

DISCIPLINARY BOARD REPORTER

VOLUME 12

January 1, 1998, to December 31, 1998

Report of Attorney Discipline Cases
Decided by the Disciplinary Board
and by the
Oregon Supreme Court
for 1998



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PREFACE

This Disciplinary Board Reporter (DB Reporter) contains final decisions of the Oregon Disciplinary Board, stipulations for discipline between accused attorneys and the OSB, summaries of 1998 decisions of the Oregon Supreme Court involving the discipline of an attorney, and a few opinions from late 1997 that were not included in the 1997 DB Reporter. Cases in this DB Reporter should be cited as 12 DB Rptr __ (1998).

A decision of the Disciplinary Board is final if the charges against the accused are dismissed, a public reprimand is imposed, or the accused is suspended from practice for up to six months, and neither the Bar nor the accused has sought review by the Oregon Supreme Court. See Title 10 of the Bar Rules of Procedure (page 335 of the 1999 Membership Directory) and ORS 9.536.

The decisions printed in this DB Reporter have been reformatted and corrected for typographical errors, but no substantive changes have been made to them. Due to space restrictions, exhibits are not included but may be obtained by calling the Oregon State Bar. Those interested in a verbatim copy of an opinion should contact Barbara Buehler at extension 370, (503) 620-0222 or (800) 452-8260 (toll-free in Oregon). Final decisions of the Disciplinary Board issued on or after January 1, 1999, are also available from Barbara Buehler at the Oregon State Bar on request. Please note that the statutes, disciplinary rules, and rules of procedure cited in the opinions are those in existence when the opinions were issued. Care should be taken to locate the current language of a statute or rule sought to be relied on concerning a new matter.

General questions concerning the Bar's disciplinary process may be directed to me at extension 319.

Jeffrey D. Sapiro
Oregon State Bar Disciplinary Counsel

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Cite as 326 Or 107 (1997)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
DAVID K. ALLEN,)
)
Accused.)

(OSB 94-191; SC S41729)

On review of the decision of a trial panel of the Disciplinary Board.

Argued and submitted November 6, 1996. Decided November 28, 1997.

Marc Blackman, of Ransom, Blackman & Maxfield, Portland, argued the cause and filed the briefs for the Accused.

Jeffrey D. Sapiro, Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Fadeley, Graber, and Durham, Justices.

PER CURIAM

The Accused is suspended from the practice of law for a period of one year, subject to any credit for which he may be eligible under the terms of this opinion, commencing on the effective date of this decision.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating ORS 9.460(1) (requiring a lawyer to support the laws of this state), ORS 9.527(1) (commission of conduct that would justify denial of admission to the Bar), ORS 9.527(2) (conviction of a misdemeanor involving moral turpitude), DR 1-102(A)(1) (assisting another to violate disciplinary rules), DR 1-102(A)(2) (committing a criminal act that reflects adversely on the lawyer’s fitness to practice), and DR 1-102(A)(3) (engaging in conduct involving misrepresentation). A trial panel found the Accused guilty of violating ORS 9.527(1) and DR 1-102(A)(2) and suspended him for one year. *Held:* The Bar proved by clear and convincing evidence that the Accused violated ORS 9.527(1) and DR 1-102(A)(2). The Accused is suspended from the practice of law for a period of one year, subject to any credit for which he may be eligible under the terms of the opinion, commencing on the effective date of the opinion.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 96-118
)
PAUL PIERSON,)
)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4),
DR 7-106(C)(5), and DR 7-110(B). 30-day
suspension.
Effective Date of Order: December 9, 1997

AMENDED ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be suspended from the practice of law for a period of 30 days, commencing January 23, 1998, for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-106(C)(5), and DR 7-110(B).

DATED nunc pro tunc this 9th day of December 1997.

/s/ Todd A. Bradley
Todd A. Bradley
State Disciplinary Board Chairperson

/s/ Armina J. Brown
Armina J. Brown, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Paul Pierson, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Paul Pierson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1988, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Curry County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily, and after having the opportunity to consult with counsel. This stipulation is made under the confidentiality provisions of Bar Rule of Procedure 3.6(h).

4.

On December 19, 1996, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-106(C)(5), and DR 7-110(B). A formal complaint was filed by the Bar on August 21, 1997, and is attached hereto as Exhibit 1. The Accused does not contest the facts and violations set forth therein. This stipulation is intended by the parties to resolve all charges in this matter.

Facts

5.

Sometime before October 1995, the Accused undertook to represent a client (hereinafter “wife”) in the dissolution of her marriage. The Accused filed a petition for dissolution on wife’s behalf on October 18, 1995.

6.

On or about February 6, 1996, the Accused received a telephone call from attorney Christopher Keusink (hereinafter “Keusink”) who informed him that Keusink now represented husband.

7.

On or about February 8, 1996, the Accused filed a motion for default with the court without notifying Keusink or sending him a copy of the motion. On February 15, 1996, the Accused filed a motion for entry of decree with the court, also without notifying Keusink or sending him a copy of the motion. The Accused intended not to notify Keusink so as to obtain a result for his client without delay.

8.

On February 20, 1996, the circuit court signed the default judgment and decree of dissolution of marriage. Thereafter, Keusink learned of the default and entry of the decree, and moved for relief on husband's behalf. The court vacated the default judgment on March 28, 1996.

9.

It is a known local custom of courtesy or practice in the Accused's local Bar not to apply for a default without giving opposing party's counsel notice of one's intent to do so. It is also a known local custom of courtesy or practice in the Accused's local Bar not to apply for a default without giving notice of intent to do so after engaging in settlement discussions or negotiations with counsel for the opposing party.

10.

The Accused admits that his conduct violated DR 1-102(A)(3), DR 1-102(A)(4), DR 7-106(C)(5), and DR 7-110(B) of the Code of Professional Responsibility.

Sanction

11.

The Accused and the Bar agree that the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* in addition to Oregon case law to determine the appropriate sanction in this case. The ABA *Standards* require that the Accused's conduct be analyzed in consideration of four factors: the ethical duty violated; the Accused's mental state; the actual or potential injury; and the existence of aggravating or mitigating circumstances.

A. *Duty*. The Accused violated his duty to the legal system to refrain from conduct prejudicial to the administration of justice, conduct which involves dishonesty to the court and opposing counsel, and conduct which involves improper communication with individuals in the legal system. *Standards* §6.7. He also violated a duty to the profession to comply with known local customs of courtesy or practice. *Standards* §7.0.

B. *Intent*. The Accused's conduct was "intentional" or "knowing" inasmuch as he was aware that husband was represented by counsel yet he

nevertheless filed pleadings for a default without notifying opposing counsel. *Standards* at 7.

C. *Injury*. Husband was injured inasmuch as his lawyer had to take action to set aside the default judgment obtained by reason of the Accused's unethical conduct.

D. *Aggravating Factors*. The following aggravating factors exist in this case: the Accused had a prior discipline offense inasmuch as he was admonished in 1992 for a former client conflict of interest (*Standards* §9.22(a)); the Accused committed multiple offenses (*Standards* §9.22(d)); and the Accused had substantial experience in the practice of law (*Standards* §9.22(i)).

E. *Mitigating Factors*. The following mitigating factors exist in this case: the Accused's conduct was not motivated by selfishness (*Standards* §9.32(b)); the Accused has displayed a cooperative attitude toward the disciplinary proceedings (*Standards* §9.32(e)); and the Accused acknowledges the wrongfulness of his conduct and is remorseful (*Standards* §9.32(l)).

12.

The ABA *Standards* provide that suspension is generally appropriate when a lawyer knowingly violates a duty owed to the legal system or to the profession. ABA *Standards* §§6.12, 6.32, 7.2. Oregon case law is consistent with this conclusion. See, e.g., *In re Porter*, 320 Or 692, 890 P2d 1377 (1995) (63-day suspension where lawyer took default after assuring opposing counsel he would not do so without notice); *In re Belcher*, 7 DB Rptr 37 (1993) (lawyer suspended 45 days for taking a decree in adoption matter without disclosing that fact to alleged biological father).

13.

Consistent with the ABA *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period of 30 days, effective January 23, 1998.

14.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the SPRB. This Stipulation for Discipline is also subject to approval by the Disciplinary Board, and the parties agree that this Stipulation will be submitted to the Disciplinary Board for consideration pursuant to BR 3.6.

EXECUTED this 8th day of December 1997.

/s/ Paul Pierson

Paul Pierson

OREGON STATE BAR

By: /s/ Mary A. Cooper

Mary A. Cooper

Assistant Disciplinary Counsel

Cite as 326 Or 195 (1997)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
RONALD D. JONES,)
)
Accused.)

(OSB 95-10; SC S43722)

En Banc

On review of the decision of a trial panel of the Disciplinary Board.

Argued and submitted September 4, 1997. Decided December 18, 1997.

Ronald D. Jones, Grants Pass, argued the cause *in propria persona*. William V. Deatherage, of Frohnmayer, Deatherage, Pratt, Jamieson & Clarke, P.C., Medford, filed the brief for the Accused.

Chris L. Mullmann, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

PER CURIAM

The Accused is suspended from the practice of law for a period of 45 days commencing on the effective date of this decision.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 1-102(A)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) and DR 1-102(A)(4) (engaging in conduct prejudicial to the administration of justice). After finding the Accused guilty as charged, a trial panel of the Disciplinary Board suspended the Accused for 45 days. On review, the Accused challenged only the sanction. *Held*: A 45-day suspension is the appropriate sanction in this case. The Accused is suspended from the practice of law for a period of 45 days commencing on the effective date of this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 96-54
)
RONALD K. CUE,)
)
Accused.)

Bar Counsel: Richard D. Adams, Esq.
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 6-101(B), DR 7-101(A)(2), DR 1-102(A)(4), DR 9-101(C)(4), and DR 1-103(C).
180-day suspension.
Effective Date of Order: January 7, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come before the Disciplinary Board upon the Stipulation of Discipline of Ronald K. Cue and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the parties is approved. Ronald K. Cue shall be suspended from the practice of law for a period of 180 days, effective January 7, 1998, or three days after this Order is signed, whichever is later, for violation of DR 6-101(B), DR 7-101(A)(2), DR 1-102(A)(4), DR 9-101(C)(4), and DR 1-103(C) of the Code of Professional Responsibility.

DATED this 26th day of December 1997.

/s/ Todd A. Bradley
Todd A. Bradley
State Disciplinary Board Chairperson

/s/ Armina J. Brown
Armina J. Brown, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Ronald K. Cue (hereinafter “the Accused”) and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Ronald K. Cue, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state, and a member of the Oregon State Bar, having his office and place of business in the County of Jackson, State of Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This stipulation is made under the restrictions of Rule of Procedure 3.6(h).

4.

On August 8, 1997, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”) alleging violation of DR 6-101(B), DR 7-101(A)(2), DR 1-102(A)(4), DR 9-101(C)(4), and DR 1-103(C) of the Code of Professional Responsibility. This Stipulation for Discipline is intended to resolve all charges.

Facts

5.

In or about February 1993, a Petition for Probate of the Estate of Edward Krahel was filed in the Circuit Court for the County of Jackson (hereinafter “Krahel Probate”). Elizabeth Brooks was appointed personal representative and was represented by attorney Ervin Hogan. About July 1993, Karen Creekmore (hereinafter “Creekmore”) retained the Accused to represent her interests as an heir and to obtain her appointment as the personal representative in the Krahel Probate. A stipulation to substitute Creekmore as personal representative was signed by the parties in the fall of 1993, but not filed with the court by the Accused until March 1994.

6.

In April 1994, two boxes of personal property belonging to the Krahel estate were delivered to the Accused by the previous personal representative. Creekmore

requested that the Accused deliver the property to her. Between May and October 1994, Creekmore sold estate assets and distributed the proceeds to the heirs. At the Accused's instruction, Creekmore also prepared and delivered two checks to the Accused, one for Hogan and one for Brooks, for him to deliver to them.

7.

In August 1994, the Accused prepared a Final Account and Petition for Decree of Distribution, which was signed by Creekmore, and a Waiver of Account and Consent to Distribution, which was signed by Krahel's heirs. The Accused failed to file the final account, petition, or waiver of consent with the court.

8.

In September 1994, the court served the Accused with a notice to appear for hearing for failure to file required accountings in March 1993 and 1994. In June 1995, the court served the Accused with a notice to appear for hearing for failure to file required accountings in March 1993, and 1994 and 1995. In August 1995, the court served a third notice to appear for hearing for failure to file required accountings from March 1993 and 1994 and 1995. On each occasion, when the Accused received the notice, the Accused reported to the court that he would promptly file the accountings. Based on these assurances, no hearings were held. On each occasion, however, the Accused failed to file the accountings, the Final Account and Petition for Decree of Distribution, or the Waiver and Consent to Distribution.

9.

Between May 1994 and September 1996, Creekmore contacted the Accused on multiple occasions concerning his failure to deliver the boxes containing the personal property to her, his failure to deliver the checks to Hogan and Brooks, and his failure to conclude the Krahel Probate. The Accused delivered some of the personal property to Creekmore in April 1996. He reported that he had discarded the remainder of the property because he was of the view that it was of no value. On September 9, 1996, the Accused filed the Final Account and Petition for Decree of Distribution and the Waiver and Consent to Distribution with the court.

10.

On February 21, 1996, Creekmore filed a complaint with the Oregon State Bar concerning the Accused's conduct. Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response by March 18, 1996. On March 5, 1996, the Accused acknowledged the Bar's letter and advised that he would respond shortly thereafter. The Accused did not provide further response.

11.

On March 25, 1996, Disciplinary Counsel's Office again requested the Accused's response to the complaint by April 1, 1996. The Accused did not respond as required and the matter was referred to the Local Professional Responsibility Committee for further investigation. Shortly thereafter the Accused filed a response to Creekmore's complaint.

Violation

12.

The Accused admits that he neglected a legal matter entrusted to him, intentionally failed to carry out a contract of employment, engaged in conduct prejudicial to the administration of justice, failed to promptly deliver property in his possession his client was entitled to receive, and failed to timely respond to the reasonable requests of an authority empowered to investigate his conduct in violation of DR 6-101(B), DR 7-101(A)(2), DR 1-102(A)(4), DR 9-101(C)(4), and DR 1-103(C) of the Code of Professional Responsibility.

Sanction

13.

The Accused and the Bar agree that in fashioning a sanction in this case, the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") should be considered. The *Standards* require that the Accused's conduct be analyzed by 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. *Standards* §3.0.

A. *Duty Violated.* In violating DR 6-101(B), DR 7-101(A)(2), DR 1-102(A)(4), DR 9-101(C)(4), and DR 1-103(C), the Accused violated duties to his client, to the profession, and to the legal system. *Standards* §§4.1, 4.4, 6.2, 7.0.

B. *State of Mind.* By neglecting a legal matter and failing to promptly deliver the property the client was entitled to receive, the Accused acted with knowledge, that is, a conscious awareness of the attendant circumstances, but without the conscious objective or purpose to accomplish a particular result. In failing to carry out a contract of employment and failing to timely respond to the Disciplinary Counsel's Office, the Accused acted with intent, or the conscious objective or purpose to accomplish a particular result. *Standards* at 7.

C. *Injury.* The Accused's conduct resulted in potential and actual injury. Between about September 1994 and September 1996, the Accused took little or no action in the probate case. He failed to comply with the court's directives that accountings be filed and caused the probate to remain open long after it should have been concluded. The Accused's client also suffered potential and actual injury by his conduct. The Accused delayed final resolution of the probate case and her possession

of property to which she was entitled. He also disposed of some of the property because he felt that it had little or no value, rather than delivering it to the client as she had requested.

D. *Aggravating Factors.* Aggravating factors to be considered include:

1. The Accused was admitted to practice law in 1976, and has substantial experience in the practice of law. *Standards* §9.22(i).
2. This Stipulation involves five rule violations. *Standards* §9.22(d).
3. The Accused initially failed to provide a timely response to the Bar's request for explanation. *Standards* §9.22(e).
4. The Accused has a prior disciplinary record for violations of some of the same rules set forth herein, consisting of an admonition in 1984 for violation of DR 6-101(A)(3) (current DR 6-101(B)), and an admonition in 1986 for violation of DR 6-101(A)(3) (current DR 6-101(B)) and DR 1-103(C). In February 1990, the Accused was suspended for 60 days, all of which was stayed subject to a two-year probation, with conditions, for violation of DR 6-101(B). *In re Cue*, 4 DB Rptr 17 (1990). *Standards* §9.22(a).

E. *Mitigating Factors.* Mitigating factors to be considered include:

1. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(l).
2. After the complaint was referred to the Local Professional Responsibility Committee for further investigation, the Accused cooperated with the Disciplinary Counsel's Office and the Committee. *Standards* §9.32(e).
3. The Accused's reputation in the community is good. *Standards* §9.32(g).

14.

The *Standards* provide that suspension is appropriate when a lawyer knowingly fails to perform services and causes serious or potentially serious injury to a client. *Standards* §4.2. Suspension is generally appropriate when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury to a client. *Standards* §4.12. The *Standards* also provide that suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is an injury or potential interference with a legal proceeding; or when the lawyer engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards* §§6.22, 7.2. Finally, suspension is appropriate when, as here, a lawyer has been disciplined for the same or similar conduct and reoffends. *Standards* §8.2.

Oregon case law is in accord. In *In re Miles*, 324 Or 218, 923 P2d 1219 (1996), the court made clear that a 60-day suspension is appropriate for a lawyer

found guilty of one violation of DR 1-103(C). In *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996), the lawyer was suspended for 120 days where he had neglected two client matters and failed to respond to the Bar's inquiries in a timely manner. See also *In re Scott*, 11 DR Rptr 159 (1997), where a lawyer with no prior record of discipline was suspended for 120 days for violation of DR 6-101(B), DR 7-101(A)(2), DR 9-101(C)(4), and DR 1-103(C); and *In re Devers*, 317 Or 261, 855 P2d 617 (1993), where a lawyer received a six-month suspension, in part, for neglect of a probate matter.

15.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree, particularly in light of his prior disciplinary record for similar offenses, that the Accused shall be suspended from the practice of law for a period of 180 days commencing January 7, 1998, or three days after approval of this Stipulation by the Disciplinary Board, whichever is later.

16.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to BR 3.6.

DATED this 8th day of December 1997.

/s/ Ronald K. Cue

Ronald K. Cue
OSB No. 76114

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus
OSB No. 73014
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-10
)
WILLIAM O. BASSETT,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Jerry F. Kobelin, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3) and DR 9-101(A).
60-day suspension.
Effective Date of Order: January 9, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved. The Accused shall be suspended from the practice of law for a period of 60 days for violation of DR 1-102(A)(3) and DR 9-101(A) of the Code of Professional Responsibility, effective January 9, 1998.

DATED this 2nd day of January 1998.

/s/ Todd A. Bradley
Todd A. Bradley
State Disciplinary Board Chairperson

/s/ Ann Fisher
Ann Fisher, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

William O. Bassett, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1969, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely, voluntarily, and with the advice of counsel. This Stipulation is made under the restrictions of Rule of Procedure 3.5(h).

4.

The State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for violation of DR 1-102(A)(3) and DR 9-101(A) of the Code of Professional Responsibility. The Bar filed its Formal Complaint on August 29, 1997.

Facts

5.

Prior to August 1996, the Accused maintained two lawyer trust accounts, one at First Interstate Bank and another at Key Bank. He also maintained a business account at First Interstate Bank. Between April and May 1996, the Internal Revenue Service (hereinafter “IRS”) levied upon the Accused’s First Interstate Bank business account and seized funds on deposit to collect unpaid taxes.

6.

Beginning about May 8 and through August 1996, the Accused deposited funds belonging to him or his law firm in the Key Bank lawyer trust account to mislead and avoid the seizure of such funds by the IRS. The Key Bank trust account held no client funds at the time.

7.

Based on the foregoing, the Accused admits that he violated DR 1-102(A)(3) and DR 9-101(A) of the Code of Professional Responsibility.

Sanction

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”) should be considered. The *Standards* establish the framework to analyze the Accused’s conduct, including (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. *Standards* §3.0.

A. *Duty*. In violating DR 1-102(A)(3) and DR 9-101(A), duties to the public and the profession are implicated. *Standards* §§5.0, 7.2.

B. *State of Mind*. The Accused deposited funds in a lawyer trust account to shield his personal assets from the IRS. The Accused knew that the lawyer trust account would be protected from levy and seizure of funds on deposit. *Standards* at 7.

C. *Injury*. As a result of the Accused’s conduct, there existed the potential for injury to the public and the profession. No actual loss or damage resulted from his deposit of funds in his lawyer trust account. The Accused had established a payment plan with the IRS prior to its levy on his business account. He had made payments and has paid the taxes due. The Accused did not commingle personal funds with client funds in the lawyer trust account. *Standards* at 7.

D. *Aggravating Factors*. Aggravating factors to be considered include:

1. The Accused was admitted to practice in 1969 and has substantial experience in the practice of law. *Standards* §9.22(i).

2. This Stipulation involves two rule violations. *Standards* §9.22(d).

3. The Accused’s conduct demonstrates dishonest and improper motives by his effort to shield personal funds from levy by the IRS. *Standards* §9.22(b).

4. The Accused has a prior disciplinary record consisting of an admonition imposed in June 1982 for violation of DR 7-104(A) and former DR 1-102(A)(4) (current DR 1-102(3)).

E. *Mitigating Factors*. Mitigating factors to be considered include:

1. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(l).

2. The Accused cooperated with the Disciplinary Counsel’s Office and the Local Professional Responsibility Committee in responding to the complaint and resolving this disciplinary proceeding. *Standards* §9.32(e).

3. The Accused's prior disciplinary record is remote in time from the conduct which is the subject of this Stipulation. *Standards* §9.32(m).

4. The Accused's reputation in the profession and the community are good. *Standards* §9.22(g).

5. The Accused experienced significant personal and financial problems since about 1990, including deaths and illnesses in his family, and added financial burdens related to those circumstances and the departure of two lawyers who shared office space left the Accused with full responsibility for the lease and other office expenses.

Because of all of the financial burdens, the Accused was unable to pay all of his taxes. Prior to the IRS levy on his business account, the Accused initiated contact with the IRS to establish and understood that he had established a payment arrangement. It was after that time that he deposited his personal funds in the trust account. The Accused acknowledges that he has no defense and that his conduct was wrong. However, he felt he needed to protect certain funds to maintain his ability to conduct his business so that he could meet professional and personal financial responsibilities. *Standards* §9.32(c), (h).

9.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.2. Case law is in accord. See *In re Whipple*, 1 DB Rptr 205 (1986), where the lawyer was suspended for 60 days for violation of DR 1-102(A)(4) (current DR 1-102(A)(3)) and DR 9-102(A) (current DR 9-101(A)) for similar conduct.

10.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period of 60 days.

11.

This Stipulation for Discipline has been approved by the State Professional Responsibility Board, reviewed by the Disciplinary Counsel of the Oregon State Bar, and is subject to the approval of the Disciplinary Board pursuant to BR 3.6. If approved by the Disciplinary Board, the Accused's suspension shall be effective January 9, 1998, or three days after such approval, whichever is later.

DATED this 22nd day of December 1997.

/s/ William O. Bassett

William O. Bassett, OSB No. 69013

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus, OSB No. 73014

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case Nos. 95-151, 95-247
)
BRIAN J. DOBIE,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Christopher R. Hardman, Esq.
Disciplinary Board: Norman Wapnick, Esq., Chair; Mark McCulloch, Esq.; Bette Worcester, Public Member
Disposition: Violation of DR 6-101(B), DR 7-101(A)(2), and DR 9-101(C)(3). 30-day suspension, stayed pending probation.
Effective Date of Opinion: January 21, 1998

OPINION OF TRIAL PANEL

This matter came regularly before a Trial Panel of the Disciplinary Board consisting of Norman Wapnick, Esq., Chair, Mark McCulloch, Esq., and Bette Worcester, Public Member, on November 19, 1997. The Oregon State Bar was represented by Chris L. Mullmann, Assistant Disciplinary Counsel, and the Accused was represented by Christopher R. Hardman. The Trial Panel has considered the pleadings, exhibits, testimony, trial memoranda, and arguments of counsel.

Cause of Wrongful Conduct

In Case No. 95-151 (Campbell), the Bar charges the Accused with violation of DR 6-101(B) (neglect of a legal matter) and DR 7-101(A)(2) (intentional failure to carry out a contract of employment). In Case No. 95-247 (Patterson), the Bar charges the Accused with violation of DR 9-101(C)(3) (failure to maintain complete records and render appropriate accounts to a client).

Summary of Facts

The Accused was admitted to the Massachusetts Bar in 1977 and practiced as an Assistant District Attorney through 1989, when he accepted a job as director of an interagency drug enforcement agency in the Commonwealth of the Northern Mariana Islands.

In 1990, the Accused and his family moved to Oregon, where he was admitted to the Bar that same year. Since that time, the Accused has been a sole practitioner, except for a brief period when he worked for a firm practicing primarily in the field of Domestic Relations.

The Campbell Case

In order to build a practice, the Accused rented space from a small firm in Lake Oswego and participated in the Hyatt Legal Services network.

During this time (in March 1991), the Accused was contacted by Mr. Clay Campbell, who was referred through the Hyatt program. Mr. Campbell resided in California and through an initial phone contact, retained the Accused to assist him in obtaining financing and clearing title to real property in Coos County, Oregon.

In May 1991, the Accused met with Mr. Campbell, obtained a list of persons to be joined in an action to clear title and in July 1991, the Accused filed the action in Coos County, Oregon. Thereafter, the Accused sent letters, certified and regular mail, to all defendants, including acceptances of service and releases. Some of the defendants did not respond. The Accused made no attempt to serve the unresponsive defendants and on September 27, 1992, the case was dismissed for failure to make service.

Shortly after the action was filed, the Accused changed positions and went to work for Mason, Rowlette, a domestic relations firm. He stayed with that firm for a little over a year, after which he moved to his present location where he rents space with a firm, but practices as an individual.

From February of 1992 to the latter part of 1993, Campbell telephoned the Accused at his office and left messages, but without response. The Accused denies getting the messages but cannot explain why he didn't contact Campbell. The Accused wrote to Campbell under date of October 28, 1992, requesting that Campbell advise him with respect to a suggested course of action. Campbell denies receiving this letter. After the letter of October 28, 1992, the Accused took no other action to contact Campbell or to prosecute the case.

In March 1994, Campbell retained another attorney who cleared title to the property. The Accused admits that he agreed with Campbell to recommence work on the lawsuit, but did not do so. The Accused admits that his conduct constitutes neglect of a legal matter entrusted to him in violation of DR 6-101(B), but denies that he intended to fail to carry out a contract of employment in violation of DR 7-101(A)(2).

The Patterson Case

The Accused had known Molly A. Patterson (Patterson) as a family friend, prior to having represented her in her claim for personal injuries as a result of an auto accident occurring in Oregon in April 1992. During the course of this representation, Patterson, in June 1993, slipped and fell at a location in Seattle,

Washington. The Accused agreed to assist her in recovering from the insurance carrier insuring the owner of the premises.

The nature of the representation is not clear. The Accused testified that he had no written retainer agreement and did not agree to represent Patterson in Washington as he is not admitted there. He discussed the case with a Washington licensed attorney who declined to take the case. He stated that he thought he could refer the case to a Washington attorney from whom he would seek fees in the event of a personal injury settlement. This testimony is different than his statements in his letter of July 20, 1995, to Ms. Lia Saroyan of the Oregon State Bar, where he takes the position that he did represent Patterson and has a valid claim of lien against any amounts which have not been distributed.

He obtained \$5,000 from the insurance company in settlement of the property owner's medical payments coverage. He agreed with the insurer that the money would be used to pay medical bills.

The Accused admits that he failed to pay all sums to medical creditors and that he failed to make an appropriate accounting to Patterson.

The Accused testified that the accounting set forth in the May 10, 1995, letter from Patterson to Dobie [ex. F] is correct and that he is holding \$1,670.88 in his trust account. He further testified that he is making no claim to those moneys and will transfer them to the attorney representing Patterson immediately upon receipt of the attorney's name and address.

Issues

1. The Bar charges that the Accused, in the Campbell matter, violated DR 6-101(B), which states:

A lawyer shall not neglect a legal matter entrusted to the lawyer.

2. The Bar charges that the Accused, in the Campbell matter, violated DR 7-101(A)(2), which states:

A lawyer shall not intentionally:

(2) Fail to carry out a contract of employment entered into with a client for professional services. . . .

3. The Bar charges that the Accused, in the Patterson matter, violated DR 9-101(C)(3), which states:

A lawyer shall:

(3) Maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the lawyer's client regarding them. . . .

Conclusion as to Issues 1 and 3

The Accused concedes that his conduct in the Campbell matter violated DR 6-101(B) and in the Patterson matter violated DR 9-101(C)(3).

The Trial Panel finds that the Accused is guilty of violating DR 6-101(B) and DR 9-101(C)(3).

Discussion as to Issue 2

The Accused admits that his conduct constitutes neglect of a legal matter, but denies that he intended to fail to carry out his obligations to Campbell.

Intent is a material and key element of DR 7-101(A)(2). *In re Hereford*, 295 Or 604, 611 (1983). There is no clearly defined rule that describes when negligent conduct turns into intentional conduct. Each case must be decided on its own facts. *Id.* at 611. As stated in *In re Loew*, 292 Or 806, 811 (1982), “At some point, the Accused’s continuing act of omission, extending over a year, could no longer be characterized as procrastination. His failure to act despite the urgings of the client and the client’s second lawyer, and despite his own knowledge of his professional duty to act, must be characterized as intentional conduct.”

The Trial Panel finds that the Accused was aware that his conduct was wrong and could very likely injure his client financially. Such conduct must be characterized as intentional.

Conclusion as to Issue 2

The Trial Panel finds that the Accused is guilty of violating DR 7-101(A)(2).

Sanction

The Trial Panel is guided by the ABA *Standards for Imposing Lawyer Sanctions* (the *Standards*) and Oregon case law. The *Standards* require analysis of the following four factors:

A. *Duty Violated.* The Accused has been found guilty of neglecting a legal matter, intentionally failing to carry out a contract of employment, failing to maintain adequate records, and failing to properly account to a client. The violations involved two clients.

B. *Mental State.* The Accused’s conduct is consistent with inexperience and negligence as opposed to malice, greed, or dishonesty.

C. *Injury.* Although there was potential for injury (which almost always exists in the practice of law) it is not clear whether Campbell suffered any actual injury, other than a lost opportunity and attorney fees. In the Patterson matter, the Accused has agreed to account for all moneys received from the insurance company on the Medical Payments claim and to turn over to Patterson’s attorney all funds remaining therefrom with no further claim by the Accused to the fund for fees. Under these circumstances, Patterson should suffer no financial injury.

D. *Mitigating Circumstances.* The Accused has no prior disciplinary record. The charges involve no dishonesty or selfish motive. He has made full disclosures, been cooperative with the Bar investigative process, and expressed an apparent sincere regret for his actions. Contributing to the misconduct was his inexperience in civil practice, his lack of support staff, and inadequate office procedures.

E. *Aggravating Circumstances.* The Accused has been an attorney since 1977, albeit having been employed through 1989 in the Suffolk County, Mass., District Attorney's Office. He should have known the potential and actual consequences to his clients of his conduct.

Disposition

The Trial Panel is mindful of the statement of the Oregon Supreme Court in *In re Loew, supra*, that "the purpose of this proceeding is not punish [the Accused] but to restrict his license to practice law to the extent necessary for the protection of the public from future unethical conduct."

The Accused shall be suspended from the practice of law for a period of thirty (30) days from the date this Opinion is deemed final, which suspension is stayed, pending a one-year period of probation from said date, during which one-year probationary period, the Accused will meet the following terms:

A. Comply with all provisions of Oregon's Code of Professional Responsibility and ORS Chapter 9.

B. Work with a suitable person from the Professional Liability Fund, to be appointed by the chairperson of the Disciplinary Board, to review and develop, if necessary, procedures with respect to the Accused's office practices and management, particularly with respect to those areas giving rise to the conduct charged in these proceedings. The Accused shall comply, at his expense, with all requirements of such person.

C. In the event the Accused fails to comply with the terms of this probation, the Bar may initiate proceedings to revoke the Accused's probation pursuant to BR 6.2(d).

IT IS SO ORDERED.

DATED this 23rd day of December 1997.

/s/ Norman Wapnick
Norman Wapnick
Trial Panel Chair

/s/ Mark McCulloch
Mark McCulloch
Trial Panel Member

/s/ Bette Worcester
Bette Worcester
Trial Panel Member

Cite as 326 Or 325 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
BARRY LEO TAUB,)
)
Accused.)

(OSB 95-60; SC S44347)

Review of the decision of the trial panel of the Disciplinary Board.

Argued and submitted January 7, 1998. Decided January 23, 1998.

John Fisher, Eugene, argued the cause for the Accused. George W. Kelly, Eugene, filed the brief.

Jane E. Angus, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Carson, Chief Justice, Gillette, Van Hoomissen, Graber, Durham, and Kulongoski, Justices. (Fadeley, J., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is disbarred.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with 17 separate violations of the Code of Professional Responsibility. After finding the Accused guilty of 16 of those violations, a trial panel of the Disciplinary Board disbarred the Accused. *Held:* The Accused is guilty of multiple violations of the disciplinary rules. The Accused is disbarred.

Cite as 326 Or 328 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
DENI STARR,)
)
Accused.)

(OSB 94-145; SC S41967)

En Banc

On review of the decision of a trial panel of the Disciplinary Board.

Argued and submitted April 29, 1997. Decided January 23, 1998.

Deni Starr, Portland, argued the cause and filed the briefs *in propria persona*.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

PER CURIAM

The Accused is suspended from the practice of law for a period of six months commencing on the effective date of this decision.

Gillette, J., filed an opinion concurring in part and specially concurring in part, with Van Hoomissen and Durham, JJ., joining.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 1-102(A)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), *former* DR 9-101(A) (failing to deposit all funds of a client into a trust account), and *former* DR 9-101(B)(1) (failing to promptly notify a client of the receipt of the client's funds). A trial panel of the Disciplinary Board found the Accused guilty as charged and concluded that disbarment is the appropriate sanction. *Held*: The Accused has violated *former* DR 9-101(B)(1) and *former* DR 9-101(A), but the Bar has not met its burden of proof as to the charged violations of DR 1-102(A)(3). The Accused is suspended from the practice of law for a period of six months commencing on the effective date of this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 96-93
)
MARK W. BURKHALTER,)
)
Accused.)

Bar Counsel: Richard A. Cremer, Esq.
Counsel for the Accused: None
Disciplinary Board: Paul E. Meyer, Esq., Chair; Risa L. Hall, Esq.; Alfred
Willstatter, Public Member
Disposition: Violation of ORS 9.527(2). Public reprimand.
Effective Date of Opinion: February 12, 1998

OPINION OF TRIAL PANEL

Introduction

The Accused is Medford attorney Mark W. Burkhalter.

On October 28, 1996, the Oregon State Bar (Bar) charged Accused with two violations of ORS 9.527(2) (conviction of misdemeanor involving moral turpitude) and two violations of DR 1-102(A)(2) (committing a criminal act that reflects adversely upon the lawyer's honesty, trustworthiness, or fitness to practice law). The charges were based on allegations that the Accused was convicted in Jackson County District Court of harassment on July 8, 1993, and again on January 4, 1996. The Accused's answer admits the fact of the convictions.

The trial in the matter was held before the trial panel on November 4, 1997, in the Jackson County Courthouse in Medford, Oregon. The Bar appeared by Richard A. Cremer and Chris L. Mullmann. The Accused represented himself. The Bar called one witness, Teresa Hogan. The Accused testified on his own behalf. The trial panel received the following documentary evidence: District Attorney's Information dated April 5, 1995 (Bar Exhibit 1); Deposition of Mark W. Burkhalter of July 24, 1997 (Bar ["plaintiff"] Exhibit 2); three photographs of Ms. Hogan's foot (Bar ["plaintiff"] Exhibits 3, 4, and 5); and an exhibit containing copies of checks, a health insurance explanation of benefits form, and a Jackson County Sheriff's report (Accused ["defendant's"] Exhibit 1). The file also contains the following: the

Bar's complaint dated October 28, 1996; the Accused's answer dated April 17, 1997; and two versions of the Bar's hearing memorandum, one dated October 8, 1997, and the other dated October 28, 1997. At the close of the hearing, the Accused requested and was given the opportunity to file a brief. The trial panel subsequently received the Accused's posthearing memorandum dated November 7, 1997. The Bar was given an opportunity to file a responsive brief, but has declined to do so.

Findings of Fact

Concerning ORS 9.527(2), we make the following findings of fact:

1. On July 8, 1993, a judgment of conviction was entered against the Accused in Jackson County District Court for harassment, ORS 166.065.

2. On January 4, 1996, the Accused pleaded no contest in an unrelated matter and a judgment of conviction was entered against him in Jackson County District Court for harassment.

3. At the time of each conviction, ORS 166.065 provided, in relevant part,

(1) A person commits the crime of harassment if the person intentionally:

(a) Harasses or annoys another person by:

(A) Subjecting such other person to offensive physical contact; or

(B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;

(b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or

(c) Subjects another to alarm by conveying a telephonic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

(2) A person is criminally liable for harassment if the person knowingly permits any telephone under the person's control to be used in violation of subsection (1) of this section.¹

4. Harassment is a misdemeanor.

¹ Between the 1993 conviction and the 1996 conviction, the statute was amended, but not in any important way for our purposes. The class of misdemeanor was changed in 1995 from Class B to Class A under some circumstances. Oregon Laws 1995, chapter 802, section 1.

Concerning DR 1-102(A)(2), we make the following findings of fact:

5. The January 4, 1996, conviction arose out of a domestic incident that occurred on March 1, 1995. At that time, the Accused was a Jackson County Deputy District Attorney.

6. Ms. Hogan, the Accused's wife at the time, was the victim of the March 1, 1995, incident and was physically injured by the Accused when he intentionally struck her twice with a suitcase.

Conclusions of Law

Charges Under ORS 9.527(2):

ORS 9.527(2) provides,

The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that:

. . . .

(2) The member has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of the conviction shall be conclusive evidence[.]

ORS 135.345 provides that a judgment following entry of a no-contest plea is a conviction of the offense to which the plea is entered. Thus, the Accused's no-contest plea on January 4, 1996, constitutes a "conviction" for purposes of ORS 9.527(2).

In re Chase, 299 Or 391, 702 P2d 1082 (1985), holds that an attorney is convicted of a misdemeanor involving "moral turpitude" when the elements of the misdemeanor involve intent or knowledge, plus (1) fraud, deceit, or dishonesty; (2) harm to a specific victim; or (3) illegal activity undertaken for personal gain. 299 Or at 402. Further, the determination of whether a particular misdemeanor is one involving moral turpitude is to be made with reference to the crime and its elements only. The facts and circumstances of an individual case are relevant only to determining the appropriate sanction. 299 Or at 399. *See also In re Drakulich*, 299 Or 417, 419, 702 P2d 1097 (1985) ("[T]he facts and circumstances of an individual case are not significant in determining whether a crime involves moral turpitude under ORS 9.527(2). We look only to the record of the conviction").

Harassment under ORS 166.065 can occur in two different ways. Under subsection (1), a person personally commits the crime if the person *intentionally* engages in one or more of three alternative acts—"A person commits the crime of harassment if the person intentionally. . . ." Under subsection (2), a person vicariously commits the crime if the person *knowingly* permits any telephone under his or her control to be used by another person in a way that violates subsection

(1)—“A person is criminally liable for harassment if the person knowingly permits any telephone under the person’s control to be used in violation of subsection (1) of this section.” Therefore, under either subsection of the statute, the mental element required by *Chase* is present.

The only other question is whether the harassment statute contains an element of (1) fraud, deceit, or dishonesty; (2) harm to a specific victim; or (3) illegal activity undertaken for personal gain. Subsections (1)(a), (1)(b), and (1)(c) are alternative acts, only one of which is necessary for a criminal violation to occur. Each of the three does not necessarily involve fraud, deceit, or dishonesty, or illegal activity undertaken for personal gain. However, we hold that each of the three subsections does necessarily involve a specific victim. Under subsection (1)(a), a person commits the crime if the person intentionally harasses or annoys “another person” by offensive physical contact or public insult. Under subsection (1)(b), a person commits the crime if the person intentionally subjects “another [person]” to alarm by conveying a false report. Under subsection (1)(c), a person commits the crime if the person intentionally subjects “another [person]” to alarm by conveying a threat. In each of the three, “another person” is the specific victim of the illegal act.

Further, under each subsection the victim is harmed. Under subsection (1)(a), the victim suffers “offensive physical contact” or “public[] insult[.]” Under subsections (1)(b) and (1)(c), the victim suffers “alarm.” We hold that “offensive physical contact,” “public insult,” and “alarm” are all harmful to the victim. Therefore, the harassment statute contains the second *Chase* element as well and we conclude that harassment is a misdemeanor involving moral turpitude. Because the Accused was twice convicted of harassment, we conclude that he twice violated ORS 9.527(2).

Charges Under DR 1-102(A)(2):

DR 1-102(A)(2) provides,

(A) It is professional misconduct for a lawyer to:

. . . .

(2) Commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness to practice law[.]

A conviction does not need to exist for a violation of DR 1-102(A)(2) to occur, only a “criminal act.” However, in this case the July 8, 1993, and January 4, 1996, harassment convictions are conclusively presumed to be “criminal act[s]” within the meaning of DR 1-102(A)(2). We find that the Accused’s acts do not necessarily reflect on his honesty or trustworthiness. The issue, however, is whether they reflect on his “fitness to practice law.”

In re White, 311 Or 573, 815 P2d 1257 (1991), holds that not every criminal act reflects on a lawyer’s “fitness to practice law” per se. Rather,

[e]ach case must be decided on its own facts. There must be some rational connection other than the criminality of the act between the conduct and the actor's fitness to practice law. Pertinent considerations include the lawyer's mental state; the extent to which the act demonstrates disrespect for the law or law enforcement; the presence or absence of a victim; the extent of actual or potential injury to a victim; and the presence or absence of a pattern of criminal conduct. [311 Or at 589.]

The Bar alleges that the incident that led to the July 8, 1993, harassment conviction violates the disciplinary rule. However, the trial panel was presented with no evidence about the facts of that incident, other than that it resulted in the July 8, 1993, harassment conviction and that it involved the Accused's wife at the time, a person other than Ms. Hogan. Because *White* requires a fact-specific analysis, but the trial panel was presented with no real facts with which to do the analysis, we hold that the Bar has failed to prove that the incident that led to the July 8, 1993, harassment conviction violates the disciplinary rule.

Applying the *White* factors to the March 1, 1995, incident, the Accused's conviction of harassment on April 5, 1995, results in the conclusive presumption that he acted with either knowledge or intent and that the act was directed toward a victim. Further, the Accused concedes in his posthearing memorandum that intent or knowledge is an element of harassment. Ms. Hogan clearly was the victim.

As to whether the Accused's act demonstrates disrespect for the law, in *White* the attorney was held to have violated DR 1-102(A)(2) because, having assaulted a police officer, he was found to have both demonstrated disrespect for the law and disrespect for law enforcement. The *White* court said,

The [attorney's] assault of a police officer . . . demonstrated a profound disregard for the process of peaceful dispute resolution, as well as for those whose task is to facilitate that process. [311 Or at 590 (emphasis added).]

In the present case, however, the component of disrespect for law enforcement is missing, because the Accused's victim, Ms. Hogan, was not a police officer. However, the word "or"—in the phrase "disrespect for the law or law enforcement"—means that disrespect for the law alone is sufficient. Nonetheless, we do *not* find that it is significant that the Accused was at the time the March 1, 1995, incident occurred, a deputy district attorney. We thus do *not* find his act demonstrates disrespect for the law.

As to actual or potential injury to a victim, Ms. Hogan clearly was injured when the Accused intentionally struck her twice with a suitcase. Ms. Hogan's testimony was credible and convincing.

As to a pattern of criminal conduct, because we were not presented with evidence about the incident that led to the July 8, 1993, conviction, we cannot find that any pattern exists.

Balancing those factors, we have an intentional act and an injured victim, but no disrespect for the law or law enforcement and no pattern of criminal conduct. We

thus conclude that the “rational connection other than the criminality of the act between the conduct and the actor’s fitness to practice law” that is required by *White* is missing in the present case and thus hold that the Accused did not violate DR 1-102(A)(2).

Sanction

Under BR 6.1, the sanctions available are limited to dismissal, public reprimand, suspension, and disbarment. Because we have found that the Accused violated ORS 9.527(2) twice, we hold that dismissal is not appropriate. The Bar, in its hearing memorandum, has recommended the lightest sanction possible—public reprimand. We hold that we are not bound by the Bar’s recommendation, but find that it is appropriate under the circumstances.

Disposition

It is the decision of the trial panel that the Accused be publicly reprimanded.

DATED this 9th day of January 1998.

/s/ Paul E. Meyer
Paul E. Meyer, Chair

/s/ Risa L. Hall
Risa L. Hall

/s/ Alfred D. Willstatter 1/3/98
Alfred D. Willstatter

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-34
)
MARGARET MELVIN-DAVIDSON,)
)
Accused.)

Bar Counsel: Steve Wilgers, Esq.
Counsel for the Accused: Susan D. Isaacs, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-110(A)(2), and DR 2-110(C). 60-day suspension.
Effective Date of Order: February 12, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be suspended for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-110(A)(2), and DR 2-110(C).

DATED this 12th day of February 1998.

/s/ Armina J. Brown
Armina J. Brown
State Disciplinary Board Chairperson

/s/ John B. Trew
John B. Trew, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Margaret Melvin-Davidson, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Margaret Melvin-Davidson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 14, 1989, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Coos County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily and subject to the terms of BR 3.6.

4.

On May 17, 1997, the State Professional Responsibility Board (hereinafter “the SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-110(A)(2), and DR 2-110(C). The Formal Complaint was filed on November 25, 1997. The Accused and the Bar agree to the following facts, disciplinary rule violations, and sanction as a resolution of the above-referenced matters.

Facts

5.

In or about November 1995, the Accused undertook to represent Marie Fletcher (hereinafter “Fletcher”) in a dissolution of marriage proceeding. The matter was set for trial on April 19, 1996. The Accused also had an appellate court mediation scheduled for April 19, 1996.

6.

Because of the scheduling conflict, the Accused advised Fletcher to terminate her services and appear on her own at the time set for trial to request a continuance. The Accused prepared a Client Consent to Withdrawal of Attorney for Fletcher’s signature and filing with the court. The withdrawal documents represented that Fletcher had discharged the Accused on April 18, 1995. That representation was

false or misleading and the Accused knew it was false or misleading when she drafted it.

7.

By her conduct, the Accused effectively withdrew from representation of Fletcher. The Accused took no significant steps to avoid foreseeable prejudice to Fletcher's rights.

8.

The court denied Fletcher's request for a continuance, and Fletcher was required to represent herself at the dissolution of marriage trial, to her detriment.

Violation

9.

The Accused admits that the conduct described in paragraphs 5 through 8 constituted conduct involving dishonesty or misrepresentation; conduct prejudicial to the administration of justice; withdrawal from employment without taking steps to avoid foreseeable prejudice to her client's rights; and withdrawal from employment without permissible grounds therefor in violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-110(A)(2), and DR 2-110(C).

Sanction

10.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *ABA Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating or mitigating circumstances.

Duties Violated.

A. The Accused violated her duties to her client to be honest and straightforward with her client, to provide her client with accurate and complete information, and to protect her client's interests against foreseeable harm. *ABA Standards* §4.0.

B. The Accused violated her duties to the legal system to prepare statements and documents that are accurate and true when being submitted to the court and that do not improperly withhold material information, and to withdraw only for permissible reasons. *ABA Standards* §6.0.

Mental State.

C. The Accused acted knowingly in preparing an inaccurate document which contained a misrepresentation and having the document submitted to the court. “Knowingly” is defined as acting with the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

Actual or Potential Injury.

D. Although it is arguable that there may have been no actual injury or detriment to Fletcher due to the Accused’s improper withdrawal from representation as far as the outcome of the case and the judge’s ultimate decision, there was a high potential for injury. Ms. Fletcher was unrepresented by counsel at the last minute while her husband was represented by an experienced attorney. Fletcher was placed in a difficult position by the Accused’s withdrawal from representation and by the Accused’s preparation of withdrawal documents which implicated Fletcher in the Accused’s misrepresentation to the court. Fletcher was emotionally distressed by being abandoned on the day of her trial.

E. The aggravating factors to be considered are:

1. *Standards* §9.22(d)—Multiple offenses.
2. *Standards* §9.22(h)—Vulnerability of victim.
3. *Standards* §9.22(i)—Substantial experience in the law, having been admitted to the Bar in 1989.

F. The mitigating factors to be considered are:

1. *Standards* §9.32(a)—Absence of a prior disciplinary record.
2. *Standards* §9.32(c)—Personal or emotional problems.
3. *Standards* §9.32(e)—Full and free disclosure to the Bar and cooperative attitude toward the proceedings.
4. *Standards* §9.32(g)—Character and reputation.
5. *Standards* §9.32(k)—Interim rehabilitation.
6. *Standards* §9.32(l)—Remorse.

11.

The ABA *Standards* provide that suspension is appropriate when a lawyer knows or should know that she has not met her duty of candor with a client or the court or prepared documents for filing with the court which contain misrepresentations. ABA *Standards* §§4.62, 6.12. Suspension is also appropriate when a lawyer fails to carry out services for a client, causing harm or potential harm. ABA *Standards* §4.42(a). Oregon case law is in accord. See *In re Riedlinger*, 8 DB Rptr 79 (1994); *In re Mendez*, 10 DB Rptr 129 (1996); *In re Melmon*, 322 Or

380, 908 P2d 822 (1995); *In re Hiller and Janssen*, 298 Or 526, 694 P2d 540 (1985).

12.

Consistent with ABA *Standards* and Oregon case law, the Bar and the Accused agree that the Accused receive a 60-day suspension from the practice of law effective February 11, 1998, or as soon thereafter as this Stipulation is accepted by the Disciplinary Board.

13.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and approved by the SPRB. The parties agree that the stipulation is to be submitted to the Disciplinary Board of the Oregon State Bar for approval pursuant to the terms of BR 3.6.

EXECUTED this 5th day of February 1998.

/s/ Margaret Melvin-Davidson
Margaret Melvin-Davidson

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel

Cite as 326 Or 447 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
WILLIAM B. WYLLIE,)
)
Accused.)

(OSB 93-4, 93-16, 93-17; SC S40929)

On review of the decision of a trial panel of the Disciplinary Board.

Argued and submitted November 5, 1996. Decided February 20, 1998.
Reconsideration allowed March 24, 1998.

William B. Wyllie, Salem, argued the cause and filed the briefs *in propria persona*.

Mary A. Cooper, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Gillette, Presiding Justice, and Van Hoomissen, Graber, and Durham, Justices. (Carson, C.J., and Kulongoski, J., did not participate in the consideration or decision of this case; Fadeley, J., retired January 31, 1998, and did not participate in this decision.)

PER CURIAM

The Accused is suspended from the practice of law for a period of one year commencing on the effective date of this decision.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating multiple disciplinary rules. A trial panel of the Disciplinary Board found that the Accused had violated DR 1-102(A)(4) and suspended him for nine months, with six months of the suspension to be stayed pending a two-year probation. On review, the Bar argued that the Accused had violated DR 1-102(A)(4) (conduct prejudicial to the administration of justice), DR 1-103(F) (failure to cooperate with the State Lawyers Assistance Committee), and DR 6-101(A) (failure to represent a client competently), but no longer alleged violations of other rules. *Held*: The court finds that the Accused violated DR 1-102(A)(4) and DR 1-103(F). The Accused is suspended from

the practice of law for a period of one year commencing on the effective date of this decision.

On reconsideration, 326 Or 622 (1998)

On petition for reconsideration filed March 12, 1998. Decided March 31, 1998.

William B. Wyllie, Salem, filed the petition for reconsideration *in propria persona*.

No appearance *contra*.

Before Gillette, Presiding Justice, and Van Hoomissen, Graber, and Durham, Justices. (Carson, C.J., and Kulongoski and Leeson, JJ., did not participate in the consideration or decision of this case.)

PER CURIAM

Former opinion reinstated and adhered to.

SUMMARY OF SUPREME COURT DECISION

On reconsideration of the court's former opinion, the court concluded that the Accused violated DR 1-103(F) (lawyer shall cooperate with the State Lawyers Assistance Committee) of the Code of Professional Responsibility. *Held*: No right or privilege applies to obviate the duty of the Accused to have cooperated with the State Lawyers Assistance Committee in this case. The Accused is guilty of violating DR 1-103(F). Former opinion reinstated and adhered to.

Cite as 326 Or 493 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
GRETCHEN R. MORRIS,)
)
Accused.)

(OSB 94-11; SC S43700)

On review of the decision of a trial panel of the Disciplinary Board.

Argued and submitted April 29, 1997. Decided March 5, 1998.

Jacob Tanzer, Portland, argued the cause and filed the briefs for the Accused.

Mary A. Cooper, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Graber, Durham, and Kulongoski, Justices. (Fadeley, J., retired January 31, 1998, and did not participate in this decision.)

PER CURIAM

The Accused is suspended from the practice of law for a period of 120 days, commencing on the effective date of this decision.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), DR 5-105(E), and ORS 9.527(4), based on her conduct in causing an altered document to be filed with the court after it had been signed by her client before a notary public, and in simultaneously representing the past and present personal representatives of an estate. A trial panel of the Disciplinary Board found the Accused guilty of all of the charged violations and recommended a suspension of nine months. *Held:* The Accused is guilty of all of the charged violations of the disciplinary rules, but is not guilty of violating ORS 9.527(4). The Accused is suspended from the practice of law for 120 days.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 98-5
)
DAVID PETERS,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Stephen Houze, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(2), DR 1-102(A)(3), and
ORS 9.527(1). 120-day suspension.
Effective Date of Order: March 6, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be suspended from the practice of law for 120 days, effective the date of this order, for violation of DR 1-102(A)(2) and DR 1-102(A)(3) of the Code of Professional Responsibility, and ORS 9.527(1).

DATED this 6th day of March 1998.

/s/ Arminda J. Brown
Arminda J. Brown
State Disciplinary Board Chairperson

/s/ Richard S. Yugler
Richard S. Yugler, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

David Peters, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, David Peters, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On January 17, 1998, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(2), DR 1-102(A)(3), and ORS 9.527(1). 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.

For most of his career as a lawyer, the Accused has been a criminal prosecutor, employed as a deputy district attorney in Multnomah County for approximately nine years until September 1997.

6.

Throughout his tenure with the Multnomah County District Attorney’s office, the Accused purchased, possessed, and used illegal drugs—specifically cocaine and marijuana.

7.

In or about the summer of 1997, the Portland Police Bureau was investigating criminal drug activity. As part of the investigation, two persons suspected of illegal

drug trafficking were arrested. The police determined that one of the persons arrested knew the Accused. In or about July 1997, the Accused stated to the police that, while he knew the person arrested, the Accused was unaware of and had never seen any illegal drug activity on the part of the person arrested. This statement was not true in that the Accused had purchased cocaine from the person arrested at various times in the past, and knew him to be engaged in illegal drug activity.

8.

Following a subsequent search of his house during which cocaine residue and marijuana were found, the Accused pled guilty on November 24, 1997, to a violation of ORS 475.992(1), Attempted Possession of a Controlled Substance, Schedule II (cocaine). The offense was treated as a violation pursuant to ORS 161.565, and the Accused was required to pay a monetary fine and court costs.

Violation

9.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(2) and DR 1-102(A)(3) of the Code of Professional Responsibility, and ORS 9.527(1).

Sanction

10.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to the public to maintain his personal integrity, *Standards* §5.1, and his duty to the legal system to refrain from making false statements, *Standards* §6.1.

B. *Mental State.* With regard to mental state, the Accused acted with "knowledge," that is, with the conscious awareness that his drug activity was in violation of the law. He acted with intent when he made false statements to the police early in their investigation.

C. *Injury.* Injury may be either actual or potential. In this case, the Accused contributed, as a repeated purchaser, to the illegal and injurious enterprise of drug trafficking. There is no evidence that the Accused's drug use affected the quality of legal services he rendered while a deputy district attorney. However, his conduct brought dishonor and disrespect to the office in which he was employed and to law enforcement generally. The Accused's false statements to the police had the potential to impede the police investigation.

- D. *Aggravating Factors.*
1. The Accused engaged in a pattern of misconduct, *Standards* §9.22(c);
 2. The Accused committed multiple offenses, *Standards* §9.22(d);
 3. The Accused has substantial experience in the practice of law, *Standards* §9.22(i);
 4. The Accused engaged in illegal conduct involving controlled substances, *Standards* §9.22(k).
- E. *Mitigating Factors.*
1. The Accused has no prior disciplinary record, *Standards* §9.32(a);
 2. Following his initial statements to the police, the Accused fully cooperated with the police investigation and made timely, good-faith efforts to rectify the consequences of his misconduct, *Standards* §9.32(d);
 3. The Accused has cooperated fully and voluntarily with the Bar in this proceeding, *Standards* §9.32(e);
 4. The Accused has submitted evidence attesting to the good character and professional reputation he enjoyed prior to the disclosure of his drug use, *Standards* §9.32(g);
 5. The Accused developed a chemical dependency to cocaine over time, and has since entered into and successfully continued with treatment, *Standards* §9.32(i);
 6. The Accused has incurred other penalties and sanctions, including the loss of his position as a deputy district attorney, the judgment in *State v. Peters*, and widespread publicity with its consequent impact on the Accused and his family, *Standards* §9.32(k);
 7. The Accused has acknowledged the wrongfulness of his conduct and has expressed remorse to his former employer and to the police, *Standards* §9.32(l).

11.

The ABA *Standards* provide that suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that does not include the elements of more aggravated crimes described in *Standards* §5.11, but reflects adversely on the lawyer's fitness to practice law. *Standards* §5.12. They also provide for suspension when a lawyer knowingly makes false statements that interfere or have the potential to interfere with a legal proceeding, *Standards* §6.12. Oregon case law is in accord. *In re Allen*, 326 Or 107, 949 P2d 710 (1997) (one-year suspension for drug-related conduct with more serious injury); *In re Gudger*, SC S43561 (1997) (seven-month suspension for drug conviction, with adverse impact on clients and prior disciplinary record); *In re White*, 311 Or 573, 589 P2d 1257 (1991) (three-year suspension for assault and many other violations); *In re Watson*, SC S38919 (1992)

(one-year suspension for misdemeanor conviction of attempting to promote prostitution); *In re Hiller*, 298 Or 526, 694 P2d 540 (1985) (four-month suspension for false statements in connection with a summary judgment motion).

12.

The Bar and the Accused agree that, for violation of DR 1-102(A)(2), DR 1-102(A)(3), and ORS 9.527(1), the Accused shall be suspended from the practice of law for 120 days, effective immediately upon the approval of this stipulation by the Disciplinary Board. The Accused's reinstatement following his term of suspension shall be governed by BR 8.3.

13.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 2nd day of February 1998.

/s/ David Peters
David Peters

EXECUTED this 3rd day of February 1998.

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro
Jeffrey D. Sapiro
Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-82
)
MARVIN O. BOLLAND,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Joann K. Beck, Esq.
Disciplinary Board: None
Disposition: Violation of DR 6-101(A) and DR 6-101(B). Public reprimand.
Effective Date of Order: March 6, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 6-101(A) and DR 6-101(B).

DATED this 6th day of March 1998.

/s/ Armina Brown
Armina Brown
State Disciplinary Board Chairperson

/s/ Robert Johnstone
Robert Johnstone, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Marvin O. Bolland, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Marvin O. Bolland, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1961, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Marion County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This stipulation is made under the restrictions of Rule of Procedure 3.6(h).

4.

In December 1997, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused for violations of DR 6-101(A) and DR 6-101(B) in connection with the Accused’s handling of the Estate of Tom Ban. The Accused and the Bar agree to the following facts and disciplinary rule violations. This stipulation for discipline is intended to resolve all charges.

Facts

5.

In 1994, the Accused was retained by the personal representative to help her administer the Estate of Tom Ban, who died on August 23, 1994. In November of 1994, the Accused sent a letter to an Ivan Ban, along with \$22,000 in bonds payable upon Tom Ban’s death to Ivan Ban. This letter was returned to the Accused, who put it (and the enclosed bonds) in his file. The Accused made insufficient efforts to follow up with the matter, and if he had inquired of the Ban family as to Ivan Ban’s whereabouts, he would have learned that Ivan Ban had been dead for many years.

6.

The Estate was ultimately closed in May of 1995. The \$22,000 in bonds remained in the Accused’s file, undistributed. In May 1996, one of the beneficiaries, Gene Ban, received a bank notice stating that payment on a safe deposit box was

overdue for the decedent Tom Ban. It was discovered at this point that there was a safe deposit box with several thousand dollars worth of bonds which had not been accessed by the PR or the Accused while the Estate was being probated. The Accused denies that anyone ever gave him a key to this safe deposit box; Paula Jones (the complainant in this Bar matter) contends that she did give the Accused a key to the box in September 1994.

7.

After review by Tom Ban's relatives of the probate file, they also discovered the \$22,000 in bonds that remained undistributed in the Accused's file. The probate had to be reopened so that the bonds could be distributed.

8.

The Accused acknowledges that his failure to follow up with the returned letter to Ivan Ban and the enclosed bonds and his failure to discover and access the safe deposit box were incompetent and neglectful within the meaning of DR 6-101(A) and DR 6-101(B).

Sanction

9.

ABA Standards

The Accused and the Bar agree that in fashioning the appropriate sanction the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* ("*Standards*") and Oregon case law. The *Standards* require analyzing the Accused's conduct in light of four factors: ethical duty violated, attorney's mental state, actual or potential injury, and the existence of aggravating and mitigating circumstances.

A. *Ethical Duty Violated.* The Accused violated his duty to his client to perform legal services diligently and competently. *Standards* §§4.4, 4.5.

B. *Mental State.* The Accused was negligent in failing to discover the safe deposit box and in handling the returned bonds. *Standards* at 7.

C. *Injury.* The Accused's failure to investigate the estate's assets and follow up with the returned bonds created the possibility that those assets would be lost to the beneficiaries. His conduct also created the possibility that his client, the personal representative, would be held liable to the beneficiaries for her failure to handle these assets properly. Judicial resources were expended reopening the estate to handle these overlooked matters.

D. *Aggravating and Mitigating Factors.* The following aggravating factor is present in this case: substantial experience in the practice of law. *Standards* §9.2. The following mitigating factors are present in this case: absence of a prior disciplinary record; absence of a dishonest or selfish motive; timely good-faith effort

to rectify consequences of misconduct; cooperative attitude toward disciplinary proceedings. *Standards* §9.3.

The *Standards* provide that a public reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury thereby.

10.

Oregon Case Law

Oregon case law also supports the conclusion that a public reprimand is appropriate. See *In re Greene*, 276 Or 1117, 557 P2d 644 (1976) (lawyer who was PR of an estate held guilty of neglect and incompetence for failing to discover estate assets was publicly reprimanded).

11.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand.

12.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The State Professional Responsibility Board (SPRB) approved the sanction contained herein on December 18, 1997. Pursuant to BR 3.6, the parties agree that the stipulation will be submitted to the Disciplinary Board for consideration.

EXECUTED this 26th day of February 1998.

/s/ Marvin O. Bolland
Marvin O. Bolland

/s/ Joann K. Beck
Joann K. Beck
Attorney for Marvin Bolland

EXECUTED this 2nd day of March 1998.

OREGON STATE BAR

By: /s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-45
)	
ELLIOT H. HOLDEN,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B) and DR 9-101(C)(4). Public reprimand.
Effective Date of Order:	March 6, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 6-101(B) and DR 9-101(C)(4).

DATED this 6th day of March 1998.

/s/ Armina J. Brown
 Armina J. Brown
 State Disciplinary Board Chairperson

/s/ Richard S. Yugler
 Richard S. Yugler, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Elliot H. Holden, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Elliot H. Holden, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1966, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation is made under the restrictions of Rule of Procedure 3.6(h).

4.

At its July 19, 1997, meeting, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused, alleging violation of DR 1-103(C), DR 6-101(B), DR 7-101(A)(2), and DR 9-101(C)(4).

5.

The Oregon State Bar filed its Formal Complaint, which was served, together with a Notice to Answer, upon the Accused. A copy of the Formal Complaint is attached hereto as Exhibit 1 and by this reference made a part hereof.

6.

The Accused admits the allegations of the First Cause of Complaint of the Formal Complaint and that, by his conduct, he violated of DR 6-101(B) and DR 9-101(C)(4). Upon further factual inquiry, the parties agree that all other charges as alleged in the Formal Complaint should be and are hereby dismissed.

7.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law should be considered. The *ABA Standards* require that the Accused’s conduct be analyzed considering the following four 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*. In violating DR 6-101(B) and DR 9-101(C)(4), the Accused violated duties to his client. *Standards* §§4.1, 4.4.

B. *State of Mind*. The Accused's conduct demonstrates a failure 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 7.

C. *Injury*. The Accused's conduct resulted in some actual injury to his client in that the client was required to retain new counsel to set aside an order of default and obtain the return of the client's retainer.

D. *Aggravating Factors*. Aggravating factors to be considered include (*Standards* §9.22):

1. The Accused received a letter of admonition in 1989 for violation of DR 6-101(A) and DR 6-101(B); and

2. The Accused was admitted to the Bar in 1966 and has substantial experience in the practice of law.

E. *Mitigating Factors*. Mitigating factors to be considered include (*Standards* §9.32):

1. The Accused did not act with a dishonest or selfish motive. The retainer check given to the Accused by the client was never cashed, but was returned ultimately by the Accused. *Standards* §9.32(b);

2. The Accused cooperated with Disciplinary Counsel's Office in resolving this disciplinary proceeding. *Standards* §9.32(e);

3. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(l); and

4. The Accused's prior disciplinary offense occurred in 1989 and is remote.

8.

The *Standards* provide that a public reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards* §4.43. Reprimand is also generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards* §4.13. Oregon case law is in accord. *In re Brownlee*, 9 DB Rptr 85 (1995) (public reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Hannam*, 8 DB Rptr 9 (1994) (public reprimand for violation of DR 6-101(B)).

9.

Consistent with the *Standards* and Oregon case law, the Accused and the Bar agree that a public reprimand is an appropriate sanction. The Accused agrees to accept a public reprimand upon the Disciplinary Board's approval of this Stipulation for Discipline.

10.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and approved by the State Professional Responsibility Board, and the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 29th day of January 1998.

/s/ Elliot H. Holden

Elliot H. Holden

EXECUTED this 2nd day of February 1998.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 96-49
)	
ELIZABETH J. C. HUBBARD,)	
)	
Accused.)	

Bar Counsel:	Caren J. Rovics, Esq.
Counsel for the Accused:	Richard Lee Barton, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 5-101(A) and DR 5-110(A). 90-day suspension.
Effective Date of Order:	March 11, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be suspended from the practice of law for 90 days for violation of DR 5-101(A) and DR 5-110(A) effective March 11, 1998, upon approval by the Disciplinary Board.

DATED this 9th day of March 1998.

/s/ Arminda J. Brown
 Arminda J. Brown
 State Disciplinary Board Chairperson

/s/ Howard E. Speer
 Howard E. Speer, Region 2
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Elizabeth J. C. Hubbard, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Elizabeth J. C. Hubbard, was admitted by the Oregon Supreme Court to the practice of law in Oregon on January 26, 1991, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Lane County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On May 23, 1997, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 5-101(A), DR 5-110(A), DR 7-102(A)(5), and DR 7-102(A)(7) of the Code of Professional Responsibility. On November 22, 1997, the SPRB partially granted the Accused’s request for reconsideration and dismissed the DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), and DR 7-102(A)(7) charges previously authorized.

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.

On or about March 11, 1994, the Accused undertook to represent Edward Motter (hereinafter “Motter”) to defend against a Family Abuse Prevention Act contempt proceeding, a proceeding to review his child support obligation to increase his child support obligation, and a potential criminal charge of Assault IV.

6.

Between March 11, 1994, and the termination of the Accused's employment by Motter on or about June 29, 1994, the Accused had sexual relations with Motter. No consensual sexual relationship existed between the Accused and Motter before March 11, 1994.

7.

The Accused became pregnant with Motter's child and knew she was pregnant with his child before her employment by Motter ended on or about June 29, 1994. The Accused continued to represent Motter in the child support modification proceeding after she became pregnant.

8.

The Accused's sexual relationship with Motter and her pregnancy with his child were likely to affect the exercise of her professional judgment on Motter's behalf in the child support modification proceeding for which she was his attorney. An award of child support against Motter in the pending child support modification proceedings would reduce the amount Motter had available for the support of the Accused's child in the future.

9.

The Accused did not make full disclosure to Motter or obtain his informed consent to her conflict of interest in her continued representation of him in the child support modification matter.

Violation

10.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 5-101(A) and DR 5-110(A) of the Code of Professional Responsibility.

Sanction

11.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated her duty to her client to avoid a conflict between the client's interests and her own and to avoid taking advantage of

their professional relationship for personal gratification. *Standards* §4.3; *In re Wolf*, 312 Or 655, 662, 826 P2d 628 (1992).

B. *Mental State*. With regard to mental state, the Accused acted knowingly: with the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

C. *Injury*. Injury may be either actual or potential. In this case, Motter became obligated to parental and financial responsibilities as a result of the sexual relationship with the Accused. While the Accused's professional judgment on Motter's behalf does not appear to have been compromised, there was the potential that the Accused would act to protect her own interests concerning the availability of future child support from Motter, rather than to represent Motter's interests free of any such personal consideration.

D. *Aggravating Factors*.

1. Prior disciplinary offenses, *Standards* §9.22(a): the Accused received a letter of admonition on February 5, 1997, for violation of DR 9-101(A) and DR 9-101(C)(3) (trust account violations);

2. Selfish motive, *Standards* §9.22(b).

E. *Mitigating Factors*.

1. Full and free disclosure to Disciplinary Counsel's Office and cooperative attitude toward proceedings, *Standards* §9.32(e);

2. Inexperience in the practice of law at the time of the relevant events, *Standards* §9.32(f).

12.

ABA *Standards* §4.32 suggests that suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. Oregon case law is in accord. See *In re Wolf*, 312 Or 655, 826 P2d 628 (1992); *In re Ofelt*, 1 DB Rptr 22 (1985); *In re Germundson*, 301 Or 656, 724 P2d 793 (1986); *In re Baer*, 298 Or 29, 688 P2d 1324 (1984).

13.

The Bar and the Accused agree that, for violating DR 5-101(A) and DR 5-110(A), the Accused shall be suspended from the practice of law for 90 days, effective immediately upon the approval of this stipulation by the Disciplinary Board. The Accused's reinstatement following her term of suspension shall be governed by BR 8.3.

14.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The State Professional Responsibility Board approved the sanction imposed herein on January 17, 1998. The parties agree this stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 23rd day of February 1998.

/s/ Elizabeth J. C. Hubbard

Elizabeth J. C. Hubbard

OSB No. 91058

EXECUTED this 25th day of February 1998.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks

OSB No. 75167

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 98-28
)
PATRICK J. KELLY,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Jeffrey H. Boiler, Esq.
Disciplinary Board: None
Disposition: Violation of DR 5-105(C) and DR 5-105(E). Public reprimand.
Effective Date of Order: March 18, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused is publicly reprimanded for violation of DR 5-105(C) and DR 5-105(E).

DATED this 18th day of March 1998.

/s/ Armina J. Brown
Armina J. Brown
State Disciplinary Board Chairperson

/s/ John B. Trew
John B. Trew, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Patrick J. Kelly, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Patrick J. Kelly, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1979, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Josephine County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On January 17, 1998, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-105(C) and DR 5-105(E) of the Code of Professional Responsibility. 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.

In or about March 1996, the Accused undertook to represent Roger Reece (hereinafter "Reece"), in connection with a foreclosure of a Second Deed of Trust encumbering certain real property in Josephine County. The Grantor on the Second Deed of Trust was shown as Ronald S. Neil.

6.

In or about April 1996, the Accused undertook to represent Gilbert R. Baker (hereinafter "Baker"), and a number of other beneficiaries of a First Deed of Trust that encumbered the same real property that was subject to the Reece Trust Deed. The Grantors shown on the Baker Trust Deed were Ronald S. Neil and Janice Neil, husband and wife.

7.

The interests of Reece and the interests of Baker in their respective foreclosure matters were in actual conflict. Although the Accused did not initially realize the two foreclosure matters involved the same real property, by the exercise

of reasonable care and by operation of DR 5-105(B), he should have known of the conflict between the interests of his two clients.

8.

In or about June 1996, Baker learned of the Accused's simultaneous representation of Reece and, as a result, Baker retained new counsel in the foreclosure of the First Trust Deed. The Accused continued to represent Reece in the foreclosure of the Second Trust Deed. The Accused failed to obtain either client's informed consent, to the extent required by DR 10-101(B), to the Accused's continued representation of Reece.

Violation

9.

The Accused admits that, by engaging in the conduct described in this Stipulation, he violated DR 5-105(E) (current client conflict of interest) and DR 5-105(C) (former client conflict of interest) of the Code of Professional Responsibility.

Sanction

10.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the Accused's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his clients to avoid conflicts of interest. *Standards* §4.3.

B. *Mental State.* With regard to mental state, the Accused did not act intentionally or knowingly. Rather, the Accused was negligent in discovering the initial conflicts of interest, and later in failing to obtain the informed consent of his clients when he continued to represent Reece.

C. *Injury.* Injury may be either actual or potential. In this case, no actual harm occurred. However, Baker was required to obtain new counsel and was inconvenienced as a result of the conflict of interest.

D. *Aggravating Factors.*

1. The Accused committed two Disciplinary Rule offenses, *Standards* §9.22(d);

2. The Accused has substantial experience in the practice of law, *Standards* §9.22(i).

- E. *Mitigating Factors.*
1. The Accused has no prior disciplinary record, *Standards* §9.32(a);
 2. The Accused's conduct did not involve any motivation for personal gain, nor did it involve dishonest or untruthful conduct, *Standards* §9.32(b);
 3. The Accused has cooperated fully and voluntarily with the Bar in this proceeding, *Standards* §9.32(e);
 4. The Accused has now taken steps to modify his conflicts detection systems in order to prevent similar violations in the future, *Standards* §9.32(j);
 5. The Accused regrets his conduct and the inconvenience it has caused his clients, *Standards* §9.32(l).

11.

The ABA *Standards* provide that a reprimand is generally appropriate when the lawyer is negligent in determining that there is a conflict of interest and causes injury or potential injury to a client. *Standards* §4.33. Oregon case law is in accord. *In re Havrenek*, 10 DB Rptr 109 (1996); *In re Kerstiens*, 8 DB Rptr 177 (1994); *In re Bristow*, 301 Or 194, 721 P2d 437 (1986); *In re Alway*, 11 DB Rptr 153 (1997).

12.

The Bar and the Accused agree that, for violation of DR 5-105(E) and DR 5-105(C), the Accused shall receive a public reprimand, effective upon the approval of this Stipulation by the Disciplinary Board.

13.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 23rd day of February 1998.

/s/ Patrick J. Kelly
Patrick J. Kelly

EXECUTED this 9th day of March 1998.

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro
Jeffrey D. Sapiro
Disciplinary Counsel

Cite as 326 Or 582 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
MILTON O. BROWN,)
)
Accused.)

(OSB 92-28; SC S43511)

On review of the decision of a trial panel of the Disciplinary Board.

Argued and submitted September 8, 1997. Decided March 26, 1998.

Charles R. Markley, of Greene & Markley, P.C., Portland, argued the cause and filed the briefs for the Accused.

Mary A. Cooper, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Durham, and Kulongoski, Justices. (Fadeley, J., retired January 31, 1998, and did not participate in this decision; Graber, J., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is disbarred.

SUMMARY OF SUPREME COURT OPINION

In a lawyer disciplinary proceeding, the Accused was charged with violating four provisions of the Code of Professional Responsibility in the course of his real estate dealings with a long-time business associate, Kittleson. In the particular joint venture that was at issue, the Accused was responsible for negotiating the purchase of a shopping center. Although Kittleson believed that the transaction had been structured to result in a 50-50 split in ownership of the property between himself and the Accused, the Accused had actually structured the purchase in such a way that he ultimately would obtain full ownership of the property. Based on the foregoing, a trial panel of the Disciplinary Board found that the Accused had violated four provisions of the Code of Professional Responsibility and recommended disbarment. *Held:* The Accused violated *former* DR 1-102(A)(4) (now DR 1-102(A)(3)) (conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 7-101(A)(3)

(intentionally prejudicing a client in course of professional relationship); DR 5-104(A) (business transaction with client having differing interests therein); and DR 5-101(A) (accepting employment when lawyer's interests may impair professional judgment). The Accused is disbarred.

Cite as 326 Or 572 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
GIMI D. PAGE,)
)
Accused.)

(OSB 97-28; SC S44396)

On review of the recommendation of the State Professional Responsibility Board.

Submitted on the record September 24, 1997; reassigned February 3, 1998.
Decided March 26, 1998.

Christopher R. Hardman, Portland, filed the answer for the Accused.

Jeffrey D. Sapiro, Disciplinary Counsel, Lake Oswego, filed the reply for the Oregon State Bar.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Graber, Durham, and Kulongoski, Justices. (Fadeley, J., retired January 31, 1998, and did not participate in this decision.)

PER CURIAM

The Accused is suspended from the practice of law for a period of 30 days commencing on the effective date of this decision.

SUMMARY OF SUPREME COURT OPINION

The Accused, who is admitted to practice in both Oregon and Washington, entered into a stipulation with the Washington State Bar Association that imposed a formal reprimand for misconduct that included making false statements of material fact to a tribunal, engaging in misrepresentation and conduct prejudicial to the administration of justice, and nondisclosure in an *ex parte* proceeding. The State Professional Responsibility Board of the Oregon State Bar recommended that the Accused be suspended from the practice of law in Oregon for 180 days. *Held*: Under Oregon law, a 30-day suspension is the appropriate sanction in this case. The Accused is suspended from the practice of law for a period of 30 days commencing on the effective date of this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-80
)	
ANDREW E. TOTH-FEJEL,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Mark M. Williams, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B). Public reprimand.
Effective Date of Order:	April 1, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 6-101(B).

DATED this 1st day of April 1998.

/s/ Armina J. Brown
 Armina J. Brown
 State Disciplinary Board Chairperson

/s/ Richard S. Yugler
 Richard S. Yugler, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Andrew E. Toth-Fejel, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Andrew E. Toth-Fejel, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 19, 1984, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation is made under the restrictions of Rule of Procedure 3.6(h).

4.

In July 1994, Lynda L. Heller (hereinafter "Heller") retained the Accused to file a claim against the Client Security Fund and the Professional Liability Fund for a former attorney's theft of money he held in trust on Heller's behalf. In May 1996, the Accused received settlement funds which he deposited into his trust account on behalf of Heller. The settlement money was to be used to resolve outstanding state and federal tax claims against Heller.

5.

After receiving the money, the Accused began to prepare offers to the tax authorities to resolve the tax claims, but he did not finish the paperwork. Heller advised the Accused on a number of occasions that the tax settlement had to be completed before the end of 1996. The Accused agreed to complete the matter before the end of 1996, but failed to do so.

6.

Between May 1996 and the end of 1996, Heller frequently called the Accused and his staff to determine the status of the tax matter. On numerous occasions, the Accused failed or neglected to return Heller's calls. On the occasions he did return the calls, he assured Heller that the matter would be promptly completed. It was not.

7.

On January 16, 1997, Heller sent a letter to the Oregon Attorney General complaining of the Accused's inaction. A copy of the letter was sent to the Oregon State Bar. Thereafter, and despite knowledge of the client's dissatisfaction with the delay, the Accused failed to complete the necessary paperwork to resolve the tax claims.

8.

Heller asserts that the delay caused by the Accused may result in additional tax liability to her. The Accused has voluntarily agreed to reimburse Heller for any additional tax liability imposed as a result of his failure to timely complete the matter.

9.

The Accused admits that by his conduct as described in paragraphs 4–8, he neglected a legal matter in violation of DR 6-101(B).

Sanction

10.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”) are to be considered. The *Standards* require that the Accused’s conduct be analyzed considering the following four factors: (1) ethical duty violated; (2) the attorney’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating or mitigating factors.

A. *Duty Violated.* In violating DR 6-101(B), the Accused violated his duty to his client by neglecting a legal matter. *Standards* §4.4.

B. *Mental State.* The Accused’s state of mind was that characterized by the *Standards* as negligence, that is, the failure to heed a substantial risk that circumstances existed or that a result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

C. *Injury.* Under case law, injury may be actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The level of injury can range from “serious” injury to “little or no” injury. *Standards* at 7. In this case, since the matter has not been resolved, it is difficult to determine the precise range of injury as no additional tax liability has yet been imposed. However, the fact that the matter is not yet resolved and may result in additional liability creates the potential for serious injury despite the fact that the Accused has promised to pay any imposed additional liability.

D. *Aggravating Factors.* The following aggravating factors are present in this case: (1) vulnerability of the victim and (2) substantial experience in the law. *Standards* §9.22(h), (i).

E. *Mitigating Factors.* The following mitigating factors are present in this case: (1) absence of a prior disciplinary record; (2) absence of dishonest or selfish motive; (3) timely good-faith offer to make restitution; (4) full and free disclosure with disciplinary investigation; (5) character or reputation; and (6) remorse. *Standards* §9.22(a), (b), (d), (e), (g), and (i).

11.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to a client. *Standards* §4.43.

Oregon case law is in accord. *In re Young*, 295 Or 461, 666 P2d 1339 (1983) (attorney reprimanded for violation of DR 6-101(B) and DR 7-101(A)(2) and was candid with court and Bar and had no priors); *In re Miller*, 7 DB Rptr 87 (1993) (attorney reprimanded for violation of DR 6-101(B) and DR 7-101(A)(2) when she neglected filing a QDRO for four years and the client lost six months of husband's pension and the attorney reduced her fee accordingly).

12.

Consistent with the ABA *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand.

13.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the State Professional Responsibility Board (SPRB) on April 17, 1997. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 13th day of March 1998.

/s/ Andrew E. Toth-Fejel
Andrew E. Toth-Fejel

EXECUTED this 16th day of March 1998.

OREGON STATE BAR

By: /s/ Chris L. Mullmann
Chris L. Mullmann
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-214
)
THOMAS V. BRYANT,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-105(E). Public reprimand.
Effective Date of Order: April 1, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused is publicly reprimanded for violation of DR 5-105(E).

DATED this 1st day of April 1998.

/s/ Arminda J. Brown
Arminda J. Brown
State Disciplinary Board Chairperson

/s/ Stephen M. Bloom
Stephen M. Bloom, Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Thomas V. Bryant, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Thomas V. Bryant, was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 23, 1973, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On November 22, 1997, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for an alleged violation of DR 5-105(E). 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.

In November of 1989, the Accused was approached by husband and wife, both of whom had been friends of the Accused for many years. Husband and wife requested the Accused to “put into legal language” the agreement they had worked out between themselves regarding their divorce. The Accused reviewed the proposed agreement and advised husband and wife that the terms presented would require husband to pay more to wife than what a court would likely award. Both husband and wife affirmed that this was what they wanted and that there was absolutely no dispute between them about how they wanted matters resolved.

6.

The Accused drafted the agreement, and read it aloud to both husband and wife to ensure that the terms conformed to their intentions. Among the written terms

read and discussed by the Accused with his clients was the following acknowledgment: “Each of the parties is aware and has been made aware by counsel that their rights differ and that consultation with another attorney is recommended by the Oregon State Bar and the parties have, of their own choice, declined to seek such additional counsel and have entered into this agreement with full knowledge of its terms and effects. . . .”

7.

At the time the Accused represented husband and wife their legal interests, viewed objectively, were adverse. The couple had minor children, the marital estate contained substantial assets, and the parties’ agreement involved husband making support payments to wife. There was an actual conflict of interest between the Accused’s two clients, defined under DR 5-105(A) as a situation in which a lawyer has a duty to contend for one client that which he has a duty to oppose on behalf of the other client.

Violation

8.

The Accused admits that by undertaking to represent two clients whose interests were adverse, although the clients purported to be in agreement at the time, he violated DR 5-105(E).

Sanction

9.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused’s conduct be analyzed by considering the following four 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.* By violating DR 5-105(E), the Accused violated a duty to his clients to avoid conflicts of interest. *Standards* §4.3.

B. *Mental State.* The Accused’s mental state in entering into this representation was negligent. The *ABA Standards* define “negligence” as 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 7.

C. *Injury.* By undertaking to represent two clients whose interests were adverse to one another, the Accused created the risk that one or both clients’ interests would not be fully protected. In fact, litigation later arose over whether the parties were properly advised as to the ramifications of the marital settlement terms.

D. *Aggravating Factors.* Aggravating factors in this case include the Accused's prior disciplinary record (an admonition in 1989 for accepting an illegal fee in violation of DR 2-106(A)), and substantial experience in the practice of law. *Standards* §9.22(a), (i).

E. *Mitigating Factors.* Mitigating factors include (a) absence of a dishonest motive; and (b) cooperative attitude toward disciplinary proceeding. *Standards* §9.32(b), (e). Also, the conduct alleged occurred in 1989, although it was not complained of until October 1996.

10.

The ABA *Standards* provide that a reprimand is appropriate where a lawyer is negligent in determining whether the representation of a client will adversely affect another client, and causes injury or potential injury to a client. *Standards* §4.33.

11.

Oregon case law also suggests that a public reprimand is the appropriate sanction. In *In re Cohen*, 316 Or 657, 853 P2d 286 (1993), a lawyer represented both husband and wife in legal actions arising out of husband's injuring wife's daughter from a prior marriage. This representation involved likely and actual conflicts of interests despite the couple's ostensible agreement concerning the services they wanted the attorney to perform. The attorney in that case was publicly reprimanded. *See also In re Barrett*, 269 Or 264, 524 P2d 1208 (1974) (attorney who acted as scrivener publicly reprimanded).

12.

Consistent with ABA *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand.

13.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar. The State Professional Responsibility Board (SPRB) approved the sanction contained herein on November 22, 1997. The parties agree the stipulation shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 11th day of March 1998.

/s/ Thomas V. Bryant

Thomas V. Bryant

OSB No. 73362

EXECUTED this 17th day of March 1998.

OREGON STATE BAR

By: /s/ Mary A. Cooper

Mary A. Cooper

OSB No. 91001

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case Nos. 96-24, 96-25
)
DAVID J. BERENTSON,)
)
Accused.)

Bar Counsel: Timothy Bowman
Counsel for the Accused: Susan Isaacs
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4), DR 6-101(B), DR
7-101(A)(2), and DR 1-103(C). 120-day suspension.
Effective Date of Order: May 1, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be suspended from the practice of law for a period of 120 days, effective 30 days after this order is signed, for violation of DR 1-102(A)(4), DR 6-101(B), DR 7-101(A)(2), and DR 1-103(C).

DATED this 1st day of April 1998.

/s/ Armina Brown
Armina Brown
State Disciplinary Board Chairperson

/s/ Richard Yugler
Richard Yugler, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

David J. Berentson, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, David J. Berentson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 21, 1973, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This stipulation is made under the restrictions of Rule of Procedure 3.6(h).

4.

On April 11, 1997, a formal complaint was filed against the Accused pursuant to authorization by the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 6-101(B), DR 7-101(A)(2), DR 1-102(A)(4), and DR 1-103(C) of the Code of Professional Responsibility. This stipulation for discipline is intended to resolve all charges.

Facts

5.

The Spreeher Matter

The Accused was retained by Harold Spreeher to represent him concerning the probate of the estate of Mr. Spreeher’s wife, Nadine Spreeher. The Accused filed a petition for probate on May 5, 1994. One of the beneficiaries of the estate retained an attorney, Bill Kehoe, who raised various issues regarding the disposition of Mrs. Spreeher’s assets. Correspondence was exchanged between the Accused and Mr. Kehoe, but at a certain point the Accused stopped opening Mr. Kehoe’s letters. Between January 25, 1995, and June 15, 1995, Mr. Kehoe sent the Accused four letters asking for the Accused’s response. The Accused did not respond, and on June 21, 1995, Mr. Kehoe filed a petition seeking to remove Mr. Spreeher as personal representative. The Accused did not respond to this petition. A hearing was set for July 10, 1995. The Accused indicates that he did not receive notice of the hearing.

He did not attend the hearing, nor did his client. The court granted the motion and Mr. Spreher was removed as personal representative.

6.

A complaint was filed with the Bar, and the Accused retained an attorney, Jon Henriksen, to respond on his behalf. However, the Accused thereafter did not provide adequate information to his attorney, who was consequently unable to file any substantive response. Eventually, Mr. Henriksen withdrew from the Accused's representation. The Accused cooperated with the LPRC's investigation.

7.

The Gross Matter

In September 1993, the Accused undertook to represent Cheryl Anderson, the personal representative for the estate of Francis K. Gross. On May 2, 1994, the Accused filed a first and final account and petition for decree of final distribution. Soon afterward, mistakenly believing that the court had signed the order approving the final account, the Accused proceeded to distribute the entire estate to the heirs. The Accused learned of his mistake on June 14, 1994, when the probate court notified him that it was returning the order unsigned because an audit report had indicated that there was an \$18 mistake/error in the accounting. The court asked the Accused to make the necessary corrections and resubmit amended pleadings at his earliest convenience.

8.

Upon receiving this notice, the Accused "froze." Despite repeated requests by the court in October and December 1994, asking that he complete the probate, he took no further action.

9.

Finally, on February 27, 1995, the court issued an order to show cause requiring the Accused's client to appear in court to show why she should not be removed as personal representative. Although the Accused probably received this order to show cause, he does not recall opening the envelope containing it. Neither the Accused nor his client appeared in court. After the time set for hearing, the court contacted the Accused. He promised that he would contact the personal representative and report back to the court, but thereafter failed to do so.

10.

On April 20, 1995, Circuit Court Judge Pro Tem Rita Cobb informed the Accused that if he did not take action by April 28, 1995, the court would enter an order removing the personal representative. On June 7, 1995, Judge Lund wrote the Accused, asking him to file pleadings with the court that would show what had happened to the estate's assets. Judge Lund stated that if no such documentation was

received by June 23, 1995, the court would turn the matter over to the Oregon State Bar. The Accused did not respond.

Violation

11.

The Accused admits that, with respect to both the Sprecher and the Gross estates, he engaged in conduct prejudicial to the administration of justice, neglected legal matters entrusted to him, and intentionally failed to carry out a contract of employment in violation of DR 1-102(A)(4), DR 6-101(B), and DR 7-101(A)(2) of the Code of Professional Responsibility. He further admits that, by failing to respond to the Bar with respect to the Sprecher matter, he violated DR 1-103(C) of the Code of Professional Responsibility.

Sanction

12.

The ABA Standards

The Accused and the Bar agree that in fashioning a sanction in this case, the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”) should be considered. The *Standards* require that the Accused’s conduct be analyzed in light of the following factors: ethical duty violated; attorney’s mental state; actual or potential injury; and existence of aggravating or mitigating circumstances. *Standards* at 3.

A. *Duty Violated.* In violating DR 6-101(B), DR 7-102(A)(2), DR 1-102(A)(4), and DR 1-103(C), the Accused violated duties to his clients, to the profession, and to the legal system. *Standards* §§4.4, 6.2, 7.0.

B. *State of Mind.* By neglecting legal matters, the Accused acted either knowingly or negligently. Conduct is “knowing” if it is committed with the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. *Standards* at 7. Conduct is “negligent” if the lawyer fails 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 under the circumstances. *Id.* The Accused’s failure to cooperate with the Bar’s inquiry was knowing.

C. *Injury.* The Accused’s conduct resulted in actual and potential injury. Mr. Sprecher, as personal representative, could have faced personal liability as a result of any perceived dereliction of duty. The probate courts in Clackamas and Washington counties were forced to expend judicial resources dealing with the consequences of the Accused’s neglect. Finally, the Accused’s failure to cooperate with the Bar’s investigation necessitated the expenditure of additional time and effort

by both staff counsel for the Bar and the lawyers who volunteer their time on the Local Professional Responsibility Committee.

D. *Aggravating and Mitigating Factors.* Aggravating factors in this case include a prior discipline offense (*Standards* §9.22(a)); a pattern of misconduct (*Standards* §9.22(c)); multiple offenses (*Standards* §9.22(d)); and substantial experience in the practice of law (*Standards* §9.22(i)). The most compelling of these aggravating circumstances is the Accused's prior disciplinary record, which involves recent conduct similar to that involved in this present matter. In September 1994, the Accused entered into a stipulation wherein he admitted that in 1992 and 1993, he had neglected a probate estate in violation of DR 6-101(B) and then failed to respond to Bar inquiry in violation of DR 1-103(C). The Accused was publicly reprimanded. *In re Berentson*, 8 DB Rptr 167 (1994).

Mitigating factors in this case include absence of a dishonest or selfish motive (*Standards* §9.32(b)); personal or emotional problems (*Standards* §9.32(c)); physical and/or mental disability or impairment (*Standards* §9.32(h)); and remorse (*Standards* §9.32(l)).

13.

The *Standards* provide that suspension is appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* §4.42. Suspension is also appropriate when a lawyer knowingly violates a court order or rule and there is an injury or potential interference with a legal proceeding (*Standards* §6.22) or when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.2. Finally, suspension is appropriate where, as here, the lawyer has been disciplined for the same or similar conduct and re-offends. *Standards* §8.2.

14.

Oregon Case Law

Oregon case law also supports the conclusion that a suspension is appropriate in this case. In *In re Schaffner (Schaffner I)*, 323 Or 472, 918 P2d 803 (1996), a lawyer who neglected a probate and then failed to cooperate with the Bar was suspended for 120 days. In *In re Gresham*, 318 Or 162, 864 P2d 360 (1993), a lawyer who neglected two matters (one of which was a probate) was suspended for 91 days for violating DR 6-101(A) and (B) and DR 1-102(A)(4). In *In re Scott*, 11 DB Rptr 159 (1997), a lawyer was suspended for 120 days for violating DR 6-101(B), DR 7-101(A)(2), DR 9-101(C)(4). and DR 1-103(C). Other cases on point include *In re Cue*, 12 DB Rptr 8 (1998) (180-day suspension); *In re Fitting*, 304 Or 143, 742 P2d 609 (1987) (90-day suspension, stayed during two-year probation

dependent on Accused lawyer receiving psychiatric care); *In re McCabe*, S Ct 37994 (1991) (120-day suspension, all but 30 days stayed during two-year probation).

15.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period of 120 days commencing 30 days after approval of this stipulation by the Disciplinary Board.

16.

This Stipulation for Discipline had been reviewed by Disciplinary Counsel of the Oregon State Bar, and the sanction has been approved by the State Professional Responsibility Board (SPRB). The parties agree the stipulation shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 11th day of March 1998.

/s/ David J. Berentson
David J. Berentson, the Accused

/s/ Susan D. Isaacs
Susan D. Isaacs, Counsel for Accused

EXECUTED this 12th day of March 1998.

OREGON STATE BAR

By: /s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel

Cite as 327 Or 44 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
DAVID W. STAUFFER,)
)
Accused.)

(OSB 93-63; SC S43698)

On review of a decision of a trial panel of the Disciplinary Board.

Argued and submitted April 30, 1997. Decided April 9, 1998.

David W. Stauffer, Portland, argued the cause and filed the briefs *in propria persona*.

Mary A. Cooper, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Carson, Chief Justice, Gillette, Van Hoomissen, Durham, and Kulongoski, Justices. (Fadeley, J., retired January 31, 1998, and did not participate in this decision; Graber, J., did not participate in this decision.)

PER CURIAM

The Accused is suspended from the practice of law for a period of two years commencing on the effective date of this decision.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating Code of Professional Responsibility Disciplinary Rules 1-102(A)(4) (conduct prejudicial to the administration of justice), DR 5-105(C) (former client conflicts of interest), DR 5-101(A) (lawyer's self-interest conflict of interest), DR 2-106(A) (charging clearly excessive fee), and DR 7-102(A)(2) (knowingly advancing claim unwarranted under existing law). A trial panel of the Disciplinary Board found that the Accused had violated all of the disciplinary rules he was charged with violating, except DR 7-102(A)(2), and imposed a 120-day sentence. *Held:* The Accused violated DR 1-102(A)(4), DR 5-105(C), DR 5-101(A), DR 2-106(A), and DR 7-102(A)(2). The Accused is suspended from the practice of law for a period of two years commencing on the effective date of this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-196
)	
DIANE L. GRUBER,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Christopher R. Hardman, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 2-106(A). Public reprimand.
Effective Date of Order:	April 13, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 2-106(A).

DATED this 13th day of April 1998.

/s/ Arminda J. Brown
 Arminda J. Brown
 State Disciplinary Board Chairperson

/s/ Richard S. Yugler
 Richard S. Yugler, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Diane L. Gruber, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Diane L. Gruber, was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 17, 1986, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily with the advice of counsel. This Stipulation is made under the restrictions of Rule of Procedure 3.6(h).

4.

On November 22, 1997, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 2-106(A). A formal complaint has not yet been filed against the Accused. 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.

On or about August 16, 1996, David Brickley retained the Accused to represent him in a dissolution of marriage. On or about that date, Brickley signed a written fee agreement wherein he agreed to pay and did pay the Accused a \$1,000 retainer, and agreed to compensate the Accused at a rate of \$150 an hour for legal services performed on Brickley’s behalf.

6.

On January 16, 1997, Brickley terminated the Accused’s services and on or about that same date, she filed a motion to withdraw as his counsel. At the time of the termination, Brickley had an outstanding balance on his account with the Accused. On February 12, 1997, Brickley paid a portion of the bill. On February, 15, 1997, the Accused billed Brickley for the balance. Brickley disputed the amount

owed and the Accused reduced the bill by \$5.00. Thereafter, she sent him an invoice reflecting the revision.

7.

On February 27, 1997, Brickley wrote the Accused and claimed that she had agreed to waive the remaining balance. Brickley also requested that the Accused adjust the billing to reflect a zero balance. On March 11, 1997, the Accused responded by denying Brickley's claims and advising Brickley she would charge him for the time it took to respond to his February 27, 1997, letter and for any additional time spent dealing with Brickley or the Bar in the event he was to make a complaint against her.

8.

On or about March 11, 1997, the Accused "audited" the Brickley file. On March 15, 1997, the Accused sent Brickley an invoice. This invoice sought payment for the previous balance and added \$480 for professional services rendered. A portion of the \$480 was for services allegedly rendered in October 1996. (On October 31, 1996, the Accused billed Brickley for services rendered in October 1996, and Brickley paid the bill in full on November 6, 1996.) The balance of the March invoice was for the time the Accused spent responding to Brickley's February 27, 1997, letter, almost two months after the termination of her representation.

9.

On March 27, 1997, Gruber filed an attorney lien against Brickley. The charges on the March invoice were included in the amount of the lien.

Violation

10.

The Accused admits that, when she charged Brickley for services during a period for which she had already billed and been paid in full, and when she charged Brickley for responding to a letter when she was no longer authorized to perform legal services on his behalf, she violated DR 2-106(A).

Sanction

11.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

- A. The Accused violated her duty owed to the profession. *Standards* §7.0.
- B. At the time the Accused sent Brickley the March 15, 1997, bill, she knew she no longer represented Brickley and knew that, pursuant to her own written fee agreement, she was only entitled to be compensated for legal services performed on Brickley's behalf. The Accused acted with negligence when she billed him for activities performed subsequent to her termination and without his authorization.
- C. The Accused injured Brickley by asserting an attorney lien on his residence which included charges to which the Accused was not ethically entitled.
- D. Aggravating factors include:
- *Standards* §9.22(a). The Accused has a prior disciplinary history. She was admonished in January 1997 for violating DR 5-105(C).
 - *Standards* §9.22(b). The Accused had a selfish motive.
- E. Mitigating factors include:
- *Standards* §9.32(c). The Accused fully responded to the Bar's inquiries and freely acknowledges the errors she made in the Brickley matter.

12.

The ABA *Standards* provide that reprimand or suspension, depending on the circumstances, is appropriate for conduct involving violations of duties owed to the profession. *Standards* §§7.2, 7.3. The commentary to the *Standards* states that courts typically impose a public reprimand when a lawyer engages in a single act of charging an excessive or improper fee and the authority cited is consistent with Oregon case law. See *In re Potts, Trammel, Hannon*, 301 Or 57, 718 P2d 1363 (1986); *In re Hill*, 261 Or 573, 495 P2d 261 (1972).

13.

Consistent with the ABA *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded.

14.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the State Professional Responsibility Board (SPRB) at its November 22, 1997, meeting. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 23rd day of March 1998.

/s/ Diane L. Gruber

Diane L. Gruber

EXECUTED this 1st day of April 1998.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan

Assistant Disciplinary Counsel

Cite as 327 Or 76 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
JAMES B. DONOVAN,)
)
Accused.)

(OSB 96-6, 96-156, 96-157, 96-159, 96-160, 96-161, 96-172, 96-176,
96-177, 96-178, 97-20, 97-21, 97-22, 97-23, 97-24, 97-25, 97-26, 97-27,
97-62, 97-63, 97-64, 97-69, 97-70, 97-71, 97-94, 97-95, 97-111,
97-161; SC S43992)

On review of the decision of a trial panel of the Disciplinary Board.

Submitted on the record March 24, 1998. Decided April 16, 1998.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, for the Oregon State Bar.

No appearance *contra*.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Durham, Kulongoski, and Leeson, Justices. (Graber, J., resigned March 31, 1998, and did not participate in the decision of this case.)

PER CURIAM

The Accused is disbarred.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with 28 violations of DR 1-102(A)(3); 28 violations of DR 2-106(A); 28 violations of DR 6-101(B); 28 violations of DR 7-101(A)(2); 28 violations of DR 9-101(A); one violation of DR 9-101(C)(3); three violations of DR 9-101(C)(4); one violation of DR 2-110(B)(2); one violation of DR 3-101(B); one violation of ORS 9.160; and 29 violations of DR 1-103(C). The Accused defaulted. The trial panel found him guilty of all charges and disbarred him. *Held*: The Accused is guilty of all of the charged misconduct. The Accused is disbarred.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 96-142
)	
PATRICK K. MACKIN,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Stephen R. Moore, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 2-106(A) and DR 2-110(B)(4). Public reprimand.
Effective Date of Order:	May 4, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused is publicly reprimanded for violation of DR 2-106(A) and DR 2-110(B)(4).

DATED this 4th day of May 1998.

/s/ Armindia J. Brown
 Armindia J. Brown
 State Disciplinary Board Chairperson

/s/ Richard S. Yugler
 Richard S. Yugler, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Patrick K. Mackin, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Patrick K. Mackin, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 21, 1977, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On April 17, 1997, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3), DR 2-106(A), and DR 2-110(B)(4). 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.

On or about August 15, 1994, the Accused was retained by Julie Weinstein (hereinafter “Weinstein”) regarding a personal injury claim. Weinstein and the Accused signed a fee agreement, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein.

6.

On March 29, 1995, Weinstein terminated the Accused’s employment by telephone message to the Accused’s office which the Accused asserts he did not receive. Weinstein also delivered a letter to the Accused’s office that same day terminating his employment. The letter was not date stamped by the Accused’s office until March 31, 1995, and not seen by the Accused until that date.

7.

On March 31, 1995, prior to learning he had been terminated, the Accused made a written demand for settlement to the opposing party's insurance company. On April 4, 1995, when the Accused was called by an adjuster for the opposing party's insurance company, he discussed Weinstein's claim and did not disclose that his services had been terminated and that he no longer had authority to negotiate on her behalf.

8.

On April 6, 1995, the Accused received a letter from the insurance adjuster acknowledging the Accused's March 31, 1995, demand. The Accused did not provide Weinstein with a copy of that letter or disclose to the adjuster that Weinstein had terminated his services and that he no longer had authority to negotiate on her behalf.

9.

On April 13, 1995, the Accused received notice that Weinstein had retained new counsel to represent her in the personal injury claim.

10.

On April 18, 1995, the opposing party's insurance adjuster contacted the Accused by telephone and made an offer to settle Weinstein's claim, at which time the Accused did disclose that Weinstein had retained new counsel.

11.

On April 19, 1995, the Accused asserted entitlement to a fee of one-third of the April 18, 1995, settlement offer, and on May 10, 1995, he asserted a lien against any settlement proceeds in the amount of one-third of the April 18 offer. The Accused believed he had not been terminated until after the demand letter had been sent and that the settlement was the result of his representation. The Accused's assertion of this fee and his lien were contrary to the terms of Exhibit 1 in that no offer had been received at the time of his discharge and his fee, therefore, was limited to reasonable hourly rate. The fee dispute was settled less than one month after the underlying claim settled in October 1996.

Violation

12.

The Accused admits that, by engaging in the conduct described in this stipulation, he charged an excessive fee and failed to withdraw from employment after having been discharged by his client, in violation of the following standards of professional conduct established by law and by the Oregon State Bar:

1. DR 2-106(A) of the Code of Professional Responsibility; and
2. DR 2-110(B)(4) of the Code of Professional Responsibility.

Sanction

13.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his client, the legal system, and the profession. *Standards* §7.0.

B. *Mental State.* With regard to mental state, the Accused acted negligently, that is, he failed to heed a substantial risk that circumstances existed or that a result would follow, which was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. The Accused failed to recognize that no settlement offer had been received before he had been terminated and incorrectly concluded he was entitled to a contingent fee on any recovery under the terms of his fee agreement with his client.

C. *Injury.* Injury may be either actual or potential. In this case, there was potential injury to the client. However, the fee dispute was ultimately settled.

D. *Aggravating Factors.*

1. The Accused was admonished in 1986 for violation of DR 5-105(A) and (B). *Standards* §9.22(a).

2. The Accused has substantial experience in the practice of law. *Standards* §9.22(i).

E. *Mitigating Factors.*

1. The Accused cooperated with the disciplinary investigation. *Standards* §9.32(e).

2. The Accused has an excellent reputation in the community. *Standards* §9.32(g).

3. The prior discipline is remote in time. *Standards* §9.32(m).

14.

The *Standards* provide that reprimand is generally appropriate when a lawyer charges an excessive fee or fails to withdraw from employment when required to do so. *Standards* §7.3. Oregon case law is in accord. See *In re Potts, Trammell and*

Hannon, 301 Or 57, 718 P2d 1363 (1986); *In re Hill*, 261 Or 573, 495 P2d 261 (1972); *In re Taylor*, 5 DB Rptr 1 (1991); *In re Rhodes*, 8 DB Rptr 45 (1994).

15.

The Bar agrees to dismiss the charge of violation of DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation), as further discovery has shown that there is an insufficient basis for the charge.

16.

The Accused agrees to a public reprimand for his violations of DR 2-106(A) and DR 2-110(B)(4).

17.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction approved by the State Professional Responsibility Board (SPRB). The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 16th day of April 1998.

/s/ Patrick K. Mackin

Patrick K. Mackin

OSB No. 77048

EXECUTED this 15th day of April 1998.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case Nos. 94-159, 94-234,
) 94-235, 95-23, 97-39
MARY L. STASACK,)
) SC S45328
Accused.)

Bar Counsel: J. Philip Parks, Esq.
Counsel for the Accused: Greg Austin, Esq.
Disciplinary Board: None
Disposition: Violation of DR 6-101(B) and DR 1-103(C).
18-month suspension.
Effective Date of Order: May 26, 1998

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The Oregon State Bar and Mary L. Stasack have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Mary L. Stasack is suspended from the practice of law for a period of 18 months. The Stipulation for Discipline is effective May 26, 1998.

DATED this 19th day of May 1998.

/s/ Wallace P. Carson
Wallace P. Carson, Jr.
Chief Justice

STIPULATION FOR DISCIPLINE

Mary L. Stasack, attorney at law (hereinafter "Ms. Stasack"), and the Oregon State Bar (hereinafter "the Bar") hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Mary L. Stasack, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 18, 1980, and except as noted herein has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Clackamas County and Multnomah County, Oregon.

3.

The State Professional Responsibility Board authorized formal disciplinary proceedings against Ms. Stasack on June 20, 1996, in Case No. 94-159 for violation of DR 6-101(B) and DR 1-103(C); on June 20, 1996, in Case No. 94-159 for violation of DR 6-101(B) and DR 1-103(C) and in Case No. 94-235 for violation of DR 1-103(C), DR 5-105(E), DR 6-101(B), and DR 7-101(A)(2); on October 17, 1996, in Case No. 95-23 for violation of DR 1-102(A)(3), DR 6-101(B), DR 7-101(A)(2); and on July 19, 1997, in Case No. 97-39 for violation of DR 2-110(A)(2), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3). A formal complaint was filed on July 24, 1996, an amended formal complaint was filed on December 17, 1996, and a second amended formal complaint was filed on August 21, 1997. A copy of the second amended formal complaint is attached hereto as Exhibit 1 and incorporated by reference herein. Ms. Stasack filed an answer to the complaint on October 4, 1996. She filed an Amended Answer to the original and new complaints on September 22, 1997, a copy of which is attached hereto as Exhibit 2 and by this reference incorporated herein.

4.

Ms. Stasack enters into this Stipulation for Discipline freely and voluntarily and after consultation with counsel and pursuant to the conditions and restrictions of BR 3.6.

Case No. 94-159

5.

On February 15, 1994, Ms. Stasack agreed to research the question of whether Jeanne Zink (hereinafter "Zink") could prevent CSD from placing her child in any foster home not of the Latter-Day Saints faith and to advise Zink on the results.

6.

Ms. Stasack did not take any significant action on Zink's behalf and, on or about March 13, 1994, withdrew from her employment by Zink without prejudice to the client.

7.

On or about June 10, 1994, Zink filed a complaint with the Oregon State Bar concerning Ms. Stasack's conduct. The Bar requested Ms. Stasack's response to the Zink complaint on June 17, 1994, and July 27, 1994. Ms. Stasack made no response to the Bar's requests before the Zink matter was referred to a Local Professional Responsibility Committee for investigation.

8.

Ms. Stasack admits that she was obligated to cooperate with the Bar's request for her response to Zink's complaint regardless of whether the complaint had (in her opinion or in fact) merit. She therefore admits she failed to timely respond to inquiries from the Bar, which is an authority empowered to investigate or act upon the conduct of lawyers, in violation of DR 1-103(C).

Case No. 94-234

9.

In about August 1994, Ms. Stasack undertook to represent James Hathaway (hereinafter "Hathaway") who was the respondent in a proceeding for dissolution of marriage. Ms. Stasack prepared an appearance on behalf of Hathaway but failed to file it or to confirm whether it had been filed with the court when she received opposing counsel's notice he had not received a service copy.

10.

An order of default was entered against Hathaway on or about October 14, 1994. Ms. Stasack received a letter dated October 17, 1994, from opposing counsel informing her he had taken a default but did not actually realize a default had been taken until December 1, 1994, when she resigned from further representation of Hathaway, who retained new counsel shortly thereafter. In January 1995, Ms. Stasack signed, on the request of Hathaway's new counsel, an affidavit accepting full responsibility for her admitted negligence in support of a motion to set aside the default filed by Hathaway's new counsel.

11.

The Oregon State Bar received a complaint concerning Ms. Stasack's conduct in the Hathaway matter on October 17, 1994. The Bar requested Ms. Stasack's response to this complaint on October 21, 1994, and November 28, 1994. Ms. Stasack made no response to the Bar's requests and Disciplinary Counsel's Office was required to refer the complaint to a Local Professional Responsibility Committee for investigation.

12.

Ms. Stasack admits that she neglected a legal matter entrusted to her and failed to respond to inquiries from the Bar, which is an authority empowered to investigate or act upon the conduct of lawyers, in violation of DR 6-101(B) and DR 1-103(C).

Case No. 94-235

13.

On or about June 28, 1993, Jenny Orr (hereinafter "Orr") retained Ms. Stasack to represent her in the adoption of a foster child placed in Orr's home by Children's Services Division.

14.

Ms. Stasack filed a petition for adoption on Orr's behalf on May 31, 1994. Thereafter, she failed to obtain a decree of adoption and failed to respond to a notice of dismissal from the court, with the result that Orr's petition for adoption was dismissed on November 18, 1994. Ms. Stasack took no further action on Orr's behalf. Beginning in January 1995, Ms. Stasack's inaction was the result of her erroneous belief that Orr had retained new counsel.

15.

The Oregon State Bar received a complaint concerning Ms. Stasack's conduct in the Orr matter on October 10, 1994. The Bar requested Ms. Stasack's response to this complaint on October 11, 1994, and November 15, 1994. Ms. Stasack made no response to the Bar's requests before the complaint was referred to a Local Professional Responsibility Committee for investigation.

16.

Ms. Stasack admits that she neglected the Orr adoption which was entrusted to her, and that she failed to respond to inquiries from the Bar, which is an authority empowered to investigate or act upon the conduct of lawyers, in violation of DR 6-101(B) and DR 1-103(C).

Case No. 97-39

17.

Beginning in about June 1994, Ms. Stasack undertook to represent Janet Carll (hereinafter "Carll") to modify the visitation provisions of her decree of dissolution of marriage.

18.

After October 1994, Ms. Stasack took no substantial action on Carll's behalf and failed to advise Carll about the status of her case or respond to Carll's attempts

to contact her until March 31, 1995, when she withdrew from representing Carll. Carll's interests were not prejudiced by Ms. Stasack's withdrawal and Carll's conduct had rendered it unreasonably difficult for Ms. Stasack to carry on her employment effectively.

19.

Ms. Stasack admits that she neglected Carll's case which was entrusted to her, by her inaction on the case in violation of DR 6-101(B).

Sanction

20.

Ms. Stasack and the Bar agree that in fashioning the appropriate sanction in this case, the Supreme Court should consider the *ABA Standards for Imposing Sanctions* and Oregon case law. The *ABA Standards* require that Ms. Stasack's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. Ms. Stasack violated her duty of diligence to her clients and her duty to the legal profession to cooperate in the Bar's investigation of her conduct. *Standards* §§4.4, 7.0.

B. In all the above matters and in her failures to cooperate with the Bar, Ms. Stasack had the conscious awareness of the nature or attendant circumstances of her conduct or failure to act, but did not intend to injure her clients.

C. Ms. Stasack caused actual injury to the legal profession and the public by delaying the Bar's investigation of and the resolution of her clients' complaints. Hathaway suffered actual injury from Ms. Stasack's inaction when a default judgment was entered against him and he was required to retain and pay new counsel to set it aside. Orr was actually injured when her adoption was dismissed and she was required to retain and pay new counsel to complete the adoption.

D. The aggravating factors in this case are:

1. Prior disciplinary offenses. Ms. Stasack was publicly reprimanded in 1992 for violation of DR 6-101(B) arising out of her failure to prepare a qualified domestic relations order for approximately four years. *In re Stasack*, 6 DB Rptr 7 (1992). A copy of Ms. Stasack's stipulation for discipline is attached hereto and incorporated by reference herein as Exhibit 3. Ms. Stasack was admonished in 1994 for violation of DR 9-101(A) and DR 9-101(C)(3). A copy of the letter of admonition is attached hereto and incorporated by reference as Exhibit 4.

2. A pattern of misconduct and multiple disciplinary offenses.

3. Failure to cooperate with investigations by Disciplinary Counsel's Office.

4. Substantial experience in the practice of law. Ms. Stasack was admitted to the practice of law in 1980. *Standards* §9.22(a), (c), (e), (i).

E. The mitigating factors in this case are:

1. Ms. Stasack did not act with a dishonest or selfish motive. All funds paid by both complainants Hathaway and Orr were returned to them, in full, when their cases were dismissed.

2. Beginning in 1990, and continuing throughout the relevant times herein, Ms. Stasack suffered from personal or emotional problems and physical or mental disabilities or impairments and their attendant personal and emotional devastation.

3. Ms. Stasack developed cancer and underwent cancer surgery in 1990.

4. After her cancer surgery, Ms. Stasack received ongoing psychological counseling for clinical depression, procrastination, disorganization, and difficulty functioning under stress. She was treated with antidepressants until 1995 when she was diagnosed with Attention Deficit Depressive Disorder and began a new course of medication which has reduced the symptoms described above.

5. Ms. Stasack was hospitalized a number of times between 1993 and 1995 with diverticulitis. She underwent a colon resection in 1996 which appears to have resolved the matter.

6. Ms. Stasack sought and received assistance from the Professional Liability Fund in office management and organization strategies from early 1995 until she voluntarily closed her practice and office in August 1997.

7. Ms. Stasack is remorseful for the inconvenience and distress suffered by her clients and has taken steps to address the conditions that contributed to her failure to attend to these clients' matters. *Standards* §9.32(b), (c), (h), (l).

8. In December 1994, Ms. Stasack voluntarily contacted Bar disciplinary counsel seeking information and advice in resolving the potential disciplinary actions against her. She retained counsel that same month and has been forthcoming in responding (through counsel) to requests by Bar investigators and disciplinary counsel for information, files, and records to Bar investigators and disciplinary counsel.

21.

The ABA *Standards* provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury or knowingly violates a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards* §§4.42, 7.2.

Oregon case law is in accord. See *In re Chandler*, 306 Or 422,760 P2d 243 (1988), where the lawyer, who had two previous suspensions for similar conduct,

was suspended for two years for violation of DR 6-101(B), DR 1-103(C), and DR 9-101(B)(4) (now DR 9-101(C)(4)); *In re Bourcier*, 322 Or 561, 909 P2d 1234 (1996), where the lawyer was suspended for three years for violation of DR 6-101(B), DR 9-101(C)(4), DR 1-102(A)(4), DR 7-102(A)(5), and DR 1-103(C); *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997), where the lawyer was suspended for two years for violation of DR 6-101(B), DR 9-101(C)(4), and DR 1-103(C); and *In re Miles*, 394 Or 218, 923 P2d 1219 (1996), where the lawyer was suspended for 120 days for two violations of DR 1-103(C).

22.

The Bar and Ms. Stasack agree that the charges of violating DR 5-105(E) and DR 7-101(A)(2) as alleged in Case No. 94-235 shall be dismissed, that the charges of violating DR 2-110(A)(2), DR 9-101(A), and DR 9-101(C)(3) as alleged in Case No. 97-39 shall be dismissed, and that Case No. 95-23 should be dismissed in its entirety.

23.

Consistent with the ABA *Standards* and Oregon case law, the Bar and Ms. Stasack agree that Ms. Stasack shall be suspended from membership in the Oregon State Bar for a period of 18 months for violation of DR 1-103(C) (three counts) and DR 6-101(B) (four counts). The suspension shall begin seven days after approval of this Stipulation for Discipline by the Supreme Court and shall run for 18 consecutive months thereafter.

24.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 24th day of March 1998.

/s/ Mary L. Stasack

Mary L. Stasack

EXECUTED this 17th day of April 1998.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-158
)	
JOHN L. JACOBSON,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board: Chair:	None
Disposition:	Violation of DR 6-101(B), DR 2-106(A), and DR 1-102(A)(4). Public reprimand.
Effective Date of Order:	June 3, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 6-101(B), DR 2-106(A), and DR 1-102(A)(4).

DATED this 3rd day of June 1998.

/s/ Armind J. Brown
 Armind J. Brown
 State Disciplinary Board Chairperson

/s/ Richard S. Yugler
 Richard S. Yugler, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

John L. Jacobson, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, John L. Jacobson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1965, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Baker County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On February 19, 1998, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(B), DR 2-106(A), and DR 1-102(A)(4). 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.

In August 1994, Jack H. Bond (hereinafter “Bond”) retained the Accused to represent Bond in his capacity as Personal Representative of Bond’s father’s estate. Bond had filed a small estate affidavit following his father’s death in 1987. The only asset of the estate was a piece of real property with a value of approximately \$6,000. The property had been sold to a third party who was in default. The Accused filed a foreclosure action on the real property on January 18, 1995. On April 27, 1995, an Interim Decree of Strict Foreclosure was entered and, on July 18, 1995, a Final Decree was entered.

6.

After the Final Decree was entered, Bond entered into a sale of the property for \$6,000, plus assumption of past taxes and cost of the sale. On August 9, 1995,

the sale proceeds of \$6,000 were put into the Accused's lawyer trust account. During the sale, the title company discovered a possible cloud on the title to the real property which required Bond's siblings to execute quitclaim deeds. Two of the siblings refused to sign quitclaim deeds which made it necessary to fully probate the estate.

7.

Probate was filed on November 21, 1995. The original inventory was filed on January 26, 1996, but no subsequent annual accounting was filed, as required by ORS 116.083(1)(a). The Accused paid himself interim attorney fees on January 31, 1996, March 31, 1996, and April 17, 1996, for a total of \$1,668.50, without prior court approval in violation of ORS 116.183 and Uniform Trial Court Rule 9.090. On April 29, 1997, the Accused finally sent Bond a proposed First and Final Account and Petition for Decree of Final Distribution. Bond did not agree with certain amounts set forth in the proposed First and Final Account and contended he was owed extraordinary expenses as Personal Representative, which the Accused felt were unreasonable and unwarranted and would equal or exceed the entire value of the estate to the detriment of other heirs or creditors. Bond objected to the attorney fees claimed by the Accused. As a result, the Accused filed a motion to approve the First and Final Account and sought to withdraw from the case.

8.

The matter was heard in Circuit Court on August 18, 1997, at which time all attorney fees claimed by the Accused were approved by the court and he was authorized to withdraw from the case.

Violation

9.

The Accused admits that, by failing to file an annual accounting and failing to timely close this estate as described in this stipulation, he neglected a legal matter entrusted to him, in violation of DR 6-101(B). The Accused further admits that by taking interim payments of attorney fees without prior court approval, as required by ORS 116.183 and Uniform Trial Court Rule 9.090, he charged an illegal fee, in violation of DR 2-106(A), and engaged in conduct prejudicial to the administration of justice, in violation of DR 1-102(A)(4). *See In re Altstatt*, 321 Or 324, 897 P2d 1164 (1995).

Sanction

10.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty

violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his client by neglecting a legal matter, in violation of DR 6-101(B). In violating DR 1-102(A)(4), the Accused violated his duty to the public by engaging in conduct prejudicial to the administration of justice. In collecting an illegal fee, in violation of DR 2-106(A), the Accused violated his duty to the profession. *Standards* §§4.4, 6.4, 7.0.

B. *Mental State.* With regard to mental state, the Accused asserts that, as to failing to file the annual accounting and promptly close the estate, he acted negligently, that is, he failed to heed a substantial risk that circumstances existed or that a result would follow, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. In taking interim fees without court approval, the Accused acted with knowledge, that 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. *Standards* at 7.

C. *Injury.* Injury may be either actual or potential. In this case, by not providing heirs and other interested parties with notice of his intent to take interim fees, the Accused denied them the opportunity to object and denied the court the opportunity to review the reasonableness of the fee which may have resulted in potential injury. However, the fee was ultimately approved by the court and the only actual injury to the heirs was a delay in closing of the estate and distribution of the balance of money held by the Accused in trust.

D. *Aggravating Factors.*

1. The Accused has substantial experience in the law. *Standards* §9.22(i).

E. *Mitigating Factors.*

1. The Accused has no prior disciplinary record.

2. The Accused had no dishonest or selfish motive.

3. The Accused fully cooperated with the Bar's investigation.

4. The Accused has a good reputation. *Standards* §9.32(a), (b), (e), and (g).

11.

The *Standards* provide that reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.3. Reprimand is also generally appropriate when a lawyer negligently fails to comply with a court order or rule and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards* §6.23. Reprimand is generally appropriate when a lawyer is

negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards* §4.43.

Oregon case law is in accord. A public reprimand was approved in a case involving charges of failing to file a custody agreement, in violation of DR 6-101(B); collecting a fee for drafting a document which was not filed, in violation of DR 2-106(A); and failing to maintain a retainer in a trust account, in violation of DR 9-101(A). *In re James*, 10 DB Rptr 63 (1996).

A reprimand was also an appropriate sanction in a case in which a fee charged in a probate matter was found to be clearly excessive when it was not supported by time and labor involved and was not in line with fees charged in the community for comparable services. Adding further charges to the bill for the firm's time in defending against objection to its fees also violated DR 2-106(A). *In re Potts/Trammel/Hannon*, 301 Or 57, 718 P2d 1363 (1986).

12.

The Accused agrees to accept a public reprimand for the conduct described in this stipulation.

13.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the State Professional Responsibility Board (SPRB) on March 14, 1998. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 30th day of April 1998.

/s/ John L. Jacobson

John L. Jacobson

OSB No. 65055

EXECUTED this 5th day of May 1998.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

Cite as 327 Or 175 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
WILLIAM B. WYLLIE,)
)
Accused.)

(OSB 96-46, 96-190; SC S40929)

On review of the decision of a trial panel of the Disciplinary Board.

Argued and submitted May 7, 1998. Decided June 5, 1998.

William B. Wyllie, Salem, argued the cause and filed the brief *in propria persona*.

Mary A. Cooper, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Gillette, Presiding Justice, and Van Hoomissen, Durham, Kulongoski, and Leeson, Justices. (Carson, C.J., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for two years, with the period of suspension to run consecutively to the period of suspension imposed on the Accused in *In re Wyllie*, 326 Or 447, 952 P2d 550, *on recons.*, 326 Or 622, 956 P2d 951 (1998).

SUMMARY OF SUPREME COURT OPINION

In a lawyer disciplinary proceeding, the Accused was charged with violating the Code of Professional Responsibility by misrepresenting his participation in Continuing Legal Education (CLE) activities to the Minimum Continuing Legal Education (MCLE) Board. A trial panel of the Oregon State Bar found that the Accused had violated two provisions of the Code of Professional Responsibility, DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation) and DR 1-103(C) (failing to cooperate fully with Bar investigation), and imposed a sanction of a seven-month suspension. *Held*: The Accused violated DR 1-102(A)(3) and DR 1-103(C) and is suspended from the practice of law for two years, with the period of suspension to run consecutively to the period of suspension imposed on the Accused in *In re Wyllie*, 326 Or 447, 952 P2d 550, *on recons.*, 326 Or 622 (1998).

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case Nos. 96-164, 97-143
)	
STEVEN D. GERTTULA,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Peter R. Jarvis, Esq.; Timothy Daly Smith, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), DR 7-102(A)(4), and DR 7-102(A)(7). 60-day suspension.
Effective Date of Order:	July 1, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Plea of No Contest to First Cause of Amended Complaint of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Plea of No Contest to First Cause of Amended Complaint entered into between the parties is accepted and the Accused shall be suspended from the practice of law for a period of 60 days, effective July 1, 1998, for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), DR 7-102(A)(4), and DR 7-102(A)(7).

DATED this 29th day of June 1998.

/s/ Arminda J. Brown
 Arminda J. Brown
 State Disciplinary Board Chairperson

/s/ William B. Kirby 6-20-98
 William B. Kirby, Region 4
 Disciplinary Board Chairperson

**PLEA OF NO CONTEST TO FIRST CAUSE
OF AMENDED COMPLAINT**

Steven D. Gerttula, attorney at law (hereinafter “the Accused”), hereby enters and the Oregon State Bar (hereinafter the “Bar”) accepts, a plea of no contest to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(b).

1.

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

2.

The Accused is, and all times herein mentioned was, an attorney at law, duly admitted by the Oregon Supreme Court to the practice of law in this state, and a member of the Bar, maintaining an office and place of business in the County of Clatsop, State of Oregon.

3.

The Accused enters this plea of no contest to the first cause of the complaint freely, voluntarily, and with the advice of counsel. The Accused does not desire to defend against the first cause of the Amended Formal Complaint. This plea of no contest is made under the restrictions of Rule of Procedure 3.6(h).

4.

At its meetings of November 23, 1996, and January 7, 1998, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against the Accused. An amended formal complaint was subsequently filed alleging violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), DR 7-102(A)(4), DR 7-102(A)(5), and DR 7-102(A)(7) of the Code of Professional Responsibility.

Allegations of First Cause of Amended Formal Complaint

5.

On or about December 12, 1995, the Accused undertook to represent Bjorn Vaughn (hereinafter “Vaughn”) to defend against a November 12, 1995, citation for driving while under the influence of intoxicants (hereinafter “DUII”). The citation required Vaughn to appear in Clatsop County District Court.

6.

On or about December 11, 1995, Vaughn was cited for DUII for a second time. The citation required Vaughn to appear in Astoria Municipal Court. The Accused undertook to represent Vaughn to defend against this charge.

7.

On or about March 25, 1996, the Accused prepared and witnessed Vaughn's signature on two Uniform Petition and Diversion Agreement and Order forms (hereinafter "diversion petitions"). (Copies of the diversion petitions are attached hereto as Exhibits 1 and 2 and incorporated by reference herein.)

8.

Both diversion petitions represented under penalty of perjury that Vaughn had no other pending DUII charge. These representations were false, and the Accused knew they were false when he prepared, caused Vaughn to sign, and witnessed the diversion petitions.

9.

The Accused filed the diversion petitions with the Clatsop County District Court and the Astoria Municipal Court. The Accused knowingly failed to disclose to either court that Vaughn had two DUII charges pending. Both courts allowed the diversion petitions.

10.

The aforesaid conduct of the Accused constituted conduct involving dishonesty, fraud, deceit, or misrepresentation; conduct prejudicial to the administration of justice; knowingly concealing or failing to disclose that which he was required by law to reveal; knowingly using perjured testimony or false evidence; and counseling or assisting a client in conduct he knew to be illegal or fraudulent in violation of the following standards of professional conduct established by law and by the Bar:

1. DR 1-102(A)(3) of the Code of Professional Responsibility;
2. DR 1-102(A)(4) of the Code of Professional Responsibility;
3. DR 7-102(A)(3) of the Code of Professional Responsibility;
4. DR 7-102(A)(4) of the Code of Professional Responsibility;
5. DR 7-102(A)(7) of the Code of Professional Responsibility.

11.

The remaining portions of the Amended Formal Complaint that are not specifically addressed in this Stipulation, including all allegations in Case No. 97-143, are withdrawn.

Sanction

12.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter

“Standards”) should be considered. The *Standards* require that the Accused’s conduct be analyzed 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*. Violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), DR 7-102(A)(4), and DR 7-102(A)(7) breach duties owed to the public, to the legal system, and to the profession. *Standards* §§5.0, 6.0, 7.0.

B. *State of Mind*. The Accused’s conduct demonstrates knowledge and negligence. “Knowledge” is an awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. “Negligence” is a failure 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 7. The Accused knew or should have known that certain representations made in the diversion petitions were false when he prepared, caused Vaughn to sign, and witnessed the diversion petitions; that he failed to disclose to the Astoria Municipal Court that Vaughn had two DUII charges pending. Because the Accused believed that the second diversion could be, and in fact was, authorized by law, and because the Accused did not focus on the significance of the boilerplate language in the diversion form, the Accused did not know or believe that his conduct or his client’s conduct was illegal or fraudulent.

C. *Injury*. The Accused’s conduct resulted in potential injury to his client.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused had substantial experience in the practice of law.

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused does not have a prior record of discipline. *Standards* §9.32(a).

2. The Accused cooperated with the Disciplinary Counsel’s Office and the Local Professional Responsibility Committee in responding to the complaint and resolving the disciplinary proceeding. *Standards* §9.32(e).

13.

The *Standards* provide that suspension is generally appropriate when a lawyer should have known that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards* §6.12. Suspension is also appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.2. Oregon case law is in accord. See *In re Hockett*, 303 Or 150, 734

P2d 877 (1987) (63-day suspension for violation of *former* DR 1-102(A)(4) [current DR 1-102(A)(3)] and DR 7-102(A)(7)); *In re Hiller*, 298 Or 526, 694 P2d 540 (1985) (120-day suspension for violation of DR 1-102(A)(3)); *In re Claussen*, 322 Or 466, 909 P2d 862 (1996) (one-year suspension for violation of DR 1-102(A)(4) and DR 7-102(A)(5)).

14.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused receive a 60-day suspension from the practice of law to commence July 1, 1998, after approval of this Stipulation by the Disciplinary Board.

15.

This Plea of No Contest to the First Cause of the Amended Complaint has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to BR 3.6.

EXECUTED this 8th day of June 1998.

/s/ Steven D. Gerttula

Steven D. Gerttula

OSB No. 77184

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-200
)
SCOTT W. McGRAW,)
)
Accused.)

Bar Counsel: John S. Foote
Counsel for the Accused: Claud A. Ingram, Jr.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3). Public reprimand.
Effective Date of Order: June 29, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved. The Accused shall be publicly reprimanded for violation of DR 1-102(A)(3).

DATED this 29th day of June 1998.

/s/ Armina J. Brown
Armina J. Brown
State Disciplinary Board Chairperson

/s/ Robert M. Johnstone
Robert M. Johnstone, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Scott W. McGraw, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

The Oregon State 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.

The Accused, Scott McGraw, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state, and a member of the Oregon State Bar, having his office and place of business in the County of Marion, State of Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation is made under the restrictions of Rule of Procedure 3.5(h).

4.

On December 16, 1997, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 1-102(A)(3) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

About and after November 1996, the Accused represented James and Ursula Gorham in connection with personal injury and real property dispute with Patrick Gorham, James Gorham’s son and Ursula Gorham’s stepson.

6.

On January 23, 1997, James Gorham died. The Accused was informed of his death. On February 11, 1997, the Accused met with Gilbert Feibleman, counsel for Patrick Gorham, to discuss the parties’ disputes and how they may be resolved. During the conference, the Accused made representations about what James Gorham would say if he were to testify. The Accused does not contest that he also advised Mr. Feibleman that he would speak with his clients about the attorneys’ discussion. The Accused failed to disclose the death of James Gorham. The Accused’s

representations to the extent he expressed or implied that James Gorham was alive and an existing client were false and known to be false at the time he made them.

7.

The Accused admits that, by his conduct, he violated DR 1-102(A)(3) of the Code of Professional Responsibility.

Sanction

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”) should be considered. The *Standards* establish a framework to analyze the Accused’s conduct, including (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. *Standards* §3.0.

A. *Duty*. In violating DR 1-102(A)(3), the Accused violated his duties to the public and the profession, the pledge to maintain personal integrity and not to mislead. *Standards* §§5.1, 7.0.

B. *Mental State*. The Accused acted with knowledge, or the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective to accomplish a particular result. *Standards* at 7. Although not a justification for his conduct, Ursula Gorham directed the Accused not to disclose to Patrick Gorham that her husband, James Gorham, had died. Ursula Gorham alleged that Patrick Gorham had assaulted her prior to her husband’s death and therefore feared for her safety. The Accused considered her directive not to disclose the death of James Gorham to be a client “secret,” which he sought to protect. The Accused failed to appreciate that in complying with his client’s directive, he was not permitted expressly or impliedly to make misrepresentations to opposing counsel that James Gorham was alive and an existing client.

C. *Injury*. There existed the potential for injury to the legal system and to the public. Honesty is fundamental to the functioning of the legal system and the profession. No actual injury occurred.

D. *Aggravating Factors*:

1. The Accused was admitted to practice in 1982 and has substantial experience in the practice of law. *Standards* §9.22(i).

E. *Mitigating Factors*:

1. The Accused has no prior record of discipline. *Standards* §9.32(a).

2. The Accused cooperated with the Disciplinary Counsel’s Office in responding to the complaint and resolving this disciplinary proceeding. *Standards* §9.32(e).

3. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(l).

4. The Accused ultimately disclosed his client's death to opposing counsel. About a month after the February 11, 1997, meeting and after opposing counsel had filed suit against James and Ursula Gorham, the Accused telephoned opposing counsel. During the conversation, opposing counsel asked the Accused if he should send notice of substitute service for James Gorham, to James Gorham or to the Accused. The Accused then disclosed that James Gorham was deceased and that he was aware of that fact at the time of the February 11, 1997, meeting.

9.

The *Standards* provide that reprimand is generally appropriate when a lawyer knowingly engages in conduct that involves dishonesty, fraud, deceit or misrepresentation and that adversely reflects on the lawyer's fitness to practice law; or when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. *Standards* §§5.13, 7.3. Commentary to the *Standards* states that a public reprimand is an appropriate sanction in most cases where there is little or no injury because it serves to educate the lawyer and to deter future violations, thus fulfilling one of the purposes of lawyer discipline. A public sanction also informs both the public and other members of the profession that the behavior is improper. *Standards* §7.3, commentary at 46. There is also support in Oregon case law for a reprimand for an isolated instance of misrepresentation that causes little or no actual injury. *In re Boardman*, 312 Or 452, 822 P2d 709 (1991); *In re Singer*, 11 DB Rptr 141 (1997).

10.

Consistent with the *Standards* the Bar and the Accused agree that the Accused should be publicly reprimanded. The Accused shall also pay the Bar's costs and disbursements in the amount of \$340.00.

11.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to BR 3.6.

DATED this 15th day of June 1998.

/s/ Scott W. McGraw

Scott W. McGraw

OSB No. 82003

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-17
)	
FRANK G. MacMURRAY,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Thomas H. Tongue, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), DR 7-102(A)(7), and ORS 9.527(4). Six-month suspension.
Effective Date of Order:	July 20, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved. The Accused shall be suspended from the practice of law for six months for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), DR 7-102(A)(7), and ORS 9.527(4). The effective date of the suspension shall be July 20, 1998.

DATED this 13th day of July 1998.

/s/ Arminda J. Brown
 Arminda J. Brown
 State Disciplinary Board Chairperson

/s/ Richard S. Yugler
 Richard S. Yugler, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Frank G. MacMurray, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Frank G. MacMurray, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 11, 1972, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On August 20, 1997, the State Professional Responsibility Board directed that a formal disciplinary proceeding be instituted against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), and DR 7-102(A)(7) of the Code of Professional Responsibility, and ORS 9.527(4). 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 or about May 1991, the Accused and his law firm, Greene and Markley, were retained by Harry Bullis (hereinafter “Bullis”) concerning certain financial problems and for bankruptcy advice. On October 9, 1991, the Accused, as counsel for Bullis, filed a petition for relief under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Oregon. The Accused signed relevant portions of the bankruptcy petition as Bullis’s attorney. The bankruptcy court appointed Michael Batlan to serve as trustee (hereinafter “Chapter 7 Trustee”).

6.

Prior to the filing of the Chapter 7 bankruptcy petition, Bullis had acquired interests in several parcels of real property in the Bend, Oregon, area. The property included a small ranch of approximately 40 acres located on Silvas Road (hereinafter "Silvas Road Property") and other parcels known as the Tumalow and Badger Road properties.

7.

The Silvas Road Property was among the assets listed by Bullis in the schedules accompanying Bullis's bankruptcy petition. The property was subject to an encumbrance, which Bullis stated to be approximately \$95,000. The actual pay-off in October 1991 was about \$71,500.

8.

Prior to filing the bankruptcy petition, Bullis and David Truslow (hereinafter "Truslow") engaged in a series of financial dealings wherein Bullis would obtain funds from Truslow. Bullis left large sums of money in Truslow's care, which he would draw against as he required. At times, Truslow advanced Bullis more money than Bullis had on deposit. Bullis would then pay the sums back over time.

9.

In September 1989 and May 1990, Bullis prepared promissory notes payable to Truslow and two deeds of trust encumbering the Silvas Road Property, as security for the notes. The trust deeds were of doubtful enforceability.

10.

In or about March 1992, Truslow informed the Chapter 7 Trustee that Bullis was and had been making transfers of property that had not been authorized by the bankruptcy court, and had concealed the existence of certain assets when he filed his Chapter 7 petition and schedules. Thereafter, in April 1992, the Chapter 7 Trustee filed an adversary proceeding against Bullis to deny his discharge (hereinafter "Trustee's Adversary Proceeding"). The Chapter 7 Trustee alleged, among other things, that Bullis had knowingly concealed interests in property, including his interest in the Badger Road property; made fraudulent transfers, including the transfer of the Tumalow property; and knowingly and fraudulently made a false oath. The Chapter 7 Trustee also filed an adversary proceeding against Truslow concerning the deeds of trust granted by Bullis to Truslow.

11.

Following the filing of the Trustee's Adversary Proceeding, the Accused engaged in settlement negotiations with the attorney for the Chapter 7 Trustee. The negotiations focused on a proposed payment by Bullis to the trustee. The Chapter 7 Trustee intended that the amount of the payment approximate the amount that the

trustee would realize from the sale of Bullis's nonexempt assets. On or about June 23, 1992, Bullis offered to pay the trustee \$35,000 to settle the Trustee's Adversary Proceeding. The trustee was willing to accept that amount subject to confirmation of the value of the Silvas Road Property. The Accused and the trustee's attorney also discussed Bullis's need to sell the Silvas Road Property to fund the settlement, and that the transaction required advance notice to creditors and the approval of the bankruptcy court.

12.

On or about July 7, 1992, upon notice from the Chapter 7 Trustee advising of a pending settlement of the Trustee's Adversary Proceeding, the court entered an order continuing the adversary proceeding for 60 days to finalize the settlement.

13.

On or about July 15, 1992, the Chapter 7 Trustee notified the Accused that he would require three independent estimates from licensed real estate brokers concerning the value of the Silvas Road Property. Prior to filing the bankruptcy petition, Bullis valued the Silvas Road Property approximately at \$240,000 to \$245,000.

14.

On or about July 22, 1992, Bullis entered into an earnest money agreement for the sale of the Silvas Road Property for \$274,500. Bullis did not inform the Accused or the Chapter 7 Trustee, and the Accused was at that time not aware that Bullis had entered into the agreement.

15.

On or about August 3, 1992, Bullis obtained estimates of value concerning a portion of the Silvas Road Property and provided them to the Accused. The estimates reported a value of \$150,000 to \$200,000 based on a quick sale, but did not reflect that only approximately one-half of the Silvas Road Property was included in the estimates. On August 6, 1992, the Accused forwarded the estimates to the trustee's attorney. The Accused was not informed by Bullis or others, and was otherwise not aware, that only a portion of the property was reflected in the estimates.

16.

On or about August 27, 1992, the Accused learned that Bullis had entered into an earnest money agreement to sell the Silvas Road Property and that the sale price exceeded the estimates of value that he delivered to the trustee. The Accused also knew that the bankruptcy court had not approved or authorized the sale, but took no action to notify the Chapter 7 Trustee or the court of the pending sale, the

sale price, or other terms, or to give notice to creditors and obtain an order authorizing and approving the sale.

17.

On or about August 31, 1992, the bankruptcy court entered an order extending the dismissal of the Trustee's Adversary Proceeding for an additional 60 days to finalize the settlement. The Accused received a copy of the court's order.

18.

On or about September 29, 1992, Truslow and the Chapter 7 Trustee, through their attorneys, agreed to settle the Trustee's adversary proceeding against Truslow concerning the deeds of trust on the Silvas Road Property. Pursuant to the terms of settlement, Truslow agreed to pay the trustee \$50,000. At or about the same time, Bullis and Truslow, through their attorneys, agreed to settle disputes between them, pursuant to which Bullis agreed to pay Truslow \$58,000 from the proceeds of sale of the Silvas Road Property, \$50,000 to be paid by Truslow to the Chapter 7 Trustee to settle the Trustee's adversary proceedings against him, and \$8,000 to be retained by Truslow. The Accused was aware of the terms of settlement between Bullis and Truslow and Truslow and the Chapter 7 Trustee. The Accused was also aware that the funds for each settlement would be derived from the proceeds of sale of the Silvas Road Property, but failed to disclose these facts to the Chapter 7 Trustee.

19.

On or about October 5, 1992, the Silvas Road Property sale was closed. Pursuant to the Accused's instructions to the title company, \$98,000 was delivered to the Accused from the sale proceeds. From the sale proceeds delivered to the Accused, \$35,000 was paid to the Chapter 7 Trustee to fund the settlement of the Trustee's Adversary Proceeding against Bullis; \$5,000 was retained by the Accused and the Greene & Markley law firm as attorney fees; and the remaining \$58,000 was paid to Truslow's attorney to fund the settlement of the Trustee's adversary proceeding against Truslow and claims between Bullis and Truslow. The Accused failed to notify the Chapter 7 Trustee and the court that the Silvas Road Property had been sold and that he had received and distributed proceeds of the sale to Truslow's attorney and to his law firm. The Accused also failed to obtain an order of the bankruptcy court approving the sale of the Silvas Road Property and the distribution of the proceeds from the sale, or an order approving attorney fees to the Accused and his law firm.

20.

On or about October 14, 1992, the Accused forwarded a lawyer trust account check in the amount of \$35,000 to the Chapter 7 Trustee's attorney with a request that the trustee take steps necessary to notify Bullis's creditors of the pending settlement of the Trustee's Adversary Proceeding.

21.

On or about October 15, 1992, the trustee's attorney telephoned the Accused and asked him to identify the source of the settlement funds. The Accused disclosed to the trustee's attorney that the Silvas Road Property had been sold and that settlement funds came from the proceeds of that sale. Prior to this time, the trustee was not aware that Bullis had sold the Silvas Road Property or that a sale was eminent or scheduled.

22.

Pursuant to 11 USC §329, attorneys representing a debtor in connection with a bankruptcy case are required to file with the court a statement of compensation paid or agreed to be paid for services rendered or to be rendered in contemplation or in connection with the case by such attorney, and the source of such compensation. FRBP 2016 requires that an application for interim and final compensation for services be filed and approved by the court. Every attorney for a debtor, whether or not the attorney applies for compensation, is also required to file and transmit to the United States Trustee within 15 days after the order of relief, or other time as the court may direct, the statement required by §329 of the Bankruptcy Code. A supplemental statement must also be filed and transmitted to the United States Trustee within 15 days after any payment or agreement not previously disclosed.

23.

The Accused received and retained attorney fees, paid from proceeds from the sale of the Silvas Road Property, which was a bankruptcy estate asset, without complying with the requirements of the Bankruptcy Code and bankruptcy rules. During the pendency of the Bullis bankruptcy case, Bullis's interest in the Silvas Road Property was also sold and title transferred without court authorization. Although the Accused disclosed to the Chapter 7 Trustee's attorney that the sale of the property was contemplated to fund the settlement of the Trustee's Adversary Proceeding, the Accused failed to obtain an order authorizing the sale, and failed to disclose the timing and details of the sale until after the sale was completed and he was questioned by the Chapter 7 Trustee.

24.

During the pendency of the bankruptcy case, the Accused's client sold the Silvas Road Property and distributed the proceeds from the sale without the approval of the Chapter 7 Trustee or court authorization, which acts were prohibited by bankruptcy laws. The Accused knew these actions were being taken. He communicated with the escrow company to assist in closing of the sale, provided instructions concerning the distribution of sale proceeds, communicated with the attorney for Truslow with regard to payments to Truslow from the sale proceeds, and distributed funds that were proceeds of the sale to third parties and his law firm. At

the time, the Accused also knew that it was necessary to obtain orders of the bankruptcy court approving the sale and for the distribution of the proceeds from the sale of bankruptcy estate assets to his law firm and others.

Violation

25.

Based on the foregoing, the Accused admits that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; engaged in conduct prejudicial to the administration of justice; collected an illegal fee; assisted a client in illegal or fraudulent conduct; and engaged in willful deceit or misconduct in the legal profession, in violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), DR 7-102(A)(7), and ORS 9.527(4).

Sanction

26.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”) are to be considered. The *Standards* require that the Accused’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.* In violating DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), DR 7-102(A)(7), and ORS 9.527(4), the Accused violated his duties to the public, the legal system, and the profession. *Standards* §§5.0, 6.1, 6.2, 7.0.

B. *Mental State.* The Accused’s conduct demonstrates intent and knowledge. “Intent” is the conscious objective or purpose to accomplish a particular result. “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. *Standards* at 7. The Accused knew that bankruptcy rules required that the court approve the terms of sale and authorize sale of the Silvas Road Property. The Accused also knew that the sale price for the property substantially exceeded the estimates of value and that his client intended to utilize the proceeds of the sale and retain the remaining portion of the Silvas Road Property for his personal use and benefit. When the Accused learned of the sale and its terms and provided instructions to the title company, he took no action to inform the Chapter 7 Trustee or the court.

C. *Injury.* The Accused caused actual and potential serious injury to the bankruptcy court, the Chapter 7 Trustee, and Bullis’s bankruptcy creditors. The court was required to devote substantial time in adversary proceedings to resolve issues created by Bullis’s and the Accused’s conduct. The Chapter 7 Trustee incurred substantial expenses to recover funds and property belonging to the bankruptcy estate, which expenses reduced assets that would otherwise have been available to

Bullis's creditors. The Accused's conduct also caused actual and potential serious injury to the profession by his failure to uphold the ethical standards.

D. *Aggravating Factors.* Aggravating factors to be considered include:

1. This Stipulation involves five rule violations. *Standards* §9.22(d).

2. The bankruptcy court and the Chapter 7 Trustee were vulnerable in that they relied on the Accused to perform his duties consistent with the provisions of the Bankruptcy Code and rules and the ethical standards of the legal profession. *Standards* §9.22(h).

3. The Accused was admitted to practice in 1972 and has substantial experience in the practice of law. *Standards* §9.22(i).

4. The Accused's conduct reflects aspects of dishonest and selfish motives. He placed his and his law firm's interests in receiving payment for legal services before his obligations to disclose and obtain court approval of such fees. He failed to disclose to the bankruptcy court and the Chapter 7 Trustee that his client had entered into an earnest money agreement to sell the property without court approval. He also failed to timely disclose the terms of sale, including the price, which far exceeded the estimates of value provided to the trustee, or that a portion of the proceeds were being used to fund a settlement of the Trustee's Adversary Proceeding against Truslow. *Standards* §9.22(b).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused does not have a prior record of discipline. *Standards* §9.32(a).

2. During times relevant to this complaint, the Accused and his family relocated to Portland from the Central Oregon area. He was starting a new practice with the Greene & Markley law firm. The Accused and his wife were in counseling and later divorced. At the time of the conduct, the Accused was also being treated for arterial fibrillation, possibly due to stress. The Accused's personal and marital situation was unstable and he was not as attentive to his work as he should have been because of these personal problems. Finally, the Accused's client initially withheld material information concerning his assets and transfers of interest in certain property from the Accused. *Standards* §9.32(c).

3. The Accused cooperated with the Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and resolving this disciplinary proceeding. *Standards* §9.32(e).

4. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(l).

27.

The *Standards* provide that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that

material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards* §6.12. Suspension is also appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding, and when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. *Standards* §§6.22, 7.2.

Although the Accused did not counsel his client in illegal or fraudulent conduct, he assisted the client in such conduct by failing to disclose material information to the Chapter 7 Trustee and the court concerning his client's agreement to sell the property; by participating in the closing of the sale of the Silvas Road Property; by failing to disclose the terms of sale, including the price, to the Chapter 7 Trustee and the bankruptcy court; by failing to disclose his client's agreement with Truslow that some of the proceeds of sale were to be distributed to Truslow and in turn delivered to the trustee to settle his adversary proceeding against Truslow; and by taking no action to obtain the approval of the court. Furthermore, when the Accused eventually became aware that the sale price of the property exceeded the estimates of value for the Silvas Road Property that had been provided by the client to him and he had provided to the Chapter 7 Trustee, he took no action to inform the Chapter 7 Trustee or the bankruptcy court of these facts. The Accused also collected fees for his legal services and distributed proceeds of estate assets to others, knowing that he had not obtained court approval as required under the Bankruptcy Code and rules.

28.

Oregon case law provides guidance in determining the appropriate sanction in this case. In *In re Benson*, 317 Or 164, 854 P2d 466 (1993), the lawyer was suspended for six months for violation of DR 1-102(A)(3), DR 7-102(A)(5), DR 7-102(A)(7), and DR 1-103(C) when he prepared and recorded trust deeds and supporting promissory notes without consideration, placing illegitimate roadblocks in the way of a property foreclosure proceeding. In *In re Hiller and Janssen*, 298 Or 526, 694 P2d 540 (1985), the lawyers were suspended for four months for violating DR 1-102(A)(3) and ORS 9.460(3). The lawyers failed to disclose in an affidavit in support of a summary judgment motion the actual consideration for a reported sale of real property. The lawyers had no prior record of discipline. In *In re Hockett*, 303 Or 150, 734 P2d 877 (1987), the lawyer was suspended for 63 days for violation of DR 1-102(A)(3), DR 7-102(A)(7), and ORS 9.460(3)–(4). The lawyer handled a divorce proceeding in a manner that was designed to preclude the husband's creditors from obtaining assets and satisfaction of lawful debts through the use of fraudulent conveyances. The lawyer had no prior record of discipline. See also *In re Johnson*, 9 DR Rptr 151 (1995), where the lawyer was suspended for 90 days for violation of DR 1-102(A)(3), DR 7-102(A)(7), and DR 2-110(B).

In contrast is *In re Claussen*, 322 Or 466, 909 P3d 862 (1996), and *In re Hedrick*, 312 Or 442, 822 P2d 1187 (1991). In *Claussen*, the lawyer intentionally misrepresented facts and documents submitted to the bankruptcy court, failed to disclose to the bankruptcy court his prior relationship with the bankruptcy debtor and a creditor, and failed to reveal that he had settled the debtor's dispute with the creditor. The court found that his conduct violated DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3) (two counts), DR 7-102(A)(5), DR 5-105(E), and ORS 9.460(2). In imposing a one-year suspension, the court noted that the lawyer changed his story during the course of the proceeding. In *In re Hedrick*, the lawyer was suspended for two years for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), DR 7-102(A)(5), and DR 7-104(A)(1). The court noted a long disciplinary history, which was an aggravating factor that increased the sanction imposed.

29.

In light of the standards and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period of six months for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), DR 7-102(A)(7), and ORS 9.527(4).

30.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and is subject to the approval of the Disciplinary Board pursuant to BR 3.6. If this Stipulation is approved by the Disciplinary Board, the Accused shall be suspended from the practice of law effective July 7, 1998, or seven days after such approval, whichever is later.

DATED this 24th day of June 1998.

/s/ Frank G. MacMurray
Frank G. MacMurray
OSB No. 72291

OREGON STATE BAR

By: /s/ Jane E. Angus
Jane E. Angus
OSB No. 73014
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 94-218
)	
WALLACE D. TERRY,)	
)	
Accused.)	

Bar Counsel:	Brian MacRitchie, Esq.
Counsel for the Accused:	Christopher Hardman, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 3-101(B), DR 9-101(C)(3), and DR 9-101(D). 30-day suspension.
Effective Date of Order:	August 1, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved. The Accused shall be suspended from the practice of law for a period of 30 days for violation of DR 1-102(A)(3), DR 3-101(B), DR 9-101(C)(3) and DR 9-101(D), effective August 1, 1998.

DATED this 20th day of July 1998.

/s/ Arminda J. Brown
 Arminda J. Brown
 State Disciplinary Board Chairperson

/s/ Stephen M. Bloom
 Stephen M. Bloom, Region 1
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Wallace D. Terry, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused is, and at all times herein mentioned was, an attorney at law, duly admitted by the Oregon Supreme Court to the practice of law in Oregon, and a member of the Oregon State Bar, maintaining his office and place of business in the County of Umatilla, State of Oregon.

3.

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

4.

On August 29, 1997, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board. This Stipulation for Discipline is intended by the parties to set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts and Violation

5.

Since about 1983, the Accused has been involved as a principal in indigent defense contracts with the State of Oregon to provide legal representation to indigent defendants in criminal matters in the Circuit and District Courts in Umatilla and Morrow counties. In or about January 1988, the Accused formed an IRC §501(C)(3) exempt corporation identified as the Umatilla/Morrow Public Defender Services, Inc. (hereinafter “UMPDS”) and continued to contract with the State of Oregon for indigent defense criminal work through June 30, 1994.

6.

ORS 9.080(2)(a) and §§15.1 and 15.2 of the Bylaws of the Oregon State Bar require that active members who are engaged in the private practice of law carry professional liability insurance through the Professional Liability Fund (hereinafter “PLF”). At all material times, pursuant to PLF Policy §3.150(B)(3),(4), a member

of the Bar was eligible to claim an exemption from PLF insurance requirements if he or she was employed as an independent contractor with a legal aid or public defender's service entity or by a private law firm exclusively providing legal aid or public defender services so long as the entity or firm provided professional liability coverage for the attorney through the National Legal Aid and Defender Association (hereinafter "NLADA").

7.

In 1993 and 1994, the Accused applied for and was granted an exemption from PLF insurance requirements, based on his representations that he was an independent contractor with a legal aid service or public defender service entity or private law firm exclusively providing legal aid or public defender services. The PLF relied on the Accused's representation of eligibility for exemption from the PLF insurance coverage requirements.

8.

During 1993 and 1994, the Accused's practice consisted of the defense of indigent persons against criminal charges. He received his compensation for legal services under the UMPDS contract with the State of Oregon. During this time, the Accused also represented and performed legal services for several clients outside the UMPDS contract, some of whom he charged and from whom he collected fees. The Accused's NLADA professional liability insurance policy excluded from coverage legal services performed for clients outside the UMPDS indigent defense contract, except those matters disclosed in his application for NLADA insurance and for which he obtained a special policy endorsement. Between January 1, 1993, and July 1994, the Accused failed to apply for or to obtain an endorsement on his NLADA policy or to obtain PLF insurance coverage to provide malpractice insurance for clients for whom he performed legal services outside the UMPDS indigent defense contract, and failed to inform the PLF that he was performing services for such clients.

9.

Prior to and between July 1, 1992, and October 31, 1993, the Accused maintained a trust account captioned "Wallace B. Terry, Client Trust Account" at the Inland Empire Bank, Hermiston branch. The account was not an interest-bearing account. Between at least July 1992 and October 31, 1993, the Accused deposited client funds in the trust account, but failed to prepare, maintain, and preserve for a period of at least five years complete records of all of such funds coming into his possession, including records expressly reflecting the date, amount, source, and explanation for the receipts, withdrawals, deliveries, and disbursements of the funds.

10.

The Accused admits that by performing legal services outside the UMPDS indigent defense contract and failing to inform the PLF that he was performing such services when he had been granted an exemption from payment of the PLF assessment based on his representations that he was exclusively providing legal aid or public defender services, he violated DR 1-102(A)(3); by performing legal services outside the UMPDS indigent defense contract without required PLF insurance or a special endorsement on his NLADA policy, he practiced law outside the regulations of the profession and violated DR 3-101(B); by failing to prepare, maintain, and preserve for a period of five years complete records of all trust funds coming into his possession, he violated DR 9-101(C)(3); and by failing to maintain an interest-bearing trust account, he violated DR 9-101(D) of the Code of Professional Responsibility. In light of further discovery and evaluation of the evidence, all remaining charges set forth in the Bar's Formal Complaint shall be withdrawn upon approval of this stipulation.

Sanction

11.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused'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.* In violating DR 1-102(A)(3), DR 3-101(B), DR 9-101(C)(3), and DR 9-101(D), the Accused violated duties to his clients, to the public, and to the profession. *Standards* §§4.6, 5.0, 7.0.

B. *Mental State.* The Accused's conduct demonstrates "negligence" and "knowledge." "Negligence" is a failure to heed a substantial risk that circumstances exist or that a result will follow, which failure is in deviation from the standard of care that a reasonable lawyer would exercise in the situation. The Accused's conduct was negligent in that he delegated administrative responsibilities to nonlawyer staff and failed to oversee and insure that required and accurate records were prepared and maintained concerning UMPDS and trust funds. "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. The Accused knew that he had applied for and was granted an exemption from PLF insurance assessment requirements based on his representations that he and other UMPDS lawyers were exclusively performing legal aid or public defender services, and that he was performing legal services for private clients outside the UMPDS contract when he did not have required professional liability insurance. *Standards* at 7.

C. *Injury*. The Accused's conduct resulted in actual injury to the profession and to the public. The Accused failed to prepare and maintain adequate records accounting for indigent defense funds, which resulted in an audit by the State Court Administrator's Office to determine whether funds had been properly accounted for and used for indigent defense clients. In conducting the audit, the state incurred substantial expense. The Accused's conduct also resulted in potential injury to clients, the public, and the profession to the extent the Accused accepted private clients and performed legal services outside his UMPDS indigent defense contract when he did not have professional liability insurance for and was not authorized by the regulations of the profession to perform such work without such insurance.

D. *Aggravating Factors*. Aggravating factors to be considered include:

1. The Accused was admitted to practice in 1972 and has substantial experience in the practice of law. *Standards* §9.22(i).

2. This Stipulation involves four rule violations. *Standards* §9.22(d).

E. *Mitigating Factors*. Mitigating factors to be considered include:

1. The Accused has no recent record of discipline. *Standards* §9.32(a). The Accused received a letter of admonition in 1986 for violation of DR 4-101(B).

2. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(l).

3. The Accused has demonstrated a cooperative attitude in resolving this disciplinary proceeding. *Standards* §9.22(e).

12.

Suspension is appropriate when a lawyer knowingly violates a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.2. Suspension is also appropriate when a lawyer in an official position knowingly fails to follow proper procedures and rules, and causes injury or potential injury to a party or to the integrity of the legal process, or when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. *Standards* §§7.2, 4.12. Oregon case precedent is consistent with the *Standards*. In *In re Lachman*, 10 DB Rptr 181 (1996), the lawyer was suspended for 30 days for violation of DR 3-101(B) and ORS 9.160. Suspension is appropriate in most cases involving misrepresentation. *In re Melmon*, 322 Or 380, 908 P2d 822 (1995). In *In re Michaels*, 10 DB Rptr 69 (1996), the lawyer was suspended for 30 days for violation of DR 9-101(C)(3) and other rules.

13.

Consistent with the standards and case law, the Bar and the Accused agree that a 30-day suspension from the practice of law is an appropriate sanction. The

Accused agrees to accept the suspension upon the Disciplinary Board's approval of this Stipulation for Discipline.

14.

The sanction set forth in this Stipulation for Discipline has been approved by the State Professional Responsibility Board, the Stipulation reviewed by Disciplinary Counsel of the Oregon State Bar, and is subject to approval by the Disciplinary Board pursuant to BR 3.6. If this Stipulation is approved by the Disciplinary Board, the Accused shall be suspended from the practice of law for 30 days, effective August 1, 1998, or seven days after such approval, whichever is later.

EXECUTED this 15th day of July 1998.

/s/ Wallace D. Terry
Wallace D. Terry
OSB No. 72262

OREGON STATE BAR

By: /s/ Jane E. Angus
Jane E. Angus
OSB No. 73014
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-74
)	
RANDALL D. KLEMP,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4), DR 2-110(A)(2), and DR 6-101(B). 120-day suspension.
Effective Date of Order:	July 31, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be suspended from the practice of law for a period of 120 days for violation of DR 1-102(A)(4), DR 2-110(A)(2), and DR 6-101(B).

DATED this 22nd day of July 1998.

/s/ Arminda J. Brown
 Arminda J. Brown
 State Disciplinary Board Chairperson

/s/ Stephen M. Bloom
 Stephen M. Bloom, Region 1
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Randall D. Klemp, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Randall D. Klemp, was admitted by the Oregon Supreme Court to the practice of law in Oregon on January 1, 1987, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Umatilla County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On November 22, 1997, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(4), DR 2-110(A)(2), and DR 6-101(B). 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.

In June 1993, Ronald Ingram (hereinafter “Ingram”) contacted the Accused to probate the estate of Gary Waterhouse (hereinafter “Waterhouse”). The Accused had no prior experience in estate matters but agreed to file a petition to probate the estate. On June 8, 1993, the Accused filed a petition to probate the estate and appoint Ingram as personal representative. Subsequently, the Accused failed to timely file the initial inventory required by law.

6.

On January 10, 1994, the court issued an Order to Show Cause why the Accused should not be removed as attorney for the estate or found in contempt for his failure to file the required inventory. On February 25, 1994, the Accused filed the first estate inventory and annual account.

7.

After February 25, 1994, the Accused received not less than three Orders to Show Cause to explain why he should not be held in contempt for failing to file an inventory or to file a final account and close the estate. The Accused did not respond to these orders, took no further action to close the estate, failed and neglected to maintain contact with Ingram, and failed to take any action to withdraw as attorney of record for the estate.

8.

On April 11, 1995, the court wrote the Accused as attorney of record for the estate and explained what was necessary to close the estate. The Accused did not respond to the court and took no action to close the estate.

9.

On September 26, 1995, on its own motion, the Court removed Ingram as personal representative and appointed Gary Vigna as successor personal representative of the estate. Mr. Vigna promptly filed the required documents to close the estate.

Violation

10.

The Accused admits that the conduct described in paragraphs 5 through 8 constituted conduct prejudicial to the administration of justice; that he withdrew from employment without taking reasonable steps to avoid prejudice to Ingram's interests; and that he neglected a legal matter entrusted to him in violation of DR 1-102(A)(4), DR 2-110(A)(2), and DR 6-101(B).

Sanction

11.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to the legal system by engaging in conduct prejudicial to the administration of justice, in violation DR 1-102(A)(4). *Standards* §6.22. By failing to properly withdraw from representation of Ingram and failing to act on his behalf, in violation of DR 2-110(A)(2) and DR 6-101(B), the Accused violated his duty of diligence owed to his client and his duty to the profession to properly withdraw from employment. *Standards* §§4.4, 7.0.

B. *Mental State.* With regard to mental state, the Accused acted with knowledge, that 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. *Standards* at 7.

C. *Injury.* Injury may be either actual or potential. In this case, by ignoring requests from the court and failing to properly and promptly attend to the closing of the estate, the Accused caused actual and serious injury to the judicial system. Furthermore, such inaction resulted in the removal of Ingram as personal representative, exposed him to charges of contempt of court, and required appointment of a successor trustee to complete the estate.

D. *Aggravating Factors.*

1. A prior disciplinary record, including a 1997 Stipulation for a Public Reprimand for failure to maintain adequate records during the same time period involved in this case, and a 1995 Stipulation for Discipline for a public reprimand for improper withdrawal, in violation of DR 2-110(B)(2).

2. Substantial experience in the law.

E. *Mitigating Factors.*

1. Absence of dishonest or selfish motive.

2. Full cooperation during the investigation of the complaint.

12.

The ABA *Standards* provide that suspension is generally appropriate when a lawyer knowingly fails to provide services for a client and causes injury or potential injury to the client. *Standards* §4.42(a). Suspension is also appropriate when a lawyer knowingly violates a court order or rule and there is interference or potential interference with a legal proceeding. *Standards* §§6.22, 7.2. Oregon case law is in accord. See *In re Gresham*, 318 Or 162, 864 P2d 360 (1993); *In re Dames*, Or S Ct No S43437 (1996).

13.

Consistent with the ABA *Standards* and Oregon case law, the Bar and the Accused agree that the Accused receive a 120-day suspension from the practice of law, effective July 31, 1998, or as soon thereafter as this stipulation is accepted by the Disciplinary Board.

14.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and approved by the State Professional Responsibility Board (SPRB). The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 6th day of July 1998.

/s/ Randall D. Klemp

Randall D. Klemp

OSB No. 87006

EXECUTED this 6th day of July 1998.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case Nos. 93-100, 93-101,
) 97-65, 97-120
WILLIS D. ANDERSON,)
) SC S45554
Accused.)

Bar Counsel: Craig D. Bachman, Esq.
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 2-106(A), DR 4-101(B), DR 9-101(A), DR 1-102(A)(4), DR 9-101(C)(3), DR 9-101(C)(4) and DR 1-103(C). 18-month suspension, 12 months of which was stayed pending completion of two years of probation.
Effective Date of Order: August 25, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

The Oregon State Bar and Willis D. Anderson have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Willis D. Anderson is suspended from the practice of law for a period of 18 months. Twelve months of this suspension shall be stayed pending the Accused's completion of two years of probation commencing the effective date of this stipulation. The Stipulation for Discipline is effective August 25, 1998.

DATED this 4th day of August 1998.

/s/ Wallace P. Carson, Jr.
Wallace P. Carson, Jr.
Chief Justice

STIPULATION FOR DISCIPLINE

Willis D. Anderson, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1982, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

Pursuant to authority from the State Professional Responsibility Board, an Amended Formal Complaint was filed against the Accused on March 4, 1998, for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 2-106(A), DR 4-101(B), DR 7-102(A)(3), DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4), ORS 9.527(1), and ORS 9.527(4). 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.

General Background

5.

Since approximately 1987, the Accused has limited his practice to bankruptcy law representing debtors in Chapter 7 and Chapter 13 bankruptcies, and has been advertising his firm as “The Bankruptcy Express.” During calendar year 1996, the Accused opened approximately 1,900 new bankruptcy files. Through the use of fee agreements in his law practice, the Accused regularly extends consumer credit to his clients that is subject to a finance charge or is payable by written agreement in more than four installments.

The McGuire Matter, Case No. 93-101

Facts

6.

In January 1992, Ken McGuire (hereinafter “McGuire”) retained the Accused to file a Chapter 13 bankruptcy and signed a fee agreement to pay the Accused \$1,250. The fee agreement granted the Accused an irrevocable assignment of twenty-five percent (25%) of McGuire’s wages and a power of attorney to endorse any refund check from the Bankruptcy Trustee and apply it to the payment of the Accused’s fees.

In July 1992, McGuire’s bankruptcy case was converted to a Chapter 7. The Accused required McGuire to sign a second fee agreement, which obligated McGuire to pay the Accused a fee of \$620, plus \$20 per month for any month, or portion thereof, in which the fee remained unpaid. This fee agreement did not disclose the annual percentage rate to be charged (hereinafter “APR”) in the event McGuire did not pay the full balance and entitled the Accused to dismiss the bankruptcy if McGuire failed to make timely payment in full of the attorney fees. The Accused’s fee agreements were subject to the requirements of 12 CFR §226.2(a)(17)(I)(A), 15 USC §1601 *et seq.*, ORS Chapter 83, and ORS 646.609.

7.

During the Accused’s professional relationship with McGuire, McGuire disclosed information to the Accused concerning his mental health. The Accused knew that further disclosure of this information to others would be embarrassing or was likely to be detrimental to McGuire. On February 11, 1993, the Accused disclosed this information to a third party without McGuire’s consent.

Violation

8.

The Accused’s fee agreements with McGuire, and the fee collected pursuant to them, were illegal in one or more of the following particulars:

1. The agreements failed to disclose the APR to McGuire and the total amount paid for the credit extended by the Accused;
2. The agreements included an irrevocable wage assignment;
3. The agreements did not accurately represent the offering price for Accused’s services.

By charging and collecting an illegal fee as described above, the Accused violated DR 2-106(A) of the Code of Professional Responsibility. By disclosing confidential information as described above, the Accused violated DR 4-101(B) of the Code of Professional Responsibility.

The Starr Matter, Case No. 93-100

Facts

9.

In March 1992, Julie Starr (hereinafter “Starr”) retained the Accused to file a Chapter 7 bankruptcy petition. Starr signed a fee agreement in which she agreed to pay \$250, plus a \$120 filing fee and \$20 per month for any month, or any portion thereof, in which the fees remained unpaid. This fee agreement was subject to the requirements of 12 CFR §226.2(a)(17)(I)(A), 15 USC §1601 *et seq.*, ORS Chapter 83, and ORS 646.608. The fees charged and collected pursuant to the fee agreement were illegal for the same reasons set forth above in the McGuire matter.

Violation

10.

By charging and collecting an illegal fee, the Accused violated DR 2-106(A) of the Code of Professional Responsibility.

The Robert C. Otterson Matter, Case No. 97-65

Facts

11.

In September 1990, Robert C. Otterson and his wife (hereinafter the “Ottersons”) retained the Accused to handle their Chapter 13 bankruptcy case. In April 1996, the court entered an order of discharge in the Otterson bankruptcy case. After discharge, it was determined that there had been an overpayment made by the Ottersons, and, on April 23, 1996, the trustee mailed to the Accused a refund check payable to the Ottersons (hereinafter “Trustee’s Refund”).

The check was endorsed by the Accused with the representation that he had the Ottersons’ power of attorney to do so. The Accused had revised his standard fee agreement in approximately 1991 to provide for such a power of attorney, and the Accused was under the mistaken belief that the Ottersons’ fee agreement contained such a provision. The Accused did not review the Otterson fee agreement to confirm he had such authority.

Despite repeated demands by the Ottersons, the Accused failed, refused, and neglected to deliver to them the Trustee’s Refund and did not deposit the refund into a lawyer trust account. Instead, the Accused claimed that the refund was due him for attorney fees. The Accused had previously been paid pursuant to court order for his fees but asserted that the Ottersons owed him for additional services.

At the time the Accused retained the Trustee’s Refund, Chapter 13 attorneys seeking supplemental compensation were required to submit Local Bankruptcy Form No. 1307, which required court approval of requested fees. The filing of supplemental petitions for compensation was required by Bankruptcy General Order

92-2, effective November 23, 1992. The Accused was aware of the requirement of General Order 92-2.

On or about May 8, 1996, the Accused prepared a supplemental billing and mailed it to the Ottersons, claiming to have credited the Trustee's Refund to outstanding legal fees. On May 21, 1996, the Ottersons wrote the Accused demanding return of the overpayment. The Accused did not respond to this letter nor did he refund the money to the Ottersons.

12.

On November 18, 1996, the Ottersons wrote to Judge Elizabeth L. Perris of the U.S. Bankruptcy Court complaining of the Accused's handling of the refund. Judge Perris set a hearing for January 8, 1997, on the Ottersons' request for review of the fees charged by the Accused. The Accused received notice of the hearing in December 1996. At that time, the Accused reviewed his file and learned that he did not have a fee agreement with the Ottersons that contained a power of attorney, the consequence of which was to undercut the Accused's position that his endorsement of the Trustee's refund was sufficient to permit him to keep the refund. However, the Accused took no action to return the refund to the Ottersons or to take the January 8, 1997, hearing off the court's docket.

As a result of the January 8, 1997, hearing, Judge Perris ordered the Accused to refund the Trustee's Refund to the Ottersons not later than January 21, 1997. The Accused timely refunded the money pursuant to the court's order.

13.

On December 31, 1996, the Bar received a letter of complaint from the Ottersons regarding the conduct of the Accused. Disciplinary Counsel's Office sent that letter to the Accused on January 10, 1997, requesting his response by January 31, 1997. The Accused did not respond. On January 15, 1997, Judge Perris sent Disciplinary Counsel's Office a copy of her order requiring the Accused to refund the Trustee's Refund, which the Bar forwarded to the Accused asking that he include any response in his January 31, 1997, reply to the Bar. When the Accused did not respond, Disciplinary Counsel's Office sent him a certified letter, dated February 10, 1997, requesting a response not later than February 17, 1997. The Accused failed to respond to the Bar's inquiries in the Otterson matter until March 11, 1997.

Violation

14.

The Accused admits that by charging and collecting a supplemental fee without obtaining court approval, as required by General Order 92-2, he charged and collected an illegal fee in violation of DR 2-106(A). The Accused further admits that, by not depositing and maintaining the Trustee's Refund in his lawyer trust account, he violated DR 9-101(A) of the Code of Professional Responsibility.

When the Accused received notice of the hearing set for January 8, 1997, and discovered that he did not have a power of attorney from the Ottersons so as to justify payment of the refund to himself as fees, the Accused engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4) by failing to concede his position, forcing the court to hold the hearing and compel refund of the improperly gained fee. The Accused also admits that once he learned he did not have a power of attorney, he should have refunded the Trustee's Refund to his clients, and his failure to do so violated DR 9-101(C)(4).

The Accused also admits that the billing of May 8, 1996, was ambiguous as it did not allow the Ottersons to distinguish the work that had been included in the fee which previously had been allowed by the court from subsequent work for which the Accused claimed additional fees. In preparing such a bill, the Accused admits that he did not render an appropriate accounting to his clients as required by DR 9-101(C)(3) of the Code of Professional Responsibility.

Finally, the Accused admits that by failing to respond timely to inquiries from Disciplinary Counsel's Office, he violated DR 1-103(C) of the Code of Professional Responsibility.

15.

Upon further evaluation of the evidence and discovery, the parties agree that all other causes of complaint and charges as alleged in the Amended Formal Complaint should be and, upon the approval of the stipulation, are dismissed.

Sanction

16.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his client and the profession by charging and collecting an illegal fee in violation of DR 2-106(A). *Standards* §§4.1, 7.0. By revealing client confidences in violation of DR 4-101(B), the Accused violated his duty to his client. *Standards* §4.2. By engaging in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4), the Accused violated his duty to the public. *Standards* §5.0. By failing to preserve client property in violation of DR 9-101(A) and DR 9-101(C)(3)–(4), the Accused also violated his duty to his client. *Standards* §4.1. By failing to cooperate with an authority empowered to investigate his conduct, the Accused violated his duty to the profession. *Standards* §7.0.

B. *Mental State.* With regard to mental state, as to all of the violations of the Code of Professional Responsibility which the Accused has acknowledged, the Accused acted with knowledge or the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards* at 7. With regard to the DR 1-103(C) violation, the Accused particularly was aware he was acting contrary to the disciplinary rule because, at that very time, he was in the process of being admonished by the Bar for an earlier DR 1-103(C) violation. See 16.D.1 below.

C. *Injury.* Injury may be either actual or potential. In this case, by charging an illegal fee in the McGuire and Starr matters, the Accused caused potential injury in that his clients did not know the true cost of the legal services being offered. By publicly disclosing confidential and embarrassing information, the Accused caused actual injury to McGuire. In the Otterson case, the clients suffered actual injury in that they were charged for an illegal fee and the delivery of the Trustee's Refund was delayed almost nine months during which time the clients had neither the use of the money nor interest thereon. By failing to deliver the Trustee's Refund to the Ottersons and forcing a hearing on the issue, the Accused caused actual harm to the administration of justice.

D. *Aggravating Factors.* Aggravating factors to be considered include (*Standards* §9.22).

1. The Accused has a past disciplinary record, including an admonition in 1990 for advertising violations of DR 2-101(D); an admonition in 1992 for contact with a represented person in violation of DR 7-104(A); an admonition in 1995 for neglect of a legal matter in violation of DR 6-101(B); and an admonition in 1997 for failing to cooperate with an authority empowered to investigate his conduct in violation of DR 1-103(C). *Standards* §9.22(a);

2. The Accused acted with a selfish motive in failing to return the Ottersons' refund. *Standards* §9.22(b);

3. The Accused engaged in a pattern of misconduct. *Standards* §9.22(c);

4. Multiple offenses are involved. *Standards* §9.22(d);

5. The Accused failed to cooperate in the investigation of the Ottersons' complaint. *Standards* §9.22(e);

6. For a time, the Accused refused to acknowledge the wrongful nature of his conduct. *Standards* §9.22(g);

7. The Ottersons and McGuire were vulnerable clients. *Standards* §9.22(h);

8. The Accused has substantial experience in the practice of law. *Standards* §9.22(i); and

9. For a time, the Accused demonstrated indifference to making restitution. *Standards* §9.22(j).

E. *Mitigating Factors.*

1. Delay in the investigation and prosecution of disciplinary proceedings in Case Nos. 93-100 and 93-101.

17.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed and such disclosure causes injury or potential injury to a client. *Standards* §4.22. Suspension is also generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.2. Suspension is also generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards* §4.13. The *Standards* also recognize probation as a sanction in appropriate cases, thus allowing the lawyer to practice under specified conditions. *Standards* §§2.7, 2.8.

18.

Oregon case law is in accord. In *In re Altstatt*, 321 Or 324, 897 P2d 1164 (1995), a lawyer was suspended for one year for collecting a probate fee without prior court approval in violation of DR 2-106(A), engaging in a conflict of interest and conduct prejudicial to the administration of justice. See also *In re Moore*, 10 DB Rptr 187 (1996).

The Supreme Court has also expressed a no-tolerance approach for lawyers who violate DR 1-103(C). Although no substantive charges were brought, a lawyer was suspended for 120 days for violation of DR 1-103(C) in *In re Miles*, 324 Or 218, 923 P2d 1219 (1996). See also *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996).

Mishandling of client funds also results in discipline. See *In re Gildea*, 325 Or 281, 936 P2d 975 (1997); *In re Boothe*, 303 Or 643, 740 P2d 719 (1987).

19.

Consistent with the *Standards* and Oregon case law, the Accused agrees to accept an 18-month suspension from the practice of law, 12 months of which shall be stayed subject to a two-year period of probation. During the period of probation, the Accused shall comply with the following conditions:

1. Comply with all provisions of this Stipulation, the Code of Professional Responsibility, and ORS Chapter 9.

2. The Accused agrees to meet with bankruptcy attorney Ann Chapman who will review and, as necessary, revise all bankruptcy fee agreement forms he currently uses. The Accused shall make any changes recommended by Ms. Chapman and shall be responsible for and pay all legal fees incurred for this review.

3. The Accused agrees to meet with attorney Richard Slotee, who will review and, as necessary, revise all retail installment fee contracts to see that such agreements comply with 15 USC §1601 *et seq.*, ORS 83.150, and ORS 646.608. The Accused shall make any changes recommended by Mr. Slotee and will be responsible for and pay all legal fees incurred for this review.

4. The Accused shall, within six months after this Stipulation is approved, meet with representatives of the U.S. Bankruptcy Court and the United States Trustee's Office to review with them how to ensure that the Accused's bankruptcy practice complies with all applicable statutes and court rules and does not impede the administration of justice. As part of this review, the Accused shall review all local court rules and general orders applicable to bankruptcy practitioners and shall attest by affidavit filed with Disciplinary Counsel's Office that he has done so.

5. In addition to the MCLE requirements generally applicable to the Accused as a member of the Oregon State Bar, the Accused shall obtain, within 12 months after approval of this Stipulation, an additional 15 MCLE credits regarding bankruptcy practice, three of which must qualify for legal ethics credit. The Accused shall attest by affidavit filed with Disciplinary Counsel's Office that he has done so.

20.

In the event the Accused fails to comply with the conditions of his probation, the Bar may initiate proceedings to revoke the Accused's probation pursuant to Rule of Procedure 6.2(d) and impose the stayed period of suspension.

21.

The Accused acknowledges that by this Stipulation, he is required to apply for reinstatement pursuant BR 8.3 when the six months of imposed suspension expire.

22.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and approved by the State Professional Responsibility Board Chairperson. The parties agree the stipulation is to be submitted to the Supreme Court for consideration pursuant to the terms of BR 3.6. If approved, the stipulation shall be effective 21 days thereafter.

EXECUTED this 10th day of July 1998.

/s/ Willis D. Anderson

Willis D. Anderson

OSB No. 82026

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-153
)
DAVID W. STAUFFER,)
)
Accused.)

Bar Counsel: Craig Bachman, Esq.
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(1), and DR 7-102(A)(2). Six-month suspension.
Effective Date of Order: Order signed August 12, 1998, suspension to commence at conclusion of the current two-year suspension which began on June 16, 1998.

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the No Contest Plea of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the No Contest Plea entered into between the parties is accepted and the Accused shall be suspended for six months for violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(1), and DR 7-102(A)(2).

DATED this 12th day of August 1998.

/s/ Arminda J. Brown
Arminda J. Brown
State Disciplinary Board Chairperson

/s/ Richard S. Yugler
Richard S. Yugler, Region 5
Disciplinary Board Chairperson

NO CONTEST PLEA

David W. Stauffer, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby enter into this No Contest Plea pursuant to Oregon State Bar Rule of Procedure 3.6(b).

1.

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

2.

The Accused, David W. Stauffer, was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 5, 1983, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this No Contest Plea freely and voluntarily. Although the Accused had the opportunity to consult with counsel, he maintains that he could not afford to do so.

4.

Effective June 19, 1998, the Oregon Supreme Court suspended the Accused from the practice of law for a period of two years for his conduct in pursuit of attorney fees he alleged were owed him by Esther Smith and/or the Estate of John Smith. *In re Stauffer*, 327 Or 44, 956 P2d 967 (1998) (hereinafter “*In re Stauffer I*”), a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference.

5.

On August 20, 1997, the State Professional Responsibility Board (hereinafter “the Board”) authorized further formal disciplinary proceedings (Case No. 97-153) against the Accused for violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(1), and DR 7-102(A)(2). As did *In re Stauffer I*, Case No. 97-153 arose from the Accused’s pursuit of his attorney fees from Esther Smith; the Bar alleges, and the Accused does not wish to contest, that the Accused’s actions in Case No. 97-153 involved conduct not alleged in (and primarily occurring after the trial of) *In re Stauffer I*. On March 9, 1998, a Formal Complaint in Case No. 97-153 was filed. A copy of the Formal Complaint is attached hereto as Exhibit 2 and incorporated herein by reference.

Violation

6.

The Formal Complaint charged the Accused with violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(1), and DR 7-102(A)(2). The Accused does not desire to defend against the Formal Complaint or any designated cause thereof, and agrees to accept the form of discipline specified herein in paragraph 10.

Sanction

7.

The following factors should be considered under the ABA *Standards for Imposing Lawyer Sanctions* in establishing the appropriate sanction in this case: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating or mitigating circumstances.

A. *Duty Violated.* Under the facts charged in the Formal Complaint, the Accused violated his duty to the legal system to refrain from conduct that is prejudicial to the administration of justice and conduct involving dishonesty, fraud, deceit, or misrepresentation. *Standards* §6.1.

B. *Mental State.* The Accused's conduct was either intentional or knowing. The *Standards* define an act as "intentional" if it is accomplished with the conscious objective or purpose to accomplish a particular result. An act is "knowing" if it is done with the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. *Standards* at 7.

C. *Actual or Potential Injury.* Smith was caused to suffer frustration and aggravation, and to incur attorney fees by reason of the Accused's conduct. Also, there was potential injury in that various courts might have been misled.

D. *Aggravating and Mitigating Factors.* The following factors which are considered aggravating under the ABA *Standards* are present in this case: the Accused has a prior disciplinary record (*Standards* §9.22(a)). In addition to the two-year suspension imposed on him in *In re Stauffer I*, he was also admonished in 1985 for taking a default without giving notice to opposing counsel, in violation of DR 7-102(A)(3), DR 7-106(C)(5), and DR 7-110(B). Other aggravating factors include a dishonest or selfish motive (*Standards* §9.22(b)); a pattern of misconduct (*Standards* §9.22(c)); multiple offenses (*Standards* §9.22(d)); a vulnerable victim (*Standards* §9.22(h)); and the Accused had substantial experience in the practice of law (*Standards* §9.22(i)).

The following mitigating factors also apply: full and free disclosure to the disciplinary board or cooperative attitude toward the proceeding (*Standards* §9.32(e)); and imposition of other penalties or sanctions (*Standards* §9.32(k)).

The ABA *Standards* provide that a suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding or causes an adverse or potentially adverse effect on the legal proceeding. *Standards* §6.12.

8.

The following Oregon case law is analogous. In *In re Glass*, 308 Or 297, 779 P2d 612 (1989), *reh'g denied*, 309 Or 218 (1990), an attorney who was in litigation with an unregistered contractor to whom he owed a debt registered himself under the contractor's assumed name in order to prevent the contractor from collecting the debt. The accused lawyer was charged with violating DR 1-102(A)(3) and DR 7-102(A)(1), and also failed to cooperate with the Bar in violation of DR 1-103(C). *Glass*, who had no prior disciplinary record, was suspended for 91 days.

In *In re Adams*, 293 Or 727, 652 P2d 787 (1982), a lawyer sought to recover an excessive fee from his former client. He then sued his client for complaining to the Oregon State Bar, despite the immunity provided by ORS 9.550(3) to complaining witnesses and parties in disciplinary proceedings. The lawyer was found to have engaged in conduct prejudicial to the administration of justice and willful misconduct in the legal profession. *Adams*, who had no prior disciplinary record, was suspended for 60 days.

9.

The Accused acknowledges that, should he wish to seek reinstatement after the expiration of his consecutive disciplinary suspensions (*Stauffer I* and *Stauffer II* (Case No. 97-153)), he is required to apply for reinstatement under Bar Rule 8.1.

10.

Consistent with the ABA *Standards* and Oregon precedent, the Bar and the Accused agree that the Accused receive a six-month suspension from the practice of law commencing immediately after the expiration of the Accused's two-year disciplinary suspension imposed by the Supreme Court in *In re Stauffer I*.

11.

This No Contest Plea has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction has been approved by the State Professional Responsibility Board ("SPRB"). The parties agree that the plea is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 20th day of July 1998.

/s/ David W. Stauffer

David W. Stauffer

EXECUTED this 27th day of July 1998.

OREGON STATE BAR

By: /s/ Mary A. Cooper

Mary A. Cooper

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case Nos. 96-103, 96-104
)	
JOYCE M. SCHIRO,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Michael A. Lewis, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B). Public reprimand.
Effective Date of Order:	August 24, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused is publicly reprimanded for neglecting two legal matters in violation of DR 6-101(B).

DATED this 24th day of August 1998.

/s/ Arminda J. Brown
 Arminda J. Brown
 State Disciplinary Board Chairperson

/s/ Howard E. Speer
 Howard E. Speer, Region 2
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Joyce M. Schiro, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Joyce M. Schiro, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 25, 1987, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Lane County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On January 18, 1997, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for two alleged violations of DR 6-101(B). Subsequently, on March 15, 1997, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 1-103(C). 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.

Case No. 96-104

The Leslie and Emma Olds Matter

Facts

5.

Leslie and Emma Olds (hereinafter “the Oldses”) retained the Accused on August 7, 1995, to file a bankruptcy. At the time, the primary asset of the Oldses was their family home, with an assessed value of \$47,000. The Accused agreed to file a Chapter 7 bankruptcy petition on behalf of the Oldses on August 14, 1995, and the petition was filed on October 2, 1995.

6.

On October 25, 1995, the Oldses received a new assessment of their home with a value of \$77,000. Based on this value, the Oldses and the Accused believed the Oldses could sell the home and pay off their debts. The Accused advised the Oldses to proceed with the Chapter 7 with the understanding it could be converted to a Chapter 13 proceeding if it was determined to be preferable.

7.

On or about December 15, 1995, the Oldses learned that the Court intended to sell their residence. Based on advice of the Accused, the Oldses instructed the Accused to convert the proceeding to a Chapter 13 Bankruptcy, which she did on January 2, 1996. The Oldses were given until January 17, 1996, to submit certain documents to perfect the Chapter 13 filing.

8.

The Accused failed and neglected to file the documents by January 17, 1996, but she did file a request for an extension of time to file the documents on January 18, 1996. Because the documents were not timely filed, the Court issued an order to show cause why the Court should not enter an order reconverting the case back to a Chapter 7 and set a hearing for February 8, 1996. The Accused was provided with notice of the hearing.

9.

The Accused failed and neglected to appear at the Show Cause hearing and the case was converted back to a Chapter 7 proceeding. The Oldses were informed and believed that the Trustee intended to sell their house and, on or about March 14, 1996, Mr. Olds contacted the Accused demanding that she take action to protect their home. The Accused failed and neglected to do so and on or about March 17, 1996, the Accused was fired by the Oldses.

Violation

10.

The Accused admits that, by engaging in the conduct described above, she neglected a legal matter entrusted to her in violation of DR 6-101(B) of the Code of Professional Responsibility.

Case No. 96-103

The Timothy Maley Matter

Facts

11.

Timothy Maley (hereinafter "Maley") suffered an on-the-job injury and, on November 11, 1994, he hired the Accused to pursue a workers' compensation claim. Prior to January 24, 1995, the Accused gave notice of claim to SAIF Corporation indicating that Maley had been employed by Environmental Rubber Bonding Company (hereinafter "ERBC"). On January 24, 1995, SAIF sent Maley and the Accused a disclaimer of responsibility indicating that Communication Construction, Inc. (hereinafter "CCI"), was the appropriate employer insured by Liberty Northwest (hereinafter "Liberty"). Pursuant to the letter, the Accused was advised that she had

60 days to request a hearing on the denial or make a written claim with the appropriate employer or insurer.

12.

The Accused requested a hearing on the disclaimer on March 17, 1995, which was withdrawn on September 29, 1995. On August 10, 1995, the Accused notified Liberty of Maley's claim, alleging he was employed by ERBC, and amended the claim on August 14, 1995, to indicate Maley had been employed by Cable Construction, Inc., of Independence, Oregon.

13.

On August 18, 1995, Liberty advised the Accused that it did not insure Cable Construction, Inc., that Maley's employer was CCI, and that the Accused had failed to enclose a copy of her retainer agreement and medical reports. Liberty further advised the Accused that when the required information was provided, the claim would be processed.

14.

On November 20, 1995, the Accused wrote Liberty advising that Cable Construction was the correct employer and that the required documents would follow. The Accused failed and neglected to obtain the necessary medical reports, failed and neglected to submit the required retainer agreement to Liberty, and failed and neglected to promptly pursue the workers' compensation claim. Maley fired the Accused in late November 1995, and retained a new lawyer to complete the claim.

Violation

15.

The Accused admits that, by engaging in the conduct described above, she neglected a legal matter entrusted to her in violation of the Code of Professional Responsibility.

16.

Upon further evaluation of the evidence and discovery, the Bar and the Accused agree that the alleged violation of DR 1-103(C) should be and, upon approval of this Stipulation, is dismissed.

Sanction

17.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty

violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* By neglecting a legal matter entrusted to her, the Accused violated her duty to her client. *Standards* §4.4.

B. *Mental State.* With regard to mental state, the Accused was negligent. *Standards* at 7.

C. *Injury.* Injury may be either actual or potential. In this case, the clients did suffer some actual injury in that resolution of the matter was delayed and they were required to obtain the services of another lawyer to complete the matter.

D. *Aggravating Factors.*

1. Substantial experience in the law. *Standards* §9.22(i).

E. *Mitigating Factors.*

1. Subsequent to the events of these disciplinary complaints, it was determined that the Accused had suffered a previously undiagnosed stroke, resulting in her reduced ability to conduct the practice of law, contributing in part to the factual finding herein against the Accused. The Accused admits that this reduced ability was not sufficient to remove all responsibility for the violations stipulated to. The Accused has subsequently recovered from this reduced ability. *Standards* §9.32(c), (h);

2. Absence of a prior disciplinary record. *Standards* §9.32(a);

3. Absence of a dishonest or selfish motive. *Standards* §9.32(b); and

4. Remorse. *Standards* §9.32(l).

18.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent and fails to act with reasonable diligence in representing a client and causes injury or potential injury to a client. *Standards* §4.43.

19.

The following Oregon case decisions appear to be in accord: *In re Ingram*, 11 DB Rptr 55 (1997), attorney publicly reprimanded for neglecting a legal matter; *In re Reid*, 10 DB Rptr 45 (1996), attorney publicly reprimanded for undertaking a personal injury case but failing to pursue it, resulting in the complaint being dismissed; and *In re Kent*, 9 DB Rptr 180 (1995), attorney publicly reprimanded for neglecting two legal matters.

20.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded.

21.

The sanction established in this Stipulation for Discipline has been approved by the State Professional Responsibility Board (SPRB) and Disciplinary Counsel of the Oregon State Bar. The parties agree that this Stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 13th day of August 1998.

/s/ Joyce M. Schiro

Joyce M. Schiro

OSB No. 87336

EXECUTED this 17th day of August 1998.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

Cite as 327 Or 522 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
DENNIS M. ODMAN,)
)
Accused.)

(OSB 95-98; SC S44782)

En Banc

On review of the decision of a trial panel of the Disciplinary Board.

Argued and submitted September 10, 1998. Decided September 23, 1998.

Wayne Mackeson, Portland, argued the cause and filed the brief for the Accused.

Mary A. Cooper, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the briefs for the Oregon State Bar.

PER CURIAM

Complaint dismissed.

SUMMARY OF SUPREME COURT OPINION

In a lawyer disciplinary proceeding, the Accused was charged with violating DR 5-105(E) (prohibiting multiple client representation that results in a likely conflict of interest unless the clients consent after full disclosure) and DR 6-101(A) (requiring competent representation). A trial panel of the Disciplinary Board of the Oregon State Bar concluded that the Accused was not guilty of the alleged misconduct. The Bar sought review. *Held*: The Bar did not prove, by clear and convincing evidence, that the Accused committed the alleged disciplinary rule violations. Complaint dismissed.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-164
)
CHARLES A. MOORE,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 6-101(B). Public reprimand.
Effective Date of Order: October 9, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be reprimanded for violation of DR 6-101(B).

DATED this 9th day of October 1998.

/s/ Arminda J. Brown
Arminda J. Brown
State Disciplinary Board Chairperson

/s/ Robert M. Johnstone
Robert M. Johnstone, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Charles A. Moore, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Charles A. Moore, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1976, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On September 20, 1997, the State Professional Responsibility Board authorized the filing of a Formal Complaint against the Accused for alleged violation of DR 6-101(B).

Facts and Violation

5.

In March of 1995, Karen and Gordon Tallman (hereinafter “the Tallmans”) retained the Accused to handle the formal adoption of Mr. Tallman’s stepdaughter. The biological father tendered relinquishment papers in June of 1995, and the Accused told the Tallmans it would take from 45 days to three months to finalize the adoption.

6.

In January 1996, the Accused advised the Tallmans that he was arranging for an appointment with a judge to finalize the adoption. On February 7, 1996, the Accused wrote the Tallmans advising them that additional information was needed because of changes in the law. The Tallmans provided the information within two weeks. Thereafter, the Tallmans attempted to call the Accused on numerous occasions but he did not return their calls, except on one occasion to say he was too busy to talk.

7.

In June of 1996, the Office for Services to Children and Families (hereinafter “the State”) requested additional information, most of which the Accused promptly provided. At that time, the only additional information to be provided to complete the matter was the address of the grandparents in order to serve notice of the adoption. When the additional information was not provided by the Accused, the adoption petition was dismissed by the state.

8.

On October 18, 1996, the Tallmans filed a complaint with the Bar concerning the conduct of the Accused. In a response to the Bar complaint dated December 21, 1996, the Accused offered to complete the adoption without delay and the Tallmans subsequently accepted the offer. On March 6, 1997, the Bar contacted the Accused regarding the status of the adoption. On June 20, 1997, the Accused replied to the Bar enclosing a copy of a Motion for an Order of Reinstatement that he had filed with the court that day. The Order was signed July 23, 1997, and the adoption was completed in August 1997.

9.

The Accused admits that by his conduct, as described in paragraphs 5–8, he neglected a legal matter in violation of DR 6-101(B).

Sanctions Analysis

10.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”) should be considered. The *Standards* require that the Accused’s conduct be analyzed considering the following four 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.* In violating DR 6-101(B), the Accused violated his duty to his client. *Standards* §4.4.

B. *State of Mind.* The Accused’s conduct demonstrates negligence, that being a failure 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 7.

C. *Injury.* The Accused’s conduct resulted in actual injury to his clients in that the case was dismissed and delayed although the adoption was ultimately completed by the Accused. *Standards* at 7.

D. *Aggravating Factors.* Aggravating factors to be considered include:

1. The Accused was admonished in 1995 for violating DR 6-101(B) and DR 9-101(C)(4). *Standards* §9.22(a).

2. The Accused was admitted to practice in 1976 and has substantial experience in the practice of law. *Standards* §9.22(i).

E. *Mitigating Factors.* Mitigating factors to be considered include:

1. The Accused did not act with dishonest or selfish motives. *Standards* §9.32(b).

2. The Accused had personal problems in dealing with the recent death of his 17-year-old daughter in June 1994. *Standards* §9.32(c).

3. The Accused cooperated with Disciplinary Counsel's Office in responding to the complaint and resolving this disciplinary proceeding. *Standards* §9.32(e).

4. The Accused acknowledges the wrongfulness of his conduct and expresses remorse for its occurrence. *Standards* §9.32(l).

11.

The *Standards* provide that a public reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to the client. *Standards* §4.43. Oregon case law is in accord. *In re Bennett*, 1 DB Rptr 54 (1985), public reprimand for violating DR 6-101(B) and DR 7-101(A)(2); *In re Jackson*, 11 DB Rptr 23 (1997); and *In re Riedlinger*, 10 DB Rptr 193 (1996), public reprimand for violation of DR 6-101(B).

12.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that a public reprimand is an appropriate sanction. The Accused agrees to accept a public reprimand upon the Disciplinary Board's approval of this Stipulation for Discipline.

13.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to BR 3.6.

EXECUTED this 28th day of August 1998.

/s/ Charles A. Moore

Charles A. Moore

EXECUTED this 15th day of September 1998.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 98-95
)	
WADE P. BETTIS, JR.,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 9-101(C)(3). Public reprimand.
Effective Date of Amended Order:	October 28, 1998

AMENDED ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be reprimanded for violation of DR 9-101(C)(3).

DATED this 28th day of October 1998.

/s/ Armind J. Brown
 Armind J. Brown
 State Disciplinary Board Chairperson

/s/ Stephen M. Bloom
 Stephen M. Bloom, Region 1
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Wade P. Bettis, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Wade P. Bettis, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1972, and has been a member of the Oregon State Bar continuously since that time, having his office and places of business in Umatilla County and Union County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On May 16, 1998, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 9-101(C)(3). 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.

James and Shirley Liles (hereinafter “the Lileses”) first retained the Accused in October of 1992 to gain guardianship of their grandson. Subsequently, from 1992 and concluding in 1996, the Accused handled four other matters for the Lileses.

6.

In December 1996, the Lileses wrote the Accused requesting an itemized statement accounting for the manner in which their retainers had been applied in each of the client matters. Because of the disarray of his records, the Accused was unable to render an appropriate accounting to the Lileses. As a result, the Lileses and the Accused agreed to submit the matter to the Oregon State Bar Fee Arbitration Program.

7.

An arbitrator was appointed who reviewed all records the Accused and the Lileses could produce. In May 1997, the arbitrator issued her award in favor of the Lileses, finding that the poor state of the Accused's bookkeeping and billing statements made it difficult to track funds received by the Accused.

Violation

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 9-101(C)(3) by failing to supervise employees in maintaining separate records of all funds coming into his possession and failing to render an appropriate account to his clients regarding the funds.

Sanction

9.

The Accused and the Bar agree that, in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his client by failing to maintain adequate records and render an appropriate accounting to the Lileses. *Standards* §4.13.

B. *Mental State.* With regard to mental state, the Accused acted negligently, that is, he failed to heed a substantial risk that circumstances existed which was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards* at 7.

C. *Injury.* Injury may be either actual or potential. In this case, the Lileses suffered some injury in that they had to initiate a fee arbitration to obtain an appropriate accounting of funds paid to the Accused. Ultimately, in response to the fee arbitration award, the Accused refunded the excess fees to his clients and further voluntarily reimbursed them for costs they had incurred.

D. *Aggravating Factors.*

1. The Accused has a prior disciplinary record of an admonition in 1994 for a conflict of interest in violation of DR 5-101(A) and again in 1997 for neglect of a legal matter in violation of DR 6-101(B). *Standards* §9.22(a).

2. The Accused has substantial experience in the practice of law. *Standards* §9.22(i).

E. *Mitigating Factors.*

1. During the time period involved, the Accused had various office personnel turnover problems which contributed to the disarray of records. *Standards* §9.32(c).

2. The Accused fully cooperated with the disciplinary investigation. *Standards* §9.32(e).

3. The Accused expressed remorse regarding his conduct. *Standards* §9.32(l).

10.

The *Standards* note that reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards* §4.13. Oregon case law is in accord. For instance, in *In re Klemp*, 11 DB Rptr 1 (1996), a lawyer received a public reprimand for violating DR 9-101(C)(3) and DR 1-103(C). See also *In re Campbell*, 10 DB Rptr 97 (1996), where a lawyer stipulated to a public reprimand for failing to maintain client funds in trust and failing to maintain adequate records in violation of DR 9-101(A) and DR 9-101(C)(3).

11.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and approved by the State Professional Responsibility Board (SPRB). The parties the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 8th day of September 1998.

/s/ Wade P. Bettis

Wade P. Bettis, OSB No. 72025

EXECUTED this 15th day of September 1998.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 96-155
)	
J. MARVIN BENSON,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 3-101(A), DR 3-102(A), DR 5-101(A), DR 5-105(E), DR 5-108(A), DR 5-108(B), and DR 6-101(A). 60-day suspension.
Effective Date of Order:	November 1, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be suspended for a period of 60 days, effective November 1, 1998, for violation of DR 3-101(A), DR 3-102(A), DR 5-101(A), DR 5-105(E), DR 5-108(A), DR 5-108(B), and DR 6-101(A).

DATED this 15th day of October 1998.

/s/ Armindia J. Brown
 Armindia J. Brown
 State Disciplinary Board Chairperson

/s/ Richard S. Yugler
 Richard S. Yugler, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

J. Marvin Benson, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused is, and at all times herein mentioned was, an attorney at law, duly admitted by the Oregon Supreme Court to the practice of law in this state, and a member of the Oregon State Bar maintaining an office and place of business in the County of Clark County, State of Washington.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

At its May 16, 1998 meeting, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused. A Formal Complaint was subsequently filed alleging violations of DR 3-101(A), DR 3-102(A), DR 5-101(A), DR 5-105(E), DR 5-108(A), DR 5-108(B), and DR 6-101(A) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Donald Dodson, dba Senior Financial Planning Services, sold revocable living trusts and other estate planning documents and services in Oregon and Washington (hereinafter “SFP”). SFP utilized nonlawyer agents to sell estate planning documents and services. SFP’s nonlawyer agents met with individuals who responded to its advertisements and advised the individuals regarding their need for and the effects and benefits of revocable living trusts and other estate planning options offered by SFP. SFP’s nonlawyer agents obtained personal and financial information from individuals who purchased SFP’s estate planning documents and services, which SFP delivered to the Accused. At all times mentioned herein, the Accused had an attorney-client relationship with SFP.

The Accused prepared estate planning documents for individuals who purchased SFP documents and services from SFP's nonlawyer agents (hereinafter "Individual Clients"). The Accused had an attorney-client relationship with the Individual Clients who purchased SFP's estate planning documents and services. SFP paid the Accused for the legal services performed for Individual Clients. The Accused's own financial, business, property, or personal interests therefore affected, or reasonably could have affected, the exercise of his professional judgment on behalf of the Individual Clients. The Accused did not obtain the consent of his Individual Clients to his representation of them after full disclosure.

By representing both SFP and the Individual Clients, the Accused represented multiple current clients in matters where such representation resulted in actual or likely conflicts of interest. To the extent consent was available to cure the conflict, the Accused failed to obtain the consent of both the Individual Clients and SFP to his representation of each of them after full disclosure.

The Accused admits that his conduct as described in this paragraph 5 violated DR 5-101(A) and DR 5-105(E) of the Code of Professional Responsibility.

6.

The Accused provided training and legal advice to SFP's nonlawyer agents concerning the various estate planning options and documents. The activities of SFP's nonlawyer agents constituted the practice of law by nonlawyers. The Accused knew the nonlawyer agents were engaged in such activities and thereby aided nonlawyers in the unlawful practice of law. Fees for SFP's estate planning documents and services were collected by and paid to SFP. The Accused received a portion of these fees as compensation for his legal services performed for the Individual Clients from SFP.

The Accused admits that his conduct as described in this paragraph 6 constituted aiding nonlawyers in the unlawful practice of law and sharing legal fees with a nonlawyer in violation of DR 3-101(A) and DR 3-102(A) of the Code of Professional Responsibility.

7.

By accepting compensation for legal services provided to Individual Clients, the Accused accepted compensation for such services from other than the lawyer's client. To the extent consent was available to permit SFP to pay the Accused for legal services provided to Individual Clients, the Accused failed to obtain the consent of the Individual Clients after full disclosure. The Accused admits that his conduct violated DR 5-108(A) of the Code of Professional Responsibility.

8.

The Accused failed to exercise independent professional judgment on behalf of Individual Clients to determine if the estate planning documents sold by SFP's

nonlawyer agents were appropriate to their individual circumstances and needs. The Accused permitted SFP's nonlawyer agents to direct and regulate the Accused's professional judgment in rendering legal services to Individual Clients. The Accused admits that his conduct violated DR 5-108(B) of the Code of Professional Responsibility.

9.

In or about April 1993, Frances and James Smith (hereinafter "the Smiths"), residents of the State of Oregon, met with SFP's nonlawyer agents concerning SFP's estate planning options. As a result, the Smiths purchased an SFP estate planning package, including a revocable living trust, pourover wills, powers of attorney for health care, and related documents (hereinafter "the Smiths' Estate Planning Documents"). Subsequently, SFP's nonlawyer agents delivered the Smiths' personal and financial information to the Accused with instructions to prepare the Smiths' Estate Planning Documents. The Accused prepared the Smiths' Estate Planning Documents based on the information provided by SFP. The Accused did not review the Smiths' personal and financial information or question the Smiths to determine if the SFP's Estate Planning Documents were appropriate for their individual circumstances and needs. The estate planning documents prepared by the Accused were not necessary or appropriate for the Smiths' circumstances and needs, including provisions concerning community property, when the Smiths had never lived in a community property state during their married lives.

The Accused delivered the Smiths' Estate Planning Documents to SFP's nonlawyer agents to deliver to and review the documents with the Smiths. The Accused relied on SFP's nonlawyer agents to attend to the proper execution of the documents and to provide advice and information to fund the revocable living trust, and other actions. On or about June 30, 1993, SFP's nonlawyer agent met with and assisted the Smiths to execute their Estate Planning Documents. The Estate Planning Documents were not properly executed. The Accused failed to obtain copies of or review the Smiths' Estate Planning Documents to determine if they had been properly executed and failed to provide advice or assistance to the Smiths to fund the trust and record documents, which were required to be recorded.

The Accused admits that he failed to provide the Smiths with competent representation, including the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation, and therefore violated DR 6-101(A) of the Code of Professional Responsibility.

Sanction

10.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") should be considered. The *Standards* require that the Accused's

conduct be analyzed by considering the following four 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*. In violating DR 3-101(A), DR 3-102(A), DR 5-101(A), DR 5-105(E), DR 5-108 (A), DR 5-108(B), and DR 6-101(A), the Accused violated duties to his clients and the profession. *Standards* §§4.0, 7.0.

B. *State of Mind*. The Accused's conduct demonstrates knowledge and negligence. "Knowledge" is an awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. "Negligence" is a failure 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 7. The Accused knew or should have known that he had numerous conflicts of interest; that he had a business or financial interests in the work performed; that SFP was engaging in the unlawful practice of law and that he assisted and failed to prevent it; and that he was sharing fees with a nonlawyer.

C. *Injury*. The Accused's conduct resulted in potential injury to his clients in that he may have approved the sale of living trusts to clients for whom the estate planning option was not appropriate. Furthermore, the Individual Clients were not permitted the opportunity to determine, with knowledge of the circumstances, whether the Accused should represent them or provide legal advice in regard to their individual interests.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused engaged in a pattern of misconduct over an extended period of time in his representation of SFP and the Individual Clients. *Standards* §9.22(c).

2. The Accused committed multiple disciplinary offenses in his representation of SFP and the Individual Clients. *Standards* §9.22(d).

3. The Individual Clients were vulnerable in that they relied upon the Accused to provide them with independent legal advice. *Standards* §9.22(h).

4. The Accused has substantial experience in the practice of law. *Standards* §9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused does not have a prior record of discipline. *Standards* §9.32(a).

2. The Accused did not act with dishonest or selfish motives. *Standards* §9.32(b).

3. The Accused cooperated with the Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and resolving this disciplinary proceeding. *Standards* §9.32(e).

4. The Accused acknowledges the wrongfulness of his conduct. *Standards* §9.32(l).

5. Most of the Accused's conduct took place before the decision in *In re Durbin*, 9 DR Rptr 71 (1995), was reported. The Accused terminated his relationship with SFP and no longer accepts referrals from its representatives.

11.

The *Standards* provide that suspension is generally appropriate when a lawyer should have known of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. *Standards* §4.32. Suspension is also appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.2. Oregon case law is in accord. See *In re Jones*, 308 Or 306, 779 P2d 1016 (1989), six-month suspension for violation of DR 1-102(A)(1) and (4) and DR 3-101(A); *In re Baer*, 298 Or 29, 688 P2d 1324 (1984), 60-day suspension for violation of DR 5-101(A), DR 5-104(A), and *former* DR 5-105(C) (current DR 5-105(E)); *In re Toner*, 8 DB Rptr 63 (1994), 30-day suspension for violation of DR 3-101(A), DR 5-101(A), DR 5-105(E), and DR 5-108(A); *In re Muir*, 10 DB Rptr 37 (1996), 60-day suspension for violation of DR 3-101(A) (two counts), DR 5-101(A) (two counts), and DR 5-105(B) (two counts); and *In re Lofton*, 11 DB Rptr 129 (1997), 60-day suspension for violation of DR 3-101(A), DR 3-102(A), DR 5-101(A), DR 5-105(E), and DR 5-105(C).

12.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period of 60 days, commencing November 1, 1998, or three days after approval of this Stipulation by the Disciplinary Board, whichever is later.

13.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

DATED this 21st day of September 1998.

/s/ J. Marvin Benson

J. Marvin Benson

OSB No. 77112

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-148
)
STEPHEN J. DOYLE,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Christopher R. Hardman, Esq.
Disciplinary Board: None
Disposition: Violation of DR 6-101(B). Public reprimand.
Effective Date of Order: October 16, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be reprimanded for violation of DR 6-101(B).

DATED this 16th day of October 1998.

/s/ Arminda J. Brown
Arminda J. Brown
State Disciplinary Board Chairperson

/s/ Richard S. Yugler
Richard S. Yugler, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Stephen J. Doyle, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Stephen J. Doyle, 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 Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On May 16, 1998, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 6-101(B). 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.

Robert Gonzales owns Tepas Jalisco, Inc. (hereinafter "Tepa"), a construction company. In 1994, Tepa was a subcontractor on two Portland road construction projects. Tepa was party to a labor agreement that required contributions to a health and welfare trust fund based on employee hours worked on covered projects. On May 23, 1995, the trustees of the union trust fund filed an action against Tepa, Gonzales, Gonzales's wife, the prime contractors on the two projects (Hamilton and Kuney), and the surety companies that provided bonds on the projects (CIGNA and Amwest). Gonzales retained the Accused to represent him, his wife, and the company in the litigation.

6.

On or about July 12, 1995, Hamilton and CIGNA filed a motion for summary judgment and a request for an injunction prohibiting plaintiffs, Tepa, and the Gonzales from commencing, prosecuting, or pursuing any suit, action, or any other proceeding against Hamilton or CIGNA for claims arising out of one of the projects. The motion was based on Hamilton and CIGNA's proposal to deposit into court all amounts they said were remaining to be paid to Tepa under the subcontract between

Hamilton and Tepas. Hamilton and CIGNA argued that their obligations and liabilities were limited to that sum, and that depositing the funds would allow the dispute to be carried on between the real parties in interest, the trustees, and Tepas.

7.

Prior to July 12, 1995, Gonzales had corresponded with Hamilton regarding extra work and other special conditions for which Gonzales requested payment of at least \$7,500 in addition to the subcontract amount on the project. The Accused was not aware of the earlier requests by Gonzales for extra compensation for work performed by Tepas outside of the subcontract. Gonzales never told the Accused of these potential cross-claims against Hamilton and the Accused never asked if Tepas had any.

8.

When Hamilton and CIGNA filed their motions for summary judgment, they made no mention of outstanding claims by Gonzales or Tepas in excess of the contract amount. Plaintiffs opposed the motion, arguing that the amount Hamilton was proposing to deposit into court might not satisfy all of Tepas's obligations and possible claims for attorney fees. The Accused filed no response on behalf of Tepas or the Gonzales, nor did he advise Gonzales that a motion for summary judgment had been filed.

9.

On October 27, 1995, the court granted Hamilton and CIGNA's motion and on February 5, 1996, the court issued an order authorizing payment of \$8,839 into the court's custody. The Accused failed to advise Gonzales of either court action.

10.

On February 6, 1996, Hamilton and CIGNA filed a request for an award of attorney fees in the amount of \$5,983, to be paid out of the \$8,839 that had been deposited with the court. Plaintiffs opposed the motion, but the Accused filed no response nor advised Gonzales that a motion for fees had been filed.

11.

Hamilton and CIGNA were awarded attorney fees. The Accused failed to advise Gonzales of the court's award. Some time in March or April of 1996, Gonzales discovered that Hamilton and CIGNA had been dismissed from the case, awarded their attorney fees, and that he and Tepas were barred from pursuing potential cross-claims against them. Thereafter, Gonzales discharged the Accused.

Violation

12.

The Accused admits that, by engaging in the conduct described in this stipulation, he neglected a legal matter entrusted to him in violation of DR 6-101(B).

Sanction

13.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to diligently represent Tepa and the Gonzales. *Standards* §4.4.

B. *Mental State.* With regard to mental state, the Accused was negligent in that he failed to keep his client informed of Hamilton and CIGNA's motion for summary judgment and motion for attorney fees and, as a result, was unaware of a potential cross-claim that Gonzales had asserted against the general contractor.

C. *Injury.* Injury may be either actual or potential. In this case, Gonzales and Tepa were potentially injured by the Accused's lack of diligence as they were barred from collecting on a potential cross-claim which might have affected the attorney fee award assessed against them in the amount of \$5,983.

D. *Aggravating Factors.*

1. The Accused has substantial experience in the practice of law. *Standards* §9.22(i).

E. *Mitigating Factors.*

1. The Accused has no prior disciplinary record. *Standards* §9.23(a).

14.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards* §4.43.

15.

Oregon case law also supports the conclusion that a reprimand is appropriate in this case. In *In re Ingram*, 11 DB Rptr 55 (1997), a lawyer who was retained to represent a plaintiff in a legal matter and allowed the case to be dismissed for want of prosecution after the defendant failed to file an answer, was publicly reprimanded for violating DR 6-101(B). Similarly, in *In re Jackson*, 11 DB Rptr 23 (1997), a

lawyer failed to advise his client that the dissolution proceeding for which he was retained had been dismissed, and was publicly reprimanded for violating DR 6-101(B). *See also In re Elliott*, 10 DB Rptr 103 (1996); *In re Reid*, 10 DB Rptr 45 (1996).

16.

The Accused agrees to accept a public reprimand for the violation described in this stipulation.

17.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 8th day of October 1998.

/s/ Stephen J. Doyle
Stephen J. Doyle
OSB No. 82242

EXECUTED this 12th day of October 1998.

OREGON STATE BAR

By: /s/ Lia Saroyan
Lia Saroyan
OSB No. 83314
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-124A
)	
FLOYD C. VAUGHAN,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(C) and DR 5-105(E). Public reprimand.
Effective Date of Order:	October 19, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 5-105(C) and DR 5-105(E).

DATED this 19th day of October 1998.

/s/ Armind J. Brown
 Armind J. Brown
 State Disciplinary Board Chairperson

/s/ Stephen M. Bloom
 Stephen M. Bloom, Region 1
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Floyd C. Vaughan, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Floyd C. Vaughan, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1978, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Baker County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On April 16, 1998, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-105(C) and DR 5-105(E). 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.

A. At all relevant times, the Accused and Alan J. Schmeits were partners in the law firm of Silven, Schmeits & Vaughan.

B. In or before July 1993, Mr. Schmeits undertook to represent Doran and Ruth Hintz (hereinafter “the Hintzes”) in an IRC §1031 delayed exchange commonly referred to as an accommodation for the sale of their ownership in the Eagle Valley RV Park in Richland, Oregon (hereinafter “the RV Park”), to Robert F. Olsen and Lillie Ann Olsen pursuant to Earnest Money Agreement dated June 29, 1993, for a total sales price of \$500,000.00. Mr. Schmeits drafted an Accommodation Agreement utilizing Kenneth A. Bardizian as accommodator and Doran M. Hintz and Ruth E. Hintz as exchangors and a contract of sale between Kenneth A. Bardizian, accommodator, and Robert F. Olsen and Lillie Ann Olsen, sellers.

C. After Mr. Schmeits undertook to represent the Hintzes in the §1031 accommodation, the Hintzes determined that they wanted to purchase real property as a portion of the total replacement property for the accommodation agreement. This replacement property was owned by Fern Taylor and was located on Foothill Drive in Baker City, Oregon (hereinafter “the Foothill Drive property”). The Foothill Drive property represented 22% of the property necessary to complete the Hintzes’ accommodation agreement and avoid taxes. Fern Taylor was the Accused’s mother-in-law and his former client on unrelated matters.

D. On October 6, 1993, the Accused undertook to represent Fern Taylor in the sale of the Foothill Drive property to the Hintzes. The Accused represented Fern Taylor through the closing of the sale of the Foothill Drive property on or about November 3, 1993.

E. Mr. Schmeits continued to represent the Hintzes for the accommodation agreement for the sale of the RV Park with Robert F. Olsen and Lillie Ann Olsen through its closing on or about November 3, 1993. At the request of the Hintzes, Mr. Schmeits also did an assignment of the Hintzes’ purchasers’ interest in the earnest money with Fern Taylor to assist the Hintzes in substituting a portion of the needed replacement property for the IRC §1031 accommodation agreement.

F. The objective interests of the Hintzes and Fern Taylor in the above-described purchase and sale of the Foothill Drive property were adverse.

G. On behalf of Fern Taylor, the Accused prepared the warranty deed and special warranty deed which were required for the §1031 exchange and the sale of the Foothill Drive property to the Hintzes. The deeds prepared by the Accused included exceptions to the warranties of title normally granted by warranty deeds or special warranty deeds. The sales agreement and earnest money receipt executed by the Hintzes and Fern Taylor did not include these exceptions to the required warranties of title to be given by Fern Taylor.

H. After November 3, 1993, the Hintzes discovered that a building on the property they had purchased from Fern Taylor encroached upon a city right-of-way and filed litigation to recover damages for the diminished value of the property.

I. The Accused undertook to represent Fern Taylor to defend against the Hintzes’ claim for damages without first having obtained the consent to the representation from either Fern Taylor or the Hintzes after full disclosure.

J. The Hintzes’ claim for damages was significantly related to the §1031 exchange and sale described herein and resulted in a judgment against Fern Taylor.

Violation

6.

The Accused admits that, by engaging in the conduct described in paragraphs 5A through 5J of this stipulation, he had a likely current client conflict of interest

that violated DR 5-105(E) and a former client conflict of interest that violated DR 5-105(C).

Sanction

7.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* and Oregon case law. The ABA *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his clients to avoid conflicts of interest. *Standards* §4.3.

B. *Mental State.* With regard to mental state, the Accused was negligent in determining whether the interests of Fern Taylor and the Hintzes were adverse and whether his representation of Fern Taylor would adversely affect the Hintzes.

C. *Injury.* Injury may be either actual or potential. In this case, the Hintzes suffered actual injury in that a member of the law firm that represented them drafted deeds which contained exceptions to the warranties of title for which they had contracted, and neither the Accused nor his partner called those exceptions to their attention, resulting in litigation. The potential for injury to both Fern Taylor and the Hintzes from the Accused's conflicts of interest was the possibility that he or his partner would not vigorously represent one client's interests in favor of the interests of the other client.

D. *Aggravating Factors.*

1. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1978. *Standards* §9.22(i).

E. *Mitigating Factors.*

1. The Accused does not have a prior record of discipline. *Standards* §9.32(a).

2. The Accused is of good character and reputation. *Standards* §9.32(g).

3. The Accused cooperated with the Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and resolving this proceeding. *Standards* §9.32(e).

4. The Accused believed that his law partner, Alan J. Schmeits, was representing the Hintzes only with respect to the sale of their "relinquished property" pursuant to the §1031 exchange and not with regard to the acquisition of the Foothill property as "replacement property."

5. The title exceptions included in the deeds prepared by the Accused and described in paragraph 5G herein were included as part of the Accused's standard custom and practice in preparing real estate documents and were not included because of the status of Fern Taylor as the Accused's mother-in-law and a former client. It was also the Accused's normal custom and practice to forward prepared real estate documents to the escrow closing agent with the assumption that the parties would review them with the escrow agent and their respective real estate agents at the time of closing. Unless specifically requested by the parties or their agents, the Accused would not customarily have reviewed the documents with his client or the agents of any of the parties before they were forwarded to the closing agent. The Hintzes received at closing a copy of all documents involved in the transaction.

6. When counsel for the Hintzes, Mark Tipperman, raised a question as to the Accused's representation of Fern Taylor, the Accused suggested that he continue to represent Fern Taylor in an attempt to resolve the problem without litigation. Mr. Tipperman made no further objection to the Accused's involvement. Mr. Tipperman worked with the Accused in an attempt to obtain an easement from the City of Baker and accepted numerous pleadings from the Accused, including an Acceptance of Service of the Complaint. The Accused had the oral consent of Fern Taylor to represent her in the litigation but did not obtain her written consent. The Accused withdrew from representing Ms. Taylor when it became apparent that there would be no resolution other than by litigation.

Case Law

8.

ABA *Standards* §4.33 suggests that a public reprimand is appropriate where a lawyer is negligent in determining whether the representation of a client will adversely affect another client, and causes injury or potential injury to the client.

Oregon case law is in accord. See *In re Alway*, 11 DB Rptr 153 (1997) (public reprimand for violation of DR 5-105(C)); *In re Newton*, 10 DB Rptr 169 (1996) (public reprimand for violation of DR 5-105(E)).

9.

Consistent with the ABA *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for violation of DR 5-105(C) and DR 5-105(E).

10.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved by the SPRB, the parties agree the stipulation is to be

submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 1st day of October 1998.

/s/ Floyd C. Vaughan

Floyd C. Vaughan

OSB No. 78416

EXECUTED this 6th day of October 1998.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks

OSB No. 75167

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case Nos. 97-67, 98-7
)	
SUSAN C. STEVES,)	
)	
Accused.)	

Bar Counsel:	Carolyn G. Wade
Counsel for the Accused:	Susan D. Isaacs
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4). 30-day suspension.
Effective Date of Order:	October 19, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be suspended for a period of 30 days for violation of DR 6-101(B), DR 9-101(C)(4), and DR 9-101(C)(3), effective the date of this order.

DATED this 19th day of October 1998.

/s/ Arminda J. Brown
 Arminda J. Brown
 State Disciplinary Board Chairperson

/s/ Howard E. Speer
 Howard E. Speer, Region 2
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Susan C. Steves, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Susan C. Steves, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state, and a member of the Oregon State Bar, having her office and place of business in the County of Lane, State of Oregon.

3.

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

4.

On April 16, 1998, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(B), DR 9-101(C)(4), and DR 9-101(C)(3) of the Code of Professional Responsibility. The Bar filed its Formal Complaint against the Accused on May 21, 1998.

Facts and Violations

Honda Matter

Case No. 97-67

5.

In or about March 1996, Mifty Honda (hereinafter “Honda”) retained the Accused to pursue civil claims against a person who had allegedly raped her in July 1995. Between about March 1996 and September 1996, Honda called the Accused at least 23 times. The Accused was also contacted by another person on Honda’s behalf during this time. In spite of Honda’s and the other person’s calls to the Accused, and the Accused’s promises, the Accused failed to take any significant action on the case to accomplish Honda’s objectives. On or about September 5, 1996, Honda requested that the Accused send her a draft of the civil complaint or deliver her file material to her. The Accused did not respond. Thereafter, Honda contacted another attorney to pursue her claims. Between about September 27 and

December 2, 1996, Honda's new attorney sent the Accused two letters, wherein he requested that the Accused deliver Honda's file to him or to Honda. The Accused did not respond. On or about December 2, 1996, Honda's new attorney sent the Accused a third letter requesting the file. The Accused forwarded Honda's file to Honda on December 11, 1996.

6.

The Accused admits that she neglected a legal matter entrusted to her and failed to promptly deliver to the client property in her possession, which the client was entitled to receive in violation of DR 6-101(B) and DR 9-101(C)(4) of the Code of Professional Responsibility.

Clithero Matter

Case No. 98-7

7.

In or about August 1997, Donley Clithero (hereinafter "Clithero") retained the Accused for advice concerning his desire to reduce or terminate his child support obligation. Clithero paid the Accused a \$1,000 retainer pursuant to a written fee agreement wherein the Accused agreed to provide monthly billing statements to Clithero. Between about August and December 1997, the Accused failed to provide billings or statements reflecting the work performed, the charges for her work, and accounting for Clithero's retainer. Clithero attempted to contact the Accused on numerous occasions without success, except for brief contacts in October and November. In early December 1997, the Accused's telephone and facsimile numbers were disconnected and the Accused closed her office. The Accused failed to notify Clithero and he was unable to locate or communicate with her. In or about early February 1998, after the Bar initiated an investigation concerning her conduct, the Accused prepared a billing statement reflecting the work performed and accounting for Clithero's retainer. The Accused delivered it to the LPRC investigator.

8.

The Accused admits that her conduct constituted failure to render appropriate accounts to the client regarding funds coming into her possession, in violation of DR 9-101(C)(3) of the Code of Professional Responsibility.

Sanction

9.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are to be considered. The *Standards* require that the Accused'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.* In violating DR 6-101(B), DR 9-101(C)(4), and DR 9-101(C)(3), the Accused violated her duties to her clients. *Standards* §§4.1, 4.4.

B. *Mental State.* The Accused acted with knowledge and negligence. "Knowledge" is the conscious awareness of the nature or the attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. "Negligence" is a failure to heed a substantial risk that circumstances existed or the result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards* at 7.

C. *Injury.* The Accused's conduct resulted in actual and potential injury to Honda and Clithero. The Accused placed Honda's claims at risk because the time to file them was limited. Because the Accused did not take any significant action on Honda's claims, and failed to promptly deliver her file to Honda's new attorney, Honda was required to hire new counsel, who spent additional time attempting to reconstruct information Honda had previously given to the Accused. Clithero's retainer was eventually accounted for, but not before a Bar complaint was filed and referred to the Local Professional Responsibility Committee (hereinafter "LPRC") for investigation. Clithero became frustrated because the Accused would not communicate with him and he could not locate the Accused. Disciplinary Counsel's Office and the LPRC were required to devote additional time to the investigation of the complaints because the Accused failed to timely provide the Bar and her clients with an address and telephone number that would allow them to contact her.

D. *Aggravating Factors.* "Aggravating factors" include:

1. The Stipulation involves two client matters and three rule violations. *Standards* §9.22(d).

2. When the Accused closed her office and disconnected her telephone, she failed to notify the Bar and her clients where she may be located, and thus delayed each of their inquiries. BR 1.11. Because the Bar and the LPRC did not have a current address inquiries concerning the complaints were delayed.

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards* §9.32(a).

2. The Accused's daughter was ill and the Accused experienced stress and depression attendant to matters related to her practice at or about the time she represented Honda and Clithero. *Standards* §9.32(c).

3. The Accused has displayed a cooperative attitude in resolving this formal proceeding. *Standards* §9.32(e).

4. The Accused was admitted to practice in 1995 and was inexperienced in the practice of law. *Standards* §9.32(f).

5. The Accused acknowledges the wrongfulness of her conduct and is remorseful. *Standards* §9.32(l).

10.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* §4.42. Suspension is also appropriate when a lawyer knows that he is dealing improperly with client property and causes injury or potential injury to a client or neglects to promptly return client property. *Standards* §4.12. See *In re Sohl*, 8 DB Rptr 87 (1994) (30-day suspension for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Borneman*, 10 DB Rptr 151 (1996) (30-day suspension for violation of DR 6-101(B)); *In re Hughes*, 9 DB Rptr 38 (1995).

11.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period of 30 days, commencing on the date the Order Approving Stipulation for Discipline is signed by the Disciplinary Board.

12.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to BR 3.6.

EXECUTED this 3rd day of October 1998.

/s/ Susan C. Steves

Susan C. Steves

OSB No. 95428

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-216
)
JAMES R. JENNINGS,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Susan D. Isaacs, Esq.
Disciplinary Board: None
Disposition: Violation of DR 6-101(B), and DR 9-101(C)(4).
Public reprimand.
Effective Date of Order: October 22, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be reprimanded for violation of DR 6-101(B) and DR 9-101(C)(4).

DATED this 22nd day of October 1998.

/s/ Armina J. Brown
Armina J. Brown
State Disciplinary Board Chairperson

/s/ Richard S. Yugler
Richard S. Yugler, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

James R. Jennings, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, James R. Jennings, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 10, 1974, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On March 14, 1998, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(B) and DR 9-101(C)(4). 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.

In 1995, Judy Langnese, a U.S. Postal Service employee, retained the Accused to represent her regarding an on-the-job injury. In 1996, after filing a lawsuit on Langnese's behalf, the Accused settled Langnese's claim for \$3,500.00. The settlement provided that Langnese was responsible for any outstanding medical liens.

6.

On June 27, 1996, Langnese signed the settlement check which was made out jointly to her and the Accused. The Accused advised Langnese that she would receive her share of the settlement proceeds within two weeks.

7.

Three weeks later, Langnese called the Accused's office to inquire as to why she had not received her settlement. The Accused did not return her telephone call.

8.

Between July 1996 and the spring of 1997, Langnese made numerous telephone calls to the Accused and wrote him one letter in an attempt to obtain her

settlement proceeds. The Accused received Langnese messages but failed to return her telephone calls or provide her with her settlement proceeds. During this period, an issue arose as to whether Langnese had a claim for aggravation of her injury. The Accused did not believe he should release the settlement funds to Langnese until the aggravation issue and any issue of lien payment was resolved. However, the Accused did not so inform the client, although he instructed his bookkeeper to do so and believed that she had done so. He did not take steps to reach such resolution either.

9.

In the spring of 1997, Langnese conferred with attorney James Duncan to assist in obtaining her settlement proceeds. In March 1997, Duncan wrote the Accused regarding the settlement. Duncan received no response to his letter or to four subsequent telephone messages requesting the Accused to contact him regarding Langnese and her settlement.

10.

In July 1997, Duncan and the Accused conferred by telephone. During the conversation, the Accused told Duncan he believed that Langnese had several outstanding medical liens, including approximately \$900.00 owed to her employer's claims department and \$85.00 owed to Kaiser.

11.

Thereafter, Langnese contacted both the Postal Service and Kaiser, who advised that their records showed nothing outstanding. On July 7, 1997, Langnese wrote the Accused and told him she did not believe she had any outstanding liens, but requested that he verify the same and if she did, pay what needed to be paid, and remit the balance of the settlement to her.

12.

On July 10, 1997, after paying Bonded Credit for an outstanding bill, the Accused sent the balance of the settlement proceeds (\$2,001.77) to Langnese. At the time the Accused forwarded the settlement funds to Langnese, he had not verified with either Kaiser or the U.S. Postal Service whether Langnese had any outstanding liens, nor advised her that he had not done so. As of July 10, 1997, the U.S. Postal Service had an outstanding lien against Langnese.

Violation

13.

The Accused admits he failed to promptly remit Langnese's settlement proceeds, failed to return her calls, failed to return Duncan's calls, failed to verify the existence of any outstanding liens, failed to disclose that he had not verified the

existence of any outstanding liens, and failed to advise Langnese that such might be required to discharge the liens, in violation of DR 6-101(B) and DR 9-101(C)(4).

Sanction

14.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to diligently and promptly respond to Langnese's communication, and failed to timely remit her settlement proceeds. *Standards* §4.4.

B. *Mental State.* The Accused acted with knowledge, in that he was aware of both Langnese's and Duncan's request for information regarding the status of the settlement.

C. *Injury.* Injury may be either actual or potential. In this case, Langnese was denied access to her settlement proceeds for over a year and was not informed, at the time those proceeds were ultimately distributed, that her employer may have an outstanding lien against a portion of them. Langnese's portion of the settlement proceeds remained in the Accused's trust account during the delay.

D. *Aggravating Factors.*

1. The Accused was admonished in 1995 for neglecting a legal matter entrusted to him (DR 6-101(B)). *Standards* §9.22(a).

2. The Accused has substantial experience in the practice of law. *Standards* §9.22(i).

E. *Mitigating Factors.*

1. The Accused had no dishonest or selfish motive for failing to comply with Langnese's requests or to complete the legal matter entrusted to him. *Standards* §9.32(b).

2. The Accused displayed a cooperative attitude toward the proceeding. *Standards* §9.32(e).

3. The Accused has expressed remorse. *Standards* §9.32(l).

15.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. *Standards* §4.42. The *Standards* also provide that a reprimand is

generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards* §4.43.

16.

Oregon case law suggests that regardless of the fact that the Accused acted knowingly, a public reprimand is appropriate in this case. In *In re Brownlee*, 9 DB Rptr 85 (1995), a lawyer was appointed to represent a criminal defendant in a postconviction proceeding. The lawyer failed to communicate with his client regarding the client's appeal, failed to respond to the client's attempts to communicate with the lawyer, and failed to promptly return trial court transcripts and other documents to the client in violation of DR 6-101(B) and DR 9-101(C)(4). The lawyer was reprimanded. Similarly, in *In re Hall*, 10 DB Rptr 19 (1996), a lawyer who failed to timely prepare a QDRO and respond to the client's numerous inquiries concerning the status of the legal matter was reprimanded for violating DR 6-101(B). See also *In re Reid*, 10 DB Rptr 45 (1996).

17.

The Accused agrees to accept a public reprimand for the violations described in this Stipulation.

18.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 8th day of October 1998.

/s/ James R. Jennings

James R. Jennings

OSB No. 74155

EXECUTED this 14th day of October 1998.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan

OSB No. 83314

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-124B
)	
ALAN J. SCHMEITS,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board: Chair:	None
Disposition:	Violation of DR 5-105(E). Public reprimand.
Effective Date of Order:	October 28, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 5-105(E).

DATED this 28th day of October 1998.

/s/ Arminda J. Brown
 Arminda J. Brown
 State Disciplinary Board Chairperson

/s/ Stephen M. Bloom
 Stephen M. Bloom, Region 1
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Alan J. Schmeits, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Alan J. Schmeits, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1976, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Baker County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On April 16, 1998, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 5-105(E). 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.

A. At all relevant times, the Accused and Floyd C. Vaughan were partners in the law firm of Silven, Schmeits & Vaughan.

B. On or before July 1993, the Accused undertook to represent Doran and Ruth Hintz (hereinafter "the Hintzes") in an IRC §1031 delayed exchange commonly referred to as an accommodation for the sale of their ownership in the Eagle Valley RV Park in Richland, Oregon (hereinafter "the RV Park") to Robert F. Olsen and Lillie Ann Olsen pursuant to Earnest Money Agreement dated June 29, 1993, for a total sales price of \$500,000.00. The Accused drafted an Accommodation Agreement utilizing Kenneth A. Bardizian as accommodator and Doran M. Hintz and Ruth E. Hintz as exchangors and a contract of sale between Kenneth A. Bardizian, accommodator, and Robert F. Olsen and Lillie Ann Olsen, sellers.

C. After the Accused undertook to represent the Hintzes in the §1031 accommodation, the Hintzes determined that they wanted to purchase real property as a portion of the total replacement property for the accommodation agreement. This replacement property was owned by Fern Taylor and was located on Foothill Drive in Baker City, Oregon (hereinafter "the Foothill Drive property"). The Foothill Drive property represented 22% of the property necessary to complete the Hintzes'

accommodation agreement and avoid taxes. Fern Taylor was the mother-in-law of the Accused's partner, Floyd C. Vaughan, and was Mr. Vaughan's former client.

D. On October 6, 1993, Floyd C. Vaughan undertook to represent Fern Taylor in the sale of the Foothill Drive property to the Hintzes. Mr. Vaughan represented Fern Taylor through the closing of the sale of the Foothill Drive property on or about November 3, 1993.

E. The Accused continued to represent the Hintzes for the accommodation agreement for the sale of the RV Park with Robert F. Olsen and Lillie Ann Olsen through its closing on or about November 3, 1993. At the request of the Hintzes, the Accused also did an assignment of the Hintzes' purchasers' interest in the earnest money with Fern I. Taylor to assist the Hintzes in substituting a portion of the needed replacement property for the IRC §1031 accommodation agreement.

F. The objective interests of the Hintzes and Fern Taylor in the purchase and sale of the Foothill Drive property were adverse.

G. On behalf of Fern Taylor, Mr. Vaughan prepared the warranty deed and special warranty deed which were required for the §1031 exchange and the sale of the Foothill Drive property to the Hintzes. The deeds prepared by Mr. Vaughan included exceptions to the warranties of title normally granted by warranty deeds or special warranty deeds. The sales agreement and earnest money receipt executed by the Hintzes and Fern Taylor did not include these exceptions to the required warranties of title to be given by Fern Taylor.

H. After November 3, 1993, the Hintzes discovered that a building on the Foothill Drive property encroached upon a city right-of-way and filed litigation to recover damages for the diminished value of the property.

Violation

6.

The Accused admits that, by engaging in the conduct described in paragraphs 5A through 5H of this stipulation, he had a likely current client conflict of interest in violation of DR 5-105(E).

Sanction

7.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *ABA Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his clients to avoid conflicts of interest. *Standards* §4.3.

B. *Mental State.* Although the Accused recognized there was a likely conflict of interest, he was negligent in making the full disclosures as required by DR 10-101(B).

C. *Injury.* Injury may be either actual or potential. In this case, the Hintzes suffered actual injury in that a member of the law firm that represented them drafted deeds which contained exceptions to the warranties of title for which they had contracted, and neither the Accused nor his partner called those exceptions to their attention, resulting in litigation. The potential for injury to both the Hintzes and Fern Taylor from the Accused's conflict of interest was the possibility that he or his partner would not vigorously represent one client's interests in favor of the interests of the other client.

D. *Aggravating Factors.*

1. The Accused has a prior record of discipline. In 1988, he was admonished for violation of *former* DR 5-105(A) and (B) in representing a bankruptcy petitioner at the same time that his law partner represented creditors who were listed on the bankruptcy petition. *Standards* §9.22(a).

2. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1976. *Standards* §9.22(i).

E. *Mitigating Factors.*

1. The Accused is of good character and reputation. *Standards* §9.32(a).

2. The Accused cooperated with Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and resolving this proceeding. *Standards* §9.32(e).

Case Law

8.

The ABA *Standards* suggest that a public reprimand is appropriate where a lawyer is negligent in determining whether the representation of a client will adversely affect another client, and causes injury or potential injury to the client.

Oregon case law is in accord. See *In re Alway*, 11 DB Rptr 153 (1997) (public reprimand for violation of DR 5-105(C)); *In re Newton*, 10 DB Rptr 169 (1996) (public reprimand for violation of DR 5-105(E)).

9.

Consistent with the ABA *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for violation of DR 5-105(E).

10.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 13th day of October 1998.

/s/ Alan J. Schmeits

Alan J. Schmeits

OSB No. 76322

EXECUTED this 19th day of October 1998.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks

OSB No. 75167

Assistant Disciplinary Counsel

Cite as 327 Or 609 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
RICHARD F. CRIST,)
)
Accused.)

(OSB 97-18; SC S30840)

On review of the decision of a trial panel of the Disciplinary Board.

Submitted on the record April 15, 1998. Decided October 29, 1998.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, filed the brief for the Oregon State Bar.

No appearance *contra*.

Before Carson, Chief Justice, Gillette, Van Hoomissen, Durham, Kulongoski, and Leeson, Justices.

PER CURIAM

The Accused is suspended from the practice of law for a period of five years, commencing 60 days from the date of the filing of this decision.

SUMMARY OF SUPREME COURT OPINION

The Accused was charged with violating DR 6-101(B) (neglecting a legal matter), DR 1-102(A)(4) (engaging in conduct prejudicial to the administration of justice), and DR 1-103(C) (failing to cooperate during disciplinary investigation). He failed to answer the Bar's complaint or to make any appearance. A majority of the trial panel suspended the Accused from the practice of law for three years. *Held:* The Accused is guilty of violating the disciplinary rules as charged. A five-year suspension is the appropriate sanction. The Accused is suspended from the practice of law for a period of five years, commencing 60 days from the date of the filing of this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 96-21
)
MICHAEL W. SEIDEL,)
)
Accused.)

Bar Counsel: Greg Hendrix, Esq.
Counsel for the Accused: James C. Tait, Esq.
Disciplinary Board: Timothy Helfrich, Esq., Chair; Donald Crane, Esq.;
Steven Bjerke, Public Member
Disposition: Violation of DR 1-102(A)(2), DR 1-103(C), and ORS
9.460(1). 120-day suspension.
Effective Date of Opinion: November 19, 1998

OPINION OF TRIAL PANEL

Introduction

This proceeding came before the trial panel upon the Second Amended Formal Complaint filed October 21, 1997, by the Oregon State Bar. The Second Amended Formal Complaint charged the Accused with two counts of professional misconduct.

The first count alleged that the Accused knowingly and willfully failed to file federal income tax returns for 1988 through 1994 and was therefore guilty of criminal acts that reflected adversely on his honesty, trustworthiness, or fitness to practice law and a failure to support the laws of the United States in violation of DR 1-102(A)(2) and ORS 9.460(1).

The second count alleged that, in connection with the Bar's investigation of his conduct, the Accused provided information which created a false impression that he had proof of the payment of all of his income taxes and that he had filed and possessed copies of his personal tax returns. The Bar alleged that this conduct involved dishonesty, fraud, deceit, or misrepresentation and a failure to respond fully and truthfully to inquiries from the Bar in violation of DR 1-102(A)(3) and DR 1-103(C).

In the answer filed by the Accused, much of the factual substance of the Bar's complaint is admitted. The Accused primarily challenged the Bar's allegations concerning his state of mind and intentions, and challenged the Bar's conclusions from the facts set forth in the Complaint.

The hearing in this matter was held in Bend, Oregon, on June 15, 1998. Greg Hendrix appeared on behalf of the Oregon State Bar and James Tait appeared on behalf of the Accused. The witnesses called by the Bar were Lia Saroyan and the Accused, Michael W. Seidel. Exhibits 1 through 11 were offered by the Bar and admitted into evidence. All exhibits were admitted without objection, except Exhibit 8.

The Accused testified on his own behalf and called as a witness his wife, Nancy Cleveland. He also offered portions of the deposition testimony of John Harrigan and Barbara Tyler, both of whom are CPAs who assisted in preparing tax returns for the Accused. Exhibits 101 through 145 were offered by the Accused and admitted into evidence without objection.

The hearing in this case was scheduled outside the parameters of BR 2.4(h) by stipulation of the parties.

Findings of Fact

The Accused is 38 years old. He graduated from Lewis and Clark College, School of Law. He began his legal practice in 1988. He has no background in finance, tax, or bookkeeping and has never engaged in any practice involving legal work related to taxes. When he was admitted to the Oregon State Bar, he set up his own office, handling criminal defense by court appointment. His practice involved criminal and domestic relations work and did not produce substantial income for the Accused in the first years of his practice.

Late in 1988, the Accused married Nancy Cleveland. Ms. Cleveland has a college degree in Business Administration, and bookkeeping and accounting experience and training. Upon opening his practice, the Accused tried to do his own books and records. After their marriage, Ms. Cleveland agreed to take responsibility for handling the books and records of the Accused's law practice and filing tax returns.

Prior to starting his practice, the Accused had never filed any tax returns other than a simple Form 1040 EZ. The same was true of his wife. The Accused knew that he was obligated to file returns, but he did not know that nonfiling of tax returns could be a criminal offense so long as the taxes were being paid. He thought that the sanction for nonfiling was only penalties and interest. He learned of the criminal nature of the penalty for nonfiling only after the Bar Complaint was filed.

In May or June of 1995, he met with an attorney who had special expertise in defending criminal tax cases. After that, the Accused testified that he knew it was

a crime and he realized how crucial it was for him to get his 1994 returns filed on time.

In 1989, the first tax filing year after the marriage, Ms. Cleveland was supposed to prepare the tax returns. The Accused discussed this with her. She told him that an extension had been requested and that estimated taxes had been paid. She reassured him that everything was being taken care of. As it turned out, Ms. Cleveland did not get the 1988 tax returns filed. The same events occurred the following year. When the Accused raised the subject of the tax returns with his wife, she would become extremely upset and angry and they would have terrible arguments. This became an annual ritual. When these arguments occurred, however, Ms. Cleveland told the Accused that, even though the returns had not been filed, the taxes were paid and that she would take care of things.

In 1994, the problems between the Accused and his wife came to a head and they separated briefly. They agreed to obtain marriage counseling and the counselor felt that Ms. Cleveland was suffering from major depression. The depression had been interfering with her ability to function effectively in many respects, including the filing of the tax returns. As each year passed without the returns being filed, the need to collect information and file returns became a more and more overwhelming task.

Ms. Cleveland was placed on antidepressant medication after her diagnosis. The medication was very effective in treating her depression and she began to work on collecting information for preparation of tax returns. In August 1994, the Accused and his wife delivered to their accountant the information needed to prepare returns for 1988, 1989, and 1990. This occurred before any notice of a Bar Complaint and before any communication from the taxing authorities.

The returns were not, however, completed and filed until nearly a year later—June of 1995. On June 23, 1995, the CPA employed by the Accused filed all of the returns for 1988 through 1993. The 1994 return was on extension until October 15, 1995. However, it was not filed until November 9, 1995. The Accused has offered no excuse for the failure to file the 1994 return on time, but explained that he was in communication with the Internal Revenue Service agent at that time. The authorities knew that the returns were going to be filed a few days late and were apparently not concerned with that fact. They were more concerned simply with making sure that proper tax payments were made.

The Accused has not been prosecuted or threatened with any prosecution for nonfiling of tax returns. After examining the factual circumstances concerning the nonfiling of returns, the Internal Revenue Service agreed to drop any claim for penalties on the late filing of returns.

In January 1995, the Bar sent notice to the Accused (Exhibit 1) advising him of an anonymous complaint stating that he had not paid taxes for five years. Although the Complaint form and the specific allegation mentioned in the Bar letter

had to do with a failure to pay taxes for five years, the letter also advised the Accused that the Oregon Supreme Court has on numerous occasions disciplined lawyers who have failed to file income tax returns, citing *In re DesBrisay*, 288 Or 625 (1980).

When the Accused received this letter, he placed a phone call to the assistant disciplinary counsel and used very abusive language. He admits that this phone call was totally inappropriate and apologized for the language that he used in that conversation.

In a subsequent letter (Exhibit 2), the Accused requests an extension of time and indicates that he fully intends to respond to the letter and exonerate himself from the anonymous allegations. This letter dated January 25, 1995, was the first of a series of letters in which the Accused requested extensions of time, which ultimately extended approximately five months. In general, these letters indicate that the Accused is working with his accountant to assemble the information necessary to prepare a response. In a letter sent to the Bar on April 5, 1995, the Accused expresses an unwillingness to send copies of his personal tax returns (because of the public records law) and offers to provide a statement from his accountant to document the payment of income taxes “for the past four years.” (Exhibit 5.) As of the date of that letter, no tax returns had been filed and income taxes were owing for various years to the state and federal government.

Ultimately, on June 26, 1995 (Exhibit 7), an attorney representing the Accused sent a letter to the Bar with attached material from the Accused’s CPA. This was the first substantive response from the Accused. That communication revealed that tax returns for 1988 through 1993 had only been filed on June 23, 1995. The letter also revealed that some taxes had not been paid during the years in question and that the Accused intended to refinance his home to pay off the taxes.

Discussion of Count One (Failure to File Tax Returns)

Most of the facts of the Second Amended Formal Complaint are admitted. The Accused admits that he knowingly failed to file federal personal income tax returns on a timely basis for the calendar years 1988 through 1994. As of the date of hearing, all of those returns had been filed and all of the taxes had been paid. The Accused denies that his failure to file tax returns was “wilful” and therefore denies that he committed a criminal act. The Bar does not contend and did not present any evidence to suggest that the Accused was attempting to evade the payment of taxes. The evidence, in fact, showed that the Accused, through his wife, sent estimated tax payments to the federal and state governments in each of the years in question. The evidence, in fact, was that the Accused *overpaid* state taxes in all of the years in question, except 1994, and overpaid federal taxes in 1988 and 1989. The Accused actually lost his entitlement to recovery of tax refunds because of his delay in filing tax returns.

It is also undisputed that the Accused and his wife began the process of preparing the delinquent tax returns before being contacted by either the Internal Revenue Service or the Oregon State Bar. (*See* Exhibit 7, p. 3.) Ultimately, the Internal Revenue Service not only declined to initiate any criminal action against the Accused, but agreed to waive penalties on his delinquent taxes because of his circumstances.

The Accused argues that his failure to file the tax returns in a timely manner was based upon ignorance and neglect. He testified that he was aware that he had an obligation to file returns, but was not aware that a failure to file returns would constitute a crime. He first learned that the failure to file would constitute a criminal act when he consulted with an attorney in late May or early June 1995, concerning the Bar Complaint. The Accused admits that, in spite of his awareness of the criminality of the failure to file, he did not file the 1994 tax return in a timely manner. The 1994 return was filed on approximately November 9, 1995, after the expiration of his final extension on October 15, 1995.

The Bar relied upon *United States v. Rosenfeld*, 409 F2d 598 (3d Cir 1972), for the rule that ignorance of a crime does not excuse a violation. The case can correctly be cited for that proposition. However, the court's ruling approved a detailed jury instruction concerning the element of "wilfulness" necessary to support a conviction of the crime of failure to file an income tax return. That instruction includes the following language that the panel feels is relevant to this case:

Defendant's conduct is not wilful if he acted through negligence, inadvertence or mistake, or due to his good faith misunderstanding of the requirements of the law. Even gross negligence is not sufficient to constitute wilfulness. A failure to act is wilful if voluntary and purposeful and with the specific intent to fail to do what the law requires to be done, that is, with the bad purpose to disobey or disregard the law.

The instruction approved by the court indicates clearly that the failure to file must be the result of "some bad intent, such as an intent to conceal taxable income from the government or delay the assessment and collection of taxes." 409 F2d at 601 n 1. In this case, there was no evidence presented of any such "bad intent." The panel recognizes that a criminal conviction is not necessary to sustain the charge in this case. However, it is significant that the other cases on which the Bar relies both involved criminal convictions on pleas of guilty by the attorneys involved. *In re Means*, 207 Or 638 (1956); *In re DesBrisay*, 288 Or 625 (1980).

Discussion of Count Two (Failure to Cooperate)

The Bar contends that the communications from the Accused were intentionally misleading and dishonest. From the various communications she received from the Accused, assistant disciplinary counsel testified that she understood that the Complaint was entirely unfounded and that the Accused was

intending to produce tax returns and other documents to show that all taxes had been paid with properly filed returns. She notes that the Accused's statements that he will prove he has paid his taxes obviously suggested that he was in possession of prepared returns so that he would know whether or not taxes were owed.

The Accused argues that the Complaint was specific. The allegation was that "You and your wife have not paid taxes for five years." (Exhibit 1.) He contends that he specifically framed his communications to respond to that Complaint. He knew then, and he has proved at the hearing, that he and his wife *had* paid taxes during the past five years. He also notes that he had a privilege against self-incrimination and had no obligation to initiate disclosure of the fact that he had not filed any tax returns from 1988 to 1993. He also points out that it was ultimately his communication to the Bar that disclosed the nonfiling which became the subject of this disciplinary proceeding.

The panel has concluded that the Accused's responses were carefully calculated and appear to be part of a strategy to get his returns prepared and filed before having to give the full facts to the Bar. The panel does not find that there was a fraudulent intent or specific misrepresentation. However, the responses were clearly intended to delay the Bar's uncovering of the full facts and the strategy was, in fact, successful.

Although the Accused is entitled to remain silent and claim his privilege against self-incrimination, he did not do that. He sent communications that contained part of the truth, undoubtedly knowing that the full truth would lead to more problems and that his position would be improved if he could get the tax returns filed before having to answer the Bar Complaint.

Conclusions

1. Conclusion Concerning Count One

It is the conclusion of the panel that, under the peculiar circumstances of this case, the Accused's failure to file returns for the years 1988 through 1993 was not "wilful" and would not constitute a criminal act. It is clear from the evidence that the failure to file returns was far more a product of negligence, procrastination, and the family difficulties encountered by the Accused and his wife, than any "bad intent" such as described in *United States v. Rosenfeld*. The panel does conclude that the failure to file in 1994 stands on a different footing because of the Accused's clear understanding of the nature of the legal requirement and awareness of the consequences. The panel, therefore, finds that, in connection with the failure to timely file the return in 1994, the Accused was in violation of DR 1-102(A)(2) of the Code of Professional Responsibility and ORS 9.460(1).

2. Conclusions as to Count Two

As to the second count of the Complaint, the panel finds that the Bar has not proved by clear and convincing evidence that the Accused violated DR 1-102(A)(3)

of the Code of Professional Responsibility. The panel does not feel that the Accused was dishonest or fraudulent in his communications with the Bar. Nonetheless, his communications were misleading and omitted crucial information that was obviously of concern to the Bar in connection with the complaint that had been filed; specifically, the fact that the Accused had not filed any tax returns whatsoever for the years 1988 through 1993 (the 1994 return was not yet due at that time). This conduct on the part of the Accused constitutes a failure to fully and truthfully respond to inquiries from the Bar and cooperate in the investigation, and constitutes a violation of DR 1-103(C) of the Code of Professional Responsibility.

Discussion of Sanctions

The panel has considered the American Bar Association *Standards for Imposing Lawyer Sanctions* (1991) (hereinafter “*Standards*”). *In re Sousa*, 323 Or 137, 145 (1996). The following four factors are identified: (1) the ethical duty violated; (2) the lawyer’s mental state at the time of the violation; (3) the extent of the actual or potential injury caused by the lawyer’s misconduct; and (4) any aggravating or mitigating circumstances. *Standards* §3.0.

The panel recognizes the duty involved to be very important and of crucial concern to the Bar. The duty to obey and uphold the laws goes to the heart of the personal integrity of the lawyer involved and the Bar’s obligation to maintain high standards of professional conduct. The duty to cooperate fully and truthfully with the Bar in its investigations is also a very important ethical obligation of all members of the Oregon State Bar.

The Accused’s mental state in this case is an important factor. None of the evidence reflected any intent to defraud or evade taxes (as illustrated most dramatically by the fact that the Accused and his wife actually overpaid either state or federal taxes or both in most of the years involved and suffered a loss of an opportunity for tax refunds in several years because of the lateness of the filing of their returns). The Accused’s mental state can best be described as one of gross negligence, ignorance, and procrastination. Coupled with these was the severe clinical depression of his wife, who was responsible for the filing of the tax returns. The Supreme Court in *DesBrisay, supra*, characterized that case as one involving “tax evasion,” 288 Or at 630, and the Court commented upon the cavalier attitude of the Accused in that case and his “studied effort . . . to excuse conduct which cannot be justified or excused.” 288 Or at 631–632. The panel does not find that case on its facts to be comparable at all to the circumstances of the Accused in this case. *DesBrisay* was criminally indicted for failing to file returns for a period of four years and he pleaded guilty to one of those charges.

With respect to any actual or potential injury in this case, there is no evidence of dishonest dealings with any clients or in the Accused’s professional duties. There is no indication of any actual or potential injury to any client. The Accused, in fact, presented a long series of letters in his support from various members of the legal

community. The absence of any injury to a client was cited by the Supreme Court in *DesBrisay* as one of the factors in rejecting the Bar's recommendation of disbarment in that case. Here, the Accused caused some actual or potential injury in the sense of delay in payment of taxes and the cost to the government of pursuing collection action. However, this is offset to a significant degree by the fact that the Accused paid estimated taxes every year and, in fact, overpaid taxes to either the state or federal government in most of the years under consideration.

The panel has also considered mitigating and aggravating circumstances. The Accused's failure to cooperate and give full disclosure of information is an aggravating factor. The severe clinical depression of the Accused's wife which played a significant role in the ultimate delay in the filing of returns is a mitigating factor. The panel also considered the Accused's taking of steps to prepare and file the returns prior to any complaint being filed or any action initiated by the Internal Revenue Service to be a mitigating factor.

Disposition

It is the decision of the trial panel that the Accused be suspended from the practice of law in the State of Oregon for a period of 120 days.

Trial panel members Bjerke and Helfrich agree upon the decision of the panel with respect to Count One. Panel Member Crane disagrees and dissents from the decision on Count One. All trial panel members agree upon the findings and conclusion with respect to Count Two.

<u>/s/ Steve Bjerke</u>	<u>7/1/98</u>
Steve Bjerke, Trial Panel Member	Date

<u>/s/ Don Crane</u>	<u>7/6/98</u>
Don Crane, Trial Panel Member	Date

<u>/s/ Tim J. Helfrich</u>	<u>6/30/98</u>
Tim J. Helfrich, Trial Panel Chair	Date

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-90
)
ERIC S. BONNER,)
)
Accused.)

Bar Counsel: Cynthia Domas, Esq.
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 6-101(B), DR 7-101(A)(2), and DR 1-103(C). 120-day suspension.
Effective Date of Opinion: November 12, 1998

OPINION OF TRIAL PANEL

Procedural History

On February 25, 1998, the Oregon State Bar filed a Formal Complaint, in Case No. 97-90, In re: Complaint as to the Conduct of Eric S. Bonner, Accused. The Complaint was served on Mr. Bonner April 9, 1998. Mr. Bonner did not respond and failed to appear within the time provided by the Bar Rules of Procedure. Consequently, on June 1, 1998, the Trial Panel of the Disciplinary Board entered a Default Order against Mr. Bonner, and deemed the allegations in the Bar's Formal Complaint true. Those allegations are as follows.

Findings of Fact

The Accused, Eric S. Bonner, is, and all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Marion, State of Oregon.

In 1993, Charles and Sharon Leppert (hereinafter "the Lepperts") employed the Accused to form a Subchapter S corporation for their business.

The Accused failed to prepare and file the proper forms with the Internal Revenue Service that would enable the Lepperts to obtain the tax advantages of a Subchapter S corporation for the years 1994 and 1995.

On or before September 29, 1995, the Accused agreed to file the forms described in paragraph 4 herein. Thereafter, the Accused failed to file these forms and failed to communicate with the Lepperts or respond to their attempts to communicate with him.

The aforesaid conduct of the Accused constituted neglect of a legal matter and intentional failure to carry out a contract of employment in violation of the following standards of professional conduct established by law and by the Oregon State Bar:

1. DR 6-101(B) of the Code of Professional Responsibility; and
2. DR 7-101(A)(2) of the Code of Professional Responsibility.

The Oregon State Bar received a complaint from the Lepperts concerning the Accused's conduct on or about March 14, 1997. On March 21, 1997, the Disciplinary Counsel's Office forwarded a copy of this complaint to the Accused and requested his response to it by April 11, 1997. The Accused made no response.

On April 22, 1997, the Disciplinary Counsel's Office requested that the Accused respond to the complaint by April 29, 1997. The Accused made no response, and the complaint was referred to the Clackamas/Linn/Marion County Local Professional Responsibility Committee (hereinafter "the LPRC") for further investigation.

On or about May 28, 1997, a member of the LPRC contacted the Accused by letter and requested that the Accused contact him. The Accused made no response. Thereafter, the LPRC member contacted the Accused's office by telephone requesting he return the LPRC member's call. The Accused did not return the LPRC member's call. On or about August 26, 1997, the LPRC member contacted the Accused by letter and requested that the Accused contact him by September 8, 1997. The Accused made no response.

While the subject of a disciplinary investigation, the Accused failed to respond to inquiries from and failed to cooperate with the Disciplinary Counsel's Office and the LPRC which are empowered to investigate or act upon the conduct of lawyers.

The aforesaid conduct of the Accused violated the following standard of professional conduct established by law and by the Oregon State Bar:

1. DR 1-103(C) of the Code of Professional Responsibility.

Violation

Based on the facts set forth in the Bar's Formal Complaint and our deeming them true, we find that the Accused violated the following Disciplinary Rules:

First Cause of Action:

1. DR 6-101(B) of the Code of Professional Responsibility (neglect of a legal matter);

2. DR 7-101(A)(2) of the Code of Professional Responsibility (failure to carry out a contract of employment entered into with a client for professional services); and

Second Cause of Action:

3. DR 1-103(C) of the Code of Professional Responsibility (failure to cooperate with investigation).

Sanction

On June 1, 1998, the Trial Panel wrote the Bar and Mr. Bonner asking if either wanted a hearing on sanctions, or if they would agree to proceed on written memoranda. The Bar agreed to proceed on written memoranda; Mr. Bonner did not respond.

On June 19, 1998, the Trial Panel requested written memoranda and set forth a briefing schedule. Mr. Bonner failed to file a memorandum, thus sanctions were determined solely on the memorandum filed July 10, 1998, by the Oregon State Bar and the Trial Panel's evaluation of the severity of the violations. The Bar's memorandum set forth the rationale for imposing a 120-day sanction:

Oregon case law supports the imposition of a 120-day sanction. In *In re Schaffner*, 323 Or 472, 481, 918 P2d 803 (1996), the Supreme Court recently determined that a 120-day suspension was appropriate where a lawyer knowingly neglected one client matter (DR 6-101(B)) and failed to cooperate with the Bar's investigation of his conduct (DR 1-103(C)). In *Schaffner*, the court determined that each rule violation warranted a 60-day suspension. In *In re Miles, supra*, 324 Or at 224, the Court relied on the *Schaffner* sanction analysis and imposed a 120-day suspension for two separate violations of DR 1-103(C).

Based on the Bar's memorandum, Oregon case law, and its evaluation of the severity of the Accused's violations, the Trial Panel determined that the appropriate sanction was a 120-day suspension. The Accused should be barred from the practice of law for 120 days.

DATED this 8th day of October 1998.

/s/ Derek C. Johnson
Derek C. Johnson, Chair
Trial Panel

/s/ Lon N. Bryant
Lon N. Bryant
Trial Panel

/s/ Robert W. Wilson
Robert W. Wilson
Trial Panel

Cite as 327 Or 636 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
TERESE M. GUSTAFSON,)
)
Accused.)

(OSB 95-34; SC S43937)

On review of the decision of a trial panel of the Disciplinary Board.

Argued and submitted November 4, 1997; resubmitted June 11, 1998. Decided November 13, 1998.

Martha M. Hicks, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the briefs for the Oregon State Bar.

James N. Westwood, of Miller, Nash, Wiener, Hager & Carlsen LLP, Portland, argued the cause and filed the brief for the Accused.

Before Carson, Chief Justice, and Van Hoomissen, Durham, and Leeson, Justices. (Fadeley, J., retired January 31, 1998, and did not participate in this decision; Graber, J., resigned March 31, 1998, and did not participate in this decision; Gillette and Kulongoski, JJ., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for a period of six months, commencing 60 days from the date of filing of this decision.

Durham, J., concurred and filed an opinion.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation) and DR 1-102(A)(4) (conduct prejudicial to the administration of justice (two counts)). A trial panel of the Disciplinary Board concluded that the Bar failed to prove the charged violations and dismissed the complaint. *Held:* The Accused is guilty of violating DR 1-102(A)(3) and (4) (two counts). The Accused is suspended from the practice of law for a period of six months, commencing 60 days from the date of filing of this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-73
)	
SAMUEL A. RAMIREZ,)	
)	
Accused.)	

Bar Counsel:	Liz Fancher, Esq.
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 9-101(A) and DR 9-101(C)(3). Public reprimand.
Effective Date of Order:	November 17, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused is publicly reprimanded for violation of DR 9-101(A) and DR 9-101(C)(3).

DATED this 17th day of November 1998.

/s/ Armind J. Brown
 Armind J. Brown
 State Disciplinary Board Chairperson

/s/ Stephen M. Bloom
 Stephen M. Bloom, Region 1
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Samuel A. Ramirez, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Samuel A. Ramirez, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 1991, and has been a member of the Oregon State Bar continuously since that time, currently having his office and place of business in Deschutes County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On March 5, 1998, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3). 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.

On or about September 1, 1994, the Accused undertook to represent Cindy Child (hereinafter “Child”) to obtain child support from her former husband (hereinafter “husband”), a resident of the State of Idaho. Child paid the Accused a retainer of \$700.

6.

Child and the Accused did not enter into a written fee agreement for the Accused’s legal services.

7.

The Accused did not deposit Child's retainer into his lawyer trust account and did not maintain records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, and disbursements of Child's funds.

Violation

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated the following standards of professional conduct established by law and by the Oregon State Bar:

1. DR 9-101(A) of the Code of Professional Responsibility; and
2. DR 9-101(C)(3) of the Code of Professional Responsibility.

9.

Upon further discovery and evaluation of the evidence, the Bar and the Accused agree that the alleged violation of DR 6-101(B) should be, and upon approval of this stipulation, is dismissed.

Sanction

10.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his client by failing to preserve his client's property. *Standards* §4.1.

B. *Mental State.* With regard to mental state, the Accused acted negligently regarding the manner in which he handled Child's funds. Negligence is defined as failing 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.

C. *Injury.* Injury may be either actual or potential. In this case, Child suffered potential injury in that the Accused could not rely upon records to properly account for the expenditure of her money, although the Accused ultimately did sufficient work to earn the entire retainer.

D. *Aggravating Factors.*

1. The Accused has substantial experience in the practice of law. *Standards* §9.22(i); and

2. Child was a vulnerable client. *Standards* §9.22(j).

E. *Mitigating Factors*.

1. The Accused has no prior disciplinary record. *Standards* §9.33(a);

2. The Accused did not have a dishonest or selfish motive. *Standards* §9.33(b); and

3. The Accused fully cooperated with the Bar during the investigation of the complaint. *Standards* §9.33(e).

The *Standards* suggest that a public reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards* §4.13.

Oregon case law is in accord. A stipulation for a public reprimand was approved in *In re Klemp*, 11 DB Rptr 1 (1997), for a violation of DR 9-101(C)(3) and a violation of DR 1-103(C). See also *In re Parker*, 11 DB Rptr 81 (1997) where a trial panel imposed a public reprimand in a case where the Accused admitted violating DR 2-106(A) (charging or collecting an excessive fee); DR 6-101(B) (neglect of a legal matter); DR 9-101(A) (failure to deposit and maintain client funds in trust); and DR 9-101(C) (failure to maintain complete records and render appropriate account to the client).

The Oregon Supreme Court has also recognized that a public reprimand is appropriate in cases like this. The Court treated DR 9-101(A) as a strict liability offense and reprimanded a lawyer for failure of his employees to deposit client funds in a trust account, even though the attorney did not know of the commingling and had no intent to enrich himself. *In re Mannis*, 295 Or 594, 668 P2d 1224 (1983).

11.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that a public reprimand is an appropriate sanction. The Accused agrees to accept a public reprimand upon the Disciplinary Board's approval of this Stipulation for Discipline.

12.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction approved by the State Professional Responsibility Board (SPRB). The parties agree the stipulation is to be submitted to the Chairperson of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 29th day of October 1998.

/s/ Samuel A. Ramirez

Samuel A. Ramirez

OSB No. 91088

EXECUTED this 3rd day of November 1998.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case Nos. 95-165, 95-166
)
ERIC HAWS,)
)
Accused.)

Bar Counsel: Tina Stupasky, Esq.
Counsel for the Accused: John C. Fisher, Esq.
Disciplinary Board: Donald K. Armstrong, Esq., Chair; Derek C. Johnson, Esq.; Ruby Brockett, Public Member
Disposition: Violation of DR 1-102(A)(4), DR 2-110(A), DR 6-101(B), and DR 7-101(A)(2). Dismissal.
Effective Date of Opinion: November 24, 1998

OPINION OF TRIAL PANEL

THIS MATTER came before the Trial Panel of the Disciplinary Board for trial on January 22, 1998. The matter was not concluded on the initial date of hearing and was rescheduled and resumed on March 17, 1998. The Oregon State Bar appeared through its counsel, Tina Stupasky. The Accused appeared in person and through his attorney, John C. Fisher. Also in attendance was Martha M. Hicks, Assistant Disciplinary Counsel for the Oregon State Bar.

The Bar's Formal Fourth Amended Complaint charged the Accused with intentional failure to carry out a contract of employment in violation of DR 7-101(A)(2) of the Code of Professional Responsibility (Reedy matter). The Bar's Fourth Amended Formal Complaint charged the Accused in a second cause of complaint with conduct prejudicial to the administration of justice and improper withdrawal without the permission of a tribunal in violation of DR 1-102(A)(4) of the Code of Professional Responsibility, and DR 2-110(A) of the Code of Professional Responsibility (Reedy matter). The Bar charged the Accused in the Third Cause of Complaint (Newell matter) with conduct prejudicial to the administration of justice, failure to obtain required court permission to withdraw from employment, and neglect of a legal matter in violation of the following standards of professional conduct:

1. DR 1-102(A)(4) of the Code of Professional Responsibility;
2. DR 2-110(A) of the Code of Professional Responsibility; and
3. DR 6-101(B) of the Code of Professional Responsibility.

The Trial Court Panel's findings and conclusions are as follows:

*Intentional Failure to Carry Out a Contract of Employment
in Violation of DR 7-101(A)(2)*

The first cause of complaint alleges that the Accused intentionally failed to carry out his contract of employment with Brian and Bonnie Reedy in 1994 in violation of DR 7-101(A)(2). These allegations are set forth in paragraphs 1B8, inclusive, of the Fourth Amended Formal Complaint.

The Panel finds that the Accused filed a Chapter 13 Petition in Federal Bankruptcy Court on behalf of Brian and Bonnie Reedy in June of 1994. At the time that the Accused filed the Petition, he also filed, in conformance with the established procedure of the Bankruptcy Court, a notice of the fact that he would be out of the United States on vacation between June 25 and August 4, 1994. On June 20, 1994, an attorney filed a Motion for Relief from the automatic stay on behalf of a creditor named Kenneth Laurence. Before he left for his vacation, the Accused spoke with his client in reference to the Motion for Relief from the stay and concluded that they did not wish to contest the Motion for Relief from the automatic stay. The creditor was seeking relief in order to foreclose a land sale contract. The Bankruptcy Court scheduled a hearing on August 3, 1994, while the Accused was out of the country. The Bankruptcy Court ignored the notice regarding the Accused's vacation which was in the Bankruptcy Court files. While the Accused was on vacation, the Reedys changed their mind about contesting the Motion and appeared at the hearing without the Accused. Rather than ruling at the August 3, 1994, hearing, the Court reset the matter for a later date. Subsequently, at the Reedys' request, attorney Carter Daum took over the case on their behalf and was substituted for the Accused. The Motion for Relief from the automatic stay was ultimately denied. The Reedy's Chapter 13 plan was confirmed, although the case was later dismissed because the Reedys failed to make payments in accordance with the plan. The Bankruptcy Court also scheduled the first meeting of creditors during the Accused's absence. However, the Accused had another attorney, Rick Huhtanen, appear with the Reedys at the first meeting of creditors. It is clear from the testimony that the first meeting of creditors is a routine matter which does not require any substantial expertise. There is no reason to indicate that it was improper for the Accused to rely upon Mr. Huhtanen, who had been licensed in Oregon as an attorney since 1988. The Accused had advised the Reedys by letter that he would be unavailable to help them and that they should seek other legal counsel in connection with the Motion for Relief from Stay. This was consistent with the discussion where they had indicated to the Accused that they did not wish to resist the Motion for Relief from the automatic stay. An Interlocutory Judgment of Foreclosure had already been entered prior to the time the Petition for

Relief under Chapter 13 of the Bankruptcy Code had been filed. It appears that there was no equity in the property and the wisdom of resisting the Motion for Relief from the automatic stay was doubtful at best.

The Accused did not show up for the August 3, 1994, hearing. However, the Court had set the hearing date ignoring its established procedure for setting hearings on dates other than those set forth in the schedule of conflicts which had clearly been filed by the Accused with the Bankruptcy Court. A single setover of a hearing which was improperly scheduled by the Court does not warrant a finding that the Accused engaged in conduct prejudicial to the administration of justice. DR 1-102(A)(4). There was no credible evidence that the Accused withdrew or intentionally failed to carry out his contract of employment with the Reedys. Mrs. Reedy's testimony lacked credibility with the panel members and there was no credible evidence that the Accused failed to carry out his contract of employment with the Reedys.

Conduct Prejudicial to the Administration of Justice DR 1-102(A)(4)

The conduct of the Accused in failing to show up for a scheduled court hearing on August 3, 1994, while on vacation, when that hearing was improperly scheduled by the Bankruptcy Court contrary to its established procedures, was not sufficiently prejudicial to the administration of justice to warrant a finding adverse to the Accused.

Improper Withdrawal Without Permission of a Tribunal DR 2-110(A)

There is no evidence that the Accused actually withdrew from his representation of the Reedys. Instead, his withdrawal was effected when Carter Daum was substituted as attorney for the Reedys. The Accused's withdrawal of representation of the Reedys was permissible under DR 2-110(C)(5). The Reedys knowingly and freely assented to termination of the Accused's employment and the Accused made arrangements for another experienced bankruptcy attorney to be substituted as attorney of record for the Reedys in the pending bankruptcy matter. There is no evidence that the substitution did not comply with applicable Bankruptcy Court rules, and was an acceptable practice allowing de facto resignation and withdrawal of an attorney.

Conduct Prejudicial to the Administration of Justice (Newell) DR 1-102(A)(4)

The Accused filed a Chapter 7 petition on behalf of John Newell on March 30, 1994. At the same time, the Accused filed a notice with the Bankruptcy Court of the fact that he would be out of the United States on vacation between June 25 and August 4, 1994. The client failed to notify the Accused at the time of filing that he had made an improper transfer of several thousand dollars to his sons through credit card charges immediately prior to filing the Bankruptcy Petition. This question was directly presented to the client by the Accused in the process of preparing the Petition for bankruptcy.

At the first meeting of creditors on May 9, 1994, in response to a creditor's attorney's questions, the client disclosed that he had made payments to his sons by making charges on credit cards immediately prior to filing bankruptcy. These disclosures under oath led the Trustee to seek to recover the preferential transfers to the sons and led the creditor to file an adversary proceeding on behalf of FCC National Bank to determine the dischargeability of Mr. Newell's debt to the bank.

The Accused had a discussion with his client and advised the client that it was possible that the entire bankruptcy discharge was in jeopardy as a result of Mr. Newell's conduct and false statement in the Bankruptcy Petition. Mr. Newell was judgment-proof, was retired, and of advanced age, and it was highly unlikely that the claim of FCC National Bank could be successfully resisted. The cost of defending against the FCC National Bank adversary claim would be substantial and the client agreed that he would stipulate to judgment in the event FCC filed a complaint in the Bankruptcy Court.

In June 1994, the attorney for FCC National Bank filed an adversary proceeding against Mr. Newell. While documents were sent to the Accused's office on June 23, 1994, they were not received by the Accused prior to his leaving for his vacation. Rather than asking the Accused's office to seek a delay until the Accused returned or to seek assistance from another attorney, Mr. Newell decided to act on his own behalf. Mr. Newell wrote directly to the attorney for the creditor and indicated he would like to come to an agreement with the bank. The creditor's attorney reached a settlement with Mr. Newell and submitted a Stipulated Judgment to the Court.

The Bankruptcy Court set a hearing in the adversary proceeding on August 2, 1994. The hearing on the adversary complaint occurred on August 2, 1994, during the Accused's absence. As in the *Reedy* case, the Bankruptcy Court ignored its established protocol and set the hearing at a time when counsel of record had given notice that he would be out of the country. The Bar argued that by failing to appear at a hearing scheduled during his prearranged vacation, the Accused constructively withdrew from representing his clients and engaged in conduct prejudicial to the administration of justice. There was, however, no evidence that the Accused actually withdrew in either the *Reedy* or the *Newell* case. The Bar was required to show that the Accused caused "substantial harm to the administration of justice," *In re Jeffrey*, 321 Or 360, 898 P2d 752. However, in both the *Reedy* and the *Newell* cases, the hearings in early August were simply set over to later dates and no substantial harm to the litigants or the Courts resulted. The Accused did have staff available to assist Mr. Newell during his absence. If it were essential for an attorney to be retained, the Accused had made arrangements with Richard Huhtanen to cover his cases during his absence. However, in the *Newell's* case, Mr. Newell acted on his own, well before the August 2 hearing, and called the creditor's attorney on his own. This apparently happened without clearing it with either the Accused or the Accused's office. It was this contact by Mr. Newell which set in motion the events leading to the complaint against the Accused. The setover of a hearing improperly scheduled

by the Bankruptcy Court contrary to its established protocol while the Accused was on vacation, did not result in prejudice to the administration of justice.

*Failure to Obtain Court Permission to Withdraw from Employment
in Violation of DR 2-110(A)*

Failure to appear at a bankruptcy hearing scheduled contrary to established protocol during the Accused's absence does not constitute withdrawal. Upon the Accused's return, the formal settlement with the attorney for FCC was ratified and submitted to the Court. The Accused was retained to file a Petition for Chapter 7 bankruptcy relief. He was not retained to represent Mr. Newell in an adversary proceeding. As the adversary proceeding was resolved by a Stipulated Judgment, it was not necessary for separate counsel to appear on behalf of Mr. Newell in that proceeding.

The matter ultimately came to the attention of the Court because of correspondence directed to Bankruptcy Judge Polly Higdon from Mr. Newell. Mr. Newell became disenchanted because the Bankruptcy Trustee decided to proceed to recover the money which had been improperly paid to Mr. Newell's sons. The Accused, of course, could not have represented Mr. Newell's sons in the proceedings by the Trustee for recovery of the preferential payments. The Accused represented Mr. Newell and representation of his sons would have been a clear conflict of interest.

Judge Higdon clearly had strong feelings about the Accused. While the panel members certainly sympathized with the Court's feelings, it appeared that the facts in the *Newell* case did not justify the findings sought by the Oregon State Bar. Rather, it seemed that Judge Polly Higdon had formed opinions of the Accused based upon numerous cases which were not relevant in the present proceeding. It was obvious to all of the panel members that Judge Higdon had a strong belief that the Accused should not be practicing in the Bankruptcy Court. Panel members attempted to disregard Judge Higdon's testimony to the extent it was based on experiences and events outside the pleadings before the Trial Panel.

The Trial Panel concluded that Mr. Newell's complaints were less than objective. While Mr. Newell was successful in obtaining an Order setting aside the Judgment, the Trial Panel was not convinced that this was well founded in law. The attorney for the creditor, Stan Erickson, testified that the creditor decided not to pursue the matter strictly on a cost-effectiveness basis. He testified that he perceived that Mr. Newell would be judgment-proof and that the cost to the creditor simply would not be justified. It appeared clear to the Panel that Mr. Newell clearly had lied to the Accused and to the Bankruptcy Court by failing to disclose the preferential transfers; that not only was the debt to FCC National Bank not dischargeable, but Mr. Newell was in substantial jeopardy of having a general order of nondischargeability entered against him, making all other debts nondischargeable. Settlement of the FCC claim was a prudent decision. The Accused carried out his contract of employment. Because the adversary claim resulted in a Stipulated

Judgment of Dismissal, it was not necessary to obtain formal approval of the Bankruptcy Court as there were no pending matters before the Court and the Accused completed everything necessary to allow an Order of Discharge to be granted in the Chapter 7 proceeding. Only after the Chapter 7 proceeding was concluded did Mr. Newell attempt to reopen the matter through direct correspondence with the Court. The Accused had not represented Mr. Newell in the adversary proceeding, and it would have been improper for him to do so when Mr. Newell presented a claim, which the Trial Panel felt clearly was not warranted under existing law, and could not be supported by good faith argument for extension or reversal of existing law. The Accused was not retained to represent Mr. Newell in the adversary proceeding, and Mr. Newell had proceeded to represent himself and enter into a Stipulated Judgment in that case. The Bankruptcy Court, on its own motion, terminated the Accused's status as attorney of record in a letter dated April 5, 1995. At this time, there was no formal matter pending before the Court and Bankruptcy Judge Frank R. Alley III treated Mr. Newell's correspondence as a Motion for Relief from Judgment and set a hearing after terminating the Accused's status. This obviated the Accused from obtaining any further formal order from the Court allowing his withdrawal as attorney of record.

Neglect of a Legal Matter, Violation of DR 6-101(B)

There is no evidence that the Accused did not take all steps necessary to complete the Chapter 7 bankruptcy filing. The matter was in fact concluded until Mr. Newell's correspondence to the Court was treated as a Motion to Grant Relief from the judgment previously entered in the case. When Judge Alley set a hearing for an informal Motion for Relief from the stay, the Court terminated the Accused's status as attorney for Mr. Newell. Consequently, the Accused had no relationship which would require him to represent Mr. Newell on any legal matter.

Summary

The Trial Panel felt that the Bar did not prove its case on any of the charges. It was not necessary for the Panel to discuss or make recommendations regarding sanctions.

The Trial Panel unanimously recommends that all charges against the Accused in the pending case be dismissed.

DATED this 30th day of September 1998.

TRIAL PANEL:

/s/ Donald K. Armstrong
Donald K. Armstrong, OSB No. 73017

/s/ Ruby Brockett
Ruby Brockett

/s/ Derek C. Johnson
Derek C. Johnson, OSB No. 88234

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-170
)
BRUCE L. MELKONIAN,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4), and DR 1-103(C). Public reprimand.
Effective Date of Order: November 24, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter, having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good causing appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the parties is approved. The Accused shall be publicly reprimanded for violation of DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4), and DR 1-103(C) of the Code of Professional Responsibility.

DATED this 24th day of November 1998.

/s/ Armina J. Brown
Armina J. Brown
State Disciplinary Board Chairperson

/s/ Richard S. Yugler
Richard S. Yugler, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Bruce L. Melkonian, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused is, and at all times mentioned herein was, an attorney at law, duly admitted by the Oregon Supreme Court to the practice of law in this state, and a member of the Oregon State Bar, having his office and place of business in the County of Multnomah, State of Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On June 18, 1998, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-103(C), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility. 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 and Violation

5.

In or about June 1991, Accounts Retrieval Systems, Inc. (hereinafter “ARS”), a New York company, retained the Accused to collect certain delinquent credit card accounts. The Accused turned the accounts over to a Portland retail collection agency known as General Collection Services, Inc. (hereinafter “GCS”). The Accused informed ARS of this action. After GCS had worked on the claims for some months, the Accused advised ARS that the accounts were generally old, or that the debtors had moved, and that the accounts were of little value. Nevertheless, between about June 1991 and October 1993, the Accused received funds collected on the accounts by GCS and on eleven occasions, the Accused forwarded a percentage of these funds to ARS, together with letters detailing amounts collected and disbursed.

On one occasion in November 1991, the Accused received a payment from GCS that was inadvertently deposited into the Accused's office account, rather than his trust account, and was not forwarded to ARS.

6.

The Accused wound down his law practice during 1992 and transferred to inactive status in January 1993. After he became inactive, the Accused occasionally received funds from GCS for the benefit of ARS. Because the Accused was no longer practicing law, he did not have a trust account, designated as such, into which the ARS money could be deposited. The Accused did deposit the funds into a separate bank account and treated the account like a trust account, and he forwarded ARS's portion of the funds to ARS.

7.

In May 1997, ARS contacted the Accused and requested an accounting of all funds collected on their accounts. ARS believed that the Accused had collected more over the years than he had accounted for. As it turned out, the Accused had not collected more funds than he had accounted, with the exception of the November 1991 payment that had been inadvertently deposited into the Accused's office account. The Accused did not retrieve or examine his old records before denying to ARS that he owed it any money. Furthermore, the records that the Accused had retained did not comply with the requirement that he maintain and preserve complete records of all client funds coming into his possession for a period of at least five years after final disposition.

8.

On July 15, 1997, ARS filed a complaint with the Disciplinary Counsel's Office concerning the Accused's conduct. Disciplinary Counsel's Office forwarded a copy to the Accused and requested his explanation. In responding to the complaint, the Accused continued not to retrieve or examine records from years earlier when he actively practiced law, but responded reactively and with some measure of anger toward ARS, representing that he had not collected any funds on behalf of ARS. Subsequently, the Accused acknowledged to the Local Professional Responsibility Committee that his statement was not correct and that it was based upon a faulty memory and failure to review his records.

9.

During the course of the investigation, it was determined that the Accused received the November 1991 funds from GCS for the benefit of ARS, which had been deposited to the office account of the Accused. The Accused has since refunded this sum to ARS.

10.

The Accused admits that the aforementioned conduct constitutes violation of DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4), and DR 1-103(C) of the Code of Professional Responsibility.

Sanction

11.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”) should be considered. The *Standards* require that the Accused’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. *Standards* §3.0.

A. *Duty Violated.* In violating DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4), and DR 1-103(C), the Accused violated his duties to his clients and the profession. *Standards* §§4.1, 7.0.

B. *Mental State.* The Accused’s conduct was negligent, defined in the *Standards* as a failure 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 7. The Accused made an error with the November 1991 deposit, did not keep sufficient records when he closed down his law practice and went inactive, and was not careful to review his records when he responded first to ARS and then to the Bar when questioned about this matter.

C. *Injury.* The Accused’s conduct resulted in actual and potential injury to ARS and the Bar. Because the Accused failed to maintain adequate records, he failed to deliver in a timely manner funds ARS was entitled to receive. Since the conclusion of the investigation, the Accused has forwarded the November 1991 funds to ARS. The Accuser’s failure to prepare, maintain and preserve required trust account records for a period of five years also caused the investigation to be more time-consuming and difficult. Additional inquiries had to be made and records obtained from others to reconstruct the information that should have been available from the Accused.

D. *Aggravating Factors.* Aggravating factors to be considered include:

1. The Accused has a prior disciplinary record consisting of an admonition in 1988 for violation of DR 1-102(A)(4) and ORS 9.460(2); and an admonition in 1993 for violation of DR 7-106(C). *Standards* §9.22(a).

2. This Stipulation involves four rule violations. *Standards* §9.22(d).

3. The Accused was admitted to practice in 1972 and has substantial experience in the practice of law. *Standards* §9.22(i).

4. The Accused's manner of reacting to the complaint of ARS, rather than carefully reviewing available records, inhibited for a time the Bar's investigation of the matter. *Standards* §9.22(f).

E. *Mitigating Factors.* Mitigating factors to be considered include:

1. The Accused had no dishonest or selfish motive. *Standards* §9.32(b).

2. After the Accused discovered that he had not paid over the November 1991 funds, he forwarded the funds to ARS, and therefore made a good-faith effort to rectify the consequences of his error. *Standards* §9.32(d).

3. The Accused ultimately displayed a cooperative attitude in the investigation and in resolving this formal proceeding. *Standards* §9.32(e).

4. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(l).

12.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards* §4.13. Reprimand is also appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system.

Oregon case law also suggests a reprimand is an appropriate sanction in this matter. *See In re Mannis*, 295 Or 594, 668 P2d 1224 (1983); *In re Klemp*, 11 DB Rptr 1 (1997); *In re Bettis*, 12 DB Rptr 163 (1998).

13.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for the violations specified herein.

14.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the sanction was approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

DATED this 6th day of November 1998.

/s/ Bruce L. Melkonian

Bruce L. Melkonian

OSB No. 72309

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

Cite as 328 Or 18 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
JEFFREY T. MURDOCK,)
)
Accused.)

(OSB 96-68; SC S43613)

On review of the decision of a trial panel of the Disciplinary Board.
Submitted on the record December 8, 1997. Decided November 27, 1998.
Jeffrey T. Murdock, *pro se*, filed the brief for the Accused.

Chris L. Mullmann, Assistant Disciplinary Counsel, Lake Oswego, filed the brief for the Oregon State Bar.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Durham, and Kulongoski, Justices. (Fadeley, J., retired January 31, 1998, and did not participate in this decision; Graber, J., did not participate in this decision.)

PER CURIAM

The Accused is disbarred.

SUMMARY OF SUPREME COURT OPINION

The Accused was employed as an associate in a law firm. The Accused diverted \$6,917.78 and converted \$2,525 of his firm's funds to his own use without the firm's consent or knowledge. The Oregon State Bar charged the Accused with violating Code of Professional Responsibility Disciplinary Rules (DR) 1-102(A)(2) and (3) and ORS 9.527(1) and (4). The Accused stipulated to violating those rules. A trial panel sanctioned the Accused with a three-year suspension. On mandatory review, the Accused argued that his addiction to alcohol and illegal drugs should mitigate his sanction, based on ABA Standard 9.32(i) (amended 1992). The Supreme Court concluded that, generally, a lawyer who converts a client's funds will be disbarred. In this case, the court concluded that disbarment generally will follow embezzlement from a lawyer's law firm. Further, the Supreme Court concluded that the Accused had not presented evidence that would justify the imposition of any sanction less than disbarment. *Held*: The Accused is disbarred.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case Nos. 97-2, 97-3, 97-4,
) 97-5, 98-119
CELESTE C. WHITEWOLF,)
) SC S45898
Accused.)

Bar Counsel: Thomas Busch, Esq.
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 2-106(A), DR 1-103(C), DR
3-101(B), DR 1-102(A)(4), DR 6-101(B), and ORS
9.160. 18-month suspension.
Effective Date of Order: November 25, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

The Oregon State Bar and Celeste C. Whitewolf have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Celeste C. Whitewolf is suspended from the practice of law for a period of 18 months. The Stipulation for Discipline is effective the date of this order.

DATED this 25th day of November 1998.

/s/ Wallace P. Carson
Wallace P. Carson, Jr.
Chief Justice

STIPULATION FOR DISCIPLINE

Celeste Whitewolf, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Celeste Whitewolf, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1988, and has been a member of the Oregon State Bar since that time, having her office and place of business at times relevant to this proceeding in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On July 17, 1997, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of a number of disciplinary rules in Case Nos. 97-2, 97-3, 97-4, and 97-5. A copy of the Formal Complaint is attached to this stipulation as Exhibit A. On August 19, 1998, the SPRB authorized an additional charge in Case No. 98-119, described further below.

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.

No. 97-2 Farron Estate

Facts

5.

In November 1994, the Accused undertook to represent Karon Fisher as personal representative in the probate of the Estate of Lisa Farron, Multnomah County Circuit Court Case No. 9411-91965. Between November 8, 1994, and July 10, 1995, the Accused billed to the estate \$14,933.80 in attorney fees and costs. Of this amount, \$5,000 was approved by the probate court on April 6, 1995, and then paid to the Accused. The remainder was not approved by the probate court before it was paid to the Accused on July 24, 1995. By the time these remaining attorney fees were disbursed to the Accused on July 24, the estate file had been turned over to the Division of State Lands (the successor personal representative) and there was doubt over who was responsible for securing court approval.

6.

Pursuant to ORS 116.183, attorney fees require advance approval by the probate court before they are paid to the lawyer.

7.

In September and October 1996, the Bar made three written requests of the Accused to respond to allegations that had been made about the Accused's conduct in the Farron Estate. Although the Accused sent a letter to the Bar in early October 1996, advising that she would be delayed in her response, she made no substantive response thereafter about the Farron Estate. As a result, the matter was referred to the Multnomah County Local Professional Responsibility Committee (LPRC) for investigation.

Violations

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5–7, she violated DR 2-106(A) and DR 1-103(C) of the Code of Professional Responsibility.

9.

Upon further evaluation of the evidence after discovery, the parties agree that all other charges alleged in the First Cause of Complaint in the Formal Complaint should be and, upon the approval of this stipulation, are dismissed.

No. 97-3 Practicing While Suspended

Facts

10.

The Accused was suspended from the practice of law from July 2, 1996, to August 8, 1996, for failing to pay the 1996 Bar membership assessment. She received prompt notification of her suspension.

11.

While suspended, the Accused continued to practice law in some of her cases as follows: in one state court matter, she argued a motion during a telephone hearing; in a federal court matter, she appeared on behalf of her client at sentencing; in another federal court matter, she participated in a scheduling conference and communicated with other lawyers involved in the matter; in the Farron Estate (No. 97-2, above), she communicated with successor counsel for the estate using letterhead indicating she was a practicing lawyer and appeared at a hearing in which the reasonableness of her attorney fees was at issue; and in the Llana Estate (No. 97-4, below), she filed a final accounting with the probate court. The Accused did

not advise any of the clients, counsel, or judges with whom she had contact that she was suspended from the practice of law.

Violation

12.

The Accused admits that, by engaging in the conduct described in paragraphs 10–11 above, she violated DR 3-101(B) of the Code of Professional Responsibility and ORS 9.160.

No. 97-4 Llaneza Estate

Facts

13.

In October 1992, the Accused undertook to represent co-personal representatives in the probate of the Estate of Flora Llaneza, Multnomah County Circuit Court No. 9209-91606. The Accused remained attorney of record in the estate until September 1996.

14.

During the course of the probate, the Accused failed to promptly administer the estate, or assist her clients in promptly administering the estate, as follows: various filings made with the court did not comply with applicable court rules and statutes and were therefore rejected by the court; accountings and other required filings were not timely filed, necessitating numerous reminder notices and show cause orders to be issued by the court; the bond was allowed to be canceled twice (the personal representative sought a lower bond premium once) and replacement bonds were not promptly obtained; and a lack of communication from the Accused and failure to comply with court directives ultimately resulted in the court removing the personal representatives from the estate.

15.

In October 1993, the Accused sought approval from the court for the payment of \$700 in interim attorney fees. Approval was denied because of various deficiencies in the probate administration to date.

In March 1995, the estate bank account was garnished in the amount of \$6,409 by a judgment creditor of the Accused. The garnishment came about after the Accused listed the Llaneza Estate as one of her accounts receivable in a judgment debtor examination, and the judgment creditor issued a garnishment to one of the personal representatives. When no response was made to the garnishment, the judgment creditor obtained a default judgment against the estate as garnishee, and then garnished the estate bank account without opposition from the Accused. The Accused and her clients agreed that the garnishment of the estate account would, in effect, constitute payment of the Accused's attorney fees in the probate. The probate

court was not advised of the garnishment until several months after the fact. While the Accused was attorney of record, the probate court did not approve payment of attorney fees to the Accused, although it did so thereafter when a successor personal representative was appointed who reported to the court that all estate assets had already been paid out.

16.

In March 1996, the Accused prepared a final accounting for the estate and paid out all probate assets to the heirs. The court did not order or approve the distribution of the assets to the heirs; in fact, the court did not learn that the assets had been distributed until a successor personal representative was appointed several months later. Under Oregon law, the probate court must approve distributions to heirs before payment is made.

Violation

17.

The Accused admits that, by engaging in the conduct described in paragraphs 13–17, she violated DR 1-102(A)(4), DR 2-106(A), and DR 6-101(B) of the Code of Professional Responsibility.

No. 97-5 Shippentower Matter

Facts

18.

In June 1994, the Accused began to represent Debbie Shippentower, and other passengers in Ms. Shippentower's automobile, in connection with injuries sustained in a motor vehicle accident. The Accused obtained settlements of the passengers' claims. After June 1995, however, the Accused failed to take any action in furtherance of her client's personal injury claim, failed to file a civil complaint in the matter, and failed to respond to inquiries from her client about the status of the matter. Ultimately, the Professional Liability Fund paid out a sum of money to Ms. Shippentower as a result of the Accused's conduct.

Violation

19.

The Accused admits that, by engaging in the conduct described in paragraph 18, she violated DR 6-101(B) of the Code of Professional Responsibility.

20.

Upon further evaluation of the evidence after discovery, the parties agree that the other charge alleged in the Fifth Cause of Complaint in the Formal Complaint should be and, upon the approval of this stipulation, is dismissed.

No. 98-119 Morton-Gobbi Matter

Facts

21.

In October 1995, the Accused began to represent Jean Morton-Gobbi to assist her with an employment-related stress claim. Thereafter, the Accused pursued the matter on behalf of her client as a workers' compensation claim before the Workers' Compensation Board. Following an unsuccessful mediation of the matter in May 1996, the Accused withdrew from representing Morton-Gobbi in June 1996.

22.

Pursuant to Oregon law, a lawyer may not collect an attorney fee in a workers' compensation matter without approval of the Workers' Compensation Board or its designee.

23.

Between October 1995 and June 1996, the Accused collected \$979.66 from Morton-Gobbi as attorney fees and costs. The Accused did not seek or obtain approval of the attorney fee from the workers' compensation authorities.

Violation

24.

The Accused admits that, by engaging in the conduct described in paragraphs 21-23, the Accused violated DR 2-106(A) of the Code of Professional Responsibility.

Sanction

25.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Supreme Court should consider the ABA *Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated various duties in this matter. By collecting attorney fees that were illegal or contrary to law, the Accused violated her duty to her clients and to the profession, *Standards* §§4.1, 7.0. By practicing law while suspended, the Accused violated her duty to the profession, *Standards* §7.0. By neglecting a probate and interfering with the court's probate administration, the Accused violated her duty to her clients and to the legal system, *Standards* §§4.4, 6.2. By failing to respond to a Bar inquiry, the Accused violated her duty to the

profession, *Standards* §7.0. By neglecting Ms. Shippentower's matter, the Accused violated her duty to her client, *Standards* §4.4.

B. *Mental State.* With regard to mental state, the Accused acted negligently in the Farron Estate and Llaneza Estate in that she was not very experienced in probate matters and was unaware of the proper procedures to follow. The same is true in the Morton-Gobbi matter to the extent that she did not realize she could not take a fee in a workers' compensation matter without proper approval. The Accused also acted negligently in the Shippentower matter.

With regard to her practicing law while suspended, the Accused acted knowingly. That is, she knew she was suspended and knew she should not practice law while suspended, but made a choice to handle some client matters regardless so as not to leave the clients without counsel.

The Accused also acted knowingly when she failed to respond timely to the Bar inquiry, although the Accused's depressed mental state at the time made it difficult for her to face the matter.

C. *Injury.* Injury may be either actual or potential. In this case, the probate court in the Farron Estate and the Llaneza Estate was injured in that it could not fulfill its statutory responsibilities to insure the orderly administration of these estates or the payment of attorney fees. The Accused's failure to respond to the Bar necessitated a referral to the LPRC. There was great potential injury in the Accused practicing law while suspended in that the clients had no lawful representation or malpractice protection when represented by the Accused. Ms. Shippentower was injured by the Accused's failure to tend to her client's personal injury claim, although a claim was later made and paid by the Professional Liability Fund in connection with the Accused's inaction. In the Morton-Gobbi matter, the Workers' Compensation Board was denied its opportunity to oversee the payment of attorney fees. The Accused ultimately did refund the attorney fee to Morton-Gobbi after a Bar complaint was filed.

D. *Aggravating Factors.*

1. The Accused has been admonished twice in the past, in August 1991 for contacting a represented party in violation of DR 7-104(A)(1); and again in December 1993 for neglecting a client matter in violation of DR 6-101(B) and failing to respond to the Bar's inquiry of the matter in violation of DR 1-103(C), two violations that are also present in the pending proceeding. *Standards* §9.22(a).

2. The Accused engaged in a pattern of misconduct. *Standards* §9.22(c).

3. Multiple offenses were involved. *Standards* §9.22(d).

4. The Accused failed to cooperate initially with the investigation of the Farron Estate matter. *Standards* §9.22(e).

E. *Mitigating Factors.*

1. The Accused was not acting with a dishonest motive. *Standards* §9.32(b).

2. The Accused was experiencing personal and financial problems during relevant time periods, which affected her mental state adversely. The Accused experienced a type of depression which led to her decision to begin closing down her office in January 1996, and she was out of her office for considerable periods during June through September 1996. *Standards* §9.32(c), (h).

3. The Accused repaid her attorney fee to Ms. Morton-Gobbi. *Standards* §9.32(d).

4. Although experienced in the practice of law, the Accused was not familiar with probate or workers' compensation matters. *Standards* §9.32(f).

5. The Accused is remorseful for her conduct. *Standards* §9.32(l).

26.

The ABA *Standards* provide that a period of suspension is appropriate in this matter. *See Standards* §§4.12, 4.42, 6.22, 7.2.

27.

Although no Oregon case contains the exact violations described herein, various cases provide guidance in each of the areas of violation. When the various violations committed by the Accused in this proceeding are taken together as a whole, a significant term of suspension appears warranted. *See In re Altstatt*, 321 Or 324, 897 P2d 1164 (1995) (one-year suspension for taking probate fee without court approval, among other violations); *In re Devers*, 317 Or 261, 855 P2d 617 (1993) (six-month suspension for taking unapproved probate fee, among other violations); *In re Sassor*, 299 Or 570, 704 P2d 506 (1985) (one-year suspension for neglect, for taking a workers' compensation fee without proper approval, and other violations); *In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (120-day suspension for not cooperating with a Bar inquiry); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (120-day suspension for not responding to a Bar inquiry and neglect); *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997) (same lawyer and same violations as *Schaffner I*, resulting in two-year suspension); *In re Jones*, 312 Or 611, 825 P2d 1365 (1992) (disbarment for practicing law while suspended, among other violations and prior disciplinary history).

28.

Consistent with the ABA *Standards* and Oregon case law, the Accused agrees to accept a suspension from the practice of law for a period of 18 months to commence immediately upon approval of this stipulation by the Supreme Court.

29.

The Accused acknowledges that, upon the expiration of the 18-month term of suspension, she is required to apply for reinstatement under BR 8.1, and to establish under that rule her character and fitness to practice law.

30.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 3rd day of November 1998.

/s/ Celeste Whitewolf

Celeste Whitewolf

OSB No. 88329

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro

Jeffrey D. Sapiro

OSB No. 78362

Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-165
)
MARTIN VAN ZEIPEL,) SC S32850
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Stephen R. Moore, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR
7-102(A)(5), and ORS 9.460(2). One-year suspension.
Effective Date of Order: December 15, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

The Oregon State Bar and Martin Van Zeipel have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Martin Van Zeipel is suspended from the practice of law for a period of one year. The Stipulation for Discipline is effective December 15, 1998.

DATED this 25th day of November 1998.

/s/ Wallace P. Carson

Wallace P. Carson, Jr.
Chief Justice

STIPULATION FOR DISCIPLINE

Martin Van Zeipel, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Martin Van Zeipel, was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 1, 1968, and, except as noted in paragraph 12D herein, has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On March 9, 1998, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), and ORS 9.460(2). 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.

On or about August 30, 1996, the Accused filed a lawsuit in Multnomah County Circuit Court on behalf of Superior Hardwood Floors, Inc., against Matt Summers and Hardwood Industries, Inc. (hereinafter "the lawsuit"). The Accused did not attempt to serve the defendants with the summons and complaint until on or about January 13, 1997.

6.

Sometime prior to December 11, 1996, the Multnomah County Circuit Court issued a notice to the Accused of its intent to dismiss the lawsuit for want of prosecution if proofs of service were not filed within 28 days.

7.

On or about December 11, 1996, the Accused submitted to the Multnomah County Circuit Court Administrator an affidavit in which the Accused represented that:

(A) He had been in contact with “defense counsel”;

(B) He had forwarded acceptances of service to defense counsel, but none had been returned; and

(C) He had not pressed defense counsel to return the acceptances of service due to settlement negotiations.

In fact, the Accused had been in contact with only one of three defense counsel; he had not forwarded acceptances of service to defense counsel (although, at the time, he thought his office staff had done so); and there had not been settlement negotiations with defense counsel with respect to the lawsuit.

8.

On December 23, 1996, the Circuit Court dismissed the lawsuit for want of prosecution.

9.

On or about December 31, 1996, the Accused filed with the Circuit Court a Motion for Reinstatement of the lawsuit. In support of this Motion for Reinstatement, the Accused filed an Affidavit in which he represented that he had not yet received acceptances of service from opposing counsel despite opposing counsel’s agreement to accept service.

In fact, the Accused’s office had not yet sent acceptances of service to opposing counsel, and the Accused did not check with his staff to confirm whether the acceptances had been sent. Further, the Accused did not have an agreement with opposing counsel to accept service. The Accused thought one opposing counsel had agreed to accept service, which that lawyer disputes, but the Accused admits he had no such agreement of any kind with other defense counsel.

10.

On December 31, 1996, pursuant to the Accused’s Motion for Reinstatement, the Circuit Court entered an order reinstating the lawsuit. Thereafter, the Accused sent opposing counsel acceptance of service forms.

Violation

11.

The Accused admits that by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5) of the Code of Professional Responsibility and ORS 9.460(2).

Sanction

12.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his client, the legal system, and the profession. *Standards* §§4.0, 6.0, 7.0.

B. *Mental State.* With regard to mental state, the Accused made misrepresentations to the court with the intent first to avoid a dismissal of the lawsuit, then to reinstate it. An intentional mental state is defined as the conscious objective or purpose to accomplish a particular result. *Standards* at 7.

C. *Injury.* Injury may be either actual or potential. In this case, the injury was actual to the extent that the Multnomah County Circuit Court reinstated the lawsuit based, at least in part, on false representations made to it by the Accused. Even if not acted upon, there is great potential injury to the system of justice and the court's ability to rely on lawyers when a lawyer makes false statements to a court. In addition, the implication from the Accused's representations was that opposing counsel had been dilatory and had not upheld their end of an agreement regarding acceptance of service, when this was not true.

D. *Aggravating Factors.*

1. The Accused has a prior disciplinary record. He was admonished in 1984 for violating DR 6-101(B), DR 7-101(A), and DR 2-110(A)(2) in conjunction with his handling of a postconviction relief matter on behalf of a client. In 1987, the Accused was admonished for violating DR 1-103(C) for failing to respond to or cooperate with a Bar inquiry. In 1992, the Accused received a public reprimand for violating DR 1-103(C) for failing to respond to a Bar inquiry. *In re Van Zeipel*, 6 DB Rptr 71 (1992). In 1993, the Accused was suspended for 60 days, all of which was stayed, pending two years of probation for violating DR 6-101(B) by neglecting a legal matter. *In re Van Zeipel*, 7 DB Rptr 161 (1993). *Standards* §9.22(a);

2. The Accused engaged in a pattern of misconduct. *Standards* §9.22(c);

3. The Accused's behavior involved multiple offenses. *Standards* §9.22(d); and

4. The Accused has substantial experience in the practice of law. *Standards* §9.22(i).

E. *Mitigating Factors.*

1. The Accused has fully cooperated with the disciplinary investigation. *Standards* §9.32(e); and

2. The Accused has expressed remorse regarding his conduct. *Standards* §9.32(l).

13.

The *Standards* provide that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards* §6.12. Suspension is also generally appropriate according to the *Standards* when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.2.

14.

Oregon case law is in accord. In *In re Morris*, 326 Or 493, 953 P2d 387 (1998), the lawyer was suspended for 120 days for, among other violations, altering a final account in a probate matter and submitting it to the court without approval of the personal representative. In *In re Staar*, 324 Or 283, 924 P2d 308 (1996), the lawyer was suspended for two years for false swearing in a FAPA petition. In *In re Claussen*, 322 Or 466, 909 P2d 862 (1996), the lawyer was suspended for one year for misrepresentations in documents filed with the court, among other violations. In *In re Hedrick*, 312 Or 442, 822 P2d 1187 (1991), a lawyer with a significant, prior disciplinary history, like the Accused in this proceeding, was suspended for two years for making a misrepresentation concerning a “last will” filed with the probate court. See also *In re McKee*, 316 Or 114, 849 P2d 509 (1993), where an attorney with prior discipline was suspended for 18 months for misrepresenting to the court the existence of a settlement agreement even though he genuinely believed his client would settle; *In re Recker*, 309 Or 633, 789 P2d 663 (1990), where a lawyer was suspended for two years for, among other violations, misrepresenting to the court that a client had not been communicative with the lawyer; and *In re Hiller*, 298 Or 526, 694 P2d 540 (1985).

15.

The Accused agrees to a suspension of 12 months for his violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), and ORS 9.460(2), which shall be effective November 25, 1998, or 21 days after the Supreme Court approves this Stipulation, which ever occurs later.

16.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the SPRB on September 19, 1998. The parties agree the stipulation is to be submitted to the Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 14th day of October 1998.

/s/ Martin Van Zeipel
Martin Van Zeipel
OSB No. 68170

EXECUTED this 15th day of October 1998.

OREGON STATE BAR

By: /s/ Chris L. Mullmann
Chris L. Mullmann
OSB No. 72311
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case Nos. 96-124, 98-30
)
JOHN A. WETTELAND,)
)
Accused.)

Bar Counsel: Roscoe C. Nelson II, Esq.
Counsel for the Accused: None
Disciplinary Board: Leslie M. Roberts, Esq., Chair; G. Kenneth Shiroishi, Esq.; Robert L. Vieira, Public Member
Disposition: Violation of DR 2-106(A), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4) (Case No. 96-124), and DR 6-101(B) (Case No. 98-30). 60-day suspension.
Effective Date of Order: January 1, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved and the Accused shall be suspended for 60 days, effective January 1, 1999, for violation of DR 2-106(A), two counts of DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4).

DATED this 1st day of December 1998.

/s/ Armina J. Brown
Armina J. Brown
State Disciplinary Board Chairperson

/s/ Richard S. Yugler
Richard S. Yugler
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

John A. Wetteland, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, John A. Wetteland, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 24, 1978, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On August 21, 1997, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 2-106(A), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3)–(4) in Case No. 96-124 (Pratt matter). On March 19, 1998, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the SPRB alleging violation of DR 2-106(A), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3)–(4) in Case No. 96-164 (Pratt matter) and DR 6-101(B) in Case No. 98-30 (McClain matter). 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

Case No. 96-124

Pratt Matter

5.

On or about August 25, 1995, the Accused undertook to represent Christopher Pratt to file a petition for postconviction relief on Pratt’s criminal conviction. Pursuant to an oral fee agreement, Mr. Pratt’s sister paid the Accused what was designated to be a “flat fee” of \$2,000 for the postconviction proceeding.

The Accused did not deposit the \$2,000 into his client trust account and did not maintain records reflecting the date, amount, source, or explanation for the receipt or disbursement of the \$2,000, nor did he render an account to Mr. Pratt or his sister regarding this money.

After August 25, 1995, the Accused determined that postconviction relief on behalf of Pratt was not warranted, but failed to notify Mr. Pratt or his sister of this determination, take any other action to protect Mr. Pratt's rights, or respond to attempts by Mr. Pratt and his sister to communicate with him about the matter.

Mr. Pratt terminated the Accused's employment on or about January 8, 1996, and requested that the Accused return to him his entire client file. The Accused did not deliver Mr. Pratt's entire file to him until on or about July 16, 1996.

Facts

Case No. 98-30

McClain Matter

6.

In or about April 1995, the Accused undertook to represent Janis McClain in a property damage claim. Thereafter, the Accused took little or no substantial action on behalf of Ms. McClain until on or about May 19, 1997, when he withdrew from representing her.

Violation

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 2-106(A), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3)–(4) in the Pratt Matter (Case No. 96-124) and DR 6-101(B) in the McClain Matter (Case No. 98-30).

Sanction

8.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his clients to act diligently on their behalf and his duty to preserve his client's property.

B. *Mental State.* With regard to mental state, the Accused knew he was not performing the services Ms. McClain had requested, knew that he was not

communicating to Mr. Pratt that he had decided not to proceed with a postconviction proceeding, and knew he was taking no action to preserve Mr. Pratt's postconviction remedies. The Accused was negligent in determining that Mr. Pratt's retainer should be deposited into his client trust account and keeping records accordingly.

C. *Injury*. Injury may be either actual or potential. In this case, Mr. Pratt was actually injured in that he lost his opportunity for postconviction review of his claims by a court and did not receive a refund of the unearned portion of his retainer. Ms. Robison suffered no actual injury but the Accused's inaction had the potential to cause her claim to be barred by the statute of limitations.

D. *Aggravating Factors*.

1. The Accused has a prior record of disciplinary offenses. In 1989, he was admonished for violation of DR 6-101(B) (neglect of a legal matter) for failure to file an amended complaint on behalf of a client for a period of 18 months. *Standards* §9.22(a).

2. When taken with the above-described neglect of a legal matter, the Accused has displayed a pattern of neglecting client matters. *Standards* §9.22(c).

3. The Accused has committed multiple disciplinary violations. *Standards* §9.22(d).

E. *Mitigating Factors*.

1. The Accused did not have a dishonest or selfish motive in his conduct. *Standards* §9.32(a).

2. The Accused was experiencing personal or emotional problems (*Standards* §9.32(c)) and/or physical or mental disability or impairment (*Standards* §9.32(h)) at the time of the conduct. During the period of time he was representing Mr. Pratt and Ms. McClain, the Accused was involved in a conflict with his former wife regarding visitation with and support of his three-year-old son. During this period of time, the Accused was also representing a defendant in a gang case brought under the organized crime statutes and was suffering considerable stress as a result of the conduct of the defendant's family and gang associates. The Accused began to drink heavily and became impaired by and dependent upon alcohol.

3. The Accused has recognized his impairment by alcohol abuse and has voluntarily placed himself in the AA program. He has been alcohol-free since he entered the AA program in April 1997. *Standards* §9.32(j).

4. The Accused has expressed remorse for his inaction in Ms. McClain's matter and has apologized to her. *Standards* §9.32(l).

The ABA *Standards* §4.42 suggests that a period of suspension is appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client or when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Oregon case law is in accord. See *In re Chandler*, 303 Or 290, 735 P2d 1220 (1987), where the lawyer was suspended for 63 days for violation of DR 1-103(C), former DR 6-101(A)(3) (current DR 6-101(A)), and former DR 9-101(B)(4) (current DR 9-101(C)(4)); and *In re Solomon*, 11 DB Rptr 47 (1997), where the lawyer was suspended for violation of DR 2-106(A), DR 6-101(B) (two counts), DR 7-101(A)(2), DR 9-101(A), and DR 9-101(C)(3).

9.

Consistent with the ABA *Standards* and Oregon case law, the Accused and the Bar agree that the Accused shall receive a 60-day suspension for violation of DR 2-106(A), two counts of DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3)–(4) is a 60-day suspension from the practice of law. The Accused and the Bar agree that the suspension shall commence on the 30th day following approval of this Stipulation for Discipline by the Disciplinary Board.

10.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the SPRB. If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 21st day of October 1998.

/s/ John A. Wetteland

John A. Wetteland

OSB No. 78106

EXECUTED this 24th day of November 1998.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks

OSB No. 75167

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-92
)	
JOHN W. SMALLMON,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 2-110(B) and DR 7-102(A)(7). 30-day suspension.
Effective Date of Order:	December 3, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter, having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good causing appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the parties is approved. The Accused shall be suspended for a period of 30 days, commencing December 3, 1998, for violation of DR 2-110(B) and DR 7-102(A)(7) of the Code of Professional Responsibility.

DATED this 1st day of December 1998.

/s/ Arminda J. Brown
 Arminda J. Brown
 State Disciplinary Board Chairperson

/s/ Stephen M. Bloom
 Stephen M. Bloom, Region 1
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

John W. Smallmon, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, John W. Smallmon, is, and at all times mentioned herein was, an attorney at law duly admitted by the Supreme Court of the State of Oregon to practice law in this state, and a member of the Oregon State Bar, having his office and place of business in Umatilla, State of Oregon.

3.

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

4.

On October 16, 1997, the State Professional Responsibility Board directed that formal disciplinary proceedings be instituted against the Accused. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

John Fredrickson owned certain real property in Umatilla County. Since August 1979, Umatilla County (hereinafter “County”) found that an accumulation of solid waste on Fredrickson’s property was a public nuisance. In October 1981, Fredrickson and the County entered into a covenant not to enforce the judgment against Fredrickson for his solid waste violations on the condition that Fredrickson clean up his property. Fredrickson failed to clean up the property.

In June 1994, Fredrickson was again found to be in violation of the County’s solid waste ordinance and also in violation of its development ordinance for allowing unauthorized occupation of camp trailers as dwellings. Fredrickson was fined, a portion of which was suspended provided he complied with the solid waste ordinance by September 1994. Fredrickson failed to comply.

6.

In August 1994, Fredrickson agreed to sell two acres of his land to Nouaneta Sisayaket for \$11,000, plus certain expenses and title insurance. Sisayaket paid Fredrickson \$5,000 on August 12, 1994, and \$3,000 on August 16, 1994. With the \$8,000, Fredrickson paid back taxes for the years 1990–1993. Fredrickson and Sisayaket did not have an earnest money agreement or other writing memorializing the agreement for the sale of the property.

7.

On September 13, 1994, Fredrickson and Sisayaket met with Fredrickson's attorney, the Accused, to arrange for the transfer of the property. Fredrickson told the Accused that he had agreed to sell a portion of his land to Sisayaket and the terms of sale. Fredrickson also told the Accused that Sisayaket had already paid him \$8,000 and was ready to pay him the balance. The Accused told Fredrickson that the property had to be partitioned before he could deed the property to Sisayaket. ORS 92.012 prohibits the partitioning of land except in accordance with ORS 92.010–92.190. The Umatilla County Development Code also prohibits a person from disposing of, transferring, selling, or agreeing to sell any parcel of land in a major or minor partition before obtaining approval of a major or minor partition. The County would not approve any land partition until Fredrickson complied with the solid waste ordinance, cleaned up his property, and paid outstanding fines.

On September 13, 1994, Sisayaket paid Fredrickson the \$3,000 balance of the purchase price for the property, which the Accused deposited in his client trust account pending completion of the partition. The Accused also prepared a recap of receipts, which both Fredrickson and the Accused signed.

8.

Thereafter, a surveyor was hired to prepare a survey for the partition. In March 1995, the County obtained a preliminary injunction and judgment against Fredrickson for ongoing solid waste violations and for renting camp trailer sites. Fredrickson was ordered to abate the violations, but did not comply. A preliminary plan for partition was filed with the County in September 1995. The Accused filed a formal application for partition in late November 1995. In January 1996, the County notified the Accused that no application for partition would be approved until Fredrickson complied with the solid waste ordinance, cleaned up his property, and paid outstanding fines. Subsequently, the Accused contacted the County Commissioners and pointed out that allowing the partition would provide Fredrickson with the opportunity to sell portions of his property and from the proceeds have funds to clean up the property and pay outstanding fines. Nevertheless, in February 1996, the County returned Fredrickson's application for partition and fee to the Accused, again affirming that the application would not be considered until Fredrickson cleaned up his property and paid outstanding fines.

Fredrickson did not have the financial resources to do so. Furthermore, the cost to clean up the property likely exceeded its value.

9.

In June 1996, Fredrickson was sued for \$11 million by a person who had sustained injuries when a dwelling he was renting from Fredrickson caught fire. Sisayaket's \$11,000 was at risk because he did not have title to the property, and Fredrickson did not have funds to repay Sisayaket. The Accused told Fredrickson that he could not advise him to deliver or record a deed contrary to the County's land use planning laws and, if Fredrickson gave Sisayaket a deed, it would be in violation of the law and Sisayaket could still lose his investment. Fredrickson told the Accused to prepare the deed because recording the deed would be better than losing the property in the event a judgment was obtained against him. Fredrickson asked the Accused to assist him in preparing and recording the deed in violation of the law. The Accused obtained a legal description of the property and prepared a deed, which Fredrickson signed. The Accused thereafter sent the deed to be recorded in the real property records. The deed was recorded on November 1, 1996. The Accused should have refused to assist his client, and if Fredrickson insisted, withdrawn as Fredrickson's attorney.

Violation

10.

Based on the foregoing, the Accused admits that his conduct constituted a violation of DR 2-110(B), failure to withdraw when a lawyer knows or it is obvious that the lawyer's continued employment will result in violation of a disciplinary rule, and DR 7-102(A)(7), counseling or assisting the lawyer's client in conduct that the lawyer knows to be illegal (or fraudulent).

Sanction

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are to be considered. The *Standards* require that the Accused'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.* In violating DR 2-110(B)(2) and DR 7-102(A)(7), the Accused violated his duties to the legal system and the profession. *Standards* §§6.0, 7.0.

B. *Mental State.* The Accused acted with knowledge and intent. "Knowledge" is the conscious awareness of the nature or the attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a

particular result. “Intent” is the conscious objective or purpose to accomplish a particular result. *Standards* at 7. The Accused knew that it was a violation of the law to transfer property and record the deed when Fredrickson’s property had not been partitioned. Nevertheless, he assisted his client by preparing and recording the deed.

C. *Injury*. The Accused’s conduct resulted in actual and potential injury. The Accused prepared a deed, which Fredrickson signed and the Accused subsequently filed in the real property records when such action should not have occurred. The Accused subjected his client to potential civil and criminal liability for transferring property in violation of the law. The Accused placed Sisayaket’s interests at greater risk by accepting the balance of the purchase price. As a result of the Accused’s filing of a deed for a portion of Fredrickson’s property, additional time was required by the County Commissioners and County Counsel to deal with these issues.

D. *Aggravating Factors*.

1. The Accused has a prior record of discipline, having been admonished in 1983 for violation of DR 7-104(A)(1), communicating with a person represented by counsel. *Standards* §9.22(a).

2. The Stipulation involves two rule violations. *Standards* §9.22(d).

3. The Accused has substantial experience in the practice of law, having been admitted to practice in this state in 1962. *Standards* §9.22(i).

E. *Mitigating Factors*.

1. The Accused did not act with dishonest or selfish motives. *Standards* §9.32(b). The Accused did not believe that anyone would be harmed by his actions. Rather, if he failed to assist Fredrickson, Fredrickson would have been required to return funds to Sisayaket, which he no longer had, and Sisayaket’s payment to Fredrickson would have been jeopardized in the event that the personal injury claim against Fredrickson by a third party resulted in a judgment lien before Fredrickson could partition the property.

2. The Accused cooperated with the Disciplinary Counsel’s Office and the Local Professional Responsibility Committee in responding to the complaint and resolving this disciplinary proceeding. *Standards* §9.32(e).

3. The Accused is of good character and reputation. *Standards* §9.32(g).

4. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(l).

5. The Accused’s prior disciplinary record is remote, having occurred over 15 years ago. *Standards* §9.32(m).

12.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession,

and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.2. Suspension is also appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. *Standards* §6.22. Oregon case law imposing discipline for violation of DR 7-102(A)(7) and DR 2-110(B)(2) under similar circumstances where there is an absence of dishonest or selfish motive is scant. See generally *In re Johnson*, 9 DB Rptr 151 (1995), 90-day suspension where the lawyer violated DR 1-102(A)(3), DR 7-102(A)(7), and DR 2-110(B)(2). In *Johnson*, the lawyer's client instigated and carried out a plan to obtain workers' compensation benefits to which he was not entitled. The lawyer did not instigate the plan, and when he discovered his client's activities, continued to represent the client without disclosing the client's theft or fraud, and allowed the client to continue his unlawful activities. In *In re Dinerman*, 314 Or 308, 840 P2d 5 (1992), the lawyer was suspended for 63 days for violation of DR 1-102(A)(2), DR 1-102(A)(3), and DR 7-102(A)(7); and *In re Hockett*, 303 Or 150, 734 P2d 877 (1987), the lawyer was suspended for 63 days for violation of DR 1-102(A)(4) (current DR 1-102(A)(3)), DR 7-102(A)(7), and ORS 9.460(4).

In contrast, the Accused did not assist a client in committing or concealing a fraud. Even though Fredrickson had potential creditors, he was entitled to dispose of his property within the bounds of the law. The Accused's failing was in assisting a client in transferring property outside the bounds of the law. Although warranting a term of suspension, the Accused's conduct is not akin to the conduct in *Johnson*, *Dinerman*, or *Hockett*.

13.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused should be suspended from the practice of law for a period of 30 days, commencing December 1, 1998, or five days after approval of the Stipulation by the Disciplinary Board, whichever is later.

14.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 9th day of November 1998.

/s/ John W. Smallmon

John W. Smallmon

OSB No. 62085

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 97-213
)
MICHAEL PATRICK LEVI,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Christopher Hardman
Disciplinary Board: None
Disposition: Violation of DR 1-103(C). 120-day suspension.
Effective Date of Order: December 4, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come before the Disciplinary Board upon the Stipulation of Michael Patrick Levi and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved. Michael Patrick Levi shall be suspended from the practice of law for a period of 120 days, effective December 4, 1998, for violation of DR 1-103(C) of the Code of Professional Responsibility.

DATED this 3rd day of December 1998.

/s/ Armina J. Brown
Armina J. Brown
State Disciplinary Board Chairperson

/s/ Robert M. Johnstone
Robert M. Johnstone, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Michael Patrick Levi (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Michael Patrick Levi, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to the practice of law in this state, and a member of the Oregon State Bar, having his office and place of business in Yamhill County, Oregon.

3.

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

4.

On June 15, 1998, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB") alleging violation of DR 1-103(C) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In or about May 1997, Jean Becker retained the Accused to represent her concerning objections to a proposed judgment in a family law case. On or about September 2, 1997, Becker filed a complaint with the Oregon State Bar concerning the Accused's conduct. On September 8, 1997, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response on or before September 29, 1997. The Accused did not respond. On October 2, 1997, Disciplinary Counsel's Office again requested the Accused's response to the complaint on or before October 9, 1997. The Accused did not respond and the matter was referred to the Local Professional Responsibility Committee for further investigation. Thereafter, the LPRC investigator called the Accused and left a message that he return the call. The Accused did not do so. The LPRC investigator then sent the Accused a letter giving him until January 21, 1998, to call to schedule an appointment for an interview. The Accused called the investigator on January 22, 1998.

Violation

6.

The Accused admits that he failed to cooperate and respond to the reasonable requests of an authority empowered to investigate his conduct in violation of DR 1-103(C) of the Code of Professional Responsibility.

Sanction

7.

The Accused and the Bar agree that in fashioning a sanction in this case, *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”) should be considered. The *Standards* require that the Accused’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. *Standards* §3.0.

A. *Duty Violated*. In violating DR 1-103(C), the Accused violated his duties to the profession. *Standards* §7.0.

B. *Mental State*. In failing to respond to the Disciplinary Counsel’s Office, the Accused acted with knowledge, or the conscious awareness of the nature or attendant circumstances of the conduct. *Standards* at 7.

C. *Injury*. The Accused’s failure to respond to the inquiries of the Bar caused harm to the legal profession and to the public because he delayed the Bar’s investigation and the resolution of his client’s complaint.

D. *Aggravating Factors*. Aggravating factors to be considered include:

1. The Accused was admitted to practice in 1982 and has substantial experience in the practice of law. *Standards* §9.22(i).

2. The Accused failed to respond, or provide a timely response to the Bar’s requests for explanation. *Standards* §9.22(e).

3. The Accused has a prior disciplinary record. In September 1987, the Accused accepted a letter of admonition for two violations of DR 1-103(C) in regard to two separate complaints filed with the Disciplinary Counsel’s Office. In 1991, the Accused was suspended for 60 days for violation of DR 6-101(B) and DR 1-103(C). In 1997, the Accused accepted a letter of admonition for violation of DR 6-101(B). *Standards* §9.22(a).

4. The Accused’s conduct demonstrates a pattern of misconduct. *Standards* §9.22(c).

E. *Mitigating Factors*. Mitigating factors to be considered include:

1. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(l).

2. After the complaint was referred to the Local Professional Responsibility Committee for further investigation, the Accused initially failed to respond but then cooperated, and subsequently cooperated with the Disciplinary Counsel's Office in resolving this disciplinary proceeding. *Standards* §9.32(e).

3. The Accused asserts that his consumption of alcohol has attributed to his failures and delays in responding to the inquiries of the Disciplinary Counsel's Office. The Accused is now participating and intends to continue to participate in an alcohol rehabilitation program.

8.

The *Standards* provide that suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.2. Suspension is also appropriate when a lawyer has been disciplined for the same or similar conduct and engages in further acts of misconduct that cause injury or potential injury to the public, the legal system, or the profession. *Standards* §8.2.

9.

Oregon case law is in accord. In *In re Miles*, 324 Or 218, 923 P2d 1219 (1996), the court made clear that a 60-day suspension is appropriate for a lawyer found guilty of one violation of DR 1-103(C). See also *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996).

10.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree, particularly in light of his prior disciplinary record for similar offenses, that the Accused shall be suspended from the practice of law for a period of 120 days, commencing November 25, 1998, or three days after approval of this Stipulation by the Disciplinary Board, whichever is later.

11.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 29th day of October 1998.

/s/ Michael Patrick Levi

Michael Patrick Levi

OSB No. 82319

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

Cite as 328 Or 177 (1998)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
THANE W. MARTIN,)
)
Accused.)

(OSB 94-157, 94-158; SC S44004)

On review of the decision of a trial panel of the Disciplinary Board.

Argued and submitted January 6, 1998; reassigned July 16, 1998. Decided December 17, 1998.

Thane W. Martin, Wilsonville, argued and cause and filed the brief *in propria persona*.

Mary A. Cooper, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Durham, and Kulongoski, Justices. (Fadeley, J., retired January 31, 1998, and did not participate in this decision; Graber, J., resigned March 31, 1998, and did not participate in this decision.)

PER CURIAM

The Accused is disbarred.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 1-102(A)(3), DR 9-101(A), DR 9-101(A)(2), DR 2-110(A)(2), DR 9-101(C)(3), and DR 1-103(C), based on his alleged conversion of client funds, on his failure to deposit and maintain client funds in a trust account, and on his improper withdrawal from employment. A trial panel of the Disciplinary Board found the Accused guilty of two violations of DR 1-102(A)(3), three violations of DR 9-101(A), one violation of DR 2-110(A)(2), and one violation of DR 9-101(C)(3), and determined that the appropriate sanction was disbarment. *Held*: The Accused is guilty of one violation of DR 1-102(A)(3), three violations of DR 9-101(A), one violation of DR 2-110(A)(2), and one violation of DR 9-101(C)(3). The Accused is disbarred.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 96-122
)
WARREN G. MOE,)
)
Accused.)

Bar Counsel: Ralph Rayburn, Esq.
Counsel for the Accused: Dan Van Thiel, Esq.
Disciplinary Board: Chair: William B. Kirby, Esq., Chair; Keith Raines, Esq.; Al Gabel, Public Member
Disposition: Violation of DR 2-110(A)(2), DR 2-110(B)(3), and DR 1-102(A)(4). Public reprimand.
Effective Date of Opinion: December 19, 1998

OPINION OF TRIAL PANEL

I. Introduction

By its Formal Complaint of 29 December 1997, the Oregon State Bar (“the Bar”) alleges that Warren Gustave Moe (“the Accused”) violated six disciplinary rules. The Bar alleges the Accused violated:

- DR 1-102(A)(3), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- DR 1-102(A)(4), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice;
- DR 2-110(A)(2), which prohibits a lawyer from withdrawing from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the right of the lawyer’s client;
- DR 2-110(B)(3), which requires a lawyer to withdraw from employment if the lawyer’s mental or physical condition renders it unreasonably difficult for the lawyer to carry out the employment effectively;
- DR 6-101(B), which prohibits a lawyer from neglecting a legal matter entrusted to the lawyer; and

- DR 7-102(A)(5), which prohibits a lawyer from knowingly making a false statement of law or fact in the course of the lawyer's representation of a client.

The Bar contends that the alleged violations arose out of the Accused's conduct in defending a client accused of three criminal offenses in the case of *State of Oregon v. Robert Wayne Austin*, Clatsop County Circuit Court Case No. 94-1361. The Accused denies that he violated any provision of the disciplinary rules.

The matter came before the trial panel for hearing on June 24, 1998, in Astoria, Clatsop County, Oregon. The Bar appeared by and through Mary A. Cooper, Assistant Disciplinary Counsel, and Ralph Rayburn, Bar Counsel. The Accused appeared personally and was represented by Dan Van Thiel. At hearing, the Bar presented testimony from witnesses Paula J. Brownhill, Kevin K. Strever, Joshua Marquis, Linda Janet Thomas, Sandra L. Richards, and the Accused. The Accused testified on his own behalf. He also presented testimony from witnesses Neal Lemery, Stephen L. Roman, and James D. Hoffman. In the course of the hearing, the trial panel received Bar exhibits 1-65 into evidence.

II. Findings of Fact

The Accused practices law in Astoria. The Oregon Supreme Court admitted the Accused to the practice of law in 1991. When the alleged violations began to occur, the Accused had about three years' professional experience in the area of criminal law. At all times relevant to the accusations at issue, the Accused practiced law as an associate in the law firm of Olsen, Huffman and Horn. The law firm's principal office is in St. Helens, Oregon. The firm had a contract with the State of Oregon to represent indigent criminal defendants facing charges in Clatsop County. The work assigned through the contract was handled through the firm's satellite office in Astoria, Oregon. There were supposed to be one and a half full-time attorneys working on court-assigned cases in the firm's Astoria office. In reality, though, only the Accused regularly staffed the office. Rarely would other lawyers from the firm's office in St. Helens assist him in handling Clatsop County indigent defense work.

The caseload in the firm's Astoria office was too demanding for one relatively inexperienced full-time attorney to handle alone, or virtually alone, for a sustained period of time. The Accused regularly received 30 or 40 new cases each month, totaling upward to 400 cases a year. He appeared in court all or part of nearly every working day. By the end of 1995, the Accused appeared tired and exhausted and in a state of chronic frustration. He readily complained that he needed a break, although until the day of the *Austin* trial, he never said he thought he was ill.

Robert Wayne Austin ("the Client") was an indigent criminal defendant charged with three offenses. The offenses were two counts of Unauthorized Use of a Motor Vehicle, involving two different vehicles, and one count of Unlawful Possession of a Destructive Device. The State alleged that the Client had stolen a car

and a motorhome and had knowingly carried a bomb around in the motorhome. The Accused came to represent the Client by a court appointment made on or about November 15, 1994.

The *Austin* case progressed slowly through the court system. At arraignment, the court scheduled a pretrial conference for January 4, 1995, with trial set for February 9, 1995. On January 4, 1995, the Accused requested a reset of the pretrial conference. The court granted the request and rescheduled the pretrial conference to February 1, 1995, keeping February 9, 1995, as the trial date.

Before the February 1, 1995, pretrial conference, the Accused and his investigator met and discussed the facts of the Client's criminal case. The investigator also met with the Client and promptly followed up on some leads provided by the case file and the Client. She did all of this before the February 1, 1995, pretrial conference. Based on her familiarity with the facts of the underlying criminal case, the investigator estimates that on February 1, 1995, a person would reasonably have believed that the defense would call 15 or 16 witnesses at trial, 10 of whom would be witnesses also called by the State.

At the February 1, 1995, pretrial conference, the State represented that it would call up to 10 witnesses at trial. The Accused represented the defense would call up to 20 witnesses. Before the Accused made the representation to the court, the Client had told the Accused the names of eight or nine people who the Client felt would testify on the Client's behalf. The Client had also told the Accused that there were more witnesses whom the Client wanted to call to testify, but Client could not recall their names. The parties estimated the *Austin* trial would last three to four days.

In the course of pretrial negotiations, the Accused attempted to negotiate a plea bargain for his Client. The Accused was prepared to recommend to the Client that he admit to the unauthorized use of both motor vehicles in exchange for the State's dismissal of the charge involving the destructive device. Such a plea would have been consistent with the Client's contention that he did not know a bomb was in the motorhome that he had stolen. The State did not agree to such a plea arrangement.

On February 2, 1995, about 10 weeks after the Accused first came to represent the Client, the Accused requested a reset of the February trial date. The Accused stated in his affidavit to the court that he had not had adequate time to meet with the Client and that further factual investigation had yet to be done. The court granted the request. The court scheduled a trial to begin on April 26, 1995.

On March 27, 1995, the State provided the Accused with a list of 10 witnesses whom the State intended to call for trial on April 26, 1995. Several weeks later, on or about April 20, 1995, the State requested a continuance of the trial. The State requested the continuance because an essential witness for the State would be

unavailable for trial on April 26, 1995. The Accused did not oppose the requested continuance. The court granted the request.

The court chose June 27, 1995, as the new trial date. A few days later, on May 1, 1995, the State moved to join the trial of the Client with that of the Client's wife, a codefendant. On May 8, 1995, the court granted the State's motion for joint trial, necessitating a rescheduling of the June 27th trial date to accommodate the joint parties and their attorneys. The court scheduled the new trial date for December 21, 1995. The court sent the lawyers the notice of this new trial date on October 24, 1995.

On or about October 24, 1995, the Accused received the court's notice of the December trial date. Thereafter, on November 22, 1995, the Accused requested a continuance of the December trial. The Accused stated in an affidavit in support of his request for a continuance that he was going out of town on vacation on December 21, 1995, and would be gone until the first of the year. "In addition," the Accused stated, "my client has requested a reset until after the first of the year for the reason that he is currently on a work release program in Portland and will not be released from the program until after January 3, 1996. He would like a reset of his trial until after that time." The Accused spoke to the Client before making this request for a continuance. The Client deferred to the Accused the decision whether a reset was in the Client's best interests. The Accused felt the request was in the Client's best interests because the Client was incarcerated in Portland, the Accused and the Client had had no substantial face-to-face contact, and the existence and whereabouts of some potential defense witnesses were still problems.

The District Attorney's Office did not object to the requested continuance. The court, however, denied the request. The court reasoned that the case was over a year old and that the Accused had not included in his affidavit what position, if any, the joint codefendant had on the requested continuance. The court asked the Accused to arrange for another attorney in the office to try the case or to talk to the court about starting the case a day or two earlier.

In response to the court's request, the Accused contacted court staff to talk about moving the case to a different date. The trial docket for that week was crowded. There were other cases going to trial that week. The court did not have any place else to put the case. The Accused also contacted his employer. He advised that he was probably going to need somebody to try the case for him. The Accused believed that James Huffman (one of the partners of the firm that employed Accused) would cover the case. Mr. Huffman is an experienced criminal defense lawyer and would have been able to take over the case. The Accused believed he might be required to begin the defense of the *Austin* case, but that Mr. Huffman would be available to finish the case. The Accused understood that for this to occur, Mr. Huffman would have to settle a pending case, *State v. Van Black*. The Accused believed the *Van Black* case would resolve by plea because the case involved a single charge of criminal nonsupport. Furthermore, the facts of the *Van Black* case

were not complex and it appeared the defendant was guilty. Nevertheless, the *Van Black* case did not resolve by plea until noontime on December 21, 1995.

The Accused was upset and frustrated that the court had denied his request for a continuance of the *Austin* case. His plan had been to leave Astoria on December 21, spend the night with his sister in Portland, and fly out of Portland on December 22. In light of the court's ruling, however, the Accused changed his plans. He intended to try the *Austin* case on December 21, hoping something would work out to allow him to leave on vacation on December 22.

Several days before the *Austin* trial, the Accused said to the District Attorney that the Accused was going on vacation no matter what the judge had ruled. The District Attorney told the Accused "that would be a really lousy idea." During the conversation, the Accused complained about his workload and his stress level. Beyond these statements, the Accused did not express any physical or mental condition that necessitated he not try the case on December 21. The District Attorney did not observe anything that raised a sense of urgency that the Accused receive immediate medical care. The District Attorney believed the Accused was "just blowing off steam" when Accused said he would not show up for trial.

On December 20, 1995, the Accused spoke to Sandra Richards, a calendaring clerk for the court. The conversation took place in the afternoon of the day before the scheduled trial. The Accused was upset. He said the trial was going to be a two-day trial and he had tickets to go away for Christmas. The plane tickets were for Friday, December 22, 1995. The Accused estimated he would have to leave the Astoria area by no later than 10:30 a.m. to catch the plane in Portland. During the conversation, the Accused essentially said to the clerk that if he had to change his plane tickets for Friday, then maybe the judge would like to pay for the tickets.

Later in the day on December 20, 1995, the calendaring clerk called the Accused and informed him that he was also expected to appear at a plea and sentencing at 8:30 a.m. on December 21, 1995, concerning a case entitled *State v. Turpen*. There was no indication from the Accused that he would not attend the plea and sentencing. Also sometime on December 20, 1995, the Accused and the Client spoke to one another. The Accused did not tell the Client that he was incapable of proceeding to trial or that he intended not to appear for trial. The Accused did say to the Client that the Accused was not feeling well and that he was "uncomfortable with proceeding."

During the period from November 15, 1994, to December 20, 1995 (the day before the *Austin* trial), the Accused accomplished the following tasks. First, he notified the District Attorney that the court had appointed him to defend the Client. Second, he requested discovery from the District Attorney's Office. Third, he reviewed the discovery received from the District Attorney's Office. Fourth, he attended all scheduled court appearances and pretrial conference. Fifth, he wrote to the Client notifying him of all important court dates. Sixth, he filed a motion requesting \$1,350 for investigative work. (The court granted the motion in part,

allowing \$300 for investigative work.) Seventh, he met with his investigator and instructed her to attempt to make contact with purported witnesses. Eighth, he requested the transport of the Client from the Inverness Jail in Portland to pretrial conference on February 1, 1995. Ninth, he filed a motion for a continuance of the February trial date, as explained above. Tenth, he requested court funds to pay for a polygraph examination of his Client. Eleventh, he notified the District Attorney's Office of nine witnesses the defense intended to call at trial. Twelfth, he prepared jury instructions for the *Austin* trial. No subpoenas were issued to compel the attendance of any witnesses. The Accused had not identified any witnesses helpful to his Client's case.

The Accused offered testimony from Stephen Roman, an attorney who has practiced law for about 25 years in the Astoria area. Mr. Roman's practice emphasizes criminal defense work. Mr. Roman knew about the facts of the *Austin* case and expressed the opinion that the Accused had not neglected the interests of the Client in preparing for trial. Mr. Roman offered no opinion as to the Accused's conduct on the day of the *Austin* trial.

On December 21, 1995, the Accused failed to appear at the 8:30 plea and sentencing and the 10:30 jury trial. When the Accused failed to appear at the 8:30 proceeding, a court clerk called the office of the Accused. The office secretary said that the Accused was on his way to Portland to see a doctor and that Mr. Huffman was due to arrive at the office by 9:00 a.m. to pick up the plea and sentencing file. When asked if the Accused was going to be in court for the jury trial, the secretary said she did not know. She said that Mr. Huffman would be at the courthouse about 9:00, leaving an impression that Mr. Huffman would know more about the situation than the secretary. Essentially all the secretary could confirm for the court was that the Accused had called to say he was very stressed, felt dizzy, and that he was going to Portland to see a doctor.

The secretary was right that Mr. Huffman knew more that she did about the Accused's situation. Mr. Huffman had spoken with the Accused early on the 21st, at about 7:00 a.m. The Accused had first tried telephoning Mr. Huffman at home during the night of the 20th, but Mr. Huffman was not available to receive the call. The next morning, Mr. Huffman's wife gave Mr. Huffman the message that the Accused had called the night before. She told Mr. Huffman that the Accused sounded anxious and that she was concerned about his condition. When they spoke in the morning, the Accused told Mr. Huffman that the Accused had not been able to sleep and that he did not feel able to try the *Austin* case. When they spoke on the telephone, Mr. Huffman concluded that the Accused had a very high level of anxiety. Mr. Huffman believed the Accused was on the verge of having a breakdown; that the Accused was "very, very sick," suffering from extreme anxiety, or a panic attack or some kind of overwhelming emotional disturbance. The medical condition of the Accused made it impractical for him to try the *Austin* case.

Mr. Huffman told the Accused what he thought the Accused needed to do. He told the Accused to call the Astoria law office and talk to the office secretary. He instructed the Accused to instruct the secretary to call the court staff at 8:00 a.m. She was to tell the court staff that Mr. Huffman was on his way to the courthouse, that he would handle whatever matters the court directed him to handle, and that he would handle as many things as reasonably possible. Mr. Huffman also told the Accused to direct the secretary to tell the court about the Accused's illness and need for immediate medical care. The Accused followed Mr. Huffman's instructions to the best of his ability. The office secretary followed the instructions given to her by the Accused to the best of her ability.

Mr. Huffman also told the Accused to go see Dr. Farmer, a medical doctor in Scappoose. The Accused did not have an appointment to see the doctor, but Mr. Huffman explained that the Accused should go to the doctor's office anyway. He told the Accused to explain the situation to the doctor's staff and then wait as long as it took to see the doctor. Mr. Huffman told the Accused that he was confident the Accused would be seen by the doctor sometime during the day. The Accused followed Mr. Huffman's direction and drove to Dr. Farmer's office. He arrived at Dr. Farmer's office at about 8:30 a.m. He saw the doctor for the first time at about 10:00 a.m. The doctor gave the Accused "a little mini MMPI" to do. The test consisted of 30 or 40 questions and a health history. Blood was drawn from the Accused for later testing. The doctor then reviewed the written test answers and Accused's health history. The Doctor and the Accused met again at about 3:00 p.m.

Dr. Farmer diagnosed the Accused as suffering from Generalized Anxiety Disorder and Major Depressive Disorder, Recurrent, of Moderate Severity. Before the two parted on December 21, the doctor prescribed at least three different medications: Zoloft, Trazodone, and Clonidine. The doctor also ordered the Accused to be off work for two weeks due to his medical condition. After meeting with the doctor, the Accused called the airline, switched his tickets, and went to Portland to catch a plane. He stopped in the Beaverton area and faxed the doctor's order to his Astoria office. He wrote on the fax coversheet, "Vicki please schedule a [follow up appointment to see doctor] sometime in the next 2 weeks some[time] after when I have no appts—Please adjust schedule accordingly. PS: Again merry x-mas. 510 689-9822 if you need to call—I will call Tues. or Wed.?!"

The Accused was treated by Dr. Farmer for the next 12 to 18 months. The blood tests done on December 21, 1995, revealed a thyroid disorder. The doctor prescribed Synthroid to treat the thyroid condition. Over the course of treatment, the doctor made adjustments to the other medications he had prescribed to treat the Accused's anxiety/depression-related condition.

The Accused did not attempt to speak with his office, Mr. Huffman, or the court on the afternoon of December 21, 1995. He assumed everything had gone smoothly back at the courthouse. This was a mistaken assumption on the part of the Accused. Mr. Huffman arrived at the courthouse at about 9:00 a.m. for the 8:30 a.m.

plea and sentencing in the *Terpen* case. Although late, he was able to step in and handle the matter for the Accused without incident. The court clerk then contacted Mr. Huffman about 9:30 a.m. for information about the 10:30 jury trial. Mr. Huffman had little additional information for court. He said he was unable to try the *Austin* case because he had another case set for trial to begin at 9:30 a.m., *State v. Van Black*. He told the court clerk that no one else in his office was prepared to try the *Austin* case, but if needed, someone else from his office could appear in court to handle any procedural issues. As it turned out, the *Van Black* case resolved by plea around noon. After the *Van Black* case resolved, Mr. Huffman did not contact Judge Brownhill. He had heard that the judge had held the Accused in contempt for failing to appear for the jury trial. He therefore chose to avoid contacting the judge.

The Accused failed to appear at the 10:30 a.m. *Austin* trial. Everyone else who was expected for trial of the case was present in the courtroom. Without the assistance of an attorney, however, the Client was unwilling to proceed to trial. The Client said that he had been in contact with the Accused the day before trial. He had no idea that the Accused was going to fail to appear at trial. The Client also stated that he had never asked for a reset and was unaware of two requests for continuance the Accused had made. The codefendant's counsel then asked the Client if the Accused had ever asked the Client "Would you mind?" in reference to the Accused requesting a continuance. The Client replied that "Well, he might have said something." When asked by the judge, "Do you recall him ever advising you that you were going to request a continuance?" the Client replied, "He might have said something, but I don't think that I agreed with him."

The Client has prior felony convictions and did not testify at hearing of this matter. The trial panel finds his statements made in open court on December 21, 1995, to be unreliable in determining whether the Accused communicated with the Client and, if the communication did occur, who said what.

As a result of the Accused's absence from court on December 21, 1995, the cases against the *Austin* codefendants did not proceed to trial. The Client's wife later filed a motion to dismiss for lack of speedy trial. The court granted the motion. The criminal charges against her were dismissed. A substantial factor in the denial of a speedy trial was the failure of the case to proceed to trial on December 21, 1995. The Client received new court-appointed counsel. Because of a discovery violation relating to evidence concerning the bomb, the Client did not have to stand trial on the destructive device charge. He went to trial before the court on the two charges concerning the unauthorized use of motor vehicles. The court convicted the Client of both charges.

When the Accused returned to the office after vacation, he found out he faced contempt charges brought by Judge Brownhill. To resolve the matter, the Accused entered into a stipulation with the State of Oregon. Pursuant to the agreement, the show cause proceeding was continued for six months. If, during that time, the Accused encountered no further difficulties in appearing before the court, paid

\$182.00 to reimburse jury fees, and apologized to the court for his failure to appear, then the contempt proceeding would be dismissed. Otherwise the Accused would not dispute the contentions contained within the affidavit in support of the Order to Show Cause, thus allowing the court to find the Accused in contempt of court. The Accused successfully complied with the stipulated conditions. The court dismissed the contempt proceeding. No findings of fact were made in connection with the contempt charge levied against the Accused.

There is evidence that suggests that personal problems, pressing business, and similar extraordinary circumstances played a role in the conduct of the Accused. In addition to the heavy caseload the Accused handled, he had suffered three deaths in his family during 1995: his father and two brothers-in-law.

III. Conclusions of Law

To establish a violation of any disciplinary rule, the Bar must prove violation of the rule by clear and convincing evidence. Bar Rule (BR) 5.2. *In re Bourcier*, 322 Or 561, 567 (1997). The Accused is presumed innocent until proven otherwise. *In re Jordan*, 295 Or 142 (1983).

A. DR 6-101(B)

DR 6-101(B) provides that “[a] lawyer shall not neglect a legal matter entrusted to the lawyer.” The Bar alleges that the Accused violated DR 6-101(B) by failing to prepare for trial and to appear at trial. The Accused’s preparation for trial was adequate up through and including December 20, 1995. Through that date, the Accused performed tasks to prepare for trial that a reasonable criminal defense attorney would perform under similar circumstances.

The Accused’s failure to appear at the *Austin* trial on December 21, 1995, is not a result of neglect or deceit. The emotional disorder the Accused suffered from on the day of the *Austin* trial was not contrived. Medical evidence in the form of prescriptions, chart notes, and medical reports establish that the Accused did suffer from an illness related to anxiety and depression on December 21. The failure of the Accused to appear at trial on December 21, 1995, was caused in major part by his medical condition. The failure to appear because of serious illness is an isolated instance of ordinary negligence. Isolated incidents of ordinary negligence do not violate DR 6-101(B). *In re Bourcier*, 325 Or 429, 939 P2d 604 (1997); *In re Collier*, 295 Or 320, 330, 667 P2d 481 (1983). Accordingly, the Bar has not proven with clear and convincing evidence its allegation of violation of DR 6-101(B). The charge of violation of DR 6-101(B) is therefore dismissed.

B. DR 2-110(A)(2) and DR 1-102(A)(4)

The Bar alleges that the Accused violated DR 2-110(A)(2) and DR 1-102(A)(4) by the manner in which he withdrew from representation. The Bar alleges that the Accused withdrew from representation without taking steps to avoid foreseeable prejudice to the Client’s rights (DR 2-110(A)(2)) and also that the

Accused engaged in conduct prejudicial to the administration of justice (DR 1-102(A)(4)).

Had the Accused not recognized his illness on December 21, he would have appeared for the *Austin* trial. His absence from the courthouse on December 21, 1995, was unexpected. However, the circumstances of his absence were not such that the Accused was unable to directly communicate with the court about his situation. Though ill, he was still able to engage in a variety of routine activities, such as driving an automobile, calling his office, and planning a trip. Though ill, lawyers cannot simply wash their hands of all responsibility for legal matters entrusted to them. The Accused was justified in not proceeding to trial on December 21, 1995, but he failed to take appropriate steps to ensure his failure to appear did not cause unreasonable problems for the Client or the court.

The failure to appear for trial left the Client, court, jury, and opposing counsel in a troublesome situation. Admittedly, the Accused tried to arrange for Mr. Huffman to cover for him, and in at least one regard (the plea and sentencing) the substitution worked. But the Accused also knew Mr. Huffman had a case set for trial in the morning of December 21, 1995; thus, the Accused was aware of the substantial risk that Mr. Huffman would be unable to actually appear on the *Austin* matter. Knowing this, and that the Accused had repeatedly voiced his frustration with the court's denial of his motion to continue the *Austin* trial, the Accused should have been doubly sure that the court understood the circumstances of his failure to appear for trial.

The conduct of the Accused substantially and adversely affected the functioning of the court (the trial had to be postponed) and the substantive interest of parties to the proceeding (the delay allowed the codefendant to obtain a dismissal for lack of speedy trial). And while there was some communication with the Client the day before trial, the manner the Accused withdrew from representation substantially adversely affected the Client.² The Client's interests were adversely affected because the Accused did not take adequate steps to transfer representation of the Client to another lawyer. No lawyer was able to represent the Client on the day of trial.

The Accused withdrew from representation in violation of DR 2-110(A)(2) because he failed to take steps he was capable of taking to avoid foreseeable

² As to the communication between the Accused and Client, the two did talk the day before trial. The Accused told Client that the Accused was not feeling well and that he was "uncomfortable with proceeding" to trial. The Accused accurately described his circumstances to Client when they spoke the day before trial. Under these circumstances, Accused was candid in his discussions with Client, but failed to fulfill his duty to inform the court of his situation and subsequently failed to withdraw from representation of Client in a manner reasonably calculated to avoid foreseeable prejudice to Client's rights.

prejudice to the Client's rights. The Accused performed a single act causing substantial harm to the administration of justice in violation of DR 1-102(A)(4). *In re Haws*, 310 Or 741, 748 (1990). Consequently, the Bar has proven with clear and convincing evidence violation of DR 2-110(A)(2) and DR 1-102(A)(4) in connection with the Accused's withdrawal from representation.

C. DR 1-102(A)(3) and DR 1-102(A)(4)

The Bar alleges that the Accused violated DR 1-102(A)(3) and DR 1-102(A)(4) by misrepresenting to the court that the Client wanted a continuance of the trial scheduled for December 21, 1995. DR 1-102(A)(3) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. DR 1-102(A)(4) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. The gist of the Bar's allegation is that the Accused misrepresented a material fact when he stated in his affidavit in support of a continuance of the December trial date that the Client would like a reset of his trial until after the first of the year.

The Client failed to appear at hearing on these charges. He has at least one recent felony conviction. The trial panel had no opportunity to view the demeanor of the Client. There is insufficient evidence to persuade the trial panel by clear and convincing evidence that the statements the Client made in court on December 21, 1995, were truthful. The uncertainty regarding whether there was a legitimate basis for the Accused to represent to the court that the Client sought a continuance, coupled with the high burden of persuasion borne by the Bar, results in a finding that neither violation contained in this cause of complaint has been proven. The charges of violation of DR 1-102(A)(3) and DR 1-102(A)(4) in the context of the Accused's request for a continuance are therefore dismissed.

D. DR 2-110(B)(3)

DR 2-110(B)(3) requires a lawyer to withdraw from employment when the lawyer's physical or mental condition renders it unreasonably difficult for the lawyer to carry out employment effectively. The Bar alleges that the Accused violated DR 2-110(B)(3), when the Accused continued to represent the Client despite the Accused's awareness that the Accused was under stress.

Several witnesses testified that in the weeks prior to the *Austin* trial, the Accused complained of being overworked and seemed to be stressed out. On the other hand, none of the witnesses stated that the Accused seemed to be in need of immediate medical care. Doctor Farmer, the Accused's treating physician, states in his chart notes (Exhibit 44) that "Mr. Moe has been wrestling with these [anxiety and depression] issues for some time." The doctor does not indicate how much time "some time" is.

The Accused was aware of his circumstances. He knew he was overworked and that he needed time away from work. He knew he was wrestling with "issues"

(later diagnosed as issues related to anxiety and depression). Under these circumstances, the Accused's mental or physical condition rendered it unreasonably difficult for the Accused to carry out his employment effectively. The Accused should have known this. He knew enough about his situation that he had an ethical obligation to withdraw from employment well before the date of the *Austin* trial. A lawyer suffering from "burn out syndrome," making it unreasonably difficult to carry on effectively, has an obligation to withdraw from representing a client. *In re Lowe*, 296 Or 328 (1984).

The Accused may have suffered from a medical condition different from "burn out syndrome," but the effect of the disease appears just the same here as in the *Lowe* case. The Accused failed to withdraw from employment within a reasonable time of when circumstances required him to. The Bar has proven with clear and convincing evidence its allegation of violation of DR 2-110(B)(3).

E. DR 7-102(A)(5)

The Bar alleges the Accused violated DR 7-102(A)(5), which prohibits a lawyer from knowingly making a false statement of law or fact in the course of the lawyer's representation of a client. In the course of his representation of the Client, the Accused made no representations that were knowingly false in any material way. The Bar has failed to prove its allegation of violation of DR 7-102(A)(5). The charge is therefore dismissed.

IV. Sanction

In fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* ("Standards") and Oregon case law are considered. The *Standards* require that the conduct of an accused lawyer be analyzed considering four 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. *Standards* §3.0.

A. *Duty*. In violating DR 2-110(A)(2) and DR 2-110(B)(3), the Accused violated a duty owed to the profession. *Standards* §7.0. In violating DR 1-102(A)(4), the Accused violated a duty owed to the public. *Standards* §5.0. (The trial panel finds that the Accused candidly communicated to the Client about his likelihood of appearing for trial, so the trial panel does not find that in violating DR 1-102(A)(4) the Accused violated a duty owed to the Client.)

B. *State of Mind*. "Negligence" is defined in the *Standards* as "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 7. This is the mental state of the Accused when he failed to appropriately withdraw from representation and failed to communicate with the court about the circumstances of his withdrawal from representation.

C. *Injury*. The Accused's conduct resulted in actual injury to the State of Oregon, the trial court, and the legal profession. The State of Oregon was harmed by the delay caused by the Accused's absence from court. The State of Oregon includes not only the Clatsop County District Attorney's Office, but all Oregonians, including the victims of the alleged crime committed by the Client's codefendant. The delay caused by the failure of the December 21 trial to actually occur allowed the Client's codefendant to successfully argue that her right to a speedy trial had been denied. The trial court was injured by the apparent contempt the Accused showed by his conduct. The legal profession was harmed by the impression the conduct of the Accused left with the public. That impression is that a lawyer may disobey a court if the court's order is inconvenient to the lawyer's personal interests.

D. *Aggravating Factors*. Aggravating factors to consider include that the Accused committed three offenses by his course of conduct relating to the *Austin* case.

E. *Mitigating Factors*. Mitigating factors to consider include:

1. The Accused has no record of discipline;
2. The Accused did not act with dishonest or selfish motives;
3. The Accused suffered from personal problems related to the death of his father and two brothers-in-law;
4. The Accused has reimbursed the court the jury fees paid by the court to the jury summoned for the December 21 trial. The Accused has also apologized to the court for his conduct related to his failure to appear for the *Austin* trial;
5. The Accused cooperated with the Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and resolving the disciplinary proceeding;
6. The Accused successfully completed the terms of his agreement with the court to avoid having the court find the Accused in contempt of court; and
7. The Accused acknowledges that his failure to communicate with the court about circumstances of his illness has caused harm to others.

F. *Oregon Case Law*. In this proceeding the Bar has recommended that the Accused be suspended for at least three months. In support of this recommendation, the Bar cites the trial panel to *In re Jones*, 312 Or 611 (1992); *In re Melvin-Davidson*, Case No. 97-34; and *In re Jeffrey*, 321 Or 360 (1995).

The *Jones* court found the accused lawyer had failed to appear on behalf of three clients, had failed to cooperate with the Bar's investigation into that conduct, and had engaged in the unauthorized practice of law after being suspended for violation of disciplinary rules. The court held this conduct to be in violation of DR 1-102(A)(4), DR 1-103(C), DR 3-101(B), and DR 6-101(B). The court disbarred the attorney.

The facts of the *Jones* case relating to the Accused's failures to appear are distinguishable from the facts of this case. First, in *Jones* there were three instances of failure to appear. Here there is only one. Second, in *Jones* the lawyer neither appeared nor arranged for substitute counsel to appear. Here, the Accused made an effort to arrange for substitute counsel to appear. Finally, in *Jones*, at least two clients appeared at the disciplinary hearing and testified in a credible manner that they waited in the courtroom for the Accused at the appointed time and were surprised and upset by his absence. Similar testimony is absent in this case.

In re Melvin-Davidson concerns an attorney who knowingly made false and misleading statements to the court concerning the circumstances of her withdrawal from representation of a client. The motivation for the withdrawal from representation involved a scheduling conflict, not an illness. Under these circumstances, the Accused attorney stipulated to a 60-day suspension. The facts and motives in this case are not as egregious as in *Melvin-Davidson*.

The *Jeffrey* case involves an attorney accused of several violations that are not present here. The one similar charge involves Jeffrey's threat to the court to refuse to put on a defense for his client in a criminal case, for the purpose of creating reversible error. The court held that the threat constituted a violation of DR 1-102(A)(4). The *Jeffrey* court found that the accused lawyer had "aggressively pursued an inappropriate confrontation with a trial judge, in open court, that resulted in a needless postponement of a criminal trial." *In re Jeffrey*, 321 Or 360, 376 (1995).

The primary difference between the Accused in this case and the accused lawyer in *Jeffrey* is that the Accused in this case was genuinely ill and would have appeared in court for the *Austin* trial had he not recognized his illness the day before trial. We are mindful that it appears that the Accused was doing exactly what the accused lawyer in *Jeffrey* was doing. (That is, aggressively pursuing an inappropriate confrontation with the trial court judge, in open court, that resulted in a needless postponement of a criminal trial.) But we conclude the facts are otherwise. We conclude that the Accused was "blowing off steam" about how the *Austin* trial date conflicted with his vacation schedule. And while he made several remarks that he intended to fail to appear at trial, we conclude the Accused did intend to try at least the first day of the *Austin* case, unreasonably leaving to later the arrangements for coverage on the likely second day of trial. Among the facts that we base these conclusions on are these: (1) the Accused did adjust his vacation schedule to accommodate at least one day of the *Austin* trial; (2) the Accused was adequately prepared for the *Austin* trial, including the preparation of jury instructions the day before trial; and (3) the Accused was truly sick on the day of the *Austin* trial. Because of the conclusions we reach about the intentions of the Accused in this case, the factual similarity between this case and the *Jeffrey* case are not substantial. Consequently, the rationale behind the sanction imposed in *Jeffrey* does not provide a substantial basis for an argument that a similar sanction should be imposed in this case.

A series of three Oregon cases involving a single attorney is instructive as to how Oregon deals with lawyers in situations like the Accused's. The series of cases includes *In re Loew*, 292 Or 806 (1982); *In re Loew*, 294 Or 674 (1983); and *In re Loew*, 296 Or 328 (1984). For sake of clarity, the 1982 decision will be referred to as *Loew I*, the 1983 decision will be referred to as *Loew II*, and the 1984 decision will be referred to as *Loew III*.

The accused lawyer in *Loew I* was hired to handle an appeal of an administrative law judge's ruling. The lawyer filed a notice of appeal and obtained three extensions of time for the filing of his brief on appeal, but never filed the brief. Despite never having filed a brief, the lawyer repeatedly represented to his client that he was about to file the brief and, ultimately, that he had filed the brief when in fact he had not. This delay and series of misrepresentations lasted for over a year.

The Bar alleged that the accused in *Loew I* had committed three ethical violations: neglect of a legal matter in violation of DR 6-101(A)(3), misrepresentation in violation of DR 1-102(A)(4), and intentionally failing to carry out a contract of employment in violation of DR 7-101(A)(2). In defense to the DR 7-101 violation, the accused lawyer maintained that his failure to carry out the contract was not intentional. Medical evidence was presented that the lawyer suffered from "burn out syndrome."

The court held that the accused had committed the three ethical violations. The court suspended the accused from the practice of law for 30 days "and thereafter until such time as the accused presents satisfactory evidence to this court that he has repaid \$500 to his former client and a written statement by his psychiatrist that the accused is sufficiently free of emotional difficulties to competently practice law." In explaining the rationale for the decision, the court wrote: "We conclude that the conduct of the accused was an isolated event caused by emotional difficulties with which he is now dealing effectively. Disbarment is not required for the protection of the public. On the other hand, his conduct is serious enough to warrant suspension."

In *Loew II*, the acts of the accused complained of occurred during the same time as those involved in *Loew I*, although the acts involved a different client and a different set of ethical violations. The court found the accused in violation of DR 6-101(A)(3); DR 7-101(A)(1), (2), and (3); DR 2-110(B)(3); DR 6-101(A)(3); and DR 7-101(A)(1), (2), and (3). In determining the appropriate sanction, the court wrote:

We believe in this case that both the public and its confidence in the administration of justice is best protected by a continuation of our previous sanction requiring that before consideration of reinstatement the accused must present evidence satisfactory to this court that he is sufficiently free of emotional difficulties to practice law competently. Because the accused is not now practicing law it would be premature to impose a period of probation.

At the time the accused presents evidence of his competency to practice law and requests reinstatement we will then consider whether a period of probation is appropriate.

In *Loew III*, the same accused attorney, suffering from the same condition, faced another set of ethical violations, including DR 2-110(B)(3), DR 6-101(A)(3), and DR 9-102(B)(4). The facts giving rise to the violation occurred during the same period of time when the accused had been psychiatrically diagnosed as suffering from the “burn out syndrome” connected with *Loew I* and *Loew II*. When the court decided *Loew III*, the accused had not yet sought reinstatement to the Bar. Under these circumstances, the court in *Loew III* imposed no further sanctions on the accused than the court had imposed in *Loew I* and *Loew II*. “However,” the court went on to say, “when the accused petitions for reinstatement he must present evidence satisfactory to this court that he is sufficiently free of emotional difficulties to practice law competently. The propriety of imposing probation, and its term and conditions, will be determined by the evidence presented at that time. . . .”

The *Loew* trilogy appears to establish that, while a medical condition may not excuse the commission of an ethical violation, it may provide grounds to substantially reduce the sanction imposed for the established violation. The trilogy also illustrates the constructive use of probation in the context of an attorney disciplinary proceeding. Under certain circumstances, a trial panel has the authority to impose conditions of probation. BR 6.1, 6.2.

V. Disposition

The *Standards* provide that a reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.3. The *Standards* also provide that an admonition is generally appropriate when a lawyer engages in conduct that adversely reflects on the lawyer’s fitness to practice law, but does not involve dishonesty, fraud, deceit, or misrepresentation. *Standards* §5.14. The Bar Rules, however, do not allow for a trial panel to impose the sanction of admonition. BR 6.1. A public reprimand is the least severe sanction a trial panel may impose for a disciplinary violation. BR 6.1(a)(ii).

The *Standards* provide that probation is a sanction that allows a lawyer to practice law under specified conditions. Under the *Standards* probation can be imposed alone or in conjunction with a reprimand, an admonition, or immediately following a suspension. *Standards* §2.7. Under the Bar Rules, however, probation can only be imposed in conjunction with a suspension. See BR 6.1(a)(v) (stating that “[t]he dispositions or sanctions in disciplinary proceedings shall include a suspension for any period designated in BR 6.1(a)(iii) or BR 6.1(a)(iv), which may be stayed in whole or in part on condition that designated probationary terms are met”) and BR 6.2(a) (stating that “[u]pon determining that an Accused should be suspended, the trial panel may decide that the execution of the suspension shall be stayed, in whole or in part, and that the Accused shall be placed on probation for a period no

longer than three years”). We conclude that the Bar Rules control in this situation, and that the trial panel lacks the authority to impose probation absent a suspension from the practice of law. *In re Schaffner*, 323 Or 472, 478 (1996).

The trial panel has identified a substantial number of mitigating factors relevant to the imposition of any sanction in this proceeding. On the other hand, there are three ethical violations established in this proceeding, although they all arise out of the same factual situation. Under these circumstances, the trial panel concludes that no enhancement or reduction in sanction is appropriate. A reprimand is the appropriate sanction for violation of DR 1-102(A)(4), DR 2-110(A)(2), and DR 2-110(B)(3).³

DATED this 16th day of February 1999, nunc pro tunc November 13, 1998.⁴

/s/ William B. Kirby
William B. Kirby
Trial Panel Chairperson

/s/ Al Gabel
Al Gabel
Trial Panel Public Member

/s/ Keith Raines
Keith Raines
Trial Panel Member

³ If the trial panel had the authority to impose probation in conjunction with a reprimand and admonition, the following conditions of probation would be imposed. For a period of three years, the Accused would be required to present evidence satisfactory to a suitable person designated by the Bar or court that he is sufficiently free of emotional difficulties to practice law competently. Cooperation with the person or persons so appointed would be a condition of probation. Any violation of probation would have to be established by the Bar with clear and convincing evidence. However, these conditions of probation are not imposed in this case because we hold that a trial panel does not have the authority to impose probation in the absence of a period of suspension. *In re Schaffner*, 323 Or 472, 478 (1996).

⁴ The trial panel decided this case on November 13, 1998. However, the original decision imposed a sanction of admonition for violation of DR 1-102(A)(4). The Bar, with the consent of the Accused, asked the trial panel to reconsider the sanction of admonition, in light of the trial panel’s lack of authority to impose such a sanction, citing the panel to BR 6.1. The trial panel agreed to reconsider its decision. On reconsideration, the earlier opinion was modified to impose a public reprimand for violation of DR 1-102(A)(4), the sanction that originally should have been imposed. Today’s opinion, as modified on reconsideration to correct the panel’s legal error, is effective November 13, 1998.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-159
)	
BURTON H. BENNETT,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Thomas E. Cooney
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(C), DR 5-105(E), and DR 2-110(B)(2). 30-day suspension.
Effective Date of Order:	December 24, 1998

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the parties is approved. The Accused shall be suspended for 30 days, commencing December 24, 1998, or two days after the date of this Order, whichever is later, for violation of DR 5-105(C), DR 5-105(E), and DR 2-110(B)(2) of the Code of Professional Responsibility.

DATED this 21st day of December 1998.

/s/ Armind J. Brown
 Armind J. Brown
 State Disciplinary Board Chairperson

/s/ Richard S. Yugler
 Richard S. Yugler, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Burton H. Bennett, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Burton H. Bennett, is, and at all times mentioned was, an attorney at law duly admitted by the Oregon Supreme Court to the practice of law in Oregon and a member of the Oregon State Bar, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On September 19, 1998, the State Professional Responsibility Board directed that a formal disciplinary proceeding be instituted against the Accused for alleged violations of DR 2-110(B)(2), DR 5-105(C), and DR 5-105(E). 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 and Violation

5.

In or about July 1995, Julie and Joseph Hickey, husband and wife, were injured in a motor vehicle accident involving another vehicle driven by Chad Jackson (hereinafter “Jackson”). Mr. Hickey was the driver and Mrs. Hickey was a passenger in the Hickey vehicle. In late July 1995, the Hickeys’ retained the Accused to pursue personal injury claims against Jackson. Mrs. Hickey was more seriously injured than Mr. Hickey. The Accused advised the Hickeys that Mrs. Hickey should file a claim against Jackson, but that Mr. Hickey should delay doing so because Jackson could file a third-party claim against Mr. Hickey alleging that he was responsible for the accident. The Accused told the Hickeys that if a third-party claim was filed, he would be required to withdraw from further representation of Mr. Hickey, but would continue to represent Mrs. Hickey.

6.

In or about August 1995, the Accused conducted an investigation and obtained information from witnesses to the accident indicating that Mr. Hickey was at fault. In or about May 1996, the Accused filed a complaint for personal injury on behalf of Mrs. Hickey against Jackson. The Accused did not advise Mrs. Hickey that she may have a claim against Mr. Hickey or assert any claim on behalf of Mrs. Hickey against her husband. In representing the interests of Mr. and Mrs. Hickey, the Accused represented multiple current clients in a matter at a time when their interests were in actual conflict, and failed to withdraw from the representation of the Hickeys when it was obvious that his continued representation would result in violation of a disciplinary rule. The Accused mistakenly believed that with the consent of each of the Hickeys he could proceed as he did.

7.

In or about July 1996, Jackson filed an answer to Mrs. Hickey's claims and named Mr. Hickey as a third-party defendant. Jackson alleged that Mr. Hickey's driving was the cause of the accident, and demanded judgment against Mr. Hickey in the amount of any award Mrs. Hickey received against Jackson. The Accused then withdrew from representing Mr. Hickey, and suggested the name of another lawyer to represent him. The Accused continued to represent Mrs. Hickey.

8.

On or about March 20, 1997, the Accused filed and served an Amended Complaint in which Mrs. Hickey asserted claims against her husband and Jackson. The Accused continued employment as Mrs. Hickey's attorney and asserted claims against Mr. Hickey, after previously representing Mr. Hickey in the same matter. To the extent consent was available to permit his continued representation, the Accused failed to make full disclosure to and obtain the consent of both Mrs. Hickey and Mr. Hickey as defined by DR 10-101(B) of the Code of Professional Responsibility.

9.

The Accused admits that his conduct constituted violations of DR 5-105(C), DR 5-105(E), and DR 2-110(B)(2) of the Code of Professional Responsibility.

Sanction

10.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law should be considered. The *Standards* require that the Accused'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.* In violating DR 5-105(C), DR 5-105(E), and DR 2-110(B)(2), the Accused violated duties to his clients and the profession. *Standards* §§4.3, 7.0.

B. *Mental State.* The Accused acted with knowledge. “Knowledge” is the conscious awareness of the nature or the attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. *Standards* at 7. The Accused’s conduct demonstrates that he knew that there was a conflict of interest between his clients, but he continued to represent both of them for a time. Later, even though the Accused was aware of the conflict and terminated his representation of one of the clients, he asserted a claim on behalf of his remaining client against the former client in the same matter he had previously represented that client.

C. *Injury.* The Accused’s conduct resulted in actual and potential injury to his clients. Mrs. Hickey’s claims against her husband were delayed. After Mrs. Hickey discharged the Accused and retained the services of another attorney, Mr. Hickey’s insurance company settled Mrs. Hickey’s claims against him by payment of insurance policy limits. Later, Mrs. Hickey’s claims against Jackson went to trial, which resulted in a defense verdict.

D. *Aggravating Factors.* “Aggravating factors” include:

1. The Accused has a prior record of discipline consisting of an admonition for DR 7-101(A)(2) in 1985 and a public reprimand in 1983 for violation of DR 6-101(B), DR 7-101(A)(2), and DR 2-110(A) and (B) of the Code of Professional Responsibility. *Standards* §9.22(a).

2. This Stipulation involves three rule violations. *Standards* §9.22(d).

3. The Accused has substantial experience in the practice of law, having been admitted to practice in 1958. *Standards* §9.22(i).

E. *Mitigating Factors.* Mitigating factors to be considered include:

1. There is an absence of dishonest motive. *Standards* §9.32(b).

2. The Accused made full and free disclosure to the Disciplinary Counsel’s Office and the Local Professional Responsibility Committee conducting the investigation. *Standards* §9.32(e).

3. The Accused acknowledges the wrongfulness of his misconduct and is remorseful. *Standards* §9.32(l).

11.

The *Standards* provide that suspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. *Standards* §4.32. Oregon case law is in accord. Although several cases resulted in a public reprimand to the lawyer, more serious conflicts of interest cases result in a suspension. See *In*

re Hockett, 303 Or 150, 734 P2d 877 (1987); *In re Melmon*, 322 Or 380, 908 P2d 822 (1995); and *In re Morris*, 326 Or 433, 953 P2d 387 (1998), wherein the court stated that a violation of DR 5-105 would alone justify at least a 30-day suspension.

12.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period of 30 days, commencing December 24, 1998, or two days after approval of this Stipulation by the Disciplinary Board, whichever is later, for violations of DR 5-105(C), DR 5-105(E), and DR 2-110(B)(2).

13.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 16th day of December 1998.

/s/ Burton H. Bennett

Burton H. Bennett

OSB No. 58006

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of) Case No. 96-17
)
ROBERT F. BLACKMORE,)
)
Accused.)

Bar Counsel: Bruce Rubin, Esq.
Counsel for the Accused: J. Philip Parks, Esq.
Disciplinary Board: C. Lane Borg, Esq., Chair; Richard S. Yugler, Esq.;
Wilbert H. Randle, Public Member
Disposition: Dismissal
Effective Date of Opinion: January 7, 1999

OPINION OF TRIAL PANEL

THIS MATTER came before a trial panel of the Oregon State Bar Disciplinary Board on August 21, 1998. The Trial Panel Members were C. Lane Borg, Chair; Richard S. Yugler; and Wilbert H. Randle. The Oregon State Bar (“Bar”) was represented by Bruce Rubin, Bar Counsel, and Jane Angus, Assistant Disciplinary Counsel. The Accused was represented by J. Philip Parks. The proceedings were recorded by Amy O’Neal, Court Reporter.

The Bar alleged in its Amended Complaint a single disciplinary rule violation. The Bar alleged that the Accused violated DR 7-104(A)(1) by communicating with a represented party, Fred Tyacke, regarding a related matter to that representation during the deposition of Fred Tyacke taken in a separate legal proceeding. The Accused denied that his conduct was a violation of DR 7-104(A)(1) because his communications with the represented party was “authorized by law” under DR 7-104(A)(1)(b).

The panel heard testimony from the Accused, from Fred Tyacke (“Tyacke”), and from attorney witnesses Greg Dennis (“Dennis”), John Berman (“Berman”), and Roger Alfred (“Alfred”). The panel received exhibits 1–11 and 14–31. The parties further offered expert testimony from attorneys Jeff Stanton, Sid Brockley, Paul Duden, and Daniel Skerritt.

The panel limited the testimony of expert witnesses to opinions whether the deposition questions that the Accused asked Tyacke were within the permissible

scope of discovery. The panel refused to receive testimony from any of the experts concerning whether the Accused had violated a disciplinary rule, and the proper interpretation of DR 7-104(A)(1), but allowed the parties to submit offers of proof. Both the Bar and the Accused filed trial memoranda and supplemental briefs which the panel considered.

Findings of Fact

The facts are largely undisputed. There were no credibility questions to be resolved.

The Accused represented a corporate client, Evergreen Plastics, Inc. (“EPI”), in defense of claims filed by International Composites Corporation (“ICC”) in Washington State Superior Court in Clark County. ICC was represented by attorney Dennis. The litigation between ICC and EPI began in 1994. It involved contract claims regarding work that EPI allegedly performed. The parties referred to this legal matter as the “commercial case.”

In 1995, Tyacke, a former employee of EPI, filed a claim against EPI in Oregon in the Circuit Court in Washington County, alleging that wages were due from EPI. Tyacke was eventually represented by attorney Berman. The Accused defended EPI in that case and knew that Berman represented Tyacke. The parties referred to this legal matter as the “wage claim.”

During the course of the commercial case Dennis served a notice of deposition on behalf of ICC to take the deposition of Tyacke. Tyacke agreed to voluntarily appear at his deposition without service of a subpoena from Dennis. The Accused received the notice of deposition and was obligated to attend and could cross-examine Tyacke on behalf of EPI.

Tyacke consulted with his attorney, Berman, about whether Berman should attend the deposition in the commercial case. Berman and Tyacke decided that Tyacke would appear at the deposition without counsel.

Neither Dennis nor the Accused contacted Berman about the deposition of Tyacke in the commercial case. Tyacke appeared for deposition, testified, and was then subject to cross-examination by the Accused.

During the cross-examination of Tyacke, the Accused asked many questions that had a direct bearing on the wage claim. Although Davis and Tyacke objected to the Accused’s questions regarding Tyacke’s employment status and wage claim, neither refused to continue the deposition, and neither adjourned the deposition to call a Judge for a ruling or to telephone attorney Berman.

After Tyacke’s deposition was concluded, the Accused used the information gained in the deposition to aid EPI’s defense of the wage claim brought by Tyacke.

All of the questions that the Accused asked of Tyacke, and the answers given by Tyacke, were within the scope of discovery in the commercial case, and were either directly relevant or likely to lead to relevant evidence in the commercial case.

Many of the questions that the Accused asked of Tyacke, and answers given, had joint relevance, which was to the advantage of the Accused's client in the wage claim case, but were proper areas of inquiry in the commercial case. The Bar was unable to identify a single question asked by the Accused which was outside the scope of permissible discovery in the commercial case or solely related to the wage claim case brought by Tyacke.

Conclusions of Law

The Accused was charged with a violation of DR 7-104(A), which provides as follows:

DR 7-104 Communicating with a Person Represented by Counsel

(A) During the course of the lawyer's representation of a client, a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation, or on directly related subjects, with a person the lawyer knows to be represented by a lawyer on that subject, or on directly related subjects, unless:

(a) the lawyer has the prior consent of a lawyer representing such other person;

(b) the lawyer is authorized by law to do so; or

(c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.

The Bar argues that the Accused violated DR 7-104(A) by cross-examining Tyacke during the deposition in the commercial case regarding matters that "directly related" to the wage claim matter because Tyacke was represented by counsel in the wage claim. The Accused argues that he was "authorized by law" to cross-examine Tyacke during the deposition regarding all matters within the scope of discovery in the commercial case, as well as to those matters that had joint relevance to the wage claim, notwithstanding Tyacke's representation by counsel in the wage claim. We agree with the Accused.

DR 7-104(A)(1)(b) provides an "authorized by law" exception to the no-communication rule. The Accused was authorized by law to attend the deposition of Tyacke in the commercial case. The deposition was initiated by the Accused's opposing counsel, Dennis, by a formal notice of deposition. Although Tyacke was not subpoenaed by Dennis, Tyacke consulted with his own counsel, Berman, about his attendance. Berman and the Accused decided that the Accused would voluntarily appear at the deposition without Berman. The Accused was required to attend the deposition and to seek the lawful objectives of his client, EPI, within the bounds of the disciplinary rules. *See* DR 7-101.

The Accused was authorized by law to inquire into all discoverable matters during Tyacke's deposition. Washington's Civil Rule for Superior Court, Rule 26, is virtually identical to Oregon Rule of Civil Procedure, ORCP 36. Both rules permit discovery of "any matter, not privileged, which is relevant" to the claim, defense, or subject matter of the litigation. Both rules provide that it is not a ground for objection that the information sought will be inadmissible at trial "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

The Accused did not seek to inquire into privileged matters during the deposition. The Bar failed to identify any question posed by the Accused that was outside the scope of permissible discovery in the commercial case. The Accused was authorized by law to inquire into any matters within the scope of permissible discovery in the commercial case. Certain areas of inquiry in the commercial case had joint relevance to the wage claim. For example, several of these matters included questions directed at disclosing evidence of bias of Tyacke and information to challenge Tyacke's credibility, which was relevant to the commercial case but also would directly impact Tyacke's wage claim. Inquiry into areas of joint relevance was authorized by law because such information remained within the scope of permissible discovery in the commercial case.

We need not decide whether Berman's decision not to accompany his client to the deposition constituted "consent" within the meaning of DR 7-104(A). The scope of Berman's representation did not extend to representing Tyacke as a witness in the commercial case. Berman's representation was limited to prosecution of the wage claim. Neither the Accused nor Dennis communicated with Berman about Tyacke's attendance at the deposition in the commercial case. Tyacke was not precluded from bringing Berman to the deposition in order to protect his interests in the wage claim case. Berman believed that Tyacke's status in the commercial case was limited as a "fact" witness. Berman did not consider the risk that Tyacke's bias and credibility as a fact witness was a possible area of inquiry in the commercial case. Nor did Berman seek a protective order on Tyacke's behalf to limit the inquiry before or during the deposition in the commercial case.

The Bar contends that our decision is controlled by *In re Hedrick*, 312 Or 442, 822 P2d 1187 (1991). In *Hedrick* a lawyer sent a demand letter directly to a person known to be represented by another lawyer and sent a copy to that person's lawyer. The court held that the accused lawyer violated the clear prohibition of DR 7-104(A). The accused lawyer in *Hedrick*, however, did not seek to rely on any exception "authorized by law."

The Bar also argues that *In re Williams*, 314 Or 530, 840 P2d 1280 (1992), indicates that the "authorized by law" exception should be narrowly construed to prevent the Accused from inquiring about any matters that had joint relevance in the deposition. In *Williams*, an attorney for a landlord argued that a direct communication with a represented party was permitted by ORS 90.600(1), which

required a landlord who is raising the rent at a mobile home park to give each affected tenant an opportunity to meet with the landlord or a representative of the landlord to discuss the rent increase. The court held that:

Nothing in the text of ORS 90.600 suggests that the prohibition of DR 7-104(A)(1) does not apply in this situation. True, a tenant can choose to ask her lawyer to attend the meeting. Here, however, there was an ongoing dispute between the landlord and the tenant, and the accused knew that the landlord was represented by a lawyer, Rastetter. The proposed rent increase was the very matter in dispute between the landlord and the tenant. The accused was not “authorized by law” to communicate with Duckworth. We find the accused guilty of violating DR 7-104(A)(1).

In re Williams does not apply. It did not deal with a situation where the lawyer was allowed by law to directly communicate with a represented party in a duly noticed deposition in a separate legal proceeding. ORS 90.600 is not analogous to the civil procedure rules concerning cross-examination of witnesses in a deposition duly noticed by an opposing party. Nothing in *Williams* indicates that the accused was precluded from inquiring into discoverable matters, jointly relevant to a legal matter in which a witness is represented by counsel.

If the Bar’s interpretation of DR 7-104(A) is accepted, then Tyacke could prevent the discovery of jointly relevant information in the commercial case by refusing to bring Berman to his deposition. Likewise, Tyacke could prevent the Accused in the wage claim from inquiring into matters having joint relevance unless Dennis was present. The Accused could not compel Tyacke to bring Berman to the deposition in the commercial case any more than he could compel Dennis to attend Tyacke’s deposition in the wage claim.

This case is more analogous to cases involving alleged unauthorized communications with the court. In *In re Murray*, 287 Or 633, 601 P2d 780 (1979), and *Conduct of Smith*, 295 Or 755, 670 P2d 1018 (1983), the court held that no disciplinary violation occurs when a lawyer has ex parte contact with the court to obtain a temporary restraining order under court rules without notice to an adverse represented party. In *In re Gillis*, 297 Or 493, 686 P2d 358 (1984), a lawyer interpreted the appointment of a receiver under ORCP 80 as allowing ex parte contact with the court without notice to an adverse represented party. The court held that such contact was “authorized by law.”

Additional support for our conclusion is found in *Restatement of the Law (3rd) Governing Lawyers*, Section 158, Comment g, Tentative Draft No. 9 (ALI 1997), which provides:

Comment g. Communication authorized by law.

. . . direct communication with a non-client represented by a lawyer is permissible, without consent of the non-client’s lawyer, when authorized by law. Where such communication is permissible, it may extend no further than reasonably necessary. . . . An interest sometimes recognized by law is

that of transmitting notice directly to a represented non-client of certain legally significant matter.

. . . For example, law commonly provides for service of process on a defendant, even in instances where the lawyer for the plaintiff knows that the defendant is represented by a lawyer in the matter.

. . . Direct communication may occur pursuant to court order or under the supervision of a court. *Thus, a lawyer is authorized by law to interrogate an opposing non-client as a witness during the course of a duly noticed deposition* or at trial or other hearing. [Emphasis added.]

See also U.S. v. Schwimmer, 882 F2d 22, 28 (2d Cir 1989) (held: interrogation by prosecutor of witness without consent of opposing counsel is “authorized by law”).

We hold that the Accused was authorized by law, under the rules of civil procedure, to communicate with the witness in the deposition by cross-examination on any matter within the scope of permissible discovery, including matters that were jointly relevant to a separate legal proceeding in which the witness was represented by counsel.

Disposition

It is the decision of the trial panel that the complaint of the Oregon State Bar be dismissed. Costs and disbursements are allowed to the Accused as the prevailing party.

DATED this 8th day of December 1998.

/s/ C. Lane Borg
C. Lane Borg
Trial Panel Chair

/s/ Richard S. Yugler
Richard S. Yugler
Trial Panel Member

/s/ Wilbert H. Randle
Wilbert H. Randle
Trial Panel Public Member