

# DISCIPLINARY BOARD REPORTER

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**VOLUME 15**

*January 1, 2001, to December 31, 2001*

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Report of Attorney Discipline Cases  
Decided by the Disciplinary Board  
and by the  
Oregon Supreme Court  
for 2001



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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 2001 decisions of the Oregon Supreme Court involving the discipline of attorneys, and order of reciprocal discipline imposed by the court. Cases in this DB Reporter should be cited as 15 DB Rptr \_\_\_\_ (2001).

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 the practice of law 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 73 of the OSB *2002 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. Because of 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, 2002, 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  
*Disciplinary Counsel*  
*Oregon State Bar*

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IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
 )  
Complaint as to the Conduct of ) Case No. 97-81  
 )  
LAURA A. SCHROEDER, )  
 )  
 )  
Accused. )

Bar Counsel: Ralph Rayburn, Esq.  
Counsel for the Accused: Brad Tellam, Esq.  
Disciplinary Board: Todd A. Bradley, Esq. (Chair); Leslie M. Roberts, Esq.; Bette Worcester (Public Member)  
Disposition: Violation of DR 4-101(B)(1) and (2), and DR 7-101(A)(3). Stipulation for discipline. Public reprimand.  
Effective Date of Opinion: January 4, 2001

**OPINION OF THE TRIAL PANEL**

**Introduction**

In this lawyer disciplinary proceeding, the Bar filed a complaint alleging that the Accused had violated DR 4-101(B)(1), DR 4-101(B)(2), DR 4-101(B)(3), and DR 7-101(A)(3), all arising out of a single event which occurred in June 1996. The Bar contended that the Accused violated client confidences or secrets, and intentionally prejudiced a client, in the course of representing the client in connection with a proposed water lease, by sending an unauthorized letter to the adverse party. The Accused denied that her conduct violated any disciplinary rules.

A hearing was held on September 20, 2000. The Bar appeared by and through disciplinary counsel Martha Hicks and Ralph Rayburn. The Accused appeared in person and by and through her attorney, Brad Tellam. The parties each presented witnesses, offered exhibits, and made oral arguments to the panel. Posthearing briefs were not requested, although the parties were given an opportunity to submit additional relevant case citations for the panel's consideration.

After considering the entire record, including the testimony of witnesses, exhibits, written submissions, and arguments of counsel, it is the decision of the trial

panel that the Accused's conduct violated the disciplinary rules in several particulars, and that the Accused be publicly reprimanded.

### **Facts**

The trial panel finds the following facts to have been established by clear and convincing evidence (BR 5.2):

The Accused has been a member of the Oregon State Bar and engaged in private law practice since 1987, emphasizing natural resource and water law. Her clients include landowners and water users, as well as water delivery districts.

Martin Nye was the owner of some real property in Jefferson County within the Deschutes River basin. Running across approximately seven miles of this property is a tributary of the Deschutes River, known as Trout Creek. In connection with this property, Mr. Nye owned certain rights to use water from Trout Creek.

In early 1996, Mr. Nye was approached by representatives of the Oregon Water Trust, who wished to know if Mr. Nye were willing to enter into an agreement to lease the water rights to Trout Creek. The Oregon Water Trust is a private nonprofit group which seeks to acquire existing consumptive water rights from the owners of those rights, for the purpose of preserving fish habitat and water quality. In essence, under the in-stream water rights program, Oregon Water Trust agrees to pay the owners to leave water in the stream that might otherwise be drawn for irrigation purposes, in order to enhance the flow during certain times of the year.

Under the statutes and rules governing the in-stream water rights program, the proposed lease would require the approval of the Oregon Water Resources Department. Among other duties, the Oregon Water Resources Department is charged with ensuring that the proposed lease does not effect an enlargement of the lessor's existing rights, nor cause injury to other owners of water rights to the stream in question. In plain terms, a lease may not purport to convey rights which the lessor does not own, nor impair the rights of other users of the stream to draw water which they are legally entitled to use during given times of year. However, Oregon Water Trust does have some power to protect the water that remains in the stream by virtue of the lease, even after that water passes beyond the boundaries of the lessor's property. This concept is referred to as the *reach*, and it is intended to prevent downstream users from consuming the water that wouldn't otherwise have been left in the stream if the lessor had exercised his rights. The in-stream lease will also prescribe the period of time or the season within which the water use must be restricted; this is known as defining the *shape* of the use.

Mr. Nye indicated to Oregon Water Trust that he would be willing to enter into such an arrangement, and discussion ensued concerning the terms of the proposed lease. An agreement in principal was reached in April 1996, and draft documents were to be prepared by Oregon Water Trust and submitted to Mr. Nye for his approval. On or about May 1, 1996, a draft lease and a separate water rights agreement were sent by Oregon Water Trust to Mr. Nye. A copy of the proposed



lease was also sent by Oregon Water Trust to Oregon Water Resources Department on or about May 1, 1996. Under the terms of the lease, Martin Nye was identified as the Lessor, the Oregon Water Trust was the Lessee, and the Oregon Water Resources Department was the Trustee.

Mr. Nye had never entered into a water rights lease before, and he felt it advisable to obtain some legal advice before doing so. He contacted his long-time attorney, Charles McClure, and sent him the documents to review. Mr. McClure did not have expertise in this somewhat specialized field of law, so he sought a recommendation of a knowledgeable attorney to whom he could refer Mr. Nye. He obtained the name of Ms. Schroeder, and arranged for Mr. Nye to meet with the Accused.

The Accused agreed to meet with Mr. Nye for an initial consultation, at no charge, to see if she could be of any help to him. The Accused was provided with copies of the proposed agreements, and on May 30, 1996, the Accused and Mr. Nye met for the first and only time at the Accused's Portland office. Estimates of the length of the meeting varied from 30 minutes to two hours. During the meeting, Mr. Nye and Ms. Schroeder discussed the terms of the proposed lease. Mr. Nye told the Accused that he wanted to enter into the agreement. The Accused advised Mr. Nye that she had some concerns about what she perceived as arguable enlargement of his rights, and that this could provide grounds for objections on the part of property owners who might claim that the proposed lease caused injury to their water rights. Specifically, the Accused believed that the *reach* of the lease impermissibly extended too far beyond Mr. Nye's downstream border and that the volume of water to be protected (the *shape* of the use) was improperly concentrated within a certain time of year, rather than spread out over a full 12 months. The Accused also told Mr. Nye that the lease might prohibit or restrict his own use of water from Trout Creek for a holding pond on his property. Mr. Nye stated that he was not particularly concerned about the potential problems, and that he intended to proceed.

At the conclusion of the meeting, it was agreed that Mr. Nye would not be retaining the Accused to act further on his behalf, and neither the Accused nor Mr. Nye expected that there would be further dealings between them. However, both felt that the information exchanged during the meeting was confidential. Mr. Nye did not direct or authorize the Accused to communicate with anyone or to take any action on his behalf with respect to the lease.

On June 3, 1996, the letter which gives rise to this case was sent by the Accused to Andrew Purkey, executive director of the Oregon Water Trust. A copy of that letter is attached as Exhibit 1. In the letter, the Accused informed Mr. Purkey that she had recently reviewed a proposed lease on behalf of a "potential client." Without stating the identity of the client or the location involved in the proposed lease, the Accused went on to repeat the major concerns about the lease terms which she had developed through the review of the proposed lease and discussions with Mr. Nye. She specifically questioned the justification and basis for what she

perceived to be an enlargement of rights in the two particulars described above. She asked for a written response from Mr. Purkey. Copies of the letter were sent by the Accused to the Oregon Water Resources Department, as well as to several other entities or individuals interested in the water rights leasing program, some of whom the Accused knew or should have known were likely to be opposed to the lease provisions described in the letter. The Accused did not send a copy of the letter to Mr. Nye.

At the time of the Accused's letter to Mr. Purkey, the terms of the proposed lease between Mr. Nye and the Oregon Water Trust were not matters of public knowledge. Once an agreement has been signed by the parties and approved by the Oregon Water Resources Department, public notice is required to allow a period of time for other interested parties or affected landowners to comment upon or object to the proposed terms of the lease. The time within which to object to a proposed lease runs from the date of publication of the public notice, which follows signing by all parties to the lease, including the Oregon Water Resources Department.

The issues raised in the letter were not new to Mr. Purkey. Nevertheless, when Mr. Purkey received the letter, he was concerned about the potential impacts of the substance of the letter on the other recipients' perception of the Oregon Water Trust, as well as the policy implications of the issues raised. He perceived the letter as being adverse to the agreement that Mr. Nye and the Oregon Water Trust were attempting to finalize, and he was worried that it might cause the Oregon Water Resources Department to decline to approve the lease or that the letter could be used by some of the other recipients of the letter to oppose leases like the one proposed with Mr. Nye.

Although it was not his initial concern, Mr. Purkey was also curious about who the Accused's "potential client" was. Because of the small number of leases pending, it was a relatively simple matter for him to determine that the letter from the Accused was referring to the Nye lease. At a meeting with Mr. Nye in mid-June, Mr. Purkey showed him a copy of the letter. This was Mr. Nye's first awareness of the Accused's communications with the Oregon Water Trust.

Through attorney McClure, Mr. Nye complained to Ms. Schroeder that she had disclosed client confidences or secrets by sending the letter. Ms. Schroeder responded that she considered the lease form to be a matter of public record and that her letter to Mr. Purkey merely raised issues of general concern to people interested in the in-stream leasing program. Shortly after being contacted by Mr. McClure, on June 12, 1996, the Accused sent Mr. Nye a nonengagement letter confirming that their meeting on May 30, 1996, had concluded with an agreement that the Accused would not be representing Mr. Nye in the matter of his proposed water lease.

The Accused's letter to Mr. Purkey did not affect the negotiations between Mr. Nye and the Oregon Water Trust, and by July 1996, the lease had been signed and approved by the necessary parties, without substantial change from the form shown to the Accused by Mr. Nye. There is no evidence that the letter from the Accused delayed the finalizing of the agreement or caused any modifications to be considered. Public notice of the proposed lease was duly issued. The opposition that Mr. Purkey had feared did not materialize, although one property owner did raise concerns similar to those mentioned by the Accused. No modifications to the lease were made as a result of those objections. The lease went into effect as written and the parties performed as provided in the lease.

### **Discussion and Conclusions of Law**

In its Amended Complaint, the Bar alleges that the Accused violated DR 4-101(B)(1), (2), and (3) and DR 7-101(A)(3), which read as follows:

#### **DR 4-101 Preservation of Confidences and Secrets of a Client**

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4-101(C)<sup>1</sup>, a lawyer shall not knowingly:

(1) Reveal a confidence or secret of the lawyer's client.

(2) Use a confidence or secret of the lawyer's client to the disadvantage of the client.

(3) Use a confidence or secret of the lawyer's client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.

#### **DR 7-101 Representing a Client Zealously**

(A) A lawyer shall not intentionally:

(3) Prejudice or damage the lawyer's client during the course of the professional relationship except as required under DR 7-102(B)<sup>2</sup>.

OEC 503(1)(a) provides: "'Client' means a person . . . , who is rendered professional legal services by a lawyer, or *who consults a lawyer with a view to obtaining professional legal services from the lawyer.*" (Emphasis added.)

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<sup>1</sup> None of the exceptions mentioned in DR 4-101(C) apply in this case.

<sup>2</sup> None of the exceptions mentioned in DR 7-102(B) apply in this case.

OEC 503(1)(b) defines “Confidential Communication” as “a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.”

OEC 503(2) gives the client the right to refuse to disclose and to prevent others from disclosing confidential communications between the client and the lawyer.

The Accused admitted in her Answer that she sent the letter (Exhibit A) to Mr. Purkey and others, and that she did not obtain Mr. Nye’s consent after full disclosure to send the letter or to disclose its contents to others. She contends, however, that nothing in the letter constituted a confidence or secret of the client and that she did not require Mr. Nye’s consent to sending it.

**1. DR 4-101(B)(1)**

To establish a violation of DR 4-101, it is necessary at the outset for the Bar to prove by clear and convincing evidence that Martin Nye was a client of the Accused. The evidence established that Mr. Nye met with the Accused in order to obtain her advice regarding the proposed lease and to decide whether to retain her to represent him further. Although the Accused and Mr. Nye agreed after their meeting that no further relationship would be established, it is clear nonetheless that Mr. Nye was a client within the definition of OEC 503(1)(a). To hold otherwise would mean that a prospective client could not interview a lawyer in confidence.

The termination of the attorney-client relationship does not affect the nature of the disclosures and communications exchanged, nor does it terminate the attorney-client privilege. For purposes of DR 4-101, the relationship continues after the lawyer ceases to perform legal services for the client, at least In regard to the duty to maintain client confidences and secrets. *In re Adams*, 293 Or 727, 737, 652 P2d 787 (1982). This means that, even though there was apparently no intention to establish an ongoing attorney-client relationship after the meeting on May 30, 1996, the Accused remained under an obligation to maintain client confidences and secrets at the time of writing the letter to Mr. Purkey on June 3, 1996.

The Accused contends that the letter in question did not reveal any confidences or secrets, because she did not identify the client by name, the form of water leases was prescribed by statute, the particular lease would soon be a matter of public record, and the issues she addressed were matters of general interest. Even if we were inclined to accept this characterization of those particular facts, the Accused’s contention represents an unduly narrow view of what constitutes a confidence or secret.

First, as described above, it was a simple matter for Mr. Purkey to learn which specific lease the Accused had been consulted about. The Accused testified

that she was surprised that Mr. Purkey cared who the client was, and that she thought there would be as many as 15 other leases presenting the same issues. We find, however, that given the size of the community of people interested in such matters and the specific nature of the questions she posed, as well as the fact that the Nye lease had to be one of a small number being negotiated at the time, the Accused could not reasonably have expected Mr. Purkey to remain ignorant of the identity of the client.

Second, it is certainly not true that the other recipients of the Purkey letter were aware of the particular provisions of a lease currently being considered by the Oregon Water Trust, nor was there any way for the Accused to have known of them if Mr. Nye had not provided them to her. The Accused admitted that she believed the information exchanged at the meeting on May 30, 1996, was confidential, and this included the status of the negotiations, the proposed terms, Mr. Nye's concern about possible opposition from neighbors, and his intention to proceed notwithstanding the Accused's concerns. It remained to be seen whether the parties to the lease would approve the reach and shape provisions; only then would the public notice rules require that the document be published.<sup>3</sup>

Third, the Accused ignores the fact that confidences include not just the information she obtained from the client, but also her advice to the client. The questions posed in the letter are rhetorical and argumentative, reflecting her view that the proposed terms of the lease she recently reviewed are arguably illegal; thus, it is clear from the letter that the Accused is sharing the advice she communicated to her client, Mr. Nye, with the adverse party to the proposed lease as well as other parties who might be opposed to the lease. Under OEC 503(2), Mr. Nye would have been entitled to assert the attorney-client privilege to prevent the Accused from disclosing to third persons the legal advice he had obtained from her, even if all the information he had provided to her could be deemed public knowledge. The disclosure of the advice clearly violated the plain terms of DR 4-101(B)(1).

## **2. DR 4-101(B)(2)**

The Accused maintains that, in writing the letter of June 3, 1996, she was motivated by a desire to protect the water rights leasing program, and not to disadvantage her client. She asserts that she hoped her letter might persuade the Oregon Water Trust to interpret the reach and shape issues more narrowly than was apparent in the Nye lease. She also contends that, because the lease ultimately was consummated without change, that nothing she conveyed to Mr. Purkey caused any disadvantage to the client and, therefore, no violation of DR 4-101(B)(2) could have occurred.

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<sup>3</sup> We express no opinion concerning whether the Accused, as an interested citizen, could properly submit her general comments or concerns about the Nye lease provisions during the public comment period, without running afoul of DR 7-101(A).

The problem with the Accused's position is that it places consideration of an abstract principle—whether the Accused is “right” about what is best for the Oregon Water Trust, the program, and, by extension, her client—in front of her duty to refrain from using client confidences in a way that interferes with her client's lawful objectives. Mr. Nye made it clear to the Accused that he wished to proceed with the lease as drafted. Despite this knowledge, the Accused undertook to use the information she had obtained in confidence concerning the reach and shape provisions of the Nye lease, together with the legal advice she had formulated based on that information, in an effort to cause changes to the proposed agreement. As discussed above, the letter had the potential to cause interference, delay, and opposition, which could have caused Mr. Nye to incur additional expense or even loss of the benefits he sought from the lease.

We interpret the word “disadvantage” in DR 4-101(B)(2) to include maintaining a position adverse to the client, regardless of whether the lawyer is successful at accomplishing a an adverse result. *See In re Adams*, 293 Or 727, 738, 652 P2d 787 (1982). In other words, the harm or disadvantage can be said to have occurred when the attorney uses client confidences to promote an outcome that would be contrary to the client's wishes. In this case, the position advanced by the Accused in her letter to Mr. Purkey was opposed to the result desired by the client, and in advancing that position the Accused used client confidences. This violated DR 4-101(B)(2).

### **3. DR 4-101(B)(3)**

The Bar charged that the Accused used client confidences for the advantage of herself or others without obtaining Mr. Nye's consent after full disclosure (DR 4-101(B)(3)). The only apparent basis for this charge was the fact that some of the Accused's clients or other recipients of the letter might be characterized as generally opposed to the efforts of the Water Trust. There was no evidence that the Accused expected to benefit personally from any action that might have been taken on her letter to Mr. Purkey, and the evidence that any other entity might benefit from the position asserted by the Accused or gain some advantage by becoming aware of the Nye lease at that time was largely speculative or theoretical. The Bar has not shown by clear and convincing evidence that the Accused violated DR 4-101(B)(3).

### **4. DR 7-101(A)(3)**

Finally, the Bar argues that the conduct of the Accused violated DR 7-101(A)(3). The Accused contends that the letter to Mr. Purkey did not occur “during the course of the professional relationship,” that Mr. Nye sustained no prejudice or damage, and that the evidence does not show the requisite intent on the part of the Accused.

For purposes of DR 7-101(A), the professional *relationship* means more than professional *employment*. As noted above, if this were not so, the mere termination of the particular employment would create an opportunity for the lawyer to be freed

from the rules governing attorney-client relationships. Instead, the Supreme Court has held that the relationship continues after the employment terminates, at least as it pertains to facts and issues arising directly from the previous employment. *In re Adams*, 293 Or 727, 736-737, 652 P2d 787 (1982); *In re Drake*, 292 Or 704, 713, 642 P2d 296 (1982). In this case, there is complete identity of facts and issues between the professional consultation with Mr. Nye and the subject matter of the letter to Mr. Purkey.

Regarding whether the Accused's conduct caused prejudice or damage, we have already observed that the lease agreement was eventually signed and approved, and that Mr. Nye received all the benefits he expected from the lease.<sup>4</sup> However, we do not read the rule so narrowly as to require proof that the lawyer actually succeed in damaging or prejudicing the client, when the lawyer has acted in a manner contrary to the client's expressed wishes. The fact that a lawyer is knowingly advocating positions adverse to the client, and that the attorney is able to do so only because of information which the attorney has learned from the client in a confidential setting, must be deemed to constitute prejudice to the client if the disciplinary rule is to have any meaning.

In this case, we have found by clear and convincing evidence that the Accused intended to raise obstacles to the completion of the lease that her client wished to enter into. She knew at the time of sending the letter to Mr. Purkey that her client wanted to go forward with the lease. Her conduct was intentional, as opposed to negligent or inadvertent. Accordingly, we find that the Accused violated DR 7-101(A)(3).

### Sanctions

The trial panel has reviewed the *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law. Under the *Standards*, we consider the Accused's conduct in light of 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 mitigating and aggravating circumstances.

A. *Duty Violated.* The Accused violated her duty to her client to preserve client confidences and secrets. *Standards*, § 4.2.

B. *State of Mind.* The *ABA Standards* define "intent," the most culpable mental state for purposes of determining sanctions, as "the conscious objective or purpose to accomplish a particular result." The next most culpable mental state is "knowledge" which is defined as "the conscious awareness of the nature of or

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<sup>4</sup> Although Mr. Nye testified that he had hoped to reach a long-term agreement with the Oregon Water Trust, and this did not come to pass, there is no evidence that the events at issue in the case had anything to do with the failure of the parties to reach an extended agreement.

attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.”

The Accused’s conduct in this case was intentional, in that she intended to interfere with the lease that her client wished to consummate. Specifically regarding the communication of client confidences and secrets, the Accused knew that her letter to Mr. Purkey shared information obtained in confidence from the client, and that the client had not authorized her to communicate on these matters with Mr. Purkey or the other recipients of the letter.

C. *Injury*. No actual injury to the client flowed from the Accused’s conduct. However, the potential existed for harm, in that the client might have lost some or all of the benefits of the lease he had negotiated.

D. *Aggravating Factors*. Aggravating factors applicable to this case include the following:

(1) Refusal to acknowledge the wrongful nature of her conduct. *Standards*, § 9.22(g).

(2) Substantial experience in the practice of law. *Standards*, § 9.22(i).

Mitigating factors applicable to this case include:

(1) Lack of prior disciplinary record. *Standards*, § 9.32(a).

(2) Cooperative attitude toward the proceedings. *Standards*, § 9.32(e).

(3) Good character and reputation. *Standards*, § 9.32(g).

(4) Substantial delay in disciplinary proceedings. *Standards*, § 9.32(i).

As the Bar and the Accused have acknowledged in their submissions to the trial panel, Oregon case law provides little guidance in this case. Although the ABA *Standards* would support a suspension for a knowing failure to preserve client confidences and secrets, the cases in which suspension has occurred for violations of DR 4-101 are quite dissimilar. As we interpret our rules regarding sanctions, there is no provision authorizing a suspension of less than 30 days. Although the duty to maintain client confidences is one of the most important duties of an attorney, in our view, a suspension for 30 days would be too harsh a sanction under the circumstances of this case.



**Disposition**

Based on the above, it is the decision of the trial panel that the Accused receive a public reprimand.

DATED this 30th day of November 2000.

/s/ Todd A. Bradley  
Todd A. Bradley  
Trial Panel Chairperson

/s/ Leslie M. Roberts  
Leslie M. Roberts  
Trial Panel Member

/s/ Bette Worcester  
Bette Worcester  
Public Member

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
)  
Complaint as to the Conduct of ) Case No. 00-60  
)  
SEANA McCANN ASH, )  
)  
Accused. )

Bar Counsel: None  
Counsel for the Accused: Peter R. Jarvis, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 2-110(B)(2) and DR 5-105(C).  
Stipulation for discipline. Public reprimand.  
Effective Date of Order: January 3, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline between Seana McCann Ash and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved. Seana McCann Ash is publicly reprimanded for violation of DR 5-105(C) and DR 2-110(B)(2) of the Code of Professional Responsibility.

DATED this 3rd day of January 2001.

/s/ Derek C. Johnson  
Derek C. Johnson  
State Disciplinary Board Chairperson

/s/ Timothy J. Helfrich  
Timothy J. Helfrich, Region 1  
Disciplinary Board Chairperson

## **STIPULATION FOR DISCIPLINE**

Seana McMann Ash (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 Supreme Court of the State of Oregon to the practice of law in this state and a member of the Oregon State Bar, maintaining her office and place of business in Deschutes 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 3.6(h).

4.

At its August 19, 2000, meeting, the State Professional Responsibility directed that the Accused be charged with violation of DR 5-105(C) and DR 2-110(B)(2) of the Code of Professional Responsibility. 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 and Violations**

5.

On or about December 13, 1999, Jon Birky spoke with the Accused by telephone concerning a forthcoming marital dissolution case and his need for a lawyer to represent him. Birky answered the Accused’s questions and told her about his concerns for himself and his family. Based on the circumstances of the conversation, Birky reasonably believed that he had become or shortly would become a client of the Accused. The Accused told Birky to schedule an appointment after he was served with the petition for dissolution. Although the Accused told Birky that he would not actually become a client until he had an appointment and paid an initial fee, Birky reasonably believed that those requirements were in the nature of a formality.

6.

Subsequent to the conversation with Birky, the Accused agreed to represent Birky's wife in the dissolution case without first making full disclosure and obtaining Birky's consent. The Accused recalled speaking with Birky during her meeting with Birky's wife. Birky reminded the Accused of their earlier conversation and asked her to withdraw from representing his wife. The Accused refused to do so because she mistakenly believed an attorney-client relationship had not been established with Birky. The Accused continued to represent Birky's wife.

7.

The Accused admits that her conduct constituted violations of DR 5-105(C) and DR 2-110(B)(2) 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* and Oregon case law 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. *Standards*, p. 7.

A. *Duty Violated.* In violating DR 5-105(C) and DR 2-110(B)(2), the Accused violated duties to her clients and the profession. *Standards*, §§ 4.3, 7.0.

B. *State of Mind.* The Accused's conduct demonstrates that she was negligent in failing to fully evaluate the substance and nature of her communications with Birky that established an attorney-client relationship. Negligence is the 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*, p. 7.

C. *Injury.* The Accused's conduct resulted in potential injury to her clients. Birky told the Accused what was important to him, which was then an advantage to the Accused in negotiating property and custody issues for Mrs. Birky.

D. *Aggravating Factors.* Aggravating factors include:

1. This stipulation involves two rule violations. *Standards*, § 9.22(d).

2. The conflict was brought to the Accused's attention immediately after she began representing the wife. The Accused refused to withdraw and continued to represent the wife through the conclusion of the dissolution case. *Standards*, § 9.22(g).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior record of discipline. § 9.32(a).
2. The Accused cooperated with Disciplinary Counsel's Office in responding to the complaint and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).

9.

The *Standards* provide that a public reprimand is generally appropriate when 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. Oregon case law is in accord. *In re Howser*, 329 Or 404, 987 P2d 496 (1999); *In re Bozgoz*, 8 DB Rptr 113 (1994); *In re Brandsness*, 299 Or 420, 702 P2d 1098 (1985).

10.

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.

11.

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.

DATED this 7th day of December 2000.

/s/ Seana McCann Ash

Seana McCann Ash

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. 99-34
	)	
GREG A. PFISTER,	)	
	)	
Accused.	)	

Bar Counsel:	James Pippin, Esq.
Counsel for the Accused:	Susan Isaacs, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(B), DR 9-101(A) (two counts), DR 9-101(C)(1), DR 9-101(C)(3), and DR 9-101(C)(4). Stipulation for discipline. 120-day suspension.
Effective Date of Order:	January 25, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for a period of 120 days, effective January 25, 2001, for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(B), DR 9-101(A) (two counts), DR 9-101(C)(1), DR 9-101(C)(3), and DR 9-101(C)(4).

DATED this 22nd day of January 2001.

/s/ Paul E. Meyer  
 Paul E. Meyer  
 State Disciplinary Board Chairperson

/s/ Lane Borg  
 C. Lane Borg, Region 5  
 Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Greg A. Pfister, 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, Greg A. Pfister, 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 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 19, 2000, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), a copy of which is attached hereto as Exhibit 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.

### **First Cause of Complaint**

#### **Facts**

5.

In 1996, Peter Fisher, M.D., contracted with Fred Puzyr to act as an expert witness in a suit to recover damages for personal injuries Puzyr had sustained in an automobile accident. When Mr. Puzyr did not pay Dr. Fisher’s bill for his services, Dr. Fisher referred the account to the Accused for collection.

6.

On February 17, 1997, pursuant to a contingent fee agreement, the Accused agreed to represent Dr. Fisher to collect the above-referenced debt. At that time, Mr. Puzyr owed Dr. Fisher \$3,460.03.

7.

On February 17, 1997, the Accused made written demand upon Mr. Puzyr, and on February 26, 1997, Mr. Puzyr sent the Accused a check for \$500 payable to Dr. Fisher. The Accused deposited this check into his lawyer trust account and remitted \$375.00 to Dr. Fisher. On or about May 16, 1997, Mr. Puzyr sent Dr. Fisher a check for \$500.00, and on May 16, 1997, Dr. Fisher paid the Accused \$140 for court filing fees and \$125 for the Accused's contingent attorney fee.

8.

On or before June 6, 1997, on Dr. Fisher's behalf, the Accused filed a lawsuit against Mr. Puzyr which sought recovery of \$2,228.56. Mr. Puzyr was served with the summons and complaint in this lawsuit on June 22, 1997.

9.

On or about June 28, 1997, Mr. Puzyr offered to settle the above-described lawsuit for half the amount demanded. The Accused advised Dr. Fisher of this offer by letter dated June 28, 1997.

10.

When Dr. Fisher received the Accused's June 28, 1997 letter, he telephoned the Accused on June 30, 1997 and rejected Mr. Puzyr's offer.

11.

In a letter dated July 14, 1997, Mr. Puzyr contested the amounts demanded in the litigation against him and requested that the Accused contact Dr. Fisher to discuss settlement for less than the full amount Dr. Fisher was demanding.

12.

On or about July 21, 1997, the Accused received a \$500 payment from Mr. Puzyr and confirmed in a letter dated July 21, 1997, that he had agreed to accept payment in full from Mr. Puzyr by August 17, 1997, in exchange for foregoing any further action on the pending lawsuit. The Accused notified Dr. Fisher in writing of this agreement on July 21, 1997.

13.

On or about August 17, 1997, the Accused received a \$1,000 payment from Mr. Puzyr.

14.

On September 18, 1997, the Accused notified Dr. Fisher that he was moving for a default judgment against Mr. Puzyr, and on October 10, 1997, a default



judgment in the amount of \$1,195.79 was entered against Mr. Puzyr, a conformed copy of which was sent to Dr. Fisher.

15.

On or about October 30, 1997, the Accused received a \$350 payment from Mr. Puzyr along with a letter dated October 29, 1997, that claimed the enclosed payment was payment in full of Mr. Puzyr's debt to Dr. Fisher. Mr. Puzyr's October 29, 1997, letter was not forwarded to Dr. Fisher, and its contents were not communicated to him.

16.

On or about November 24, 1997, Mr. Puzyr filed a motion to set aside the default judgment the Accused had taken against him and mailed a copy of this motion to the Accused along with an answer that alleged that his debt to Dr. Fisher was \$728 less than the amount awarded in the judgment.

17.

In a letter to the Accused dated November 24, 1997, Mr. Puzyr asked the Accused if they could come to an agreement to settle the litigation.

18.

By letter dated December 2, 1997, Mr. Puzyr requested that the Accused provide him with a full accounting of his debt to Dr. Fisher and enclosed a check for \$200 payable to Dr. Fisher. The Accused did not advise Dr. Fisher that he had received this check, did not render an accounting to Dr. Fisher of the proceeds of this check, and did not forward to Dr. Fisher his portion of the proceeds of this check. The Accused deposited the check into his lawyer trust account.

19.

In a telephone conversation with Mr. Puzyr that took place on December 10, 1997, the Accused agreed to settle the remaining \$845.79 balance of Dr. Fisher's judgment against Mr. Puzyr for the sum of \$268 in addition to the \$200 the Accused had received on or about December 2, 1997. Dr. Fisher did not know about the Accused's conversation with Mr. Puzyr and had not agreed to any settlement of the remaining balance due on the judgment.

20.

The Accused did not notify Dr. Fisher that he had entered into a settlement agreement with Mr. Puzyr for less than the remaining balance on the judgment and knew he did not have authority from Dr. Fisher to enter into such an agreement.

21.

On or about December 10, 1997, Mr. Puzyr delivered to the Accused a \$268 check made payable to Dr. Fisher. In the letter that accompanied this check, Mr. Puzyr described the check as the final payment under the judgment and requested that the Accused execute a satisfaction of Dr. Fisher's judgment upon receipt of the check.

22.

On December 15, 1997, the Accused executed a satisfaction of Dr. Fisher's judgment, filed the satisfaction with the court, and mailed a copy of it to Mr. Puzyr.

23.

Dr. Fisher did not know that the Accused had executed the above-described satisfaction of judgment and had not given the Accused the authority to satisfy the judgment for \$377.79 less than the amount of the judgment balance. When he executed the satisfaction of judgment, the Accused knew that he did not have authority from Dr. Fisher to do so. The Accused did not send Dr. Fisher a copy of the satisfaction of judgment.

24.

The Accused did not deposit the \$268 check described in paragraph 21 into his lawyer trust account or any other account, did not notify Dr. Fisher he had received it, did not deliver to Dr. Fisher his portion of the proceeds of the check, and did not render an accounting to Dr. Fisher of the check.

25.

Beginning in January 1998, Dr. Fisher telephoned the Accused several times to inquire about the status of his case, but the Accused did not return Dr. Fisher's calls or otherwise communicate with him.

26.

On February 23, 1998, on behalf of Dr. Fisher, attorney Ronald J. Meltzer wrote to the Accused and requested that he contact Dr. Fisher about the status of his case. The Accused did not respond to this letter.

27.

On or about August 11, 1998, Dr. Fisher filed a complaint with the Oregon State Bar concerning the Accused's conduct.

28.

On or before September 15, 1998, the Accused knew that he had not deposited the \$268 check described in paragraph 21 herein into his lawyer trust account. On or about September 15, 1998, the Accused determined that this check was stale and returned it to Mr. Puzyr for reissue.

29.

Mr. Puzyr did not immediately reissue a check for \$268 to cover the check described in paragraph 21. Instead, after September 15, 1998, he made three payments totaling \$218 to the Accused. The Accused did not advise Dr. Fisher he had received these payments or account to Dr. Fisher for them.

### **Violations**

30.

The Accused admits that, by engaging in the conduct described in paragraphs 1 through 29 of this stipulation, he violated DR 1-102(A)(3) and DR 1-102(A)(4) for settling the judgment and filing the satisfaction of judgment without Dr. Fisher's knowledge or authority and for failing to disclose this conduct to Dr. Fisher; DR 6-101(B) for failing to communicate with Dr. Fisher or his lawyer after December 15, 1997; DR 9-101(A) for failing to deposit the check for \$268 into his lawyer trust account; DR 9-101(C)(1) for failing to notify Dr. Fisher that he had received from Mr. Puzyr payments totaling \$468; DR 9-101(C)(3) for failing to maintain complete records of and failing to account to Dr. Fisher for payments from Mr. Puzyr totaling \$468; and DR 9-101(C)(4) for failing to promptly pay Dr. Fisher his portion of the \$468 he collected from Mr. Puzyr.

Upon further factual inquiry, the parties agree that the charge of alleged violation of ORS 9.527(4) in the First Cause of Complaint should be and, upon the approval of this stipulation, is dismissed.

### **Second Cause of Complaint**

#### **Facts**

31.

By letter dated October 13, 1998, Dr. Fisher, through counsel, Ronald J. Meltzer Esq., demanded that the Accused waive his fee of \$84.83 on the "last monies collected," which totaled \$468.00.

32.

On October 14, 1998, the Accused deposited \$626.50 of his own money into his lawyer trust account. That same day, the Accused issued a trust account check to Dr. Fisher for \$797.33, which was the entire fee he had earned during the representation.

### **Violations**

33.

The Accused admits that, by engaging in the conduct described in paragraphs 31 and 32 of this stipulation, he violated DR 9-101(A) by depositing his own money into his lawyer trust account to fund the settlement with Dr. Fisher.

### **Third Cause of Complaint**

34.

Upon further inquiry, the parties agree that the charge of alleged violation of DR 9-101(C)(3) in the Second Cause of Complaint should be, and upon the approval of this stipulation, is dismissed.

### **Sanction**

35.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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.* The Accused violated his duties to his client to preserve the client’s property and to represent his client diligently. The Accused also violated his duty to the public to maintain his personal integrity. *Standards*, §§ 4.1, 4.4, 5.1.

B. *Mental State.* The Accused acted knowingly when he settled the Puzyr judgment without Dr. Fisher’s knowledge or authority, when he filed the unauthorized satisfaction of judgment, and when he failed to disclose his conduct to Dr. Fisher. The Accused acted negligently in failing to deposit the \$268 check into his lawyer trust account and in depositing his own funds into trust to fund the settlement he reached with Dr. Fisher. *Standards*, p. 7.

C. *Injury.* Dr. Fisher was actually harmed in that he did not timely receive his portion of some of the funds the Accused collected from Mr. Puzyr and did not collect the entire amount of his judgment against Mr. Puzyr.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused committed multiple disciplinary offenses. *Standards*, § 9.22(d); and

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

- E. *Mitigating Factors*. Mitigating factors include:
1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a);
  2. The Accused made a timely, good-faith effort to make restitution and to rectify the consequences of his misconduct. *Standards*, § 9.32(d);
  3. The Accused has made full and free disclosure to the Disciplinary Counsel and has displayed a cooperative attitude toward these proceedings. *Standards*, § 9.32(e);
  4. The Accused has an excellent character and reputation. *Standards*, § 9.32(g); and
  5. The Accused is extremely remorseful concerning his conduct. *Standards*, § 9.32(l).

36.

ABA *Standards* §§ 4.12 and 4.42 suggest that a suspension is generally appropriate when the lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client and when he knowingly fails to perform services for a client and causes injury or potential injury to a client. ABA *Standards* § 5.13 suggests that a public reprimand is appropriate when a lawyer knowingly engages in conduct that involves misrepresentation and that reflects on the lawyer's fitness to practice law.

37.

Oregon case law is in accord. See *In re Fuller*, 284 Or 273, 586 P2d 1111 (1978) (60-day suspension for violation of former DR 1-102(A)(4) [current DR 1-102(A)(3)] and former ORS 9.480(4) [current ORS 9.527(4)]); *In re Whitener*, 13 DB Rptr 1 (1999) (120-day suspension for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-101(A)(2), and DR 1-103(C)); *In re Wetteland*, 2 DB Rptr 246 (1998) (60-day suspension for violation of DR 2-106(A), DR 6-101(B) [two counts], DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4)).

38.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of 120 days for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(B), DR 9-101(A) (two counts), DR 9-101(C)(1), DR 9-101(C)(3), and DR 9-101(C)(4), the sanction to be effective beginning on January 25, 2001.

39.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The sanction provided for herein was approved by the Chairman of the State Professional Responsibility Board on January 2, 2001, under

Cite as *In re Pfister*, 15 DB Rptr 16

BR 3.6(d). 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 12th day of January 2001.

/s/ Greg A. Pfister

Greg A. Pfister

OSB No. 79344

EXECUTED this 17th day of January 2001.

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. 99-57
	)	SC S48184
JUDY BOOMHOWER,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4), DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2). Stipulation for discipline. 12-month suspension.
Effective Date of Order:	January 30, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

The Oregon State Bar and Judy Boomhower have entered to a Stipulation for Discipline. The Stipulation for Discipline is approved. Judy Boomhower is suspended from the practice of law for a period of 12 months and shall pay the Oregon State Bar the sum of \$141. The Stipulation for Discipline is effective the date of this order.

DATED this 30th day of January 2001.

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

**STIPULATION FOR DISCIPLINE**

Judy Boomhower, 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, Judy Boomhower, 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 since that time, but has been suspended from the practice of law since July 2, 1999, for failure to pay her Bar dues. Prior to her suspension, the Accused's principal place of business was in Benton 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 15, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(4), DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2) of the Code of Professional Responsibility. 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 September 1997, the Accused was retained by Dena Greening ("Greening") to represent her in a dissolution of marriage. A telephone status conference was scheduled for May 20, 1998. The Accused did not advise Greening of the status conference, and neither the Accused nor Greening appeared at the status conference. Between September 1997 and May 20, 1998, Greening made numerous attempts to contact the Accused, but the Accused did not return Greening's telephone calls.

6.

On September 23, 1998, a status conference was held at which the Accused and husband's attorney, Stephen Tabor ("Tabor"), advised the court that the case was settled. The Accused was to prepare a judgment order consistent with the terms of the settlement agreement and submit it to the court by October 14, 1998. The Accused did not prepare and submit a form of judgment order. Tabor prepared a form of judgment order and sent it to the Accused. The Accused did not forward the order to Greening and did not respond to Tabor.



7.

At a status conference set for December 16, 1998, the Accused advised the court that Greening would not sign anything prepared by Tabor. The court set the case for trial for February 18, 1999. The Accused did not advise Greening of the trial date.

8.

On or about February 17, 1999, the Accused met with Greening to review a form of Stipulated Judgment that had been prepared by Tabor. The Accused declined to continue to represent Greening unless Greening agreed to sign the Stipulated Judgment. Greening refused to sign the Stipulated Judgment. At no time did the Accused advise Greening that trial of the matter was set for the following day.

9.

On or about February 17, 1999, Greening called the clerk of the court and was told that she had to be in court on February 18, 1999. Greening appeared in court on February 18, 1999, and learned that it was the time and date of trial. The Accused did not appear at trial and effectively withdrew from representation without taking reasonable steps to avoid foreseeable prejudice to her client. The court would not reset the matter, and Greening proceeded to represent herself.

10.

On February 22, 1999, the Honorable Terry A. Leggert filed a complaint with Disciplinary Counsel's Office concerning the conduct of the Accused. The letter was forwarded to the Accused for a response. The Accused did not respond, and the matter was referred to the Polk/Benton/Lincoln County Local Professional Responsibility Committee ("LPRC").

11.

The LPRC investigator attempted to contact the Accused by letter and by telephone. The Accused did not respond to the letter or telephone calls. On September 30, 1999, the LPRC subpoenaed the Accused to respond to the complaint on October 29, 1999. The Accused appeared pursuant to the subpoena, but did not respond fully to inquiries from the LPRC investigator.

12.

Disciplinary Counsel's Office and the LPRC are empowered to investigate and act upon the conduct of lawyers.

## Violations

13.

The Accused admits that, by engaging in the conduct described in this stipulation, she engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4); failed to respond fully to inquiries from and comply with reasonable requests of an authority empowered to investigate or act upon her conduct in violation of DR 1-103(C); improperly withdrew from employment in violation DR 2-110(A)(2); neglected a legal matter in violation of DR 6-101(B); and intentionally failed to carry out a contract of employment in violation of DR 7-101(A)(2).

## Sanction

14.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Supreme Court 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.* The Accused violated her duty to her client and her duty to the profession. *Standards*, §§ 4.4, 7.2.

B. *Mental State.* In violating DR 1-102(A)(4), DR 1-103(C), DR 2-110(A)(2), and DR 6-101(B), the Accused’s conduct demonstrates knowledge. “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. In violating DR 7-101(A)(2), the Accused’s conduct demonstrates intent. “Intent” is the conscious objective or purpose to accomplish a particular result. *Standards*, p. 17.

C. *Injury.* The conduct of the Accused caused great stress for the client and, at a minimum, potential injury to the client in that she was required to appear at trial pro se, the court declined to reset her case, and she was required to proceed unrepresented by counsel. By failing to respond to Disciplinary Counsel’s Office, the Accused caused some injury to the profession in that the matter had to be referred to the LPRC for investigation. The LPRC was also delayed by the Accused’s initial failure to respond to the committee investigator.

D. *Aggravating Factors.* Aggravating factors include:

There are multiple charges. *Standards*, § 9.22(d).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a);

2. The Accused did not act with a dishonest or selfish motive. *Standards*, § 9.32(b);

3. At the time of the misconduct in this case, the Accused was experiencing personal or emotional problems and was being treated for depression by her physician. *Standards*, § 9.32(c); and

4. The Accused is remorseful. *Standards*, § 9.32(l).

15.

The *Standards* provide that suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.” *Standards*, § 4.42.

Under duties owed the profession, which include communicating in response to disciplinary inquires, *Standards*, § 7.2 provides:

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.

16.

Oregon case law is in accord and provides some guidance in fashioning an appropriate sanction in this case. In *In re Purvis*, 306 Or 522, 760 P2d 254 (1988), an attorney was suspended from the practice of law for six months when he neglected over several months to take any action after being retained by a client to seek reinstatement of child support payments for the client’s son. In *In re Recker*, 309 Or 633, 789 P2d 663 (1990), the accused was suspended from the practice of law for two years for neglecting the defense of a matter entrusted to the attorney by court appointment and for failing to respond to numerous telephone messages. *See also In re Meyer*, 328 Or 220, 970 P2d 647 (1999) (lawyer suspended for one year for failure to take any constructive action to advance or protect client’s legal position in dissolution-of-marriage proceeding where lawyer had a prior disciplinary record, but cooperated in Bar’s investigation of his conduct); *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997) (lawyer suspended for two years for, among other things, neglecting a legal matter and failing to answer a disciplinary complaint).

17.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for one year for violation of DR 1-102(A)(4), DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2).

18.

In addition, on or before June 1, 2001, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$141.00, incurred for process service for subpoena duces tecum. Should the Accused fail to pay said sum in full by June 1, 2001, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

19.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar, and the sanction has been approved by the Chairperson of the State Professional Responsibility Board (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 18th day of January 2001.

/s/ Judy Boomhower

Judy Boomhower  
OSB No. 91024

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann  
OSB No. 72311  
Assistant Disciplinary Counsel

**Cite as 331 Or 580 (2001)**  
**IN THE SUPREME COURT**  
**OF THE STATE OF OREGON**

In re )  
 )  
Complaint as to the Conduct of )  
 )  
PAUL F. GLOYN, )  
 )  
Accused. )

(OSB Nos. 98-70, 98-71, 98-79, 99-111, 99-112, 99-113; SC S47962)

En Banc

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

Submitted on the record December 22, 2000. Resubmitted January 16, 2001.  
Decided February 1, 2001.

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

No appearance contra.

PER CURIAM

The Accused is disbarred.

**SUMMARY OF SUPREME COURT OPINION**

The Accused left Oregon after a Coos County grand jury indicted him on numerous criminal charges. Subsequently, the Disciplinary Board of the Oregon State Bar initiated this proceeding. The Accused, who was served by publication, did not file an answer or otherwise appear. Accordingly, a trial panel entered a default order against the Accused for violating: DR 1-102(A)(2) (engaging in criminal conduct that reflects adversely on a lawyer’s honesty, trustworthiness, or fitness to practice law); DR 1-102(A)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(4) (engaging in conduct prejudicial to administration of justice); DR 1-103(C) (failing to cooperate with a disciplinary investigation); DR 2-106(A) (charging illegal or excessive fees); DR 7-102(A)(5) (knowingly making false statements of law or fact); DR 9-101(A) (failing to deposit and maintain client funds in a trust account); DR 9-101(C)(3) (failing to account for client funds); and DR 9-101(C)(4) (failing to deliver client funds promptly). The trial panel decided that the Accused should be disbarred. *Held*: On de novo review the trial panel’s decision is adopted. Bar Rule 10.6.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
)  
Complaint as to the Conduct of ) Case No. 00-33  
)  
CATHERINE DIXON, )  
)  
Accused. )

Bar Counsel: None  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 1-103(C). Stipulation for discipline. Public reprimand.  
Effective Date of Order: January 30, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 1-103(C).

DATED this 30th day of January 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Lon Bryant  
Lon Bryant, Region 6  
Disciplinary Board Chairperson

**STIPULATION FOR DISCIPLINE**

Catherine Dixon, 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, Catherine Dixon, was admitted by the Oregon Supreme Court to the practice of law in Oregon on December 14, 1990, has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Marion 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 October 21, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 1-103(C) of the Code of Professional Responsibility. 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.

On December 15, 1999, the Oregon State Bar received a complaint concerning the Accused's conduct from Robert Macias. After reviewing Mr. Macias' concerns, the Disciplinary Counsel's Office sought additional information from Mr. Macias to determine whether his complaint raised an issue within the office's jurisdiction. After receiving Mr. Macias' further comment, the Disciplinary Counsel's Office dismissed his complaint, but advised him that he could seek review by the State Professional Responsibility Board of staff's dismissal pursuant to BR 2.5(c). Mr. Macias sought Board review.

6.

Upon receipt of Mr. Macias' request for Board review, Disciplinary Counsel's Office sent the Accused a copy of Mr. Macias' complaint and requested that she respond to the allegations contained therein no later than February 9, 2000. When the Accused failed to respond, the Disciplinary Counsel's Office sent the Accused three additional letters requesting her response. The Accused failed to respond, necessitating a referral of Mr. Macias' complaint to the Clackamas/Marion/Linn County LPRC for investigation.

7.

After the matter was referred to the LPRC, the Accused tendered a response to the Disciplinary Counsel's Office. The Disciplinary Counsel's Office contacted the LPRC and advised that an LPRC investigation appeared unnecessary. Thereafter, the Disciplinary Counsel's Office sent the Accused three additional letters seeking information responsive to Mr. Macias' complaint. When the Accused did not respond, the Disciplinary Counsel's Office was required to refer the matter to the LPRC for a second time.

### **Violations**

8.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 1-103(C) of the Code of Professional Responsibility.

### **Sanction**

9.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). 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.* The Accused violated her duty to the legal profession to cooperate with the Bar's investigation of her conduct. *In re Miles*, 324 Or 218, 221, 923 P2d 1219 (1996).

B. *Mental State.* The Accused negligently failed to respond to Disciplinary Counsel's inquiries, but cooperated with the Local Professional Responsibility Committee's investigation.

C. *Injury.* The Bar and the public suffered actual injury in that the resolution of the Macias complaint was delayed and the Bar was twice required to call upon the LPRC to resolve a matter.

D. *Aggravating Factors.* Aggravating factors to be considered include: The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1990. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include: The Accused has no prior disciplinary record. *Standards*, § 9.32(a);

10.

*ABA Standards* § 7.3 suggests that a public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the



legal profession and causes injury or potential injury to a client, the public, or the legal system. Oregon case law is in accord. See *In re Edelson*, 13 DB Rptr 72 (1999); *In re Klemp*, 11 DB Rptr 1 (1997); *In re Van Zeipel*, 6 DB Rptr 71 (1992).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 1-103(C).

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 provided for herein on October 21, 2000. 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 1st day of December 2000.

/s/ Catherine Dixon

Catherine Dixon

OSB No. 90480

EXECUTED this 22nd day of January 2001.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan

OSB No. 83314

Assistant Disciplinary Counsel

**Cite as 331 Or 606 (2001)**  
**IN THE SUPREME COURT**  
**OF THE STATE OF OREGON**

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

(OSB Nos. 97-84, 98-35; SC S47249)

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

Argued and submitted November 6, 2000. Decided February 23, 2001.

William B. Wyllie, Crescent Lake, 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, Durham, Kulongoski, Leeson, and Riggs, Justices. (Van Hoomissen, J., retired December 31, 2000, and did not participate in the decision of this case. Carson, C.J., and De Muniz, J., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for four months, with the period of suspension to run consecutively to the period of suspension imposed on the Accused in *In re Wyllie*, 327 Or 175, 957 P2d 1222 (1998).

**SUMMARY OF SUPREME COURT OPINION**

Billy Wayne Yother, Jr. (“Yother junior”), his sister Laura Yother, and his girlfriend Denise Szlavich (collectively, the defendants) were indicted for burglary and assault. The Accused provided the defendants and Billy Wayne Yother, Sr. (“Yother senior”) an oral opinion about whether the defendants should accept no-contest pleas in their criminal cases. Each of the defendants was represented by court-appointed counsel in their criminal case. In a meeting with the defendants, the Accused orally disclosed that the defendants’ interests might be in conflict. The day before the defendants’ criminal trial was scheduled to begin, Yother junior called the Accused. The Accused told Yother junior that there was nothing he could do for the defendants at trial, because he would need more time to prepare if he were going to

represent them at trial. The Accused had worked two-and-one-half hours on the defendants' case at an hourly rate of \$150. The Accused charged Yother senior a total of \$1,925 for his services. The Accused collected \$750 for his services, which he deposited in his personal account. The Oregon State Bar filed four causes of complaint against the Accused, alleging a total of eight violations of the Code of Professional Responsibility Disciplinary Rules (DRs), including DR 5-105(E) (current client conflict); DR 2-106(A) (charging or collecting illegal or excessive fee); DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 2-110(A)(2) (improper withdrawal); DR 6-101(B) (neglect of legal matter); DR 7-101(A)(1) (intentionally failing to seek lawful objectives of client); and DR 7-101(A)(2) (intentionally failing to carry out contract of employment). *Held*: The Accused violated DR 5-105(E), DR 9-101(A), and DR 2-106(A). The Accused is suspended from the practice of law for four months, with the period of suspension to run consecutively to the period of suspension imposed on the Accused in *In re Wyllie*, 327 Or 175, 957 P2d 1222 (1998).

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
)  
Complaint as to the Conduct of ) Case Nos. 97-197, 98-145, 99-110  
)  
DIANE L. GRUBER, )  
)  
Accused. )

Bar Counsel: Timothy M. Bowman, Esq.  
Counsel for the Accused: Christopher R. Hardman, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 2-106(A). Stipulation for  
discipline. Public reprimand.  
Effective Date of Order: March 2, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

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

DATED this 2nd day of March 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Lon N. Bryant 2/26/01  
Lon N. Bryant, Region 6  
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 Clackamas 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 29, 1999, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), a copy of which is attached hereto and incorporated by reference herein. The Amended Formal Complaint encompassed three separate matters: Case Nos. 97-197, 98-145, and 99-110. The parties intend that this Stipulation for Discipline sets forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Case No. 99-110

#### Facts

5.

On or about August 5, 1996, the Accused undertook to represent Wanda Emmett in a proceeding for dissolution of marriage. Ms. Emmett executed a written fee agreement prepared by the Accused, a copy of which is attached hereto and by this reference incorporated herein.

6.

The above-described fee agreement provided that, beginning 30 days after the conclusion of Ms. Emmett’s case, the Accused would be permitted to charge interest at the rate of 18% per annum on any balance then unpaid. The agreement did not

provide that the Accused would be permitted to charge Ms. Emmett for any time she expended in defending against complaints to the Oregon State Bar arising out of her representation of Ms. Emmett.

7.

The employment contract between the Accused and Ms. Emmett obligated Ms. Emmett to pay her bill promptly each month. The Accused continued to provide legal services on behalf of Ms. Emmett for over a year even though Ms. Emmett made no payments until after the case was concluded and the marital property was sold. Between August and November 1997, the Accused also billed for and collected 18% interest on fees for time she expended in responding to a complaint concerning her conduct filed with the Oregon State Bar by Ms. Emmett's former husband.

8.

Between August and November 1997, while Ms. Emmett's dissolution of marriage proceeding was pending, the Accused billed for and collected interest on her unpaid fees and costs.

### **Violations**

9.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 2-106(A).

### **Case Nos. 97-197, 98-145**

10.

Upon further factual inquiry, the parties agree that Case Nos. 97-197 and 98-145 should be dismissed in their entirety.

### **Sanction**

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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.* The Accused violated her duty as a professional to avoid charging illegal or clearly excessive fees. *Standards*, § 7.0.

B. *Mental State.* The Accused acted with a negligent mental state in that she failed to review her billings to Ms. Emmett for charges that were not authorized by her fee agreement.

C. *Injury*. Ms. Emmett was actually injured in that she paid interest that the Accused was not entitled to receive, paid for the Accused's time expended in a matter that benefited the Accused rather than Ms. Emmett, and lost the use of the funds paid in interest and for the Accused's defense of a disciplinary complaint until the Accused learned of the improper charges.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused had substantial experience in the practice of law, having been admitted to the Bar in 1986. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has a prior disciplinary record, *Standards*, § 9.32(a); see *In re Gruber*, 12 DB Rptr 81 (1998). However, under the holding of *In re Jones*, 326 Or 195, 951 P2d 149 (1997), the prior offense should be given little weight as an aggravating factor;

2. The Accused did not act with a dishonest or selfish motive, *Standards*, § 9.32(b);

3. The Accused made a timely, good-faith effort to rectify the consequences of her misconduct in that as soon as the unauthorized charges to Ms. Emmett were brought to her attention, she made reimbursement to Ms. Emmett, *Standards*, § 9.32(d); and

4. The Accused has displayed a cooperative attitude toward these proceedings, *Standards*, § 9.32(e).

12.

ABA *Standards* § 7.3 suggests 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.

Oregon case law is in accord. See *In re Mackin*, 12 DB Rptr 87 (1998).

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 2-106(A), the sanction to be effective upon approval of this stipulation for discipline by the Disciplinary Board.

14.

The sanction provided for in this Stipulation for Discipline was approved by the State Professional Responsibility Board (SPRB) on October 21, 2000, and is subject to review by the Disciplinary Counsel of the Oregon State Bar. 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 12th day of February 2001.

/s/ Diane L. Gruber

Diane L. Gruber

OSB No. 86366

EXECUTED this 22nd day of February 2001.

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. 00-159
	)	
MICHAEL A. MILLS,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 7-106(A), and ORS 9.527(2). Stipulation for discipline. 30-day suspension.
Effective Date of Order:	March 3, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 30 days, effective March 3, 2001, or three days after the date of this order, whichever is later, for violation of DR 1-102(A)(3), DR 7-106(A), and ORS 9.527(2).

DATED this 28th day of February 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Lon N. Bryant  
Lon N. Bryant, Region 6  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Michael A. Mills, 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 Oregon on April 27, 1990, and has been a member of the Oregon State Bar continuously since that time. At all times mentioned herein, the Accused had 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 December 15, 2000, the State Professional Responsibility Board directed that a formal complaint be filed against the Accused for violation of DR 1-102(A)(2), DR 1-102(A)(3), DR 1-102(A)(4), DR 7-106(A), and ORS 9.527(2). 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.

On or about February 21, 1999, the Accused knowingly subjected his wife to offensive physical contact during a domestic argument. The Accused was arrested and subsequently released on his own recognizance subject to conditions, which included that he not return to the family home and have no contact with the victim. The Accused signed a Conditional Release Agreement in which he acknowledged the conditions of his release. Following his release, the Accused returned to the family home and contacted his wife in violation of terms of the release agreement.

6.

On or about February 25, 1999, while at the family home, the Accused directed his wife to prepare a note to the Morrow County district attorney and the

Heppner police department stating that she wished the conditions of her husband's release to be immediately changed to forbid only offensive physical contact and that he be allowed to return home. The Accused told his wife what to say in the note.

7.

The Accused also directed his wife to state in the note that she did not want him prosecuted because he was acting in self-defense. The Accused's wife included the statement in the note. The representation was false and known to be false at the time the Accused directed his wife to make the statement.

8.

On or about July 27, 2000, the Accused entered a plea of guilty and was convicted of the crime of Harassment in violation of ORS 166.065.

### **Violations**

9.

Based on the foregoing, the Accused admits that he violated DR 1-102(A)(3), dishonesty, fraud, deceit, or misrepresentation, DR 7-106(A), disregarding an order of the court, and ORS 9.527(2), conviction of a misdemeanor involving moral turpitude. On further factual inquiry, the parties agree that the alleged violations of DR 1-102(A)(2) and DR 1-102(A)(4) should be and, upon approval of this stipulation, shall be dismissed.

### **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 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.

A. *Duty Violated.* In violating DR 1-102(A)(3), DR 7-106(A), and ORS 9.527(2) the Accused violated his duties to the public, to the legal system, and the profession. *Standards*, §§ 5.0, 6.0, 7.0.

B. *Mental State.* The Accused's conduct demonstrates that he acted with knowledge. "Knowledge" is defined as a conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. *Standards*, p. 7. The Accused acted knowingly when he grabbed his wife, when he returned home and contacted his wife in violation of the conditions of his release, and when he directed his wife to prepare a note to law enforcement authorities that contained a false statement.

C. *Injury*. The Accused caused actual and potential injury to the public, the legal system and the profession. By subjecting his wife of offensive physical contact and disregarding conditions of the release agreement, the Accused demonstrated a disrespect for the law. The Accused also caused potential injury to the profession. As a member of the Bar, the Accused is expected to comply with the law. When a lawyer fails to obey the law or a court order, the public has reason to question the judicial process and the need to comport their own conduct to societal norms.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused's conduct demonstrates dishonest and selfish motives. *Standards*, § 9.22(b).
2. There are multiple offenses. *Standards*, § 9.22(d).
3. The Accused's wife was vulnerable. *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 has no prior record of discipline. *Standards*, § 9.32(a).
2. The Accused cooperated with Disciplinary Counsel's Office in responding to the complaint and resolving this disciplinary proceeding. *Standards*, § 9.32(e).
3. Other penalties and sanctions have been imposed by the court. *Standards*, § 9.32(k).
4. The Accused is remorseful. *Standards*, § 9.32(l).

11.

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

12.

Case law is in accord. See *In re Rhodes*, 331 Or 231, 13 P3d 512 (2000) (lawyer suspended for two years for violation of DR 7-106(A), DR 1-102(A)(4), and other rules); *In re Jones*, 326 Or 195, 951 P2d 149 (1997) (lawyer suspended for 45

days for violation of DR 1-102(A)(3) and DR 1-102(A)(4)); *In re Bukhalter*, 12 DB Rptr 26 (1998) (lawyer reprimanded for conviction of crime of harassment, with no other violations present).

13.

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 30 days for violation of DR 1-102(A)(3), DR 7-106(A), and ORS 9.527(2).

14.

This stipulation 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.

DATED this 15th day of February 2001.

/s/ Michael A. Mills

Michael A. Mills  
OSB No. 90090

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. 97-139  
)  
CATHERINE N. CARROLL, )  
)  
Accused. )

Bar Counsel: Sarah M. Bostwick, Esq.  
Counsel for the Accused: Christopher R. Hardman, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(3), DR 7-102(A)(5),  
and DR 7-104(A). Stipulation for discipline.  
30-day suspension.  
Effective Date of Order: May 3, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Catherine N. Carroll (hereinafter "Accused") and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for 30 days, effective May 3, 2001, for violation of DR 1-102(A)(3), DR 7-102(A)(5), and DR 7-104(A) of the Code of Professional Responsibility.

DATED this 12th day of March 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ C. Lane Borg  
C. Lane Borg, Region 5  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Catherine N. Carroll, 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 Oregon on April 21, 1977, and has been a member of the Oregon State Bar continuously since that time. At all times mentioned herein, the Accused had her 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 June 16, 1999, the State Professional Responsibility Board directed that a formal complaint be filed against the Accused for violation of DR 1-102(A)(3), DR 1-103(C), DR 7-102(A)(1), DR 7-102(A)(2), DR 7-102(A)(5), and DR 7-104(A). On February 21, 2001, the Bar filed an Amended Formal Complaint. 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.

On or about April 24, 1996, a Stipulated Decree of Dissolution and Judgment was filed in the matter of *Amber Mae Hoyt v. Nicholas Hoyt*, Case No. C951953DR, in the Washington County Circuit Court (hereinafter “Judgment”). The Accused represented the husband (hereinafter “Husband”) during the dissolution case and in post dissolution proceedings. In part, the Judgment provided that Husband was awarded custody of the parties’ children; Husband was to pay \$150 per month spousal support to his wife (hereinafter “Wife”); Wife was to pay \$50 per month child support to Husband; and Husband could offset Wife’s payment obligation against his payment obligation to Wife. Following entry of the Judgment, the

Accused notified Wife's attorney that Husband refused Wife's request that he offset the payments.

6.

In early July 1996, Wife's attorney withdrew from representing Wife. Shortly thereafter, the Accused notified Wife that Husband elected to have the child support payment withheld from her wages. The same day, the Accused sent a Motion and Order for Wage Withholding to the court, and served Wife with a copy thereof with her letter. When the Accused sent the motion to the court, Wife was not in arrears in her child support payments. After the Accused notified Wife that her support payment would be withheld from her wages, Wife did not send Husband a support check. On August 8, 1996, the court granted the motion and signed the order.

7.

On September 24, 1996, a lawyer notified the Accused by letter that he had been retained to represent Wife (hereinafter "Wife's Attorney"). The Accused received the letter on September 25, 1996. On September 25, 1996, the Accused signed a motion and supporting affidavit to require Wife to show cause why the Judgment should not be modified, and held in contempt of court for failure to pay child support (hereinafter "Show Cause Documents"). The same date, the Accused also signed a Request for Production of Documents. The request called for Wife to produce certain documents on or before October 25, 1996 (hereinafter "Request for Production").

8.

On September 25, 1996, the Accused delivered the Show Cause Documents and the Request for Production to a process server for filing with and issuance of the show cause order by the court, and service on the Wife after the order to show cause was signed. The Accused did not send a copy of the Show Cause Documents or the Request for Production to Wife's Attorney. The process server delivered the documents to the court.

9.

On October 9, 1996, the court signed the order to show cause. On October 27, 1996, the process server served the Show Cause Documents and the Request for Production on Wife, two days after production of the documents was stated to be due. By serving the Wife with the Request for Production, the Accused communicated, or caused another to communicate, on the subject of the representation or on directly related subjects, when she knew that Wife was represented by an attorney.



10.

On November 5, 1996, the Accused notified Wife's Attorney by letter, via facsimile, that she would be appearing at ex parte on November 7, 1996. The Accused did not inform Wife's Attorney of the reason for the appearance or provide him with a copy of the documents she intended to present to the court. Wife's attorney instructed his assistant to contact the Accused to determine the reason for the appearance. On November 6, 1996, Wife's Attorney's assistant telephoned the Accused. The Accused stated that she intended to present a motion for the appointment of an attorney for the parties' children and file a motion to compel discovery. On November 6, 1996, Wife's attorney delivered to the Accused, via facsimile, Wife's Response to Request for Production and a billing statement for the documents. Wife's Attorney did not include or identify the documents in his letter. Wife's Attorney mailed the original letter and the documents to the Accused the same day.

11.

On November 7, 1996, the Accused and Wife's Attorney appeared at ex parte. The Accused delivered a copy of the motions to Wife's Attorney. The Accused represented in the motion to compel that she had spoken with Wife's Attorney and his assistant concerning the Request for Production, and that she had received no documents. In fact, the Accused never spoke with Wife's Attorney concerning the Request for Production of Documents. The Accused also expressed or implied that Wife had failed to comply with the discovery request and that grounds existed for the motion. The Accused failed to state that the Request for Production was not served on Wife until October 27, 1996, two days after the date production was stated to be due, or that Wife's Attorney had delivered a response to the request on November 6, 1996.

12.

The Accused raised the discovery issue with the court. The court refused to consider the motion to compel discovery because it was not properly before the court at ex parte, and told the Accused and Wife's Attorney that the motion should be scheduled. The court also suggested that the attorneys should meet to see if the discovery issues could be resolved. On November 7, 1996, the Accused received the documents Wife's Attorney sent to her on November 6, 1996. The Accused did not file or pursue the motion to compel.

### **Violations**

13.

Based on the foregoing, the Accused admits that she violated DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation), DR 7-102(A)(5) (false statement of fact In representing the interests of a client), and DR 7-104(A) (communicating, or causing another to communicate, with a represented person). On

further factual inquiry, the parties agree that the alleged violations of DR 1-103(C), DR 7-102(A)(1), and DR 7-102(A)(2) should be and, upon approval of this stipulation, shall be dismissed.

### Sanction

14.

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 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.

A. *Duty Violated.* In violating DR 1-102(A)(3), DR 7-102(A)(5), and DR 7-104(A), the Accused violated her duties to the public, to the legal system, and the profession. *Standards*, §§ 5.0, 6.0, 7.0.

B. *Mental State.* The Accused’s conduct demonstrates that she acted with knowledge. “Knowledge” is defined as a conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. *Standards*, p. 7.

C. *Injury.* The Accused caused actual and potential injury to the public, the legal system and the profession. By failing to serve Wife’s Attorney with a copy of the Request for Production, the Accused delayed notice to Wife’s Attorney as required under the rules. By making false statements, the Accused caused potential injury to the profession, the legal system and the public. The *Standards* provide that when a lawyer fails to be truthful, the public has reason to question the judicial process and the need to comport their own conduct to societal norms.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused’s conduct demonstrates selfish motives. *Standards*, § 9.22(b).

2. There are multiple offenses. *Standards*, § 9.22(d).

3. The Accused has substantial experience in the practice of law, having been admitted to practice in New Mexico in 1975, and in Oregon in 1977. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

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

3. The Accused is remorseful. *Standards*, § 9.32(l).

4. The Accused's reputation is good according to members of the profession who contacted the Bar. *Standards*, § 9.32(g).

15.

The *Standards* provide that suspension is generally appropriate when a lawyer prepares documents containing false statements, or such documents are being submitted to the court, 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 engages in communication with an individual in the legal system when the lawyer know that such communication is improper, and causes injury or potential injury to a party, 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*, §§ 6.32, 7.2.

16.

Case law is in accord. See *In re Walker*, 293 Or 297, 647 P2d 468 (1982) (lawyer suspended for 30 days for violation of DR 1-102(A)(4) [current DR 1-102(A)(3)], and other rules, when he misrepresented the status of a case to the probate court); *In re Hobson*, 13 DB Rptr 120 (1999) (lawyer suspended for 30 days for violation for DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-110(B), when he presented a form of judgment to judge for signature, then delivered service copy to opposing counsel without informing that judgment had been signed); *In re Gertulla*, 12 DB Rptr 105 (1998) (lawyer suspended for 60 days 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)); *In re Greene*, 290 Or 291, 620 P2d 1379 (1980) (lawyer suspended for 60 days for violation of DR 1-102(A)(4)-(5) [current DR 1-102(A)(3)-(4)], and other rules, when he allowed a client to submit false statements in affidavit and failed to disclose material information).

17.

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 30 days, effective May 3, 2001, for violation of DR 1-102(A)(3), DR 7-102(A)(5), and DR 7-104(A) of the Code of Professional Responsibility.

18.

This stipulation 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.

DATED this 28th day of February 2001.

/s/ Catherine N. Carroll

Catherine N. Carroll

OSB No. 77022

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

**Cite as 331 Or 689 (2001)**  
**IN THE SUPREME COURT**  
**OF THE STATE OF OREGON**

In re )  
 )  
Complaint as to the Conduct of )  
 )  
WILLIAM S. DAMES, )  
 )  
Accused. )

(OSB No. 98-8; SC S47462)

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

Argued and submitted March 2, 2001. Decided March 22, 2001.

Doug J. Richmond, Medford, argued the cause and filed the briefs for the Accused. With him on the briefs was Kellington, Krack, Richmond, Blackhurst & Sutton, LLP.

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 one year, commencing 60 days from the date of filing of this opinion.

**SUMMARY OF SUPREME COURT OPINION**

A trial panel of the Disciplinary Board found that the Accused had violated five separate provisions of the Code of Professional Responsibility and determined that he should be suspended from the practice of law for a period of one year. *Held*: The trial panel's findings were correct and the sanction appropriate. The Accused is suspended from the practice of law for one year, commencing 60 days from the date of the filing of this opinion.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
 )  
Complaint as to the Conduct of ) Case Nos. 95-219, 99-18  
 )  
ERIC HAWS, )  
 )  
Accused. )

Bar Counsel: Gary R. Ackley, Esq.  
Counsel for the Accused: John C. Fisher, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 6-101(A). Stipulation for  
discipline. Public reprimand.  
Effective Date of Order: April 2, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 6-101(A).

DATED this 2nd day of April 2001.

/s/ Paul E. Meyer  
Paul E. Meyer, Esq.  
State Disciplinary Board Chairperson

/s/ Gregory E. Skillman  
Gregory E. Skillman, Region 2  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Eric Haws, 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, Eric Haws, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1973, and has been a member of the Oregon State Bar continuously since that time, having his 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 19, 2000, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), a copy of which is attached hereto and incorporated by reference herein. 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 October 30, 1996, the Accused undertook to represent Tami Dvorak (hereinafter referred to as “Dvorak”) in a Chapter 13 bankruptcy proceeding. The bankruptcy court confirmed Dvorak’s Chapter 13 plan (hereinafter referred to as the “plan”) on or about March 23, 1997.

6.

On or about November 6, 1997, Dvorak requested the Accused to obtain a postconfirmation modification of her plan to reduce the monthly payments it required her to pay. On or about November 7, 1997, the bankruptcy trustee filed a motion to dismiss Dvorak’s plan.

7.

On or about November 14, 1997, on Dvorak's behalf, the Accused filed a new plan and amended schedules. These documents contained errors, and the court entered an order striking the plan and amended schedules on November 17, 1997. The court returned the stricken documents to the Accused and informed him of the errors they contained.

8.

On or about December 1, 1997, on Dvorak's behalf, the Accused filed an amended plan, amended schedules and a notice of postconfirmation modification. These documents contained errors, and the court entered an order striking them on or about December 3, 1997. The court returned the stricken documents to the Accused and informed him of the errors they contained.

9.

On or about December 12, 1997, on Dvorak's behalf, the Accused again filed documents to effect the amendment of the plan. These documents contained errors. On December 16, 1997, the court rejected the documents, returned them to the Accused, and informed him of the errors they contained.

10.

On or about December 31, 1997, on Dvorak's behalf, the Accused again filed documents to effect the amendment of the plan. However, the court had already dismissed Dvorak's Chapter 13 proceeding.

11.

The Accused did not acquire or use the legal knowledge, skill, thoroughness or preparation necessary to represent Dvorak competently.

### **Violations**

12.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 6-101(A) of the Code of Professional Responsibility.

Upon further factual inquiry, the parties agree that the charge of alleged violation of DR 6-101(B) in Case No. 99-18 should be and, upon the approval of this stipulation, is dismissed. The parties further agree that Case No. 95-219 should be and, upon the approval of this stipulation, is dismissed in its entirety.

### **Sanction**

13.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing*



*Lawyer Sanctions* (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*. The Accused violated his duty to his client to represent her competently. *Standards*, § 4.5.

B. *Mental State*. The Accused acted negligently, i.e., he failed to heed a substantial risk that circumstances existed or that a result would follow from his conduct, which failure was a deviation from the standard of care that a reasonable lawyer would have exercised in the situation. *Standards*, p. 7.

C. *Injury*. Dvorak was actually injured by the Accused’s failure to effect the amendment of her plan in that she was unable to make the payments required by the plan and it was dismissed for failure to make the proper payments.

D. *Aggravating Factors*. Aggravating factors include:

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

2. The Accused has a prior disciplinary record. In 1990, he was suspended for 63 days, stayed pending completion of a two year probation, for violation of DR 1-103(C). *In re Haws*, 310 Or 741, 801 P2d 818 (1990). Although this prior discipline is properly considered in aggravation, it involves conduct that is dissimilar to the conduct in this case and the conduct that resulted in the prior discipline occurred approximately ten years prior to the conduct in Case No. 99-18. See *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997), for guidance as to the weight to be assigned to prior discipline.

E. *Mitigating Factors*. Mitigating factors include:

The Accused did not act with a dishonest or selfish motive. *Standards*, § 9.32(b).

14.

ABA *Standards* § 4.53 suggests that a public reprimand is generally appropriate when a lawyer (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

Oregon case law is in accord. See *In re Bolland*, 12 DB Rptr 45 (1998) (public reprimand for violation of DR 6-101(A) and (B)).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 6-101(A), the sanction

to be effective upon approval of this Stipulation for Discipline by the Disciplinary Board.

17.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The sanction agreed upon by the parties was approved by the State Professional Responsibility Board (SPRB) on November 18, 2000. 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 February 2001.

/s/ Eric Haws

Eric Haws

OSB No. 73126

EXECUTED this 1st day of March 2001.

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. 99-99  
)  
JAMES W. VAN LOON, )  
)  
Accused. )

Bar Counsel: None  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(4) and DR 6-101(A).  
Stipulation for discipline. Public reprimand.  
Effective Date of Order: April 2, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is reprimanded for violation of DR 1-102(A)(4) and DR 6-101(A).

DATED this 2nd day of April 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Dwayne R. Murray  
Dwayne R. Murray, Region 3  
Disciplinary Board Chairperson

### **STIPULATION FOR DISCIPLINE**

James W. Van Loon, 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 W. Van Loon, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1992, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business at various times in Multnomah, Lane, and Douglas counties, 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 September 15, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(4) and DR 6-101(A) of the Code of Professional Responsibility. 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 November 1996, the Accused undertook to represent his brother, Charles Van Loon (hereinafter “Charles”) in the dissolution of his marriage to Belinda Van Loon (hereinafter “Belinda”). Proceedings were initially filed in Lane County, Oregon, by Belinda as petitioner, naming Charles as respondent.

6.

Thereafter, Charles, representing himself, filed dissolution proceedings in Snohomish County, Washington, and had Belinda served as respondent in those proceedings.

7.

At issue in the dissolution between Charles and Belinda was the paternity of a child born in 1997. Charles disputed that he was the father.

8.

Ultimately, the Lane County proceedings were dismissed, although the Accused, on Charles' behalf, appealed the dismissal to the Oregon Court of Appeals. The proceedings in Washington went forward, during which Charles raised his claim that he was not the child's natural father.

9.

In or about January 1998, the trial court in the Snohomish County, Washington, dissolution proceeding directed Charles to commence a proceeding in Oregon to determine the paternity of the child as between Charles and another man who resided in Oregon.

10.

On behalf of Charles, the Accused filed a Petition to Determine Paternity, Parenting and Support in Douglas County, Oregon, on or about January 14, 1998. Charles was petitioner. Both Belinda and the man Charles believed to be the child's father were named as respondents.

11.

Pursuant to a stipulated order of the Douglas County Circuit Court, blood tests of Charles, Belinda, and the child were conducted, which revealed that Charles was the natural father of the child. These results were conveyed to the trial court in Snohomish County, Washington.

12.

On or about March 4, 1998, the trial court in Snohomish County, Washington entered an order that: (1) stated that jurisdiction in the matter was properly placed in the Snohomish County court; (2) required Charles to pay Belinda temporary child support in the amount of \$250 a month; (3) prohibited Charles from having contact with Belinda or the child; (4) required Charles to obtain an Oregon court order within 60 days that confirmed Charles' paternity of the child; and (5) set the Washington proceeding for trial.

13.

On or about May 20, 1998, the Accused, on behalf of Charles, obtained a Default Judgment Re Paternity, Custody, Visitation, and Support in the Douglas County proceeding. The provisions of the Default Judgment, prepared by the Accused, went beyond the directive of the Snohomish County, Washington court and included (1) a provision stating that the courts of the State of Oregon had exclusive

jurisdiction to make child custody determinations in the matter; (2) a provision establishing Charles as the natural father of the minor child; (3) a provision granting Charles custody of the minor child (an apparent error); (4) a provision giving Charles liberal visitation with the minor child and requiring Belinda to transport the child to and from Charles for the visits; and (5) a provision requiring Charles to pay \$175 per month in child support.

14.

In support of the default judgment referred to in paragraph 13 above, the Accused drafted for Charles' signature and filed with the Oregon court an affidavit which stated that: (1) there were no other domestic relations suits pending between the parties in Oregon; and (2) the Snohomish County, Washington, court directed the parties to proceed in Oregon because Washington courts were without jurisdiction of the child. These statements were not true in that the Lane County proceeding was still on appeal in May 1998, and the Snohomish County court had clearly stated it had jurisdiction over the matter.

15.

The Accused stipulates that he engaged in conduct prejudicial to the administration of justice, and did not exercise the knowledge, skill, thoroughness, or preparation reasonably necessary for the representation, in one or more of the following particulars:

(a) the Accused did not inform himself sufficiently of the orders of the Snohomish County, Washington, court before seeking and obtaining the default judgment in Douglas County, Oregon. In fact, the Accused did not read or review the Washington orders prior to filing for the default judgment in Douglas County;

(b) the Accused did not inform himself sufficiently of the lawful method or means to accomplish what his client was directed by the Washington court to obtain from an Oregon court;

(c) the Accused drafted the affidavit for Charles' signature without sufficient care to avoid the statements described in paragraph 14 above that were not true;

(d) the Accused obtained provisions in the Douglas County Circuit Court default judgment regarding custody, support and visitation that were contrary to the provisions made by the Snohomish County, Washington, court.

### **Violations**

16.

The Accused admits that, by engaging in the conduct described above, he violated DR 1-102(A)(4) and DR 6-101(A) of the Code of Professional Responsibility.

## Sanction

17.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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.* The Accused violated his duty to render competent representation in a legal matter, *Standards*, § 4.5, and his duty to avoid any misuse of the legal process, *Standards*, § 6.2.

B. *Mental State.* The Accused acted negligently, defined in the ABA *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. In this case, the Accused received, but did not read or review, the Snohomish County order prior to seeking and obtaining the Douglas County default judgment. Had he reviewed that order, he would have seen that the relief he was seeking from the Douglas County court was not consistent with the Washington order.

C. *Injury.* The opposing party was required to move the Douglas County court to set aside the default judgment, and incurred some expense in doing so. However, once contacted by opposing counsel, the Accused offered to voluntarily set the judgment aside, which offer was refused. Accordingly, some of the expense in obtaining relief from the court was not a direct result of the Accused’s conduct.

D. *Aggravating Factors.* Aggravating factors include:

1. Multiple offenses, *Standards*, § 9.22(d);
2. Experience in the practice of law, *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record, *Standards*, § 9.32(a);
2. Absence of a dishonest or selfish motive, *Standards*, § 9.32(b);
3. Cooperative attitude in resolving the proceedings, *Standards*, § 9.32(e).

18.

The ABA *Standards* indicate that a public reprimand is the appropriate sanction in this matter. *Standards*, §§ 4.53, 6.23.

19.

Oregon case law is in accord. See *In re McCurdy*, 13 DB Rptr 107 (1999); *In re Moe*, 12 DB Rptr 264 (1998); *In re Hall*, 10 DB Rptr 19 (1996).

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of DR 1-102(A)(4) and DR 6-101(A), the sanction to be effective upon approval of this stipulation by the Disciplinary Board.

21.

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 26th day of March 2001.

/s/ James W. Van Loon

James W. Van Loon  
OSB No. 92488

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. 00-66
	)	
ANN B. WITTE,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Craig Colby, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B). Stipulation for discipline. Public reprimand.
Effective Date of Order:	April 2, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

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

DATED this 2nd day of April 2001.

/s/ Paul E. Meyer  
 Paul E. Meyer  
 State Disciplinary Board Chairperson

/s/ C. Lane Borg  
 C. Lane Borg, Region 5  
 Disciplinary Board Chairperson

**STIPULATION FOR DISCIPLINE**

Ann B. Witte, 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, Ann B. Witte, 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 her 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 November 18, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(B) of the Code of Professional Responsibility. 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 1998, a landlord sued two residential tenants for pet damage to the premises in excess of the tenants' security deposit. The tenants retained the Accused, who filed an Answer and counterclaimed for statutory doubling of the security deposit, alleging that landlord had failed in bad faith to refund the deposit. The matter proceeded to arbitration.

6.

On January 4, 1999, the arbitrator evaluated the pet damage at \$850, subtracted the \$400 security deposit which landlord had from the beginning credited to the tenants, denied the doubling, and so awarded landlord \$450. The arbitrator, after finding both sides to be prevailing parties, awarded no prevailing attorney fees, but awarded landlord his costs. The arbitrator requested that landlord's counsel submit a cost bill and provide a copy to the Accused.

7.

On January 4, 1999, the Accused transmitted the Arbitrator's award to her clients and indicated that she anticipated that the landlord would be unhappy with

the result, would try to appeal or change the arbitrator's award, and asked her clients to call her to discuss the matter.

8.

The clients called the Accused, who was familiar with the relevant case law. She told the clients that the landlord would no doubt appeal, while she and the clients should lie low and keep their fingers crossed.

9.

On January, 6, 1999, landlord's counsel submitted a statement of costs and disbursements to the arbitrator. The Accused corrected the cost of the filing fee with a phone call to counsel. On January 12, 1999, landlord's counsel filed with the court an exception to the arbitrator's denial of attorney fees and a statement of attorney fees. The Accused received both filings. The Accused did not file an objection as she believed that the amount sought was reasonable.

10.

On January 22, 1999, the presiding court granted landlord's exception to the denial of attorney fees and ordered counsel to file a statement of fees in accordance with ORCP 68. The Accused was advised of the court's order, and thereafter, landlord's counsel refiled his previous statement of attorney fees.

11.

On March 4, 1999, landlord's counsel wrote the Accused advising that the court had entered an award of attorney fees against her clients, and that landlord was willing to entertain a payment plan on the entire judgment. Counsel sought a response from the Accused or payment in full within 10 days. Counsel's letter further recited that if the Accused did not respond or tender payment, landlord would use all available means to collect the judgment.

12.

The Accused did not advise her clients that landlord had filed a statement of costs and disbursements, an exception to the denial of attorney fees, a statement of attorney fees, or that the court had awarded landlord his fees. The Accused did not provide her clients with copies of the postarbitration filings or awards. Moreover, the Accused did not advise her clients that landlord's counsel had proposed a payment plan to satisfy the judgement.

### **Violations**

13.

The Accused admits that her failure to apprise her clients of the postarbitration activity on the case, including the award of attorney fees, and the

offer to entertain a payment plan on the judgment, constituted a violation of DR 6-101(B) of the Code of Professional Responsibility.

### Sanction

#### 14.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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.* The Accused violated her duty to her clients to diligently represent their interests by failing to apprise them of postarbitration activity and a settlement proposal.

B. *Mental State.* The Accused negligently failed to keep her clients apprised of postarbitration activity.

C. *Injury.* The clients suffered actual injury as they were denied access to information regarding the resolution of their case and denied the opportunity to accept or reject a payment plan.

D. *Aggravating Factors.* Aggravating factors to be considered include: The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1977. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include: The Accused has no prior disciplinary record and did not have a selfish or dishonest motive. *Standards*, § 9.32(a) and (b).

#### 15.

ABA *Standards* § 4.4 suggests that a public reprimand is 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. Oregon law is in accord. See *In re Toth-Fejel*, 12 DB Rptr 65 (1998); *In re Jennings*, 12 DB Rptr 190 (1998); *In re Reid*, 10 DB Rptr 45 (1996); *In re Elliott*, 10 DB Rptr 103 (1996).

#### 16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 6-101(B).

#### 17.

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 provided for herein on November 18, 2000. 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 14th day of March 2001.

/s/ Ann B. Witte

Ann B. Witte

OSB No. 77077

EXECUTED this 20th day of March 2001.

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. 00-34  
)  
CYNTHIA L. BARRETT, )  
)  
Accused. )

Bar Counsel: None  
Counsel for the Accused: Christopher R. Hardman, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 6-101(B). Stipulation for  
discipline. Public reprimand.  
Effective Date of Order: April 2, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

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

DATED this 2nd day of April 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
OSB No. 90144  
State Disciplinary Board Chairperson

/s/ C. Lane Borg  
C. Lane Borg, Region 5  
OSB No. 85029  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Cynthia L. Barrett, 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, Cynthia L. Barrett, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 1, 1976, 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. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On March 11, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 6-101(B) and DR 9-101(C)(4) of the Code of Professional Responsibility. 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 December, 1996, Becky Clark and Robert Barton, a married couple, retained the Accused to prepare a trust and will documents. On May 7, 1997, the Accused provided the requested documents but informed her clients that a small amount of legal work was still necessary to complete the funding of the trust. In August 1997, Ms. Clark wrote to the Accused asking her to change beneficiary designations with respect to the couple’s IRAs. Ms. Clark also asked the Accused to return the couple’s insurance policies.

The Accused returned the original documents, but did not complete the legal work. The Accused moved her office in November 1997, and again in 1998. She

mistakenly believed that she had completed the Barton/Clark trust project until her clients complained to the Bar in January 1999. The Accused completed the legal work and transmitted it to her clients on February 17, 1999.

### **Violations**

6.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 6-101(B).

7.

Upon further factual review, the parties agree that the alleged violation of DR 9-101(C)(4) should be and, upon the approval of this Stipulation, will be dismissed.

### **Sanction**

8.

#### ***The ABA Standards***

In violating DR 6-101(B), The Accused violated her duty to her clients to exercise diligence in the representation. The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (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. Standards*, § 4.4.

B. *Mental State*. The Accused acted negligently. “Negligence” is a failure to heed a substantial risk that circumstances exist or a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in this situation. *Standards*, p. 7.

C. *Injury*. The Accused’s conduct created the possibility of injury to her clients and caused them to suffer frustration in attempting to get her to complete the job.

D. *Aggravating Factors*. Aggravating factors include:

1. A prior record for discipline inasmuch as the Accused was admonished in 1980 for failing to promptly respond to the requests of her clients. *Standards*, § 9.22(a).

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



E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has displayed a cooperative attitude in resolving this matter. *Standards*, § 9.32(e);
2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b);
3. Timely and good-faith effort to make restitution or rectify consequences of misconduct. *Standards*, § 9.32(d).
4. Remorse. *Standards*, § 9.32(l).
5. The remoteness of the Accused's prior offense. *Standards*, § 9.32(m).

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.

9.

#### ***Oregon Case Law***

Oregon case law also suggests that a public reprimand is appropriate in this case. In *In re Brownlee*, 9 DB Rptr 85 (1985), 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).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 6-101(B).

11.

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 27th day of February 2001.

/s/ Cynthia L. Barrett

Cynthia L. Barrett

EXECUTED this 25th day of January 2001.

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. 00-62, 00-99
	)	
JAMES L. CONTOIS,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-103(C) and DR 6-101(B). Stipulation for discipline. 60-day suspension.
Effective Date of Order:	April 15, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for 60 days, effective April 15, 2001, or three days after the date the order approving stipulation is signed, whichever is later, for violation of DR 1-103(C) and DR 6-101(B).

DATED this 12th day of April 2001.

/s/ Paul E. Meyer  
Paul E. Meyer, Esq.  
State Disciplinary Board Chairperson

/s/ Lon N. Bryant  
Lon N. Bryant, Esq., Region 6  
Disciplinary Board Chairperson

## **STIPULATION FOR DISCIPLINE**

James L. Contois, 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 L. Contois, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1989, 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 for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On January 20, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-103(C) and DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

### **The Oregon State Bar Investigation**

#### **Case No. 00-62**

#### **Facts**

5.

On March 31, 2000, Disciplinary Counsel’s Office of the Oregon State Bar received a notice from Bank of America that a lawyer trust account belonging to the Accused was overdrawn in the amount of \$84.58.

6.

On April 4, 2000, Disciplinary Counsel’s Office wrote the Accused seeking a response by April 25, 2000, as to his explanation for the overdraft. When no response was received on April 27, 2000, the Bar wrote the Accused again and requested a response no later than May 4, 2000. No response was received to this letter and the matter was referred to the Local Professional Responsibility Committee

(“LPRC”). The Accused did not respond to the LPRC investigator’s letter, but did cooperate with the LPRC two months later. The LPRC concluded that the Accused had made a banking error that was corrected immediately after the Accused learned of the error.

7.

Disciplinary Counsel’s Office and the LPRC are authorities empowered to act upon and investigate the conduct of lawyers. By failing to respond to inquires from Disciplinary Counsel’s Office and the initial inquiry of the LPRC, the Accused failed to cooperate in the investigation of his conduct.

### **Violations**

8.

The Accused admits that, by engaging in the conduct described above, he violated DR 1-103(C) of the Code of Professional Responsibility.

### **The Uglem Matter**

#### **Case No. 00-99**

#### **Facts**

9.

Don Uglem (“Uglem”) contacted the Accused to handle the transfer of trust assets in his deceased aunt’s estate sometime in mid-1998. The primary assets to be transferred were two mutual fund accounts. The Accused failed and neglected to complete the transfer of assets until August 2000, despite repeated telephone calls from Uglem asking that the transfers be completed in a timely fashion.

10.

On May 8, 2000, Uglem filed a complaint with Disciplinary Counsel’s Office of the Bar concerning the conduct of the Accused as described above. On May 10, 2000, Disciplinary Counsel’s Office sent the Accused a copy of the complaint asking that he provide a response to the complaint not later than May 31, 2000. The Accused did not respond to this letter and a follow-up letter was sent to the Accused on June 13, 2000, asking for a response to the complaint not later than June 20, 2000. This letter advised that if the Accused did not respond to the letter, the matter would be referred to the LPRC for investigation. The Accused did not respond to the letter, and the matter was referred to the LPRC on June 28, 2000. The Accused subsequently cooperated with the LPRC in its investigation of his conduct.

## Violations

11.

The Accused admits that by engaging in the above-described conduct he neglected a legal matter entrusted to him and failed to respond fully to inquiries from Disciplinary Counsel's Office, an authority empowered to investigate his conduct, in violation of DR 6-101(B) and DR 1-103(C) of the Code of Professional Responsibility.

## Sanction

12.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (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.* The Accused violated duties owed to his client and to the profession. *Standards*, §§ 4.0, 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*, p. 7. The Accused knew Uglem had retained him to transfer the assets of the trust in a timely manner and knew that he failed to take timely action to accomplish the client's desires. The Accused knew that the Bar was investigating his conduct and he knowingly failed to respond to inquires from the Bar.

C. *Injury.* Uglem suffered no actual financial loss from the Accused's delay because the assets to be transferred increased in value during the delay. However, Uglem did suffer some actual injury in that he did not have control over the assets and conclusion of the legal matter was unreasonably delayed. The Accused also caused Uglem to be very upset. The Accused's failure to respond to Disciplinary Counsel's Office caused actual injury to the profession in that resolution of the complaint was delayed and additional Bar resources were required to conclude the investigation.

D. *Aggravating Factors.* Aggravating factors include:

1. Multiple offenses. *Standards*, § 9.22(d);
2. Bad-faith obstruction of the disciplinary proceeding by knowingly failing to comply with rules of the disciplinary agency in two separate matters; *Standards*, § 9.22(e); and

3. Substantial experience in the practice of law, having been admitted in 1989. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards*, § 9.32(a);
2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b); and
3. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards*, § 9.32(l).

13.

As noted above, 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 or 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. Oregon case law is in accord. *See In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (lawyer was suspended for 120 days for one violation of DR 1-103(C) and knowingly neglecting legal matter in violation of DR 6-101(B)). *See also In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (lawyer was suspended for 120 days when she failed to respond to two complaints that had been filed against her and did not respond to inquiries from LPRC until investigator showed up at her home unannounced). The Bar does not consider the Accused's violations in this proceeding to be as aggravated as the conduct in *Schaffner* or *Miles*.

14.

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 60 days, commencing on April 15, 2001, or three days after the date the Order Approving Stipulation is signed by the Disciplinary Board, whichever is later.

15.

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

EXECUTED this 2nd day of April 2001.

/s/ James L. Contois

James L. Contois

OSB No. 89218

EXECUTED this 3rd day of April 2001.

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. 00-132
	)	
DAN W. POLING,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 9-101(A) and DR 9-101(C)(3). Stipulation for discipline. Public reprimand.
Effective Date of Order:	April 13, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused will receive a public reprimand for violation of DR 9-101(A) and DR 9-101(C)(3).

DATED this 13th day of April 2001.

/s/ Paul E. Meyer  
 Paul E. Meyer, Esq.  
 State Disciplinary Board Chairperson

/s/ Dwayne R. Murray  
 Dwayne Murray, Esq., Region 3  
 Disciplinary Board Chairperson

### **STIPULATION FOR DISCIPLINE**

Dan W. Poling, 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, Dan W. Poling, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1956, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lincoln 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 17, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility. 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.

On October 31, 1998, John W. Lunstedt (“Lunstedt”) retained the Accused to explore possible civil claims against various federal and state officials who had been involved in proceeding that lead to Lunstedt’s criminal convictions. Between October 1998 and April 1999, Lunstedt paid the Accused a total of \$1,200, none of which was deposited into the Accused’s trust account. Between October 1998 and April 1999, the Accused and his paralegal performed legal services for Lunstedt in excess of fees paid to the Accused.

6.

At no time did the Accused provide Lunstedt with a bill for services rendered, maintain adequate records of the time he spent on Lunstedt’s behalf, or provide Lunstedt with an accounting of fees paid to him for those services.

## Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 9-101(A) and DR 9-101(C)(3).

## Sanction

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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 9-101(A) and DR 9-101(C)(3), the Accused violated his duty to his client. *Standards*, § 4.1.

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*, p. 7.

C. *Injury.* The Accused’s failure to prepare, maintain, and preserve trust account records caused the investigation of his conduct to be more time-consuming and difficult. Lunstedt suffered some injury in that he was not provided with an accounting of fees paid to the Accused and was uncertain that fees paid to the Accused were actually earned. However, based upon the Bar’s investigation, Lunstedt did not suffer any monetary injury as the Accused ultimately earned all fees paid to him by Lunstedt.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused received a public reprimand in 1990 for improperly withdrawing from employment and neglecting a legal matter entrusted to him. *In re Poling*, 4 DB Rptr 115 (1990); *Standards*, § 9.22(a).

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

3. The Accused was admitted to practice in 1956 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused had no dishonest or selfish motive. *Standards*, § 9.32(b).

2. The Accused cooperated in the investigation and in resolving the Bar’s investigation of his conduct. *Standards*, § 9.32(e).

3. The Accused has acknowledged that he should have placed client funds in trust, should have kept better records of client funds, and should have provided his client with an accounting of funds paid to him by the client. *Standards*, § 9.32(l).

4. The Accused's prior discipline is remote in time. *Standards*, § 9.32(m).

9.

The *Standards* provide that a 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 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 (1998); *In re Melkonian*, 12 DB Rptr 224 (1998).

10.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for the violation DR 9-101(A) and DR 9-101(C)(3), the sanction to be effective the day this Stipulation is approved by the Disciplinary Board.

11.

Disciplinary Counsel of the Oregon State Bar has reviewed this Stipulation for Discipline and the State Professional Responsibility Board (SPRB) has approved the sanction. 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 March 2001.

/s/ Dan W. Poling

Dan W. Poling  
OSB No. 56075

EXECUTED this 30th day of March 2001.

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. 99-43, 00-40
	)	
T. MICHAEL RYAN,	)	
	)	
Accused.	)	

Bar Counsel:	C. Thomas Davis, Esq.
Counsel for the Accused:	Mark M. Williams, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-103(C), DR 3-101(A), DR 6-101(B), DR 9-101(C)(1), and DR 9-101(C)(4). Stipulation for discipline. 180-day suspension.
Effective Date of Order:	May 10, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 180 days, effective the date of this order or May 10, 2001, whichever is later, for violation of DR 1-102(A)(3), DR 3-101(A), DR 1-103(C), DR 6-101(B), DR 9-101(C)(1), and DR 9-101(C)(4).

DATED this 10th day of May 2001.

/s/ Paul E. Meyer  
 Paul E. Meyer  
 State Disciplinary Board Chairperson

/s/ William B. Kirby  
 William B. Kirby, Region 4  
 Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

T. Michael Ryan, 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, T. Michael Ryan, was admitted by the Oregon Supreme Court to the practice of law in Oregon on March 1, 1991, and has been a member of the Oregon State Bar continuously since that time, currently 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 September 29, 2000, an Amended 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 3-101(A), DR 1-103(C), DR 6-101(B), DR 9-101(C)(1), 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.

### **Higdon Matter**

### **Case No. 99-43**

### **Facts**

5.

The Accused is a lawyer in private practice who purchases professional liability coverage through the Professional Liability Fund (“PLF”). In 1998, the Accused was paying his PLF assessment through installment payments. One such payment was due on April 10, 1998. On April 10, 1998, the Accused had a check delivered to the PLF in the amount of the installment payment. The check was

unsigned and, on April 10, 1998, the Accused was orally advised by a PLF staff member that he would be suspended from the practice of law effective April 11, 1998, if the installment was not paid timely. Because the Accused could not get to the PLF office before the close of business on April 10, 1998, the Accused told the PLF staff member to submit the check to the Accused's bank without signature. Subsequently, the bank refused to honor the check.

6.

Upon being advised that the bank did not honor the unsigned check, the Accused was given an opportunity by the PLF to submit a second check in the amount of the installment, which the Accused did on April 20, 1998. That check was submitted by the PLF to the Accused's bank, but was dishonored on April 27, 1998, for insufficient funds. On April 27, 1998, a PLF staff member spoke with the Accused, advising him that the check had been dishonored, and describing to the Accused the process by which he could be reinstated to active Bar membership.

7.

On April 27, 1998, a certified letter was sent to the Accused advising him that he had been suspended from the practice of law, effective April 11, 1998, for failure to pay the PLF assessment installment. The Accused received notice that he had received a certified letter, but he did not pick it up from the post office until May 7, 1998.

8.

On May 12, 1998, the Accused signed a BR 8.4 statement in support of reinstatement in which he disclosed that he had engaged in the practice of law during his period of suspension before he received actual notice of the suspension. Also on May 12, 1998, the Accused paid the PLF assessment installment and a reinstatement fee, and was reinstated to practice law.

9.

Between April 11, 1998, and May 12, 1998, the Accused appeared in court on behalf of clients; drafted pleadings and other documents for clients; rendered legal advice to clients in person and in writing; communicated orally and in writing with opposing counsel and third persons about legal proceedings; and attended a hearing before a bankruptcy trustee. During this time, the Accused did not disclose to clients, opposing counsel, and the court that he was suspended from the practice of law.

10.

On May 11, 1998, Oregon State Bar Disciplinary Counsel's Office received a complaint alleging that the Accused had engaged in the practice of law during his suspension from active Bar membership. In response to the complaint, the Accused

represented that he had not learned of his suspension from the practice of law until May 7, 1998, at which time he ceased the practice of law.

11.

While it is true that the Accused did not pick up the certified letter from the post office until May 7, 1998, the Accused had been advised, and was aware, before May 7, 1998, that (a) nonpayment of his PLF assessment installment would result in his suspension from the practice of law from the date the installment was due until his reinstatement was approved; and (b) he was, in fact, suspended from the practice of law when his second check was dishonored for insufficient funds. Accordingly, the Accused practiced law while suspended and misrepresented that he had not done so.

### **Violations**

12.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 11, he violated DR 1-102(A)(3) (engaged in conduct involving dishonesty, fraud, deceit or misrepresentation); DR 3-101(A) (engaged in the practice of law while suspended); and DR 1-103(C) (made a misrepresentation during a disciplinary investigation).

### **Bressman Matter**

#### **Case No. 00-40**

#### **Facts**

13.

On or about April 22, 1997, the Accused was employed to assist a client to file a Chapter 13 bankruptcy. For a variety of reasons, the Accused filed four bankruptcy petitions for the client, the last being filed March 10, 1998. The final plan called for monthly payments by the client of \$157 for 36 months through payroll deductions from the client's paycheck. The Accused was to arrange for the monthly payroll deductions with a wage withholding order.

14.

The Accused neglected and failed to arrange for the monthly payroll deductions, failed to provide the client with copies of her bankruptcy documents for approximately eight months, and failed to respond to the client's attempts to contact him.



15.

In November 1998, the Accused sent the client a copy of her bankruptcy documents and obtained an order to withhold monthly payments from the client's paycheck. However, the amount the Accused requested to be withheld from the client's paycheck exceeded that required by the Chapter 13 plan.

16.

On May 18, 1999, the client dismissed the Accused as her attorney. On May 26, 1999, an order converting the client's Chapter 13 plan to a Chapter 7 was filed. On or about June 1, 1999, the trustee made a final account and mailed a refund in the amount of \$157 to the Accused. The Accused did not promptly notify the client of the receipt of the money.

17.

Despite requests from the client, the Accused failed to promptly deliver the \$157 refund to the client, even though the client was entitled to receive the refund. On June 26, 1999, the Accused delivered the check for \$157 to the bankruptcy trustee.

### **Violations**

18.

The Accused admits that by engaging in the conduct described in paragraphs 13 through 17, he neglected a legal matter entrusted to him in violation of DR 6-101(B); failed to promptly notify a client of the receipt of client's funds in violation of DR 9-101(C)(1); and failed to promptly deliver, as requested, funds which the client was entitled to receive in violation of DR 9-101(C)(4).

### **Sanction**

19.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). 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 factors.

A. *Duty Violated.* By engaging in the practice of law while suspended, the Accused violated his duty to the profession and the public. *Standards*, §§ 5.0, 7.0. He also violated his duty to the court by failing to disclose that he was suspended from the practice of law. *Standards*, § 6.0. By neglecting a legal matter and by

improperly handing client funds and property, the Accused violated his duty to his client. *Standards*, §§ 4.1, 4.4. By failing to advise his clients, opposing counsel and the court of his suspension from the practice of law, and by failing to respond fully and truthfully to an authority empowered to investigate his conduct, the Accused acted with a lack of candor in violation to his client and the profession. *Standards*, §§ 4.6, 7.0.

B. *Mental State*. Regarding No. 99-43, 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. Although he had not physically received official notice of his suspension, he had knowledge that the suspension was in effect and disregarded the consequences of continuing to represent clients while suspended. The Accused also knew when he responded to the Bar complaint that his representations about his knowledge of his suspension were not completely accurate. Regarding No. 00-40, 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. *Standards*, p. 7.

C. *Injury*. “Injury” may be actual or potential harm to a client, the public, the legal system, or the profession from a lawyer’s misconduct. The level of injury may range from “serious” to “little or no” injury. The unlawful practice of law inherently carries with it the potential to injure the legal system. *In re Whipple*, 320 Or 476, 488, 886 P2d 7 (1994). In addition, there was the possibility of injury to the client in that the Accused would not have insurance coverage in the event of any malpractice. In the Bressman matter, the client incurred some actual injury in that the return of her money was delayed. By the Accused failing to disclose to clients, opposing counsel, and the court that he was suspended from the practice of law, there was potential injury in that the public and courts expect lawyers to abide by the legal rules of substance and procedure.

D. *Aggravating factors*. Aggravating factors include:

1. Multiple offenses. *Standards*, § 9.22(d); and
2. Substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating factors*. Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a); and
2. Absence of a selfish motive in that the Accused’s continuing to practice law was an attempt to tend to client matters, not benefit the Accused. *Standards*, § 9.32(b).

The *Standards* provide that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes

injury or potential injury to a client. *Standards*, § 4.12. Suspension is also 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. Finally, the *Standards* provide that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2.

21.

Oregon case law is in accord. In *In re Jones*, 308 Or 306, 779 P2d 1016 (1989), the court suspended the accused lawyer for six months for violating DR 1-102(A)(1) (knowingly assisting another to violate disciplinary rules), DR 1-102(A)(4) (conduct prejudicial to the administration of justice), and DR 3-101(A) (aiding a nonlawyer in unlawful practice of law). See also *In re Koliha*, 330 Or 402, 9 P3d 102 (2000), in which the court suspended the accused lawyer for one year for engaging in the practice of law while suspended, engaging in conduct involving dishonesty and misrepresentation, engaging in conduct prejudicial to the administration of justice and failing to cooperate with the Bar's investigation of the misconduct. Likewise, neglect of a legal matter combined with the other allegations of misconduct warrant a suspension in this case. See *In re Purvis*, 306 Or 522, 760 P2d 254 (1988), where the accused lawyer was suspended for six months for neglecting over several months to take any action to seek reinstatement of child support payments for the client's son.

22.

Consistent with the *Standards* and Oregon case law, the parties agree that, upon execution of the Order approving this Stipulation for Discipline, the Accused shall be suspended from the practice of law for 180 days, effective the date of the Order or April 30, 2001, whichever is later.

23.

In addition, on or before November 1, 2001, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$142.20, incurred for the Accused's deposition. Should the Accused fail to pay this sum by November 1, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

24.

This Stipulation for Discipline is subject to approval as to form by Disciplinary Counsel and to substantive approval by the SPRB. If approved, the Stipulation for Discipline shall be submitted to the Disciplinary Board for review by the State Chairperson and the Regional Chairperson pursuant to BR 3.6(e), and if

Cite as *In re Ryan*, 15 DB Rptr 87

approved, shall be effective the date of the Order or April 30, 2001, whichever is later.

EXECUTED this 14th day of March 2001.

/s/ T. Michael Ryan

T. Michael Ryan

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. 97-32, 97-47, 98-31
	)	
MARK R. HUMPHREY,	)	
	)	
Accused.	)	

Bar Counsel:	Paul Duden, Esq.
Counsel for the Accused:	Bernard Jolles, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4), and DR 1-103(C). Stipulation for discipline. 90-day suspension.
Effective Date of Order:	July 7, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 90 days, effective 60 days after approval by the Disciplinary Board, for violation of DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4), and DR 1-103(C).

DATED this 8th day of May 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ C. Lane Borg  
C. Lane Borg, Region 5  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Mark R. Humphrey, 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, Mark R. Humphrey, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 21, 1990, 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, and after having consulted with legal counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On November 15, 1999, pursuant to the authorization of the State Professional Responsibility Board, a Second Amended Formal Complaint was filed against the Accused for alleged violations of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

### **Desmond Will Matter**

**No. 97-32**

### **Facts**

5.

In or about November 1995, Desmond Will (hereinafter “Will”) filed a civil complaint against the Eubanks Family Care Clinic, P.C., Eubanks and Eubanks, D.O., P.C., dba Columbia View Family Health Center, and Williams Eubanks, for wrongful discharge and wage claims in the Circuit Court of the State of Oregon for the County of Multnomah, Case No. 9511-08309 (hereinafter “Court Action”). Attorneys for the defendants in the Court Action signed an Acceptance of Service, which was filed with the court.

6.

On or about February 16, 1996, the Accused agreed to represent Will in the Court Action. A substitution of attorneys was signed and filed with the court on February 16, 1996.

7.

On or about February 21, 1996, the court filed and mailed a notice of intent to dismiss the Court Action for lack of prosecution unless action was taken within 28 days. The Accused received a copy of the notice, but took no action. The Court Action was dismissed on April 16, 1996.

8.

Between February and September 1996, the Accused failed to notify Will of the court's notice of intent to dismiss the Court Action or the dismissal of the Court Action, failed to communicate with Will, and failed to take action to reinstate the case.

9.

In or about September 1996, after discovery that the Court Action had been dismissed, Will communicated with the Accused and requested the delivery of his file. The Accused failed to deliver Will's client file as requested by the client.

### **Violations**

10.

The Accused admits that, by engaging in the conduct described above, he neglected Will's legal matter and failed to promptly deliver property of the client as requested by the client, in violation of DR 6-101(B) and DR 9-101(C)(4) of the Code of Professional Responsibility.

### **John Hunsucker Matter**

#### **Case No. 97-47**

#### **Facts**

11.

In or about April 1994, John W. Hunsucker, Jr. (hereinafter "Hunsucker"), retained the Accused to pursue wage claims against his former employers. The Accused agreed to perform the legal services.

12.

During the summer of 1996, Hunsucker's claims were submitted to arbitration. The arbitrator ruled in favor of the defendants and against Hunsucker.

13.

On or about August 6, 1996, the Accused settled Hunsucker's claim for \$1,500. Defendants' counsel forwarded a settlement agreement to the Accused. Between about August 1996 and about April 27, 1997, the Accused failed to communicate with Hunsucker or defendants' counsel, failed to forward settlement documents to Hunsucker for his signature, or take other action to conclude his client's case or accomplish his objectives. The case was not finally resolved and Hunsucker did not receive the settlement proceeds until June 1997, after Hunsucker complained to the Bar and after the Accused then completed the settlement documentation, collected a settlement check from Defendants' counsel and forwarded the check to Hunsucker.

14.

On January 27, 1997, Hunsucker filed a complaint with the Oregon State Bar concerning the Accused's conduct. On January 29, 1997, Disciplinary Counsel's Office forwarded a copy of Hunsucker's complaint to the Accused and requested his response on or before February 19, 1997. By letter dated February 19, 1997, the Accused gave a brief, preliminary response and requested an extension of time to February 28, 1997, to respond fully to the complaint. No further response was received from the Accused by February 28, 1997.

On February 28, 1997, Disciplinary Counsel's Office wrote the Accused and asked for his full explanation of the Hunsucker matter on or before March 7, 1997, but he did not respond further by that date. On March 7, 1997, Disciplinary Counsel's Office wrote to the Accused notifying him that, because of his failure to respond, the matter would be referred to the Local Professional Responsibility Committee (hereinafter "LPRC") for further investigation.

By letter dated March 10, 1997, the Accused advised the Bar that he could not respond further until March 21, 1997. Follow-up letters were sent to the Accused on March 12, 1997, and April 9, 1997, requesting the Accused's further response to the Hunsucker complaint.

When no response was received from the Accused by April 17, 1997, the matter was referred to the LPRC.

15.

Thereafter, the Accused did provide a written response to the Hunsucker complaint and did cooperate with the investigation conducted by the LPRC.

### **Violations**

16.

The Accused admits that, with his conduct described above, he neglected Hunsucker's legal matter and failed to respond timely to the Bar concerning the



Hunsucker complaint, in violation of DR 6-101(B) and DR 1-103(C) of the Code of Professional Responsibility.

### **Gary Gerads Matter**

#### **Case No. 98-311**

#### **Facts**

17.

In or about May 1996, Gary Gerads (hereinafter “Gerads”) retained the Accused to represent him in a dissolution proceeding. Pursuant to a written fee agreement, Gerads paid the Accused \$1,500 for legal services to be performed. The Accused considered the matter to be a flat-fee case and did not deposit the funds in his client trust account or thereafter account to the client for the manner in which the retainer had been applied. However, the fee agreement with the client did not provide that the retainer was earned by the Accused upon receipt and, accordingly, the funds should have been treated as client money, with a deposit to trust and the proper accounting for its use.

18.

In or about October 1996, Gerads and his wife agreed to settle the dissolution proceeding. Thereafter, the attorney for Gerads’ wife prepared and delivered proposed forms of a stipulated judgment of dissolution of marriage and a marital settlement agreement to the Accused (hereinafter “Settlement Documents”). The Settlement Documents were signed and filed with the court on or about December 16, 1996.

19.

During the course of the Accused’s representation, Gerads provided to the Accused various documents relevant to the dissolution. Between about December 1996 and January 1998, Gerads requested that the Accused return the documents and provide Gerads with copies of the signed Settlement Documents from the dissolution. The Accused failed to deliver the documents to Gerads as he requested. For a period of time, the Accused could not locate the requested documents. Ultimately, the Accused located the documents and returned them to Gerads.

#### **Violations**

20.

The Accused admits that, with his conduct described above, he failed to deposit funds in a lawyer trust account, failed to render an appropriate account to

the client and failed to promptly deliver property of the client as requested by the client, in violation of DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility.

### **Remaining Allegations**

21.

Upon further factual inquiry, the parties agree that remaining charges in the Second Amended Formal Complaint should be, and upon the approval of this stipulation, are dismissed.

### **Sanction**

22.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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.* By neglecting legal matters, the Accused violated his duty of diligence to his clients. *Standards*, § 4.4. By failing to deposit client funds in trust, prepare an accounting of client funds, or return client property, the Accused violated his duty to preserve such property. *Standards*, § 4.1. By failing to respond timely to a Bar investigation, the Accused violated his duty to the legal profession. *Standards*, § 7.0.

B. *Mental State.* In neglecting client matters and failing to deposit client funds in trust or prepare an accounting for such funds, the Accused acted with “negligence,” which is defined in the *Standards*, p. 7, as the failure of the lawyer to heed a substantial risk that circumstances exist or that a result will follow, which is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. In failing to return client property and in failing to respond timely to the Bar, the Accused acted with “knowledge,” which is defined in the *Standards*, p. 7, as 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 re Williams*, 314 Or 530, 840 P2d 1280 (1992). Potential for injury always exists when a lawyer neglects a client matter. In the Will matter, the client pursued a claim against the Accused through the Professional Liability Fund. There was delay in Hunsucker receiving his settlement proceeds and both Hunsucker and Gerads experienced the frustration of delay in the return of their file material. There was potential for injury in the Accused’s failure to treat the Gerads retainer as client funds, although no actual injury occurred. The Accused’s failure to respond timely to a Bar inquiry necessitated an LPRC investigation.

D. *Aggravating Factors*. Aggravating factors include:

1. A pattern of misconduct, *Standards*, § 9.22(c);
2. Multiple offenses, *Standards*, § 9.22(d);
3. The vulnerability of the clients, *Standards*, § 9.22(h);
4. The Accused's experience in the practice of law, *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior disciplinary record, *Standards*, § 9.32(a);
2. The absence of a dishonest or selfish motive, *Standards*, § 9.32(b);
3. Personal or emotional problems, *Standards*, § 9.32(c);
4. Delay in the disciplinary proceedings, *Standards*, § 9.32(i).

23.

The ABA *Standards* suggest that a suspension is the appropriate sanction in this proceeding. *Standards*, §§ 4.12, 4.42(b), 7.2.

24.

Oregon case law is in accord. See *In re Meyer*, 328 Or 220, 970 P2d 647 (1999) (one-year suspension for relatively short-term neglect; sanction aggravated by prior misconduct); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (120-day suspension for neglect of one client matter and failure to respond to Bar); *In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (120-day suspension for failure to respond to Bar); *In re Piper*, 15 DB Rptr 153 (2000) (120-day suspension for neglect of one client matter, failure to withdraw and failure to respond to Bar); *In re Bonner*, 12 DB Rptr 209 (1998) (120-day suspension for neglect of one client matter and failure to respond to the Bar); *In re Scott*, 11 DB Rptr 159 (1996) (120-day suspension for neglect, failure to return client property, and failure to respond to Bar).

25.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for a period of 90 days for violations of DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4), and DR 1-103(C). The suspension shall be effective 60 days after this stipulation is approved by the Disciplinary Board.

26.

Each party shall bear its own costs and disbursements incurred in this proceeding. No costs shall be awarded to either party.

27.

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 6th day of April 2001.

/s/ Mark R. Humphrey

Mark R. Humphrey

OSB No. 90303

EXECUTED this 16th day of April 2001.

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 Nos. 98-99, 00-114  
)  
JENNIFER NASH, )  
)  
Accused. )

Bar Counsel: Marc A. Spence, Esq.  
Counsel for the Accused: Joe Richards, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4),  
DR 7-110(B), and ORS 9.527(4). Stipulation for  
discipline. 120-day suspension.  
Effective Date of Order: June 1, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for 120 days, effective June 1, 2001, for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-110(B), and ORS 9.527(4).

DATED this 10th day of May 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Dwayne R. Murray  
Dwayne R. Murray, Region 3  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Jennifer Nash, 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, Jennifer Nash, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1996, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Benton 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 December 13, 2000, a Second Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 1-102(A)(2), DR 1-102(A)(3) (three counts), DR 1-102(A)(4) (two counts), and DR 7-110(B) (two counts) of the Code of Professional Responsibility, and ORS 9.527(4) (two counts). A copy of the Second Amended Formal Complaint is attached as Exhibit A. 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

#### Dickman Matter

5.

Beginning in December 1996 and continuing through August 31, 1997, the Accused was employed as an associate lawyer at the law firm of Lorence & Dickman, P.C. (hereinafter “the firm”). This employment terminated on August 31, 1997. The Accused and the firm agreed that for the month of September 1997, the firm would pay the Accused’s overhead expenses, and the Accused would maintain an office at the firm and would pay the firm one-half of any legal fees she earned during that month. That arrangement ended on September 30, 1997.

6.

On September 27, 1997, the firm sent a bill to one of its clients for legal work done by the Accused during the month. In October 1997, the Accused billed that same client for legal work she performed in September and October 1997.

7.

On October 1, 1997, November 13, 1997, and December 1, 1997, the Accused received payments from the above-referenced client for legal work she performed in September 1997. A portion of those three payments belonged to the firm. The Accused failed to inform the firm that she had received those payments until the firm inquired about the matter in mid-December 1997. The Accused also failed to forward to the firm the portion of the payments it was entitled to receive until after December 1997.

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5–7, she violated DR 1-102(A)(3) and ORS 9.527(4), as alleged in the Second Cause of Complaint. Upon further factual inquiry, the parties agree that the alleged violations of DR 1-102(A)(2), DR 1-102(A)(3), and ORS 9.527(4) in the First Cause of Complaint should be and, upon the approval of this stipulation, are dismissed.

### **Naranjo Matter**

9.

In May 1997, the Accused was representing petitioner Roger Naranjo in a dissolution of marriage proceeding. Respondent was also represented by a lawyer.

10.

On May 21, 1997, the Accused filed a motion for a status quo order of temporary restraint. In violation of ORS 107.138, the Accused failed to serve a copy of that motion on respondent's lawyer.

11.

On October 13, 1997, the Accused filed a motion allowing substituted service for respondent on her lawyer. The Accused failed to promptly serve a copy of that motion on respondent's lawyer.

12.

The Accused admits that by engaging in the conduct described in paragraphs 9-11, she violated DR 7-110(B) on two occasions.

### **Wurster Matter**

13.

On July 23, 1998, the parties, co-petitioners in the Linn County Circuit Court case of *Wurster v. Wurster*, Case No. 996-1858, entered into a stipulated order directing them to participate and cooperate in a custody study and evaluation by a psychologist. The order further provided that a copy of the psychologist's report would be filed with the court, that it could be read in its entirety by the court before a final hearing on the matter, and that the report would become a part of the record.

14.

On June 14, 1999, a lawyer representing one of the petitioners in the above-referenced matter sent a copy of the psychologist's report to the court. The accompanying letter asked that the report be filed and stated that it would be helpful for the trial judge to have read the report prior to a final hearing. On June 16, 1999, the Accused, on behalf of the other petitioner, sent a letter to the court challenging the qualifications of the psychologist. The Accused failed to promptly deliver a copy of that letter to the opposing lawyer.

15.

The Accused admits that by engaging in the conduct described in paragraphs 13–15, she violated DR 7-110(B).

### **Newton Matter**

16.

In July 1999, the Accused was representing Gene Newton, the respondent in a dissolution of marriage proceeding. Petitioner was also represented by a lawyer.

17.

In July 1999, the Accused filed a motion and order to show cause for a status quo order. In her motion, the Accused asked the court to issue an order prohibiting the parties from moving their children from their then-current address. At the time, the parties' son was living with the Accused's client. The court signed the order to show cause on August 5, 1999, and gave petitioner 20 days to file a response.

18.

On August 15, 1999, the Accused learned from her client that he intended to relocate and move the parties' son from his current address. The Accused failed to withdraw her previously filed motion and failed to inform the court or petitioner's lawyer that she no longer sought an order prohibiting the children from being moved.



19.

On August 25, 1999, petitioner's lawyer filed a response to the show cause motion concurring with the Accused's motion. He also submitted a proposed order, which prohibited the parties from moving the children from the addresses listed in the Accused's motion.

20.

On August 31, 1999, the court signed the order referenced in paragraph 19. The Accused thereafter failed to advise her client to comply with the order.

21.

On October 5, 1999, petitioner's lawyer filed a motion for an order to show cause for contempt regarding the failure of the Accused's client to comply with the order referenced in paragraph 19. On November 23, 1999, the court issued a notice setting the motion for contempt for hearing on December 23, 1999.

22.

Between the time the Accused received the notice referenced in paragraph 21 and December 23, 1999, the Accused mistakenly informed her client that he need not be present for the hearing on December 23, 1999. At the hearing on December 23, 1999, the court inquired of the Accused as to why her client was not present. The Accused represented to the court that her client was not present because of bad weather. At the time the Accused made that representation, she knew that it was false.

23.

The Accused admits that by engaging in the conduct described in paragraphs 16–22, she violated DR 1-102(A)(3) and DR 1-102(A)(4).

### **Sanction**

24.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Supreme Court 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.* The Accused violated her duty to maintain personal integrity, her duty to avoid making false statements to the court, her duty to avoid conduct prejudicial to the administration of justice, and her duty to avoid improper communications with individuals in the legal system. *Standards*, §§ 5.1, 6.1, 6.3.

B. *Mental State.* The Accused knowingly failed to inform the firm she had received payments from the client and knowingly failed to pay the firm its portion of those payments. The Accused delayed informing the firm and sending the payments because she believed the firm had broken promises to her and she was angry with the firm.

In the Newton matter, the Accused knowingly failed to inform the court and the opposing lawyer that she no longer sought a status quo order prohibiting the children from being moved. In that same matter, the Accused knowingly misrepresented to the court why her client was not present at the contempt hearing.

The Accused negligently engaged in improper ex parte contacts in the Naranjo and Wurster matters.

C. *Injury.* The Accused's failure to inform the firm she had received payments from the client caused potential injury to the firm because it did not receive the payments for a number of months. Her conduct also caused potential injury to the client as the firm might have initiated a collection action against the client because it did not know the client had paid the Accused.

In the Newton matter, the court, the Accused's client, and the opposing party all sustained injury as a result of the Accused's conduct. The court spent time and resources addressing a status quo order, which the Accused no longer sought. The opposing party believed that her child would not be moved and had to pursue a motion for contempt when the Accused's client failed to comply with the court's order. The Accused's client was not given an opportunity to explain his conduct at the contempt hearing.

In the Wurster matter, the opposing lawyer sustained potential injury as a result of the Accused's conduct. He only discovered that the Accused had made the ex parte communication when the court called to inquire about his availability for a hearing to address the Accused's concerns.

In the Naranjo matter, the court, and the opposing party sustained injury as a result of the Accused's conduct. They spent time and resources setting aside two ex parte orders.

D. *Aggravating Factors.* Aggravating factors include:

1. Dishonest or selfish motive with respect to the fees the Accused failed to disclose and pay to the firm and with respect to the misrepresentation she made to the court. *Standards*, § 9.22(b).

2. A pattern of misconduct. *Standards*, § 9.22(c).

3. Multiple offenses. *Standards*, § 9.22(d).

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).

2. Personal medical problems in the summer of 1997. *Standards*, § 9.32(c).

3. Timely, good-faith effort by the Accused to make restitution to the firm. *Standards*, § 9.32(d).

4. Cooperative attitude toward the proceedings. *Standards*, § 9.32(e).

5. Inexperience in the practice of law as the Accused had been practicing law less than five years at the time she engaged in the conduct described above. *Standards*, § 9.32(f).

25.

The ABA *Standards* provide that a period of suspension is appropriate in this matter. *See Standards*, § 6.12.

26.

Oregon case law suggests that the Accused should be suspended as a result of her failure to disclose and pay fees to the firm. *See In re Busby*, 317 Or 213, 855 P2d 156 (1993); *In re Smith*, 315 Or 260, 843 P2d 449 (1992). In both of those cases the lawyers were suspended for four months because they intentionally deceived clients or law firms where they were employed. The Accused's conduct here is not as egregious as in those cases because the Accused did not intentionally deceive the firm about the status of the funds.

Oregon case law also suggests that the Accused should be suspended as a result of her conduct in the Naranjo, Wurster, and Newton matters. Generally, lawyers who knowingly make misrepresentations to a court or fail to disclose material facts to a court, in violation of DR 1-102(A)(3) and DR 1-102(A)(4), receive suspensions. *See In re Gustafson*, 327 Or 636, 968 P2d 367 (1998) (six-month suspension); *In re Jones*, 326 Or 195, 951 P2d 149 (1997) (45-day suspension); *In re Hiller*, 298 Or 526, 694 P2d 540 (1985) (four-month suspension); *In re Walker*, 293 Or 297, 647 P2d 468 (1982) (30-day suspension). In this case, because the mitigating factors outweigh the aggravating factors, this case is more like *Jones*, *supra* and *Walker*, *supra*.

27.

Consistent with the *Standards* and Oregon case law, the Accused agrees to accept a suspension from the practice of law for a period of 120 days for violations of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-110(B) of the Code of Professional Responsibility, and ORS 9.527(4), the suspension to start on June 1, 2001.

28.

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 3rd day of May 2001.

/s/ Jennifer Nash

Jennifer Nash

OSB No. 96373

EXECUTED this 4th day of May 2001.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 86202

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 98-80, 98-140
	)	
FORREST N.A. BACCI,	)	
	)	
Accused.	)	

Bar Counsel:	Steven L. Wilgers, Esq.
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 6-101(B), DR 7-102(A)(5), and DR 7-104(A)(1). Stipulation for discipline. 120-day suspension.
Effective Date of Order:	June 15, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 120 days, effective June 15, 2001, for violation of DR 1-102(A)(3), DR 6-101(B), DR 7-102(A)(5), and DR 7-104(A)(1).

DATED this 10th day of May 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ C. Lane Borg  
C. Lane Borg, Region 5  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Forrest N.A. Bacci, 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, Forrest N.A. Bacci, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1980, 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 5, 2000, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 1-102(A)(3), DR 6-101(B), DR 7-102(A)(5), and DR 7-104(A)(1) 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

#### Piltz Matter

5.

The Accused represented First Indiana Bank in a foreclosure proceeding against Randy and Clare Piltz (hereinafter “the Piltzes”). The Piltzes retained an attorney to represent them in the action, and thereafter sent their lawyer a check for the amount they were in arrears on their loan from First Indiana Bank.

6.

On September 22, 1997, the Piltzes’ lawyer sent a cashier’s check to the Accused for the arrearage. The Accused received the check in early October 1997.

7.

The Accused requested instructions from his client about what to do with the check, and placed it in his file. The Accused failed to follow up with his client and failed to take any action on the matter until December 1997. The foreclosure proceeding was not dismissed until January 20, 1998.

8.

In the meantime, the Piltzes, believing the arrearage had been paid and the foreclosure proceeding had been dismissed, attempted to refinance their loan with another lender. That lender rejected the application because the foreclosure proceeding was still pending.

9.

While the foreclosure action was pending in Multnomah County Circuit Court, the Accused had a short telephone conversation with Mrs. Piltz on the subject of the foreclosure or on directly related subjects at a time when he knew that she was represented by a lawyer.

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5–9, herein, he violated DR 6-101(B) and DR 7-104(A)(1).

### **Shore/Nichols Matter**

11.

The Accused was successor trustee of a trust deed that attached to real property in Clackamas County. On or about September 9, 1997, the grantors of the trust deed went into default and the Accused issued a trustee's notice of sale for January 22, 1998. The sale date was postponed to allow time for one of the grantors to complete a refinance of the property. The sale of the property was rescheduled for February 5, 1998, at 11:00 a.m. in front of the Clackamas County courthouse.

12.

A number of potential buyers, including the grantors or their representatives, were in front of the Clackamas County courthouse on February 5, 1998, at 11:00 a.m. for the above-referenced sale. The Accused stipulates that one of the potential buyers would testify that, shortly after 11:00 a.m., he telephoned the Accused, who reported that the sale had been cancelled. The Accused has no recollection of any such telephone conversation.

13.

Sometime after 11:00 a.m., the Accused determined that the grantor had not refinanced the property and the Accused decided to go forward with the sale. The

Accused subsequently arrived at the courthouse and conducted the sale at approximately 11:45 a.m. By then, a number of the potential buyers, including the grantors and their representatives, had left believing the sale had been cancelled.

14.

On February 12, 1998, the Accused signed a trustee's deed representing that the sale had occurred at 11:00 a.m. when he knew that representation was false.

15.

The Accused admits that by engaging in the conduct described in paragraphs 11–14, herein, he violated DR 1-102(A)(3) and DR 7-102(A)(5).

### **Sanction**

16.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (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 the Piltz matter, the Accused violated his duty to act with reasonable diligence and promptness and his duty to avoid improper communications with individuals in the legal system. *Standards*, §§ 4.4, 6.3. In the Nichols/Shore matter, the Accused violated his duty to maintain personal integrity and his duty to avoid making false statements. *Standards*, §§ 5.1, 6.1.

B. *Mental State.* “Knowledge” is defined in the *ABA Standards* as 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*, p. 7. “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7.

In the Piltz matter, the Accused negligently failed to act with reasonable diligence and promptness and knowingly communicated with a represented party. In the Shore/Nichols matter, the Accused knowingly made misrepresentations.

C. *Injury.* Injury may be either actual or potential. In the Piltz matter, the Accused's conduct caused actual injury to the Piltzes, in that they had contacted a new lender but were unable to refinance their mortgage until the Accused dismissed the foreclosure proceeding, a couple of months after they paid the arrearage. In the Shore/Nichols matter, the Accused conduct also caused actual injury. The grantors and their representatives lost an opportunity to purchase the property.



D. *Aggravating Factors*. Aggravating factors include:

1. Prior disciplinary offenses. In December 1996, the Accused was admonished for neglecting two matters. *Standards*, § 9.22(a).
2. Dishonest or selfish motive. In the Nichols/Shore matter, the Accused made misrepresentations in order to conceal his failure to conduct the sale appropriately. *Standards*, § 9.22(b).
3. A pattern of misconduct. The Accused's misconduct in these two matters occurred over the course of almost five months. *Standards*, § 9.22(c).
4. Multiple offenses. *Standards*, § 9.22(d).
5. Substantial experience in the practice of law. The Accused has been practicing law in Oregon since 1980. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. Personal problems. In the summer of 1997, the Accused's sister-in-law was diagnosed with acute leukemia. During the following year and a half, the Accused spent a considerable amount of time taking care of his sister-in-law and his brother, who was a disabled quadriplegic. *Standards*, § 9.32(c).
2. Remorse. The Accused is extremely remorseful over his action in these matters. *Standards*, § 9.32(l).

17.

The ABA *Standards* provide that a period of suspension is appropriate in this matter. *See Standards*, §§ 6.12, 6.32.

18.

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 are taken together as a whole, Oregon case law suggests varying terms of suspension. *See In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (lawyer suspended for 120 days, 60 of which were for neglecting legal matter by failing to return client's telephone calls, failing to keep client apprised of status of the matter, and failing to perform work on the matter); *In re Holm*, 275 Or 178, 590 P2d 233 (1979) (lawyer who failed to provide explanation for why he did not complete legal matter for over seven months suspended for 60 days); *In re Melmon*, 322 Or 380, 908 P2d 822 (1995) (lawyer suspended for 90 days for violating DR 1-102(A)(3) and DR 5-105(E) [three counts] when she created or helped to create a false aircraft bill of sale and when she represented multiple clients in three different business transactions where clients' interests were in actual or likely conflict); *In re Leonard*, 308 Or 560, 784 P2d 95 (1989) (lawyer suspended for 35 days when he interlineated lease to include language favorable to his client and then informed other party to lease that there was no need to consult with their lawyer about the change); *In re Hiller*, 298 Or 526, 694 P2d 540 (1985) (lawyer suspended

for four months for failing to disclose in affidavit the actual consideration for a reported sale of real property); *In re Greene II*, 290 Or 291, 620 P2d 1379 (1980) (lawyer suspended for 60 days for failing to disclose to court in a petition seeking approval for conservator to purchase and improve real property for benefit of minor children that property belonged to conservator, who was also lawyer's spouse).

19.

Consistent with the *Standards* and Oregon case law, the Accused agrees to accept a suspension from the practice of law for the period of 120 days for violation of DR 1-102(A)(3), DR 6-101(B), DR 7-102(A)(5), and DR 7-104(A)(1). The suspension will be effective on May 25, 2001.

20.

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 20th day of April 2001.

/s/ Forrest N.A. Bacci

Forrest N.A. Bacci

OSB No. 80154

EXECUTED this 3rd day of May 2001.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 86202

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
)  
Complaint as to the Conduct of ) Case Nos. 98-72, 98-73, 98-74, 98-75;  
) SC S48503  
RICHARD A. SEIDEMAN, )  
)  
Accused. )

Bar Counsel: Conrad E. Yunker, Esq.  
Counsel for the Accused: Bradley F. Tellam, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(3) (four counts) and  
DR 4-101(B)(3) (two counts). Stipulation for  
discipline. One-year suspension.  
Effective Date of Order: July 30, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

The Oregon State Bar and Richard A. Seideman have entered into a Stipulation for Discipline. The Stipulation for Discipline is approved. Richard A. Seideman is suspended from the practice of law for a period of one year commencing July 30, 2001.

DATED this 31st day of May 2001.

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

De Muniz, J., not participating.

**STIPULATION FOR DISCIPLINE**

Richard A. Seideman, 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, Richard A. Seideman, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1964, 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 for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On November 21, 1998, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3) and DR 4-101(B)(3) of the Code of Professional Responsibility. 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 Common to All Cases**

5.

By the end of the year 1994, the Accused had personal debt of approximately \$77,600 in loans from private sources, in addition to his credit card debt and his home mortgages. At this time, the Accused had no reasonable expectation that he would be able to pay all of the private loans in full when they became due.

6.

By the end of the year 1995, the Accused had borrowed approximately \$148,000 from private sources, in addition to his credit card debt and home mortgages. At this time, the Accused had no reasonable expectation that he would be able to pay all of the private loans in full when they became due.

7.

In 1996, the Accused borrowed another approximately \$122,000 from private parties, for a total of about \$270,000. At this time, the Accused had no reasonable expectation that he would be able to pay all of the private loans in full when they became due.

**Totten Matter**  
**Case No. 98-72**

**Facts**

8.

In about 1991, the Accused represented Edwin Totten, Sr. (hereinafter referred to as “Totten”) and, on Totten’s behalf, established a revocable living trust called the Edwin Totten, Sr. Revocable Living Trust (hereinafter referred to as “the trust”), funded by Totten’s assets. Totten was the trustee. During the course of this representation, the Accused acquired knowledge of Totten’s assets and the assets of the trust. The Accused did not represent Totten after January 1992.

9.

At all relevant times, the Accused had no relationship with Totten other than that described in paragraph 8 herein, and his knowledge of Totten’s and the trust’s financial circumstances was acquired through this attorney-client relationship.

10.

Beginning earlier in 1995, and continuing until October 10, 1995, the Accused requested that Totten make him a loan. On or about October 10, 1995, Totten loaned the Accused \$25,000 in trust assets on an unsecured promissory note that the Accused drafted. Under the terms of this promissory note, the Accused was obligated to pay the loan in full on or about October 10, 1996. At the time he took this loan, the Accused had no reasonable expectation that he would be able to pay it in full when it became due.

11.

In February 1996, at the Accused’s request, Totten loaned the Accused an additional \$10,000 in trust assets on an unsecured promissory note that the Accused drafted. Under the terms of the promissory note, the Accused was obligated to pay the loan in full in one year. At the time the Accused took this loan, he had no reasonable expectation that he would be able to pay it in full when it became due.

12.

At the time he borrowed from Totten, the Accused was aware of his financial circumstances and his outstanding personal indebtedness. The Accused’s financial circumstances and inability to repay his indebtedness when due were material to the Totten loan transactions, but the Accused failed to disclose them to Totten.

13.

The Accused paid approximately \$3,500 in interest, but never repaid the principal of the Totten loans, and on November 7, 1997, he filed a Chapter 7 petition for bankruptcy. On February 25, 1998, the Accused's debt to the trust in the amount of \$36,050 was discharged by the bankruptcy court.

### **Violations**

14.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 13 of this stipulation, he violated DR 1-102(A)(3) by knowingly failing to disclose to Totten material facts of which he was aware, and DR 4-101(B)(3) by using client confidences or secrets to his own advantage.

### **Kiefer Matter**

### **Case No. 98-73**

### **Facts**

15.

On or about October 30, 1995, at the Accused's request, John Kiefer (hereinafter referred to as "Kiefer") loaned the Accused \$25,000 on an unsecured promissory note that the Accused drafted. Under the terms of this promissory note, the Accused was obligated to pay the Kiefer loan in full on or about October 30, 1996. At the time he took this loan, the Accused had no reasonable expectation that he would be able to pay it in full when it was due.

16.

At the time he borrowed from Kiefer, the Accused was aware of his financial circumstances and his outstanding personal indebtedness. The Accused's financial circumstances and inability to repay his indebtedness when due were material to the Kiefer loan transaction, but the Accused failed to disclose them to Kiefer.

17.

The Accused paid over \$3,000 in interest, but never repaid the principal of the Kiefer loan, and on November 7, 1997, he filed a Chapter 7 petition for bankruptcy. On February 25, 1998, the Accused's debt to Kiefer in the amount of \$25,000 was discharged by the bankruptcy court.

### **Violations**

18.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7 and 15 through 17 of this stipulation, he violated DR 1-102(A)(3) by failing to disclose to Kiefer material facts of which he was aware.

**Nielsen Matter**

**Case No. 98-74**

**Facts**

19.

On or about May 8, 1995, at the Accused's request, Tom and Christine Nielsen (hereinafter referred to as "the Niensens") loaned the Accused \$10,000 on an unsecured promissory note that the Accused drafted. Under the terms of this promissory note, the Accused was obligated to pay the Nielsen loan in full on or about May 8, 1996. At the time he took this loan, the Accused had no reasonable expectation that he would be able to pay it in full when it was due.

20.

At the time he borrowed from the Niensens, the Accused was aware of his financial circumstances and his outstanding personal indebtedness. The Accused's financial circumstances and inability to repay his indebtedness when due were material to the Nielsen loan transaction, but the Accused failed to disclose them to the Niensens.

21.

The Accused paid \$3,780 in principal and interest, but never repaid the entire principal of the Nielsen loan, and on November 7, 1997, he filed a Chapter 7 petition for bankruptcy. On February 25, 1998, the Accused's debt to the Niensens in the amount of \$8,348 was discharged by the bankruptcy court.

**Violations**

22.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7 and 19 through 21 of this stipulation, he violated DR 1-102(A)(3) by failing to disclose to the Niensens material facts of which he was aware.

**Lewis Matter**

**Case No. 98-75**

**Facts**

23.

Before December 19, 1995, the Accused represented David and Carolyn Lewis (hereinafter referred to as "the Lewises"). During the course of this representation, the Accused acquired some knowledge of the Lewises' assets. The Accused did not represent the Lewises after January 1992.

24.

On or about December 19, 1995, at the Accused's request, the Lewises loaned the Accused \$10,000 on an unsecured promissory note that the Accused drafted. Under the terms of this promissory note, the Accused was obligated to pay the Lewis loan in full on or about December 19, 1996. At the time he took this loan, the Accused had no reasonable expectation that he would be able to pay it in full when it was due.

25.

On or about January 5, 1996, at the Accused's request, the Lewises loaned the Accused an additional \$15,000 on an unsecured promissory note that the Accused drafted. Under the terms of this promissory note, the Accused was obligated to pay this loan in full on or about January 5, 1997. At the time he took this loan, the Accused had no reasonable expectation that he would be able to pay it in full when it was due.

26.

At the time he borrowed from the Lewises, the Accused was aware of his financial circumstances and his outstanding personal indebtedness. The Accused's financial circumstances and inability to repay his indebtedness when due were material to the Lewis loan transactions, but the Accused failed to disclose them to the Lewises.

27.

The Accused paid \$2,267 in interest, but never repaid the principal of the Lewis loan, and on November 7, 1997, he filed a Chapter 7 petition for bankruptcy. On February 25, 1998, the Accused's debt to the Lewises in the amount of \$25,750 was discharged by the bankruptcy court.

### **Violations**

28.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7 and 23 through 27 of this stipulation, he violated DR 1-102(A)(3) by failing to disclose to the Lewises material facts of which he was aware and DR 4-101(B)(3) by using client confidences or secrets to his own advantage.

### **Sanction**

29.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Supreme Court 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.* The Accused violated his duty to the public to maintain his personal integrity and his duty to his clients to preserve their confidences and secrets.

B. *Mental State.* The Accused acted knowingly, i.e., with the conscious awareness of the nature or attendant circumstances of his conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7.

C. *Injury.* Each person who complained about the Accused's conduct described in this stipulation was actually harmed by his conduct. Had the complainants known of the Accused's financial circumstances and inability to pay the loans when they came due, they would not have made the loans. The Accused failed to pay some or all of the principal of all four loans described herein and some or all of the interest thereon. The unpaid balance of principal and interest on each loan was discharged in bankruptcy.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has substantial experience in the practice of law. *Standards*, § 9.22(i).
2. The Accused acted with a selfish motive. *Standards*, § 9.22(b).
3. The Accused engaged in a pattern of misconduct that involved multiple disciplinary rule violations. *Standards*, § 9.22(c) and (d).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
2. The Accused has displayed a cooperative attitude toward these proceedings and has made full and free disclosure to Disciplinary Counsel's Office. *Standards*, § 9.32(e).
3. The Accused has a good reputation. *Standards*, § 9.32(g).
4. After his bankruptcy, the Accused has paid the Nielsens approximately \$7,200 in an effort to make restitution or to rectify the consequences of his misconduct. *Standards*, § 9.32(d).

30.

*Standards* § 5.12 suggests that suspension is appropriate where the lawyer knowingly engages in conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

31.

Oregon case law is in accord. See *In re Altstatt*, 321 Or 324, 897 P2d 1164 (1995) (one-year suspension for undertaking to represent estate of person from

whom lawyer had borrowed money and obtaining payment of his fees without court authority in violation of DR 1-102(A)(4) and DR 5-101(A)); *In re Moore*, 299 Or 496, 703 P2d 961 (1985) (one-year suspension where lawyer represented three individuals in business transaction and borrowed money from two of them in violation of DR 5-101(A), DR 5-104(A), and DR 5-105(E)).

32.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of one year for violation of DR 1-102(A)(3) (four counts) and DR 4-101(B)(3) (two counts), the sanction to be effective beginning on the 61st day following approval of this stipulation by the Supreme Court.

33.

This Stipulation for Discipline is subject to review by the Disciplinary Counsel of the Oregon State Bar. The sanction provided for herein was approved by the State Professional Responsibility Board (SPRB) on January 20, 2001. The parties agree this stipulation is to be submitted to the Supreme Court of Oregon for consideration pursuant to the terms of BR 3.6.

EXECUTED this 24th day of April 2001.

/s/ Richard A. Seideman

Richard A. Seideman  
OSB No. 64100

EXECUTED this 27th day of April 2001.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks  
OSB No. 75167  
Assistant Disciplinary Counsel

**Cite as 332 Or 173 (2001)**  
**IN THE SUPREME COURT**  
**OF THE STATE OF OREGON**

In re )  
 )  
Complaint as to the Conduct of )  
 )  
DANIEL Q. GALLAGHER, )  
 )  
Accused. )

(OSB No. 98-12; SC S47248)

En Banc

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

Argued and submitted November 6, 2000. Decided June 1, 2001.

Daniel Q. Gallagher, Winston, argued the cause and filed the briefs in propria persona.

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

Before Carson, Chief Justice, and Gillette, Durham, Kulongoski, Leeson, and Riggs, Justices. (Van Hoomissen, J., retired December 31, 2000, and did not participate in the decision of this case; De Muniz, J., did not participate in the consideration or decision of this case.)

No appearance contra.

PER CURIAM

The Accused is suspended from the practice of law for two years, commencing 60 days from the date of filing of this decision.

**SUMMARY OF SUPREME COURT OPINION**

The Oregon State Bar charged the Accused with violating DR 1-102(A)(3) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation) (two counts), DR 1-103(C) (requiring cooperation with Bar investigation) (two counts), and DR 9-101(A) (requiring deposit and maintenance of client funds in trust account). The alleged violations of DR 1-102(A)(3) and DR 1-103(C) stemmed from the Accused’s conduct during settlement negotiations and from the Accused’s statements during the subsequent Bar investigation. The alleged violation of DR 9-101(A) stemmed from the Accused’s handling of funds that belonged to opposing

counsel's client. A trial panel of the Disciplinary Board determined that the Accused had violated all those rules and imposed a two-year suspension. *Held:* The Accused violated DR 1-102(A)(3) (two counts) and DR 1-103(C) (two counts). The Accused did not violate DR 9-101(A), because that rule regulates only the lawyer's handling of funds belonging to the lawyer's client. The Accused is suspended from the practice of law for two years.

**Cite as 332 Or 165 (2001)**  
**IN THE SUPREME COURT**  
**OF THE STATE OF OREGON**

In re )  
 )  
Complaint as to the Conduct of )  
 )  
IVAN J. VESELY, )  
 )  
 )  
Accused. )

(OSB Nos. 97-101, 97-102, 98-105, 98-163, 99-68, 00-56,  
00-57, 00-58, 00-71, 00-72; SC S47964)

En Banc

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

Submitted on the record April 30, 2001. Decided June 1, 2001.

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

No appearance contra.

PER CURIAM

The Accused is disbarred.

**SUMMARY OF SUPREME COURT OPINION**

The Oregon State Bar charged the Accused with violating DR 1-102(A)(2) (engaging in criminal conduct that reflects adversely on lawyer’s honesty, trustworthiness, or fitness to practice law) (two counts); DR 1-102(A)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation (two counts); DR 1-102(A)(4) (engaging in conduct prejudicial to administration of justice (two counts); DR 1-103(C) (failing to cooperate with disciplinary investigation (nine counts); DR 2-110(A)(2) (withdrawing from representation without taking reasonable steps to avoid foreseeable prejudice to client); DR 5-105(E) (representing multiple current clients with conflicting interests); DR 6-101(B) (neglecting legal matter) (four counts); DR 7-102(A)(7) (counseling or assisting client in conduct lawyer knows to be illegal or fraudulent); DR 7-106(A) (disregarding or advising client to disregard rulings of tribunal) (two counts); DR 9-101(C)(3) (failing to account for client funds) (two counts); DR 9-101(C)(4) (failure to deliver client property promptly) (three counts); ORS 9.527(1) (committing act or course of conduct that, if member were applying for admission, application should be denied) (two counts);

and ORS 9.527(3) (willfully disobeying court order) (two counts). The Accused did not answer the Bar's second amended formal complaint, and the trial panel entered an order of default. The Accused did not participate in the court's review of the trial panel's decision. *Held*: The court adopts the opinion of the trial panel. The Accused is disbarred.

**Cite as 332 Or 241 (2001)**  
**IN THE SUPREME COURT**  
**OF THE STATE OF OREGON**

In re )  
 )  
Complaint as to the Conduct of )  
 )  
GREGORY A. HARTMAN, )  
 )  
Accused. )

(OSB No. 94-219A; SC S45712 (Control))

In re )  
 )  
Complaint as to the Conduct of )  
 )  
ELIZABETH ANN McKANNA, )  
 )  
Accused. )

(OSB No. 94-219B; SC S45713)

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

Argued and submitted November 5, 1999. Decided June 14, 2001.

Thomas M. Christ, Special Counsel, Oregon State Bar, Portland, argued the cause and filed the briefs for the Oregon State Bar.

David Markowitz, of Markowitz, Herbold, Glade & Mehlhaf, P.C., Portland, argued the cause for the Accused. With him on the brief was Lynn R. Stafford.

Before Carson, Chief Justice, and Gillette, Kulongoski, and Leeson, Justices. (Van Hoomissen, J., retired December 31, 2000, and did not participate in the decision of this case. Durham, Riggs, and De Muniz, JJ., did not participate in the consideration or decision of this case.)

PER CURIAM

Complaints dismissed.

### **SUMMARY OF SUPREME COURT OPINION**

The Oregon State Bar (“Bar”) charged Gregory A. Hartman and Elizabeth Ann McKanna (the “Accused”) with violating DR 1-102(A)(3), DR 2-110(B)(2), DR 7-102(A)(7), DR 7-102(B)(1), and DR 1-102(A)(4), based on their representation of a client in an employment dispute. A majority of a trial panel of the Disciplinary Board found that the Bar failed to prove by clear and convincing evidence that the Accused committed any of the charged disciplinary violations and dismissed the complaints. *Held*: The Bar has failed to prove by clear and convincing evidence that the Accused committed any of the charged violations. Complaints dismissed.



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
)  
Complaint as to the Conduct of ) Case No. 99-72  
)  
RICHARD G. SAMUELS, )  
) OPINION  
)  
Accused. )

Bar Counsel: Stacy J. Hankin  
Counsel for the Accused: None  
Disciplinary Board: Mark McCulloch (Chair); Charles Bates, Esq.;  
Daniel Williamson (Public Member)  
Disposition: Violation of DR 6-101(B) and DR 1-103(C).  
Five-month suspension.  
Effective Date of Opinion: June 19, 2001

**OPINION OF TRIAL PANEL**

**Introduction**

On January 22, 2001, the trial panel chairperson entered an order granting the Bar's Motion for Discovery Sanctions, striking the Accused's Answer, and deeming the allegations of the Formal Complaint as true.

Accordingly, the panel finds that the Accused was retained by Edik Sakouyan in November 1996 to represent EIS Engines, Inc., in a claim against Speed's Towing for damages to an automobile engine. The Accused filed a complaint in Multnomah County Circuit Court on July 15, 1998, but thereafter failed to pursue the matter, despite receiving notices from the court setting deadlines which informed the Accused that the matter would be dismissed and despite having received a discovery request from the lawyer representing Speed's Towing. On December 31, 1998, the court dismissed the lawsuit. The Accused failed to inform Sakouyan the case had been dismissed and failed to take any steps to have the case reinstated.

The Accused's conduct violates DR 6-101(B) because he neglected a legal matter entrusted to him.

The Bar produced evidence to indicate the Accused failed to respond to numerous inquiries from disciplinary counsel's office about Sakouyan's complaint. The Accused did meet with Attorney Michael B. Merchant, of the LPRC, to answer

questions about the Accused's conduct. The Accused was open with Mr. Merchant, admitted that his conduct was wrong, but failed to give any justification for his conduct. He indicated to Mr. Merchant that he only had one active legal matter, and was planning to leave the active practice of law and undertake business interests in the computer field.

Following the Accused's conversation with Mr. Merchant, a formal complaint was brought by the Oregon State Bar. On November 17, 2000, notice of deposition was directed to the Accused. On November 20, 2000, the trial panel chairperson ordered the Accused to produce documents. Both the notice and the order were directed and mailed to the Accused's last known address. Neither mailing was returned. The Accused failed to appear for the deposition and failed to produce any documents.

The Accused's conduct in failing to cooperate with the Oregon State Bar is in violation of DR 1-103(C).

### **Conclusion**

It is the opinion of the Trial Panel that the Accused should be suspended from the practice of law for five months because of his violations as described in this opinion.

IT IS SO ORDERED.

DATED this 8th day of May 2001.

/s/ Mark McCulloch

Mark McCulloch  
Trial Panel Chair

/s/ Charles Bates

Charles Bates  
Trial Panel Member

/s/ Daniel Williamson

Daniel Williamson  
Trial Panel Member

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
)  
Complaint as to the Conduct of ) Case No. 99-6  
)  
GARY ROBERTS, )  
)  
Accused. )

Bar Counsel: Margaret Fiorino, Esq.  
Counsel for the Accused: Stephen R. Moore, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4),  
and DR 7-102(A)(5). Stipulation for discipline.  
90-day suspension.  
Effective Date of Order: July 6, 2001

**AMENDED ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 90 days, effective on the 6th day of July 2001, for violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5).

DATED this 9th day of July 2001.

/s/ Paul E. Meyer  
Paul E. Meyer, Esq.  
State Disciplinary Board Chairperson

/s/ C. Lane Borg  
C. Lane Borg, Esq., Region 5  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Gary Roberts, 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, Gary Roberts, 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 May 25, 2001, pursuant to the authorization of the State Professional Responsibility Board, an Amended Formal Complaint was filed against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5) of the Code of Professional Responsibility. A copy of the Amended Formal Complaint is attached hereto and by this reference incorporated herein. 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.

On or about June 4, 1996, the Accused undertook to represent Gary and Sandra Parker (hereinafter referred to as “the Parkers”) in a suit against Laurie Balcomb (hereinafter referred to as “Balcomb”) for specific performance of a contract for the sale of real property to the Parkers or for damages arising from Balcomb’s breach of this contract. Balcomb had refused to sell her property to the Parkers after the parties had entered into a contract for the sale of the property.

6.

Balcomb's real property had been listed for sale with a licensed real estate broker, John L. Scott Real Estate (hereinafter referred to as "Scott"). Greg Ferrera (hereinafter referred to as "Ferrera") was engaged with Scott as a salesperson and was responsible for the Balcomb sale. In connection with listing her real property for sale, Balcomb had agreed to pay to Scott a percentage of the sale price of the property as a sales commission (hereinafter referred to as the "Balcomb commission"). Ferrera was entitled to the entire Balcomb commission pursuant to an agreement with Scott.

7.

At all relevant times herein, in the absence of an assignment of its right to do so, Scott was the only party permitted to maintain a court action for collection of the Balcomb commission, pursuant to the provisions of ORS 696.710(2). At all relevant times, the provisions of ORS 696.710(2) prohibited Ferrera from maintaining a court action for collection of the Balcomb commission in the absence of an assignment to him by Scott of the right to do so.

8.

On or about July 26, 1996, the Accused undertook to represent Ferrera to recover the Balcomb commission from Balcomb. Although Scott agreed to and did sign a request for mediation of the Ferrera/Balcomb dispute, at no relevant time herein did the Accused represent Scott in any action to recover the Balcomb commission or in any other matter.

9.

On or about July 26, 1996, Ferrera left Scott and became engaged as a salesperson with a different real estate broker, ReMax Executives (hereinafter referred to as "ReMax"). At no relevant time herein did the Accused represent ReMax in any action to recover the Balcomb commission or in any other matter.

10.

On or about September 24, 1996, on behalf of Ferrera, the Accused contacted the attorneys for Scott and requested that Scott assign its right to collect the Balcomb commission to Ferrera. Scott's attorneys required that the commission claim be assigned to both Ferrera and ReMax. The Accused acquiesced in this requirement, even though he knew he had no authority from ReMax to do so on its behalf and even though he did not know whether ReMax would accept an assignment of the commission claim. Thereafter, the Accused and Scott's lawyers did not discuss the terms of the assignment or the conditions under which Scott would execute an assignment until March 1997.

11.

On or about March 24, 1997, the Accused commenced an arbitration proceeding on behalf of Ferrera and ReMax against Balcomb to recover the Balcomb commission, but knowingly failed to disclose to ReMax that he had filed an arbitration proceeding on its behalf.

12.

In the Statement of Claim filed in the arbitration proceeding, the Accused represented that the claimants were Ferrera and ReMax; that Ferrera and ReMax were the assignees of rights under a listing agreement between Balcomb and Scott; and that the Accused was the attorney for Ferrera and ReMax. These representations were false, and the Accused knew they were false when he made them.

13.

On or about March 26, 1997, the Accused resumed negotiations with the attorneys for Scott. These negotiations were intended by the Accused to result in the assignment to Ferrera and/or Ferrera and ReMax of Scott's claim to the Balcomb commission. During the course of these negotiations, the Accused failed to disclose to Scott's attorneys that he did not represent ReMax and that he did not have authority to negotiate on behalf of ReMax. The Accused and Scott's attorney were never able to agree on the language or terms of an assignment.

14.

On or about May 30, 1997, Balcomb filed counterclaims for damages against Ferrera and ReMax in the arbitration proceeding. The Accused knowingly failed to disclose to ReMax that Balcomb had asserted claims against it.

15.

The arbitration hearing was set for September 4, 1997. The Accused failed to timely file a prehearing statement of proof as required by the arbitration rules. The time for filing was subsequently extended by the arbitrator at the Accused's request.

16.

On or about September 19, 1997, ReMax discovered that the Accused had named it as a claimant in the arbitration proceeding and that Balcomb had asserted counterclaims against it as Scott's assignee. In a telephone conversation that day, ReMax advised the Accused it would not accept an assignment of Scott's claim for the Balcomb commission and requested the Accused to dismiss it as a party to the arbitration proceeding. The Accused agreed to "take care of it," with the hope he

could persuade Scott to assign the commission claim to Ferrera only, thereby enabling the Accused to dismiss ReMax as a party and continue with the arbitration proceeding in Ferrera's name only. The Accused was unable to obtain an assignment to Ferrera only before the case was settled and failed to notify ReMax that he had not dismissed it from the arbitration proceeding.

17.

After the September 19, 1997, telephone conversation with ReMax, the Accused continued his negotiations with Scott's attorney for an assignment of the Balcomb commission claim to Ferrera only, but did not disclose to Scott's attorney that ReMax had demanded to be dismissed as a party to the arbitration proceeding; that he did not represent ReMax; and that ReMax had advised him it would not accept an assignment of the Balcomb commission claim.

18.

On or about November 6, 1997, the Accused had a conversation with one of the attorneys for Scott regarding an assignment of the Balcomb commission to Ferrera. After the conversation, the Accused dictated a letter to the arbitrator.

19.

On or about November 7, 1997, the Accused signed the letter to the arbitrator and gave it to his secretary for delivery. After signing the letter, the Accused had two additional conversations with the Scott attorney. As a result of the second conversation, some of the representations in the Accused's letter to the arbitrator had been rendered untrue. The Accused failed to determine if the letter to the arbitrator had been sent or, if necessary, send a correcting letter.

20.

On or about November 12, 1997, Balcomb filed a motion for summary determination of the arbitration proceeding under the authority of ORS 696.710. The motion was based on the fact that Scott had not assigned its claim to the Balcomb commission to either Ferrera or ReMax.

21.

Sometime before November 29, 1997, an associate lawyer in the Accused's office prepared a draft affidavit for the Accused to sign and submit in opposition to Balcomb's motion for summary determination. The Accused reviewed the affidavit, noticed certain errors, made changes by hand, and submitted the affidavit to his staff for revision. On or about November 29, 1997, the Accused signed the revised affidavit without reading it to confirm that his changes had been made. In fact, the Accused's revisions had not been incorporated into the final version of the affidavit, which was then filed. The affidavit contained certain statements that were not true.

## Violations

22.

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).

## Sanction

23.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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.* The Accused violated his duty to the public to maintain his personal integrity and his duty to the legal system to avoid making false statements in the filing of the arbitration or petition. *Standards*, §§ 5.1, 6.1.

B. *Mental State.* With respect to the violations of DR 1-102(A)(3) and DR 7-102(A)(5), the Accused acted knowingly, i.e., with the conscious awareness of the nature or attendant circumstances of his conduct, but without the conscious objective to accomplish a particular result. With respect to the violation of DR 1-102(A)(4), the Accused acted negligently by failing to review documents before signing them.

C. *Injury.* Balcomb suffered actual injury in that she was required to defend against a proceeding that the Accused could not have initiated on behalf of Ferrera alone. There was potential injury to ReMax in that Balcomb asserted counterclaims against it of which ReMax was unaware.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused engaged in a pattern of misconduct that involved multiple disciplinary offenses. *Standards*, § 9.22(c) and (d); and

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

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a);

2. The Accused made a timely, good-faith effort to rectify the consequences of his misconduct. *Standards*, § 9.32(d);

3. The Accused made full and free disclosure to Disciplinary Counsel’s Office and displayed a cooperative attitude toward the proceedings. *Standards*, § 9.32(e);



4. The Accused is of good character and enjoys an excellent reputation. *Standards*, § 9.32(g); and

5. The Accused has displayed remorse for the conduct described herein. *Standards*, § 9.32(l).

24.

*Standards* § 6.12 suggests that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to a tribunal, 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.

Oregon case law is in accord. See *In re Scanlon*, 13 DB Rptr 91 (1999) (90-day suspension for violation of DR 1-102(A)(2), DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), and DR 7-102(A)(8)); *In re Hiller*, 298 Or 526, 694 P2d 540 (1985) (120-day suspension for violation of former DR 1-102(A)(4) [current DR 1-102(A)(3)] and ORS 9.460(4)); *In re Morris*, 326 Or 949, 953 P2d 387 (1998).

25.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 90 days for violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5), the sanction to be effective beginning on the 30th day following the date this stipulation is approved by the Disciplinary Board or earlier by agreement of the parties hereto.

In addition, on or before the expiration of the suspension, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$1,307.70, incurred for depositions. Should the Accused fail to pay \$1,307.70 in full by the expiration of the 90 day suspension, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

26.

The sanction provided for herein was approved by the State Professional Responsibility Board on May 19, 2001. This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. If approved by Disciplinary Counsel, 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 June 2001.

/s/ Gary Roberts

Gary Roberts

OSB No. 74273

EXECUTED this 11th day of June 2001.

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 Nos. 99-36, 99-107  
)  
D. OLCOTT THOMPSON, )  
)  
Accused. )

Bar Counsel: Dean Heiling, Esq.  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 6-101(B) (two counts) and DR  
1-103(C). Stipulation for discipline. 120-day  
suspension.  
Effective Date of Order: July 21, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 120 days, effective on the 30th day from the date of this order, for violation of DR 6-101(B) (two counts) and DR 1-103(C).

DATED this 21st day of June 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Lon N. Bryant  
Lon N. Bryant, Region 6  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

D. Olcott Thompson, 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, D. Olcott Thompson, 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 Marion 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 19, 2000, and August 20, 1999, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(B) and DR 1-103(C) of the Code of Professional Responsibility. A copy of the Amended Formal Complaint is attached hereto and incorporated by this reference herein. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

### **Long Matter**

### **Case No. 99-36**

### **Facts**

5.

Beginning on or about October 8, 1997, the Accused represented Charles S. Long (hereinafter referred to as “Long”) in a proceeding for postconviction relief. On or about February 5, 1998, the Circuit Court advised the Accused that it had ruled against Long’s petition for postconviction relief. On or about February 11, 1998, the Accused agreed to represent Long to appeal the resulting order which was signed and filed by the court on February 17, 1998.

6.

Thereafter, the Accused failed to obtain a copy of the above-referenced order before the expiration of the time to file an appeal and failed to timely file a notice of appeal. From about April 7, 1998, until June 30, 1998, the Accused took no further substantial action on behalf of Long, despite reminders from Long of his obligation to do so.

### **Violations**

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 6-101(B).

### **Doty Matter**

### **Case No. 99-107**

### **Facts**

8.

On or about February 9, 1998, the Accused was appointed by the court to represent Linda Doty (hereinafter referred to as “Doty”) in civil rights litigation Doty had filed pro se.

9.

On or about March 16, 1998, the Accused advised Doty that it was necessary to concede a motion for summary judgment filed by the State of Oregon in the above-described litigation. The Accused advised Doty that he would allow the litigation to be dismissed pursuant to the motion for summary judgment, but that he would prepare and file a new complaint.

10.

After March 1998, the Accused took no substantial action on Doty’s behalf, despite the issuance by the court of an order to show cause why the litigation should not be dismissed for lack of prosecution, and failed to advise Doty of the status of her case. The court dismissed the litigation on or about August 18, 1998.

### **Violations**

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 6-101(B).

12.

The Oregon State Bar received a complaint from Doty concerning the Accused's conduct on November 23, 1998. On November 25, 1998, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response to it by December 16, 1998. The Accused made no response. On March 23, 1999, Disciplinary Counsel's Office again requested the Accused's response to the complaint by March 30, 1999. The Accused filed his response on March 27, 1999.

13.

On September 1, 1999, Disciplinary Counsel's Office requested the Accused provide additional information regarding his conduct. The Accused made no response. On September 27, 1999, Disciplinary Counsel's Office again requested the Accused to respond to its September 1, 1999 request for information by October 7, 1999. The Accused responded on October 7, 1999, but because the response was not received by the Bar until October 15, 1999, the matter was referred to the Clackamas/Linn/Marion County Local Professional Responsibility Committee (hereinafter referred to as the "LPRC") on October 13, 1999, for investigation.

14.

On January 4, 2000, and January 9, 2000, the LPRC investigator contacted the Accused by telephone, facsimile transmission, and regular and certified mail to request that he make himself available for an interview. The Accused made no response.

15.

On January 29, 2000, the LPRC issued a subpoena that required the Accused to appear for examination and produce Doty's client file on February 14, 2000 at 4:00 p.m. On February 14, 2000, the Accused notified the LPRC investigator that he had a trial set for that day and could not appear pursuant to the subpoena. The Accused's client entered a guilty plea in the morning of February 14, 2000, but the Accused did not appear for examination at 4:00 p.m. as required by the subpoena.

16.

The Accused made himself available for interview by the LPRC investigator on February 24, 2000, after the LPRC notified him it would issue a new subpoena and cite the Accused for contempt if he failed to appear for an interview.

17.

On March 8, 2000, the LPRC investigator requested the Accused produce Doty's client file and his research notes. On March 9, 2000, the Accused produced Doty's client file, but did not produce his research notes because he could not find them. The Accused never produced those notes.

### **Violations**

18.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-103(C).

### **Sanction**

19.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, they 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.* The Accused violated his duty of diligence to his clients and his duty as a professional to cooperate with investigations into his conduct. *Standards*, §§ 4.4, 7.0.

B. *Mental State.* The Accused acted knowingly, i.e., with the conscious awareness of the nature or attendant circumstances of his conduct but without the conscious objective to accomplish a particular result.

C. *Injury.* The Accused's clients were injured or potentially injured by his failure to pursue their claims. The Accused's failure to cooperate with the Bar's investigation caused harm to the legal profession and to the public by delaying the Bar's investigation and the resolution of his client's complaint. *In re Miles*, 324 Or 218, 923 P2d 1219 (1996).

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior disciplinary record. In 1991, he was suspended for violation of DR 6-101(B) and DR 1-102(A)(3) for a period of six months with five months of the suspension stayed pending the completion of a two-year probation. *In re Thompson*, 6 DB Rptr 33 (1992); *Standards*, § 9.22(a).

2. When taken together with his prior discipline, the Accused's conduct displays a pattern of misconduct. *Standards*, § 9.22(c).

3. The Accused's conduct involves multiple offenses. *Standards*, § 9.22(d).

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

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused did not act with a dishonest or selfish motive. *Standards*, § 9.32(a).

2. At the time of the conduct, the Accused was experiencing marital difficulties. *Standards*, § 9.32(c).

20.

*Standards* § 4.42 suggests 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* § 7.2 suggests that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public or the legal system.

21.

Oregon case law is in accord. See *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (120-day suspension for violation of DR 6-101(B) and DR 1-103(C)); *In re Morrow*, 303 Or 102, 734 P2d 867 (1987) (91-day suspension for violation of DR 1-102(A)(3), DR 6-101(B), DR 7-101(A)(1), and DR 7-101(A)(2)).

22.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of 120 days for violation of DR 6-101(B) (two counts) and DR 1-103(C), the sanction to be effective beginning on the 30th day following approval of this stipulation by the Disciplinary Board.

23.

The sanction provided for herein was approved by the Chair of the State Professional Responsibility Board (SPRB) on April 25, 2001. This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. If approved by Disciplinary Counsel, 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 June 2001.

/s/ D. Olcott Thompson

D. Olcott Thompson

OSB No. 82409

EXECUTED this 12th day of June 2001.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 86202

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
 )  
Complaint as to the Conduct of ) Case No. 01-64  
 )  
MICHAEL REDDEN, )  
 )  
Accused. )

Bar Counsel: None  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 5-101(A) and DR 5-105(E).  
Stipulation for discipline. Public reprimand.  
Effective Date of Order: June 27, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Michael Redden (hereinafter "Accused") and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is reprimanded for violation of DR 5-101(A) and DR 5-105(E) of the Code of Professional Responsibility.

DATED this 27th day of June 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ C. Lane Borg  
C. Lane Borg, Region 5  
Disciplinary Board Chairperson

## **STIPULATION FOR DISCIPLINE**

Michael Redden (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 Supreme Court of the State of Oregon to the practice of law in this state and a member of the Oregon State Bar, maintaining 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 3.6(h).

4.

At its April 13, 2001, meeting, the State Professional Responsibility directed that the Accused be charged with violation of DR 5-101(A) and DR 5-105(E) of the Code of Professional Responsibility. 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 and Violations**

5.

A husband and wife (hereinafter “clients”) retained a lawyer to represent them in a Chapter 13 bankruptcy case. The clients also retained the Accused to litigate the clients’ significant tax liabilities with the Oregon Department of Revenue (hereinafter “ODR”) and the Internal Revenue Service (hereinafter “IRS”) in the bankruptcy court. The ODR and IRS filed motions to dismiss the Chapter 13 case based on allegations that the clients had failed to disclose assets. The Accused was not involved in the preparation of the clients’ bankruptcy petition and schedules. The court granted the motion to dismiss. Thereafter, the Accused told the clients that he could no longer represent them.

6.

The Accused instructed his associate to prepare and file involuntary Chapter 7 bankruptcy petitions against his former clients. The former clients owed the Accused about \$20,000 in fees from the previous representation. The Accused thought if he could litigate the tax liability, which was the subject of the former representation in the context of the involuntary Chapter 7 proceeding, the former clients would then have the funds to pay him. The involuntary bankruptcy petitions were filed with the court. The court notified the Accused's former clients that they were required to file answers to the petitions and schedules by a specified date. They did not have a new attorney.

7.

The former clients sought help from the Accused and his associate. The Accused and his associate told the former clients that they could not represent them and should obtain new counsel. The former clients continued to call. The Accused then instructed his associate to prepare drafts of answers and schedules for the former clients. The Accused reviewed and approved the documents before the associate forwarded them to the clients, with instructions that they should carefully review them to ensure accuracy before signing them, and how to file the documents.

8.

The Accused admits that the preparation of drafts answers and schedules and advice about those documents constituted the representation of the clients, and that his conduct thereby violated DR 5-101(A), self-interest conflict, and DR 5-105(E), current client conflict, 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* and Oregon case law 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*, p. 7.

A. *Duty*. In violating DR 5-101(A) and DR 5-105(E), the Accused violated duties to his clients and the profession. *Standards*, §§ 4.3, 7.0.

B. *Mental State*. The Accused's conduct demonstrates that he was negligent in failing to fully evaluate the substance and nature of his relationship with the clients. Negligence is the 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*, p. 7. The Accused's associate asked him if they were permitted to prepare documents for the clients when the Accused was the opposing party in the same proceeding. The Accused dismissed the inquiry.

C. *Injury*. The Accused's conduct resulted in potential injury to his clients. His interests were adverse to his clients' interests. He provided his former clients with legal advice concerning the same matter in which he represented his own interests. The clients received no independent legal advice concerning the case until sometime after the Accused prepared the documents.

D. *Aggravating Factors*. Aggravating factors include:

1. This stipulation involves two rule violations. *Standards*, § 9.22(d).
2. The Accused has substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no 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 in responding to the complaint and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).

10.

The *Standards* provide that a reprimand is generally appropriate when 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. Oregon case law is in accord. *In re Howser*, 329 Or 404, 987 P2d 496 (1999); *In re Bozgoz*, 8 DB Rptr 113 (1994); *In re Brandsness*, 299 Or 420, 702 P2d 1098 (1985).

11.

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

12.

Disciplinary Counsel of the Oregon has reviewed this Stipulation for Discipline 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 19th day of June 2001.

/s/ Michael Redden

Michael Redden

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

**Cite as 332 Or 251 (2001)**  
**IN THE SUPREME COURT**  
**OF THE STATE OF OREGON**

In re )  
 )  
Complaint as to the Conduct of )  
 )  
DAVID R. KLUGE, )  
 )  
Accused. )

(OSB No. 98-22; SC S47247)

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

Argued and submitted January 10, 2001. Decided June 28, 2001.

David R. Kluge, Portland, argued and filed the brief in propria persona.

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, Durham, Leeson, Riggs, and De Muniz, Justices. (Kulongoski, J., resigned June 14, 2001, and did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for three years, commencing 60 days from the date of this decision.

**SUMMARY OF SUPREME COURT OPINION**

The Oregon State Bar charged the Accused with violating DR 1-102(A)(3) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation) (two counts) by misrepresenting to a deponent and opposing counsel that he was a notary and by misrepresenting to the Professional Liability Fund (PLF) that he did not engage in the private practice of law; DR 3-101(B) (prohibiting unlawful practice of law) by engaging in the private practice of law without mandatory PLF coverage; DR 5-102(C) (requiring lawyer to withdraw from representation if lawyer will be witness and lawyer's testimony will or might be prejudicial to client) by failing to withdraw from representing his client when the Accused knew that he would be called as a witness if the proceeding against his client and that his testimony could

be prejudicial; and DR 7-102(A)(5) (prohibiting lawyer from knowingly making false statement of law or fact) by misrepresenting his status as a notary. The Accused failed to file a timely answer. The trial panel deemed the allegations in the complaint to be true and concluded that the Accused had committed the alleged violations. After a hearing concerning sanction, the trial panel imposed a suspension of 18 months. *Held:* The Accused intentionally violated DR 1-102(A)(3) (two counts), DR 3-101(B), DR 5-102(C), and DR 7-102(A)(5). The Accused is suspended from the practice of law for three years, 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. 01-79  
 )  
STEVE P. CHEZ, )  
 )  
Accused. )

Bar Counsel: None  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 9-101(A) and DR 9-101(C)(3).  
Stipulation for discipline. Public reprimand.  
Effective Date of Order: July 9, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Steve P. Chez (hereinafter "Accused") and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is reprimanded for violation of DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility.

DATED this 9th day of July 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Lon Bryant 6/28/01  
Lon Bryant, Region 6  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Steve P. Chez, 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, Steve P. Chez, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1971, 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 for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On May 21, 2001, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Facts and Violations

5.

In or about April 1999, Jose Garcia-Emillio (hereinafter “Garcia”) retained the Accused to represent and defend him against certain criminal charges in the state and federal courts. The Accused agreed to represent Garcia for a flat fee of \$5,000. Between May and June 1999, friends of Garcia paid the Accused \$2,900 for the legal services to be performed for Garcia. The Accused did not deposit any of the funds in a lawyer trust account.

6.

The Accused considered the Garcia matter to be a flat fee case, entitling him to the attorney fee immediately. However, the Accused did not have a written

agreement or other writing that expressed that the fees paid in advance constituted a nonrefundable retainer, earned on receipt. The funds paid for legal services were therefore client property and should have been deposited in a lawyer trust account and withdrawn only as they were earned. *In re Biggs*, 318 Or 293, 864 P2d 1310 (1994).

7.

In the fall of 1999, Garcia terminated the attorney-client relationship and obtained new counsel. The Accused did not complete the legal services he had agreed to perform. Garcia asked the Accused to refund a portion of the fee that had been paid. The Accused failed to provide an accounting of the funds he had received.

8.

At no time did the Accused deposit any of the funds delivered to him for legal services for Garcia in a lawyer trust account, prepare and maintain adequate records of the time he spent on Garcia's legal matter, or provide Garcia with an accounting of funds paid to him for the legal services he performed. *See Oregon Formal Ethics Opinion No. 1998-151; In re Biggs*, 318 Or 293, 864 P2d 1310, 1316 (1994); *In re Gildea*, 325 Or 281, 936 P2d 975 (1997).

9.

The Accused admits that the aforementioned conduct constitutes violation of DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility.

### **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 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*. In violating DR 9-101(A) and DR 9-101(C)(3), the Accused violated duties to his client and the profession. *Standards*, §§ 4.1, 7.0.

B. *Mental State*. The Accused's conduct demonstrates negligence, or 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*, p. 7.

C. *Injury*. The Accused's failure to deposit client funds in trust and prepare trust account and time records caused the investigation of his conduct to be more time-consuming. Garcia suffered some injury in that he was not provided with

an accounting of funds that were paid to the Accused and was therefore uncertain that the Accused actually earned the funds that were paid. Based upon the Bar's investigation, it appears that Garcia did not suffer any monetary injury as the Accused ultimately earned the funds that were paid to him.

D. *Aggravating Factors.* Aggravating factors include:

1. This stipulation involves two disciplinary rule violations. *Standards*, § 9.22(d).

2. The Accused was admitted to practice in 1971 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards*, § 9.22(a).

2. The Accused had no dishonest or selfish motive. *Standards*, § 9.32(b).

3. The Accused cooperated in the investigation and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).

4. The Accused acknowledges that he should have deposited his client's funds in trust, should have kept better records of client funds and the work he performed for the client, and should have provided his client with an accounting of the funds that were paid for the legal services. *Standards*, § 9.32(l).

11.

The *Standards* provide that a 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 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. *Standards*, § 7.3. Oregon case law is in accord. *See, e.g., In re Mannis*, 295 Or 594, 668 P2d 1224 (1983); *In re Poling*, 15 DB Rptr 83 (2001).

12.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for the violation of DR 9-101(A) and DR 9-101(C)(3), the sanction to be effective the day this stipulation is approved by the Disciplinary Board.

13.

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 19th day of June 2001.

/s/ Steve P. Chez

Steve P. Chez

OSB No. 71038

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. 99-142  
)  
LAWRENCE P. CULLEN, )  
)  
Accused. )

Bar Counsel: None  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 9-101(A) and DR 9-101(C)(3).  
Stipulation for discipline. Public reprimand.  
Effective Date of Order: July 13, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 9-101(A) and DR 9-101(C)(3), effective the date of this order.

DATED this 13th day of July 2001.

/s/ Paul E. Meyer  
Paul E. Meyer, Esq.  
State Disciplinary Board Chairperson

/s/ William B. Kirby  
William B. Kirby, Esq., Region 4  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Lawrence P. Cullen, 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, Lawrence P. Cullen, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1992, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Washington and 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 17, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility. 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 January 1995, the Accused was retained to represent a client in connection with a personal injury case. Between May 1996 and December 30, 1998, the Accused received seven checks from the client to pay for costs advanced or incurred. All funds received from the client should have been deposited into the Accused’s lawyer trust account. Some of the funds were deposited into the Accused’s lawyer trust account, but some were deposited into the Accused’s business account. During the course of the representation, the Accused paid for the costs of the representation from his lawyer trust account and from his business account. The Accused did not maintain complete records of his client’s funds, or checkbooks, cancelled checks, check stubs, vouchers, or ledgers which would clearly and expressly reflect the date, amount, source, and explanation for all receipts, withdrawals, or disbursements of

the client's funds. As a result, funds belonging to other clients were inadvertently drawn upon to pay for some of the costs incurred by this particular client.

6.

When the representation terminated, the client requested an accounting of her funds. The Accused prepared an accounting that contained numerous errors. Notwithstanding these errors, the amount of costs incurred during the course of the representation exceeded the amount submitted by the client, and the Accused paid the difference. At no time did the Accused misappropriate client funds or fail to pay the client's creditors.

### **Violations**

7.

The Accused admits that his failure to deposit and maintain client funds in his lawyer trust account constituted a violation of DR 9-101(A) of the Code of Professional Responsibility. The Accused also admits that his failure to maintain complete records of the client's funds, his failure to render an appropriate account to the client, and his failure to maintain and preserve all account records reflecting account activity violated DR 9-101(C)(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 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.* The Accused violated his duty to this particular client by failing to deposit and maintain client funds in trust and by failing to maintain accurate records of client deposits and disbursements.

B. *Mental State.* The Accused acted negligently regarding the manner in which he handled the client's funds and the accounting of those funds.

C. *Injury.* The client suffered no financial injury as the Accused paid the balance of the client's outstanding costs. However, the client could not rely upon the records provided to her to ensure that debts owed to creditors during the course of the representation had been satisfied.

D. *Aggravating Factors.* None



E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
2. The Accused had no dishonest or selfish motive. *Standards*, § 9.32(b).

9.

The *Standards* provide that a 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 law is in accord. See *In re Mannis*, 295 Or 594, 668 P2d 1224 (1983); *In re Klemp*, 11 DB Rptr 1 (1998); *In re Melkonian*, 12 DB Rptr 224 (1998).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall receive a public reprimand for violation of DR 9-101(A) and DR 9-101(C)(3), the sanction to be effective the date this Stipulation is approved by the Disciplinary Board.

11.

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 provided for herein on March 17, 2001. 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 14th day of June 2001.

/s/ Lawrence P. Cullen

Lawrence P. Cullen  
OSB No. 92046

EXECUTED this 18th day of June 2001.

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 ) SC S48553  
 )  
LOUIS A. FERREIRA, ) ORDER OF REPRIMAND  
 ) (RECIPROCAL)  
Accused. )

The Accused has been admitted to the practice of law in Oregon since 1990. At all material times, the Accused also was admitted to the practice of law in the State of Washington.

By letter dated May 2, 2001, the Disciplinary Board of the Washington State Bar Association censured the Accused based upon a Stipulation to Censure and Restitution arising from certain professional misconduct by the Accused while engaged in the practice of law in the State of Washington.

Pursuant to Oregon State Bar Rule of Procedure 3.5, the court determines that the Accused should be disciplined in Oregon for the Accused's misconduct in the State of Washington, and that the discipline should be a public reprimand.

DATED this 18th day of July 2001.

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

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
)  
Complaint as to the Conduct of ) SC S48551  
)  
DAVID R. MADDUX, ) ORDER IMPOSING  
) RECIPROCAL DISCIPLINE  
Accused. )

Upon consideration by the court.

The Accused is admitted to the practice of law in Oregon.

The Accused is before the court on notice from the State Professional Responsibility Board (SPRB) pursuant to Oregon State Bar Rule of Procedure 3.5 that the Accused has been suspended in Utah for ethical misconduct for a period of three years. The SPRB has recommended that the court disbar the Accused as reciprocal discipline for his misconduct in Utah.

The court has reviewed the matter and orders that the Accused be suspended from the practice of law in Oregon for a period of three years effective the date of this order.

DATED this 25th day of July 2001.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.

Chief Justice

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-49
	)	
SUSAN E. SNELL,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Susan D. Isaacs, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(C). Stipulation for discipline. Public reprimand.
Effective Date of Order:	August 6, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

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

DATED this 6th day of August 2001.

/s/ Paul E. Meyer  
 Paul E. Meyer, Esq.  
 State Disciplinary Board Chairperson

/s/ William B. Kirby  
 William B. Kirby, Region 4  
 Disciplinary Board Chairperson

**STIPULATION FOR DISCIPLINE**

Susan E. Snell, 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 E. Snell, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1985, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Washington 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 19, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 5-105(C) of the Code of Professional Responsibility. 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 the spring of 1996, the Accused developed an attorney-client relationship with Florence Reifsteck (hereinafter "Reifsteck"), an 81-year-old woman. The Accused was introduced to Reifsteck by Rebecca Fong (hereinafter "Fong"), a distant relative of Reifsteck and a friend and part-time employee of the Accused.

6.

On April 10, 1996, Reifsteck, assisted by the Accused, revoked Reifsteck's previously executed revocable trust. On April 17, 1996, Reifsteck executed a Durable Power of Attorney and a Power of Attorney for Health Care, nominating Fong as her attorney-in-fact in both documents. The Accused also had several conversations with Reifsteck regarding her estate plan. On June 26, 1996, Reifsteck executed a new Will and Nomination of Conservator nominating Fong as her Conservator in the event she became incapacitated. Both documents were prepared by the Accused.

7.

During the spring and summer of 1996, the Accused had occasion to see Reifsteck periodically on both a business and social basis. Near the end of July 1996, the Accused began to have doubts that Reifsteck could continue to manage her own affairs. These doubts were based on observations by Fong and the Accused as well as neighbors who reported that Reifsteck was having difficulties managing her own affairs. The Accused subsequently discussed with Reifsteck the advisability of filing a conservatorship/guardianship for Reifsteck. However, no medical evaluation of Reifsteck was sought.

8.

On September 5, 1996, the Accused began to represent Fong and, on Fong's behalf, filed a Petition for Conservatorship/Guardianship of Reifsteck, nominating Fong as Conservator. The Accused arranged to have Reifsteck served with these papers. As of September 5, 1996, Reifsteck was a former client of the Accused. Preparation of the Petition on behalf of Fong was significantly related to the Accused's prior representation of Reifsteck in her estate planning.

9.

Representation of Fong after representing and consulting with Reifsteck resulted in an actual or likely conflict of interest between a current and a former client. To the extent consent after full disclosure may have cured the former client conflict of interest, or was ever a possibility given Reifsteck's mental health, the Accused did not get the consent of Fong or Reifsteck after full disclosure.

### **Violations**

10.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 5-105(C).

### **Sanction**

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (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.* The Accused violated her duty to her clients to avoid conflicts of interest. *Standards*, § 4.3.

B. *Mental State*. By representing Fong in the conservatorship/guardianship matter, the Accused acted negligently in failing to determine if her clients had a conflict of interest. *Standards*, p. 7.

C. *Injury*. In respect to the conflict of interest, there was potential injury to Reifsteck in that a conservatorship may not have been appropriate at the time or may have been contrary to Reifsteck's desires or interests.

D. *Aggravating Factors*. Aggravating factors include:

Substantial experience in the practice of law. *Standards*, § 9.32(i).

E. *Mitigating Factors*. Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Absence of a dishonest or selfish motive. The Accused was attempting to remedy a situation in which it appeared that Reifsteck was unable to act adequately in her own interest. She also sought ethics advice from the Bar before undertaking to represent Fong. Nevertheless, she should not have represented a third party as a petitioner in the conservatorship matter after having represented Reifsteck. *Standards*, § 9.32(b).
3. Free and full disclosure during the investigative process and cooperative attitude toward the proceedings. *Standards*, § 9.32(e).
4. Good reputation and character. *Standards*, § 9.32(g).
5. Delay in the disciplinary process. *Standards*, § 9.32(i).

12.

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

13.

Oregon case law is in accord. In *In re Cohen*, 316 Or 657, 853 P2d 286 (1983), the court reprimanded a lawyer for representing two clients with conflicting interests, failing to provide full disclosure of the conflict at the outset of the representation and in continuing to represent both parties after notice of the actual conflict of interest. In *In re O'Neal*, 297 Or 258, 683 P2d 1352 (1984), the court concluded that a reprimand was appropriate where the accused simultaneously represented codefendants in a drug case even when the representation was limited to negotiating guilty pleas.

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-105(C), the sanction

to be effective the day the Order Approving Stipulation for Discipline is signed by the Disciplinary Board.

15.

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 30th day of July 2001.

/s/ Susan E. Snell

Susan E. Snell

OSB No. 85335

EXECUTED this 1st day of August 2001.

OREGON STATE BAR

By: /s/ Chris 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. 01-31  
)  
RUSSELL L. BALDWIN, )  
)  
Accused. )

Bar Counsel: Steven L. Wilgers, Esq.  
Counsel for the Accused: Frank H. Lagesen, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 2-106(A) and DR 5-105(C).  
Stipulation for discipline. Public reprimand.  
Effective Date of Order: August 9, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Russell L. Baldwin (hereinafter "Accused") and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is reprimanded for violation of DR 2-106(A) and DR 5-105(C) of the Code of Professional Responsibility.

DATED this 9th day of August 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Dwayne R. Murray  
Dwayne R. Murray, Region 3  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Russell L. Baldwin (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 September 15, 1989, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lincoln 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 3.6(h).

4.

At its February 16, 2001 meeting, the State Professional Responsibility directed that the Accused be charged with violation of DR 2-106(A) and DR 5-105(C) of the Code of Professional Responsibility. 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 and Violations

5.

In or about 1993, the Accused was employed at the law firm of Stephen Lovejoy (hereinafter “Law Firm”). In or about 1993, Regina and Claud Miller (hereinafter “Millers”) retained the Law Firm for estate planning services. The Millers reviewed the nature and extent of their assets with the Accused. The Accused advised the Millers concerning an estate plan and prepared estate planning and other documents to implement the plan. Thereafter, the Accused left the Law Firm. In or about January 1998, the Millers contacted the Accused to have him review their estate plan. The Millers reviewed the nature and extent of their assets with the Accused. Claud Miller passed away shortly thereafter.

6.

In or about February 2000, the Accused agreed to represent Coronado Shores Beach Club (hereinafter “Coronado Shores”), to pursue a claim against Mrs. Miller for declaratory and injunctive relief and for attorney fees and costs in the matter of *Coronado Shores Beach Club Inc. v. Regina D. Miller, Trustee of the Claud F Miller and Regina D. Miller Family Trust*, et al, Lincoln County Circuit Court Case No. 004015 (hereinafter “Court Action”). The representation of Coronado Shores was significantly related to the Accused’s prior representation of the Millers in that the Millers had provided the Accused with client confidences and secrets, including information about the nature and location of clients’ assets, the use of which would, or would likely, inflict injury or damage on Mrs. Miller in the course of the Accused’s representation of Coronado Shores.

7.

The Accused failed to make full disclosure and obtain Mrs. Miller’s consent to his representation of Coronado Shores.

8.

On or about November 6, 2000, a complaint was filed with the Bar concerning the Accused’s conduct. Thereafter, the Accused submitted a Statement of Attorney Fees to the court in which he sought to collect attorney fees from Mrs. Miller for time he spent consulting with counsel, reviewing an allegation that he had a conflict of interest, and reviewing and responding to the complaint filed with the Bar concerning his conduct. After the Bar brought the issue to his attention, the Accused, without action by the opposing party, submitted an amended petition on the following day, which deleted the value of his time, but left the description of his activities.

9.

The Accused admits that the aforementioned conduct constitutes violation of DR 2-106(A) and DR 5-105(C) of the Code of Professional Responsibility.

### **Sanction**

10.

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 *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*, p. 7.

A. *Duty*. In violating DR 2-106(A) and DR 5-105(C), the Accused violated duties to his clients and the profession. *Standards*, §§ 4.3, 7.0.

B. *Mental State*. The Accused's conduct demonstrates that he was negligent in failing to fully evaluate the substance and nature of his relationship with the clients. Negligence is the 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*, p. 7. Another lawyer brought the conflict to the Accused's attention. The Accused dismissed the issue and continued to represent Coronado Shores until after a statement for attorney fees had been submitted to the court.

C. *Injury*. The Accused's conduct resulted in potential injury to Mrs. Miller, in that he possessed information obtained from Mr. and Mrs. Miller in the attorney-client relationship, the use of which could have been used to collect attorneys fees from Mrs. Miller.

D. *Aggravating Factors*. Aggravating factors include:

1. This stipulation involves two rule violations. *Standards*, § 9.22(d).
2. The Accused has substantial experience in the practice of law having been admitted to practice in 1989. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards*, § 9.32(a). However, the Accused was admonished for a self-interest conflict in 1995.
2. The Accused did not act with dishonest motives. *Standards*, § 9.32(b).
3. The Accused cooperated with the Disciplinary Counsel's Office in responding to the complaint and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).
4. The Accused acknowledges that his conduct was wrong and is remorseful. *Standards*, § 9.32(l).
5. The Accused submitted an Amended Statement of Attorney's Fees to omit charges for his time related to the Bar Complaint, and thereafter withdrew as Coronado Shores counsel. *Standards*, § 9.32(d).

11.

The *Standards* provide that a reprimand is generally appropriate when 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. 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. *Standards*, § 7.3. Oregon case law is in accord. *In re Howser*, 329 Or 404, 987 P2d 496 (1999); *In re Brandsness*, 299 Or 420, 702 P2d 1098 (1985); *In re Gruber*, 12 DB Rptr 81 (1998).

12.

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

13.

Disciplinary Counsel of the Oregon has reviewed this Stipulation for Discipline 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 19th day of July 2001.

/s/ Russell L. Baldwin

Russell L. Baldwin

OSB No. 89189

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. 01-80  
)  
HILDA GALAVIZ, )  
)  
Accused. )

Bar Counsel: None  
Counsel for the Accused: Susan D. Isaacs, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(4), DR 2-106(A), and  
DR 6-101(A). Stipulation for discipline. 30-day  
suspension.  
Effective Date of Order: August 17, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Hilda Galaviz (hereinafter "Accused") and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused shall be suspended from the practice of law for 30 days for violation of DR 1-102(A)(4), DR 2-106(A), and DR 6-101(A) of the Code of Professional Responsibility. The suspension shall be effective three days after the date of this order.

DATED this 14th day of August 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Lon N. Bryant  
Lon N. Bryant, Region 6  
Disciplinary Board Chairperson

## **STIPULATION FOR DISCIPLINE**

Hilda Galaviz, 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 May 4, 1990, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Yamhill, 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 21, 2001, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 1-102(A)(4), DR 2-106(A), and DR 6-101(A) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### **Facts and Violations**

5.

Alcira Sevilla-Urbina was a passenger and died in an automobile accident on September 5, 1999. In January 2000, the Accused agreed to represent Alba Ramos Matute as personal representative of the estate of Alcira Sevilla-Urbina to pursue a wrongful death claim and probate the estate.

6.

In February 2000, the Accused filed a Petition for Appointment of Personal Representative and Letters of Administration and a proposed Order Appointing

Personal Representative. The Accused used the format from a Stevens-Ness form. The court signed the order on February 8, 2000. The order provided that upon the filing of a bond in the amount of \$20,000, Letters of Administration would be issued. The Accused did not understand the requirements of the order. The Accused took no action to secure a bond.

7.

Letters of Administration were never issued and no action was taken on the probate case. In February 2000, the Accused settled the wrongful death claim for \$25,000, the amount available from the driver's insurance. The Accused had not previously handled a wrongful death claim and relied on the claims' representative of the driver's insurance company for direction. The Accused knew that she did not know the law or rules applicable to such cases. The claims representative incorrectly told the Accused that she needed only a certified copy of a court order appointing the personal representative to resolve the matter.

8.

In February 2000, the Accused distributed \$18,619 to the personal representative, and \$6,250 to herself for attorney fees in handling the wrongful death claim. The Accused did not file an inventory or investigate the financial affairs of the deceased or the identity of her creditors. The Accused did not file an accounting or seek an order approving the settlement of the wrongful death claim as required by ORS 30.070, or the approval of her attorneys fees as required ORS 116.083 and UTCR 9.090(2). The Accused did not notify the court that she had settled a wrongful death claim for the estate and distributed the funds.

9.

On June 12, 2000, Judge Pro Tem Rita Cobb sent a letter to the Accused stating that it had come to her attention that the bond had not been filed in the case and that letters testamentary could not be issued by the clerk until the bond had been filed and approved by the court. Judge Cobb asked the Accused to submit the appropriate documents within ten days. The letter was not returned to the court. The court did not receive a response.

10.

On August 10, 2000, Judge Jon Lund, on the court's own motion, signed an order requiring the personal representative to appear on September 12, 2000, and show cause why she should not be removed for failure to administer the estate in a timely manner. A copy of the order was sent to the personal representative and to the Accused. On the morning of September 12, 2000, Galaviz contacted the court and advised that she had a conflict and would not be able to appear. The court gave



the Accused one week to provide the court with the status of the pleadings and to update and bring the file current. Thereafter, another attorney assumed responsibility for the case to correct the problems in the administration of the estate.

11.

On November 20, 2000, the court set aside the order appointing personal representative. The court found that the Accused failed to comply with the court's original order to post a bond, failed to respond to the June 12 inquiry from the court regarding the bond, and failed to inform the court of the status of the estate. As of the date of this stipulation, the probate case remains open. The court and the new attorney are still attempting to confirm the delivery of the settlement funds to the guardian of the deceased's children in Honduras.

12.

The Accused admits that the aforementioned conduct constitutes violation of DR 1-102(A)(4), DR 2-106(A), and DR 6-101(A) of the Code of Professional Responsibility.

### **Sanction**

13.

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 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*. In violating DR 1-102(A)(4), DR 2-106(A), and DR 6-101(A), the Accused violated duties to her client, the legal system, and the profession. *Standards*, §§ 4.1, 6.0, 7.0.

B. *Mental State*. The Accused's conduct demonstrates 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. The Accused knew that she had no experience in probate and wrongful death cases and did not know the law and rules applicable to such cases. *Standards*, p. 7.

C. *Injury*. Funds were distributed without court approval. The court has not been able to confirm that the funds intended for the deceased's children were delivered to their guardian for their use and benefit. The Accused's failure to obtain a bond for the personal representative leaves the children at risk if the personal representative has not delivered the funds as required. The Accused's failure to comply with substantive and procedural rules applicable to probate and wrongful death cases has caused the court to devote substantial time to the case, which would not have been required if the Accused had complied with such rules.

D. *Aggravating Factors*. Aggravating factors include:

1. This stipulation involves three disciplinary rule violations. *Standards*, § 9.22(d).
2. The Accused was admitted to practice in 1990 and has substantial experience in the practice of law, but not in the areas of probate and wrongful death claims. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards*, § 9.22(a).
2. The Accused did not act with a dishonest or selfish motive. *Standards*, § 9.32(b).
3. The Accused cooperated in the investigation and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).
4. The Accused acknowledges her misconduct and that she should have consulted with another attorney who was experienced in probate and wrongful death cases, or referred the client to such a person. *Standards*, § 9.32(l).

14.

The *Standards* provide that suspension is appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client. *Standards*, § 4.52. 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 party, or interference or potential interference with a legal proceeding. *Standards*, § 6.22. Oregon case law is in accord. *See, e.g., In re Gresham*, 318 Or 162, 864 P2d 360 (1993).

15.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended for 30 days for violation of DR 1-102(A)(4), DR 2-106(A), and DR 6-101(A), the sanction to be effective three days after the day this stipulation is approved by the Disciplinary Board.

16.

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 20th day of July 2001.

/s/ Hilda Galaviz

Hilda Galaviz

OSB No. 90151

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

**Cite as 332 Or 422 (2001)**  
IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
 )  
Complaint as to the Conduct of )  
 )  
MICHAEL T. BARRETT, )  
 )  
Accused. )

(OSB No. 98-48; SC S47788)

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

Argued and submitted June 19, 2001. Decided August 16, 2001.

Michael T. Barrett, Salem, filed the briefs and argued the cause in propria persona.

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

Before Carson, Chief Justice, and Gillette, Durham, Leeson, Riggs, and De Muniz, Justices.

PER CURIAM

The Accused is disbarred, effective 60 days from the date of the filing 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) (two counts); DR 6-101(B) (neglecting legal matter) (two counts); DR 7-101(A)(2) (failing to carry out employment contract); DR 7-102(A)(5) (knowingly making false statement of fact); DR 9-101(C)(2) (failing to preserve client property) (two counts); DR 9-101(C)(3) (failing to account for client funds); DR 9-101(C)(4) (failing to deliver client property); and DR 1-103(C) (failing to cooperate with disciplinary investigation). A trial panel of the Disciplinary Board found that the Accused had committed the misconduct alleged except as to one count of DR 7-101(A)(2) and

DR 6-101(B), and two counts of DR 9-101(C)(2). The trial panel concluded that disbarment was the appropriate sanction. *Held*: (1) The Accused committed the misconduct alleged except as to one count each of DR 7-101(A)(2) and DR 6-101(B), and two counts of DR 9-101(C)(2); (2) disbarment is the appropriate sanction. The Accused is disbarred.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
 )  
Complaint as to the Conduct of ) Case No. 01-63  
 )  
RODERICK D. PETERS, )  
 )  
Accused. )

Bar Counsel: None  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(4) and DR  
2-110(A)(2). Stipulation for discipline. Public  
reprimand.  
Effective Date of Order: August 16, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 1-102(A)(4) and DR 2-110(A)(2) effective the date of this order.

DATED this 16th day of August 2001.

/s/ Paul E. Meyer  
Paul E. Meyer, Esq.  
State Disciplinary Board Chairperson

/s/ William B. Kirby  
William B. Kirby, Esq., Region 4  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Roderick D. 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, Roderick D. Peters, 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 his office and place of business in Washington 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 13, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(4) and DR 2-110(A)(2) of the Code of Professional Responsibility. 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 October 2000, the Accused represented a plaintiff in a matter scheduled for trial on October 19, 2000. On October 2, 2000, the Accused and defense counsel submitted a joint motion for a continuance. The trial court judge assigned to the case denied the motion. On October 19, 2000, at approximately 2:00 a.m., the Accused called the trial court judge and left a message on her answering machine. In the message, the Accused advised the court that he was resigning from the practice of law, dismissing the case scheduled for trial that morning, and would not be appearing to represent his client in defense of the counterclaims asserted by the defendant.

6.

On October 19, 2000, the Accused did not appear for trial. A member of the Accused's firm appeared on behalf of the Accused's client, and advised the court that the Accused had left a message similar to one received by the trial court on the firm answering machine. The firm representative advised the court that he was not prepared to proceed on behalf of the Accused's client and requested a continuance. The opposing counsel objected to the request for a continuance. The court, out of deference to the client, granted the continuance.

### **Violations**

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(4) and DR 2-110(A)(2).

### **Sanction**

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (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.* For failing to appear for trial and abandoning his client without making arrangements to ensure the client's legal rights were not prejudiced, the Accused violated his duty owed to the public and to the profession. *Standards*, §§ 5.0, 7.0.

B. *Mental State.* The Accused acted negligently in failing to appropriately withdraw from the representation and failing to appear to ensure that his client's interests were not prejudiced. For several months prior to the trial, the Accused and his wife were experiencing extreme marital difficulties. On the evening before the trial, the Accused's wife issued him an ultimatum: if he did not immediately resign from his law practice she would leave the marriage. After much argument and consideration, the Accused chose to resign his job to save his marriage.

C. *Injury.* The Accused's conduct resulted in prejudice to his client, the opposing party, and the administration of justice. The client and the opposing party were both denied their day in court, at least on October 19, 2000. Moreover, the trial court judge's schedule was disrupted and the timely resolution of the legal matter was impeded.

D. *Aggravating Factors.* Aggravating factors include:

None.



- E. *Mitigating Factors*. Mitigating factors include:
1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
  2. At the time, the Accused was suffering from personal or emotional problems. *Standards*, § 9.32(c).
  3. The Accused expressed remorse and apologized to the court for his actions. *Standards*, § 9.32(l).

9.

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. Oregon law is in accord. See *In re Lafky*, 13 DB Rptr 114 (1999); *In re Moe*, 12 DB Rptr 264 (1998); *In re Jones*, 312 Or 611, 825 P2d 1365 (1992) (case includes more aggravated facts and merited a greater sanction).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall receive a public reprimand for violating DR 1-102(A)(4) and DR 2-110(B)(2), the sanction to be effective the date this Stipulation is approved by the Disciplinary Board.

11.

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 provided for herein on April 13, 2001. 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 26th day of July 2001.

/s/ Roderick D. Peters

Roderick D. Peters

OSB No. 87319

EXECUTED this 13th day of August 2001.

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. 01-50  
)  
GREGORY KAFOURY, )  
)  
Accused. )

Bar Counsel: None  
Counsel for the Accused: Bradley F. Tellam, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 6-101(B) (two counts).  
Stipulation for discipline. Public reprimand.  
Effective Date of Order: August 20, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 6-101(B) (two counts).

DATED this 20th day of August 2001.

/s/ Paul E. Meyer  
Paul E. Meyer, Esq.  
State Disciplinary Board Chairperson

/s/ C. Lane Borg  
C. Lane Borg, Esq., Region 5  
Disciplinary Board Chairperson

## **STIPULATION FOR DISCIPLINE**

Gregory Kafoury, 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, Gregory Kafoury, 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 April 19, 2001, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 6-101(B). A copy of the Formal Complaint is attached as Exhibit A. 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.

### **Ramona Arnold Matter**

#### **Facts**

5.

On October 19, 1994, the Accused was retained by Ramona Arnold (hereinafter “Arnold”) to represent her in a claim for personal injuries she sustained in a motor vehicle accident on March 25, 1994.

6.

Between April 1995 and March 2000, the Accused periodically performed some work on Arnold’s legal matter, but failed to take constructive action to advance her claim and failed to maintain adequate communications with Arnold about the status of her legal matter.

### Violations

7.

The Accused admits that, by engaging in the conduct described in paragraphs 5 and 6, he violated DR 6-101(B) of the Code of Professional Responsibility.

### ██████████ Matter

#### Facts

8.

On July 27, 1995, the Accused was retained by Arnold to represent her minor son, ██████████ (hereinafter “██████████”) in a claim for personal injuries he sustained on May 8, 1995.

9.

Between October 1995, and April 17, 2000, when the Accused withdrew from representing ██████████ the Accused periodically performed some work on ██████████’s legal matter, but failed to take constructive action to advance his claim and failed to maintain adequate communications with Arnold about the status of ██████████’s legal matter.

### Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 8 and 9, he violated DR 6-101(B) of the Code of Professional Responsibility.

### Sanction

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (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.* The Accused violated his duty to act with reasonable diligence and promptness in representing Arnold and ██████████. *Standards*, § 4.4.

B. *Mental State.* Negligence is defined in the *ABA 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*, p. 7. The Accused acted with negligence in failing to advance the interests of Arnold and ██████████. He did not intend to harm either of them.

C. *Injury*. Injury may be either actual or potential. In this case, there was potential injury to Arnold. There was also potential injury to [REDACTED]'s legal interests because the Accused did not withdraw from representing [REDACTED] until the statute of limitations on his claim was about to expire.

D. *Aggravating Factors*. Aggravating factors include:

1. Prior disciplinary offenses. In July 2000, the Accused received a letter of admonition for violating DR 6-101(B). *Standards*, § 9.22(a);

2. A pattern of misconduct in that the Accused neglected these matters over the course of approximately five years. *Standards*, § 9.22(c);

3. Multiple offenses. *Standards*, § 9.22(d); and

4. The Accused has substantial experience in the practice of law, having been admitted to practice in Oregon in 1974. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b);

2. Cooperative attitude toward the proceedings. *Standards*, § 9.32(e);

3. The Accused is remorseful for his conduct. *Standards*, § 9.32(l).

12.

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.

13.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. See *In re McKenzie*, 13 DB Rptr 12 (1999); *In re Brownlee*, 9 DB Rptr 85 (1995).

14.

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

15.

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 18th day of July 2001.

/s/ Gregory Kafoury

Gregory Kafoury

OSB No. 74166

EXECUTED this 23rd day of July 2001.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 86202

Assistant Disciplinary Counsel

**Cite as 332 Or 480 (2001)**  
**IN THE SUPREME COURT**  
**OF THE STATE OF OREGON**

In re )  
 )  
Complaint as to the Conduct of )  
 )  
ADAM KIMMELL, )  
 )  
Accused. )

(OSB No. 98-82; SC S47464)

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

Argued and submitted May 3, 2001; reassigned June 20, 2001. Decided August 30, 2001.

Adam Kimmell, in propria persona, Portland, argued the cause and submitted the brief.

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

Before Carson, Chief Justice, and Gillette, Durham, Leeson, Riggs, and De Muniz, Justices. (Kulongoski, J., resigned June 14, 2001, and did not participate in the 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 this decision.

**SUMMARY OF SUPREME COURT OPINION**

The Accused, who removed a jacket from a department store without paying for it, pled guilty to a violation and was fined. In a subsequent Bar disciplinary proceeding, a trial panel concluded that the Accused’s conduct was dishonest in violation of DR 1-102(A)(3) and suspended him from the practice of law for six months. The panel also concluded that the Accused could not be disciplined for violating DR 1-102(A)(2) or ORS 9.527(1), because *former* ORS 161.565(4) (1997) protects persons convicted of violations from any of the disabilities or legal disadvantages imposed on persons convicted of a crime. On review, the Supreme Court ruled that *former* ORS 161.565(4) does not protect the Accused because lawyers may be disciplined for violating the Code of Professional Responsibility in the absence of any conviction. Therefore, such discipline is not a disability or legal

disadvantage based on conviction of a crime. In light of concessions made by the Accused before the trial panel, the court concluded that his conduct also violated DR 1-102(A)(2) (engaging in criminal conduct that reflects adversely on a lawyer's honesty, trustworthiness, or fitness to practice law). The court declined to consider charges that the Accused violated ORS 9.527(1) because such statutory violations have no bearing on the sanction imposed. *Held*: On de novo review, the Accused is suspended from the practice of law for a period of six months, commencing 60 days from the date its decision is filed.



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 00-155
	)	
EDWARD M. BUTLER,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 9-101(A) and DR 9-101(C)(3). Stipulation for discipline. Public reprimand.
Effective Date of Order:	September 4, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Edward M. Butler (hereinafter "Accused") and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused shall be publicly reprimanded for violation of DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility.

DATED this 4th day of September 2001.

/s/ Paul E. Meyer  
 Paul E. Meyer  
 State Disciplinary Board Chairperson

/s/ Gregory E. Skillman  
 Gregory E. Skillman, Region 2  
 Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Edward M. Butler, 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, Edward M. Butler, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1987, and has been a member of the Oregon State Bar continuously since that time, having his 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 July 21, 2001, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Facts and Violations

5.

In or about May 1998, Cheryl Brodka (hereinafter “Brodka”) retained the Accused to represent her concerning a land use dispute with the City of Eugene. In or about September 1998, the Accused agreed to handle related proceedings for \$20,000. Over a period of time, Brodka paid the Accused \$16,750 for the work to be performed. The Accused did not deposit any of the funds in a lawyer trust account.

6.

The Accused considered the Brodka matter to be a flat fee case, entitling him to the attorney fee immediately. However, he did not have a written agreement or other writing that expressed that the fees paid in advance constituted a nonrefundable retainer, earned on receipt. The funds paid for legal services were therefore client

property and should have been deposited in a lawyer trust account and withdrawn only as they were earned. *In re Biggs*, 318 Or 293, 864 P2d 1310 (1994).

7.

The attorney-client relationship was terminated in or about September 1999. At no time during the representation did the Accused provide Brodka with an accounting of funds paid to him for the legal services he performed. *See Oregon Formal Ethics Opinion No. 1998-151; In re Biggs*, 318 Or 293, 864 P2d 1310, 1316 (1994); *In re Gildea*, 325 Or 281, 936 P2d 975 (1997).

8.

The Accused admits that the aforementioned conduct constitutes violation of DR 9-101(A) and 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 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*. In violating DR 9-101(A) and DR 9-101(C)(3), the Accused violated duties to his client and the profession. *Standards*, §§ 4.1, 7.0

B. *Mental State*. The Accused’s conduct demonstrates negligence, or 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*, p. 7.

C. *Injury*. Brodka suffered some injury in that she was not provided with an accounting of funds that were paid to the Accused and was therefore uncertain that the Accused actually earned the funds that were paid. Based upon the Bar’s investigation, Brodka did not suffer any monetary injury as the Accused ultimately earned the funds that were paid to him.

D. *Aggravating Factors*. Aggravating factors include:

1. This stipulation involves two disciplinary rule violations. *Standards*, § 9.22(d).

2. The Accused was admitted to practice in 1987 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards*, § 9.22(a).

2. The Accused had no dishonest or selfish motive. *Standards*, § 9.32(b).
3. The Accused cooperated in the investigation and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).
4. The Accused acknowledges that he should have deposited his client's funds in trust and should have provided his client with an accounting of the funds that were paid for legal services. *Standards*, § 9.32(l).

10.

The *Standards* provide that a 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 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. *Standards*, § 7.3. Oregon case law is in accord. *See, e.g., In re Mannis*, 295 Or 594, 668 P2d 1224 (1983); *In re Poling*, 15 DB Rptr 83 (2001).

11.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for the violation of DR 9-101(A) and DR 9-101(C)(3), the sanction to be effective the day this stipulation is approved by the Disciplinary Board.

12.

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 24th day of August 2001.

/s/ Edward M. Butler

Edward M. Butler  
OSB No. 87181

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus  
OSB No. 73014  
Assistant Disciplinary Counsel

**Cite as 332 Or 502 (2001)**  
**IN THE SUPREME COURT**  
**OF THE STATE OF OREGON**

In re )  
 )  
Complaint as to the Conduct of )  
 )  
J. MARK LAWRENCE, )  
 )  
Accused. )

(OSB Nos. 95-249, 97-123; SC S46876)

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

Argued and submitted May 3, 2001. Decided September 13, 2001.

Paula J. Lawrence, Lawrence & Houser, P.C., McMinnville, 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.

Before Carson, Chief Justice, and Gillette, Durham, Leeson, Riggs, and De Muniz, Justices. (Kulongoski, J., resigned June 14, 2001, and did not participate in the decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for a period of 60 days, commencing 60 days from the date of filing of this decision.

**SUMMARY OF SUPREME COURT OPINION**

The Oregon State Bar charged the Accused with violating various disciplinary rules of the Code of Professional Responsibility and with violating one statute. The trial panel found that the Accused violated DR 5-101(A)(1) (continuing employment when exercise of judgment on behalf of client is or may be affected by business, property, or personal interests without full disclosure), dismissed the other charges, and reprimanded him. *Held:* The Accused violated DR 1-102(A)(2) (committing criminal act reflecting adversely on lawyer's honesty, trustworthiness, or fitness to practice law) and DR 5-101(A)(1). The Accused is suspended from the practice of law for a period of 60 days, 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. 00-19  
)  
PAUL D. GEAR, )  
)  
Accused. )

Bar Counsel: None  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(3), DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), DR 7-101(A)(2), and DR 7-101(A)(3). Stipulation for discipline. Six-month suspension.  
Effective Date of Order: September 17, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended, effective upon the approval of this stipulation by the Disciplinary Board for violations of DR 1-102(A)(3), DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), DR 7-101(A)(2), and DR 7-101(A)(3).

DATED this 17th day of September 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Timothy J. Helfrich  
Timothy J. Helfrich, Region 1  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Paul Douglas Gear, 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 Douglas Gear, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1996, 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 September 20, 2000, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 1-102(A)(3) (two counts), DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), DR 7-101(A)(2), and DR 7-101(A)(3) of the Code of Professional Responsibility. A copy of the Formal Complaint is attached as Exhibit A. 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.

### Violations

5.

The Accused admits all of the facts as they are alleged in the Formal Complaint and admits that by engaging in the conduct described in the complaint, he violated DR 1-102(A)(3), DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), DR 7-101(A)(2), and DR 7-101(A)(3).

### Sanction

6.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Supreme Court 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.* The Accused violated various duties in this matter. He violated his duty to act with reasonable diligence and promptness in representing Michael Watson. *Standards*, § 4.4. The Accused also violated his duty to be candid with Watson when the Accused failed to advise Watson that he had not forwarded the Satisfaction of Judgment and that Tilghman was pursuing an order of satisfaction and an award of attorney fees. *Standards*, § 4.6.

The Accused violated his duty to maintain personal integrity when he endorsed and forwarded the draft he had received from Tilghman knowing that he was not authorized to do so. *Standards*, § 5.1.

The Accused also violated a duty he owes to the profession when he failed to respond to inquiries from Disciplinary Counsel’s Office and the LPRC investigator. *Standards*, § 7.0.

B. *Mental State.* “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*, p. 7. The Accused intentionally misrepresented the status of the satisfaction to Tilghman, intentionally failed to return the satisfaction, knowingly failed to inform his client of, or defend against, the postarbitration motions filed by Tilghman, and intentionally failed to respond to inquiries from Disciplinary Counsel’s Office and the LPRC investigator.

C. *Injury.* Injury may be either actual or potential. The Accused’s conduct caused serious actual injury to Watson because a judgment was entered against him for the amount of attorney fees incurred by Tilghman’s client in obtaining a satisfaction of judgment from the court. Although Watson eventually paid off that judgment with funds he received from the settlement of a small claims action against the Accused, his credit history reflects that a judgment had been taken against him and he lost at least one employment opportunity because of the judgment.

The Accused’s failure to return the satisfaction caused actual injury to Tilghman’s client in that Tilghman and others in his law firm billed the client for the time they spent pursuing the satisfaction first with the Accused and then with the court.

The Accused’s failure to cooperate with the Bar’s investigation of his conduct caused actual harm to both the legal profession and to the public, because he delayed the Bar’s investigation and, consequently, the resolution of the complaint against him. *In re Miles*, 324 Or 218, 322, 923 P2d 1219 (1996).



- D. *Aggravating Factors*. Aggravating factors include:
1. Selfish motive. The Accused made misrepresentations to Tilghman about the status of the satisfaction in order to cover up his failure to complete the matter. *Standards*, § 9.22(b).
  2. A pattern of misconduct. The Accused's misdeeds occurred over the course of almost a year. *Standards*, § 9.22(c).
  3. Multiple offenses. *Standards*, § 9.22(d).
  4. Bad-faith obstruction of the disciplinary proceeding by intentionally failing to respond to numerous inquiries by Disciplinary Counsel's Office and by the LPRC investigator. *Standards*, § 9.22(e).
  5. Indifference to making restitution to his client. *Standards*, § 9.22(j).
- E. *Mitigating Factors*. Mitigating factors include:
1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
  2. Inexperience in the practice of law. The Accused had been a lawyer for only three years at the time he represented Watson. *Standards*, § 9.32(f).
  3. Remorse. *Standards*, § 9.32(l).

7.

The ABA *Standards* provide that a period of suspension is appropriate in this matter. *See Standards*, §§ 4.42, 4.62, 7.2.

8.

Oregon case law suggests that the Accused should be suspended for a period of six months with his readmission made subject to the formal reinstatement requirements of BR 8.1. *See In re Purvis*, 306 Or 522, 760 P2d 254 (1988) (lawyer who failed to pursue child support matter even though he had told his client that papers had been prepared and action had been taken and who failed to cooperate with Bar's inquiry into the matter was suspended for six months with readmission made subject to formal reinstatement requirements of BR 8.1); *In re Boland*, 288 Or 133, 602 P2d 1078 (1979) (six-month suspension for lawyer who failed to appear in court on behalf of clients and thereby permitted lawsuit to be dismissed for lack of prosecution, neglected to carry out contracts of employment, client, and permitted default judgment to be entered against client).

9.

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 six months, to commence immediately upon the approval of this stipulation by the Disciplinary Board. The Accused also agrees that he will be required to apply for reinstatement under BR 8.1, when the term of suspension in this proceeding expires.

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 5th day of September 2001.

/s/ Paul D. Gear

Paul D. Gear

OSB No. 96293

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 86202

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	SC S48740
	)	
MICKIE E. JARVILL,	)	ORDER IMPOSING
	)	RECIPROCAL DISCIPLINE
Accused.	)	

Upon consideration by the court.

The Accused is admitted to the practice of law in Oregon.

The Accused is before the court on notice from the State Professional Responsibility Board (SPRB) pursuant to Oregon State Bar Rule of Procedure 3.5 that the Accused has been disbarred in Washington for ethical misconduct. The SPRB has recommended that the court disbar the Accused as reciprocal discipline for her misconduct in Washington.

The court has reviewed the matter and orders that the Accused be disbarred from the practice of law in Oregon effective the date of this order.

DATED this 3rd day of October 2001.

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

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
 )  
Complaint as to the Conduct of ) Case Nos. 98-160, 00-2  
 )  
SHARON L. MITCHELL, )  
 )  
Accused. )

Bar Counsel: None  
Counsel for the Accused: Christopher R. Hardman, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 1-103(C) (two counts) and DR  
6-101(B). Stipulation for discipline. 120-day  
suspension.  
Effective Date of Order: October 13, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Sharon L. Mitchell (hereinafter "Accused") and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused shall be suspended for 120 days, effective three days after the stipulation and order are approved by the Disciplinary Board, for violation of DR 1-103(C) (two counts) and DR 6-101(B) of the Code of Professional Responsibility.

DATED this 10th day of October 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Timothy J. Helfrich  
Timothy J. Helfrich, Region 1  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Sharon L. Mitchell (hereinafter “the Accused”) and the Oregon State Bar (hereinafter “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, Sharon L. Mitchell, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1992, has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Multnomah and Washington counties, 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 November 19, 2000, and June 15, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-103(C), and DR 6-101(B) and DR 1-103(C), respectively. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

### **Pitchford Matter**

### **Case No. 98-160**

### **Facts**

5.

On July 27, 1998, Randall Pitchford filed a complaint with the Bar concerning the Accused’s conduct. On August 3, 1998, Disciplinary Counsel’s Office forwarded a copy of the complaint to the Accused and requested her response by August 24, 1998. The Accused did not respond. On September 14, 1998, Disciplinary Counsel’s Office again requested the Accused’s response by September 21, 1998. The Accused did not respond and the matter was referred to the Local Professional Responsibility Committee (hereinafter “LPRC”) for investigation.

6.

Between December 1998 and December 1999, the LPRC sent letters and made telephone calls to the Accused. The Accused did not respond until December 23, 1999, when the Bar received a limited response to the Pitchford complaint. In January 2000, the Accused's husband contacted the LPRC investigator. The Accused contacted the LPRC investigator in February 2000, and thereafter met with the investigator and provided an explanation.

### **Sheppard Matter**

#### **Case No. 00-2**

#### **Facts**

7.

Bessie Epps died in September 1997. Lizzie Sheppard retained the Accused to handle the probate and to represent her as the personal representative of the estate. The Accused assured Sheppard that she would handle all related matters, including payment of outstanding bills and a Department of Human Resources, Senior and Disabled Services claim (hereinafter "DHR"). During 1998, DHR sent notices to the Accused that \$2,965 was owed for an unpaid Medicare bill. The Accused did not respond to DHR, nor did she notify Sheppard about the notices concerning the outstanding bill. The Accused took no action and did not notify Sheppard that she would not be completing work on the case.

8.

In or about September 1999, DHR notified Sheppard that \$2,965 remained owing to the agency and that its notices and efforts to communicate with the Accused had gone unanswered. Sheppard and another lawyer attempted to communicate with the Accused concerning the matter. The Accused did not respond.

9.

On October 21, 1999, Sheppard filed a complaint with the Bar concerning the Accused's conduct. On October 26, 1999, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested her response by November 16, 1999. The Accused did not respond. On November 22, 1999, Disciplinary Counsel's Office again requested the Accused's response by November 29, 1999. The Accused did not respond.

10.

On December 23, 1999, the Bar received a letter from the Accused in which she provided a limited and incomplete response to the Sheppard complaint. Thereafter, the matter was referred to the LPRC for investigation. In January 2000, the Accused's husband contacted the LPRC investigator. The Accused contacted the

LPRC investigator in February 2000, and thereafter met with the investigator and provided an explanation.

### **Violations**

11.

The Accused admits by engaging in the conduct described in this stipulation she violated DR 1-103(C) in the Pitchford matter, and DR 1-103(C) and DR 6-101(B) in the Sheppard matter.

### **Sanction**

12.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”). 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.* The Accused violated her duty to the legal profession to cooperate with the Bar’s investigations, and her duty to her client to act with reasonable diligence and promptness in representing the client. *Standards*, §§ 4.4, 7.0.

B. *Mental State.* The Accused’s conduct demonstrates knowledge. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective to accomplish a particular result. The Accused knew that DHR had sent notices and had to be paid. The Accused knew she had not responded to DHR and had not paid the bill, and that she had not notified her client about DHR’s notices or that the bill had not been paid. The Accused knew that the Bar required her response to the complaints. *Standards*, p. 7.

C. *Injury.* The client and the profession suffered actual injury. The Accused’s client was frustrated because she could not locate the Accused, and when she did, because the Accused did not respond to her inquires. Payment to DHR was delayed. The resolution of the Bar complaints was delayed because the Accused did not respond. The Bar was required to devote additional time and resources to the complaints. Both matters had to be referred to the LPRC for investigation because the Accused failed to respond and provide a complete account of her conduct.

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

1. There is a pattern of misconduct. *Standards*, § 9.22(c).
2. There are multiple offenses. *Standards*, § 9.22(d).

3. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1992. *Standards*, § 9.22(i).

E. *Mitigating factors*. Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).

2. The Accused is remorseful. *Standards*, § 9.32(l).

3. During the time the cases were being investigated by the Bar, the Accused suffered from a serious illness and closed her practice. The Accused reports that her illness has continued but she is hopeful that her health will improve and she will be able to apply for reinstatement as an active member. *Standards*, § 9.32(h).

13.

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 profession. *Standards*, § 7.3. The *Standards* also 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. Case law is in accord. *See, e.g., In re Miles*, 324 Or 218, 923 P2d 1291 (1996) (lawyer suspended for 120 days for two violations of DR 1-103(C)); *In re Schaffner I*, 323 Or 472, 918 P2d 803 (1996) (lawyer suspended for 120 days for violation of DR 6-101(B) and DR 1-103(C)).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 120 days, effective three days after this stipulation is approved by the Disciplinary Board, for violation of DR 1-103(C) (two counts) and DR 6-101(B).

15.

The Accused and the Bar also agree that when the term of her suspension has expired, the Accused is required to make formal application for reinstatement pursuant to BR 8.1, which requires that the Accused demonstrate that she possesses the requisite character and fitness for reinstatement and also requires consideration and action by the Board of Governors and the Supreme Court.

16.

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



DATED this 31st day of August 2001.

/s/ Sharon L. Mitchell

Sharon L. Mitchell

OSB No. 92098

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. 00-111  
 )  
LAURA A. SCHROEDER, )  
 )  
Accused. )

Bar Counsel: None  
Counsel for the Accused: Bradley F. Tellam, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 2-106(A). Stipulation for  
discipline. Public reprimand.  
Effective Date of Order: October 23, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

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

DATED this 23rd day of October 2001.

/s/ Paul E. Meyer  
Paul E. Meyer, Esq.  
State Disciplinary Board Chairperson

/s/ C. Lane Borg  
C. Lane Borg, Esq., Region 5  
Disciplinary Board Chairperson

**STIPULATION FOR DISCIPLINE**

Laura A. Schroeder, 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, Laura A. Schroeder, 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 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 20, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 2-106(A) of the Code of Professional Responsibility. 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.

On or about November 11, 1993, the Accused undertook to represent Gerylyn Nichols (hereinafter referred to as “Nichols”) in a dissolution of marriage proceeding. Nichols’ father, Ted Canfield (hereinafter referred to as “Canfield”), agreed to be responsible for payment of the Accused’s fees incurred in her representation of Nichols.

6.

At all relevant times, the legal rate of interest was 9% per annum, and the Accused was not permitted by law to charge a higher rate of interest on monies owed by Nichols without Nichols’ agreement to pay a higher rate of interest.

7.

Although the Accused understood that Nichols and Canfield assented to a higher interest rate because neither objected when the Accused told them she would do so, at no time during the Accused’s representation of Nichols did either Nichols or Canfield agree to pay interest on any unpaid balance of the Accused’s fees.

8.

Beginning in about March 1994, and continuing thereafter until about May 1, 1998, the Accused charged Nichols interest in the amount of approximately 18% per annum on the unpaid balance of her fees. Beginning in about May 1998, and continuing thereafter, the Accused charged Nichols interest in the amount of approximately 24% per annum on the unpaid balance of her fees. In September 1999, the Accused credited all interest charges to Nichols' account as part of resolution of the bill.

### **Violations**

9.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 2-106(A).

### **Sanction**

10.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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.* The Accused violated her duty owed as a professional to refrain from charging or collecting illegal or clearly excessive fees. *Standards*, § 7.0.

B. *Mental State.* The Accused acted negligently in charging Nichols more than the legal rate of interest on her past due fees without affirmative agreement by Nichols to pay the higher rate of interest. *Standards*, p. 7.

C. *Injury.* Nichols was not actually injured because the Accused credited her account with the unauthorized interest charges (as well as all fees). The Accused's conduct was, however, potentially harmful in that Nichols could have paid the Accused interest on her overdue balance in amounts greater than 9% and which she had not agreed to pay. *Standards*, p. 6.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior disciplinary record, having been publicly reprimanded for violation of DR 4-101(B) in 2001. *Standards*, § 9.22(a).

2. The Accused's conduct continued for several years. *Standards*, § 9.22(c).

3. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1987. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

Full and free disclosure to Bar and cooperative attitude toward proceedings. *Standards*, § 9.32(e).

*Standards* § 7.3 suggests that a public reprimand is generally appropriate when the lawyer negligently engages in conduct that is a violation of a duty the lawyer owes as a professional, and causes injury or potential injury to a client.

### Oregon Case Law

11.

Prior Disciplinary Board decisions suggests that a public reprimand is an appropriate sanction for charging or collecting more than the legal rate of interest without agreement by the lawyer's client. *See In re Gruber*, 15 DB Rptr 38 (2001) (lawyer was publicly reprimanded for a single violation of DR 2-106(A) in charging a client 18% interest on unpaid fees before such time as the agreement authorized lawyer to do so).

12.

Consistent with the *Standards* and prior Disciplinary Board decisions, the parties agree that the Accused shall be publicly reprimanded for violation of DR 2-106(A), the sanction to be effective upon 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. The sanction provided for herein was approved by the Chairman of the SPRB on July 13, 2001. 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 12th day of October 2001.

/s/ Laura A. Schroeder

Laura A. Schroeder

OSB No. 87339

EXECUTED this 16th day of October 2001.

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. 01-10  
 )  
WILLIAM J. STATER, )  
 )  
Accused. )

Bar Counsel: None  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(3) and DR 3-101(B).  
Stipulation for discipline. 60-day suspension.  
Effective Date of Order: October 26, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 60 days, effective the date of this order, for violation of DR 1-102(A)(3) and DR 3-101(B).

DATED this 26th day of October 2001.

/s/ Paul E. Meyer  
Paul E. Meyer, Esq.  
State Disciplinary Board Chairperson

/s/ Gregory E. Skillman  
Gregory E. Skillman, Region 2  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

William J. Stater, 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, William J. Stater, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 26, 1977, and has been a member of the Oregon State Bar continuously since that time, having his 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 20, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3) and DR 3-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

5.

On July 23, 2001, a Formal Complaint was filed and served upon the Accused together with a Notice to Answer. The Accused admits the allegations of the Formal Complaint, a copy of which is attached hereto as Exhibit 1, and that his conduct violated DR 1-102(A)(3) and DR 3-101(B) of the Code of Professional Responsibility.

### Sanction

6.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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) and DR 3-101(B), the Accused violated duties owed to the profession. *Standards*, § 7.2.

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 or purpose to accomplish a particular result.

C. *Injury.* The Accused caused potential injury to the profession and to his client by his conduct. During the period of suspension and until reinstated, the Accused was not authorized to practice law and was not covered by malpractice liability insurance. The Accused placed at risk the client for whom he performed legal service in the event of a malpractice claim against him.

D. *Aggravating Factors.* Aggravating factors include:

The Accused has substantial experience in the practice of law, having been admitted to practice in 1977. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused did not act with a selfish or dishonest motive. *Standards*, § 9.32(b);

2. The Accused fully cooperated in the Bar's investigation of his conduct. *Standards*, § 9.32(e); and

3. The Accused has acknowledged the wrongful nature of his conduct. *Standards*, § 9.32(l).

7.

The *Standards* provide that suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty to the profession, and causes injury or potential injury to a client, the public or the legal system. *Standards*, § 7.2.

8.

Oregon case law is consistent with the *Standards*. *In re Dale*, 10 DB Rptr 73 (1996); *In re Jones*, 312 Or 611, 825 P2d 1365 (1992); *In re Van Leuven*, 8 DB Rptr 203 (1994).

9.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 60 days for violation of DR 1-102(A)(3) and DR 3-101(B), the sanction to be effective upon approval of this Stipulation by the Disciplinary Board.



10.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and it will be submitted to 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 15th day of October 2001.

/s/ William J. Stater

William J. Stater

OSB No. 77356

EXECUTED this 18th day of October 2001.

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. 00-112  
 )  
CHARLES E. COULTER, )  
 )  
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).  
Stipulation for discipline. Public reprimand.  
Effective Date of Order: November 13, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

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

DATED this 13th day of November 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Lon N. Bryant  
Lon N. Bryant, Region 6  
Disciplinary Board Chairperson

**STIPULATION FOR DISCIPLINE**

Charles E. Coulter, 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 E. Coulter, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1989, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Oregon City, Clackamas 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 October 6, 2000, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of DR 6-101(B) and DR 9-101(C)(4). A copy of the Formal Complaint is attached as Exhibit A. 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 August 25, 1998, the Accused was retained by Deon Mill (hereinafter "Mill") to represent her in a separation of marriage proceeding. On November 14, 1998, the court orally ordered Mill's husband to pay temporary spousal support to Mill each month during the pendency of the proceeding, and ordered that the support payments be made by withholding wages from his paycheck.

6.

The Accused failed to take any steps to prepare a written order reflecting the court's oral rulings until February 10, 1999, and then did not submit a written order to the court for signature until June 17, 1999. The Accused failed to file an order requiring the withholding of wages from the husband's paychecks until November 2, 1999.

7.

Beginning in August 1999, Mill made multiple requests for her file from the Accused. He did not respond to those requests until January 2000.

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5–7, he violated DR 6-101(B) and DR 9-101(C)(4) of the Code of Professional Responsibility.

### Sanction

9.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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.* The Accused violated his duty to act with reasonable diligence and promptness in representing Mill and his duty to promptly return client property. *Standards*, § 4.4.

B. *Mental State.* Negligence is defined in the ABA *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*, p. 7. The Accused acted with negligence in failing to promptly and diligently complete the matter. He did not intend to harm Mill.

C. *Injury.* Injury may be either actual or potential. In this case, there was actual injury. Between November 1998 and November 1999, Mills’ husband voluntarily paid a little less than half of the support that had been ordered. Mill received the remaining payments after November 1999, and only because of the wage withholding order. The Accused’s neglect delayed Mill’s receipt of those payments.

D. *Aggravating Factors.* Aggravating factors include:

1. Multiple offenses. *Standards*, § 9.22(d);
2. Vulnerability of the victim in that Mill was having significant financial difficulties. *Standards*, § 9.22(h);
3. The Accused has substantial experience in the practice of law, having been admitted to practice in Oregon in 1989. *Standards*, § 9.22(i).

- E. *Mitigating Factors*. Mitigating factors include:
1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a);
  2. The Accused made free and full disclosure in the Bar's investigation of this matter and had a cooperative attitude toward the proceedings. *Standards*, § 9.32(e);
  3. The Accused is remorseful for his conduct. *Standards*, § 9.32(l).

10.

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.

11.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. See *In re McKenzie*, 13 DB Rptr 12 (1999); *In re Brownlee*, 9 DB Rptr 85 (1995).

12.

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

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 24th day of October 2001.

/s/ Charles E. Coulter

Charles E. Coulter

OSB No. 89221

EXECUTED this 25th day of October 2001.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 86202

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
 )  
Complaint as to the Conduct of ) Case No. 99-70  
 )  
ROBERT S. HAMILTON, )  
 )  
Accused. )

Bar Counsel: Thad M. Guyer, Esq.  
Counsel for the Accused: William V. Deatherage, Esq.  
Disciplinary Board: Risa L. Hall, Esq. (Chair); Dwayne R. Murray,  
Esq.; Linda K. Beard  
Disposition: Violation of DR 6-101(B). Trial panel opinion.  
Public reprimand.  
Effective Date of Opinion: November 13, 2001

**OPINION OF TRIAL PANEL**

**Introduction**

The Accused is Medford attorney Robert S. Hamilton.

The trial in this matter was held on April 3, 2001, in Medford, Oregon. The Oregon State Bar (“Bar”) was represented by Thad M. Guyer and Stacy J. Hankin, and the Accused was represented by William V. Deatherage.

The trial panel received testimony from Robert S. Hamilton, Michael Bird, and David P. Mickelson and admitted a total of 59 exhibits into evidence.

The Bar has charged the Accused with violations of DR 6-101(B) (neglecting a legal matter entrusted to him).

In mid-June 1997, the Accused was retained by Washington Lawyer David Mickelson (hereinafter “Mickelson”) to pursue payment on a Washington judgment owed to TMC Sales, Inc., from judgment debtors located in Medford, Oregon. The Accused has been accused of failure to take action for long periods of time and what work was performed by the Accused did not advance his client’s interests. It is alleged that the resulting postponements reduced the chances of the client’s chances of recovering on the judgment. The Accused was officially charged with neglecting a legal matter, in violation of DR 6-101(B).

### **Findings of Fact**

1.

The Accused was initially retained by Mickelson on or about June 16, 1997, to file a Foreign Judgment in Jackson County and to make efforts to collect. Ex #4.

2.

The Accused promptly registered the Foreign Judgment in Jackson County, Oregon on or about July 7, 1997. Ex #5.

3.

The Accused failed to take affirmative action to collect on the Judgment until mid-November 1997.

4.

The Accused failed to obtain order and service upon the Debtors until January 29, 1998 (Debtor-Wife), and February 1, 1998 (Debtor-Husband), for a February 9, 1998, Debtor Examination Hearing.

5.

The Accused requested postponement of the Debtor's Examination Hearing five times and finally took a Deposition of both Debtor's on the last set date for the Debtor's Examination of April 13, 1998, in lieu of the Debtor's Examination.

6.

The Accused failed to return Mickelson's telephone calls (at least three) from the beginning of August 1997 through the beginning of November 1997.

7.

The Accused failed to return at least two telephone calls from Mickelson between March 3, 1998, and May 14, 1997.

8.

Between December 9, 1997, through May of 1998, the Accused failed to keep the client (through Mickelson) advised of the case status, including the Debtor Exams and postponements, conversation with Debtor's attorney Bird, the offer from debtors for payment plan and taking their depositions in lieu of Debtor's Examination.

9.

Prior to client's Foreign Judgment being registered in Oregon on July 3, 1997, the Debtors had recorded Judgments and Liens against them and their property in the sum of \$318,600.00 in principal only. This sum does not include taxes, interest,

or costs involved. The recorded judgments and trust deed liabilities, against Debtors' business and residential properties, exceeded all equity without any consideration for any statutory exemptions. Accused Exhibits 101 and 102.

10.

The Accused failed to notify the clients of the deposition results by either provided them a summary or a copy of said deposition until after receiving notification of Mickelson's complaint to the Oregon State Bar.

11.

The Accused received an Admonition in December of 1998 for violation of DR 6-101(B).

### **Burden of Proof/Evidentiary Standard**

The Bar has the burden of establishing the Accused's misconduct in this proceeding by clear and convincing evidence. BR 5.2. Clear and convincing evidence means that the truth of the facts asserted is highly probable. *In re Taylor*, 319 Or 595, 600, 878 P2d 1103 (1994).

The Oregon Evidence Code ("OEC") does not apply to disciplinary proceedings. *In re Taylor, supra*, 319 Or at 603 n 6. The evidentiary standard is set forth in BR 5.1(a):

Rule 5.1 Evidence and Procedure.

(a) Rules of Evidence. Trial panels may admit and give effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Incompetent, irrelevant, immaterial, and unduly repetitious evidence should be excluded at any hearing conducted pursuant to these rules.

### **Conclusions of Law**

The Bar contends that the Accused neglected a legal matter entrusted to him. DR 6-101(B) prohibits a lawyer from neglecting a legal matter entrusted to the lawyer. A lawyer's failure to take action on a matter after being retained by a client constitutes neglect in violation of DR 6-101(B). *In re Biggs*, 318 Or 281, 294, 864 P2d 1310 (1994); *In re Purvis*, 306 Or 522, 760 P2d 254 (1988); *In re Thies*, 305 Or 104, 750 P2d 490 (1988). The Bar need only prove that the lawyer engaged in a course of negligent conduct. *In re Bourcier*, 322 Or 561, 909 P2d 1234 (1996); *In re Collier*, 295 Or 320, 667 P2d 481 (1983).

In the present case, the Accused was initially retained by Mickelson on or about June 16, 1997, to file a foreign judgment in Jackson County Court and to make efforts to collect on said judgment. Although the Accused timely registered the foreign judgment, he failed to take action for significant periods of time.



The Accused engaged in a course of negligent conduct as follows:

1. He failed to take any action on the matter between July 7, 1997, and mid-November 1997;
2. He failed to take any significant action to pursue the matter between February 2, 1998, and April 13, 1998; and
3. He failed to take any significant action after April 13, 1998.

A lawyer can violate DR 6-101(B) where the time period involved is relatively short. In *In re Meyer*, 328 Or 220, 225, 970 P2d 647 (1999), the court found a DR 6-101(B) violation even where the lawyer rendered some service during a two-month period, because the lawyer took no constructive action to advance or protect his client's position. See also *In re Biggs, supra*, where a lawyer's failure to act on a number of matters over the course of eight months constituted neglect of a legal matter; *In re Purvis, supra*, where a lawyer's failure to pursue the reinstatement of child support payments for four months constituted neglect of a legal matter.

A lawyer also has an affirmative duty to communicate with a client, and a lawyer who ignores a client's requests and efforts to communicate violates DR 6-101(B). *In re Bourcier, supra*; *In re McKee*, 316 Or 114, 849 P2d 509 (1993); *In re Recker*, 309 Or 633, 789 P2d 663 (1990).

The Accused failed to return Mickelson's telephone calls (at least three) from the beginning of August 1997 through the beginning of November 1997, together with failing to return at least another two telephone calls from Mickelson between March 3, 1998, and May 14, 1999. Additionally, between December 9, 1997, and May 1998, the Accused failed to keep his client (through Mickelson) advised of the case status, including the Debtor Exams and postponements, conversations with Debtor's attorney Bird, offer from debtor for a proposed payment plan and taking the Depositions in lieu of the Debtor's Examination. Furthermore, the Accused failed to notify the client's of the deposition results by either providing them a summary or a copy of said deposition until after receiving notification of Mickelson's complaint to the Oregon State Bar.

Therefore, we find, there is clear and convincing evidence that the Accused violated DR 6-101(B) by engaging in a course of negligent conduct and failing to maintain adequate communications with Mickelson.

### **Sanction**

The Supreme Court looks at the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law in arriving at appropriate sanctions in discipline cases. *In re Bins*, 322 Or 584, 910 P2d 382 (1996). The *Standards* require an analysis of 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.

### **ABA Standards**

A. *Duty Violated.* The most important ethical duties are those obligations that a lawyer owes to a client. *Standards*, p. 5. The Accused violated his duty to act with reasonable diligence and promptness. *Standards*, § 4.4.

B. *Mental State.* 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. At the time the Accused was retained he was told time was of the essence and the matter should be pursued aggressively. Despite numerous inquiries from and urgings from Mickelson, the Accused failed to act. The trial panel does conclude that the Accused knowingly neglected this matter.

C. *Injury.* Injury can be either actual or potential under the ABA *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). It is the determination of the trial panel that prior to client's foreign judgment being registered in Oregon on July 3, 1997, the Debtors had recorded judgments and liens against them and their property in the sum of \$318,600.00 in principal only. This sum does not include taxes, interest, or costs involved. The recorded judgments and trust deed liabilities against Debtors' business and residential properties exceeded all equity without consideration for any statutory exemptions. Accused Exhibits 101 and 102. The evidence supports the position that the client would not collect on the foreign judgment.

The *Standards* provide as follows:

4.41 Disbarment is generally appropriate when:

.....

(1) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

.....

4.42 Suspension is generally appropriate when:

(a) A lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client.

.....

8.3 Reprimand is generally appropriate when a lawyer:

.....

(b) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

8.4 An admonition is generally not an appropriate sanction when a lawyer violates the terms of a prior disciplinary order or when a lawyer has engaged in the same or similar misconduct in the past.

The Bar also contends that the Accused's prior disciplinary record warrants a suspension from the practice of law. The evidence shows that the Accused was admonished on December 17, 1998, for violation of DR 6-101(B). These actions took place between May and October of 1997. The Admonition filed against the Accused came after the filing of allegations in the present case of the Accused and is not considered a "prior disciplinary action."

D. *Aggravating Factors*. The following aggravating factor is present in this case:

Substantial experience in the practice of law as the Accused has been a lawyer in Oregon since 1967. *Standards*, § 9.22(i).

E. *Mitigating Factors*. The following mitigating factors are present in this case:

1. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
2. Cooperative attitude toward the proceedings. *Standards*, § 9.32(e).
3. No evidence of actual injury to client.
4. The Accused shows remorse for his actions.

In this case, the mitigating factors outweigh the aggravating factors. It appears that the Accused does understand his ethical obligations to his clients and he demonstrates remorse in his violation of his duties to his client in this case. Under the circumstances, the *Standards* suggest a reprimand is the appropriate sanction in this case. It is the decision of the trial panel that the Accused be reprimanded in this matter.

Respectfully submitted this 12th day of October 2001.

/s/ Dwayne R. Murray  
Dwayne R. Murray, Esq.

/s/ Linda K. Beard  
Linda K. Beard

/s/ Risa L. Hall  
Risa L. Hall, Esq.  
Trial Panel Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
)  
Complaint as to the Conduct of ) Case No. 99-70  
)  
ROBERT S. HAMILTON, )  
) ORDER ON COSTS  
Accused. ) AND DISBURSEMENTS

This matter is before me on the motion of the Oregon State Bar (“Bar”) for costs and disbursements dated November 13, 2001, to which the Accused has filed an objection dated November 27, 2001. I have also now received a reply from the Bar dated December 10, 2001.

A trial panel of the Disciplinary Board filed an opinion dated October 15, 2001, reprimanding the Accused for violating DR 6-101(B) (neglect of a client matter). Neither the Accused nor the Bar sought review. Pursuant to BR 10.7(b), the Bar is consequently deemed to be the prevailing party. The Accused does not argue otherwise.

Thus, pursuant to BR 10.7(b), the Bar is entitled to an award of its costs and disbursements as set forth in BR 10.7(a). It provides:

“Costs and disbursements” are actual and necessary (1) service, filing and witness fees; (2) expenses of reproducing any document used as evidence at a hearing, including perpetuation depositions; (3) expense of the hearing transcript; and (4) the expense of preparation of an appellate brief in accordance with ORAP 13.05(5)(a). Lawyer fees are not recoverable costs and disbursements either at the hearing or on appeal nor are prevailing party fees recoverable by any party.

The Bar’s cost bill seeks the amount of \$1,644.85, which is the sum of the following items:

(1) The cost bill claims \$107.00 for “Expenses of Reporting Documents Used as Evidence at Hearing.” The Accused concedes that this item is appropriate.

(2) The court reporter’s April 17, 2001, invoice billed the Bar \$267.30 for “891 copies of exhibits at time of hearing.” In its reply, the Bar represents that “this expense was actually incurred in reproducing documents used in evidence at the hearing.”

This cost is allowable under BR 10.7(a)(2).

(3) The court reporter’s April 17, 2001, invoice billed the Bar \$627.20 for an “original transcript” of the trial, \$315.00 for the court reporter’s “appearance fee”

at the trial, and \$18.50 for “delivery and long distance.” The Accused concedes that \$627.20 is appropriate, but objects to the balance.

BR 10.7(a)(3) uses the term “expense of the hearing transcript.” I believe that term is intended to include *all* expenses related to the court reporter’s stenographic recording of the hearing and preparation and delivery of the transcript. Consequently, I am going to allow the \$315.00 for the court reporter’s “appearance fee” and the \$18.50 for “delivery and long distance.”

(4) The court reporter’s April 17, 2001, invoice billed the Bar \$283.65 for an “original” transcript of the Accused’s pretrial deposition, \$130.00 for the court reporter’s “appearance fee” at the deposition, and \$3.20 for “postage.” The Accused objects. In its reply, the Bar represents that the “transcript of the Accused’s deposition was admitted into evidence” at the trial.

This is a harder question. Unlike BR 10.7(a)(3)—which I believe is clear—the rule applicable to the costs of pretrial depositions—BR 10.7(a)(2)—is a bit confusing. It speaks in terms of “expenses of reproducing any document used as evidence at the hearing, including perpetuation depositions.” The first clause—“expenses of reproducing any document”—seems to contemplate simply the photographic copying of preexisting documents. But the second clause—“including perpetuation depositions”—seems inconsistent with the first clause, because a court reporter’s stenographic recording of a deposition and then preparation and delivery of a transcript of the deposition is not the “reproduction” of a preexisting document, but is rather the “production” of a new document.

Nevertheless, the intent of BR 10.7(a)(2) appears to me to be a deliberate choice by the Supreme Court to vary from the general rule applicable to civil litigation that the costs of depositions are not recoverable. ORCP 68 A(2) sets forth a laundry list of the kinds of costs and disbursements that are recoverable thereunder. The last sentence reads, “The expense of taking depositions shall not be allowed, even though the depositions are used at trial, except as otherwise provided by rule or statute.”

Thus, I read BR 10.7(a)(2) to say that the costs of a pretrial deposition are allowable if the deposition is used at the time of trial. That is the case here.

IT IS HENCE HEREBY ORDERED that the Bar’s cost bill is allowed in full in the amount of \$1,751.85.

DATED: December 11, 2001.

/s/ Paul E. Meyer

Paul E. Meyer

Disciplinary Board State Chair

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
 )  
Complaint as to the Conduct of ) Case Nos. 00-5, 00-6  
 )  
PATRICK J. STIMAC, )  
 )  
Accused. )

Bar Counsel: Michael F. Conroyd, Esq.  
Counsel for the Accused: Susan D. Isaacs, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 6-101(B) and DR 9-101(C)(4).  
Stipulation for discipline. 60-day suspension.  
Effective Date of Order: November 23, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for a period of 60 days for violation of DR 6-101(B) and DR 9-101(C)(4). The suspension is effective November 23, 2001, if the Stipulation for Discipline has been approved by the Disciplinary Board by that date, or no later than three days after the Stipulation for Discipline is approved by the Disciplinary Board.

DATED this 21st day of November 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Dwayne R. Murray  
Dwayne R. Murray, Region 3  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Patrick J. Stimac, 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. Stimac, 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 Lincoln 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 23, 2001, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”) alleging violations of DR 1-102(A)(3), DR 1-103(C), DR 6-101(B) (two counts), DR 9-101(C)(3) (two counts), and DR 9-101(C)(4). A copy of the Amended Formal Complaint is attached as Exhibit A. 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.

### **Stoll Matter**

#### **Facts**

5.

On or about February 3, 1998, the Accused undertook to represent Arthur Stoll, (hereinafter “Stoll”) in connection with a dispute regarding a Qualified Domestic Relations Order (hereinafter “QDRO”). On February 4, 1998, Stoll sent a letter to the Accused laying out his concerns and instructing the Accused to get the issues before the court by March 10, 1998. The Accused failed to inform the opposing lawyer that he had been retained by Stoll.

6.

Between February 4, 1998, and March 16, 1998, Stoll left a number of telephone messages for the Accused inquiring about the status of the matter. The Accused failed to return those telephone calls and failed to otherwise communicate with Stoll until March 23, 1998, at which time he sent a letter to Stoll outlining Stoll's options.

7.

On March 31, 1998, the opposing lawyer sent a letter to Stoll enclosing a motion for contempt. The letter informed Stoll that unless he signed and returned the QDRO that he had been previously sent, he would file the motion for contempt in 16 days. On April 9, 1998, Stoll sent a copy of the opposing lawyer's letter and motion for contempt to the Accused. The Accused did not respond to Stoll's letter or inform the opposing lawyer that he had been retained by Stoll.

8.

The opposing lawyer filed the motion for contempt on April 21, 1998. The court issued an order requiring Stoll to appear on May 18, 1998, to show cause as to why he should not be found in contempt of court.

9.

On May 15, 1998, the Accused filed a response to the motion for contempt. Hearing on the motion was rescheduled for August 27, 1998. Between May 15, 1998, and August 27, 1998, the Accused failed to actively pursue Stoll's objectives and failed to respond to Stoll's attempts to communicate with him.

10.

Stoll signed the QDRO at the August 27, 1998, hearing. The court found Stoll in contempt of court, but agreed not to sign an order of contempt if Stoll timely paid the attorney fees and costs incurred by his former wife in connection with the motion for contempt.

11.

On September 19, 1998, Stoll sent to the Accused sufficient funds to pay the attorney fees and costs incurred by his former wife. The Accused received those funds on September 21, 1998, and deposited them into his trust account but thereafter failed to forward the funds to the opposing lawyer until October 21, 1998.



12.

The Accused admits that, by engaging in the conduct described in Paragraphs 5 through 11 he violated DR 6-101(B). Upon further factual inquiry, the parties agree that the alleged violation of DR 9-101(C)(3) in the First Cause of Complaint should be and, upon the approval of the Stipulation, is dismissed.

### **Staples Matter**

#### **Facts**

13.

On November 3, 1998, the Accused undertook to represent Kandy Staples (hereinafter “Staples”) in a child custody and support matter. The Accused agreed to pursue Staples’ matter for a flat fee.

14.

During the next three months, the Accused did some work on the matter but failed to actively pursue Staples’ objectives and failed to maintain adequate communications with Staples.

15.

Staples terminated the Accused’s representation on February 12, 1999. Because the Accused had not pursued her legal matter, Staples requested from the Accused a refund of the monies she had paid to him. The Accused failed to timely make a refund to Staples.

16.

The Accused admits that, by engaging in the conduct described in paragraphs 13 through 15, he violated DR 6-101(B) and DR 9-101(C)(4). Upon further factual inquiry, the parties agree that the alleged violation of DR 9-101(C)(3) in the Second Cause of Complaint and all of the allegations in the Third Cause of Complaint should be and, upon the approval of this Stipulation, are dismissed.

#### **Sanction**

17.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Supreme Court 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.* The Accused violated duties he owed to both Stoll and Staples in failing to act with reasonable diligence and promptness with regard to their legal matters. *Standards*, § 4.4.

B. *Mental State.* “Intent” is the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist of that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

During the summer of 1998, the Accused knowingly failed to perform work on Stoll’s matter and knowingly failed to communicate with him. During those months, the matter came to the Accused attention when he received correspondence from the opposing counsel, when he received telephone messages from Stoll, and when he received notices from the court regarding the contempt hearing. Despite these frequent reminders, the Accused failed to pursue Stoll’s objectives during those months. The Accused was negligent in failing to promptly forward the funds he received from Stoll to the opposing lawyer.

The Accused knowingly failed to pursue Staples legal matter and maintain adequate communications with her. He did not act even though the file came to his attention a number of times and Staples left numerous inquiries for him. The Accused negligently failed to timely make a refund to Staples.

C. *Injury.* Injury can be either actual or potential under the ABA *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

Stoll suffered actual injury as a result of the Accused’s neglect. He ended up paying attorney fees and costs incurred by his former wife because the Accused did not timely notify the opposing lawyer of his representation and because the Accused did not actively pursue Stoll’s objectives during the summer of 1998.

Staples sustained potential injury as a result of the Accused neglect. When she retained the Accused, she was worried that the child’s father would show up one day and claim her. The Accused’s failure to act and failure to communicate prolonged her anxiety.

D. *Aggravating Factors.* Aggravating factors include:

1. Prior disciplinary offenses in that the Accused was reprimanded in 2000 for violating DR 6-101(B) and DR 9-101(C)(4). *In re Stimac*, 15 DB Rptr 42 (2000). *Standards*, § 9.22(a).

2. A pattern of misconduct. The Accused violated multiple disciplinary rules in two separate matters over the course of almost two years. *Standards*, § 9.22(c). See *In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996);

3. Multiple offenses. *Standards*, § 9.22(d);
  4. Vulnerability of victim. Both Stoll and Staples were involved in emotionally difficult situations and placed their confidence in the Accused. *Standards*, § 9.22(h);
  5. Substantial experience in the practice of law in that the Accused has been a lawyer in Oregon since 1981, *Standards*, § 9.22(i).
- E. *Mitigating Factors*. Mitigating factors include:
1. Absence of selfish motive. *Standards*, § 9.32(b).
  2. Remorse. *Standards*, § 9.32(l).

18.

The *Standards* provide that a period of suspension is appropriate in this matter. *See Standards*, §§ 4.42, 8.2.

19.

Oregon case law also suggests that a suspension is the appropriate sanction in this matter. *See In re Bourcier*, 325 Or 429, 939 P2d 604 (1997) (60-day suspension for neglect of a legal matter, among other violations); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (120-day suspension, 60 of which resulted from lawyer's neglect of a legal matter); *In re Steves*, 15 DB Rptr 11 (2000) (lawyer with prior disciplinary record received 60-day suspension for neglecting a legal matter failing to render an appropriate account).

20.

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 60 days, to commence on November 23, 2001, if the Stipulation for Discipline has been approved by the Disciplinary Board by that date, or no later than three days after the Stipulation for Discipline is approved by the Disciplinary Board.

21.

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 to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 13th day of November 2001.

/s/ Patrick J. Stimac

Patrick J. Stimac

OSB No. 81388

EXECUTED this 14th day of November 2001.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 86202

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	SC S48917
	)	
DONALD B. KRONENBERG,	)	ORDER IMPOSING
	)	RECIPROCAL DISCIPLINE
Accused.	)	

Upon consideration by the court.

The Accused is admitted to the practice of law in Oregon.

The Accused is before the court on notice from the State Professional Responsibility Board (SPRB) pursuant to Oregon State Bar Rule of Procedure 3.5 that the Accused has been suspended in Washington for ethical misconduct. The SPRB has recommended that the court suspend the Accused for a period of six months as reciprocal discipline for his misconduct in Washington.

The court has reviewed the matter and orders that the Accused be suspended from the practice of law in Oregon for a period of six months effective the date of this order and be required to seek reinstatement as an active member of the Bar pursuant to BR 8.1.

DATED this 27th day of November 2001.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.

Chief Justice

**Cite as 333 Or 42 (2001)**  
**IN THE SUPREME COURT**  
**OF THE STATE OF OREGON**

In re )  
 )  
Complaint as to the Conduct of )  
 )  
L. BRITTON EADIE, )  
 )  
Accused. )

(OSB Nos. 96-80, 97-105, 97-109, 97-114; SC S47751)

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

Argued and submitted September 10, 2001. Decided December 6, 2001.

L. Britton Eadie, West Linn, 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 Carson, Chief Justice, and Gillette, Durham, Leeson, De Muniz, and Balmer, Justices. (Riggs, J., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended for three years, effective 60 days from the date of the filing of this decision.

**SUMMARY OF SUPREME COURT OPINION**

The Oregon State Bar charged the Accused with statutory violations and multiple violations of the Disciplinary Rules for conduct related to the representation of four clients. A trial panel of the Disciplinary Board concluded that the appropriate sanction for the violations that it found was disbarment. *Held*: (1) The Accused violated Disciplinary Rule (DR) 1-102(A)(3); DR 1-102(A)(4); DR 6-101(A); DR 7-102(A)(5); DR 7-106(C)(1); and DR 7-106(C)(7). (2) The Accused is suspended from the practice of law for three years, after which the Accused must reapply for admission and show that he has the requisite character and fitness to practice law.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 01-4
	)	
MARY J. GRIMES,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 9-101(C)(3). Stipulation for discipline. Public reprimand.
Effective Date of Order:	December 6, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 9-101(C)(3).

DATED this 6th day of December 2001.

/s/ Paul E. Meyer  
Paul E. Meyer, Esq.  
State Disciplinary Board Chairperson

/s/ Lon N. Bryant  
Lon N. Bryant, Esq., Region 6  
Disciplinary Board Chairperson

**STIPULATION FOR DISCIPLINE**

Mary J. Grimes, 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, Mary J. Grimes, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 15, 1988, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Marion 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 21, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 9-101(C)(3) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

### **Facts**

5.

In May 1999, Kathleen Carty retained the Accused to represent her in a dissolution. In addition, over a period of some months, the Accused assisted Ms. Carty with a family abuse prevention restraining order and later a civil stalking order, both of which were consolidated with the dissolution action. Ms. Carty paid the Accused a \$1,000 retainer during their initial conference.

6.

Proceedings were held before Judge Ochoa on July 14, 1999, in the dissolution and restraining order cases. A stipulated judgment was signed by Judge Ochoa on August 27, 1999. On December 1, 1999, the parties again appeared in court regarding the opposing party's alleged violation of the stalking order. Around this time, Ms. Carty became dissatisfied with the Accused's services. She requested an accounting detailing the Accused's charges. The Accused, however, was unable to provide one because she had failed to maintain adequate accounting records to explain how Ms. Carty's \$1,000 retainer was applied.



## Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 9-101(C)(3).

## Sanction

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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 9-101(C)(3), the Accused violated her duty to exercise care in the handling of client property. *Standards*, § 4.1.

B. *Mental State.* The Accused acted negligently. “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*, p. 7.

C. *Injury.* The Accused’s conduct created the possibility of injury to her client and caused the client to suffer frustration in attempting to obtain an accounting of her funds.

D. *Aggravating Factors.* Aggravating factors include:

1. A prior record for discipline inasmuch as the Accused was admonished in February 2001, for neglecting a client matter. *Standards*, § 9.22(a).

2. Substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. A cooperative attitude toward resolving this disciplinary matter. *Standards*, § 9.32(e).

2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).

3. Personal or emotional problems at the time of the misconduct. *Standards*, § 9.32(c).

4. Remorse. *Standards*, § 9.32(l).

9.

After consideration of all the above factors, the *Standards* suggest that a public reprimand is the appropriate sanction. *Standards*, § 4.13. Analogous Oregon case law includes *In re Melkonian*, 12 DB Rptr 224 (1998). In *Melkonian*, an

attorney failed to maintain records adequate to provide an accurate accounting to his former client in violation of DR 9-101(C)(3). He also violated other disciplinary rules, including DR 1-103(C). His prior disciplinary record consisted of two admonitions. He was publicly reprimanded.

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violating DR 9-101(C)(3), the sanction to be effective on the date this Stipulation is approved by the Disciplinary Board.

11.

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 provided for herein on July 21, 2001. 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 November 2001.

/s/ Mary J. Grimes

Mary J. Grimes

OSB No. 88052

EXECUTED this 26th day of October 2001.

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. 00-148, 01-198  
)  
CECIL B. STRANGE, )  
)  
Accused. )

Bar Counsel: None  
Counsel for the Accused: Les Swanson, Esq.  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(3) and DR  
5-101(A)(1). Stipulation for discipline. 30-day  
suspension.  
Effective Date of Order: December 12, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 30 days, effective the date of this order, for violation of DR 1-102(A)(3) and DR 5-101(A)(1).

DATED this 12th day of December 2001.

/s/ Paul E. Meyer  
Paul E. Meyer, Esq.  
State Disciplinary Board Chairperson

/s/ C. Lane Borg  
C. Lane Borg, Region 5  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Cecil B. Strange, 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, Cecil B. Strange, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1989, 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 October 21, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3) and DR 7-102(A)(1) of the Code of Professional Responsibility. On November 17, 2001, the State Professional Responsibility Board authorized additional formal disciplinary proceedings against the Accused for alleged violation of DR 5-104(A) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

### **The NCSI Matter**

### **Case No. 00-148**

### **Facts**

5.

At all times material hereto, the Accused was the President and sole shareholder of Cecil Strange, Inc. (“CSI”), which he used for various business purposes.

6.

At all times material hereto, the Accused represented Parr Lumber Company (“Parr”) in a dispute with Northwest Coating Systems, Inc. (“NCSI”). From approximately 1992 to 1999, NCSI operated a business in Portland, Oregon. On November 27, 1997, NCSI was administratively dissolved pursuant to ORS 60.647. NCSI and its officers and directors contend they continued to do business as a corporation under the name NCSI because they were unaware of the administrative dissolution.

7.

In January 1999, NCSI relocated its facilities from Portland, Oregon, to Woodburn, Oregon. At that time, NCSI’s telephone number was also changed. After NCSI relocated, the Accused did not know if NCSI was still in business, or where it was located, because its registration information was not current with the Secretary of State’s Office, and the Accused could not readily locate a current address or telephone number for NCSI. In March 1999, the Accused learned that NCSI had been dissolved, and its business name was available for registration.

8.

On March 23, 1999, the Accused, acting through CSI, registered with the Secretary of State’s Office to use the name Northwest Coating Systems as an assumed business name. The Accused asserts that his intention in registering to use the NCSI name was as a possible means of locating NCSI in order to address with NCSI the dispute with Parr. On the registration form, CSI, was listed as the registrant for the name of Northwest Coating Systems, and the form listed the company as offering personal services.

9.

By filing an assumed business name registration form, the Accused made a representation to the public that the registrant CSI would be doing business under the assumed business name. At no relevant time did the Accused intend to do business under the assumed business name Northwest Coating Systems.

### **Violations**

10.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(3) (conduct involving misrepresentation). Upon further factual investigation, the parties agree that the alleged violation of DR 7-102(A)(1) (take action to merely harass another) should be and, upon approval of this stipulation, shall be dismissed.

**The Steve Gardner Matter**

**Case No. 01-198**

**Facts**

11.

The Accused was hired by Steve Gardner (“Gardner”) in October 1997, to investigate Gardner’s claims of franchise fraud. In November 1997, the Accused referred Gardner to another attorney to file a Chapter 13 bankruptcy for him. Gardner’s bankruptcy was terminated in May 1998, for failure to make the required payments, and Gardner asked the Accused to assist him with the orderly liquidation of his businesses.

12.

The Accused agreed to assist Gardner in the liquidation of his businesses. In June 1998, CSI purchased, with Gardner’s consent, an assignment of a preexisting trust deed on Gardner’s home, that was in default, to secure future unpaid attorney fees. The Accused advised Gardner to consult with another attorney before preparing the form for the assignment and confirmed that advice in writing. In July 1998, CSI purchased, with Gardner’s consent, an assignment of a preexisting judgment against Gardner, that he could not then pay, as security for payment of fees. The Accused confirmed the purchase in writing but failed to advise Gardner to consult another attorney as required by DR 10-101(B)(2). Even though Gardner was not, strictly speaking, a party to either transaction described in this paragraph, the transactions were part of the Accused’s overall representation of Gardner in the liquidation of Gardner’s businesses.

13.

At the time of the preparation of the form for the judgment creditor to assign the judgment to CSI, the Accused’s interests and Gardner’s differed in that the Accused became a secured creditor of Gardner’s for payment of the Accused’s legal fees. When Gardner approved the purchase, the Accused’s professional judgment on behalf of Gardner reasonably may have been affected by the Accused’s own financial, business, or personal interests.

**Violations**

14.

The Accused admits that, by engaging in the above-described conduct, he violated DR 5-101(A)(1) of the Code of Professional Responsibility (lawyer self-interest conflict of interest). The parties stipulate to substitute this disciplinary rule for DR 5-104(A), as more applicable to the Accused’s conduct. DR 5-104(A) shall be dismissed upon approval of this stipulation.

## Sanction

### 15.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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.* By filing the application for the assumed business name while never intending to use the name, other than to gather information, the Accused violated his duty to the public to maintain the standards of personal integrity upon which the community relies. *Standards*, § 5.0. By failing to fully avoid a conflict of interest with his client, the Accused violated his duty to his client. *Standards*, § 4.3.

B. *Mental State.* In applying for the assumed business name through CSI, the Accused acted with knowledge, that is, the conscious awareness of the nature or attendant circumstances of the conduct (registering the name without intending to engage in business) but without the conscious objective or purpose to accomplish a particular result (intending to deceive others). The Accused also acted with knowledge in regards to the conflict of interest.

C. *Injury.* NCSI suffered some actual injury in that it was required to take additional steps, including dealing with the Accused to secure CSI’s release of its assumed business name, in order to obtain reinstatement of its corporate name. In the Gardner matter, the client suffered potential injury in that, had he received independent legal advice, he may have acted differently.

- D. *Aggravating Factors.* Aggravating factors include:
1. Multiple offenses. *Standards*, § 9.22(d), and
  2. Substantial experience in the law. *Standards*, § 9.22(i).
- E. *Mitigating Factors.* Mitigating factors include:
1. Absence of a prior disciplinary record. *Standards*, § 9.32(a);
  2. Absence of a selfish motive. *Standards*, § 9.32(b); and
  3. Full and free disclosure and cooperation during the disciplinary investigation. *Standards*, § 9.32(e).

### 16.

The *Standards* provide 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 provides that suspension is appropriate when a lawyer violates DR 1-102(A)(3) by filing an application with the Secretary of State's Office to use an assumed business name, when not intending to conduct the business indicated in the application. *In re Glass*, 308 Or 297, 779 P2d 612 (1989), *on reh'g*, 309 Or 218 (1990); *In re Hopp*, 291 Or 697, 634 P2d 238 (1991).

Oregon case law also provides that suspension is appropriate when a lawyer commits a self interest conflict without consent and full disclosure. *In re Wittemyer*, 328 Or 448, 980 P2d 148 (1999).

The Bar and the Accused agree that the conduct in this case is less serious than the conduct involved in *In re Glass*, *In re Hopp*, and *In re Wittemyer*, *supra*.

17.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 30 days for violation of DR 1-102(A)(3) and DR 5-101(A), the sanction to be effective immediately upon approval of this stipulation.

18.

In addition, on or before June 1, 2002, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$148.40, incurred for the cost of the Accused's deposition. Should the Accused fail to pay \$148.40 in full by June 1, 2002, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

19.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and is subject 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 6th day of December 2001.

/s/ Cecil B. Strange

Cecil B. Strange

OSB No. 89369

EXECUTED this 7th day of December 2001.

OREGON STATE BAR

By: /s/ Chris 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. 00-84  
 )  
GLENN SOLOMON, )  
 )  
Accused. )

Bar Counsel: Robert E. Barton, 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 7-102(A)(5), DR 7-106(C)(7), and DR  
7-110(B). Stipulation for discipline. 90-day  
suspension.  
Effective Date of Order: January 1, 2002

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for a period of 90 days for violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), DR 7-106(C)(7), and DR 7-110(B). The suspension will commence on January 1, 2002, if the Stipulation for Discipline has been approved by the Disciplinary Board by that date. If the Stipulation is approved by the Disciplinary Board after January 1, 2002, the suspension shall commence three days after it is approved by the Disciplinary Board

DATED this 12th day of December 2001.

/s/ Paul E. Meyer

Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ C. Lane Borg

C. Lane Borg, Region 5  
Disciplinary Board Chairperson

### **STIPULATION FOR DISCIPLINE**

Glenn Solomon, 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, Glenn Solomon, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 13, 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 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 8, 2000, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”) alleging violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), DR 7-106(C)(7), and DR 7-110(B). A copy of the Formal Complaint is attached as Exhibit A. 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 1999, the Accused represented defendants in the Multnomah County Circuit Court Cases *Northwest Software Inc. v. Bollu* No. 9807-05539 and *Northwest Software Inc. v. Ramachandran* No. 9807-05359. The cases were set for trial on August 26, 1999, and August 30, 1999, respectively.

6.

On August 16, 1999, the Accused appeared in court at the time designated for ex parte matters and presented motions for postponing trial in both matters. In both motions, the Accused represented that he had served a copy of the motion on the opposing lawyer and the opposing lawyer consented to the postponement. At the time the Accused made these representations, he knew that they were false.

7.

At the time the Accused appeared ex parte, he also told the court that the motions were unopposed. The Accused knew this representation was false.

8.

At the time the Accused appeared ex parte, Multnomah County Supplemental Local Rule (hereinafter "SLR") 5.025(3) required that, in the absence of a statute, waiver, or consent, any party seeking ex parte relief must provide one judicial day's notice to the opposing party of the date, time and court where the ex parte relief would be sought.

9.

The Accused knew that the opposing lawyer had not consented to the postponements and intentionally failed to provide one judicial day's notice to the opposing lawyer of the date, time and court where the ex parte relief would be sought, in violation of SLR 5.025(3).

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 9, he violated DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), DR 7-106(C)(7), and DR 7-110(B).

## Sanction

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (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.* The Accused violated his duty to maintain personal integrity, his duty to avoid making false statement to the court, his duty to avoid violating court rules, his duty to avoid improper communications with the court, and his duty to avoid conduct prejudicial to the administration of justice. *Standards*, §§ 5.1, 6.1, 6.2, 6.3, 7.0.

B. *Mental State.* "Intent" is the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

The Accused intentionally violated SLR 5.025(3). The Accused knowingly failed to inform the opposing lawyer of his intent to appear at ex parte and knowingly made misrepresentations to the court.

C. *Injury.* Injury can be either actual or potential under the ABA *Standards. In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The opposing lawyer and his client had prepared and were ready to try the cases as scheduled. By the time the opposing lawyer discovered what the Accused had done, it was too late to have the trial dates reinstated. The Accused's conduct caused further delay and expense.

D. *Aggravating Factors.* Aggravating factors include:

1. Prior disciplinary offenses in that the Accused was previously suspended for 30 days pursuant to a no-contest plea for violations of DR 6-101(B), DR 2-106(A), DR 7-101(A)(2), DR 9-101(A), and DR 9-101(C)(3). *In re Solomon*, 11 DB Rptr 47 (1997). *Standards*, § 9.22(a).

2. Dishonest motive. *Standards*, § 9.22(b);

3. Multiple offenses. *Standards*, § 9.22(d);

4. Substantial experience in the practice of law in that the Accused has been a lawyer in Oregon since 1983. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

Cooperative attitude toward proceedings. *Standards*, § 9.32(e);

12.

The *Standards* provide that a period of suspension is appropriate in this matter. *See Standards*, §§ 6.12, 6.22, 6.32, 7.2.

13.

Oregon case law also suggests that a suspension is the appropriate sanction in this matter. Generally, lawyers who make misrepresentations to the court or fail to disclose material facts to the court, in violation of DR 1-102(A)(3) and DR 1-102(A)(4), receive suspensions. See *In re Gustafson*, 327 Or 636, 968 P2d 367 (1998) (six-month suspension); *In re Jones*, 326 Or 195, 951 P2d 149 (1997) (45-day suspension); *In re Hiller*, 298 Or 526, 694 P2d 540 (1985) (four-month suspension); *In re Walker*, 293 Or 297, 647 P2d 468 (1982) (30-day suspension). In this case, because the aggravating factors outweigh the mitigating factors, this case is more egregious than *Jones, supra*, and *Walker, supra*. However, because the Accused cooperated in the proceedings and because the injury was not as significant, this case is not as egregious as *Gustafson, supra*.

14.

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 90 days, to commence on January 1, 2002, if the Stipulation for Discipline has been approved by the Disciplinary Board by that date. If the Stipulation is approved by the Disciplinary Board after January 1, 2002, the suspension shall commence three days after it is approved by the Disciplinary Board.

15.

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 that the Stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 15th day of November 2001.

/s/ Glenn Solomon

Glenn Solomon  
OSB No. 83328

EXECUTED this 19th day of November 2001.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin  
OSB No. 86202  
Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re )  
)  
Complaint as to the Conduct of ) Case No. 01-167  
)  
MICHAEL HENDERSON, )  
)  
Accused. )

Bar Counsel: None  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 2-106(A), DR 9-101(A), and  
DR 9-101(C)(3). Stipulation for discipline.  
Public reprimand.  
Effective Date of Order: December 31, 2001

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Michael Henderson (hereinafter "Accused") and the Oregon State Bar, and good cause appearing

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is reprimanded for violation of DR 2-106(A), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility.

DATED this 31st day of December 2001.

/s/ Paul E. Meyer  
Paul E. Meyer  
State Disciplinary Board Chairperson

/s/ Timothy J. Helfrich  
Timothy J. Helfrich, Region 1  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, Michael Henderson, 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 Deschutes 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 October 20, 2001, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 2-106(A), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Facts and Violations

5.

Terry McBride (hereinafter “McBride”) was convicted by guilty plea of Attempted Robbery I on December 18, 1998. The Accused did not represent McBride. In or about August 1999, McBride claimed that a mistake had been made in the sentencing order and wanted to have it corrected. According to McBride, the court ordered that he would be eligible for a boot camp program. McBride asked the Accused to represent him on the matter.

6.

The Accused told McBride that he required \$1,000 to handle the matter and would do no work until he received the funds.



7.

About September 2, 1999, McBride paid the \$1,000 to the Accused, who deposited the funds in his lawyer trust account. The same day, the Accused withdrew all of the funds. The Accused considered the McBride matter to be a flat fee case, immediately entitling him to the fee. However, the Accused did not have a written agreement or other writing that expressed that the fee paid in advance constituted a nonrefundable retainer, earned on receipt. The funds paid for legal services were therefore client property and should have been deposited in a lawyer trust account and withdrawn only as they were earned. *In re Biggs*, 318 Or 293, 864 P2d 1310 (1994).

8.

Little time was required to determine whether the court had ordered that McBride would be eligible for a boot camp program and had failed to include it in the sentencing order. The Accused learned that McBride's claim that the court had ordered that he would be eligible for a boot camp program and that there was an error in the sentencing order was not correct. The Accused reported his findings to McBride. He also told McBride that he did not believe that anything further could be done on the matter. The Accused did not prepare a complete record of his time and activities. He recorded 3.75 hours of time valued at \$561.50. The Accused did not provide McBride with an accounting of the funds he had received for the legal services.

9.

The Accused failed to maintain the funds delivered to him for legal services for McBride in a lawyer trust account until they were earned, collected an excessive fee, and failed to provide McBride with an accounting of funds paid to him for the legal services he performed. *See Oregon Formal Ethics Opinion No. 1998-151; In re Biggs*, 318 Or 293, 864 P2d 1310, 1316 (1994); *In re Gildea*, 325 Or 281, 936 P2d 975 (1997).

10.

The Accused admits that the aforementioned conduct constitutes violation of DR 2-106(A), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility.

### **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 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*. In violating DR 2-106(A), DR 9-101(A), and DR 9-101(C)(3), the Accused violated duties to his client and the profession. *Standards*, §§ 4.1, 7.0.

B. *Mental State*. The Accused's conduct demonstrates negligence, or 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*, p. 7. The Accused was of the mistaken belief that he was entitled to immediately withdraw the funds from trust if the work would be performed within 30 days.

C. *Injury*. McBride suffered some injury in that he was charged and paid a fee that exceeded a reasonable fee for the work the Accused agreed to perform. Also, McBride was not provided with an accounting of the funds that he paid to the Accused and was therefore uncertain that the Accused actually earned the funds that were paid.

D. *Aggravating Factors*. Aggravating factors include:

1. This stipulation involves three disciplinary rule violations. *Standards*, § 9.22(d).

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

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards*, § 9.22(a).

2. The Accused had no dishonest or selfish motive. *Standards*, § 9.32(b).

3. The Accused cooperated in the investigation and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).

4. The Accused acknowledges that he should have maintained his client's funds in trust and withdrawn them only as they were earned, should have charged a lesser fee for the work he agreed to perform, and should have provided his client with an accounting of the funds that were paid for the legal services. *Standards*, § 9.32(l).

12.

The *Standards* provide that a 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 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. *Standards*, § 7.3. Oregon case law is in accord. *See, e.g., In re Mannis*, 295 Or 594, 668 P2d 1224 (1983); *In re Poling*, 15 DB Rptr 83 (2001). The *Standards* also provide that a sanction may

include restitution of some or all of the money, property, or fees received by the lawyer in the representation of a client. BR 6.1(a)(vii).

13.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for violation of DR 2-106(A), DR 9-101(A), and DR 9-101(C)(3), and shall provide restitution in the amount of \$431.50 to McBride, the funds to be held by the Bar for McBride pending approval of this stipulation by the Disciplinary Board.

14.

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

DATED this 11th day of December 2001.

/s/ Michael Henderson

Michael Henderson

OSB No. 69075

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro

Jeffrey D. Sapiro

OSB No. 78362

Disciplinary Counsel



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