

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 21-23  
)  
ROBERT M. SNEE, )  
)  
Respondent. )

Counsel for the Bar: Courtney C. Dippel

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.15-1(d) and RPC 1.16(d). Stipulation for Discipline. Public reprimand.

Effective Date of Order: April 29, 2021

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is publicly reprimanded for violation of RPC 1.15-1(d) and RPC 1.16(d).

DATED this 29th day of April, 2021.

/s/ Mark A. Turner

Mark A. Turner  
Adjudicator, Disciplinary Board

**STIPULATION FOR DISCIPLINE**

Robert M. Snee, 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 20, 1985, and has been a member of the Bar continuously since that time, having his 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 March 6, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of the Oregon Rules of Professional Conduct (RPC) 1.15-1(d) and RPC 1.16(d). The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

#### **Facts**

5.

In May 2018, Oregon residents Chelsea and Scott Pisani (Pisanis) retained California lawyer John Mounier (Mounier), to file a medical malpractice action against defendants in Oregon. Mounier told the Pisanis that he would need to retain Oregon counsel to file the action since he was not licensed here, but that he would submit a pro hac vice application to handle the action once admitted.

6.

Mounier retained Respondent to be his local counsel. On June 8, 2018, Respondent filed the medical malpractice action in Lane County Circuit Court. On July 24, 2018, he filed an amended complaint and thereafter, served the majority of the defendants with summons and the amended complaint. However, he was unable to complete service on one defendant.

7.

That fall, some of the defendants had served Respondent with discovery requests. On November 6, 2018, the Pisanis provided Respondent with a \$1,000 check to work on responding to those requests. Snee deposited the check into his trust account on November 8, 2018.

8.

The court dismissed the Pisanis' case on December 23, 2018 due to a failure by Respondent to serve one defendant, and entered its judgment of dismissal on December 27, 2018. The Pisanis checked on the status of their lawsuit electronically in late December, and discovered the dismissal. On January 17, 2019, the clients emailed Respondent and informed him that they learned the case had been dismissed. On February 7, 2019, the Pisanis terminated both Respondent and Mounier.

9.

The Pisanis filed a Bar complaint on June 13, 2019. Throughout the course of the Bar's investigation, the Bar inquired as to the status of the Pisanis' \$1,000 that they had provided to Respondent. On December 14, 2020, Respondent refunded the balance of funds remaining in his trust account, \$700, to Mr. Pisani, after deducting \$300 for service costs. Respondent had delayed doing so due to Mounier indicating that he had outstanding costs and expenses in excess of \$500.00 and would submit documentation to Respondent of those costs. Respondent refunded the funds after he did not receive any such documentation from Mounier.

### **Violations**

10.

Respondent admits that, by failing to refund client funds until December 2020, after being terminated in February 2019, he violated RPC 1.15-1(d) [lawyer shall promptly deliver to the client any funds that the client is entitled to receive], and RPC 1.16(d) [upon termination of representation, lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as refunding any advance payment of fee or expenses that has not been earned or incurred].

### **Sanction**

11.

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 violated his duties owed to his clients to deal properly with client property and to avoid injury upon termination of representation. ABA Standard 4.0. He violated duties he owed as a professional to protect the Pisanis' interests upon termination of representation by promptly returning their funds in his possession. ABA Standard 7.0.
- b. **Mental State.** The most culpable mental state is that of "intent," when the lawyer acts with 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.* Respondent originally acted negligently, or with the failure to be aware of a substantial risk that circumstances exists or that a result will follow, which failure deviates from the standard of care that a reasonable lawyer would exercise in the situation. ABA Standards at 9. However, as the Bar's investigation wore on and he continued to retain the funds, his conduct arguably became knowing.
- c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Respondent's conduct caused actual injury to his former clients, who lost the use of their \$700 for almost two years.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
  1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice in Oregon in 1985.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
  1. Absence of prior discipline. ABA Standard 9.32(a).
  2. Remorse. ABA Standard 9.32(l).

12.

Under the ABA Standards, suspension is appropriate when a lawyers knows or should know that he is dealing improperly with client property and causes a client injury or potential injury. ABA Standard 4.12. Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. ABA Standard 4.13.

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. ABA Standard 7.3.

13.

Reprimand would also be appropriate under Oregon case law, including the following cases that resulted in stipulated reprimands:

*In re Farrell*, 33 DB Rptr 164 (2019). Upon client's termination of representation, attorney failed to transfer client's file to new counsel for several months, despite written requests.

*In re Kmetic*, 33 DB Rptr 518 (2019). Attorney refused to refund any portion of an advance flat fee when representation was terminated before she had completed the representation for which the flat fee had been paid. Aggravating factors included prior discipline and substantial experience.

*In re Hafez Daraee*, 32 DB Rptr 252 (2018). Attorney received a retainer to defend a case. After the client terminated representation and directed where a refund be sent, attorney did not respond to multiple communications from the client and the client's new lawyer, and failed to refund the fee until after being notified of the Bar complaint.

*In re James F. O'Rourke*, 32 DB Rptr 36 (2018). Attorney who was hired on a criminal case took a nonrefundable fee, but was terminated before completing the services for which he was paid, and then failed to refund any portion of the fee until the disciplinary proceeding was filed. Aggravating factors included prior discipline and substantial experience.

*In re Lynne B. Morgan*, 31 DB Rptr 28 (2017). Upon a client's termination of the representation, attorney failed to promptly account for or deliver funds that client had advanced for costs that had not been incurred, but had been mistakenly withdrawn from trust. Aggravating factors included substantial experience and multiple violations.

*In re Ivan S. Zackheim*, 28 DB Rptr 9 (2014). In a personal injury action, clients terminated attorney's representation and instructed him to forward their files to new counsel. Attorney refused, improperly asserting that he was entitled to retain them.

*In re Jerry G. Kleen*, 27 DB Rptr 213 (2013). Attorney took nearly eight months after representation ended to return funds the client had paid him to obtain an expert opinion that he never sought. Attorney also engaged in neglect and failure to communicate. Aggravating factors included substantial experience and multiple violations.

*In re Daniel L. Lounsbury*, 24 DB Rptr 53 (2010). Attorney failed to refund a portion of a client's advance fee when representation ended before the legal services were completed.

*In re Ann B. Witte*, 24 DB Rptr 10 (2010). Attorney withdrew from representing a client without returning file materials to the client proceed *pro se*.

*In re Patrick D. Angel*, 22 DB Rptr 351 (2008). Attorney represented a client in a legal action for about 16 months, during which time he filed a complaint in district court. Shortly after filing the complaint, attorney informed his client that he had accepted another job and would need to withdraw from the client's case. Respondent failed to refund the client's unearned funds until about seven months after withdrawing.

14.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 1.15-1(d) and RPC 1.16(d).

15.

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

16.

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: none.

17.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 6, 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 27th day of April, 2021.

/s/ Robert M. Snee

Robert M. Snee, OSB No. 853349

EXECUTED this 27th day of April, 2021.

OREGON STATE BAR

By: /s/ Courtney C. Dippel

Courtney C. Dippel, OSB No. 022916  
Disciplinary Counsel