IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 19-28, 19-88, & 20-08
	)	
KEVIN ELLIOTT PARKS,	)	
	)	
Respondent.	)	

Counsel for the Bar:	Eric J. Collins
Counsel for the Respondent:	None
Disciplinary Board:	Mark A. Turner, Adjudicator Tinuade Adebolu Natasha Voiloshina, Public Member
Disposition:	Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.16(d), and RPC 8.1(a)(1). Trial Panel Opinion. 240-day suspension.
Effective Date of Opinion:	September 25, 2021

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged respondent Kevin Elliott Parks with violating 14 Rules of Professional Conduct involving three separate client matters. The charges include neglect and failure to communicate as to each matter and, variously, mishandling of client funds, failure to properly withdraw, and providing knowingly false statements to regulatory authorities. The Bar asks us to impose an eight month suspension. For the reasons set forth below, we find that the Bar has established its case in each respect and we order that Respondent be suspended for eight months.

PROCEDURAL POSTURE

The Bar filed an amended formal complaint on June 23, 2020. Respondent was personally served on July 20, 2020. Respondent filed an answer on August 17, 2020. Trial was set to begin July 28, 2021.

On March 18, 2021, the Bar filed a motion to compel discovery after Respondent failed to respond to discovery requests. Respondent filed no opposition to the motion. On March 30, 2021, the Adjudicator granted the motion to compel and ordered Respondent to produce documents by April 7, 2021. Respondent did not obey the order, and failed to produce any documents or provide any response to the Bar.

The Bar filed a motion for discovery sanctions on April 14, 2021. Again, Respondent filed no opposition to the motion. On April 28, 2021, the Adjudicator granted the motion for discovery sanctions. Respondent's answer was stricken. Respondent is thus in default. In this circumstance, we treat the factual allegations against Respondent as true. BR 5.8(a); *see also In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004); *In re Kluge*, 332 Or 251, 253 27 P3d 102 (2001). Our task is first to determine whether the facts alleged establish the disciplinary rule violations charged by the Bar. If we so conclude, we then determine the appropriate sanction. *See In re Koch,* 345 Or 444, 447, 198 P3d 910 (2008).

FACTS

Earnshaw and Stoy Matter – Case No. 19-28

Yvonne C. Earnshaw and Christopher Stoy retained Respondent on March 22, 2018 to represent them in a landlord/tenant dispute. ¶3. [1] Approximately two months later, Respondent filed a lawsuit on their behalf, Case No. 18CV22675, in Multnomah County Circuit Court. *Id*. In early October 2018, Respondent and counsel for the defendants, Nathan Pogue, set a deposition for October 31, 2018, and agreed to set an arbitration hearing on November 30, 2018. ¶4.

On October 12, 2018, Earnshaw delivered documents to Respondent requested by defendants. *Id*. Around this time Respondent stopped communicating with Earnshaw and Stoy and stopped working on their case. ¶¶5-6. He did not tell them that he would no longer represent them, nor did he tell Pogue he was no longer working on the case. *Id*. Respondent failed to provide discovery to Pogue and failed to advise his clients to do so. ¶6. He did nothing to reset the October 30, 2018 deposition and told neither his clients nor Pogue anything about the status of the deposition. *Id*.

On October 18, 2018, Earnshaw emailed Respondent, asking whether he had reviewed the documents she had provided and whether the deposition would occur on October 30, 2018. ¶9. She received no response so she emailed Respondent again on October 25, 2018, with the same questions, and then again on October 30, 2018, asking if the deposition was occurring that day and about the case's status. *Id*. Earnshaw heard nothing from Respondent in answer to these questions. *Id*.

Respondent also failed to reply to opposing counsel's attempts to contact him on October 23, 2018, October 31, 2018, and November 6, 2018. ¶6. Opposing counsel filed a motion

[1] All paragraph references are to the Amended Formal Complaint.

to compel production of documents. Respondent filed no response on behalf of his clients and failed to inform them of the motion. *Id*.

Opposing counsel filed a motion to exclude Respondent's clients' evidence from the arbitration hearing set for November 30, 2018. Respondent failed to tell his clients that the motion had been filed, failed to respond to the motion, and failed to tell his clients that the arbitrator granted the motion. *Id*. Respondent failed to advise the court or the arbitrator that he had withdrawn from representing his clients, failed to advise opposing counsel that he would not appear at the arbitration hearing, and failed to prepare for or appear at the arbitration hearing. *Id*.

Respondent never told his clients the date of the arbitration hearing nor did he respond to Earnshaw's telephone calls on November 2, 2018, November 5, 2018, November 14, 2018, and November 15, 2018. ¶¶6, 9. Earnshaw and Stoy did not learn of the date of the arbitration hearing until it had already been held without them. ¶9.

After Earnshaw and Stoy hired new counsel in early December 2018, Respondent failed to communicate with them or their counsel, failed to provide counsel with a complete copy of Respondent's client file, and failed to surrender papers and property to which Earnshaw and Stoy were entitled, including original documents given to him, as well as any notes and attorney work-product. ¶¶6, 13.

Bailey Matter – Case No. 19-88

On or about September 5, 2017, pursuant to an hourly fee agreement, Respondent was hired to defend George Bailey in a suit filed against him in Clackamas County Circuit Court, Case No. 17CV31289. ¶16. Bailey paid Respondent a $2,000 retainer. *Id*. Respondent thereafter failed to take substantive action on behalf of his client in the litigation, including failing to file an answer and counterclaims, failing to pay the first appearance fee, and failing to file a substantive response to plaintiff's statement of attorney fees. ¶17.[2] Respondent did not inform his client that he failed to file an answer or counterclaims or that he did not intend to make an appearance or defend the litigation. ¶20. Respondent also did not notify his client that he failed to oppose plaintiff's attorney fee statement. *Id*.

Respondent failed to notify his client about a hearing on plaintiff's statement of attorney fees. ¶17. Respondent failed to appear at that hearing and did not tell his client that fact. ¶¶17,

[2] The amended complaint makes no mention of what happened between Respondent's failure to file an answer and the submission of an attorney fee statement by plaintiff, although the logical explanation is that plaintiff took a default against Respondent's client, thereby entitling plaintiff to an award of attorney fees as prevailing party. Allowing a default to be entered against one's client would seem to be an act of neglect as well, but it is not specified in the pleading, and we are limited to the four corners of the amended complaint in assessing the merits of the charges so there is no point in further speculation about the events in the litigation.

20. Respondent never told his client that the court awarded a judgment for attorney fees to plaintiff. ¶17. When plaintiff filed a supplemental statement of attorney fees, Respondent never filed a response, and Respondent never told his client that the court entered another judgment against him for additional attorney fees in April 2018. ¶17.

From April 2018 until August 2018, Bailey repeatedly inquired of Respondent about his case and Respondent repeatedly failed to provide substantive responses. ¶20. Respondent never told his client when plaintiff sent demands to pay the judgments for attorney fees. ¶17.

During his representation of Bailey between September 2017 and August 2018, Respondent also failed to provide his client with copies of the documents filed in the litigation. *Id*.

Mann Matter – Case No. 20-08

On November 24, 2017, pursuant to a written fee agreement, Respondent agreed to represent Rachel Mann in a claim against Mann's former landlord. ¶24. The fee agreement stated a $450 flat fee was "earned by Law Firm upon receipt," but failed to state that the funds would not be deposited in Respondent's lawyer trust account. ¶33. The agreement also failed to state that Mann could be entitled to a refund of all or part of the flat fee if she discharged Respondent for any cause and the services for which the fee was paid were not completed. Respondent subsequently collected the $450 fee from Mann but did not deposit those funds into his lawyer trust account. *Id*.

On September 12, 2018, Respondent filed a lawsuit on behalf of Mann in Multnomah County Circuit Court, Case No. 18CV40418. ¶25.

Between approximately December 19, 2018, and November 8, 2019, Respondent took no substantive action on behalf of Mann in the litigation. ¶26. The court issued an order dated December 19, 2018 transferring the case to arbitration that Responded failed to advise his client of. *Id*. He failed to file any response regarding the selection of an arbitrator as requested by the court. *Id*. He failed to advise his client of the court's notice of pending dismissal for lack of action dated January 17, 2019, for the failure of the parties to select an arbitrator, and he failed to advise his client that the court issued a general judgment of dismissal of her lawsuit dated February 26, 2019. *Id*.

On May 2, 2019, Mann emailed Respondent and received no response. Mann then called Respondent in late June or early July 2019, and Mann emailed Respondent on July 17, 2019, and again on July 23, 2019, and still received no response. ¶29.

Mann subsequently learned on her own that the court had dismissed her lawsuit back in February 2019. On or about August 23, 2019, Respondent finally responded to an email from Mann in which she asked him why her case had been dismissed. *Id*.

Respondent failed to take any substantive action after this to reinstate Mann's case despite Mann's request for him to do so. ¶26. Respondent did not tell his client that he did nothing to reinstate her case. *Id*. From approximately September 2019 until November 2019, Respondent failed to respond to Mann's requests for information regarding his efforts to reinstate her case. ¶29.

Mann complained to the Bar on November 6, 2019 about Respondent, alleging, among other things, that his failure to communicate and inattention to her case resulted in the dismissal of her lawsuit and prevented her from recovering any money sought in the lawsuit. ¶39. On December 6, 2019, Mann's complaint was referred to Disciplinary Counsel's Office (DCO).

On January 6, 2020, DCO asked Respondent by letter to respond to Mann's allegations regarding dismissal of her lawsuit. *Id*. In response to DCO's inquires Respondent stated he believed that the "bulk of issues concerning this case" began when the court assigned the case to arbitration. ¶40. Respondent claimed that, though he anticipated the court would assign Mann's case to arbitration, he never learned that the court in fact did so. *Id*. Respondent made the following representations to the Bar regarding his lack of notice or knowledge about specific actions taken by the court in Mann's case (taken verbatim from the amended formal complaint):

> With regard to the court's assignment of Mann's case to arbitration and corresponding request for the parties to select an arbitrator in December 2018, Respondent represented: "For reasons I'm not sure of, however, I either did not received (sic) the Court's service of such notice, or I somehow missed it entirely.";
>
> With regard to the court's January 17, 2019, notice of pending dismissal for lack of action for the failure of the parties to select an arbitrator, Respondent represented: "Similar to the Court's notice regarding assignment to arbitration and its proposed list of arbitrators, I was not aware of the Court's pending January 17th notice of dismissal."; and
>
> With regard to the court's dismissal of Mann's lawsuit, Respondent represented: "Having considered the matter to be waiting on the court for whatever reason, I had not docketed any specific date or deadline for any next/further action. Thus, it was not until receiving a follow up from Ms. Mann, in August 2019, that I became aware that the case had been dismissed." *Id*.

The Bar alleges that one or more of these statements to DCO were false and material to the Bar's inquiry, and Respondent knew at the time of making the statement or statements that one or more of the statements were false and material. *Id*.

ANALYSIS OF THE CHARGES

1. Respondent neglected each of the client matters in violation of RPC 1.3

RPC 1.3 states that "a lawyer shall not neglect a legal matter entrusted to the lawyer." Neglect occurs from "either a course of neglectful conduct or an extended period of neglect." *In re Jackson*, 347 Or 426, 435, 223 P3d 387 (2009). An isolated act of ordinary negligence does not run afoul of the rule. *Id.* Neglect can occur over a short period of time if a matter requires a lawyer to act with urgency. *See In re Meyer (II)*, 328 Or 220, 225, 970 P2d 647 (1999) (attorney violated disciplinary rule by failing to act over a two-month period, where the case required immediate action).

Here, Respondent engaged in a course of neglectful conduct in the Earnshaw/Stoy matter when he failed to take substantive actions in the litigation starting in October 2018 regarding discovery and the pending arbitration. Although the period of Respondent's neglect was relatively short, the litigation at that time required prompt action because of deadlines, outstanding discovery issues, motions filed by opposing counsel, and the looming arbitration.

Respondent also engaged in a course of neglectful conduct in the Bailey matter when he failed to take action in the litigation between September 2017 and August 2018. Respondent did not file an answer or counterclaims, did not pay the required first appearance fee, did not file an objection to plaintiff's two fee petitions, and did not appear at the March 2018 hearing on plaintiff's first fee petition.

Finally, Respondent engaged in a course of neglectful conduct in the Mann matter between approximately December 2018 and November 2019. When Mann's case was assigned to arbitration, Respondent failed to file any response regarding the selection of an arbitrator as required by the court, which led the court to issue a notice of pending dismissal. Respondent then failed to take any action to prevent the dismissal of the lawsuit. Respondent failed to tell Mann her case had been dismissed. When Mann learned that fact six months later she asked Respondent to reinstate the case and he did nothing.

We find that Respondent's conduct violated RPC 1.3 in each client matter.

2. Respondent failed to adequately communicate with his clients in each of the three matters in violation of RPC 1.4(a) and RPC 1.4(b)

RPC 1.4(a) provides: "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." RPC 1.4(b) goes on: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

When determining whether a lawyer has violated the provisions of RPC 1.4, we consider such factors as: the length of time between the lawyer receiving information and the lawyer's communication of that information to the client; whether the lawyer failed to respond promptly to the client's reasonable requests for information; and whether the lawyer knew, or a

reasonable lawyer would have foreseen, that delay in communication would prejudice the client. *In re Graeff*, 368 Or 18, 24-25, 485 P3d 258 (2021) *citing In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011). A lawyer may be required to communicate information immediately to keep a client reasonably informed. *Id.* In many circumstances, RPC 1.4 places the responsibility on the lawyer to initiate the communication. *Id.*

From approximately October 12, 2018, until early December 2018, Respondent failed to keep Earnshaw and Stoy reasonably informed about the status of discovery, the scheduled deposition, the scheduled arbitration, and opposing counsel's motion to exclude evidence. This occurred despite repeated attempts by Earnshaw and Stoy to get information from Respondent via emails and telephone calls in October and November 2018. These were reasonable requests for information. A reasonable lawyer would have foreseen that a failure to communicate at that point would prejudice his clients, up to and including missing the arbitration hearing.

Respondent also had an obligation to tell his clients promptly that he no longer planned to represent them or take any action on their behalf. He was also obligated to explain the status and circumstances surrounding the significant litigation events mere weeks away so his clients could make informed decisions regarding their case.

Respondent's failings were similar in the Bailey matter. From September 2017 to August 2018, Respondent failed to keep his client reasonably informed about significant issues and events in his case, including Respondent's failure to file an answer and counterclaims, his failure to oppose plaintiff's attorney fee petition, his failure to notify his client of the March 2018 hearing regarding attorney fees, his failure to report his absence from that hearing, his failure to inform his client about the supplemental judgment entered after that hearing or the subsequent supplemental judgment related to an award of additional attorney fees. Between April 2018 and August 2018, Respondent failed to provide substantive responses to repeated and reasonable requests for information. A reasonable lawyer would have foreseen that failing to inform his client of these developments would prejudice his client.

This pattern repeated itself in Respondent's handling of the Mann matter. He failed to keep her informed about the status of her lawsuit. He never told her about the court's order transferring the case to arbitration, that the court issued a notice of pending dismissal, or that the court in fact dismissed her lawsuit. He did not respond to his client's calls and emails until his client had discovered that the court had dismissed her lawsuit six months prior. When he did finally respond in August of 2019, he promised to reinstate the case, but kept quiet the fact that he never did so.

The client's requests for information were reasonable, but ignored. The answers he should have given were necessary for the client to make informed decisions about how to move forward.

We find that Respondent's failure to communicate in each of the three client matters violated RPC 1.4(a) and RPC 1.4(b).

3. Respondent failed to provide notification of withdrawal and failed to surrender client papers and property in the Earnshaw/Stoy matter in violation of RPC 1.16(d)

RPC 1.16(d) states:

> "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law."

Respondent failed to take a number of steps to protect the interests of Earnshaw and Stoy upon his withdrawal from the representation. He never gave notice to his clients, opposing counsel, the arbitrator, or the court of his termination of the representation. After his clients hired new counsel, Respondent failed to communicate with his clients or new counsel, failed to provide new counsel with a complete copy of his client's file, and failed to surrender papers and property that his clients were entitled to receive. We find these failures violated RPC 1.16(d).

4. Respondent collected a fee denominated as earned on receipt without making required disclosures in the Mann matter in violation of RPC 1.5(c)(3)

RPC 1.5(c)(3) provides, in relevant part:

> "A lawyer shall not enter into an arrangement for, charge or collect … a fee denominated as "earned on receipt," "nonrefundable" or in similar terms unless it is pursuant to a written agreement signed by the client which explains that:
>
> (i) the funds will not be deposited into the lawyer trust account, and
>
> (ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed."

Respondent's fee agreement with Mann stated only that the $450 flat fee portion was "earned by Law Firm upon receipt," but did not include other required elements. We find that the Mann fee agreement violated RPC 1.5(c)(3).

5. Respondent failed to hold funds belonging to Mann separate from his own property in violation of RPC 1.15-1(a) and failed to deposit client funds into trust in violation of RPC 1.15-1(c)

RPC 1.15-1(a) states:

> "A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the lawyer's office is situated. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to the rules in the jurisdictions in which the accounts are maintained. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation."

RPC 1.15-1(c) then states:

> "A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the fee is denominated as "earned on receipt," "nonrefundable" or similar terms and complies with Rule 1.5(c)(3)."

Since Respondent's written fee agreement did not meet the requirements of RPC 1.5(c)(3), he was prohibited from depositing the $450 that he collected from Mann in his operating account. He should have deposited those funds into his attorney trust account. We find that when Respondent deposited Mann's $450 payment into his operating account, he violated RPC 1.15-1(a) and RPC 1.15-1(c).

6. Respondent made a knowingly false statement in connection with a disciplinary matter in violation of RPC 8.1(a)(1)

RPC 8.1(a)(1) provides, in relevant part: "A lawyer … in connection with a disciplinary matter, shall not knowingly make a false statement of material fact."

To determine whether a lawyer knowingly made a false statement of material fact, we analyze the statement as we would a misrepresentation under RPC 8.4(a)(3) (misrepresentation that reflects adversely on fitness to practice law). *In re Nisley*, 365 Or 793, 802-03, 453 P3d 529 (2019). To establish a violation, the allegations must show that (1) the statement at issue was false when it was made; (2) Respondent knew it was false at that time; and (3) the statement was material and Respondent knew it was material. *Id.* (citations omitted).

A statement is material under RPC 8.1(a)(1) if it would or could have influenced the Bar in its decision-making about a disciplinary matter. *Id.; citing In re Eadie*, 333 Or 42, 53, 36 P3d 468 (2001); *In re Worth*, 336 Or 256, 273, 82 P3d 605 (2003) (false statement to Bar during investigation under former DR 1-102(A)(3) could have affected evaluation of misconduct allegations); *In re Brandt/Griffin*, 331 Or 113, 139-41, 10 P3d 906 (2000) (in case applying former DR 1-102(A)(3), misstatements were material to Bar's inquiry because they affected the assessment whether to formally investigate).

Respondent made a number of written statements to DCO during the investigation of the Mann matter, all set forth in paragraph 40 of the amended complaint. First, Respondent claimed that he either "did not receive" the court's notice assigning Mann's case to arbitration in December 2018 or "somehow missed it entirely." Second, he represented he "was not aware" that the court had issued notice of dismissal on January 17, 2019, for the failure of the parties to select an arbitrator. Third, Respondent stated that he "only became aware that the case had been dismissed" after "receiving a follow up from Ms. Mann, in August 2019." Regarding the dismissal, respondent stated: "Having considered the matter to be waiting on the court for whatever reason, I had not docketed any specific date or deadline for any next/further action."

Due to the default, we must accept as true the Bar's allegation that one or more of these statements was false. We must also accept as true the allegation that any false statement Respondent made was material and that Respondent was aware of the falsity and materiality of the statement when made. The elements of the violation are pleaded here, and we find that Respondent violated RPC 8.1(a)(1).

SANCTION

In assessing an appropriate sanction, we refer to the ABA *Standards for Imposing Lawyer Sanctions* (ABA Standards), and Oregon case law, for guidance.

ABA Standards.

The ABA Standards establish an analytical framework for determining the appropriate sanction in discipline cases using three factors: the duty violated; the lawyer's mental state; and the actual or potential injury caused by the conduct. Once these factors are analyzed, we make a preliminary determination of sanctions, after which we may adjust the sanction, if appropriate, based on the existence of aggravating or mitigating circumstances. ABA Standard 3.0.

Duty Violated.

The most important ethical duties are those obligations that lawyers owe to their clients. ABA Standards at 5. In all three matters, Respondent violated his duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. ABA Standard 4.4. He also violated his duty to properly handle client property, including his failure to provide Earnshaw and Stoy's new lawyer a complete copy of the client file as well as his failure to place Mann's funds in his trust account. ABA Standard 4.1.

Respondent violated his duty as a professional to cooperate completely and truthfully with a disciplinary investigation when he made false statements to the Bar in connection with a disciplinary matter. ABA Standard 7.0; *Nisley*, 365 Or at 815.

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.

Respondent acted knowingly and negligently. He acted knowingly when he failed to communicate with his clients in all three matters. Because his clients repeatedly contacted him about the status of their matters over time, Respondent was aware of his obligation to act on their behalf but chose not to. Thus he acted knowingly regarding his handling of their matters. Respondent acted knowingly regarding his failure to return Earnshaw and Stoy's original documents as part of their client file. Respondent acted negligently regarding the deficient fee agreement signed by Mann and his failure to deposit her $450 in his lawyer trust account.

Respondent acted knowingly regarding his false statements to DCO.

Extent of Actual or Potential Injury.

For purposes of determining an appropriate disciplinary sanction, we take into account both actual and potential injury. ABA Standards at 6; *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. ABA Standards at 9.

A client sustains actual injury when an attorney fails to actively pursue his client's case. *See e.g., In re Parker*, 330 Or 541, 546-47, 9 P3d 107 (2000).

In the Earnshaw and Stoy matter, Respondent's misconduct prevented his clients from participating in the arbitration. It caused them to have to hire new counsel in the middle of the case. Respondent failed to provide the new attorney with the complete client file. We find it highly likely that the clients suffered uncertainty, anxiety and aggravation due to Respondent's neglect and failure to communicate. These are all recognized as actual injuries under the disciplinary rules. *In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010).

In the Bailey matter, Respondent also abandoned his client in the middle of litigation. No one appeared on Bailey's behalf at the March 12, 2018 hearing in which the court awarded the plaintiff $5,000 in attorney fees. Respondent did not tell his client about the attorney fee award, and interest began accruing. Opposing counsel then pursued—and the court awarded—a supplemental attorney fee award of $950, which too began accruing interest. The supplemental award was based, in part, on opposing counsel's time spent trying to get the court to sign the General Judgment and Money Award, which the court declined to do initially because

Respondent had not paid a first appearance fee. The court signed the judgment after two months. Bailey accrued a total of about $166 in interest from both attorney fee awards due to Respondent's neglect and failure to communicate. We find it highly likely that Bailey, too, suffered anxiety, uncertainty and aggravation. Respondent's misconduct also apparently caused Bailey to hire an attorney to pursue a malpractice claim.

In the Mann matter, Respondent's neglect caused the court to dismiss his client's case. Respondent left his client in the dark about the status of her lawsuit for six months. When she discovered her case was dismissed and confronted Respondent, he said he would fix the situation, but then abandoned the matter altogether. Mann also suffered anxiety, uncertainty and aggravation from Respondent's lapses and silence.

Respondent's knowingly false and material statements to the Bar during its investigation of the Mann matter caused injury to the lawyer disciplinary system. *See Nisley*, 365 Or at 815, *citing In re Lawrence*, 337 Or 450, 472, 98 P3d 366 (2004) (lawyer caused injury to the profession when she failed to be truthful with the Bar).

Preliminary Sanction.

Absent aggravating or mitigating circumstances, the following ABA Standards appear to apply:

Suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

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.

Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. ABA Standard 4.12.

Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client. ABA Standard 4.14.

We find that a suspension is the presumptive sanction here for the multiple violations pleaded.

Aggravating and Mitigating Circumstances.

We find the following aggravating factors recognized by the *Standards* present here:

1. A pattern of misconduct. ABA Standard 9.22(c). "[A] pattern of misconduct does not necessarily require proof of a prior sanction. Rather, that aggravating factor

bears on whether the violation is a one-time mistake, which may call for a lesser sanction, or part of a larger pattern, which may reflect a more serious ethical problem." *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018). Respondent demonstrated the same pattern of neglect, abandonment, and silence in each of the three client matters here.

2. Multiple offenses. ABA Standard 9.22(d). We have found that Respondent violated 14 rules in three client matters.

3. Bad faith obstruction of the disciplinary proceeding. ABA Standard 9.22(e). Respondent failed to respond to the Bar's Request for Production of Documents, causing the Bar to file a motion to compel. Respondent ignored the subsequent order compelling production. He offered no defense for his conduct. The Bar contends that Respondent's failure to respond to the Bar's RFP was significant because it requested, among other documents, an accounting of funds related to the Bailey case. In correspondence with the Bar, Bailey's malpractice attorney alleged that Respondent may have converted Bailey's $2,000. Respondent provided Bailey no invoices for work performed nor did he refund any of the funds. Respondent's obstruction of the discovery process in this matter prevented the Bar from determining what Respondent did with the $2,000.

   Additionally, Respondent's failure to comply with discovery was not an isolated incident. Since DCO first contacted Respondent in February 2019 with inquiries about the Earnshaw and Stoy matter, Respondent consistently failed to timely cooperate with DCO. Between April 2019 and April 2020, DCO filed five petitions seeking Respondent's administrative suspension pursuant to BR 7.1 due to Respondent's failure to respond to DCO inquiries. Two of those petitions pertained to the Earnshaw and Stoy matter, two petitions pertained to the Mann matter, and one petition pertained to the Bailey matter. Each time, after DCO filed its petition, Respondent ultimately provided a response to DCO, thus avoiding an administrative suspension. Respondent's conduct delayed DCO's investigations and caused significant extra work.

4. Refusal to acknowledge wrongful nature of conduct. ABA Standard 9.22(g).

5. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice law in Oregon in 2009.

In mitigation, we find:

1. Absence of a prior record of discipline. ABA Standard 9.32(a).

The Bar asked us to find an additional aggravating factor, a dishonest or selfish motive, ABA Standard 9.22(b). The Bar contended that the fact that Respondent made false statements to Mann and to the Bar constitutes proof of such a motive. We disagree. We do not know what

Respondent's motive was for making the false statements. He may have been embarrassed by his failures, for example, and unwilling to admit them. The fact that the conduct itself was dishonest, i.e., involved false statements, does not in itself demonstrate that Respondent's motive was dishonest. Whether this particular aggravating factor applies, however, is of little significance. The aggravating factors we have found significantly outweigh the sole mitigating factor, confirming that a lengthy suspension is the appropriate sanction.

Oregon Case Law

Oregon cases support a significant suspension. The Oregon Supreme Court has stated: "We conclude that a lawyer who neglects clients' cases and fails to cooperate with the disciplinary authorities is a threat to the profession and the public and that that conduct warrants a significant sanction." *In re Bourcier (II),* 325 Or 429, 437, 939 P2d 604 (1997).

The Bar points out that the Oregon Supreme Court typically imposes a presumptive sanction of at least 60 days for knowing neglect standing alone. *In re Knappenberger*, 337 Or 15, 32-33, 90 P3d 614, 624 (2004); *In re Redden*, 342 Or 393, 153 P3d 113 (2007) (60-day suspension imposed for single serious neglect despite young, inexperienced lawyer having no prior discipline); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (60-day suspension for neglect of tort claim and subsequent failure to notify client where aggravating and mitigating factors were balanced).

Respondent's case is similar to *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996), where the court imposed a 120-day suspension. In that case, the lawyer neglected the representation of two clients in the same matter by failing to return phone calls both from his clients and the opposing lawyer, failing to respond to discovery requests, and failing to inform the clients of their scheduled depositions, a motion for sanctions, and an arbitration hearing. *Id*. at 475. The court imposed a 60-day suspension for knowing neglect." *Id.* at 481. The court also imposed an additional 60-day suspension for the lawyer's failure to cooperate with the Bar's investigation where the lawyer failed to timely respond to several Bar inquiries regarding the matter. *Id.* at 475.

For comparison, the court imposed a one-year suspension on another lawyer who engaged in conduct involving neglect of a client matter and misrepresentation. *In re Butler*, 324 Or 69, 921 P2d 401 (1996). The attorney's neglect led to the dismissal of his client's lawsuit with prejudice. *Id.* at 72. The attorney then failed to inform the client about the dismissal and gave the client false assurances about the case's status. *Id.* In imposing the one-year suspension, the court emphasized that the lawyer had demonstrated a pattern of similar misconduct spanning about 10 years and involving three separate clients. *Id.* at 76.

The Bar contends that Respondent's case falls between that of the lawyers in *Schaffner* and *Butler*. We agree that the misconduct is more serious than that in *Schaffner.* Respondent's neglect here injured multiple clients in three separate matters and involved a pattern of

misconduct between 2017 and 2019. But the Bar concedes that Respondent lacks the disciplinary history of neglecting clients shown by the lawyer in *Butler*.

The Bar also argues that Respondent's knowingly false and material statements to the Bar, standing alone, warrant a suspension. See *Nisley*, 365 Or at 817-18. (court imposed a 60-day suspension when lawyer's sole misconduct was providing false statements during a Bar investigation).

The Bar asks us to impose a 180-day suspension for the client-related violations—60 days per client matter, and an additional 60-day suspension for Respondent's false and material statements to the Bar, for a total of 240-day (eight month) suspension. We find that this approach is supported by the ABA Standards and Oregon case law, and therefore order that Respondent be suspended for eight months, beginning 30 days after this decision becomes final.

CONCLUSION

The purpose of lawyer discipline is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties. ABA Standard 1.1. A 240-day suspension is appropriate here.

Respectfully submitted this 26th day of July 2021.

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

/s/ Tinuade Adebolu
Tinuade Adebolu, Trial Panel Member

/s/ Natasha Voloshina
Natasha Voloshina, Trial Panel Public Member