

# DISCIPLINARY BOARD REPORTER

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**VOLUME 20**

*January 1, 2006, to December 31, 2006*

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Report of Lawyer Discipline Cases  
Decided by the Disciplinary Board  
and by the  
Oregon Supreme Court  
for 2006



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## PREFACE

This Disciplinary Board Reporter (DB Reporter) contains final decisions of the Oregon Disciplinary Board, stipulations for discipline between accused lawyers and the OSB, summaries of 2006 decisions of the Oregon Supreme Court involving the discipline of lawyers, orders of reciprocal discipline imposed by the court, and related matters. Cases in this DB Reporter should be cited as 20 DB Rptr \_\_\_\_ (2006).

In 2006, a decision of the Disciplinary Board was final if neither the Bar nor the accused sought review of the decision by the Oregon Supreme Court. See Title 10 of the Bar Rules of Procedure (page 38 of the OSB 2007 Membership Directory or [www.osbar.org](http://www.osbar.org), click on Rules, Regs & Policies) 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, most 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 the Public Records Coordinator at extension 394, 503-620-0222 or (800) 452-8260 (toll-free in Oregon). Final decisions of the Disciplinary Board issued on or after January 1, 2007, are also available at the Oregon State Bar Web site, [www.osbar.org](http://www.osbar.org). 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. 04-149  
)  
DONALD BRUCE KRONENBERG, ) SC S53003  
)  
Accused. )

**ORDER IMPOSING RECIPROCAL DISCIPLINE OF DISBARMENT**

Upon consideration by the court.

The Oregon State Bar (Bar) has notified this court that the accused has been disbarred from the practice of law in the State of Washington. The Bar recommended reciprocal disbarment. The accused did not file an answer or otherwise respond to the Bar's Notice of Discipline in this court. The court therefore accepts the recommendation and orders that the accused be disbarred.

DATED this 24th day of January 2006.

/s/ Paul J. De Muniz

Paul J. De Muniz  
Chief Justice

**SUMMARY**

Effective January 24, 2006, the Oregon Supreme Court imposed reciprocal discipline and disbarred Seattle, Washington, attorney Donald Bruce Kronenberg. Kronenberg was earlier disbarred in Washington in August 2005.

Kronenberg represented a criminal defendant charged with three counts of child rape. The victim was the State's principal witness and had been subpoenaed for trial. Shortly before trial, Kronenberg met with the victim and offered him \$6,000.00 and a one way plane ticket to Oklahoma in exchange for not appearing in court. The victim was initially receptive to Kronenberg's proposal and Kronenberg memorialized their agreement in a document. Thereafter, Kronenberg received \$3,000.00 from his client. He used part of it to purchase the plane ticket. He then met with the victim and gave him the plane ticket and the balance of the \$3,000.00. Kronenberg also offered to drive the victim to the airport. The victim refused the ride and subsequently changed his mind.

**Cite as *In re Kronenberg*, 20 DB Rptr 1 (2006)**

Before Kronenberg learned that the victim had changed his mind, the court, during a pretrial hearing, ordered Kronenberg to disclose any information he possessed regarding the victim's location. Kronenberg left the hearing without disclosing the agreement, payment, and airplane ticket and then instructed his secretary not to document any information she learned about the victim's whereabouts. Kronenberg later met with prosecutors and told them they needed to dismiss the case as the State did not have a victim. During this meeting, Kronenberg failed to disclose his dealings with the victim.

Kronenberg's conduct violated Washington RPC 8.4(a), (b), (c), and (d) (applicable Oregon rules are RPC 8.4(a)(1), (2), (3), and (4)).

Kronenberg was admitted to practice in Oregon in 1986. He was suspended for 6 months in 2001, by the Oregon Supreme Court, also under the reciprocal discipline rule, after discipline imposed in Washington.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 04-123
	)	
DAWNA F. SCOTT,	)	
	)	
Accused.	)	

Counsel for the Bar:	Susan Gerber; Jane E. Angus
Counsel for the Accused:	Lawrence Matasar
Disciplinary Board:	None
Disposition:	Violation of DR 1-103(C), DR 9-101(A), and DR 9-101(C)(3). Stipulation for Discipline. Six-month suspension.
Effective Date of Order:	February 2, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Dawna F. Scott (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 is suspended from the practice of law for six months for violation of DR 1-103(C), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility, effective three (3) days after the date of this order. The Accused shall also be required to make formal application for reinstatement pursuant to BR 8.1.

DATED this 30th day of January 2006.

/s/ Jill A. Tanner  
 Jill A. Tanner, Region 6  
 Disciplinary Board Chairperson

/s/ John A. Berge  
 John A. Berge  
 State Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

Dawna F. Scott, 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 September 15, 1997, and has been a member of the Oregon State Bar continuously since that time. At all material times, the Accused maintained 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 October 15, 2004, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for violation of DR 9-101(A) of the Code of Professional Responsibility. On May 14, 2005, the SPRB directed that the Accused also be charged with violating DR 1-103(C) and DR 9-101(C)(3) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

### FACTS AND VIOLATIONS

5.

On or about April 3, 2001, the Accused undertook to represent Richard Martinez (hereinafter “Martinez”) in connection with Martinez’s civil claims against his former employer, Levitz Furniture Company (hereinafter “Levitz”). Pursuant to a written fee agreement, the Accused agreed to advance costs (other than filing and process serving fees) on Martinez’s behalf and to be reimbursed for costs advanced out of settlement or judgment proceeds.



6.

On or about September 2001, the Accused filed a civil complaint on behalf of Martinez against Levitz and other persons. In November 2002, the case proceeded to jury trial, which resulted in an award against Levitz and in favor of Martinez. The court entered judgment for Martinez against Levitz in March 2003, and in April 2003, the Accused served a writ of garnishment on Levitz's bank to collect the judgment entered in favor of Martinez. In response to the writ of garnishment, the Accused recovered funds to satisfy the judgment. The Accused deposited these client funds into her lawyer trust account.

7.

On or about April 28, 2003, the Accused filed a notice of claim of attorney lien for attorney's fees and for costs incurred on behalf of Martinez. Included in the costs were charges by Schmitt & Lehmann Court Reporters for the following invoices: June 3, 2002 for \$729.00 for appearance fees for depositions and an original deposition transcript; and September 19, 2002 for \$1,116.00 for an original deposition transcript.

8.

At the time the Accused filed the notice of attorney lien, the Accused had not paid the Schmitt & Lehmann invoices or advanced those costs for or on behalf of Martinez. In July 2003, Martinez, acting through his attorney in fact, authorized the Accused to apply the garnishment proceeds held in her trust account to satisfy her attorney lien. On or about July 23, 2003, the Accused disbursed funds to herself from her lawyer trust account to satisfy her attorney lien, which included costs the Accused claimed for the Schmitt & Lehmann invoices. At the time, the Accused had not paid the amounts owing to Schmitt & Lehmann. The Accused did not pay or apply any of the funds she disbursed to herself for costs to satisfy the outstanding Schmitt & Lehmann invoices.

9.

By withdrawing the client's funds from her lawyer trust account for the Schmitt & Lehmann invoices as reimbursement for costs advanced when she had not advanced or paid the amount, the Accused disbursed funds to herself that she was not entitled to receive and failed to maintain client funds in her lawyer trust account.

10.

The Accused closed her private practice of law in or about October 2003. The Accused failed to maintain complete and accurate records of costs incurred and payments made for those costs on behalf of Martinez, and failed to maintain complete records, including bank and other records, reflecting the Accused's deposit and disbursement of clients' funds coming into her possession.

11.

On January 21, 2005, the Bar asked the Accused to propose dates for her deposition in the above entitled disciplinary proceeding. On January 30, 2005, the Accused notified the Bar that its representatives should select and notify her of the deposition date. On February 1, 2005, the Bar served the Accused by mail with a notice to take the Accused's deposition on February 24, 2005. The Bar also served the Accused with a request for production of documents that required the Accused to produce the documents described by February 21, 2005. The Accused failed to produce documents in response to the Bar's request, and without notice to the Bar failed to appear for her deposition on February 24, 2005.

12.

On February 24, 2005, the Bar served the Accused by mail with a second notice to take the Accused's deposition on March 15, 2005. The Bar also served the Accused with a second request for production of documents, which required the Accused to produce the documents described in the Bar's requests by March 10, 2005. On February 25, 2005, the Accused contacted the Bar and asked that her deposition be scheduled for March 25, 2005. The Bar accommodated the Accused's request and rescheduled the deposition for that date.

13.

Between January 21 and March 25, 2005, the Accused did not produce any documents responsive to the Bar's requests for production of document.

14.

On March 24, 2005, the Accused telephoned the Bar and left a message at about 5:30 a.m. The Accused represented that she was ill and could not appear for the deposition scheduled for March 25, 2005, and that she was going to get some sleep and did not know if she would answer the telephone if the Bar tried to call her.

15.

The Accused did not again contact the Bar on March 24 or on March 25, 2005; did not appear for her deposition on March 25, 2005; and through March 25, 2005, did not produce any documents in response to the Bar's requests for production of documents. Without notice to the Bar, the Accused reported to work at her place of employment at the regular morning hour and worked the entire day on March 24 and March 25, 2005.

16.

On March 25, 2005, the Bar prepared a subpoena directing the Accused to appear for deposition and to produce documents responsive to the Bar's requests for production of documents. Representatives of the Bar attempted to serve the Accused

at her home, but she was not at that location. Representatives of the Bar then located the Accused at her place of employment. The Accused refused to meet with the Bar's representative to accept service of the subpoena, but eventually authorized another member of her office to accept service of the subpoena on her behalf. The Accused appeared on April 4, 2005 for deposition pursuant to the Bar's subpoena. The Accused produced some, but not all of the documents requested by the Bar at the time of her deposition.

17.

The Accused admits that the aforementioned conduct constitutes violation of DR 1-103(C), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility.

### SANCTION

18.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are considered. The *Standards* require that the Accused's conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. *Standards*, § 3.0.

a. *Duty Violated.* By failing to maintain client funds in trust, and failing to maintain complete and accurate records of clients' funds, the Accused violated her duty to her clients. *Standards*, § 4.1. By failing to appear for deposition, failing to produce documents in response to the Bar's discovery requests within the time provided, and making misleading statements to the Bar, the Accused violated her duties to the public, the legal system, and the profession. *Standards*, §§ 5.1, 6.0, 7.0.

b. *Mental State.* The Accused acted negligently, knowingly, and intentionally. By withdrawing a client's funds from trust and disbursing those funds to herself when she was not entitled to them, and failing to maintain complete and accurate records of client funds and expenses she claimed to have incurred on behalf of her client, the Accused acted negligently, which is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. The Bar does not allege that the Accused intentionally took funds knowing that she was not entitled to them. By failing to produce documents requested by the Bar, the Accused acted knowingly, or with a 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 1-103(C), the Accused acted with intent, or the conscious objective to cause a particular result. *Standards*, p. 7.

c. *Injury.* The Accused caused actual injury as a result of her conduct. Schmitt & Lehmann and the Accused's client were injured. The Accused disbursed client funds to herself when she was not entitled to them. Schmitt & Lehman was

denied timely payment of funds due for services that they had provided at the Accused's request. Between June 2002 and June 2004, Schmitt & Lehmann attempted to collect the amount due from the Accused. As a result of Schmitt & Lehmann's pursuit, the Accused eventually commenced making monthly payments in November 2003 and satisfied the amount due in August 2004. The Accused's failure to appear for deposition and failure to comply with the Bar's requests for production of documents caused actual injury to the Bar and the court reporter. The Accused delayed the Bar's discovery. The Bar incurred unnecessary expense for the court reporter and was required to serve a subpoena to compel her appearance and production of documents. The court reporter scheduled time for the Accused's deposition, which could have been used for other matters.

d. *Aggravating Factors.* The Accused has a prior record of discipline for violation of DR 1-103(C), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4). *In re Scott*, 17 DB Rptr 118 (2003); *Standards*, § 9.22(a). There is a pattern of misconduct and multiple disciplinary offenses. *Standards*, § 9.22(c), (d). The Accused also delayed and obstructed the disciplinary proceeding because she failed to comply and timely comply with the Bar's discovery requests and made misleading statements to the Bar to avoid appearing for her deposition. *Standards*, § 9.22(e), (g).

e. *Mitigating Factors.* The Accused represents that she is remorseful. *Standards*, § 9.32(j).

19.

The *Standards* provide that suspension is generally appropriate when a lawyer knows or should know that he or she is dealing improperly with client funds and causes injury or potential injury to a client. *Standards*, § 4.1. Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. *Standards*, § 6.22. Suspension is also 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.

20.

Case law is in accord with the *Standards*. See, e.g., *In re Eakin*, 334 Or 238, 259, 48 P3d 147 (2002) (60-day suspension for violation of DR 9-101(A) and DR 9-101(C)(3) when lawyer had no prior record of discipline); *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997) (lawyer suspended for two years after having been previously disciplined for DR 1-103(C) and other rules); *In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (120-day suspension for violation of DR 1-103(C) alone when lawyer had no prior record of discipline).

21.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for six (6) months for violation of DR 1-103(C), DR 9-101(A), and DR 9-101(C)(3), the sanction to be effective three days after this stipulation is approved. The parties further agree that the Accused shall be required to seek formal reinstatement pursuant to BR 8.1, at such time as she is eligible to seek reinstatement.

22.

In addition, the Accused shall pay \$232.20 to the Bar for the costs of the court reporter and witness fee associated with the Accused's depositions and the subpoena to compel her appearance. The Bar shall be entitled to entry of a judgment against the Accused for these costs, plus interest thereon at the legal rate to accrue from the date the judgment until paid. The Accused shall not be eligible to apply for reinstatement as an active member of the Bar until the amount of the judgment is paid in full.

23.

The Accused acknowledges that, at the expiration of the term of suspension, she will be required to apply for reinstatement pursuant to Bar Rule 8.1.

24.

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.

EXECUTED this 23rd day of January 2006.

/s/ Dawna F. Scott

Dawna F. Scott

OSB No. 97393

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. 05-58  
)  
KURT CARSTENS, )  
)  
Accused. )

Counsel for the Bar: James A. Wallan; Jane E. Angus  
Counsel for the Accused: Susan D. Isaacs  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(4). Stipulation for  
Discipline. 30-day suspension.  
Effective Date of Order: February 5, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is suspended from the practice of law for 30 days for violation of DR 1-102(A)(4), effective three days after the date of this order.

DATED this 2nd day of February 2006.

/s/ John A. Berge  
John A. Berge  
State Disciplinary Board Chairperson

/s/ R. Paul Frasier  
R. Paul Frasier, Region 3  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Kurt Carstens, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1972, and has been a member of the Oregon State Bar continuously since that time, having his office and 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 for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

The State Professional Responsibility Board authorized a formal disciplinary proceeding 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. 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 July 21, 2003, Penelope Lewman (hereinafter “Lewman”) and Michele Paul (hereinafter “Paul”) retained the Accused and his law firm concerning a dispute with Helen Barrett, Daniel Barrett, and Allegory, Inc. (hereinafter “Allegory”) related to an agreement for Lewman’s and Paul’s purchase of a business from the Barretts.

6.

The case was assigned to another lawyer in the Accused’s law firm. On or about August 1, 2003, that lawyer filed a civil complaint on behalf of Lewman and Paul in the Circuit Court of the State of Oregon for the County of Lincoln, Penelope Lewman and Michele Paul v Helen Barrett, Daniel Barrett, and Allegory, Inc., an Oregon Corporation, Case No. 033365 (hereinafter “Court Action”). Shortly

thereafter, the other lawyer was called out of state due to a family emergency. During his absence, Lewman reported to the Accused that she believed that a sale of the business to another buyer was imminent. The Accused assigned a second lawyer to research the availability of remedies for temporary restraining order and injunctive relief. During this time, the second lawyer determined that the complaint had not been delivered to a process server for service on the Barretts.

7.

On or about August 12, 2003, summonses and copies of the civil complaint in the Court Action were delivered to the Lincoln County Sheriff's Office for service on Helen Barrett, Daniel Barrett (hereinafter collectively "Barretts"), and Allegory.

8.

On August 13, 2003, a Lincoln County deputy sheriff attempted to serve (hereinafter "process server") Daniel Barrett at his place of work. Daniel Barrett was not at work at that time. A co-worker of Daniel Barrett informed the process server of Daniel Barrett's work hours. On August 13, 2003, the process server attempted to serve Helen Barrett at her place of work. A coworker of Helen Barrett told the process server that Helen Barrett was not at that time there but she would be at work the following day.

9.

On August 14, 2003, a staff member of the Accused's office telephoned the Lincoln County Sheriff's Office to determine the status of service on the Barretts and was told that the process server had attempted to serve the Barretts at their places of employment but they were not at that time there. The staff member thereafter reported the information to the Accused's client, Lewman, who told her that Helen Barrett had been at work that day. The staff member provided the information to the Accused.

10.

On August 14, 2003, the process server returned to Helen Barrett's place of work. Helen Barrett was not at work at that time, but spoke with the process server by telephone. Helen Barrett provided the process server with directions to the Barretts' home. On August 14, 2003, the process server traveled to the Barretts' home and personally served Daniel Barrett and Helen Barrett with the summonses and the complaint in the Court Action. Service on the Barretts was completed on August 14, 2003. The return of service was filed with the court late in the day on August 15, 2003.

11.

In and between August 12 and 14, 2003, the second lawyer and a legal assistant in the Accused's law firm prepared a draft motion for temporary restraining



order and order to show cause why preliminary injunction should not enter, along with drafts of supporting affidavits for Lewman's and the Accused's signatures. The motion and affidavits were delivered to the Accused for his review and approval. The Affidavit included the following statement: "I . . . have been advised by the process server that Defendants are evading process, which would further support plaintiffs' concern that sale of the business is imminent." Thereafter, the motion and supporting affidavits were filed with the court. The Accused's representation was not true and was misleading. The Accused had not spoken with the process server or anyone else at the Lincoln County Sheriff's Office. No one at the sheriff's office had told him or anyone in his office that the Barretts' were "evading service." The motion, supporting affidavits and proposed order were delivered to the court clerk's office for filing on August 14, 2003.

12.

On August 15, 2003, the court signed a temporary restraining order and order to show cause why preliminary injunction should not enter, restraining Barretts and Allegory from the sale of Allegory's assets and materially depleting the inventory or selling other business assets outside the normal course of business. The court scheduled a show cause hearing for August 25, 2003. Thereafter, the parties agreed to continue the restraining order pending further hearing.

### VIOLATION

13.

Based on the foregoing, the Accused admits that he engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged violations of DR 1-102(A)(3) and DR 7-102(A)(5) as set forth in the Bar's Formal Complaint, upon the approval of this stipulation, are 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*. The Accused violated his duty to the legal system. *Standards*, § 6.1.

B. *Mental state*. The Accused's conduct demonstrates negligence. *Standards*, p. 7. He made inaccurate statements. The Accused knew that he had not personally spoken with the process server and that no one had told him that the

**Cite as *In re Carstens*, 20 DB Rptr 10 (2006)**

Barretts were evading service. He was negligent in concluding that the Barretts were evading service based on the limited information he had been provided and failed to make sufficient inquiry to assure that his statements were accurate and correctly attributed.

C. *Injury*. The Accused's conduct had a potentially adverse effect on the legal proceeding.

D. *Aggravating factors*. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. Aggravating factors include:

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

2. The Accused has a prior record of discipline. In 1984, he was reprimanded for violation of *former* DR 1-102(A)(2), *former* DR 1-102(A)(3), and ORS 9.480(2) (current ORS 9.527(2)). *In re Carstens*, 297 Or 155, 683 P2d 992 (1984). In 2003, the Accused was suspended for violation of DR 5-101(A), DR 5-103(B), and DR 5-105(C). *In re Carstens*, 17 DB Rptr 46 (2003).

E. *Mitigating factors*. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. Mitigating factors include:

1. The Accused cooperated with the disciplinary authorities during the investigation of his conduct. *Standards*, § 9.32(e).

2. One of the Accused's prior cases of misconduct is remote in time. *Standards*, § 9.32(m).

15.

Reprimand is appropriate when a lawyer is negligent in either determining whether statements or documents are false or in taking remedial action when material information is being withheld, 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*, § 6.13. However, aggravating factors in this case outweigh the mitigating factors. Oregon case law supports the imposition of a period of suspension. *See, e.g., In re Johnson*, 18 DB Rptr 181 (2004); *In re Thompson*, 325 Or 467, 940 P2d 512 (1997).

16.

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 thirty (30) days for violation of DR 1-102(A)(4), the sanction effective January 30, 2006, or 3 days after this stipulation is approved by the disciplinary board, whichever is later.

17.

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

EXECUTED this 24th day of January 2006.

/s/ Kurt Carstens

Kurt Carstens

OSB No. 72048

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. 05-159  
)  
LEANNE M. BOWKER, )  
)  
Accused. )

Counsel for the Bar: Stacy J. Hankin  
Counsel for the Accused: Rene C. Holmes  
Disciplinary Board: None  
Disposition: Violation of DR 5-105(E), RPC 1.9(a), and  
RPC 1.9(c)(2). Stipulation for Discipline. 30-day  
suspension.  
Effective Date of Order: April 1, 2006

**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 thirty (30) days, effective the 60th day after this stipulation for discipline is approved or April 1, 2006, whichever is earlier, for violation of DR 5-105(E), RPC 1.9(a), and RPC 1.9(c)(2).

DATED this 9th day of February 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Arnold S. Polk  
Arnold S. Polk, Esq., Region 4  
Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

Leanne M. Bowker, 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 September 19, 1986, 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 November 30, 2005, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of former DR 5-105(E) of the Code of Professional Responsibility, and current RPC 1.9(a) and RPC 1.9(c)(2) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Facts

5.

In early 2004, the Accused represented Kim and Fred Allman (hereinafter the “Allmans”) in an estate planning matter. Work on the matter was completed in April 2004. On June 9, 2004, the Accused met with the Allmans regarding funds they were hoping to borrow from Madalyn Falcon (hereinafter “Falcon”) so that they could purchase some property (hereinafter “loan matter”). Falcon is the mother of Kim Allman.

6.

On July 20, 2004, the Accused met with the Allmans and Falcon regarding the loan matter. As of July 20, 2004, the Accused undertook to represent Falcon in the loan matter. The Accused did not believe she was representing the Allmans in the loan matter, but failed to inform them of her belief. In light of the Allmans' prior relationship with the Accused, the meetings in June and July 2004, and other circumstances, the Allmans had a reasonable expectation that the Accused was representing them in the loan matter.

7.

Because the Allmans and Falcon were borrowers and lenders in the same transaction, the Accused had a duty to contend for something on behalf of each that she had a duty to oppose on behalf of the other. Although the Accused believed at the time that she only represented Falcon, the Allmans also believed that they were clients of the Accused at the time and this belief was reasonable within the meaning of existing Oregon case law. As a result, the Accused represented both the Allmans and Falcon in the loan matter when such representation resulted in an actual conflict of interest.

8.

As a result of the meetings described in paragraphs 5 and 6 herein, the Accused prepared a promissory note and trust deed. The promissory note provided for the Allmans to borrow funds from Falcon. The trust deed granted Falcon an interest in the Allmans' home and secured the promissory note. All of the legal work performed by the Accused and her staff in connection with the loan matter was billed to the Allmans.

9.

The Allmans did not execute the promissory note or trust deed prepared by the Accused. Instead, in September 2004, the Allmans executed a different promissory note prepared by another lawyer.

10.

In May 2005, Kim Allman consulted with the Accused regarding problems with the loan from Falcon.

11.

On July 12, 2005, the Accused met with Kim Allman and Falcon regarding problems with the loan. As of July 12, 2005, the Accused undertook to represent Falcon to collect from the Allmans the funds they had borrowed from her in August 2004 (hereinafter "collection matter").

12.

The collection matter referenced in paragraphs 10 and 11 was the same or substantially related to the loan matter in which the Accused had previously represented the Allmans; and Falcon's interests in the collection matter were materially adverse to the interests of the Allmans.

13.

The Accused failed to obtain informed consent, confirmed in writing, from both the Allmans and Falcon before she undertook to represent Falcon in the collection matter.

14.

In July 2005, in connection with the Accused's representation of Falcon in the collection matter, and at Falcon's instruction, despite objections by the Allmans, the Accused sent a copy of the draft promissory note and trust deed she had prepared in 2004 to Kim Allman's brother.

### **Violations**

15.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 14, she violated DR 5-105(E), RPC 1.9(a), and RPC 1.9(c)(2).

### **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. *Duties Violated.* The Accused violated her duties to preserve client confidences and secrets and to avoid conflicts of interest. *Standards*, §§ 4.2, 4.3.

b. *Mental State.* In the loan matter, the Accused was negligent in failing to document and make clear that she was not representing the Allmans. In the collection matter, the Accused knowingly revealed information to Kim Allman's brother when she knew the Allmans objected to the disclosure. The Accused failed to recognize that the Allmans had a reasonable expectation the information would remain confidential.

c. *Injury.* The Allmans sustained actual injury because the Accused knowingly disclosed information regarding her representation of them to Kim Allman's brother after Kim Allman specifically informed the Accused that she did

not want her brother involved in the matter. There was also potential injury to both the Allmans and Falcon. Because of the undisclosed conflict of interest, they did not understand or consent to the Accused's divided loyalty.

d. *Aggravating Circumstance.* The following aggravating circumstances exist:

1. Multiple offenses. *Standards*, § 9.22(d).
2. Substantial experience in the practice of law as the Accused has been a lawyer in Oregon since 1986. *Standards*, § 9.22(i).

e. *Mitigating Circumstances.* The following mitigating circumstances exist:

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 toward the proceedings. *Standards*, § 9.32(e).
4. Remorse. *Standards*, § 9.32(m).

17.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and the disclosure causes injury or potential injury to a client. *Standards*, § 4.22. 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.

18.

Lawyers who engage in an improper conflict of interest and who improperly reveal or use information relating to the representation of a client for the benefit of another client have received reprimands or short suspensions. See *In re Gant*, 293 Or 130, 645 P2d 23 (1982) (30-day suspension of lawyer who failed to obtain consent after full disclosure from wife, who he had previously represented, before undertaking to represent husband in claim against wife and thereafter revealed or used secrets or confidences he had previously learned from wife in pursuing husband's interests.) See also *In re Jayne*, 295 Or 16, 663 P2d 405 (1983) (similar fact pattern as in *Gant*, *supra*, but lawyer reprimanded). By itself, a patent improper conflict of interest justifies a 30-day suspension. *In re Knappenberger II*, 337 Or 15, 33, 90 P3d 614 (2004); *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001); *In re Hockett*, 303 Or 150, 734 P2d 877 (1987).

19.

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 5-105(E), RPC 1.9(a), and RPC 1.9(c)(2), the suspension to be effective the 60th



day after this stipulation for discipline is approved or April 1, 2006, whichever is earlier.

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 3rd day of February 2006.

/s/ Leanne M. Bowker

Leanne M. Bowker

OSB No. 86157

EXECUTED this 6th day of February 2006.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 86202

Assistant Disciplinary Counsel

Cite as 340 Or 108 (2006)  
IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of )  
)  
CARROLL J. TICHENOR, )  
)  
Accused. )

(OSB No. 03-33; SC S52239)

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

Argued and submitted September 7, 2005. Decided February 16, 2006.

Marc D. Blackman, Ranson Blackman, LLP, Portland, argued the cause and filed the briefs for the Accused. With him on the briefs was Kendra M. Matthews.

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

Robert W. Hermann, Hillsboro, filed the brief for *amicus curiae* Oregon District Attorneys' Association.

Before Gillette, P.J., and Durham, Riggs, De Muniz, Balmer, and Kistler, JJ. (Paul DeMuniz was Chief Justice when decision was rendered. Carson, J., Chief Justice when case was argued, did not participate in the consideration or decision of this case.)

PER CURIAM

Complaint dismissed.

**SUMMARY OF THE SUPREME COURT OPINION**

The Oregon State Bar alleged that the accused lawyer, a state prosecutor, violated DR 7-106(C)(1) when he asked a criminal defendant's character witnesses if they had knowledge of certain prior instances of conduct on the part of the defendant. The trial panel of the Disciplinary Board concluded that the Accused violated OEC 405(1) because he did not have a reasonable basis to believe that the conduct referred to in the questions actually occurred. Because he violated OEC 405(1), the trial panel concluded that he also violated DR 7-106(C)(1). *Held*: Proof of a violation of OEC 405(1) does not give rise to a violation of DR 7-106(C)(1).

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 05-174  
)  
BOBBY ARSANJANI, )  
)  
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott  
Counsel for the Accused: Susan D. Isaacs  
Disciplinary Board: None  
Disposition: Violation of RPC 3.4(c). Stipulation for  
Discipline. 30-day suspension.  
Effective Date of Order: March 2, 2006

**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 three days after this Order is signed, for violation of RPC 3.4(c).

DATED this 27th day of February 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff  
Susan G. Bischoff, Esq., Region 5  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 21, 1999, 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 December 30, 2005, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 3.4(c). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Facts

5.

In November 2004, the Accused pled no contest to Assault in the Fourth Degree in Washington County Case No. DO45300M, *State of Oregon vs. Bobby Arsanjani*, in connection with a dispute with his then wife, Esenda Orami (hereinafter “Orami”). Orami also obtained a restraining order (hereinafter “Restraining Order”) against the Accused in response to the assault (Case No. CO43779RO, *Esenda Orami vs. Bobby Arsanjani*).

6.

Later in November 2004, the Accused entered into a Conditional Release Agreement and Deferred Sentencing Agreement (hereinafter “Deferred Sentencing Agreement”) wherein the Accused was directed by the court (and agreed) to have no contact with Orami.

7.

In March 2005, the Accused had contact with Orami, and was arrested for violation of the Restraining Order. The state did not pursue criminal charges, but on April 18, 2005, the Accused stipulated that the contact with Orami that had led to his arrest violated his Deferred Sentencing Agreement. Thereafter, the Accused was specifically notified by the court that he was required to strictly comply with the terms of his Deferred Sentencing Agreement.

8.

In July 2005, the Accused again had contact with Orami, and was arrested for violation of the Restraining Order. The Washington County District Attorney's Office filed a complaint which sought punitive sanctions against the Accused for violation of the Restraining Order.

9.

On August 22, 2005, the court found the Accused in willful contempt of the Restraining Order and in violation of the terms of the Deferred Sentencing Agreement. The court revoked the Accused's Deferred Sentencing Agreement, entered a judgment finding the Accused guilty of Assault in the Fourth Degree, and placed him on formal probation.

### **Violations**

10.

The Accused admits that, by having contact with his wife in violation of the court's ruling, he knowingly disobeyed an obligation under the rules of a tribunal in violation of RPC 3.4(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 his duty to the legal system to avoid abuse to the legal process. *Standards*, § 6.0.

b. *Mental State.* The Accused acted knowingly in violating the court's order. "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.

c. *Injury*. In addition to the emotional injury inflicted upon the Accused's wife when he contacted her, the Accused caused injury to the criminal and judicial system in that his arrest and the subsequent hearing to address his misconduct consumed law enforcement and judicial resources.

d. *Aggravating Factors*. Aggravating factors include:

1. The Accused acted with a selfish motive. *Standards*, § 9.22(b).
2. The judicial system is vulnerable. *Standards*, § 9.22(h).

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 dishonestly. *Standards*, § 9.32(b).
3. The Accused demonstrated a cooperative attitude toward proceedings. *Standards*, § 9.32(e).
4. The Accused has had criminal penalties imposed upon him in addition to these disciplinary proceedings. *Standards*, § 9.32(k).

12.

The *Standards* suggest that a suspension is appropriate for a knowing violation of a court order or rule which causes injury or potential injury to a party, or causes interference or potential interference with a legal proceeding. *Standards*, § 6.22.

13.

Oregon case law similarly supports the imposition of a suspension. *See In re Chase*, 339 Or 452, 121 P3d 1160 (2005) (lawyer suspended for 30 days for violation of child support order resulting in contempt finding). The court has also imposed more substantial suspensions where the lawyer has exhibited a more serious and intentional disregard for the court in conjunction with a serious pattern of noncompliance. *In re Rhodes*, 331 Or 231, 13 P3d 512 (2000) (lawyer suspended for two years as a result of two contempt orders and his failure to cooperate in subsequent Bar proceedings). The Accused's conduct is not as serious or deliberate as that of *Rhodes* and, as noted above, the Accused has fully cooperated in these proceedings.

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 30 days for violation of RPC 3.4(c), the sanction to be effective three days after approval 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 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 15th day of February 2006.

/s/ Bobby Arsanjani

Bobby Arsanjani

OSB No. 99021

EXECUTED this 17th day of February 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 99028

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 05-98  
)  
JAMES J. KOLSTOE, )  
)  
Accused. )

Counsel for the Bar: Wilson C. Muhlheim; Jane E. Angus  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violations of DR 1-102(A)(3), DR 2-110(B)(3),  
DR 6-101(A), and DR 6-101(B). Stipulation for  
Discipline. 60-day suspension.  
Effective Date of Order: March 30, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by James J. Kolstoe (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 is suspended from practice of law for 60 days for violation of DR 1-102(A)(3), DR 2-110(B)(3), DR 6-101(A), and DR 6-101(B) of the Code of Professional Responsibility. The suspension shall be effective March 30, 2006.

DATED this 1st day of March 2006.

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

/s/ John A. Berge  
John A. Berge  
State Disciplinary Board Chairperson



## STIPULATION FOR DISCIPLINE

James J. Kolstoe, 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 September 20, 1985, 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 16, 2005, the State Professional Responsibility Board directed that the Accused be charged with violating DR 1-102(A)(3) (misrepresentation); DR 2-110(B)(3) (failure to withdraw); DR 5-101(A) (lawyer self-interest conflict); and DR 6-101(B) (neglect of a legal matter). 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 September 5, 2002, a judgment of commitment was entered concerning David Alexander DeLong (hereinafter “DeLong”), Lane County Circuit Court Case No. 30-02-17098 (hereinafter “Commitment Proceeding”). Pursuant to the terms of the judgment, the court declared DeLong to be a mentally ill person and committed him to the custody of the Oregon Department of Human Services for treatment. The court also ordered that DeLong be prohibited from purchasing or possessing firearms. On September 10, 2002, DeLong notified the court that he wished to file an appeal in the Commitment Proceeding, including the court’s order prohibiting him from purchasing and possessing firearms, and requested the appointment of counsel for the appeal. On or about September 10, 2002, the court appointed the Accused to represent DeLong on appeal.

6.

On September 16, 2002, the Accused filed a notice of appeal in the Court of Appeals, Appellate Case No. A119278 (hereinafter “Commitment Appeal”) concerning the Commitment Proceeding. The Accused designated the appeal of the court’s judgment of commitment, but did not designate an appeal of the court’s order prohibiting DeLong from purchasing and possessing firearms.

7.

On January 9, 2003, the trial court transcript concerning the Commitment Proceeding was filed with the Court of Appeals. The Accused was required to file the opening brief, or seek an extension of time to do so, by March 11, 2003. The Accused did not file the opening brief and did not seek an extension of time to do so by March 11, 2003. On March 19, 2003, the Court of Appeals filed a notice that the Commitment Appeal would be dismissed for want of prosecution unless good cause was shown, in writing, within 14 days why the appeal should not be retained on the court’s docket. The court served the Accused with a copy of the notice by mail. The Accused did not file the opening brief or a motion for extension of time to file the brief, and on April 11, 2003, the court filed an order of dismissal and appellate judgment dismissing the Commitment Appeal. The court served the Accused with a copy of the order and appellate judgment by mail.

8.

In and between about December 2002 and June 2003, the Accused failed to prepare and complete the opening brief and failed to take action to obtain relief from default to reinstate the Commitment Appeal. In and between April and June 2003, the Accused failed to communicate with his client to notify that the Court of Appeals had dismissed the Commitment Appeal and that he had not taken and was not taking action to reinstate it.

9.

In or about July 2003, the Accused met with DeLong concerning the Commitment Appeal. The Accused represented to DeLong that the Commitment Appeal had been dismissed; that the court would allow him to file the opening brief late; and that he would take action to reinstate the appeal and file the opening brief in the Commitment Appeal.

10.

After July 2003, the Accused did not inform DeLong that he had not prepared, completed, or filed a motion or taken other action to reinstate the Commitment Appeal; that the court had not reinstated the Commitment Appeal; that he had not completed or filed the opening brief; or that he was taking no action to protect and advance DeLong’s appellate rights. In and after July 2003, the Accused did not

provide DeLong with copies of the court's notices, orders and judgment dismissing the Commitment Appeal, or any opening brief concerning the Commitment Appeal.

11.

In and after March 2003, the Accused continued employment as DeLong's lawyer when the exercise of his professional judgment on behalf of DeLong was likely to be or may reasonably have been affected by his own financial, business, property or personal interests. The Accused failed to obtain DeLong's consent to his representation, after full disclosure.

12.

In and after March 2003, the Accused knowingly failed to disclose material information to DeLong concerning the status and his lack of action concerning the Commitment Appeal. The Accused continued his employment as DeLong's lawyer and failed to withdraw from the representation when the Accused's mental or physical condition rendered it unreasonably difficult for the Accused to carry out the employment effectively.

13.

Based on the foregoing, the Accused admits that he engaged in conduct involving misrepresentation; failure to withdraw; lawyer self-interest conflict; and neglect of a legal matter in violation of DR 1-102(A)(3), DR 2-110(B)(3), DR 5-101(A), and DR 6-101(B) of the Code of Professional Responsibility.

### SANCTION

14.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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.* The Accused violated duties to his client and the profession. *Standards*, §§ 4.3, 4.4, 4.6, 7.0.

b. *Mental State.* The Accused's conduct demonstrates negligence and knowledge. *Standards*, p. 7. The Accused was negligent when he failed to recognize that he needed to withdraw and that his professional judgment in continuing the representation may have been affected by his own interests. He knew that he did not timely notify the client that this appeal had been dismissed and that he was not taking action to reinstate the case. He also knew that he was not taking action even after he eventually told the client that he would do so.

c. *Injury*. There was actual injury to DeLong. He was denied the opportunity for appellate review of the decision of the trial court.

d. *Aggravating Factors*. Aggravation or aggravating circumstances are considerations or factors that may justify an increase in the degree of discipline to be imposed. Aggravating factors include:

1. There are multiple rule violations. *Standards*, § 9.22(d).

2. The Accused's client was vulnerable. DeLong suffered from bouts with mental illness and relied on his lawyer to advance his claims and handle the Commitment Appeal. *Standards*, § 9.22(h).

3. The Accused was admitted to practice in 1985 and has substantial experience in the practice of law. *Standards*, § 9.22(l).

e. *Mitigating Factors*. Mitigation or mitigating circumstances are considerations or factors that may justify a reduction in the degree of discipline to be imposed. Mitigating factors include:

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

2. The Accused cooperated with the disciplinary authorities during the investigation of his conduct and in resolving this proceeding. *Standards*, § 9.32(e).

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

4. The Accused reports that he suffered from a mental condition at a time when he represented the client. *Standards*, § 9.3. He has not been diagnosed by any mental health professional and has presented no medical evidence to establish that the condition was the direct cause of his misconduct. The condition is therefore given little weight as a mitigating factor. *Standards*, § 9.3, Commentary (1992 Amendments).

15.

The *Standards* provide for suspension when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. *Standards*, § 4.32. Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or knowingly deceives a client, and causes injury or potential injury to a client. *Standards*, §§ 4.33, 4.62. Suspension is also 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.

16.

Case law is in accord. *See, e.g., In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (30-day suspension for a single violation of DR 6-101(B)); *In re Holm*, 285 Or 189,

194, 590 P2d 233 (1979) (60-day suspension for neglect (*former* DR 6-101(A)(3)); *In re Bourcier*, 7 DB Rptr 115 (1993) (60-day suspension for violation of DR 6-101(A), DR 6-101(B), DR 7-101(A)(2), and DR 2-110(A)); *In re Obert*, 336 Or 640, 89 P3d 1173 (2004) (30-day suspension for violation of DR 1-102(A)(3)); *In re Butler*, SC S40533 (1993) (90-day suspension for violation of DR 6-101(B) and DR 1-102(A)(3)). *See also In re Hockett*, 303 Or 150, 734 P2d 877 (1987) (30-day suspension appropriate for a single violation of conflict of interest rules).

17.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended for 60 days for violation of DR 1-102(A)(3), DR 5-101(A), DR 6-101(B), and DR 2-110(B)(3) of the Code of Professional Responsibility. The suspension shall be effective March 30, 2006, or three days after this stipulation is approved by the Disciplinary Board, whichever is later.

18.

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.

EXECUTED this 23rd day of February 2006.

/s/ James J. Kolstoe

James J. Kolstoe  
OSB No. 85258

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus  
OSB No. 73014  
Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
 )  
Complaint as to the Conduct of ) Case Nos. 05-85, 05-86, 05-196  
 )  
OSCAR R. NEALY, )  
 )  
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 2-106(A), DR 6-101(B),  
DR 9-101(C)(3), DR 9-101(C)(4), and RPC 1.3.  
Stipulation for Discipline. Four-month  
suspension.  
Effective Date of Order: March 10, 2006

**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 four months, effective three days after this order is signed, for violations of DR 2-106(A), DR 6-101(B), DR 9-101(C)(3), DR 9-101(C)(4), and RPC 1.3.

DATED this 6th day of March 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ R. Paul Frasier  
R. Paul Frasier, Esq., Region 3  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Oscar R. Nealy, 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 September 20, 1968, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Josephine County, Oregon.

3.

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

4.

On December 30, 2005, 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 2-106(A) (collecting an illegal fee), DR 6-101(B) (neglect of a legal matter), DR 9-101(C)(3) (failure to appropriately account for client property), and DR 9-101(C)(4) (failure to promptly provide client property) of the Code of Professional Responsibility and RPC 1.3 (neglect of a legal matter) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### **Garvey Matter**

**(Case No. 05-85)**

#### **Facts**

5.

In January 2002, Henry Garvey (hereinafter “Garvey”) retained the Accused to pursue claims related to injuries Garvey suffered in July 2001, while flying as a passenger on a jet operated by Frontier Airlines (hereinafter “Frontier”).

6.

In May 2002, the Accused sent a formal demand letter to AIG Aviation (hereinafter “AIG”), the insurer for Frontier. In October 2002, AIG notified the Accused that it was denying Garvey’s claim.

7.

Thereafter the Accused failed to take any substantive action on Garvey’s personal injury matter, and failed to notify Garvey prior to the expiration of the statute of limitations that the Accused would do nothing further to pursue Garvey’s claim.

### **Violations**

8.

The Accused admits that the above-described conduct constitutes neglect of a legal matter entrusted to him in violation of DR 6-101(B).

### **Montgomery Matter**

**(Case No. 05-86)**

#### **Facts**

9.

In January 2004, the Accused undertook to defend Steven Montgomery (hereinafter “Montgomery”) on a Lake County criminal indictment. Montgomery’s father paid the Accused a \$2,000 retainer. In March 2004, the Accused received an additional \$5,000 on behalf of Montgomery.

10.

On May 19, 2004, Montgomery terminated the Accused’s employment and requested that the Accused account for his retainer. Montgomery then retained attorney Thomas Hill (hereinafter “Hill”). On May 28, 2004, Hill also requested that the Accused render an accounting for Montgomery’s fees and remit Montgomery’s remaining funds to Hill. The Accused did not render an accounting or remit Montgomery’s remaining funds in a timely manner.

11.

On June 18, 2004, Hill demanded an accounting and the return of Montgomery’s remaining funds. The Accused did not respond or provide the requested accounting and client funds. On June 23, 2004, Hill requested that the Accused contact Hill regarding Montgomery’s remaining funds. The Accused did not provide the requested accounting or return the funds.



12.

From May 2004 through July 2004, Montgomery's stepmother repeatedly telephoned the office of the Accused demanding an accounting of the funds paid to the Accused and the return of unearned funds. The Accused failed to provide an accounting until September 2004 and failed to remit Montgomery's remaining funds until February 2005. The Bar does not contend that the Accused converted Montgomery's funds to his own use.

### **Violations**

13.

The Accused admits that, by failing to render an appropriate account to Montgomery regarding his funds and failing to promptly deliver any remaining funds to Montgomery as requested, the Accused violated DR 9-101(C)(3) and DR 9-101(C)(4).

### **Nealy Probate Matter**

**(Case No. 05-196)**

### **Facts**

14.

In September 2002, the Accused's brother, Clifford Nealy (hereinafter "Clifford"), passed away. The Accused filed a probate in October 2002 and the court appointed Clifford's son, Mark Nealy (hereinafter "Mark") and the Accused, as co-personal representatives of Clifford's estate (hereinafter the "Estate"). The Accused also acted as the attorney for the personal representatives.

15.

From October 2002 through June 2003, the Accused attended to various issues related to advancing the probate proceeding, including filing the inventory and publishing the necessary notices.

16.

From June 2003 through April 2004, the Accused did not take any substantial action on behalf of the Estate, including failing to file the accounting required by the court. The Accused also failed to respond to some of Mark's requests for information.

17.

On April 27, 2004, the Accused filed the Final Accounting and Decree of Final Distribution, which was approved by the court on May 12, 2004. All that

remained was to make the distributions, obtain receipts and obtain an order closing the probate. The Accused did not make all required distributions, obtain all the necessary receipts or obtain an order closing the probate. In July 2005, the court dismissed the Estate probate for lack of prosecution.

18.

On December 9, 2005, the Accused finally obtained the necessary receipts and filed an Order to Close Estate and Discharge the Co-Personal Representatives. The court signed the order closing the estate on December 13, 2005.

19.

At all relevant times, ORS 116.183(1) allowed for a personal representative to recover all necessary expenses, including reasonable attorney fees in the final accounting. A partial award of such expenses, including fees, was permitted prior to settlement of the final account upon petition and order of the court.

20.

Prior to the Final Accounting and Decree of Final Distribution, the Accused took periodic payments for his fees from Estate funds, without petitioning the court for approval in violation of ORS 116.183(1). The Bar does not contend that the violation of ORS 116.183(1) constituted criminal conduct.

### **Violations**

21.

The Accused admits that, by collecting fees from the Estate prior to court approval, he collected an illegal fee in violation of DR 2-106(A). The Accused further admits that by failing to take substantial action in the Estate, as described above, he neglected a legal matter entrusted to him in violation of DR 6-101(B) and RPC 3.1.

### **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.* The Accused violated his duty to his clients to act with reasonable diligence and promptness in their representation when he neglected legal matters and failed to promptly tender client property. *Standards*, § 4.4. The Accused also violated his duty to his client when he was unable to timely and fully account for client funds. *Standards*, § 4.1. The *Standards* provide that the most important ethical duties are those obligations which a lawyer owes to his clients. *Standards*, p. 5.

The Accused violated his duty to the profession to refrain from charging improper fees when he collected money from an estate prior to court approval. *Standards*, § 7.0.

b. *Mental State.* The Accused acted knowingly with respect to all violations. “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.

c. *Injury.* “Injury” is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. *Standards*, p. 7. Injury can be actual or potential. The Accused caused injury to Garvey by allowing any potential claim for his injuries to become barred. The Accused caused injury to the estate and the courts by delaying distribution to the heirs and completion of the probate. The Accused caused injury to Montgomery in not timely accounting for and remitting his retainer.

d. *Aggravating Factors.* Aggravating factors include:

1. Existence of a prior disciplinary record, the Accused having been publicly reprimanded for violations of DR 5-105(C) (former client conflict) and DR 7-104(A)(1) (communication with a represented party) in 2000 (*In re Nealy*, 14 DB Rptr 79 (2000)) and again publicly reprimanded for a violation of DR 5-105(E) (current client conflict) in 2002. *In re Nealy*, 16 DB Rptr 47 (2002). The Accused has also received three letters of admonition for violations of DR 6-101(B) (neglect of a legal matter) in 1973, 1983, and 1994. *Standards*, §§ 8.2, 9.22(a). A letter of admonition is considered as evidence of past misconduct if the misconduct that gave rise to that letter was of the same or similar type as the misconduct at issue in the case at bar. *In re Cohen*, 330 Or 489, 500, 8 P3d 953 (2000).

2. The type of misconduct exhibited by the Accused is similar in each of the cases addressed by this Stipulation and similar to that of the Accused’s prior discipline. *Standards*, § 9.22(c);

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

4. The Accused has substantial experience in the practice of law, having been admitted in 1968 and having practiced continuously since that time. *Standards*, § 9.22(i).

- e. *Mitigating Factors*. Mitigating factors include:
  - 1. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b);
  - 2. Full and free disclosure to disciplinary board. *Standards*, § 9.32(e);
  - 3. The Accused has expressed remorse for his conduct. *Standards*, § 9.32(l).

23.

The *Standards* provide that a period of suspension is appropriate in this matter. A suspension is recommended by the *Standards* for each of the Accused's knowing violations. See *Standards*, §§ 4.12, 4.42, 7.2.

24.

Oregon case law is in accord, both in terms of the violations and the significant aggravation created by the Accused's prior discipline. See *In re Knappenberger*, 337 Or 15, 90 P3d 614 (2004) (90-day suspension for neglect and self-interest conflict where prior admonition for neglect); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (60-day suspension for violation of DR 6-101(B) where prior admonition for neglect); *In re Meyer*, 328 Or 220, 970 P2d 647 (1999) (one-year suspension for failing to take constructive action (i.e., neglect) on support issue where prior public reprimand for similar misconduct); *In re Butler*, 324 Or 69, 921 P2d 401 (1996) (one-year suspension for violations including neglect, aggravated by the fact that the violations occurred while the lawyer was under investigation by the Bar for similar misconduct).

25.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for four months for violations of DR 2-106(A), DR 6-101(B), DR 9-101(C)(3), DR 9-101(C)(4), and RPC 1.3. The sanction is to be effective March 1, 2006 or three days after this stipulation is approved by the Disciplinary Board, whichever is later.

26.

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

EXECUTED this 2nd day of February 2006.

/s/ Oscar R. Nealy

Oscar R. Nealy  
OSB No. 68115

EXECUTED this 28th day of February 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott  
OSB No. 99028  
Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 05-114  
)  
COURTNEY M. O'CONNOR, ) SC S53260  
)  
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott  
Counsel for the Accused: Kurt F. Hansen  
Disciplinary Board: None  
Disposition: Violation of RPC 8.4(a)(2) and RPC 8.4(a)(3).  
Stipulation for Discipline. One-year suspension.  
Effective Date of Order: March 7, 2006

**ORDER ACCEPTING STIPULATION**

Upon consideration by the court.

The court accepts the Stipulation for Discipline. The accused is suspended from the practice of law in the State of Oregon for a period of one year, effective March 7, 2006.

DATED this 7th day of March 2006.

/s/ Paul J. De Muniz

Paul J. De Muniz  
Chief Justice

**STIPULATION FOR DISCIPLINE**

Courtney M. O'Connor, attorney at law (hereinafter "the Accused"), and the Oregon State Bar (hereinafter "the Bar") hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 27, 2005, 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 August 12, 2005, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 8.4(a)(2) and RPC 8.4(a)(3) of the Oregon Rules of Professional Conduct. 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 early May 2005, the Accused was offered a deputy district attorney position with the Curry County District Attorney's Office (hereinafter "Curry County DA"), conditioned upon her passing a preemployment drug test.

6.

On May 13, 2005, the Accused reported to the Oregon Medical Laboratories (hereinafter "Lab") in Portland for drug testing. Concerned that her urine samples could contain trace amounts of THC from prior marijuana use, the Accused carried with her to the Lab a concealed vial or vials of distilled water which she used to surreptitiously dilute her two urine samples, causing them to fall below the acceptable temperature range.

7.

Following notification by the Lab that O'Connor's samples were below normal temperature, the Curry County DA instructed the Accused to return to the Lab on the afternoon of May 13, 2005, and provide an observed urine sample. Prior to returning

to the Lab and giving the third sample, the Accused obtained and drank a body detoxifier.

8.

On May 16, 2005, the Lab notified the Curry County DA that the Accused's third urine sample was clean and within the appropriate temperature, but that no Lab personnel observed her give it.

9.

Suspicious aroused, the Curry County DA called the Accused and inquired whether she had used controlled substances. The Accused denied drug use, instead blaming the two invalid samples on a problem with her body temperature, which she claimed to have remedied by exercise and sitting in a sauna prior to her third test. In reaction to this explanation, the Curry County DA instructed the Accused to report to the Lab for an additional (observed) test. In response to this request, the Accused recanted her previous denial of drug use, admitted that she had recently smoked marijuana and was concerned that trace THC would show up in her urine. The Accused also acknowledged that her urine samples had not been pure, as she had diluted the first samples and drank a detoxifier for the third.

10.

ORS 475.981 provides in relevant part that a person commits the crime of falsifying drug test results if the person intentionally uses, or possesses with intent to use, any substance or device designed to falsify the results of a drug test of the person. Falsifying drug test results is a Class B misdemeanor. As used in this section and ORS 475.982, "drug test" means a lawfully administered test designed to detect the presence of a controlled substance.

### **Violations**

11.

The Accused admits that by tampering with her drug tests and engaging in misrepresentations and dishonest conduct in connection with her communications and interactions with the Curry County DA and the Lab, she violated RPC 8.4(a)(2) (criminal conduct reflecting adversely on honesty, trustworthiness, or fitness to practice law) and RPC 8.4(a)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

### **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 her duty to the public to maintain her personal integrity. *Standards*, § 5.1.

b. *Mental State.* The Accused acted intentionally. "Intent" is the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. The Accused did not want to lose the employment opportunity offered by the Curry County DA and wrongly decided to tamper with her urine samples in order to falsify the results.

c. *Injury.* An injury need not be actual, but only potential to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). However, the Accused did cause actual injury to the Curry County DA, in the form of additional effort and expenses associated with the additional testing. The Accused also caused potential injury to the Curry County DA, in that it may have been misled by the Accused's misconduct and employed her contrary to its policy.

d. *Aggravating Factors.* Aggravating factors include:

1. The Accused acted with a dishonest or selfish motive in that she attempted to gain a personal benefit through deceptive practices. *Standards*, § 9.22(b).

2. There were multiple offenses insofar as the Accused's conduct violated more than one disciplinary rule. *Standards*, § 9.22(d).

e. *Mitigating Factors.* Mitigating factors include:

1. The Accused made full and free disclosure in these disciplinary proceeding and showed a cooperative attitude. *Standards*, § 9.32(e).

2. The Accused is inexperienced in the practice of law, having been admitted to the bar just weeks prior to the conduct in this case. *Standards*, § 9.32(f).

13.

The *Standards* provide that disbarment is generally appropriate when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. A suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that seriously adversely reflects on the lawyer's fitness to practice. *Standards*, §§ 5.11, 5.12.

14.

Oregon cases suggest that a lengthy suspension or disbarment is imposed in association with criminal and dishonest conduct. *See, e.g., In re Albrecht*, 333 Or 520, 42 P3d 887 (2002); *In re Jaffee*, 331 Or 398, 15 P3d 533 (2000); *In re Garvey*, 325 Or 34, 932 P2d 549 (1997); *In re Leonhardt*, 324 Or 498, 930 P2d 844 (1997);

**Cite as *In re O'Connor*, 20 DB Rptr 42 (2006)**

*In re Taylor*, 316 Or 431, 851 P2d 1138 (1993); *In re Kirkman*, 313 Or 181, 830 P2d 206 (1992); *In re Hendricks*, 306 Or 574, 761 P2d 519 (1988); *In re Griffith*, 304 Or 575, 748 P2d 86 (1987) (all disbarred for criminal conduct). *See also In re Davenport*, 334 Or 298, 49 P3d 91, *recons.*, 335 Or 67 (2002) (two-year suspension for false swearing, although attorney was never indicted or convicted of a criminal act); *In re Leisure*, 338 Or 508, 113 P3d 412 (2005) (18-month suspension for writing numerous bad checks); *In re Kimmell*, 332 Or 480, 31 P3d 414 (2001) (six-month suspension for shoplifting); *In re Summer*, 338 Or 29, 105 P3d 848 (2005) (180-day suspension for submitting a false insurance claim on behalf of a client (i.e., theft by deception)).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for one year for violations of RPC 8.4(a)(2) and RPC 8.4(a)(3), the sanction to be effective on approval by the Supreme Court.

16.

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 Oregon Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 8th day of February 2006.

/s/ Courtney M. O'Connor

Courtney M. O'Connor  
OSB No. 05081

EXECUTED this 8th day of February 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott  
OSB No. 99028  
Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 05-20
	)	
CLAYTON C. PATRICK,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott; Michael P. Opton
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 5-101(A) and DR 5-105(E). Stipulation for Discipline. 30-day suspension.
Effective Date of Order:	May 25, 2006

**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 30 days, effective May 25, 2006, for violations of DR 5-101(A) and DR 5-105(E) (two counts).

DATED this 13th day of March 2006.

/s/ John A. Berge  
 John A. Berge, Esq.  
 State Disciplinary Board Chairperson

/s/ Susan G. Bischoff  
 Susan G. Bischoff, Esq., Region 5  
 Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Clayton Patrick, 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 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 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 6, 2006, 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 5-101(A) (personal interest conflict) and DR 5-105(E) (current client conflict of interest) (two counts). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### General Facts

5.

Michael Tandy (hereinafter “Tandy”) and the Accused were close friends for several years. Prior to 1997, Tandy established the Tandy/Quan Trust n/k/a Clearspring Trust (hereinafter “Trust”) with a business partner. One of the Trust’s income producing ventures was to make loans to individuals.

### The Holman Loan

#### Facts

6.

In January 1997, the Accused suggested to Tandy that the Trust loan Timothy and Kimberly Holman (hereinafter the “Holmans”) money to operate and expand their business. The Holmans were also long-time friends of the Accused. Tandy

agreed on behalf of the Trust. The Accused, who viewed the loan as a benefit to both the Holmans and the Trust, actively facilitated the loan transaction by performing legal services for both the Holmans and Tandy/the Trust.

7.

The Accused negotiated and secured the loan on behalf of the Holmans. He also signed the promissory note as a guarantor for the Holmans. The Accused's professional judgment on behalf of the Holmans was or could reasonably have been affected by his own financial, business, property, or personal interests as a guarantor for their loan. The Accused did not immediately recognize this personal-interest conflict and therefore he failed to obtain the Holmans' consent to the continued representation, after full disclosure.

8.

The Accused obtained a special power of attorney from Tandy that allowed him to conduct business with the title company on Tandy's behalf, including allowing the Accused to close the transaction in Tandy's absence.

### **Violations**

9.

The Accused acknowledges that, as lender and borrowers, the objective interests of the Trust and the Holmans were adverse. Accordingly, the Accused's representation of both the Trust and the Holmans in the loan transaction resulted in an actual conflict of interest in violation of DR 5-105(E). Furthermore, the Accused now recognizes that, in guaranteeing the loan for the Holmans, without consent following full disclosure, the Accused violated DR 5-101(A).

### **The Schultz Loan**

#### **Facts**

10.

In June 1997, the Accused referred another client, Thomas Schultz (hereinafter "Schultz") to Tandy for a loan. The Accused represented Schultz in negotiating, securing and facilitating the loan from the Trust. However, Tandy also sent draft documents to the Accused for review and the Accused was aware that Tandy was looking to him to ensure that the Trust's interests were protected in the transaction.

#### **Violation**

11.

The Accused acknowledges that, as lender and borrower, the objective interests of the Trust and Schultz were adverse. Accordingly, the Accused's representation of

both the Trust and Schultz in the loan transaction resulted in an actual conflict of interest in violation of DR 5-105(E).

### 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 his duty to his clients to avoid conflicts of interest. *Standards*, § 4.3.

b. *Mental State.* The evidence suggests that the Accused was negligent with respect to the personal interest conflict. “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. 5. However, the Accused discussed his conflict with Tandy on at least one occasion which demonstrates that the Accused had some knowledge of the multiple client conflicts. “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. 5.

c. *Injury.* Injury can be actual or potential. The Accused caused potential injury to the Holmans in failing to recognize or disclose his personal interest conflict in guaranteeing their loan transaction. In addition, in facilitating transactions between Tandy and the Holmans and Tandy and Schultz, the Accused had a duty to obtain terms most favorable to each party. This caused potential injury to the Holmans, Schultz and Tandy, in the form of divided loyalties and less than objective advice.

d. *Aggravating Factors.* Aggravating factors include:

1. There are multiple offenses. *Standards*, § 9.22(d); and
2. The Accused has substantial experience in the practice of law, having been admitted in California in 1970, in Washington in 1972, 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 did not act dishonestly. *Standards*, § 9.32(b);
3. The Accused has been cooperative in these proceedings. *Standards*, § 9.32(e); and
4. The Accused has stated remorse for his conduct. *Standards*, § 9.32(l).

13.

The *Standards* indicate that a suspension is generally appropriate when a lawyer knowingly engages in a conflict of interest, causing injury or potential injury to a client. *Standards* § 4.32. A reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests and causes injury or potential injury to a client. *Standards*, § 4.33. Given that the applicable mitigating factors outweigh those in aggravation, the *Standards* suggest that a short suspension would be appropriate for the Accused's misconduct.

14.

Oregon case law is in accord for actual or obvious multiple-client conflicts of interests. *See, e.g., In re Hockett*, 303 Or 150, 164, 734 P2d 877 (1987) (single violation of DR 5-105, by itself, justifies a 30-day suspension); *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001) (four-month suspension for failure to disclose conflict and fee issues); *In re Robertson*, 290 Or 639, 624 P2d 603 (1981) (30-day suspension for representing buyers and sellers in transaction).

Oregon cases have also held that a suspension is appropriate for personal interest conflicts. *See, e.g., In re Wittemyer*, 328 Or 448, 980 P2d 148 (1999) (four-month suspension for violation of conflict rules where attorney had attorney-client relationship with individual regarding loan transaction and loan collection in which he had an interest); *In re Gildea*, 325 Or 281, 936 P2d 975 (1997) (120-day suspension for violations of DR 5-101(A) and others, for failing to obtain consent from client after full disclosure for transfer of title to client's vehicle to attorney's professional corporation).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 30 days for violations of DR 5-101(A) and DR 5-105(E) (two counts), the sanction to be effective May 25, 2006.

16.

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.

Cite as *In re Patrick*, 20 DB Rptr 47 (2006)

EXECUTED this 3rd day of March 2006.

/s/ Clayton C. Patrick

Clayton C. Patrick

OSB No. 77298

EXECUTED this 3rd day of March 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 99028

Assistant Disciplinary Counsel



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 05-155
	)	
RANDOLPH J. STEVENS,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	Kevin N. Keaney
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(A) and DR 6-101(B). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	March 23, 2006

**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 violations of DR 6-101(A) and DR 6-101(B).

DATED this 23rd day of March 2006.

/s/ John A. Berge  
 John A. Berge, Esq.  
 State Disciplinary Board Chairperson

/s/ Susan G. Bischoff  
 Susan G. Bischoff, Esq., Region 5  
 Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

Randolph J. Stevens, 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 January 28, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On November 17, 2005, 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(A) (lack of preparation and competence) and DR 6-101(B) (neglect of a legal matter). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Facts

5.

In 1993, Linda Curry (hereinafter “Curry”) became the conservator for her mother’s estate (hereinafter “estate”). In May 2000, the Multnomah County Circuit Court released Curry from the obligation to file annual accountings, but restricted Curry’s ability to sell a large parcel of real property (hereinafter “Washington property”), owned by Curry’s mother. The court required Curry to report annually on the status of the Washington property.

6.

In December 2000, Curry retained the Accused to represent her in her capacity as conservator for the estate. Thereafter, the Accused failed to timely file the 2001

status report on the Washington property and also failed to timely file the 2002 status report, resulting in the setting of a show cause hearing by the court in April 2002.

7.

In November 2002, Curry and her sister Etta Schwab (hereinafter “Schwab”) agreed that Schwab should become conservator for the estate. On November 27, 2002, on Curry’s behalf, the Accused prepared and submitted a final accounting, along with a petition for dismissal of Curry as conservator.

8.

The final accounting prepared and submitted by the Accused in November 2002 failed to provide all of the information required in the format required by statute or court rules and failed to include all of the necessary documentation required by statute or court rules, resulting in objections from the protected person to the approval of the final accounting; the discharge of Curry as conservator; and the payment of conservator and attorney fees.

9.

In October 2003, the court entered a stipulated order that appointed Schwab as conservator and withdrew the November 2002 accounting submitted by the Accused. The order also required Schwab’s attorney, Michael Petersen (hereinafter “Petersen”), to perform an internal audit of the estate by November 30, 2003, and required Curry (through the Accused) to file her final accounting by December 31, 2003.

10.

The Accused believed that he had provided Petersen with all financial records of the conservatorship prior to the entry of the stipulated order. However, the Accused had not provided Petersen with bank records and other documentation in his or his client’s possession or control necessary for Petersen to conduct a complete audit in the time contemplated by the stipulated order, and the audit was not completed timely. In turn, the Accused did not file Curry’s final accounting by December 31, 2003.

11.

On February 24, 2004, the Accused filed a supplemental accounting for the period from the November 2002 accounting through October 2003. The supplemental accounting prepared and submitted by the Accused in February 2004 failed to provide all of the information required in the format required by statute or court rules and failed to include all of the necessary documentation required by statute or court rules.

12.

In May 2004, Curry terminated the Accused's employment. As of May 2004, the Accused had not amended or resubmitted the November 2002 accounting or the February 2004 accounting. These accountings were subsequently withdrawn.

### Violations

13.

The Accused admits that, by failing to submit the required accounting or accountings for the estate with adequate information and documentation in a timely manner, the Accused violated DR 6-101(A) (lack of preparation and competence) and DR 6-101(B) (neglect of a legal matter).

### 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 his duties of diligence and competence to his client. *Standards*, §§ 4.4, 4.5. The *Standards* provide that the most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, p. 5.

b. *Mental State.* The Accused acted negligently in failing to ensure that the documents he submitted were of the form and substance required by statute and court rules. "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. The Accused also initially acted negligently in failing to timely submit the supplemental accounting. However, the Accused knowingly failed to correct the defective supplemental accounting. "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.

c. *Injury.* "Injury" is harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. *Standards*, p. 7. Injury can be actual or potential. The Accused caused actual injury to his client, the estate and the court by delaying his client's withdrawal as conservator of the estate.

- d. *Aggravating Factors*. Aggravating factors include:
  1. There are multiple offenses in that more than one rule was violated by the Accused's conduct. *Standards*, § 9.22(d); and
  2. The Accused is an experienced attorney, having been admitted to practice in Oregon in 1981. *Standards*, § 9.22(i).
- e. *Mitigating Factors*. Mitigating factors include:
  1. The Accused has no relevant record of prior discipline. *Standards*, § 9.32(a);
  2. The Accused did not act with a dishonest or selfish motive. *Standards*, § 9.32(b);
  3. The Accused waived his fees to minimize the injury to his client and the estate. *Standards*, § 9.32(d); and
  4. The Accused has demonstrated a cooperative attitude in these proceedings. *Standards*, § 9.32(e).

15.

The *Standards* provide that, absent aggravating or mitigating circumstances, a suspension is generally appropriate for a lawyer's knowing neglect, while a reprimand is appropriate for a lawyer's negligent misconduct. *Standards*, §§ 4.42(a), 4.43, 4.53(a). In light of the fact that the Accused's applicable mitigating factors outweigh those in aggravation, the *Standards* suggest that a reprimand is appropriate under these facts.

16.

Oregon case law is in accord. See *In re Greene*, 276 Or 1117, 557 P2d 644 (1976) (lawyer who was personal representative of estate was found guilty of neglect and incompetence for failing to discover estate assets and publicly reprimanded); *In re Bolland*, 12 DB Rptr 45 (1998) (reprimand for violations of DR 6-101(A), DR 6-101(B) in failing to take timely or sufficient actions on behalf of personal representative in estate matter); *In re Storkel*, 16 DB Rptr 224 (2002) (reprimand for violations of DR 5-101(A), DR 6-101(A) and DR 6-101(B) related to attorney's failure to obtain necessary documents and timely file a posthearing memorandum in one post-conviction case and failing to timely file a petition for review in another).

17.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violations of DR 6-101(A) and DR 6-101(B), the sanction to be effective on approval by the Disciplinary Board.

18.

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

EXECUTED this 10th day of March 2006.

/s/ Randolph J. Stevens

Randolph J. Stephens

OSB No. 81011

EXECUTED this 15th day of March 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 99028

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 05-93, 05-94
	)	
RUTH A. CHERRY,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	John C. Fisher
Disciplinary Board:	None
Disposition:	Violation of DR 2-110(A)(2), DR 5-101(A), and DR 7-101(A)(1). Stipulation for Discipline. 30-day suspension.
Effective Date of Order:	April 6, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Ruth A. Cherry (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 is suspended from the practice of law for 30 days for violation of DR 2-110(A)(2), DR 5-101(A), and DR 7-101(A)(1) of the Code of Professional Responsibility, effective three days after the date of this order.

DATED this 3rd day of April 2006.

/s/ John A. Berge  
 John A. Berge, Esq.  
 State Disciplinary Board Chairperson

/s/ Carl W. Hopp, Jr.  
 Carl W. Hopp, Jr., Esq., Region 1  
 Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

Ruth A. Cherry, 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 September 27, 1991, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Klamath County, Oregon.

3.

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

4.

The State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 2-110(A)(2), DR 4-101(B), DR 5-101(A) and DR 7-101(A)(1) 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.

██████████ (hereinafter “██████████”) is the minor daughter of Brandi Lee Cherry-Thornhill (hereinafter “Brandi”). Patricia Cherry (hereinafter “Patricia”) is Brandi’s mother and ██████████’s grandmother. The Accused and Patricia are sisters. On or about April 26, 2002, Brandi died in a motor vehicle accident. Following Brandi’s death, Patricia took physical custody of ██████████. Prior to and after May 2002, the Accused was of the belief that Patricia lacked parenting skills and had a problem with alcohol. Nevertheless, the Accused agreed to represent Patricia and to seek her appointment as ██████████’s guardian and conservator. because she also believed that Patricia was at the time the most suitable person available to serve in that capacity.



6.

On or about May 7, 2002, the Accused, as counsel for Patricia, filed a petition for Patricia's appointment as ██████'s guardian and conservator, *In the Matter of ██████ Cherry*, Klamath County Circuit Court Case No. 0201639CV (hereinafter "Court Action"). On or about May 7, 2002, the court entered an order appointing Patricia as ██████'s temporary guardian and conservator. On June 6, 2002, the court entered an order appointing Patricia as ██████'s permanent guardian and conservator.

7.

Nicola Cherry (hereinafter "Nicola") is the Accused's daughter. Nicola resided with the Accused. Smokey Thornhill (hereinafter "Smokey") is Patricia's former husband and ██████'s grandfather. Alan Thornhill (hereinafter "Alan") is Patricia's and Smokey's son.

8.

After November 2002, while continuing to represent Patricia and without notice to her, the Accused encouraged Smokey, Alan and Nicola to intervene. The Accused failed to act on her client's behalf and was sympathetic to those persons who sought Patricia's removal as ██████'s guardian and conservator.

9.

In and between about May 2002 and September 30, 2003, the Accused accepted and continued her representation of Patricia when the exercise of her professional judgment on behalf of Patricia was or reasonably may have been affected by her own personal interests. The Accused failed to obtain Patricia's consent to her representation after full disclosure.

10.

During the representation, the Accused engaged in conduct that was contrary to her client's wishes and objectives, and intentionally failed to seek the lawful objectives of Patricia through reasonably available means permitted by law and the disciplinary rules.

11.

On or about September 30, 2003, the Accused filed a motion to allow her to withdraw as Patricia's lawyer. The Accused failed to take reasonable steps to avoid foreseeable prejudice to the rights of Patricia, including giving due notice to Patricia; and allowing Patricia time for employment of other counsel.

## VIOLATIONS

12.

Based on the foregoing, the Accused admits that she violated DR 2-110(A)(2), DR 5-101(A), and DR 7-101(A)(1) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged violation of DR 4-101(B) as set forth in the Bar's Formal Complaint, upon the approval of this stipulation, is dismissed.

## 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 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 duties to her client and the profession *Standards*, §§ 4.3, 7.0.

b. *Mental State.* The Accused's conduct demonstrates negligence, knowledge and intent. *Standards*, p. 7. The Accused failed to recognize the conflict of interest posed by her personal beliefs that her client was not the best choice to serve as ██████'s guardian and conservator when she continued the representation. The Accused acted with knowledge and intent when she encouraged other persons to intervene, and failed to act to notify and protect Patricia when she knew other persons intended to seek her removal as ██████'s guardian and conservator, which was contrary to her client's wishes.

c. *Injury.* The Accused's conduct caused actual injury to her client. The Accused lost sight of the duty of loyalty she owed to her client. The Accused limited her communications and advice to her client; and actively sought the intervention of other persons. Subsequently, Alan, Nicola, Smokey, and Tracey Thornhill filed petitions to remove Patricia as ██████'s guardian and conservator.

d. *Aggravating Factors.* Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. Aggravating factors include:

1. The Accused was admitted to practice in 1991 and has substantial experience in the practice of law. *Standards*, § 9.22(1).

2. The Accused's client was vulnerable. *Standards*, § 9.22(h).

e. *Mitigating Factors.* Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. Mitigating factors include:

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

2. The Accused cooperated with the disciplinary authorities during the investigation of her conduct. *Standards*, § 9.32(e).

3. There is an absence of dishonest motive. *Standards*, § 9.32(b).

14.

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. *Standards*, § 4.32. Suspension is also 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. Oregon case law supports the imposition of a period of suspension. The court has stated that a single violation of a conflict rule, by itself, justifies a 30 day suspension. *See, e.g., In re Knappenberger III*, 337 Or 15, 33, 90 P3d 614 (2004); *In re Wyllie III*, 331 Or 606, 625, 19 P3d 338 (2001); *In re Hockett*, 303 Or 150, 164, 734 P2d 877 (1987). Suspension has also been imposed for violation of DR 7-101(A)(1). *See, e.g., In re Kersh*, Or S Ct No S42614 (1995) (six-month suspension for violation of DR 7-101(A)(1), DR 1-102(A)(3), and other rules involving multiple client matters.)

15.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for 30 days for violation of DR 2-110(A)(2), DR 5-101(A), and DR 7-101(A)(1), the suspension effective April 6, 2006, or three days after this stipulation is approved by the disciplinary board, whichever is later.

16.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the disposition and sanction were 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.

**Cite as *In re Cherry*, 20 DB Rptr 59 (2006)**

EXECUTED this 21st day of March 2006.

/s/ Ruth A. Cherry

Ruth A. Cherry  
OSB No. 91236

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. 05-154  
)  
HARRY AINSWORTH, )  
)  
Accused. )

Counsel for the Bar: Jane E. Angus  
Counsel for the Accused: Christopher R. Hardman  
Disciplinary Board: None  
Disposition: Violation of DR 2-110(B)(2), DR 5-101(A), and  
DR 6-101(B). Stipulation for Discipline. 30-day  
suspension.  
Effective Date of Order: June 1, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Harry Ainsworth (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 is suspended from the practice of law for 30 days for violation of DR 2-110(B)(2), DR 5-101(A), and DR 6-101(B) of the Code of Professional Responsibility, effective June 1, 2006.

DATED this 7th day of April 2006.

/s/ John A. Berge

John A. Berge  
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff

Susan G. Bischoff, Region 5  
Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

Harry Ainsworth, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law on October 29, 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, 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 October 14, 2005, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 2-110(B)(2), DR 5-101(A), 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.

### FACTS AND VIOLATIONS

5.

In or about October 2000, Autumn Brown (hereinafter “Brown”) entered into a residential lease agreement with May Lam (hereinafter “Lam”) for a house located in Portland, Oregon. Brown paid a security deposit and rent and moved into the premises. On or about September 9, 2002, Lam notified Brown that she was in default for failure to pay required rent and directed Brown to vacate the premises. Brown vacated the premises on or about September 20, 2002. Lam did not return Brown’s security deposit, claiming said funds for unpaid rent, repairs and damages allegedly caused to the premises, and other costs Brown was contractually obligated to pay during and on termination of the tenancy.

6.

In or about October 2002, Brown retained the Accused to handle the dispute with Lam. Brown provided information and documents to the Accused concerning the dispute and claims. In June 2003, the Accused reviewed Brown's file and conducted brief legal research. On or about June 20, 2003, the Accused drafted and on June 30, 2003, filed a civil complaint in the Circuit Court of the State of Oregon for the County of Multnomah, *Autumn Brown v. May Lam*, Case No. 030707051 (hereinafter "Court Action"). Pursuant to ORS 12.125, Brown's claims against Lam had to be commenced within one year. Lam was not served with summons and a copy of the civil complaint in the Court Action until October 8, 2003, after the statute of limitations barred Brown's claims.

7.

In October 2003, Lam retained a lawyer to defend against Brown's claims and to assert counterclaims against Brown in the Court Action (hereinafter "Lam's Counsel"). Among other defenses, Lam's Counsel asserted that Brown's claims were barred by the statute of limitations, the Court Action having been commenced more than a year from termination of Brown's tenancy. On or about November 12, 2003, Lam's Counsel filed Lam's Answer and Counterclaims in the Court Action, and sent a service copy thereof to the Accused. Lam's Counsel also sent the Accused a letter in which he asked that Brown's claims be dismissed as time barred. The Accused did not respond or otherwise communicate with Lam's Counsel concerning his communications.

8.

On December 4, 2003, the court ordered the Court Action transferred to arbitration, with notice thereof to the Accused and Lam's Counsel. The court directed counsel to select an arbitrator and notify the court of the person selected by December 29, 2003. The Accused received the court's notice. Lam's Counsel attempted to communicate with the Accused concerning the Court Action and the notice to select an arbitrator. The Accused did not respond or communicate with Lam's Counsel or the court.

9.

On January 6, 2004, Lam's Counsel sent a letter to the court in which he reported the Accused's failure to respond to his efforts to communicate concerning the Court Action. Lam's Counsel sent the Accused a copy of the letter. The Accused received the letter but did not communicate with Lam's Counsel or the court. On or about January 28, 2004, the court selected an arbitrator and sent notice of the appointment to the Accused and Lam's Counsel. The Accused received the court's notice.

10.

On February 17, 2004, Lam's Counsel sent a letter to the Accused asking the Accused to propose dates for the arbitration hearing and dates for Brown's deposition. Lam's Counsel asked the Accused to respond within 10 days. The Accused received the letter, but did not respond. On or about February 25, 2004, Lam's Counsel submitted a Motion for Summary Judgment to the arbitrator and served a copy thereof on the Accused. The Accused received the motion. Pursuant to ORCP 47 C, the Accused was required to file and serve opposing affidavits and supporting documents within 20 days.

11.

On March 2, 2004, the arbitrator sent a letter to the Accused and Lam's Counsel acknowledging the Motion for Summary Judgment. The arbitrator asked the Accused to respond to the motion and to provide other documents. The Accused did not respond. On March 29, 2004, the arbitrator sent another letter to the Accused and Lam's Counsel confirming the scheduling of the arbitration hearing for April 4, 2004. The arbitrator also acknowledged communication from Lam's Counsel; that he had received no communication from the Accused; and asked for compliance with the rules. The Accused received the arbitrator's March 29, 2004, letter, but did not respond.

12.

On March 31, 2004, the arbitrator confirmed the rescheduling of the arbitration hearing to April 21, 2004, by letter to the Accused and Lam's Counsel. Shortly before April 21, 2004, the Accused informed Brown of the date, time and place for the arbitration hearing and filed a response to Lam's motion for summary judgment. On April 21, 2004 the Accused and Brown appeared for the arbitration hearing. The arbitrator granted Lam's Motion for Summary Judgment and dismissed Brown's claims against Lam. The arbitrator also dismissed Lam's counterclaims against Brown. The Accused told Brown that she had lost the case because of his actions.

13.

On May 11, 2004, Lam's Counsel mailed a copy of a proposed Arbitration Award to the Accused. Pursuant to its terms, Lam requested \$136.91 in costs and \$1,000.00 as a prevailing party fee. The Accused received the proposed award, but did not communicate with his client or Lam's Counsel concerning the proposed award. On May 28, 2004, Lam's Counsel submitted the proposed Arbitration Award to the arbitrator, with copy of his letter and the proposed award also mailed to the Accused. The Accused received a copy of Lam's Counsel's letter and the proposed Arbitration Award, but did not communicate with his client, the arbitrator or Lam's Counsel concerning the proposed award. On June 2, 2004, the arbitrator signed the Arbitration Award, and thereafter filed it with the court. The court entered a general



judgment against Brown for \$1,136.91, plus interest, with notice thereof to the Accused.

14.

In and between October 2002 and June 2004, the Accused did not timely prepare and file a civil complaint; did not timely serve the civil complaint and summons; did not respond or timely respond to his client's telephone calls and letters; did not provide or timely provide his client with copies of written communications from the court, Lam's Counsel and the arbitrator; did not respond to Lam's Counsel's inquiries and requests and failed to communicate with Lam's Counsel; did not respond to the court's and the arbitrator's requests and failed to communicate with the court and the arbitrator; did not timely prepare and serve a response to Lam's motion for summary judgment; did not monitor or calendar Brown's case; and did not inform Brown that a judgment for Lam's costs and a prevailing party fee had been entered against her.

15.

The Accused continued his employment as Brown's lawyer and failed to withdraw from the representation when he knew or it is obvious that his continued employment would result in violation of a disciplinary rule. He continued employment as Brown's lawyer when the exercise of his professional judgment on behalf of Brown was likely to be or may reasonably have been affected by his own financial, business, property or personal interests, and failed to obtain Brown's consent to his representation, after full disclosure.

16.

The Accused admits that the aforesaid conduct constituted a failure to withdraw, a lawyer self-interest conflict, and neglect of a legal matter entrusted to him in violation of DR 2-110(B)(2), DR 5-101(A), and DR 6-101(B) of the Code of Professional Responsibility.

### SANCTION

17.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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. *Standards*, § 3.0.

a. *Duty Violated.* In violating DR 2-110(B)(2), DR 5-101(A), and DR 6-101(B), the Accused violated duties to his client and the profession. *Standards*, §§ 4.3, 4.4, 7.0.

b. *Mental State.* “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. “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. The Accused knew he had agreed to handle the client’s claim against her former landlord, that he was not attending to the case as he should, and that time limitations applied to filing and service of the summons and complaint. He also knew that opposing counsel, the court and the arbitrator requested his responses to certain issues and that he was not responding. Because of ongoing personal problems, the Accused was negligent in failing to promptly prepare and file the lawsuit, to insure that service was accomplished in a timely manner, and failing to adequately communicate with his client.

c. *Injury.* The *Standards* define “injury” as harm to the client, the public, the legal system or the profession that results from a lawyer’s conduct. “Potential injury” is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. *Standards*, p. 7.

The Accused caused actual and potential injury to his client. Because the Accused failed to timely serve the complaint in the Court Action on the defendant, his client was not able to pursue her claim against the landlord. If the Accused had advised his client and discussed defense counsel’s request that the Accused’s client dismiss the case, the Accused might have secured an agreement from the landlord not to seek costs against the Accused’s client. The Accused’s client was frustrated by the Accused’s failure to communicate with her. The client made a claim to the Professional Liability Fund. The claim was settled by the PLF’s payment of \$1,000 to Ainsworth’s client. Forced or compelled restitution or payment of damages is neither an aggravating nor mitigating factor. *Standards*, § 9.4.

The Accused also caused potential injury to the profession. The profession is judged by the conduct of its members.

d. *Aggravating Factors.* “Aggravating factors” are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. There are several aggravating factors in this case. There are multiple offenses and a pattern of misconduct. *Standards*, § 9.22(d), (c). The Accused has substantial experience in the practice of law. He was admitted to practice in 1990. *Standards*, § 9.22(i). The client was vulnerable in that she relied on the Accused to actively advance her objectives and to keep her informed. *Standards*, § 9.22(h).

e. *Mitigating Factors.* The Accused has no prior record of discipline. *Standards*, § 9.32(a). There is an absence of selfish or dishonest motives. *Standards*, § 9.32(b). The Accused has acknowledged his misconduct and cooperated in the investigation of the case. *Standards*, § 9.22(e). Also, the Accused experienced certain

family problems at times relevant to this complaint and is remorseful. *Standards*, § 9.32(c), (l).

18.

The *Standards* provide that suspension is generally appropriate when a lawyer fails to perform services for a client or engages in a pattern of neglect, or when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. *Standards*, §§ 4.42, 4.32. Suspension is also 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.

19.

Case law is in accord with the *Standards*. See, e.g., *In re Holm*, 285 Or 189, 590 P2d 233 (1979); *In re Bourcier*, 7 DB Rptr 115 (1993); *In re Barnett*, 14 DB Rptr 5 (2000); *In re Doherty*, 17 DB Rptr 1 (2003).

20.

Consistent with the *Standards* and 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 2-110(B)(2), DR 5-101(A), and DR 6-101(B), the suspension effective June 1, 2006, or three days after the Disciplinary Board approves this stipulation, whichever is later.

21.

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 this stipulation shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 28th day of March 2006.

/s/ Harry Ainsworth

Harry Ainsworth  
OSB No. 90461

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. 05-106  
)  
IAIN E. LEVIE, )  
)  
Accused. )

Counsel for the Bar: Martha M. Hicks  
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: April 7, 2006

**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 7th day of April 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff  
Susan G. Bischoff, Esq., Region 5  
Disciplinary Board Chairperson

**STIPULATION FOR DISCIPLINE**

Iain E. Levie, 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 September 27, 1991, 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 21, 2006, 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.

At all relevant times before May 23, 2002, the Accused was employed as an associate attorney by the law firm of Davis Wright Tremaine, LLP. On or before March 24, 2002, the Accused undertook to represent Precision Marketing Group, Inc., a corporation owned by Robert Mazziliano, in litigation against Backyard Adventures, Inc. (hereinafter “the litigation”).

6.

Settlement of the litigation was reached at mediation, and on or about June 5, 2002, Backyard Adventures, Inc. issued a check for \$300,000 payable to the Davis Wright Tremaine client trust account in trust for Precision Marketing Group, Inc. At the time this check was issued, the Accused was no longer employed by Davis Wright Tremaine, LLC. Accordingly, Davis Wright Tremaine, LLC issued a trust account check for \$300,000 payable to the Accused’s lawyer trust account.

7.

When he received the \$300,000 check from Davis Wright Tremaine, LLC, the Accused deposited it into his lawyer trust account and made disbursements from the

settlement proceeds on behalf of his client. These disbursements included payment of \$1,250 to a collection agency the Accused's client had employed to collect the debt from Backyard Adventures, Inc., payment of the Accused's fee, and payment to the client.

8.

The Accused did not maintain complete records of the trust account disbursements described in paragraph 7 herein in his possession. Sometime thereafter, when called upon to document the disbursements he made from the settlement proceeds, the Accused could not do so.

### Violations

9.

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

### 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 his duty to his client to preserve his client's property. *Standards*, § 4.1.

b. *Mental State.* The Accused was negligent in his handling of his trust account.

c. *Injury.* The Accused's client suffered no injury in that the Accused disbursed the settlement proceeds in accordance with the parties' settlement agreement. However, there is some potential for injury when a lawyer fails to maintain complete records of trust account transactions.

d. *Aggravating Factors.* There are no aggravating factors appropriately attributable to the Accused's conduct.

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

11.

*Standards* § 4.13 suggests that a reprimand is generally appropriate with a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

Decisions of the Disciplinary Board are in accord. See *In re Grimes*, 15 DB Rptr 241 (2001), where the lawyer was publicly reprimanded for violation of DR 9-101(C)(3). See also *In re Dobie*, 19 DB Rptr 6 (2005) (public reprimand for violation of DR 9-101(C)(3)).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 9-101(C)(3).

13.

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

EXECUTED this 3rd day of April 2006.

/s/ Iain E. Levie

Iain E. Levie

OSB No. 91359

EXECUTED this 3rd day of April 2006.

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. 05-99  
 )  
DENNIS L. ODEN, )  
 )  
Accused. )

Counsel for the Bar: Stacy J. Hankin  
Counsel for the Accused: Scott Jonsson  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(2) and DR 1-102(A)(3). Stipulation for Discipline. 180-day suspension.  
Effective Date of Order: April 17, 2006

**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 180 days, effective immediately for violation of DR 1-102(A)(2) and DR 1-102(A)(3) of the Code of Professional Responsibility.

DATED this 17th day of April 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff  
Susan G. Bischoff, Esq., Region 5  
Disciplinary Board Chairperson



## STIPULATION FOR DISCIPLINE

Dennis L. Oden, 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 September 24, 1992, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Klamath 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 18, 2005, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging two counts of violations of DR 1-102(A)(2) and DR 1-102(A)(3) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Facts

5.

Late in the evening of December 17, 2004, the Accused and his wife decided to spend the night at a motel in Klamath Falls. While the Accused’s wife walked to a nearby motel, the Accused walked to his truck with the intent of locking it and then walking to the motel to meet his wife. Instead, the Accused decided to drive his truck to the motel. While driving his truck to the motel, the Accused collided with an unoccupied parked car, causing damage to it. He thereafter left the scene of the collision and walked to the motel.

6.

The Accused failed to locate and notify the operator or owner of the vehicle that he hit or leave in a conspicuous place on the vehicle a written notice giving his

name and address and a statement of the circumstances of the collision, in violation of ORS 811.700.

7.

When the Accused arrived at the motel, he called 911 Emergency Services and reported that his truck had been stolen. Police officers were dispatched to the motel to investigate the Accused's report.

8.

The Accused knowingly initiated a false report which was transmitted to a law enforcement agency, in violation of ORS 162.375.

9.

The Accused informed the police officers who were dispatched to the motel, that his truck had been stolen and that he had not been at the scene of the collision. At the time the Accused made these representations, he knew they were false and material.

10.

The Accused was arrested and taken to the police station. At the police station the Accused confessed that his truck had not been stolen and that he had been driving the truck at the time of the collision. At the time of the collision, when he called 911 Emergency Services and when he spoke with the police officers, the Accused was intoxicated.

11.

The Accused was charged with driving under the influence of intoxicants, criminal mischief in the second degree, failure to perform the duties of a driver when property is damaged, and initiating a false report. On April 26, 2005, the Accused pleaded guilty to criminal mischief. The other charges were dismissed.

### **Violations**

12.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 11, he violated DR 1-102(A)(2) and DR 1-102(A)(3).

### **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 is duties to avoid criminal conduct and maintain his personal integrity. *Standards*, § 5.1.

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. *Standards*, p. 7. The Accused acted knowingly.

c. *Injury.* "Injury" is harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. *Id.* The Accused's conduct caused actual injury to law enforcement officials because they responded to the Accused's 911 emergency call when no emergency actually existed and because the Accused made misrepresentations to them about what had happened.

Injury can be actual or potential under the ABA *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). "Potential injury" is harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Standards*, p. 7. Because the Accused left the scene of the collision, the Accused's conduct caused potential injury to the owner of the other vehicle. However, because the Accused eventually confessed that he had been driving his truck at the time of the collision, the owner of the other vehicle did not sustain any actual injury.

d. *Aggravating Circumstances.* The following aggravating circumstances exist:

1. Dishonest or selfish motive. When the Accused made misrepresentations to the 911 operator and the police officers, he sought to avoid the consequences of his prior conduct. *Standards*, § 9.22(b),

2. Multiple offenses. *Standards*, § 9.22(d), and

3. Substantial experience in the practice of law as the Accused has been licensed to practice law in Oregon since 1992. *Standards*, § 9.22(i).

e. *Mitigating Circumstances.* The following mitigating circumstances exist:

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

2. Timely good-faith efforts to make restitution or rectify the consequences of his misconduct. After the Accused was taken into custody, he confessed that he had been driving his truck at the time of the collision. Shortly after the collision, he contacted the owner of the vehicle and made restitution for damage to the vehicle. *Standards*, § 9.32(d),

3. Cooperative attitude toward the proceeding. *Standards*, § 9.32(e),

4. Good character or reputation. *Standards*, § 9.32(g),

5. Interim rehabilitation. The Accused has abstained from consuming any alcoholic beverages since December 17, 2004. He is a member of a DUI Task Force that educates others about the danger and risk associated with driving while intoxicated. He continues to participate in a support group once a week. *Standards*, § 9.32(k),

6. Imposition of other penalties or sanctions. As a result of the guilty plea, the Accused's driver's license was suspended for 90 days, and he was on probation for 12 months. *Standards*, § 9.32(l), and

7. Remorse. *Standards*, § 9.32(m).

14.

The *Standards* provide that a suspension is generally appropriate when a lawyer knowingly engages in certain criminal conduct that seriously adversely reflects on the lawyer's fitness to practice law. *Standards*, § 5.12.

15.

Where lawyers have engaged in similar criminal conduct, the court has imposed a suspension. *In re Strickland*, 339 Or 595, 124 P3d 1225 (2005) (one-year suspension of lawyer who violated DR 1-102(A)(2) and DR 1-102(A)(3) when he improperly used the emergency reporting system, initiated a false report, and engaged in disorderly conduct); *In re Kimmell*, 332 Or 480, 31 P3d 414 (2001) (six-month suspension of lawyer who committed theft when he shoplifted a jacket).

16.

Consistent with the *Standards* and Oregon case law, and because the mitigating circumstances outweigh the aggravating circumstances, the parties agree that the Accused shall be suspended from the practice of law for 180 days for violation of DR 1-102(A)(2) and DR 1-102(A)(3) of the Code of Professional Responsibility, the sanction to be effective the day this stipulation is approved.

17.

In addition, on or before the Accused is reinstated to the practice of law, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$101.25, incurred for taking the Accused's deposition. Should the Accused fail to pay \$101.25 in full by the date he is eligible to be reinstated to the practice of law, 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.

18.

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

EXECUTED this 5th day of April 2006.

/s/ Dennis L. Oden

Dennis L. Oden

OSB No. 92524

EXECUTED this 11th day of April 2006.

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. 05-107  
)  
HILDA GALAVIZ, )  
)  
Accused. )

Counsel for the Bar: C. Thomas Davis; Jane E. Angus  
Counsel for the Accused: Susan D. Isaacs  
Disciplinary Board: None  
Disposition: Violation of DR 6-101(B). Stipulation for  
Discipline. 60-day suspension.  
Effective Date of Order: April 20, 2006

**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 is suspended from the practice of law for 60 days for violation of DR 6-101(B) of the Code of Professional Responsibility, effective three days after the date of this order.

DATED this 17th day of April 2006.

/s/ Jill A. Tanner  
Jill A. Tanner, Region 6  
Disciplinary Board Chairperson

/s/ John A. Berge  
John A. Berge  
State Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

Hilda Galaviz, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law 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 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 August 12, 2005, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violation 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 AND VIOLATION

5.

On or about September 6, 2002, Augustin Alvarez (hereinafter “Alvarez”) retained the Accused to pursue a worker’s compensation claim. The claim had previously been denied by the Workers Compensation Board because Alvarez had failed to timely file the claim. Alvarez filed a notice of appeal, which was pending at the time he retained the Accused.

6.

On or about October 31, 2002, the Accused, on behalf of Alvarez, filed a civil complaint for personal injury against Alvarez’ employer, *Augustin Alvarez v. July Creek and Frank Creek, dba Discount Barkdust*, Marion County Circuit Court Case No. 02C19966 (hereinafter “Court Action”). The defendants in the Court Action were served with summons and the complaint in December 2002.

7.

On or about February 25, 2003, the defendants filed a motion for change of venue, motion to dismiss, motion to make more definite and certain, and motion to strike concerning the complaint filed by the Accused in the Court Action. Pursuant to UTCR 5.030, the Accused was required to file a response to the motions within 14 days. On or about April 2, 2003, the court granted defendants' motion for change of venue, but declined to rule on other motions because of the transfer of venue to Washington County.

8.

After and between February 25, 2003, and December 15, 2004, the Accused did not file a response to defendants' motion for change of venue, motion to dismiss, motion to make more definite and certain, and motion to strike; did not pay the fee to transfer the Court Action to Washington County; did not recognize that the Accused's client or the Accused was responsible for paying the fee to transfer the Court Action to Washington County; did not review the law or the court's order to determine who was required to pay the fee to complete the transfer of the Court Action to Washington County; did not conduct discovery concerning the Court Action; did not communicate with defendants' counsel concerning the Court Action; and did not actively pursue and protect Alvarez's claim and interests. On or about October 19, 2004, Marion County Circuit Court closed the Court Action because the Accused failed to complete its transfer to Washington County.

9.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to her in violation of DR 6-101(B) of the Code of Professional Responsibility.

### SANCTION

10.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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. *Standards*, § 3.0.

A. *Duty Violated.* In violating DR 6-101(B), the Accused violated a duty to her client. *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 to accomplish a particular result. "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. The Accused knew she had agreed to handle the client's claim against his former employer and that she was not attending to the case. The Accused was negligent in that she failed to review the law or inquire of experienced counsel for advice.

C. *Injury*. The *Standards* define "injury" as "harm to the client, the public, the legal system or the profession which results from a lawyer's conduct." "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct. *Standards*, p. 7. An injury does not need be actual, but only potential to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

The Accused caused actual and potential injury to her client. Although the client may not have prevailed on his claim if the Accused had promptly paid the costs to complete the transfer of the case to Washington County and advanced the case, the client was denied the opportunity to have a court determine its merit. The client was of limited education and financial means. He was frustrated by the lack of activity. After the client complained to the Bar, the Accused paid the required fee and withdrew from further representation of the client. The client was not able to find another lawyer to represent him and the court dismissed the case.

The Accused also caused potential injury to the profession. The profession is judged by the conduct of its members.

D. *Aggravating Factors*. "Aggravating factors" are any considerations that justify an increase in the degree of discipline to be imposed. *Standards*, § 9.22. Several aggravating factors are present in this case. The Accused was admitted to practice in 1990 and has substantial experience in the practice of law. *Standards*, § 9.22(i). Her client was vulnerable. The Accused also has a prior record of discipline. *In re Galaviz*, 15 DB Rptr 176 (2001).

E. *Mitigating Factors*. The *Standards* also recognize mitigating factors. *Standards*, § 9.32. The Accused did not act with dishonest or selfish motives. *Standards*, § 9.32(b). She cooperated in the investigation and is remorseful. *Standards*, § 9.22(e), (l).

11.

The *Standards* provide that suspension is generally appropriate when a lawyer fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42. Case law is in accord with the *Standards*. See, e.g., *In re Holm*, 285 Or 189, 590 P2d 233 (1979); *In re Meyer*, 328 Or 220, 970 P2d 647 (1999); *In re Labahn*, 335 Or 357, 67 P3d 381 (2003).

12.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for 60 days for violation of DR 6-101(B), the suspension effective three days after the Disciplinary Board approves this stipulation, whichever is later.

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 this stipulation shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 31st day of March 2006.

/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

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 05-111  
)  
MATT MATTOX, ) SC S53408  
)  
Accused. )

Counsel for the Bar: Stacy J. Hankin  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(3) and  
DR 1-102(A)(4). Stipulation for Discipline.  
One-year suspension.  
Effective Date of Order: May 25, 2006

**ORDER ACCEPTING STIPULATION FOR DISCIPLINE**

Upon consideration by the court.

The court accepts the Stipulation for Discipline. The accused is suspended from the practice of law in the State of Oregon for a period of one year, effective May 25, 2006.

DATED this 25th day of April 2006.

/s/ Paul J. De Muniz

Paul J. De Muniz  
Chief Justice

**STIPULATION FOR DISCIPLINE**

Matt Mattox, 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 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 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 September 9, 2005, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 1-102(A)(2), DR 1-102(A)(3), and DR 1-102(A)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### **Facts**

5.

In July 2003, the Accused's wife initiated a dissolution of marriage proceeding in Clackamas County Circuit Court entitled *Mattox and Mattox*, Case No. DR03-07-170. On January 27, 2004, after due and proper notice, the Accused was deposed in that matter.

6.

During his deposition, the Accused testified that he did not presently have a gambling problem and had not engaged in gambling since September 12, 2003. At the time the Accused gave that testimony, he knew that it was false and material. Specifically, the Accused knew that he continued to gamble and knew that he had gambled a number of times earlier in the month.

7.

The dissolution of marriage proceeding went to trial on June 9, 2004. The Accused testified on his own behalf. On direct examination, the Accused truthfully

testified that he continued to have a gambling problem and that he had engaged in gambling activities in January 2004.

### Violations

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7 he violated DR 1-102(A)(3) and DR 1-102(A)(4). Upon further factual inquiry, the parties agree that the alleged violation of DR 1-102(A)(2), upon the approval of this stipulation, is dismissed.

### Sanction

9.

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. *Duties Violated.* The Accused violated his duties to maintain personal integrity and to avoid conduct prejudicial to the administration of justice. *Standards*, §§ 5.1, 6.1.

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. *Standards*, p. 7. The Accused acted knowingly. At the time he made the false statements, the Accused was seeking custody of his two minor children. The Accused made false statements in order to convince his soon to be ex-wife and her lawyer that he was no longer gambling.

c. *Injury.* The Accused’s wife incurred additional expense because her lawyer had to subpoena records which showed that the Accused engaged in gambling activities in January 2004. There was also potential injury to the administration of justice as a result of the Accused’s false testimony.

d. *Aggravating Circumstances.* The following aggravating circumstances are present:

1. Dishonest and selfish motive. *Standards*, § 9.22(b).
2. Multiple offenses. *Standards*, § 9.22(d).
3. Substantial experience in the practice of law as the Accused has been an Oregon lawyer since 1990. *Standards*, § 9.22(i).

e. *Mitigating Circumstances.* The following mitigating circumstances are present:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Personal or emotional problems. At the time the Accused made the false statements, he was impaired by a gambling addiction. Since then he obtained and continues to receive treatment for that addiction. The Accused experienced a significant amount of stress during the dissolution of his marriage. *Standards*, § 9.32(c).
3. Character or reputation. *Standards*, § 9.32(g).
4. Imposition of other penalties or sanctions. As a result of his conduct in this matter, the Accused resigned from his position as a Senior Felony District Attorney, a job he had held for 13 years. *Standards*, § 9.32(l).
5. Interim rehabilitation. *Standards*, § 9.32(k).
6. Remorse. *Standards*, § 9.32(m).

10.

The *Standards* provide that disbarment is generally appropriate when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice or when a lawyer, with the intent to deceive the court, makes a false statement and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding. *Standards*, §§ 5.11(b), 6.11. Suspension is generally appropriate when a lawyer knows that false statements 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.

11.

The court considers false swearing a serious violation and generally imposes disbarment or a lengthy suspension. See *In re Davenport*, 334 Or 298, 49 P3d 91, *recons.*, 335 Or 67 (2002) (two-year suspension imposed on lawyer who made false representations during a federal bankruptcy examination and a subsequent related civil deposition); *In re Sundstrom*, 250 Or 404, 442 P2d 604 (1968) (five-year suspension of lawyer who offered false and willfully deceitful testimony in a disciplinary hearing). The length of any suspension is reduced when there are significant mitigating circumstances. See *In re Staar*, 324 Or 283, 924 P2d 308 (1996) (two-year suspension, instead of disbarment, imposed on lawyer who falsely stated under oath in a petition for a restraining order that she had been abused by a man with whom she lived; where at the time of the underlying conduct, the lawyer was suffering from a mental disability or impairment).

This case is less egregious than the ones describe above because at the time of the underlying conduct the Accused was suffering from a gambling addiction. The Accused has obtained and continues to receive treatment for that addiction. In combination, the Accused's mental disability or impairment and his subsequent rehabilitation constitute significant mitigating circumstances.

12.

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)(3) and DR 1-102(A)(4), the sanction to be effective 30 days after this stipulation is approved.

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 Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 21st day of March 2006.

/s/ Matt Mattox  
Matt Mattox  
OSB No. 90334

EXECUTED this 3rd day of April 2006.

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. 04-141  
)  
CALVIN P. VANCE, )  
)  
Accused. )

Counsel for the Bar: James M. Finn; Stacy J. Hankin  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 2-106(A), DR 2-110(A)(3), and  
DR 9-101(A). No Contest Plea. Public  
reprimand.  
Effective Date of Order: May 2, 2006

**ORDER APPROVING NO CONTEST PLEA**

This matter having been heard upon the No Contest Plea entered into by the Accused, and good cause appearing,

IT IS HEREBY ORDERED that the no contest plea is approved and the Accused is publicly reprimanded, effective immediately, for violation of DR 2-106(A), DR 2-110(A)(3), and DR 9-101(A) of the Code of Professional Responsibility.

DATED this 2nd day of May 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff  
Susan G. Bischoff, Esq., Region 5  
Disciplinary Board Chairperson



## NO CONTEST PLEA

Calvin P. Vance, attorney at law (hereinafter “the Accused”), hereby enters the following no contest plea pursuant to Oregon State Bar Rule of Procedure 3.6(b).

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1996, and has been a member of the Oregon State Bar continuously since that time. At all material times herein, the Accused had his office and place of business in Marion County, Oregon.

3.

The Accused enters into this No Contest Plea freely and voluntarily. This No Contest Plea is made under the restrictions of Bar Rule of Procedure 3.6(h).

## Allegations

4.

On September 20, 2005, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”). In the Amended Formal Complaint the following is alleged:

a. In November 1999, Linda Hopchas (hereinafter “Hopchas”) and her husband Alan Hines (hereinafter “Hines”) retained the Accused to represent them in a lawsuit. The Accused was retained to defend Hopchas and Hines and pursue counterclaims on their behalf.

b. In early 2001, the Accused requested that Hopchas and Hines provide him with a substantial retainer so that he could try the case in June 2001.

c. On March 23, 2001, the Accused sent to Hopchas and Hines a proposed written fee agreement. The agreement provided for Hopchas and Hines to immediately pay the Accused a fixed fee of \$30,000, which would comprise all or part of his compensation through trial. Any compensation over \$30,000 would be paid on a contingent basis depending upon the outcome of the litigation. On March 31, 2001, Hopchas and Hines signed the written agreement.

d. On April 2, 2001, Hopchas and Hines paid \$30,000 to the Accused. He failed to deposit those funds into his lawyer trust account.

e. The trial date was postponed a number of times. In September 2002, the court granted the Accused's motion to withdraw from representing Hopchas and Hines.

f. At the time the Accused withdrew from representing Hopchas and Hines, the case had not yet been resolved and the Accused failed to promptly refund the part of the \$30,000 fee that he had not yet earned.

g. The aforesaid conduct of the Accused constitutes collecting a clearly excessive fee; failing to promptly refund any unearned fee upon withdrawing from employment; and failing to deposit client funds into trust, in violation of the following standards of professional conduct established by law and by the Oregon State Bar:

- A. DR 2-106(A),
- B. DR 2-110(A)(3), and
- C. DR 9-101(A) of the Code of Professional Responsibility.

#### **Plea**

5.

Pursuant to BR 3.6(b)(ii), the Accused does not desire to defend against the allegations of the Amended Formal Complaint or any designated cause thereof.

#### **Sanction**

6.

The Accused agrees to accept a public reprimand as the designated form of discipline in exchange for the no contest plea.

7.

The Accused has no prior disciplinary record.

8.

There is precedent in Oregon for the imposition of a public reprimand for similar conduct. *In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (reprimand would have been appropriate sanction for lawyer who mishandled client funds but where the lawyer should have known that she was doing so, a 60-day suspension was imposed); *In re Mannis*, 295 Or 594, 668 P2d 1224 (1983) (reprimand imposed on lawyer for mishandling client funds as a result of mistakes by lawyer's office staff).

9.

This No Contest Plea is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the SPRB. If approved by the SPRB, the no contest plea will be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 24th day of April 2006.

/s/ Calvin P. Vance

Calvin P. Vance

OSB No. 96122

I, Stacy J. Hankin, being first duly sworn, say that I am Assistant Disciplinary Counsel for the Oregon State Bar and that I attest that I have reviewed the foregoing No Contest Plea and that the substance of the plea was approved by the SPRB for submission to the Disciplinary Board on the 13th day of April 2006.

/s/ Stacy J. Hankin

Stacy J. Hankin

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 05-48  
)  
TILMAN HASCHE, )  
)  
Accused. )

Counsel for the Bar: Jeffrey M. Edelson; Stacy J. Hankin  
Counsel for the Accused: Douglas G. Combs  
Disciplinary Board: Anthony A. Buccino, Chair; Judith Hudson;  
Gail C. Gengler, Public Member  
Disposition: Trial Panel Opinion. Dismissed.  
Effective Date of Opinion: May 7, 2006

**OPINION OF THE TRIAL PANEL**

The Accused is Portland attorney Tilman Hasche.

The trial in this matter was held on November 29, 2005, in Portland, Oregon.

The Oregon State Bar was represented by Jeffrey Edelson and Assistant Disciplinary Counsel Stacy Hankin.

The Accused was present and represented by Douglas Combs. The trial panel heard testimony and received exhibits. The Bar has charged the Accused with violations of DR 4-101(B) (failure to hold client secrets), DR 5-105(C) (the representation of multiple clients when doing so resulted in an actual conflict of interest), and DR 7-101(A)(3) (intentionally causing a client to be prejudiced or damaged).

**FACTS**

The alleged violations arise from the Accused's representation of Fong Ly and Renea Ly in an immigration matter. The facts in the case do not appear to be in dispute. On December 11, 1998, the Accused was retained by Mr. and Mrs. Ly for the purpose of obtaining lawful permanent status for Mr. Ly. At the time Mr. Ly was subject to a final order of deportation, which had been ordered in 1996. A warrant had been issued for his arrest to assist with deportation. The warrant had not been executed.

The Accused prepared and filed an Alien Relative Petition on Mr. Ly's behalf. After the petition was approved, the Accused intended to ask immigration officials to join in a motion to reopen Mr. Ly's deportation proceeding so that he could apply for adjustment of status before the immigration court. Once the immigration court granted the adjustment, then Mr. Ly would be considered a permanent resident.

Immigration officials approved Mrs. Ly's petition in April 2002, but twice rejected efforts to join in a motion to reopen Mr. Ly's deportation case. After the second denial in October 2003, the Accused met with Mr. and Mrs. Ly. Mr. Ly was very upset that his immigration status remained unresolved. The parties decided the Accused would make one more attempt to get Immigration Offices to join in a motion to reopen the case.

On November 18, 2003, Mrs. Ly came to the Accused's office, without an appointment. She met with the Accused's assistant, Awilda Medina. After talking to Mrs. Ly, Ms. Medina prepared a page of notes and presented them to the Accused. He read them, conferred with Ms. Medina and then met with Mrs. Ly. The notes taken by Ms. Medina indicate that two days earlier, Mrs. Ly had called the police to her home because Mr. Ly had hit and kicked her. The police arrested Mr. Ly, charged him with Assault IV and Harassment. Pictures had been taken of her bruises. Further, she indicated that this was not the first time, Mr. Ly had hit her.

In May of 2001, Mr. Ly called 911 and asked that the police come as he wanted to hurt his wife and burn down his house. No charges were pressed and Mr. Ly was taken to Adventist Hospital and then transferred to Providence Mental Health where he spent three days. Mrs. Ly reported that a doctor claimed he was a threat to himself and others.

Further, Mrs. Ly reported that her daughters claimed Mr. Ly had attempted sexual abuse. The abuse was reported to the police. The Medina Note also made mention of Mr. Ly's depression and use of drugs. Mrs. Ly wanted Mr. Ly placed in a rehabilitation home and she wanted a divorce. She indicated that Mr. Ly was to be in court the following day.

Initially, the Accused told Mrs. Ly that there was nothing he could do to help her because he represented both of them and her statements created an actual conflict of interest. However, the longer he listened the more concerned he became and retreated to his office to reconsider his position. He reviewed the disciplinary rules and concluded that Mrs. Ly and her daughters were at risk of imminent, violent harm and that risk needed to be dealt with immediately.

The Accused decided to contact immigration officials and urge them to take Mr. Ly into custody under the authority of the existing order of deportation. When the Accused contacted immigration officials, he gave them information concerning Mr. Ly's upcoming hearing as well as information he had learned from Mrs. Ly.

On November 19, 2003, Mrs. Ly returned to the Accused's office and brought some additional documentation regarding what she had told Ms. Medina the day

before. She spoke with the Assused and informed him the hearing had been moved to a different day. The Accused again contacted immigration officials urging them to act on his information and informing them of the new hearing date.

Immigration officials acted on the information and took Mr. Ly into custody on November 21, 2003. He remained in custody for ninety days. On November 21, 2003, Mrs. Ly telephoned the Accused seeking advice. The Accused once again explained to her that he could no longer represent or advise her. The Accused drafted a letter to both Mr. and Mrs. Ly confirming that he no longer represented either of them. He also filed a withdrawal letter with INS. Approximately one year later, Mr. Ly filed a complaint with the Oregon State Bar, which prompted this disciplinary proceeding.

### **BURDEN OF PROOF/EVIDENTIARY STANDARD**

The Bar has the burden of establishing the Accused 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. The trial panel may admit and give effect to all evidence which possesses probative value and would be accepted by reasonably prudent persons in the conduct of their affairs.

### **CONCLUSIONS OF LAW**

DR 4-101(B)(1) prohibits a lawyer from knowingly revealing a secret of the lawyer's client. *Secret* refers to information gained in a current or former professional relationship that the client has requested held or the disclosure of which would be embarrassing or would be likely to be detrimental to the client. DR 4-101(C)(3) provides an exception to the rule. A lawyer may reveal the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime. The duty of client confidentiality must be balanced against the public's interest in safety and justice. There are no Oregon cases on point, thus the trial panel was inclined to look to the ABA Model Rule of Professional Conduct for assistance. The guiding rule for applying the exception to DR 4-101 appears to be "objective reasonableness in light of surrounding circumstances." Given the Accused's prior experiences as outlined in his trial memorandum, the trial panel believes the Accused had a reasonably objective belief that Mr. Ly was going to commit a crime similar to actions he had already committed and, thus, we are not going to second-guess his decision. The exception applies and, thus, in our opinion, the Accused did not violate DR 4-101(B)(1).

DR 5-105(E) prohibits a lawyer from representing multiple current clients in any matters when such representation would result in an actual or likely conflict of interest. An actual conflict of interest exists when the lawyer has a duty to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client.

Mr. and Mrs. Ly had similar interests until November 18, 2003. At that point their interests became adverse and an actual conflict developed. While the Accused advised Mrs. Ly that he could no longer represent her, there was no such notice to Mr. Ly until December 2, 2003. There is a question whether Mr. Ly had a reasonable expectation that the Accused would not take any action adverse to his interest. Mr. Ly could and should assume that Mrs. Ly would contact the Accused. At the very least, Mr. Ly should have known that given the pending charges Mrs. Ly's interest and his were adverse. Mr. Ly never called the Accused after November 18, 2003. If he believed he had legal representation, the panel believes he would have attempted to make contact. While we question why it took two weeks to send a letter to Mr. Ly, we do not believe the delay caused a violation of DR 5-105(E) in light of our ruling on DR 4 101(B)(1).

DR 7-101(A)(3) prohibits a lawyer from intentionally prejudicing or damaging the lawyer's client during the course of the professional relationship. In this case it is clear that the Accused intended immigration officials to take Mr. Ly into custody, thus it may be argued, prejudicing or damaging Mr. Ly. However, there was already a warrant for Mr. Ly's arrest. He could have been taken into custody at any time, thus we are not persuaded that Mr. Ly sustained any additional damages. Given the panel has already ruled that the Accused's conduct when he alerted immigration officials fell within the exception to the DR 4-101(B)(1), we find he did not violate DR 7-101(A)(3).

### SANCTION

The panel does not believe any sanction is needed.

DATED this 6th day of March 2006.

/s/ Anthony A. Buccino

Anthony A. Buccino

/s/ Gail Gengler

Gail Gengler

/s/ Judith Hudson

Judith Hudson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 05-82  
)  
JAMES W. BRITT, )  
)  
Accused. )

Counsel for the Bar: D. Michael Wells; Jane E. Angus  
Counsel for the Accused: George L. Derr  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(3), DR 5-108(B), and  
DR 6-101(A). Stipulation for Discipline.  
Six-month suspension.  
Effective Date of Order: May 15, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by James W. Britt (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 is suspended from the practice of law for six months for violations of DR 1-102(A)(3), DR 5-108(B), and DR 6-101(A) of the Code of Professional Responsibility, effective April 30, 2006, or three days after the date of this order, whichever is later.

DATED this 12th day of May 2006.

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

/s/ John A. Berge  
John A. Berge  
State Disciplinary Board Chairperson



## STIPULATION FOR DISCIPLINE

James W. Britt, 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 September 25, 1996, 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, 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 10, 2005, the State Professional Responsibility Board directed that the Accused be charged with violating DR 1-102(A)(3), dishonesty or misrepresentation, DR 6-101(A), failure to provide competent representation, and DR 5-108(B), avoiding influence by others than the client.

5.

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

6.

At all material times, John A. Williams (hereinafter “Williams”) was a financial planner and insurance agent who sold, among other things, life insurance and annuities. Williams’ and the Accused’s offices were located in the same office suite.

7.

During the 1990s, Williams became acquainted with Verlin A. Stubbs, *aka* Smoke Stubbs, and Loyd E. Stubbs, elderly brothers who resided in Brownsville, Oregon. Through this acquaintance, Williams learned that Verlin Stubbs and Loyd

Stubbs owned a farm in Brownsville and jointly controlled several bank accounts and certificates of deposit. Williams also learned that upon the death of one of them, the surviving brother would be the beneficiary of all assets owned by the deceased brother.

8.

In and after May 1998, Loyd Stubbs was about 87 years old and was not fully capable of making important decisions regarding financial investments and legal affairs, or of fully understanding the legal meaning, significance, and consequences of decisions and transactions.

9.

In and between about May 1998 and February 1999, Williams caused and assisted Loyd Stubbs to purchase annuities from ReliaStar Insurance Company, of which Williams was a commissioned sales agent. The annuity contracts were flexible deferred premium annuities that matured and were payable in 2012, at which time Loyd Stubbs would be about 100 years old.

10.

Verlin Stubbs died on or about December 18, 1998. Within days of Verlin Stubbs' death, Williams caused and assisted Loyd Stubbs to access funds Loyd Stubbs jointly held in bank accounts and certificates of deposit with Verlin Stubbs and to consolidate those funds into an account at Key Bank in Brownsville, Oregon.

11.

On or about December 29, 1998, Williams caused and assisted Loyd Stubbs to transfer \$198,000 from the Key Bank account to an account at Waddell and Reed, a financial services company, of which Williams was a commissioned sales agent.

12.

### **PROBATE MATTER**

In or about January 1999, Williams asked the Accused to represent Loyd Stubbs (hereinafter "Stubbs") concerning the administration of the estate of Verlin Stubbs. The Accused agreed to represent Stubbs and on or about January 13, 1999, prepared a Fee Agreement for legal services and an Understanding and Acceptance of Fee Agreement, which the Accused delivered to Williams to be presented to Stubbs. On or about January 14, 1999, Stubbs signed the Understanding and Acceptance of Fee Agreement, which Williams thereafter delivered to the Accused (hereinafter "Fee Agreement"). Pursuant to the terms of the Fee Agreement, the Accused agreed to perform services normally performed in connection with the probate of an estate.

13.

Based on information Williams provided to the Accused, the Accused prepared a Petition for Administration of Intestate Estate and Appointment of Personal Representative for Probate (hereinafter “Petition”), which the Accused delivered to Williams to be presented to Stubbs. Among other things, the Petition recited that Verlin Stubbs died intestate; Stubbs was willing to serve and was not disqualified from serving as personal representative of the estate of Verlin Stubbs under the provisions of ORS 113.095; and that the heirs of Verlin Stubbs consisted of Stubbs, three other brothers and a sister. On or about January 28, 1999, Stubbs signed the Petition, which Williams thereafter delivered to the Accused.

14.

On or about February 2, 1999, the Accused filed the Petition in the Circuit Court of the State of Oregon for the County of Linn, Case No. 19866 (hereinafter “Probate Case”). On February 10, 1999, the court signed an Order for Administration of Intestate Estate and Appointment of Personal Representative in the Probate Case, by which Stubbs was appointed to serve as the personal representative of the estate of Verlin Stubbs.

15.

Based on information Williams provided to the Accused, the Accused prepared an inventory of the property of Verlin Stubbs’ estate and delivered it to Williams to be presented to Stubbs. According to the inventory, the estimated total value of Verlin Stubbs’ estate was \$68,981.61, including \$57,481.61 in a money market checking account and a certificate of deposit; and four motor vehicles valued at approximately \$11,500 (hereinafter “Inventory”).

16.

On or about April 13, 1999, Stubbs signed the Inventory certifying that it was a complete inventory of all the property of the estate that had come into his possession or knowledge. Williams returned the signed Inventory to the Accused, and on about May 10, 1999, the Accused filed the Inventory with the court.

17.

In or about April 1999, the Accused prepared Waivers of Notice of Information required by ORS 113.145(1)(a)–(f) to be signed by Verlin Stubbs’ heirs. The Accused delivered the waivers to Williams to be delivered to the heirs for their signatures. In or about late April 1999, Williams returned only two signed waivers to the Accused.

18.

On or about September 15, 1999, based on information Williams provided to the Accused, the Accused prepared a Verified Statement in Lieu of Final Account and Petition for Decree of Final Distribution (hereinafter “Verified Statement”). The Accused delivered the statement to Williams to be presented to Stubbs.

19.

The Verified Statement recited that the total value of the estate was \$68,981.61, consisting of \$57,411.26 in cash, and motor vehicles valued at \$11,500. The Verified Statement also recited that the cash had been used to purchase an investment contract with ReliaStar Insurance Company, Account No. SFUA019797, and that no funds had been distributed from the account. The statement also recited that titles to the four motor vehicles had been transferred to the personal representative; and that all Oregon income, inheritance and personal property taxes due from the estate had been paid, and all required tax returns had been filed.

20.

Verlin Stubbs’ cash funds and other property identified in the Inventory were not used to purchase the ReliaStar Insurance Company annuity, Account No. SFUA019797. The \$57,411.26 identified in the Inventory was withdrawn from Key Bank on February 12, 1999, and was not accounted for in the Verified Statement. On or about September 15, 1999, Stubbs signed the Verified Statement. Williams returned the Verified Statement to the Accused, and on September 23, 1999, the Accused filed the statement with the court.

21.

On or about September 27, 1999, the court signed an Order Approving Verified Statement and Decree of Final Distribution. Pursuant to the order, the Accused was awarded \$1,200 as a reasonable attorney fee, and the remaining assets were to be divided equally among Verlin Stubbs’ five heirs. Based on information Williams provided to the Accused, in or about December 1999, the Accused prepared and delivered Final Distribution Receipts to Williams to be presented to and signed by Verlin Stubbs’ heirs. The distribution receipts did not identify the property or its value distributed to each of the heirs. In or about January 2000, Williams returned signed Final Distribution Receipts to the Accused. On or about April 3, 2000, the Accused filed the receipts with the court.

22.

In or about April 2000, based on information Williams provided to the Accused, the Accused prepared an Order Discharging Personal Representative and Closing Estate, which he thereafter presented to the court. The court signed the order on April 5, 2000 and closed the Probate Case.

23.

Throughout the Accused's representation of Stubbs, the Accused permitted Williams to direct or regulate the Accused's representation. At no time during the representation did the Accused meet, speak to, or otherwise communicate directly with Stubbs. The Accused did not know whether Stubbs existed.

24.

In and between about January 1999 and April 2000, the Accused:

(a) did not confirm that Stubbs wanted the Accused to provide representation and legal services concerning the probate of the estate of Verlin Stubbs;

(b) did not meet, speak to, or otherwise communicate directly with Stubbs;

(c) did not determine or verify Stubbs' mental capacity and that he was otherwise competent to serve as the personal representative of Verlin Stubbs' estate;

(d) did not determine or verify that Verlin Stubbs did not have a will and died intestate;

(e) did not determine the extent, nature and value of Verlin Stubbs' property;

(f) did not obtain and review documents to verify the existence, status and value of Verlin Stubbs' property;

(g) did not determine that Verlin Stubbs owned any interest in real property;

(h) did not identify and include all of Verlin Stubbs' property in the Inventory of the estate;

(i) did not communicate with the persons identified in the Petition as Verlin Stubbs' heirs;

(j) did not provide notice and information concerning the Petition and probate of Verlin Stubbs' estate to the persons required by ORS 113.145(1)(a)–(f);

(k) did not determine and verify that the persons identified in the Petition as the heirs of Verlin Stubbs signed the waivers of notice of information;

(l) did not monitor or determine the expenditure of funds by the personal representative during the probate of Verlin Stubbs' estate;

(m) did not review documents, verify and otherwise determine that property identified in the Inventory and Verified Statement had been used to purchase the ReliaStar Insurance Company investment; did not account for the distribution of \$57,526 in cash identified in the Inventory and Verified Statement;

(n) did not probate the will of Verlin Stubbs;

(o) did not review and verify that all Oregon income, inheritance and personal property taxes due from the estate had been paid, and all required tax returns had been filed;

(p) did not prepare or cause to be prepared and filed all required state and federal tax returns;

(q) did not determine and verify that the heirs of Verlin Stubbs signed the Final Distribution Receipts;

(r) did not determine and verify the amount of the distribution to each of Verlin Stubbs' heirs;

(s) did not determine and verify that each of Verlin Stubbs' heirs received the distribution from Verlin Stubbs' estate;

(t) did not transfer title or ownership of Verlin Stubbs' interest in real property to Stubbs;

(u) did not verify information provided by Williams; allowed Williams to direct the Accused's representation of Stubbs; and

(v) did not consult with lawyers experienced in probate matters for advice concerning his handling of Verlin Stubbs' probate and estate.

25.

The Accused admits that the aforesaid conduct constituted violation of DR 5-108(B) and DR 6-101(A) of the Code of Professional Responsibility.

#### **AMENDMENT TO TRUST AGREEMENT**

26.

In or about early January 1999, Williams asked the Accused to prepare an amendment to the Loyd Stubbs' Revocable Living Trust Agreement to add Williams as a co-successor trustee and change other provisions to the trust agreement. Based on the information provided by Williams, the Accused prepared a First Amendment to the Loyd Stubbs Revocable Living Trust Agreement (hereinafter "First Amendment") pursuant to which Williams was added as a co-successor trustee and other provisions were changed. The Accused delivered the amendment to Williams to be presented to Stubbs. On or about January 28, 1999, Stubbs signed the First Amendment. Thereafter, Williams delivered a copy of the First Amendment to the Accused.

27.

Throughout the representation, the Accused permitted Williams to direct or regulate the Accused's representation of Stubbs concerning the First Amendment to the Loyd Stubbs Revocable Trust Agreement. At no time during the representation did the Accused meet or communicate directly with Stubbs.

28.

In and after about January 1999, the Accused:

(a) did not confirm that Stubbs wanted the Accused to provide representation to prepare the First Amendment to the Loyd Stubbs Revocable Trust Agreement adding Williams as a co-trustee and other provisions to the trust;

(b) did not determine Stubbs' mental capacity and that he was competent to understand and understood the legal nature, meaning and consequences of adding Williams as a co-trustee and other provisions to the trust; failed to determine and verify that Stubbs was not acting under restraint, undue influence, duress or misrepresentation;

(c) did not advise Stubbs concerning the nature, meaning and consequences of adding Williams as a co-trustee and other provisions to the trust;

(e) did not meet or communicate directly with Stubbs; and

(f) did not verify information provided by Williams.

29.

The Accused admits that the aforesaid conduct constituted violation of DR 5-108(B) and DR 6-101(A) of the Code of Professional Responsibility.

### **POWER OF ATTORNEY**

30.

In or about early July 1999, Williams asked the Accused to prepare a power of attorney appointing Williams as Stubbs' agent and attorney in fact. Based on the information provided by Williams, the Accused prepared a Durable Power of Attorney for Stubbs (hereinafter "Power of Attorney") and delivered it to Williams to be presented to Stubbs. Pursuant to the terms of the Power of Attorney, Williams was granted the power: to take possession, sell and dispose of Stubbs' real and personal property in any manner; to make gifts to or for the benefit of Williams, Williams' estate, creditors, the creditors of Williams' estate, and any person whom Williams had a duty to support; to make withdrawals from Stubbs' living trust for the purpose of making gifts to himself and others; and to take other actions for and on Stubbs' behalf.

31.

On or about July 7, 1999, Stubbs signed the Power of Attorney and Williams thereafter delivered a copy thereof to the Accused. On or about July 7, 1999, Williams, using the Power of Attorney, rented a private mail box in Eugene, Oregon, in the name of Loyd Stubbs. Stubbs did not know about the mail box.

32.

On or about July 8, 1999, Williams used the Power of Attorney to open a joint bank account at US Bank in Eugene, Oregon in the name of “John A. Williams or Loyd E. Stubbs” (hereinafter “Joint Account”). Williams directed US Bank to send all bank statements for the Joint Account to the private mail box he had previously rented. Stubbs did not know about the US Bank account or the private mail box.

33.

Between about July 8, 1999, and July 13, 1999, Williams delivered requests to liquidate the annuities Stubbs had purchased from ReliaStar Insurance Company, and also directed that the proceeds of these transactions be transferred to and deposited in the Joint Account Williams had established at US Bank. On July 12 and 13, 1999, ReliaStar Insurance Company liquidated the annuities and mailed checks totaling \$414,968.82 to US Bank in Eugene, Oregon, where they were deposited into the Joint Account.

34.

From and between about July 23, 1999, through September 20, 1999, Williams withdrew and transferred approximately \$414,968.82 of Stubbs’ funds from the Joint Account at US Bank into Williams’ personal accounts he had established at US Bank and Bank of America. On or about September 20, 1999, the Joint Account was closed. On or about August 23, 1999, Williams caused funds he obtained from and belonged to Stubbs to be wire transferred to Belize Bank Limited in Belize, Central America.

35.

Williams wrongfully converted Stubbs’ funds to his own use and benefit, and violated the criminal laws.

36.

Throughout the Accused’s representation of Stubbs, the Accused permitted Williams to direct or regulate the Accused’s representation concerning the Power of Attorney. At no time during the representation did the Accused meet or communicate directly with Stubbs.

37.

In and after about July 1999, the Accused:

(a) did not confirm that Stubbs wanted the Accused to provide representation to prepare the Power of Attorney granting Williams powers and control over Stubbs’ financial and other affairs;

(b) did not meet or communicate directly with Stubbs;



(c) did not determine Stubbs' mental capacity and that he was competent to understand and understood the legal nature, meaning and consequences of the powers granted to Williams by the Power of Attorney;

(d) did not advise Stubbs concerning the nature, meaning and consequences of the Power of Attorney and the powers granted to Williams by the Power of Attorney;

(e) did not determine and verify that Stubbs was not acting under restraint, undue influence, duress or misrepresentation; and

(f) did not verify information provided by Williams.

38.

The Accused admits that the aforesaid conduct constituted violation of DR 5-108(B) and DR 6-101(A) of the Code of Professional Responsibility.

### **SECOND AMENDMENT TO TRUST AGREEMENT**

39.

In or about July 1999, Williams asked the Accused to prepare an amendment to the Loyd Stubbs' Revocable Living Trust Agreement to add provisions for disposition of his tangible personal property; to make cash gifts to Stubbs' girlfriend and Stubbs' nephew; and to provide for disposition of certain real property. Based on the information provided by Williams, the Accused prepared a Second Amendment to the Loyd Stubbs Revocable Living Trust Agreement, which added provisions for disposition of Stubbs' tangible personal property; made cash gifts to Stubbs' girlfriend and his nephew totaling \$75,000; and provided for disposition of certain real property (hereinafter "Second Amendment"). The Accused delivered the amendment to Williams to be presented to Stubbs.

40.

On or about July 7, 1999, Stubbs signed the Second Amendment to the Loyd Stubbs Revocable Trust Agreement. Thereafter, Williams delivered a copy of the amendment to the Accused.

41.

Throughout the representation, the Accused permitted Williams to direct or regulate the Accused's representation of Stubbs concerning the Second Amendment. At no time during the representation did the Accused meet or communicate directly with Stubbs.

42.

In and after July 1999, the Accused:

- (a) did not confirm that Stubbs wanted the Accused to provide representation to prepare the Second Amendment to the Loyd Stubbs Revocable Trust Agreement adding and modifying provisions to the trust;
- (b) did not meet or communicate directly with Stubbs;
- (c) did not determine Stubbs' mental capacity and that he was competent to understand and understood the legal nature, meaning and consequences of the Second Amendment to the Loyd Stubbs Revocable Trust Agreement;
- (d) did not advise Stubbs concerning the nature, meaning and consequences of the Second Amendment to the Loyd Stubbs Revocable Trust Agreement;
- (e) did not determine and verify that Stubbs was not acting under restraint, undue influence, duress or misrepresentation; and
- (f) did not verify information provided by Williams.

43.

The Accused admits that the aforesaid conduct constituted violation DR 5-108(B) and DR 6-101(A) of the Code of Professional Responsibility.

#### **LETTER OF REFERENCE**

44.

In or about September 1999, Williams told the Accused that Stubbs wanted to give Williams a substantial monetary gift, but did not disclose the amount of the gift. On or about September 20, 1999, at Williams' request, the Accused prepared a letter for the benefit of Williams in which the Accused purported to verify that Williams received a monetary gift from Stubbs in 1999.

45.

In the September 20, 1999, letter, the Accused represented that Stubbs was of sound mind and not acting under any restraint, undue influence, duress, or fraudulent misrepresentation; Stubbs was aware of the nature and extent of his property; Stubbs' consideration for the gift was love, friendship, and a desire to leave his family and friends gifts *inter vivos*; Williams was an outstanding member of his community, very active with his church and children's school and education; and the Accused had known Williams for a number of years and that he had come to know Williams as a man of character, with very strong beliefs and values. In making these representations, the Accused knew that some of them were false, and that he had no or insufficient information to make others.

46.

The Accused knew that Williams intended to use, and the Accused intended that Williams use, the September 20, 1999, letter by presenting it to third parties, and that those third parties would rely on the Accused's representations.

47.

The Accused admits that the aforesaid conduct constituted violation of DR 1-102(A)(3) of the Code of Professional Responsibility.

### SANCTION

48.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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. *Duties violated.* The Accused violated duties to his client and the public. *Standards*, §§ 4.5, 5.0.

b. *Mental state.* The Accused's conduct demonstrates knowledge and negligence. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. "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.

The Accused knew he had never met and never made an effort to meet his client. He knew that the client was elderly. The Accused also knew he had not confirmed the client's wishes and that he had not made any assessment of the client's competency or understanding of the legal documents. The Accused also knew that he was allowing a third party, James Williams, to direct the representation and work to be performed for the client.

The Accused's conduct also demonstrates negligence insofar as he failed to understand the most fundamental legal doctrines and procedures. He simply utilized forms found in a CLE publication to prepare documents when Williams, the person arranging for and directing his services, asked for them. It did not occur to the Accused that he needed to meet the client, or to assess the client's mental competency or understanding of the effect of the documents.

c. *Injury.* The *Standards* define "injury" as "harm to the client, the public, the legal system or the profession which results from a lawyer's conduct." "Potential injury" is harm to the client, the public, the legal system, or the profession that is

reasonably foreseeable at the time of the lawyer's conduct. *Standards*, p. 7. An injury does not need be actual, but only potential to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

The Accused caused actual and potential injury to his client. The Accused did not "intend" to cause his client harm at least insofar as he did not act with that objective. The Accused did not knowingly conspire with Williams to steal the client's funds. Williams manipulated Loyd Stubbs. He also manipulated the Accused. Williams recognized the Accused as someone he could use to accomplish the objectives. The documents that the Accused prepared and delivered to Williams were used by Williams to access Stubbs' assets.

A guardian/conservator was eventually appointed for Loyd Stubbs. Legal action was taken against the Accused and the annuity company that cashed in and disbursed proceeds of Stubbs' annuity. The Professional Liability Fund paid policy limits—\$300,000—to Stubbs' estate. Additional funds were paid by the annuity company. Williams was indicted and convicted of criminal conduct in federal court. The Accused cooperated with the US Attorney's Office and testified against Williams. Although a substantial portion of the funds taken have been reimbursed, that action has been at a cost to Stubbs' estate. Attorneys for his estate continue collection efforts.

d. *Aggravating factors.* "Aggravating factors" are considerations that justify an increase in the degree of discipline to be imposed. *Standards*, § 9.22. There are multiple offenses and a pattern of misconduct. *Standards*, § 9.22(d), (c). The Accused's client was vulnerable. He was elderly and suffered progressive symptoms of dementia.

e. *Mitigating factors.* The *Standards* also recognize mitigating factors. *Standards*, § 9.32. The Accused has no prior record of formal discipline. *Standards*, § 9.32(a). He did not act with dishonest motives. *Standards*, § 9.32(b). The Accused cooperated with the disciplinary authorities in the investigation and in resolving this disciplinary proceeding. *Standards*, § 9.32(e). Although the Accused was admitted to practice law in 1996, at the time of the misconduct in this case, he had limited experience. *Standards*, § 9.32(f). Forced or compelled restitution is neither an aggravating or mitigating factor. *Standards*, §§ 9.4(a), 9.32(l).

49.

The *Standards* provide that suspension is generally 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 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.

50.

Case law is in accord with the *Standards*. See, e.g., *In re Chambers*, 292 Or 670, 642 P2d 286 (1982) (two-year suspension for violation of DR 6-101(A), DR 7-101(A), and DR 7-102(A)(5)); *In re Gresham*, 318 Or 162, 864 P2d 360 (1993) (91-day suspension for violation of DR 6-101(A), DR 6-101(B), and DR 1-102(A)(4)); *In re Rudie*, 290 Or 740, 662 P2d 321 (1983) (seven-month suspension for failure to provide competent representation, neglect, and failure to carry out a contract of employment); *In re Blakely*, 11 DB Rptr 59 (1997) (six-month suspension for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(A), and DR 7-102(A)(3) and (5)).

51.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended for six (6) months for violation of DR 1-102(A)(3), DR 5-108(B), and DR 6-101(A) of the Code of Professional Responsibility. The suspension shall be effective April 30, 2006, or three (3) days after this stipulation is approved by the Disciplinary Board, whichever is later.

EXECUTED this 17th day of April 2006.

/s/ James W. Britt

James W. Britt  
OSB No. 96484

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. 05-96  
 )  
SHARON HOCKETT, )  
 )  
Accused. )

Counsel for the Bar: Jane E. Angus  
Counsel for the Accused: Susan D. Isaacs  
Disciplinary Board: None  
Disposition: Violation of DR 6-101(B). Stipulation for  
Discipline. 60-day suspension.  
Effective Date of Order: May 26, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Sharon Hockett (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 is suspended from the practice of law for 60 days for violation of DR 6-101(B) of the Code of Professional Responsibility, effective May 26, 2006, or three days after the date of this order, whichever is later.

DATED this 15th day of May 2006.

/s/ John A. Berge  
John A. Berge  
State Disciplinary Board Chairperson

/s/ R. Paul Frasier  
R. Paul Frasier, Region 3  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Sharon Hockett, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law on September 11, 1981, and has been a member of the Oregon State Bar continuously since that time, having her office in Douglas 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 July 16, 2005, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violation 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 AND VIOLATION

5.

In or about August 2002, the court entered a judgment and decree of dissolution of marriage in the *Matter of Helen D. Smith and Bobby L. Smith*, Douglas County Circuit Court Case No. 02-DO-01147DS (hereinafter “Dissolution Case”). On or about October 31, 2003, Bobby Smith filed a motion for order to show cause and supporting affidavit concerning custody/parenting time in the Dissolution Case (hereinafter “Post Decree Proceeding”).

6.

In or about November 2003, Helen D. Smith (hereinafter “Client”) retained the Accused to represent her interests concerning the Post Decree Proceeding. On or about December 17, 2003, the Accused received a \$5,000 retainer for legal services to be performed for the Client. On or about May 11, 2004, a stipulated supplemental

judgment concerning the Post Decree Proceeding was filed with the court. The court entered the supplemental judgment on or about May 21, 2004.

7.

The Accused asserted that the Client was entitled to an award of her reasonable attorney fees concerning the Post Decree Proceeding pursuant to ORS 107.135 and ORCP 68. Pursuant to Oregon Rules of Civil Procedure (hereinafter "ORCP") 68 C(a), the Accused was required to file the statement for attorneys fees not later than 14 days after entry of judgment. In or about May 2004, the Accused prepared a Statement for Attorney Fees and a supporting affidavit and exhibit concerning the Post Decree Proceeding. The Accused served a copy of the statement on counsel for Bobby Smith and delivered the original to the court. The Accused did not use the correct case number. The court did not file the original Statement for Attorney's Fees and returned it to the Accused. In June 2004, counsel for Bobby Smith filed objections to the Accused's Statement for Attorney Fees, a copy of which was served on the Accused. On January 10, 2005, the Client terminated the Accused's representation and requested that the Accused return the unused portion of the retainer.

8.

In and between June 2004 and January 2005, the Accused:

- (a) did not use the correct case number on the Statement for Attorney Fees concerning the Post Decree Proceeding and did not resubmit the statement for filing with the court;
- (b) did not communicate with the court concerning the award of attorney fees in the Post Decree Proceeding;
- (c) did not communicate with opposing counsel concerning objections to the Statement for Attorney Fees in the Post Decree Proceeding;
- (d) did not request a hearing or take other action for decision concerning the award of attorney fees and any objections thereto in the Post Decree Proceeding;
- (e) did not timely review her mail and messages and did not timely respond to the Client's communications concerning the Post Decree Proceeding and the award of attorney fees;
- (f) did not monitor the Client's case concerning the Post Decree Proceeding and the award of attorney fees;
- (g) did not deliver the unearned portion of the retainer to the Client until after the Client Assistance Office sent the Client's complaint to the Disciplinary Counsel's Office for further investigation; and
- (h) did not take action to advance and protect the Client's interests and claim for the award of attorney fees in the Post Decree Proceeding.



9.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to her in violation of DR 6-101(B) of the Code of Professional Responsibility.

### SANCTION

10.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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. *Standards*, § 3.0.

a. *Duty Violated.* In violating DR 6-101(B), the Accused violated a duty to her client. *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 to accomplish a particular result. “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. The Accused knew she had agreed to handle the Client’s claim concerning the Post Decree Proceeding and to seek an award of the client’s attorney fees. The Accused knew that the Client made numerous inquiries concerning the status of the court’s decision concerning the award of attorney fees. The Accused also knew that she had taken and was taking no action to advance the claim or to inquire with the court to obtain a decision.

c. *Injury.* The *Standards* define “injury” as “harm to the client, the public, the legal system or the profession which results from a lawyer’s conduct.” “Potential injury” is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s conduct. *Standards*, p. 7. An injury does not need be actual, but only potential to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

The Accused caused actual and potential injury to her client. The Client was frustrated by the Accused’s lack of communication and the absence of a decision concerning the award of attorney fees. After the client complained to the Bar, the Accused returned the unused portion of the retainer. The Accused did not obtain a decision from the court concerning the Client’s claim for an award of her attorney fees.

d. *Aggravating Factors.* “Aggravating factors” are any considerations that justify an increase in the degree of discipline to be imposed. *Standards*, § 9.22. Several aggravating factors are present in this case. The Accused was admitted to

**Cite as *In re Hockett*, 20 DB Rptr 114 (2006)**

practice in 1981 and has substantial experience in the practice of law. *Standards*, § 9.22(i). Her client was vulnerable. *Standards*, § 9.22(h). The Accused also has a prior record of discipline. *In re Hockett*, 16 DB Rptr 151 (2002). *Standards*, § 9.22(a). Also, the Accused did not fully cooperate and timely produce documents during the prosecution of this case. *Standards*, § 9.22(e).

e. *Mitigating Factors*. The *Standards* also recognize mitigating factors. *Standards*, § 9.32. The Accused did not act with dishonest or selfish motives. *Standards*, § 9.32(b). Also, she is remorseful. *Standards*, § 9.32(l).

11.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42. Case law is in accord with the *Standards*. See, e.g., *In re Holm*, 285 Or 189, 590 P2d 233 (1979); *In re Meyer*, 328 Or 220, 970 P2d 647 (1999); *In re Labahn*, 335 Or 357, 67 P3d 381 (2003).

12.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for sixty (60) days for violation of DR 6-101(B), the suspension effective May 26, 2006, or three (3) days after the Disciplinary Board approves this stipulation, whichever is later.

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 this stipulation shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 2nd day of May 2006.

/s/ Sharon Hockett

Sharon Hockett  
OSB No. 81266

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus  
OSB No. 73014  
Assistant Disciplinary Counsel

Cite as 340 Or 573 (2006)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of )  
)  
ALLAN F. KNAPPENBERGER, )  
)  
Accused. )

(OSB No. 03-104; SC S52757)

En Banc

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

Argued and submitted March 7, 2006. Decided May 18, 2006.

Peter R. Jarvis, of Hinshaw & Culbertson LLP, Portland, argued the cause and filed the briefs for the Accused. With him on the briefs was David L. Elkanich.

Stacy J. Hankin, 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 effective date of this decision.

**SUMMARY OF THE SUPREME COURT OPINION**

The Oregon State Bar charged the Accused with one violation of DR 6-101(B) (neglect of a legal matter) based on his failure, over an eight-year period, to complete certain acts that were necessary to perfect his client's right to a share of her ex-husband's pension after their divorce. A trial panel of the Disciplinary Board found that the Accused committed that violation and ordered that the Accused be suspended from the practice of law for a period of one year. *Held*: The Accused is suspended from the practice of law for one year, commencing 60 days from the effective date of this decision.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
 )  
Complaint as to the Conduct of ) Case No. 04-07  
 )  
MIKE KILPATRICK, )  
 )  
Accused. )

Counsel for the Bar: Greg Hendrix; Martha Hicks  
Counsel for the Accused: None  
Disciplinary Board: Carl W. Hopp, Chair; William E. Flinn; Dr. John  
McBee, Public Member  
Disposition: Trial Panel Opinion. Dismissed.  
Effective Date of Opinion: May 20, 2006

**TRIAL PANEL’S DECISION**

**Findings of Fact**

1. During or about October 2000 the accused undertook to represent Ruth Seal, personal representative of the Estate of Mary Joyce Stevenson, in connection with the probate of the decedent’s will.

2. The will contained a specific bequest of all of Stevenson’s Series EE bonds to Howard K. Rabb, to be held in trust by him for the benefit of her brother Robert L. Fisher. The will directed the trustee to hold and distribute the trust funds “for (Fisher’s) maintenance, support and education.” The will also provided that the trustee could “act freely in all matters concerning the trust . . . without the necessity of obtaining the approval or consent of any person interested or of any court.” Finally, the will provided for the disposition of any trust assets remaining at the time of Fisher’s death. Both Rabb and Fisher were Washington residents at all material times.

3. On December 22, 2000, the accused wrote to Rabb, sending him a copy of the will and asking that Rabb contact the accused to make arrangements for a Washington attorney to prepare a trust instrument.<sup>1</sup> Prior to March 15, 2001, Rabb called the accused on one or more occasions to discuss preparation of the trust instrument and other trust-related matters. He authorized the trust instrument and generally authorized the accused to perform whatever legal services were needed in connection with the trust and its assets.

4. On March 5, 2001, the County Court for Grant County, Oregon entered an order approving ‘a partial distribution of all assets (of the estate) according to the Will, except \$50,000.00 shall be retained in the estate bank account at US Bank to meet all remaining debts and expenses of the estate.’”

5. No later than March 15, 2001, an attorney-client relationship existed between the accused and Rabb with respect to trust matters. The relationship continued to exist at all material times.

6. No later than March 15, 2001, in his dealings with Seal and Rabb, the accused treated the estate assets and trust assets as separate and discrete, even though all those assets remained in his physical possession.

7. On March 29, 2001, the accused retained a Washington attorney, Roger A. Castelda, to prepare the trust instrument. Thereafter, Castelda prepared the instrument and sent the accused a statement for \$650.00.

8. Sometime around April of 2001 the personal representative suggested to the accused that it would be more appropriate for Castelda’s statement and other trust-related costs and attorney fees to be paid from the trust assets, i.e., the Treasury bonds, rather than from estate assets.<sup>2</sup> The accused agreed and, in phone conversations shortly thereafter, he advised Rabb that Castelda’s statement and other trust-related costs and fees would have to be paid from trust assets. Rabb agreed. Because Rabb had no funds of his own to advance to the trust, he gave the accused consent to cash one or more of the Treasury bonds to pay trust-related costs and fees as they were incurred.

9. On or about May 1, 2001, the accused caused the personal representative to cash one of the Treasury bonds. The proceeds were deposited in the

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<sup>1</sup> The Bar and the accused offered conflicting testimony as to whether such a document was necessary, given the trust language in the will. However, the Bar does not contend that the decision to obtain the document constituted an ethical violation.

<sup>2</sup> It appears the accused was sending monthly information-only statements to Seal that showed costs and attorney fees as they were incurred.

personal representative's checking account. Castelda's statement was paid from these proceeds.<sup>3</sup>

10. During the first half of 2001, in phone conversations, Rabb asked the accused for advice on whether to cash the remaining Treasury bonds. He asked the accused to retain the bonds until that issue was resolved. The issue was resolved and on October 30, 2001 the accused mailed the remaining bonds to Rabb, except for one that was retained to pay for trust-related costs and attorney fees.

11. On about February 11, 2002, the accused caused the personal representative to cash the retained Treasury bond. The proceeds of \$903.20 were deposited in the personal representative's checking account. On March 13, 2002, the proceeds were paid into the accused's account in full payment of trust-related costs and attorney fees.<sup>4</sup>

12. On October 31, 2002, the County Court for Grant County entered an order approving the final account and distribution of estate assets. Included in the final account were a "partial distribution" of \$21,213 to Fisher,<sup>5</sup> the \$650.00 paid to Castelda and the \$903.20 paid to the accused.

13. In his dealings with the personal representative and the trustee, the accused was acting as their attorney.

14. In early 2004 Fisher contacted a Washington attorney, Paul J. Allison, to complain that he had not received any funds from the trust. While looking into a claim against the trustee, Allison discovered that the accused had cashed the two Treasury bonds to pay for trust-related costs and attorney fees. Allison felt the trust instrument was unnecessary and, also, that the other costs and fees charged to the trust should have been paid from the estate. He send a letter to both Castelda and the accused, demanding they return the \$650.00 and the \$903.20 to the trust. Castelda complied. The accused did not. Allison then wrote a letter addressed to the Professional Liability Fund (PLF) and to Disciplinary Counsel at the Oregon State Bar. From the PLF, he demanded reimbursement of the \$903.20. Of Disciplinary Counsel, he requested "such action as is appropriate under the circumstances."

16. Although a lack of good record keeping made it difficult for the accused to present a complete, documented and orderly description of his dealings with the

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<sup>3</sup> It appears the balance of these particular proceeds were ultimately applied to payment of trust-related costs and attorney fees or paid to the trust on final distribution.

<sup>4</sup> The actual balance of these costs and fees was about \$1,400.00. But, in his October 30, 2001 letter, the accused had told Rabb that he would accept the proceeds of the bond in full satisfaction.

<sup>5</sup> This number probably represents the actual or approximate value of the Treasury bonds mailed to Rabb on October 30, 2001.

various actors, his trial testimony was credible. To the extent Rabb's trial testimony was inconsistent with our factual findings, that testimony was not credible.

### Conclusions of Law

#### A. Illegal Fee

1. The trust provisions in the decedent's will were sufficient to create the trust and to authorize the trustee (a) to take actual or constructive possession of the trust assets, (b) to retain the accused, and (c) to give consent to sell or liquidate trust assets.

2. No later than March 15, 2001, the trust assets were in the constructive possession of the trustee.

3. Because the trust assets were in the constructive possession of the trustee on and after March 15, 2001, and because the accused treated the estate assets and trust assets as separate and discrete from that date forward, the costs and attorney fees paid to the accused and Castelda did not represent expenses incurred in connection with the settlement of the decedent's estate and, therefore, the accused did not violate ORS 116.007(1).<sup>6</sup>

4. A fee is not illegal, within the meaning of DR 2-106(A), simply because it could have been, but was not, charged against the principal of an estate by virtue of ORS 116.007(1).

5. Because the trust assets were in the constructive possession of the trustee on and after March 15, 2001, and because the accused treated the estate assets and trust assets as separate and discrete from that date forward, the trust assets were, as of that date, no longer the "property of the estate" as that term is used in ORS 114.325(1). Therefore, the accused did not violate ORS 114.325(2)(b) when he caused the personal representative, with the consent of the trustee, to cash the two Treasury bonds.<sup>7</sup>

6. For one or more of the above reasons, the accused did not violate DR 2-106(A).

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<sup>6</sup> If the accused had physically transferred the Treasury bonds to Rabb before March 29, 2001, any legal services performed thereafter by the accused at Rabb's request could have properly been charged against the trust assets. We do not believe the lack of a physical transfer meant that ORS 116.007(1) was still in play. There is nothing in the statute that invites such an interpretation.

<sup>7</sup> In retrospect, it appears the accused should have taken steps to have title to the Treasury bonds transferred to Rabb no later than March 15, 2001. Then, Rabb, and not the personal representative, could have cashed them. But, the Bar does not contend that the accused's use of the personal representative for this purpose, and under these circumstances, constituted an ethical violation.

**B. Conflict of Interest**

1. A conflict of interest, whether actual or likely, can exist only if there is an objectively reasonable basis for concluding that the interests of concurrent clients are or may become adverse.

2. In this case, there was no objectively reasonable basis for the trustee to contend that the trust-related costs and attorney fees should have been charged against the principal of the estate by virtue of ORS 116.007(1), and the trustee did not so contend.

3. Therefore, the accused did not violate any of the provisions of DR 5-105.

**C. Disposition**

The charges against the accused are dismissed. BR 6.1(a)(i).

If we had found a violation of DR 2-106(A) or DR 5-105, or both, we would have chosen as a sanction a public reprimand as permitted by BR 6.1(a)(ii).

CARL W. HOPP JR. LLC

/s/ Carl W. Hopp, Jr.  
Carl W. Hopp Jr., OSB 75176  
Trial Panel Chairperson  
Date: 3/16/06

/s/ John G. McBee DDS  
John G. McBee, DDS  
Trial Panel Member  
Date: 3-11-06

HURLEY, LYNCH & RE, P.C.

/s/ William E. Flinn  
William E. Flinn, OSB 67034  
Trial Panel Member  
Date: 3-14-06



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 05-22  
)  
CHARLES P. DUFFY, )  
)  
Accused. )

Counsel for the Bar: Sarah Bostwick, Andrew T. Reilly  
Counsel for the Accused: Bradley F. Tellam  
Disciplinary Board: Sandra A. Hansberger, Chair; Milton C. Lankton;  
Gail C. Gengler, Public Member  
Disposition: Violation of DR 1-102(A)(3) and DR 1-102(A)(4).  
Trial Panel Opinion. Public reprimand.  
Effective Date of Opinion: May 24, 2006

**OPINION OF THE TRIAL PANEL**

The above entitled matter came before the Trial panel for hearing on November 30, 2005. The accused appeared, represented by attorney Brad Tellam. The Bar appeared, represented by Sarah Bostwick of the State Professional Responsibility Board and by attorney Andrew Reilly. Kelly Giampa, John Richards, Elizabeth Sempler, and Donald Bowerman testified for the Bar. The accused as well as Martha Hicks, the Honorable Robert Jones, and the Honorable Edward Levy, testified on behalf of the accused.

**INTRODUCTION**

The accused was admitted to the Bar in 1975. He was an assistant to Portland Mayor Bud Clark, and then a liaison for the Portland Police Bureau from 1985–1989. He has been in private practice, primarily representing plaintiffs in automobile accident cases, but also handles other types of civil cases, including a small number of medical malpractice cases. Mr. Duffy is also a part-time volunteer for the Jesuits. Mr. Duffy has never before been the subject of Bar discipline.

**FACTS OF THIS CASE**

The Bar alleges that the accused engaged in dishonest conduct by destroying or concealing a document and/or misrepresenting facts to the court. In addition, the

bar alleges that this conduct by the accused was prejudicial to the administration of justice.

In 2002 Manfred Groesch walked into Mr. Duffy's office. Mr. Groesch was a German immigrant in his mid-sixties whose daughter, Linda Van Hee, had recently died following treatment at the Delta Clinic in Portland. The Delta Clinic is a methadone treatment facility and does not have insurance.

Mr. Groesch had originally sought assistance from another lawyer in The Dalles, Oregon, who "worked up the case." According to Mr. Duffy, the other lawyer had hired a medical professional to review the case, but did not hire an actual medical doctor. The previous expert believed that Ms. Van Hee's death was caused by the fact that the methadone administered by the Delta Clinic was fatal because of Ms. Van Hee's hepatitis and the condition of the liver. The Delta Clinic and its employees were apparently not aware of Ms. Van Hee's medical history because no recent history was taken.

Ms. Van Hee, a heroin addict in her mid-thirties at the time of her death, had tried many times to fight her addiction. Following the completion of a residential treatment program at the DePaul Clinic about six months to a year prior to her death, Ms. Van Hee had taken small doses of heroin. When she became concerned about a full relapse, she went to the Delta Clinic for methadone treatment. She was in the facility for two days. At the end of the second day she was released third to her parents' care to continue her dose of methadone at her parents' home. She died in her parents' home on the morning of the third day. The paramedics arrived at the Groesch's home within two minutes of the emergency call and a full autopsy was later performed. No drugs, other than methadone, were found in her body. The medical examiner concluded she died from methadone intoxication.

Mr. Duffy, realizing that this was a difficult case, agreed to represent Mr. Groesch as the personal representative of Linda Van Hee's estate against the Delta Clinic and the medical professionals involved in that Clinic and in Ms. Van Hee's care. Mr. Groesch had waived any claims he personally might have had, and the claim was brought on behalf of her estate for the benefits of her two teenage children.

Mr. Duffy retained an economist and Dr. Ceasar, a medical doctor. Dr. Ceasar reviewed the medical records and treatment of Ms. Van Hee, and ultimately concluded that it was not the decedent's liver damage in conjunction with the methadone that caused her death, but was instead that she had been administered too high a dose of methadone. The amount administered would have been appropriate for a full-blown heroin addict, but not for Ms. Van Hee, who had been taking only small amounts of the substance since the conclusion of her residential treatment program only six months before.

At the time Mr. Duffy filed suit, there were six named defendants, including the Clinic, the medical director of the Clinic, the supervising doctor, and the nurse practitioner, Mr. Richards, who was actually responsible for Ms. Van Hee's care. There were four defense attorneys involved in the case. Defense counsel requested medical records from Ms. Van Hee for the past 20 years, in addition to counseling and other records. Mr. Duffy complied with these requests, and by all accounts was very cooperative and courteous.

The relationship between Mr. Duffy and Kelly Giampa, the defense lawyer for Mr. Richards, took a dramatic turn at the deposition of Mr. Groesch. Mr. Groesch's testimony was taken over a two-day period. There were no problems when the first defense attorney asked questions of the witness. Ms. Giampa was the second to ask questions. Ms. Giampa asked Mr. Groesch the following types of questions, "Are you aware that your daughter had been sexually abused?" "Are you aware that she was a thief?" "Are you aware that your daughter had been arrested?"<sup>1</sup> Mr. Duffy became incensed at these questions during the deposition and objected to them. Ms. Giampa asked Mr. Duffy several times whether he wanted to take a break so that the attorneys could discuss the potential relevance of the questions. Mr. Duffy declined. Mr. Duffy ultimately permitted the questioning to continue and his client answered the questions. However, he called Ms. Giampa "cold hearted" and became very hostile toward her. At some point during the deposition, Ms. Giampa asked Mr. Groesch whether his daughter's body was warm to the touch when he discovered her.<sup>2</sup> Mr. Groesch was crying and visibly shaken during the deposition.

Following the deposition, Mr. Duffy was upset and expressed his dislike of Ms. Giampa to at least one of the other defense lawyers. Mr. Duffy ultimately settled the case with the other defendants (or dismissed them as parties) but did not settle with defendant Richards. Mr. Duffy explained that it was Mr. Richards who administered the lethal doses of methadone and who was responsible for taking her medical history upon admission to the Clinic. In addition, it appears that Defendant Richards was insured. Mr. Duffy stated that he believed he had a better case against Richards without the other defendants in the case. Ms. Giampa believed that her

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<sup>1</sup> Ms. Giampa stated that it was necessary to understand the relationship between father and daughter because the Mr. Groesch had asserted a claim for loss of companionship. Mr. Duffy stated that Mr. Groesch had waived any claims on his own behalf and was only pursuing the case for the benefit of Ms. Van Hee's minor children.

<sup>2</sup> Ms. Giampa explained that her medical experts believed that the time of death was critical and that the temperature of the body was important. Mr. Duffy explained that the medical technicians arrived within two minutes of the discovery of the body and that the information concerning the temperature of the body, as well as the autopsy's time of death was a much more appropriate way to get that information.

client was the most tangentially involved and that the decision to proceed against her client was a vindictive move by Mr. Duffy.<sup>3</sup>

Shortly before the trial, Mr. Duffy was talking with another defense lawyer, Mike Gutzler, who recently lost a case because he was unable to establish with his medical expert that it was medically probable that the actions of a doctor caused the death. Instead, the doctor in Mr. Gutzler's case testified only that it was "possible" that the doctor caused the death. The two discussed of the importance of working with the expert witness to get the right language. Toward the end of August 2004, Mr. Gutzler sent Mr. Duffy some language he thought was helpful in working with the medical expert. (*See Ex. 1.*) During this time, and beginning in August of 2004, Mr. Duffy was spending full time, at least four to five days a week, working on the Groesch matter. He put the letter from Mr. Gutzler on the corner of his desk. Within a few days, he gave the Gutzler letter to his paralegal, Vetta, with instructions to prepare the letter "our way." Vetta began a draft letter to Dr. Ceasar. In a few days, Mr. Duffy went to review the letter and made changes and suggestions while working over Vetta's shoulder. This took about five minutes. The final version of the letter was placed on his desk; he signed it and sent it out to Dr. Ceasar on or about September 2, 2004. (*Ex. 2; Attached as App. A.*) Mr. Duffy had never before written such a letter to an expert, although he frequently uses experts in his trials. The purpose of the letter was to confirm Dr. Ceasar's testimony and to make certain that Dr. Ceasar was using the correct language. Mr. Duffy agrees that he assumed the letter would be in Dr. Ceasar's file.

Mr. Duffy explained that he does not recall ever talking with Dr. Ceasar about the letter after he sent it. Mr. Duffy spoke with Dr. Ceasar several times, and had, over the course of time written about eleven letters to Dr. Ceasar. (*See Ex. 104.*) Of the eleven letters to Dr. Ceasar, only two of those letters were during the summer of 2004 when Mr. Duffy was spending full-time preparing for trial in this case. Mr. Duffy met Dr. Ceasar for dinner the evening before the trial, but the conversation was mostly social. Dr. Ceasar did have his file with him at the time.

Dr. Ceasar testified on September 7, 2004. Following his direct examination, Ms. Giampa asked for a recess to review Dr. Ceasar's file so that she could review the file before her cross-examination. Mr. Duffy and Ms. Giampa have different recollections of what happened with regard to Dr. Ceasar's file on this day. No party introduced the court transcript, so we are unable to clarify what happened. Ms. Giampa testified that the court called a recess to give Ms. Giampa an opportunity to review the file. However, after the recess was granted, Mr. Duffy merely told her that Dr. Ceasar did not have his file with him. According to Ms. Giampa, she had

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<sup>3</sup> Ms. Giampa testified that one of the defense lawyers told her that Duffy had admitted he wanted to leave Richards in because he wanted to "get back at her." Duffy denies this, and the other two defense lawyers who testified at the hearing did not have any such conversations with Duffy.

to tell the clerk that she needed the judge's assistance and that it was only when the judge came back on the bench and inquired about the file that Mr. Duffy revealed that the file was in Dr. Ceasar's car. According to Ms. Giampa, the judge ordered Dr. Ceasar to go and retrieve the file. According to Mr. Duffy, Ms. Giampa said she needed to review the file in open court before the recess and that Duffy asked Dr. Ceasar where the file was and when he responded that the file was in his car, he instructed Dr. Ceasar to retrieve the file.

Dr. Ceasar's file was about 10 inches thick. Ms. Giampa reviewed the file with her client, Mr. Richards, in the courtroom. According to Mr. Richards, the September 2, 2004, letter from Duffy to Ceasar was about two thirds of the way into a 10-inch thick file. According to Ms. Giampa it was near the top. Ms. Giampa thought the letter to Dr. Ceasar was inappropriately suggestive of a particularly worded answer and she intended to cross-examine Dr. Ceasar with the letter. Because the court ended up taking the testimony of other witnesses out of order before her cross examination, either she or Mr. Richards put the letter back in the file and returned the file to either Dr. Ceasar or Mr. Duffy. Dr. Ceasar kept the file with him and kept it in his car. Dr. Ceasar states that he did not review the file between the time of his testimony and his cross-examination.

Dr. Ceasar's testimony was scheduled to resume on September 14. Shortly before court began, Ms. Giampa saw Mr. Duffy and Dr. Ceasar talking in the hall of the courthouse. They were standing near a window well, with a large file on the ledge of the window well. Ms. Giampa assumed that this was Dr. Ceasar's file. Ms. Giampa approached Mr. Duffy and informed him that she would again need Dr. Ceasar's file. Mr. Duffy stated that when he and Dr. Ceasar were done talking, they walked the 20 steps to the courtroom and handed the file to Ms. Giampa. Ms. Giampa looked through the file at least two times trying to locate the September 2 letter. She also asked Mr. Duffy to look through the file.

When she could not find the letter, the following questioning of Dr. Ceasar by Ms. Giampa took place before the judge (Ex. 3):

- Q. Last week when you brought the file here there was a letter in this file dated September 2, 2004 from Mr. Duffy. Do you recall that letter?
- A. Not specifically, no.
- Q. Do you recall receiving a letter from Mr. Duffy about a week or so ago about your testimony about his trial?
- A. I received lots of letters from Mr. Duffy. I don't remember a specific one. If it's in there, I can verify that I received it.
- Q. In your file there are two letters from Mr. Duffy. Did you receive more letters from Mr. Duffy that aren't here?

A. Possibly more than two letters overall, yes. I've been involved in the case for over a year.

Q. Mr. Duffy wrote you a letter on September 2, 2004, which said along the following lines, dear doctor—

Mr. Duffy: Your Honor, do we have any letter? Is she going to testify to this letter? I don't know what this is about.

The Court: Can you show me the letter?

Ms. Giampa: The letter was in his file last week and it is not in his file today.

The Court: Is there a letter to look at?

Ms. Giampa: There is not a letter to look at.

The Court: Then we're not talking about it, unless there's some exception.

(End of proceedings as requested for purposed of this excerpt.)

According to Mr. Duffy, there was some addition discussion that as not transcribed.

The following discussion then took place after the jury left the courtroom.

The Court: Do you want to talk about it, Ms. Giampa?

Ms. Giampa: My question to Dr. Ceasar would be, did you get a letter from Mr. Duffy last week which said, I'm going to ask you this question and you should answer this.

There was a letter in his file that I reviewed on Thursday dated a particular date which said exactly that. He testified he brought the entire file back with him. That letter is not in there, so I obviously don't have the letter to show him.

But my question would be simply that question, did you get a letter that said that, or something along those lines.

Mr. Duffy: I don't know what "something along those lines" is.

Ms. Giampa: I can quote you the letter.

The Court: Where is it?

Ms. Giampa: The letter was in his file Thursday and it's been taken out of his file.

Mr. Duffy: She had that file for a long time in her possession, and I have no idea—we gave it to her. I don't know where it is. If there's a letter, she had it.

Ms. Giampa: I didn't have the expert's file—

The Court: Have you gone through the entire file?

Ms. Giampa: Yes, and it's been taken out of the file.

Mr. Duffy: Did you mark it when you had it? Did you do anything to it? Did you make a copy?

Ms. Giampa: No, I didn't make a copy. It's the expert's file. So I will ask him if he received a letter along those lines. If he says no, he says no, and I can't impeach him on it. But I think I can ask if he received the letter.

The Court: You don't talk to people about documents unless you have the documents. That's a standard rule.

Ms. Giampa: Well, Judge, I would have the document if Dr. Ceasar hadn't taken it out of his file.

Mr. Duffy: We don't know that, and I'm not going to accept that. Maybe she took it out of the file. I don't know what letter she's talking about.

The Court: Do you want to have Dr. Ceasar answer some questions about the letter and put that on the record?

Ms. Giampa: I would.

The Court: All right. Let's bring him in.

. . .

At that point, the Court allows Ms. Giampa to resume questioning Dr. Ceasar. Dr. Ceasar again stated that he was not certain he had received a letter dated September 2 from Mr. Duffy. She then asked the following questions:

Q. Did you receive a letter from Mr. Duffy in the week or so before the trial began which said, Dear Dr. Ceasar, I'm going to ask you this question: Did John Richards meet the standard of care? Your answer should be."

Did you get a letter like that from Mr. Duffy?

A. Not that I recall. We had conversations where he was asking my opinion and that specific came up. He said when—if I were to ask you or when I ask you did Mr. Richards meet the standard of care, your answer will be, and then I would tell him my answer. But, you know, Mr. Duffy didn't have to tell me what to say.

Q. Did you receive a letter from Mr. Duffy which said, "Dear Dr. Ceasar, I'm going to ask you the following question, did the dosing of Ms. Van Hee cause her death? Your answer should be."

A. Not that I recall.

Q. That would be my offer of proof, judge.

The Court: Any questions, Mr. Duffy?

Mr. Duffy: I don't have any.

In response to additional questions from Ms. Giampa, Dr. Ceasar stated that he left the file in the back seat of his car and picked up the same stack to bring to court the second time. He stated that he "didn't even review anything." When asked whether Mr. Duffy reviewed the file, Dr. Ceasar stated, "Yes, he looked through the file before I gave it to you. He didn't take any papers out."

When asked if he wanted to be heard, Mr. Duffy stated:

"But we talked about—you know, when you ask a question about care and diligence, it's my job to make sure that, based on his opinion, he's going to agree with the standard of care question. I'll do that, but that doesn't mean that I put words in his mouth.

I want to say on that record that I really resent this. Because this is an accusation that somehow I'm trying to suborn this witness's testimony and put words in his mouth and say something that is not the case. I think to interject that in front of the jury would be terrible.

Mr. Duffy testified at the disciplinary hearing that at the time of this exchange with the court he had no recollection of the letter that he wrote on September 2, only 12 days earlier. He testified at the disciplinary hearing that he wished he had recalled the letter at the time of the trial, or that the court or someone had asked him to check his file to look for a copy of the September 2 letter. However, according to Mr. Duffy, no one asked him to do this, and he did not think of it at the time. (Mr. Duffy had four or five boxes of documents in the courtroom with him, but he does not bring his correspondence file with him. He testified that he could have called his office assistant to locate a letter but he did not think of it at the time and he believed the matter was over because the judge was not interested in exploring this further.)

The panel does not need to address the appropriateness of the September 2, 2004, letter. The Bar does not contend that the letter was an unethical attempt to suborn perjury, but merely states that the letter was fair game for cross-examination of Dr. Ceasar. Mr. Duffy has also stated that he believed the letter was appropriate and had no concerns about the letter.

### **ELEMENTS AND BURDEN OF PROOF**

The Bar has the burden of establishing misconduct by clear and convincing evidence. 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 accused



admits the existence of the September 2 letter to the Bar when he provided a copy to the Bar in response to the ethics complaint filed in this matter.

The Bar alleges three violations in this case: (1) that the accused engaged in dishonesty when he removed the September 2, 2004, letter from Dr. Ceasar's file in violation of DR 1-102(A)(3); (2) that the accused violated DR 1-102(A)(3) when he informed the court that he did not know what letter Ms. Giampa was referencing; and (3) that this conduct was prejudicial to the administration of justice in violation of DR 1-102(A)(4).

Misrepresentation requires a two-part inquiry: (1) whether the lawyer knew that the statement was a misrepresentation and (2) whether the lawyer knew the representation was material. *In re Bennett*, 331 Or 270, 277, 14 P3d 66 (2000). A lawyer need not have an intent to deceive or commit fraud in order to engage in conduct involving misrepresentation. *In re Hiller*, 298 Or 526, 532, 694 P2d 540 (1985). A knowing failure to disclose a material fact to the court may also be the basis of a misrepresentation. *In re Gustafson*, 327 Or 636, 968 P2d 367 (1998).

## DISCUSSION

The panel concludes that there is not clear and convincing evidence in this case to conclude that the accused took the letter from Dr. Ceasar's file. The file was loose—with some page stapled, but others not. There were no rubber bands, binder clips, or clips in the file. There is not clear and convincing evidence that the accused was presented with the opportunity to remove the letter from the file. The Bar's own investigation revealed that Dr. Ceasar denies any knowledge of the letter, and also acknowledges that Dr. Ceasar does not believe he talked about the letter with the accused.

However, the panel concludes that there is clear and convincing evidence that during the September 14 trial in this matter the accused knew, at least by the end of the inquiry into this matter, that Ms. Giampa was referring to the letter he wrote Dr. Ceasar regarding the standard of care issue with specific reference to the date of the letter and its contents. The Accused's own statements during the hearing indicate that he was concerned that Ms. Giampa was accusing him of improperly coaching Dr. Ceasar. He had written the letter only 12 days prior to the inquiry, and during his statements at the trial, he seemed to be defending the language he used in his letter. At that point in time, Mr. Duffy certainly knew about the letter he wrote regarding the standard of care. The panel concludes that it is not plausible that Mr. Duffy did not recall a letter he had written only 12 days earlier. This was one of only 2 letters in a period of many months to key witness. Also, this was a relatively short letter which dealt with a specific issue of language which needed to be used by a key expert witness. The letter dealt with a point previously unknown to Mr. Duffy prior to his conversations with an attorney friend. Mr. Duffy was concerned that he could lose his case if he did not have his expert testify using certain specific words.

At the disciplinary hearing, Mr. Duffy acknowledged the existence of the September 2 letter. The panel believes that Mr. Duffy failed on September 14 to reveal something that he had a duty to reveal to the Court and opposing counsel—that is, that he was aware of the September 2 particularly after Ms. Giampa’s detailed description of the letter and its contents. Had Mr. Duffy acknowledged the existence of the letter, the Court may have asked him to produce the letter, or the Court may have excluded Dr. Ceasar’s testimony based on the failure to produce the letter. His conduct in failing to acknowledge the existence of the letter was conduct prejudicial to the administration of justice.

### **SANCTION**

The *ABA Standards for Imposing Lawyer Sanctions* and Oregon case law notes that four factors should be considered when determining appropriate sanction: (1) the duty violated; (2) the lawyer’s mental state; (3) the potential or actual injury caused by the lawyer’s misconduct; and (4) the existence of aggravating or mitigating factors.

The accused violated an important duty to his profession and that is his duty to maintain the integrity of the profession. He also violated a duty to the court and the opposing party when he realized the existence of the letter and failed to acknowledge its existence to the Court and persisted in his position to the Court that he was unaware of such a letter.

The sanction imposed should be greater if the accused acted with an intent to deceive than if he acted with mere knowledge that his representation was false. The sanction should be less severe if he was merely negligent. Because there is not evidence that Mr. Duffy actually removed the letter from the file, or that he was aware of the letter until Ms. Giampa further described the letter, Mr. Duffy’s fault was in not acknowledging to the court of the existence of the letter as soon as his memory was refreshed about the September 2 standard of care letter. His omission at that point in time was “conscious awareness of the nature or attendant circumstances of his conduct” (i.e., that the court was relying on the statement that he did not know what letter defense counsel was referencing) “but without the conscious objective or purpose to accomplish a particular result” (i.e., to commit a fraud).

Potential or actual injury is another factor to be considered. In this case, there was ultimately a defense verdict, so arguably there was no actual injury. However, there was a potential injury—and an actual injury to the system of justice.

Aggravating factors include the accused’s substantial experience in the practice of law. In addition, since the accused has not acknowledged that he recalled the September 2 letter at the time of trial in this matter, he cannot express remorse now for his conduct at the time.

There are numerous mitigating factors in this case. The accused has no prior disciplinary record, and by all accounts has an excellent reputation for truth and veracity. It is likely that in this case the accused became consumed by the case, his close sympathy with the grieving father, and with his animosity toward opposing counsel.<sup>4</sup> Also, as noted above, his action was more of an omission than a commission. Given the accused's excellent reputation, the panel is inclined to believe that this is not the type of violation that will be repeated by the accused.

According to the *ABA Standards*, a reprimand is ordinarily appropriate "when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public or the legal system." The accused should be reprimanded.

DATED this 24th day of March 2006.

/s/ Sandra Hansberger

Sandra Hansberger  
Panel Chair

/s/ Milton Lankton

Milton Lankton, Esq.  
Panel Member

/s/ Gail Gengler

Gail Gengler  
Public Member

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<sup>4</sup> During the disciplinary hearing, Ms. Giampa testified that the accused would make comments to her like, "that was the worst cross examination I've ever seen." According to Ms. Giampa, he would frequently refuse to talk with her. The accused does not deny that his conduct to Ms. Giampa was unprofessional in this regard. While this evidence was presented as background information and is not the basis of a disciplinary complaint, the panel considers that Mr. Duffy's unprofessional conduct, though inappropriate, was out of character for him.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
 )  
Complaint as to the Conduct of ) Case Nos. 05-40, 05-124, 05-125,  
 ) 05-126, 05-147  
WILLIAM N. KENT, )  
 ) SC S53496  
Accused. )

Counsel for the Bar: David P. R. Symes; Amber Bevacqua-Lynott

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4),  
DR 6-101(B), DR 9-101(A), DR 9-101(C)(3),  
DR 9-101(C)(4), RPC 1.15-1(c), RPC 1.15-1(d),  
RPC 1.15-1(e), RPC 1.16(d), RPC 3.3(a)(1),  
RPC 8.1(a)(2), and RPC 8.4(a)(3). Stipulation for  
Discipline. Two-year suspension.

Effective Date of Order: July 24, 2006

**ORDER ACCEPTING STIPULATION FOR DISCIPLINE**

Upon consideration by the court.

The court accepts the Stipulation for Discipline. The accused is suspended from the practice of law in the State of Oregon for a period of two years, effective July 24, 2006.

DATED this 23rd day of May 2006.

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

### STIPULATION FOR DISCIPLINE

William N. Kent, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 24, 1978, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 December 30, 2005, 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)(3) (conduct involving dishonesty or misrepresentation) (two counts); DR 1-102(A)(4) (conduct prejudicial to the administration of justice); DR 6-101(B) (neglect of a legal matter); DR 9-101(A) (failure to deposit or maintain client funds in trust) (two counts); DR 9-101(C)(3) (failure to account for client funds or property) (two counts); DR 9-101(C)(4) (failure to promptly provide client property upon request); RPC 1.15-1(c) (failure to deposit into trust funds paid in advance to be withdrawn only as earned) (two counts); RPC 1.15-1(d) (failure to promptly deliver entitled property) (three counts); RPC 1.15-1(e) (failure to maintain disputed property in trust and distribute undisputed portion); RPC 1.16(d) (failure to take reasonable steps upon withdrawal, including reasonable notice and refund of advance payment of fee that has not been earned); RPC 3.3(a)(1) (knowingly make a false statement of fact to a tribunal); RPC 8.1(a)(2) (failure to respond to a lawful demand for information in a disciplinary matter); and RPC 8.4(a)(3) (conduct involving dishonesty or misrepresentation reflecting adversely on fitness to practice). 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.

**BOUCHET MATTER**

(Case No. 05-40)

**Facts**

5.

On August 2, 2002, Tracy Bouchet (hereinafter “Bouchet”) retained the Accused to represent him in obtaining custody of his son. Bouchet paid the Accused a \$1,000.00 retainer. During the course of the representation, the Accused did not provide Bouchet with any accounting of this retainer.

6.

On August 19, 2002, the Accused filed a Motion to Modify Custody (hereinafter “modification”) on Bouchet’s behalf.

7.

On April 3, 2003, counsel for Bouchet’s former wife filed a Motion for Summary Judgment regarding the modification and served it on the Accused. The Accused did not file a response to the Motion for Summary Judgment or take other action to protect the modification proceeding. On April 29, 2003, the Motion for Summary Judgment was granted, and Bouchet’s modification proceeding was dismissed.

**Violations**

8.

The Accused acknowledges that by failing to respond to the Motion for Summary Judgment and failing to maintain complete records of all funds and other properties of a client coming into his possession and render appropriate accounts regarding them, the Accused violated DR 6-101(B) and DR 9-101(C)(3).

**MARSHALL MATTER**

(Case No. 05-124)

**Facts**

9.

On August 25, 2004, on behalf of his client, Misty Marshall, the Accused filed with the Lane County Circuit Court a Motion to Postpone the *Perry and Marshall* case, with a supporting Affidavit of Counsel. The Accused represented to the court that trial of the *Perry and Marshall* case should be postponed because the Accused had another case, *State v. Heffelfinger*, set for the same day and that the *Heffelfinger* case had been rescheduled for trial “several times.” In fact, the *Heffelfinger* case had never been rescheduled for trial and the Accused was aware that the *Heffelfinger* case was not likely to go to trial.

10.

The Accused's statement that trial in the *Heffelfinger* case had been postponed several times was false and the Accused either knew it was false or knew that he had insufficient knowledge about the case to make the statement.

11.

As a result of the Accused's statements to the court, the presiding judge was required to hold a conference with the Accused and the prosecutor in the *Heffelfinger* matter to inquire as to the basis for the Accused's statements in his affidavit in support of postponement.

### **Violations**

12.

The Accused acknowledges that by engaging in conduct described in paragraphs 9 through 11 he violated DR 1-102(A)(3) and DR 1-102(A)(4).

### **BLEGEN MATTER**

**(Case No. 05-125)**

### **Facts**

13.

In January 2004, Melinda Blegen (hereinafter "Blegen") hired the Accused to file a personal bankruptcy. She paid him a \$1,200.00 flat fee. There was no written fee agreement. Mistakenly believing the fee was earned on receipt, the Accused did not deposit Blegen's retainer into his trust account and did not keep records regarding the time spent on Blegen's bankruptcy. The Accused did not maintain complete records of Blegen's funds in his possession, including receipts, relevant bank records or Blegen's client ledger, and is therefore unable to render an appropriate account to Blegen regarding her retainer.

### **Violations**

14.

The Accused acknowledges that by failing to deposit or maintain client funds in trust and failing to maintain complete records of all funds and other properties of a client coming into the possession of the Accused and render appropriate accounts to the client regarding them, the Accused violated DR 9-101(A), RPC 1.15-1(c), DR 9-101(C)(3), and RPC 1.15-1(d).

**DEMENIO MATTER**

**(Case No. 05-126)**

**Facts**

15.

Beginning in August 2003, the Accused was appointed to represent Michael Demenio (hereinafter “Demenio”) in a number of criminal matters. At a sentencing hearing on his remaining cases in mid-September 2004, Demenio requested that the Accused provide Demenio with copies of all his files. The Accused indicated that he would provide these materials to Demenio.

16.

On or about October 11, 2004, the Accused’s assistant sent Demenio a copy of the discovery materials in one of Demenio’s files. Despite a subsequent attempt to contact the Accused regarding his remaining files, Demenio did not receive a response or any of the other requested files.

17.

In November 2004, having not received the promised materials or other word from the Accused, Demenio complained to the Bar. The Accused did not provide Demenio’s complete file materials until May 2005.

**Violations**

18.

The Accused admits that by failing to promptly provide client property in his possession upon a request by the client, he violated DR 9-101(C)(4) and RPC 1.15-1(d).

**DiMARCO MATTER**

**(Case No. 05-147)**

**Facts**

19.

In December 2003, Gaetano DiMarco (hereinafter “DiMarco”) hired the Accused to bring a contempt action against Michael Smith (hereinafter “Smith”), to enforce court-ordered visitation with Smith’s son (DiMarco’s grandson). DiMarco gave the Accused a \$500.00 retainer. There was no written fee agreement. The Accused was unable to effectuate service on Smith and the contempt action was abandoned.



20.

In November 2004, DiMarco hired the Accused to defend him against a civil stalking petition brought by Smith. DiMarco provided the Accused with an additional \$600.00 retainer. There was no written fee agreement. Although the Accused initially deposited DiMarco's retainer into his trust account, he does not have records reflecting that it was maintained in trust until earned. The Accused contends that he performed sufficient work to earn the total retainer.

21.

In December 2004, the Accused appeared with DiMarco at a hearing on the stalking petition and recognized Smith as a former client of the Accused in a criminal matter. The Accused represented to the parties and court that a conflict of interest might exist due to his previous representation of Smith. The hearing was postponed to determine if a conflict existed.

22.

Thereafter, the Accused made no attempt to verify whether a conflict of interest existed in his representation of both Smith and DiMarco, or determined that no such conflict of interest existed. Nevertheless, on January 26, 2005, the Accused filed a motion to withdraw from representing DiMarco, based on the assertion that he had "an ethical conflict of interest based on upon (*sic*) prior representation of . . . Smith." The Accused also telephoned DiMarco and made similar statements to him regarding his need to withdraw.

23.

The Accused's statement that he had a conflict of interest due to his prior representation of Smith and his separate similar statement to DiMarco were both false and the Accused knew they were false when he made the misrepresentations.

24.

On February 1, 2006, the court allowed the Accused's motion to withdraw. The Accused did not provide DiMarco his client file or take other steps to ensure that DiMarco had successor counsel or was otherwise not prejudiced by the Accused's withdrawal.

25.

Following the Accused's withdrawal, DiMarco requested an accounting and refund of his remaining retainer. The Accused sent DiMarco a January 30, 2005, billing statement (hereinafter "billing summary") indicating that the Accused had performed legal services and expended costs totaling \$392.00, leaving \$708.00 of the \$1,100.00 total retainer DiMarco had paid. DiMarco made a demand for the \$708.00 but the Accused refused, claiming the billing summary contained errors and further

claiming that he had earned DiMarco's entire retainer. However, the Accused has not provided DiMarco with a corrected billing summary.

26.

On June 9, 2005, Disciplinary Counsel's Office of the Oregon State Bar received a complaint from DiMarco expressing concerns about the Accused's conduct. On June 15, 2005, Disciplinary Counsel's Office forwarded the complaint to the Accused and requested an explanation by July 6, 2005. The Accused made no response to the Bar's request, despite an additional request from Disciplinary Counsel's Office on September 2, 2005, that he do so. Receiving no response, on September 16, 2005, the matter was referred by Disciplinary Counsel's Office to the Lane County Local Professional Responsibility Committee (hereinafter "LPRC") for investigation. The Accused ultimately cooperated with the LPRC investigation.

### **Violations**

27.

The Accused acknowledges that the aforesaid conduct described in paragraphs 19 through 26 violated DR 1-102(A)(3), RPC 8.4(a)(3), DR 9-101(A), RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.15-1(e), RPC 1.16(d), and RPC 3.3(a)(1). The Accused further acknowledges that by failing to respond to a lawful demand for information from Disciplinary Counsel's Office in connection with his disciplinary matter, he violated RPC 8.1(a)(2).

### **SANCTION**

28.

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 preserve client property and his duty of diligence owed to clients (*Standards*, §§ 4.1, 4.4). The most important of a lawyer's ethical duties are those obligations which a lawyer owes to clients. *Standards* at 5. The Accused also violated duties owed to the legal system (*Standards*, § 6.1) and the legal profession (*Standards*, § 7.0).

b. *Mental State.* The Accused acted knowingly with respect to all violations. "Knowledge" is defined as having 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.

c. *Injury*. There was actual injury to the Accused's clients: Bouchet had his modification dismissed; Blegen had her bankruptcy delayed while the Accused held her funds; Demenio was denied access to his files; and DiMarco was forced to appear without representation and has yet to have his funds accounted for. The Accused caused actual injury to the court in the Perry and Marshall matter and the Heffelfinger matter, because Judge Bearden had to convene a special conference to confront the Accused regarding the status of those cases.

d. *Aggravating Factors*. Aggravating factors include:

1. The Accused has a prior record of discipline. *Standards*, § 9.22(a). He has been twice reprimanded: once for two violations of DR 6-101(B) (neglect of a legal matter), *In re Kent*, 9 DB Rptr 175 (1995); and once for a violation of DR 1-102(A)(4) (conduct prejudicial to the administration of justice). *In re Kent II*, 17 DB Rptr 93 (2003). The Accused has also been twice admonished: once in 1984 for violations of DR 6-101(B) (neglect of a legal matter) and DR 7-101(A)(2) (intentionally failing to carry out a contract of employment) (Case No. 84-6); and again in 1999 for a violation of DR 9-101(A) (failure to deposit or maintain client funds in trust) (Case No. 97-98). Letters of admonition are considered as evidence of past misconduct if the misconduct that gave rise to that letter was of the same or similar type as the misconduct at issue in the case at bar. *In re Cohen*, 330 Or 489, 500, 8 P3d 953 (2000).

2. The Accused exhibited a dishonest or selfish motive. *Standards*, § 9.22(b).

3. There is a pattern of misconduct both in that the Accused engaged in prior similar misconduct to that at issue in this proceeding, and that the Accused's misconduct in this case spans more than three years. *Standards*, § 9.22(c).

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

5. Both the administration of justice and the Accused's incarcerated clients were vulnerable victims, dependent on the Accused to timely and properly attend to the matters entrusted to him. *Standards*, § 9.22(h).

6. The Accused has substantial experience in the practice of law, having been admitted in Oregon in 1978. *Standards*, § 9.22(i).

7. The Accused has not provided an amended accounting to support his claimed entitlement to the full amount of DiMarco's retainer or otherwise provided a refund of the amount reflected on the Accused's only billing statement. *Standards*, § 9.22(j).

e. *Mitigating Factors*. The following mitigating factor is applicable:

1. During the time when some of the misconduct in this proceeding occurred, the Accused was experiencing personal problems resulting from questionable practices by a long-time secretary who had separated from the Accused's employment. *Standards*, § 9.32(c).

29.

The *Standards* indicate that a period of suspension is appropriate for the Accused's misconduct. *Standards*, §§ 4.12, 4.42, 6.12, 7.2, 8.2. On balance, the aggravating factors greatly outweigh the single mitigating factor. The result is that a lengthy period of suspension is warranted.

30.

Oregon cases agree. Misrepresentations to the court are alone sufficient to impose a substantial suspension. *See, e.g., In re Dugger*, 334 Or 602, 54 P3d 123 (2002) (nine-month suspension); *In re Davenport*, 334 Or 298, 49 P3d 91, *recons.*, 335 Or 67 (2002) (two-year suspension); *In re Eadie*, 333 Or 42, 36 P3d 468 (2001) (three-year suspension); *In re Huffman*, 331 Or 209, 13 P3d 994 (2000) (two-year suspension). The misrepresentations in *Eadie*, *Davenport*, and *Huffman* were intentional misrepresentations. The Accused's misrepresentations are more akin to that in *Dugger*, where the misrepresentations were found to be negligent and knowing. Like the Accused, *Dugger* also contained a charge for conduct prejudicial to the administration of justice. However, unlike *Dugger*, the Accused has been previously reprimanded for conduct prejudicial to the administration of justice, resulting in an increase of the otherwise applicable sanction.

Neglect similar to that of the Accused, combined both with a failure to account for client funds and/or prior discipline for similar misconduct has resulted in multiple-month suspensions. *See, e.g., In re Knappenberger*, 337 Or 15, 90 P3d 614 (2004) (90-day suspension); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (60-day suspension); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (120-day suspension). The Accused has been admonished and reprimanded for neglect in the past, again adding to the length of the appropriate suspension.

The Accused's substantial experience in the practice of law also dictates that his failure to deposit or maintain client funds in trust is deserving of an additional multiple-month suspension. *See In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (so stating and imposing 60-day suspension); *see also In re Wyllie*, 331 Or 606, 19 P3d 338 (2001) (four-month suspension); *In re Williams*, 314 Or 530, 840 P2d 1280 (1992) (63-day suspension); *In re Hedges*, 313 Or 618, 836 P2d 119 (1992) (63-day suspension); *In re Starr*, 326 Or 328, 952 P2d 1017 (1998) (six-month suspension). However, the Accused's sanction on this violation must be increased to reflect his prior discipline for the same violation.

Finally, the Accused's knowing failure to respond to Disciplinary Counsel's requests for information increases his overall sanction. *See, e.g., In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (120-day suspension); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (120-day suspension); *In re Hereford*, 306 Or 69, 756 P2d 30 (1988) (126-day suspension).

Combining the applicable sanctions to address the Accused's violations, a suspension of two years is appropriate for the Accused's multiple violations of the disciplinary rules.

31.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for two years for violations of DR 1-102(A)(3) (two counts), DR 1-102(A)(4), DR 6-101(B), DR 9-101(A) (two counts), DR 9-101(C)(3) (two counts), DR 9-101(C)(4), RPC 1.15-1(c) (two counts), RPC 1.15-1(d) (three counts), RPC 1.15-1(e), RPC 1.16(d), RPC 3.3(a)(1), RPC 8.1(a)(2), and RPC 8.4(a)(3), the sanction to be effective 60 days after approval, or as otherwise directed by the Supreme Court.

32.

In addition, on or before June 1, 2008, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$3,350.00, incurred for costs, including court reporter expenses, service and witness fees, and costs associated with the procurement of documents. Should the Accused fail to pay \$3,350.00 in full by June 1, 2008, 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.

33.

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

**Cite as *In re Kent*, 20 DB Rptr 136 (2006)**

EXECUTED this 19th day of April 2006.

/s/ William N. Kent

William N. Kent

OSB No. 78052

EXECUTED this 21st day of April 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 99028

Assistant Disciplinary Counsel

Cite as 340 Or 654 (2006)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
 )  
Complaint as to the Conduct of )  
 )  
LEE S. WERDELL, )  
 )  
Accused. )

(OSB No. 02-130; SC S51668)

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

Argued and submitted March 8, 2005. Decided May 25, 2006.

Lee S. Werdell, *in propria persona*, Medford, argued the cause and filed the brief for himself.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar. With her on the brief was Louis L. Kurtz, Bar Counsel, Eugene.

Before Carson, Chief Justice, and Gillette, Durham, Riggs, De Muniz, Balmer, and Kistler, Justices. (Carson, J., was Chief Justice when case was argued; DeMuniz, J., was Chief Justice when decision was rendered.)

PER CURIAM

The complaint is dismissed.

**SUMMARY OF THE SUPREME COURT OPINION**

The Oregon State Bar brought disciplinary action against the accused lawyer who had been convicted of the felony of hindering prosecution, on the ground that that criminal conviction requires discipline under *former* DR 1-102(A)(2) (engaging in criminal conduct reflecting adversely on a lawyer’s honesty, trustworthiness, or fitness to practice law) and under ORS 9.527(2) (authorizing imposition of sanction when lawyer convicted of felony. A trial panel of the Disciplinary Board found that the Accused had committed the charged violations and ordered that the Accused be suspended from the practice of law for a period of one year. *Held*: In light of fact that court, in an opinion decided to this day, held that facts of case do not permit Accused to be convicted of underlying charge, Bar’s legal theory in the disciplinary action is not well taken. The complaint is dismissed.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 06-06  
)  
MICHAEL JAMES WICKS, ) SC S53267  
)  
Accused. )

**ORDER IMPOSING RECIPROCAL DISCIPLINE**

Upon consideration by the court.

The Oregon State Bar (Bar) has notified this court that the accused has been disciplined for misconduct in the States of Arizona and Washington. The Oregon State Professional Responsibility Board of the Oregon State Bar recommended a 180-day suspension from the practice of law in Oregon. The accused did not file an answer or otherwise respond to the Bar's Notice of Discipline in this court. The court declines the recommendation and orders that the accused be suspended from the practice of law in Oregon for 60 days, effective 30 days from the date of this order.

DATED this 31st day of May 2006.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.

Presiding Justice

*De Muniz, C.J., and Gillette, J., not participating*

**SUMMARY**

By order dated May 31, 2006, the supreme court suspended Michael James Wicks of Arizona for 60 days pursuant to BR 3.5 (reciprocal discipline). The Arizona Supreme Court had censured Wicks and placed him on probation for a period of one year. Later, for the same conduct, the Washington Supreme Court reprimanded Wicks on reciprocal discipline.

In October 2005 the Arizona court signed an order censuring Wicks for violation of Ariz. R. S. Ct., Rule 42, ER 1.15 (equivalent to *former* DR 9-101(A), which requires the deposit of client funds into a lawyer trust account), Ariz. R. S. Ct., Rule 43 (equivalent of *former* DR 9-101(C)(4), which requires lawyers to maintain complete records of trust account transactions) and Ariz. R. S. Ct. Rule 44 (equivalent of *former* DR 9-101(A) and DR 9-101(C)(3) and (4), which require the



deposit of client funds into trust, the maintenance of complete trust account records and the prompt refund of client funds as requested). The violations arose from complaints relating to five different client matters in which Wicks displayed a pattern of trust account mismanagement. He did not maintain sufficient records to determine whether he had sufficient trust funds to pay disbursements Wicks made on behalf of clients. Wicks also made disbursements out of his trust accounts when there were not sufficient funds in those accounts to cover the disbursements. On several occasions, Wicks received settlement proceeds and distributed them to the clients at times when the balance in his trust account had fallen below the amount owed to the clients.

Wicks did not file an answer to the BR 3.5 proceedings, and the Oregon Supreme Court ordered that he be suspended from the practice of law in Oregon for 60 days, effective June 30, 2006.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 06-31  
)  
JOHN C. MOORE, )  
)  
Accused. )

Counsel for the Bar: Linn D. Davis  
Counsel for the Accused: Rene Holmes  
Disciplinary Board: None  
Disposition: Violation of RPC 3.3(a)(5). Stipulation for  
Discipline. Public reprimand.  
Effective Date of Order: June 7, 2006

**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 RPC 3.3(a)(5).

DATED this 7th day of June 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Jill A. Tanner  
Hon. Jill A. Tanner, Region 6  
Disciplinary Board Chairperson

**STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused 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 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 March 18, 2006, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of RPC 3.3(a)(5) of the Rules of Professional Conduct. 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.

The Accused represented a client in a domestic relations matter which required a Uniform Support Affidavit. The Accused received a signed, un-notarized affidavit from his client. On April 22, 2005, the Accused contacted his client by telephone and obtained verification that his client was the person who signed the affidavit and that his client swore to the truth of the statements in the affidavit. The Accused, who had obtained a notary license from the Corporations Division of the Oregon Secretary of State, then used his notary stamp to attest to and verify his client's signature, even though his client was not personally present. The Accused noted the fact that his client had not personally appeared by handwriting the words "by telephone" in the jurat on the affidavit.

6.

The Accused subsequently filed with the court the Uniform Support Affidavit which he had notarized based on the telephone conversation with his client. The Accused knew that there was no express telephonic exception to the notary rules. However, the Accused chose to proceed in this manner, with the disclosure that the acknowledgment was "by telephone," rather than to submit an un-notarized document with an explanatory cover letter, because the Accused believed his conduct was

consistent with the purposes to be served by the notary law. As a result of the strict requirements of the notary statute, the Accused admits that he acted in violation of ORS 194.515(2) by witnessing and attesting to the signature of a person when that person had not appeared before him personally as required.

### Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 3.3(a)(5).

### 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.* By failing to adhere to his duties as a notary, the Accused violated a duty owed to the profession. *In re Walter*, 247 Or 13, 427 P2d 96 (1967); *Standards*, § 7.0.

b. *Mental State.* The Accused acted knowingly. Although the Accused believed his conduct was consistent with the purposes to be served by the notary law, he knew there was no express exception to the requirement that notarizations be made in person and was unaware of any Oregon case authority that permitted telephone notarization.

c. *Injury.* The Accused’s improper notarization of the affidavit caused potential injury to the legal system and to the opposing party since the enforcement of the affidavit as a sworn statement was jeopardized.

d. *Aggravating Factors.* Aggravating factors include:

1. In 1996, the Accused was suspended from the practice of law for a 60-day period for violation of DR 2-106(A) (excessive fee) as a result of conduct that occurred in a single matter in 1993 and 1994. *Standards*, § 9.22(a); *In re Moore*, 10 DB Rptr 187 (1996).

2. The Accused has substantial experience in the practice of law having been admitted to the practice of law in 1992. *Standards*, § 9.22(i).

e. *Mitigating Factors.* Mitigating factors include:

1. The Accused did not have a dishonest or selfish motive. The Accused disclosed the fact that the affiant had not appeared personally before him at the relevant place in the notary stamp. *Standards*, § 9.32(b).

2. The Accused displayed a cooperative attitude toward these proceedings and made full and free disclosure to Disciplinary Counsel's office. *Standards*, § 9.32(e).

3. Although the Accused's prior offense and sanction were serious, the prior offense is fairly remote, having occurred over 10 years prior to the instant offense, and the prior offense does not involve conduct that is similar to the misconduct at issue. *Standards*, § 9.32(m); *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997).

9.

The *Standards* suggest that, prior to the consideration of aggravating or mitigating circumstances, suspension is generally appropriate when an attorney 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. 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, reprimand is generally appropriate. *Standards*, § 7.3.

10.

Oregon cases involving improper notary acts have generally resulted in suspension where they involved dishonesty and elements of fraud as well as actual injury or interference. See *In re Kluge*, 332 Or 251, 27 P3d 102 (2001) (attorney who acted as a notary knowing that his license had expired and committed multiple additional violations was subjected to a three-year suspension); *In re Weidner*, 320 Or 336, 883 P2d 1293 (1994) (attorney disbarred when he misrepresented whether he was a notary and whether the signer had appeared before him and committed multiple additional violations); *In re Benson*, 311 Or 473, 814 P2d 507 (1991) (attorney who intentionally notarized deed containing false signature suspended for one year). Where those aggravating factors are not present, improper notary acts have resulted in public reprimand. See *In re Sims*, 284 Or 37, 584 P2d 766 (1978) (inexperienced attorney, believing he had authority to sign for client, signed and notarized client's name on verification of a response in a marriage dissolution); *In re Scott*, 255 Or 77, 464 P2d 318 (1970) (attorney acknowledged signature of person who had not appeared before her and attorney was innocent of any ulterior motives or purposes); *In re Walter*, 247 Or 13, 427 P2d 96 (1967) (when attorney performed notary act without appearance of the signer, reprimand is the minimum penalty).

11.

The conduct of the Accused is substantially distinguished from previous cases involving formal discipline in that the affiant had appeared before the Accused and the identity of the affiant was verified by the Accused. The Accused merely failed to require the affiant to appear personally at the time that the Accused performed the notarial act. Further, the Accused did not misrepresent whether the affiant had

appeared personally before him and there was no element of fraud or ulterior motive. Finally, the potential for harm or interference was minimal. Given these significant distinguishing factors and the remoteness of the Accused's prior unrelated offense, public reprimand is appropriate.

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 3.3(a)(5), the sanction to be effective immediately upon approval by the Disciplinary Board.

EXECUTED this 24th day of May 2006.

/s/ John C. Moore

John C. Moore

OSB No. 92099

EXECUTED this 30th day of May 2006.

OREGON STATE BAR

By: /s/ Linn D. Davis

Linn D. Davis

OSB No. 03222

Assistant Disciplinary Counsel

Cite as 341 Or 13 (2006)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of )  
)  
LAUREN J. PAULSON, )  
)  
Accused. )

(OSB No. 01-100; SC S52465)

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

Argued and submitted January 4, 2006. Decided June 8, 2006.

Lauren J. Paulson, Aloha, argued the cause and filed the briefs on his own behalf.

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

Before De Muniz, Chief Justice, and Gillette, Durham, Riggs, and Balmer, and Kistler, Justices. (Carson, J., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for six months, commencing 60 days from the effective date of this decision.

**SUMMARY OF THE SUPREME COURT OPINION**

This case arises out of the Accused’s representation of the Nutts, a retired couple who were experiencing difficulties with the installation of their modular home. The Accused knew that the Nutts’ concerns related to delays in the installation and the quality of the contractor’s work. The Accused encouraged the Nutts to pursue recovery from their mortgage broker and lender for failing to disclose certain terms of credit for the Nutts’ construction loan. Neither their mortgage broker nor lender had caused the delays or faults in the installation. The Accused filed a complaint that claimed, without explanation, that the mortgage broker and lender were liable to the Nutts for hundreds of thousands of dollars in damages. Over the course of the state proceeding, opposing counsel made numerous attempts to get the Accused to explain and quantify the Nutts’ damages and to consider settlement. However, the Accused

refused to comply, even when ordered to do so by the court. On July 1, 1999, the Nutts appeared at trial, unaware that their case had been decimated by a series of Rule 21 and summary judgment motions. At this point, instead of attempting to protect the Nutts from being held liable for attorney fees, the Accused chose to focus his efforts on attacking the court for what were, in his opinion, unfavorable rulings. The Accused failed to appear at the attorney fee hearing, at which the court ordered the Nutts to pay over \$61,000. In the ensuing disciplinary proceeding, a trial panel concluded that the Accused had violated DR 1-102(A)(4) during the Nutts' bankruptcy proceeding, but that his conduct during the state court proceeding in which he had represented the Nutts had not. The trial panel imposed a 45-day suspension from the practice of law. The Bar sought review. *Held*: On de novo review, the supreme court determined that the Accused's conduct in both the Nutts' state court and bankruptcy court proceedings constituted violations of DR 1-102(A)(4). The court concluded that there are circumstances in which a lawyer's cumulative actions are so egregious as to constitute a violation of DR 1-102(A)(4) and warrant sanction. As a result, the court suspended the Accused from the practice of law for six months.



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-12
	)	
DAVID I. BEAN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	David J. Elkanich
Disciplinary Board:	None
Disposition:	Violation of RPC 3.3(d) and RPC 8.4(a)(4). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	June 12, 2006

**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 violations of RPC 3.3(d) and RPC 8.4(a)(4).

DATED this 12th day of June 2006.

/s/ John A. Berge  
 John A. Berge, Esq.  
 State Disciplinary Board Chairperson

/s/ Susan G. Bischoff  
 Susan G. Bischoff, Esq., Region 5  
 Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

David I. Bean, 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 19, 2001, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On March 15, 2006 a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 3.3(d) (failing to inform a tribunal of all material facts in an *ex parte* proceeding) and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice). 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.

Prior to February 2005, the Accused represented Heather Lang (hereinafter “Mother”) in a dissolution of marriage proceeding against Jason Lang (hereinafter “Father”), which resulted in a Stipulated Judgment awarding the parties joint custody of their only child.

6.

On February 25, 2005, the Accused notified Father that the Accused would be appearing at the Clackamas County Courthouse at the time set for *ex parte* matters on February 28, 2005, to present a motion and proposed order to the court requesting that custody of the parties’ child be awarded to Mother pursuant to ORS 107.139

(hereinafter “emergency motion”). Mother also notified Father of the appearance at *ex parte*.

7.

When the Accused and Mother appeared on February 28, 2005, they found Father already waiting in the hallway outside the chambers and courtroom of the Honorable Ronald Thom (hereinafter “Judge Thom”), who was scheduled to hear *ex parte* matters that day. The Accused recognized Father but had no contact with him and was unclear whether Father had notified the court of his presence.

8.

After a short while, Judge Thom’s clerk appeared in the hallway and inquired whether anyone was present for *ex parte* matters. The Accused gave the emergency motion to the clerk. The Accused did not inform the clerk that Father was present, and Father did not make his presence known to the clerk.

9.

The clerk then went into Judge Thom’s chambers and returned a few minutes later with an order awarding custody to Mother signed by Judge Thom. The Accused did not inform the clerk that Father was present or that the Judge had signed the order based on the emergency motion without hearing from Father, as contemplated by ORS 107.139. The Accused filed the order and left the courthouse.

10.

Thereafter, Father informed the court that he had been present to be heard on the emergency motion, and Judge Thom rescinded the order.

### **Violations**

11.

The Accused admits that, by failing to provide the court with all material facts to enable the court to make an informed decision on his *ex parte* emergency motion, the Accused violated RPC 3.3(d) and RPC 8.4(a)(4).

### **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 his duties to the legal system in two respects: (1) he engaged in conduct prejudicial to the administration of justice by failing to take remedial measures when he was aware that the court had acted in the absence of material information (*Standards*, § 6.1); and (2) his omissions constituted an improper communication with the court. *Standards*, § 6.3.

b. *Mental State.* The Accused acted negligently. “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.

c. *Injury.* Injury can be actual or likely. The Accused caused actual injury to the court in terms of additional time and resources required once the court was fully apprised of all the material facts in the matter. Father was caused substantial potential injury in that, had he not taken steps to have the emergency order vacated, he may have been harmed by its enforcement.

d. *Aggravating Factors.* Aggravating factors include:

1. Multiple offenses, in that more than one charge resulted from the conduct. *Standards*, § 9.22(d); and

2. Both the court and Father were vulnerable, given the circumstances. *Standards*, § 9.22(h).

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. Full and free disclosure and a cooperative attitude toward this disciplinary proceeding. *Standards*, § 9.32(e); and

4. Inexperience in the practice of law, the Accused having been admitted to practice at the time of the incident for less than four years. *Standards*, § 9.32(f).

13.

The *Standards* indicate that a reprimand is generally appropriate when a lawyer is negligent in taking remedial action when material information is being withheld, 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*, § 6.13. The *Standards* also suggest that a reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding. *Standards*, § 6.33.

14.

Oregon case law is in accord. See *In re Honsowetz*, 16 DB Rptr 345 (2002); *In re Moe*, 12 DB Rptr 264 (1998); *In re LaFrance*, 10 DB Rptr 1 (1996). See also *In re Camacho*, 19 DB Rptr 337 (2005); *In re Foley*, 19 DB Rptr 205 (2005); *In re Johnson*, 17 DB Rptr 185 (2003); *In re Peters*, 15 DB Rptr 184 (2001); *In re Van Loon*, 15 DB Rptr 61 (2001); *In re Egan*, 13 DB Rptr 96 (1999) (all reprimands for conduct prejudicial to the administration of justice in conjunction with improper communications, improper withdrawal, disobeying the court or incompetence).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violations of RPC 3.3(d) and RPC 8.4(a)(4), the sanction to be effective upon approval by the Disciplinary Board.

16.

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 31st day of May 2006.

/s/ David I. Bean

David I. Bean

OSB No. 01202

EXECUTED this 7th day of June 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 99028

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 05-115  
)  
JOHN R. PUTMAN, )  
)  
Accused. )

Counsel for the Bar: Martha M. Hicks  
Counsel for the Accused: Christopher R. Hardman  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(4) and DR 6-101(B).  
Stipulation for Discipline. Public reprimand.  
Effective Date of Order: June 12, 2006.

**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 6-101(B).

DATED this 12th day of June 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Arnold S. Polk  
Arnold S. Polk, Esq., Region 4  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 27, 1990, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Tillamook 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 18, 2005, 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)(4) and DR 6-101(B). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Facts

5.

In or about February 1999, the Accused undertook to represent David Ulrich, the personal representative of the estate of Dennis Moore Ulrich (hereinafter the “Ulrich estate”), in the probate and administration of the Ulrich estate in Tillamook County Circuit Court. The personal representative previously had been represented by other counsel who withdrew from the representation.

6.

When the Accused undertook to represent the personal representative, the estate’s only asset of significance was the vendor’s interest in a land sale contract. Before the Accused became involved in the Ulrich estate, the personal representative had sold the house pursuant to a land sale contract to avoid foreclosure. The contract did not provide for a balloon payment in the near future, which left the estate with

a small income, but not enough money to promptly pay the claims of creditors. By November 1999, the Accused was able to persuade the vendee to pay the contract in full. Thereafter, the Accused discovered that the estate had serious tax problems, including that the decedent had not filed income tax returns for a number of years before his death.

7.

Between February 1999 and June 2005, the Accused performed services for the personal representative and took some steps to forward the probate of Ulrich's will. However, during this period of time, in part because of health problems and the loss of office staff, the Accused failed to file or to timely file accountings; failed to keep the court adequately apprised of the status of the estate; failed to vigorously pursue the resolution of the estate's tax problems; and failed to close the estate in a timely fashion

### Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he neglected a legal matter entrusted to him and engaged in conduct prejudicial to the administration of justice in violation of DR 6-101(B) and DR 1-102(A)(4).

### 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 of diligence to his client. The Accused also violated his duty to the public to avoid engaging in conduct prejudicial to the administration of justice. *Standards*, §§ 4.4, 5.2.

b. *Mental State.* "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 was negligent in failing to follow up with his client and his client's accountant to timely acquire the information necessary to file accountings and resolve the estate's tax problems. The Accused was also negligent in failing to realize that he should respond to the court's requests for reports on the status of the estate, even if that status had not changed since his previous report.



c. *Injury*. The Accused's lack of diligence caused actual injury to the court in that the court was required to communicate repeatedly with the Accused and was hindered in its ability to supervise the probate of the Ulrich estate. Payment of the estate's tax obligations was delayed, as was distribution to the devisees.

d. *Aggravating Factors*. Aggravating factors include:

1. The Accused's conduct in the Ulrich estate displayed a pattern of neglect. *Standards*, § 9.22(c);

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

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

4. The Accused has a good reputation in his community. *Standards*, § 9.32(g); and

5. The Accused is remorseful for having neglected the Ulrich probate and has submitted a written apology to the court. *Standards*, § 9.32(l).

10.

*Standards* § 4.43 suggests 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* § 6.23 suggests that reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or causes interference or potential interference with a legal proceeding.

11.

Drawing together the aggravating and mitigating circumstances and the analytical factors outlined by the ABA *Standards*, a public reprimand is appropriate for the Accused's conduct.

Oregon case law is in accord. See *In re McGraw*, 18 DB Rptr 14 (2004) (public reprimand for violation of DR 1-102(A)(4) and DR 6-101(B) in five probate matters); *In re Ehmann*, 8 DB Rptr 123 (1994) (public reprimand for violation of DR 1-102(A)(4) in a single probate matter); *In re Odman*, 297 Or 744, 687 P2d 153 (1984) (public reprimand for violation of DR 6-101(A) and (B) and DR 5-105(E) in a single probate matter).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 1-102(A)(4) and DR 6-101(B).

13.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The sanction provided for herein has been approved by the State Professional Responsibility Board. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 1st day of June 2006.

/s/ John R. Putman

John R. Putman

OSB No. 90105

EXECUTED this 5th day of June 2006.

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. 06-39
	)	
JOHN M. HEURLIN,	)	SC S53453
	)	
Accused.	)	

**ORDER IMPOSING RECIPROCAL DISCIPLINE OF DISBARMENT**

Upon consideration by the court.

The Oregon State Bar (Bar) has notified this court that the accused has been disciplined for misconduct in the State of California. The State Professional Responsibility Board of the Oregon State Bar recommended that the accused be disbarred. The accused did not file an answer or otherwise respond to the Bar’s Notice of Discipline in this court. The court therefore accepts the recommendation and orders that the John M. Heurlin (OSB No. 83237) be disbarred, effective this date.

DATED this 28th day of June 2006.

/s/ Paul J. De Muniz  
 Paul J. De Muniz  
 Chief Justice

**SUMMARY**

Effective June 28, 2006, the supreme court disbarred California attorney John M. Heurlin from the practice of law in Oregon.

This was a reciprocal discipline matter, arising out of Heurlin’s discipline in California. The Supreme Court of California had ordered that Heurlin be suspended from the practice of law for five years, that execution of the suspension be stayed, that Heurlin be placed on probation for five years, and that he comply with probationary conditions including two years actual suspension. The California court also ordered that Heurlin prove his rehabilitation and take the MPRE before being eligible for reinstatement in California.

In connection with the California matter, Heurlin stipulated to three acts of misconduct stemming from a lengthy fee dispute with his former client. Heurlin admitted that he had improperly withheld money from settlement proceeds as

“collection costs,” an act that amounted to charging an unconscionable fee, and that he had failed to maintain client funds in trust, an act involving moral turpitude. He also admitted that he had filed and pursued an unjust appeal for wrongful motives, and that he had repeatedly made misrepresentations to opposing counsel and to the court. These stipulated acts violated the California equivalents of Oregon DR 2-106(A) (charging or collecting an illegal or clearly excessive fee); DR 1-102(A)(4) (conduct prejudicial to the administration of justice); DR 7-102(A)(1) (taking legal action merely to harass or maliciously injure another); DR 7-102(A)(2) (knowingly advancing claim or defense unwarranted under existing law); DR 1-102(A)(3) (conduct involving dishonesty, deceit, fraud, or misrepresentation); and DR 9-101(A) (duty to maintain client funds in trust).

Aggravating factors included Heurlin’s previous record of discipline in California. In 1998, he was privately reprovved for failing to pay sanctions imposed upon him by the San Diego Superior Court. In 2001, Heurlin was again disciplined in California after he failed to comply with the conditions imposed upon him in connection with the 1998 discipline matter.

Heurlin was admitted to practice in Oregon in 1983. He had no prior record of discipline in Oregon. In disbaring him, the supreme court noted that he had failed to respond to the bar’s Notice of Discipline in this reciprocal case.

Cite as 341 Or 142 (2006)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of )  
)  
WILLARD MERKEL, )  
)  
Accused. )

(OSB No. 04-154; S52856)

En Banc

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

Argued and submitted May 8, 2006. Decided July 7, 2006.

Wayne Mackeson of Birmingham & Mackeson, LLP, Portland, argued the cause and filed the brief for the Accused.

Jane E. Angus, Assistant Disciplinary Counsel, Oregon State Bar, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar. With her on the brief was David L. Slader, Bar Counsel.

PER CURIAM

Complaint dismissed.

Kistler, J., concurred in part and dissented in part and filed an opinion in which Gillette and Balmer, JJ., joined.

**SUMMARY OF THE SUPREME COURT OPINION**

The Oregon State Bar charged the Accused with violating DR 7-110(B) (prohibiting *ex parte* communications) when he called an arbitrator to ask about his policy on using telephonic testimony and with two violations of DR 1-102(A)(3) (prohibiting misrepresentations) for telling opposing counsel that the arbitrator had cleared his intent to use telephonic testimony and for telling the Bar that he had tried to telephone opposing counsel before speaking with the arbitrator. A trial panel of the Disciplinary Board found that the Accused had not violated DR 7-110(B) but that he had made two misrepresentations in violation of DR 1-102(A)(3). *Held*: (1) Asking the arbitrator about whether the Accused could offer witness testimony by telephone during an arbitration hearing did not constitute an *ex parte*

**Cite as *In re Merkel*, 20 DB Rptr 169 (2006)**

communication in violation of DR 7-110(B). (2) The Bar failed to prove by clear and convincing evidence that the Accused's statements to opposing counsel and the Bar constituted a knowing misrepresentation in violation of DR 1-102(A)(3).

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case Nos. 05-66, 05-122, 05-123  
)  
TOD DAVID EAMES, )  
)  
Accused. )

Counsel for the Bar: Timothy E. Miller; Jane E. Angus  
Counsel for the Accused: None  
Disciplinary Board: Thomas H. Nelson, Chair; Sandra A. Hansberger;  
Barbara Anderson, Public Member  
Disposition: Violation of DR 1-102(A)(2), DR 1-102(A)(3),  
DR 9-101(A), DR 9-101(C)(3), RPC 3.4(c), and  
RPC 8.1(a)(2). Trial Panel Opinion. Disbarred.  
Effective Date of Opinion: July 31, 2006

**TRIAL PANEL OPINION**

**INTRODUCTION**

At the direction of the State Professional Responsibility Board, Tod David Eames (hereinafter “Accused”) was charged with violating DR 1-102(A)(2) (criminal conduct reflecting adversely on a lawyer’s honesty, trustworthiness or fitness to practice law); DR 1-102(A)(3) (dishonesty); DR 9-101(A) (failure to maintain client funds in trust); DR 9-101(C)(3) (failure to account for client funds); RPC 3.4(c) (disobeying orders of a tribunal); and RPC 8.1(a)(2) (failure to respond to lawful demand of disciplinary authorities) (two counts) as alleged in four causes of complaint.<sup>1</sup>

The Bar filed its Formal Complaint against the Accused on September 8, 2005. The Accused was personally served with a copy of the complaint and Notice to Answer on September 12, 2005. Pursuant to BR 4.3(a), the Accused was required to

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<sup>1</sup> The Code of Professional Responsibility applies to conduct occurring prior to January 1, 2005, the effective date of the new Oregon Rules of Professional Conduct. The Rules of Professional conduct applies to conduct occurring on and after January 1, 2005, pursuant the Oregon Supreme Court’s order dated December 1, 2004.

file an answer or other appearance within 14 days after service. The Accused did not file an answer and on September 28, 2005, the Bar filed a Motion for Order of Default. On October 5, 2005, the region Disciplinary Board chair granted the motion and signed the Order of Default. Pursuant to BR 5.8(a), the allegations of the Bar's Formal Complaint are deemed true. The sole issue before the trial panel is the imposition of the sanction for the misconduct.

## **FACTS**

### *FIRST CAUSE OF COMPLAINT: Cobler Matter, Case No. 05-66*

On or about July 2002, Danny Cobler (hereinafter "Cobler") was injured in a motor vehicle accident. In August 2002, the Accused agreed to represent Cobler and pursue his claim for personal injuries sustained in the accident. (FC §3).<sup>2</sup> The Accused settled Cobler's claim and on or about September 9, 2002, received a check for \$25,000. Pursuant to a written fee agreement, the Accused was entitled to 30% of the settlement amount. (FC §4.)

On or about September 12, 2002, the Accused deposited the \$25,000 check in his lawyer trust account. On or about September 17, 2002, the Accused withdrew \$7,500 for his attorney fees in the Cobler matter. The Accused failed to deliver the balance of the settlement funds to Cobler and failed to render an appropriate account to Cobler for the funds. (FC §5.)

In and between about September 17, 2002, and October 2004, the Accused failed to maintain the balance of Cobler's settlement funds in a lawyer trust account. The Accused withdrew Cobler's settlement funds from his lawyer trust account and converted said funds to his own use and benefit when he was not entitled to them. (FC §6.) Between about September 17, 2002, and October 2004, the Accused committed the crime of Theft I in violation of ORS 164.055, a Class C felony, and Aggravated Theft I in violation of ORS 164.057, a Class B felony. (FC §7.)

By engaging in the foregoing conduct, the Accused committed criminal conduct reflecting on his honesty, trustworthiness, or fitness to practice law; engaged in conduct constituting dishonesty; failed to maintain client funds in a lawyer trust account; and failed to account for client funds (FC §8), in violation of DR 1-102(A)(2), DR 1-102(A)(3), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility.

### *SECOND CAUSE OF COMPLAINT*

On or about February 25, 2005, Chris Covert brought the Accused's conduct to the attention of the Bar. (FC §10.) On March 8, 2005, the matter was referred to Disciplinary Counsel for investigation. On March 10, 2005, Disciplinary Counsel

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<sup>2</sup> References to "FC" means the allegation contained in the paragraph of the Bar's Formal Complaint that is deemed admitted.



forwarded a copy of the information filed with the Bar to the Accused and requested his explanation by March 31, 2005. (FC §10.)

On March 28, 2005, the Accused contacted Disciplinary Counsel and requested an additional week to respond. On March 30, 2005, Disciplinary Counsel confirmed that it granted the Accused's request and that his explanation and response was due by April 7, 2005. Disciplinary Counsel also asked the Accused to address certain issues when providing his explanation and to provide copies of records reflecting his receipt, deposit and disbursement of client funds, including, without limitation, bank statements, deposit slips, and cancelled checks. The Accused did not provide the explanation or provide the documents requested by Disciplinary Counsel. (FC §11.)

On or about April 21, 2005, the Accused sent a letter to Disciplinary Counsel informing that he required another week to provide the explanation and documents requested by Disciplinary Counsel. On May 4, 2005, the Accused delivered another letter to Disciplinary Counsel informing that he required an additional two weeks to provide his response. (FC §12.)

The Accused did not provide the explanation or the documents requested by Disciplinary Counsel and on May 9, 2005, Disciplinary Counsel again requested the Accused's explanation and the production of the documents that had previously been requested no later than May 19, 2005. The Accused did not respond and did not produce the documents requested by Disciplinary Counsel. (FC §13.)

While the subject of an investigation concerning his conduct, the Accused failed to respond to a lawful demand for information from the disciplinary authority. (FC §14.) The Accused violated RPC 8.1(a)(2). (FC §15.)

*THIRD CAUSE OF COMPLAINT: Knapp/Staten Matter,  
Case Nos. 05-122, 05-123*

On or about June 28, 2004, Vanessa J. Whitbeck filed a Petition for Restraining Order to Prevent Abuse naming the Accused as defendant, *Vanessa J. Whitbeck v. Tod David Eames*, Washington County Circuit Court Case No. C042370RO. On or about June 28, 2004, the court entered a restraining order against the Accused (hereinafter "Restraining Order"). (FC §17.) Pursuant to the Restraining Order, among other requirements, the Accused was restrained (prohibited) from entering or attempting to enter any area within 100 yards of Whitbeck. The Accused was served with a copy and had notice of the Restraining Order. (FC §18.) On or about March 4, 2005, the Accused violated the Restraining Order. The Accused was within 100 yards of Whitbeck. (FC §19.)

On or about March 7, 2005, the Washington County District Attorney's Office filed a complaint against the Accused for imposition of punitive sanctions, contempt, for violation of the restraining order. (FC §20.) On or about March 21, 2005, the court found the Accused in willful contempt of the Restraining Order. The court sentenced the Accused to two years formal probation with conditions, which

included, among others, that the Accused: (a) obey all laws, including the Restraining Order; (b) pay all court ordered financial obligations; (c) be evaluated and participate in drug and mental health treatment; (d) comply with the court's drug package and conditions; and (e) report as required by his probation officer. (FC §21.)

The Accused knowingly disobeyed an obligation under the rules of a tribunal, including failing to comply with the court's June 28, 2004, and March 21, 2005, orders. On or about June 28, 2005, the court issued a warrant for the Accused's arrest for violation of the conditions of his probation. Thereafter, the warrant was served and the Accused was taken into custody. On or about August 2, 2005, the Accused admitted that he violated the conditions of his probation. (FC §22.) By engaging in the foregoing conduct, the Accused violated RPC 3.4(c). (FC §23.)

#### *FOURTH CAUSE OF COMPLAINT*

On or about March 25, 2005, the Washington County District Attorney's Office and the Washington County Circuit Court brought the Accused's conduct to the attention of the Bar. On or about March 29, 2005, the matter was referred to Disciplinary Counsel for investigation. On April 6, 2005, Disciplinary Counsel forwarded a copy of the information filed with the Bar to the Accused and requested his explanation by April 27, 2005. The Accused did not respond by April 27, 2005. (FC §25.)

On April 28, 2005, the Accused delivered a letter to Disciplinary Counsel in which he represented that he was preparing a motion for post conviction relief concerning his conduct. The Accused asked Disciplinary Counsel to delay its investigation pending outcome of his motion for post conviction relief. On May 3, 2005, Disciplinary Counsel informed the Accused that the investigation would not be delayed. Disciplinary Counsel again asked the Accused to provide his explanation by May 13, 2005. The Accused did not respond. (FC §26.)

On May 17, 2004, Disciplinary Counsel again requested that the Accused provide his explanation by May 27, 2005. On May 26, 2005, Disciplinary Counsel received a letter from the Accused in which he represented that he was in the process of filing a motion for post conviction relief and wished to invoke his Fifth Amendment privilege. The Accused also represented that he would provide a complete statement after the postconviction proceeding in the circuit court was concluded. (FC §27.)

On June 8, 2005, Disciplinary Counsel acknowledged the Accused's May 26, 2005, letter. Disciplinary Counsel also asked the Accused to provide a copy of his motion for post conviction relief. The Accused did not respond. (FC §28.) On June 29, 2005, Disciplinary Counsel notified the Accused that court records reflected that he had not filed any motion or appeal concerning the court's contempt judgment. Disciplinary Counsel requested the Accused's explanation; that he provide the authority for his position that a petition for post conviction relief was an available appellate remedy; and if none existed, to provide the explanation requested in

Disciplinary Counsel's April 6, 2005, letter. Disciplinary Counsel requested the Accused's response by July 13, 2005. The Accused did not respond. (FC §29.)

While the subject of an investigation concerning his conduct, the Accused failed to respond to a lawful demand for information from the disciplinary authority. (FC §30.) By engaging in the foregoing conduct, the Accused violated RPC 8.1(a)(2). (FC §31.)

A hearing was held on this matter at the Law Offices of Thomas H. Nelson, 825 NE Multnomah, Suite 925, in Portland, Oregon, on May 15, 2006, at 10:00 a.m. Present were Jane Angus, Disciplinary Panel Members Sandra Hansberger, Barbara Anderson (Public Member), and Thomas Nelson. The Accused did not appear. After a presentation of the case and discussion of the merits, the Panel finds as follows:

### FINDINGS

A. *The Accused violated DR 1-102(A)(2) and DR 1-102(A)(3) as charged in the Bar's First Cause of Complaint.*

The Accused committed acts that constitute criminal and dishonest conduct, theft and conversion of client funds, as charged in the Bar's Formal Complaint.

ORS 164.015(1) provides in relevant part:

"Theft. A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof.

. . .

ORS 164.055, Theft in the first degree, provides:

(1) A person commits the crime of theft in the first degree if, by other than extortion, the person commits theft as defined in ORS 164.015 and:

(a) The total value of the property in a single or aggregate transaction is \$200 or more in a case of theft by receiving, and \$750 or more in any other case; or

. . .

(3) Theft in the first degree is a Class C felony."

ORS 164.057, Aggravated theft in the first degree, provides:

(1) A person commits the crime of aggravated theft in the first degree, if:

(a) The person violates ORS 164.055 with respect to property, . . . ; and

(b) The value of the property in a single or aggregate transaction is \$10,000 or more.

(2) Aggravated theft in the first degree is a Class B felony.

DR 1-102(A)(2) provides that a lawyer “shall not engage in criminal conduct reflecting adversely on a lawyer’s honesty, trustworthiness or fitness to practice law.” It is not necessary for a lawyer to have been criminally charged or convicted of a crime to establish a violation of the rule. The rule addresses a lawyer’s conduct regardless of whether that conduct resulted in a criminal prosecution or conviction. *In re Kirkman*, 313 Or 181, 184, 830 P2d 206 (1992); *In re Allen*, 326 Or 107, 120, 949 P2d 710 (1997). It is enough for the Bar to establish (not beyond a reasonable doubt) that a criminal act occurred. *In re Morin*, 319 Or 547, 559, 878 P2d 393 (1994); *In re Anson*, 302 Or 446, 453–454, 730 P2d 1229 (1986). A lawyer does not need to be acting as a lawyer to violate the rule. *In re White*, 311 Or 573, 815 P2d 1257 (1991); *In re Taylor*, 316 Or 431, 851 P2d 1138 (1993).

Theft of client funds is a criminal act that reflects adversely on a lawyer’s honesty, trustworthiness, and fitness to practice and constitutes a violation of DR 1-102(A)(2). It is also conduct that violates DR 1-102(A)(3), dishonesty, fraud, deceit, or misrepresentation. *See In re King*, 320 Or 354, 883 P2d 1291 (1994). *See also, e.g., In re Martin*, 328 Or 177, 970 P2d 638 (1998); *In re Pierson*, 280 Or 513, 571 P2d 907 (1977); *In re Benjamin*, 312 Or 515, 823 P2d 413 (1991); *In re Laury*, 300 Or 65, 76, 706 P2d 935 (1985). Violation of the rules is not avoided by making restitution of the funds. *In re Pierson, supra*.

The Accused violated DR 1-102(A)(2), criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness to practice, and DR 1-102(A)(3), dishonesty, fraud, deceit, or misrepresentation by his theft/conversion of Cobler’s funds.

**B.** *The Accused violated DR 9-101(A) as alleged in the Bar’s First Cause of Complaint.*

The Accused violated DR 9-101(A) by failing to maintain the client’s funds in a lawyer trust account. The rule provides:

“All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, and escrow and other funds held by a lawyer or law firm for another in the course of work as lawyers, shall be deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated. Trust accounts shall be specifically identified by use of the phrase “Lawyer Trust Account.” No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay account charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.”

Failing to deposit and maintain funds in a lawyer trust account does not require intent. The elements of the rule do not include a mental state. *In re Phelps, supra*, 306 Or at 513, citing *In re Mannis*, 295 Or 594, 597, 668 P2d 1224 (1983). A lawyer may violate DR 9-101(A) even when he mistakenly fails to deposit client funds in a lawyer trust account or when funds are mistakenly removed from a lawyer trust account. *Id.*; *In re Eakin*, 334 Or 238, 253, 48 P3d 147 (2002).

Funds may be disbursed from a lawyer trust account only after they have been earned. *In re Biggs*, 318 Or 281, 293, 864 P2d 1310, 1316 (1994); *In re Miller*, 303 Or 253, 735 P2d 591 (1987). The Accused withdrew the funds to which he was entitled as a fee, the \$7,500. The client was entitled to the balance of the funds. The Accused withdrew all but \$4.92 of the funds that belonged to the client and disbursed those funds to himself. In doing so, he violated DR 9-101(A).

C. *The Accused violated DR 9-101(C)(3) as alleged in the Bar’s First Cause of Complaint.*

The Accused violated DR 9-101(C)(3) by failing to account to his client, Danny Cobler for the settlement funds delivered to the Accused. The rule provides:

“A lawyer shall:

. . .

(3) Maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer *and render appropriate accounts to the lawyer’s client regarding them. . .*” [Emphasis supplied.]

It is the lawyer’s affirmative obligation to render an appropriate account to the client regarding how the client’s funds were disbursed or applied. *In re Sousa*, 323 Or 137, 915 P2d 408 (1996). The requirement is not dependent on a request for an accounting from the client. The lawyer is obligated to provide an accounting even if the client does not request it. *In re Gildea*, 325 Or 281, 290-91, 936 P2d 975 (1997).

The Accused did not provide an accounting of any nature to his client for the settlement funds he received for the client. He simply claimed and disbursed all but \$4.92 of those funds to his own use and benefit.

**D.** *The Accused violated RPC 3.4(c) as alleged in the Bar's Third Cause of Complaint.*

RPC 3.4(c)<sup>3</sup> provides:

“A lawyer shall not:

(c) Knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists; . . .”

A violation of the rule occurs when a lawyer disregards a tribunal's rulings/orders made in the course of a proceeding, unless the lawyer's action amounts to “appropriate steps in good faith to test the validity” of the dig. *In re Rhodes*, 331 Or 231, 235, 13 P3d 512 (2000).

The Accused knowingly violated the court's orders made in the course of the restraining order proceeding, which resulted in his being found in contempt of court. The Accused admitted that he violated the court's orders.

**E.** *The Accused violated RPC 8.1(a)(2) as alleged in the Bar's Second and Fourth Causes of Complaint.*

RPC 8.1(a) in relevant part provides:

(a) An applicant . . . in connection with a disciplinary matter, shall not:

(2) . . . knowingly fail to respond to a lam demand for information from disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.”

The rule imposes obligations previously required by DR 1-103(C).<sup>4</sup> Although the text of DR 1-103(C) and RPC 8.1 are different, the obligations are the same. The duty to comply with these rules is no less important than other ethical responsibilities. *In re Hereford*, 306 Or 69, 756 P2d 30 (1988). The court has expressed a virtual no-tolerance approach to a lawyer's failure to cooperate. DR 1-103(C); *In re Miles*, 324 Or 218, 923 P2d 1219 (1996).

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<sup>3</sup> This obligation was also found in the previous Code of Professional Responsibility as DR 7-106(A), which provided: “A lawyer shall not disregard or advise the lawyer's client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding but the lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.”

<sup>4</sup> DR 1-103(C) provided: “A lawyer who is the subject of a disciplinary investigation shall respond fully and truthfully to inquiries from and comply with reasonable requests of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers, subject only to the exercise of any applicable right or privilege.”

A lawyer may violate DR 1-103(C) when the lawyer does not respond, or provides responses that are incomplete, unresponsive, or evasive to the inquiry, or fails to respond within the time established by the Bar. *See, e.g., In re Bourcier*, 322 Or 561, 909 P2d 1234 (1996); *In re Bourcier*, 325 Or 429, 939 P2d 604 (1997); *In re Worth*, 336 Or 256, 273, 82 P3d 605 (2003); *In re Haws*, 310 Or 741, 750, 801 P2d 818 (1990); *In re Schaffner*, 323 Or 472, 477, 918 P2d 803 (1996). Pressing workload or other obligations is insufficient justification for failing to respond and cooperate with the disciplinary authorities. *In re Dugger*, 299 Or 21, 697 P2d 973 (1985).

In this case, the Accused acknowledged and therefore knew of the Bar's inquiries concerning the Cobler matter (First Cause of Complaint) and the contempt proceeding and failure to comply with the court's orders (Third Cause of Complaint). In each case, he requested extensions of time to provide his explanation and the documents that Disciplinary Counsel requested. Then, the Accused did not provide the explanations or produce the documents. The Accused violated RPC 8.1(a)(2) as alleged in the Bar's Second and Fourth Causes of Complaint.

### SANCTION

The *ABA Standards for Imposing Lawyer Sanctions* (1991) (amended 1992) (hereinafter "*Standards*") are considered in determining the appropriate sanction. *In re Spencer*, 335 Or 71, 85–86, 58 P3d 228 (2002). The *Standards* require that the Accused's conduct be analyzed by the following factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. *Standards*, § 3.0.

*Duties.* In violating DR 1-102(A)(2), DR 1-102(A)(3), RPC 3.4(c), and RPC 8.1(a)(2), the Accused violated duties to his clients, the legal system, and the profession. *Standards*, §§ 4.1, 5.1, 7.0. A lawyer's most important ethical duties are those owed to his clients. *Standards*, p. 8.

*Mental state.* The Accused's conduct demonstrates intent and 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. "Intent" is the conscious objective to cause a particular result. *Standards*, p. 7.

*Injury.* The *Standards* define "injury" as harm to the client, the public, the legal system, or the profession that results from a lawyer's conduct. "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Standards*, p. 7. An injury does not need to be actual, but only potential to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

The Accused caused actual injury to his client. The Accused deprived his client of the client's funds for a substantial period of time. The Accused took those funds for his own use and benefit when he was not entitled to them. The Accused also caused injury to the legal system. The court devoted valuable and limited resources and time to addressing the Accused's continued misconduct, which could have been avoided if the Accused had complied with the court's orders. Disciplinary Counsel also devoted additional unnecessary time to the matters because the Accused failed to respond and comply with its requests. The Accused also caused injury to the profession. The profession is judged by the conduct of its members.

### PRELIMINARY SANCTION—THE STANDARDS

As a preliminary sanction, the *Standards* provide:

#### 4.0 VIOLATIONS OF DUTIES OWED TO CLIENTS

##### 4.1 FAILURE TO PRESERVE THE CLIENT'S PROPERTY

Absent aggravating or mitigating circumstances, upon application of the factors set forth in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

. . .

##### 6.2 ABUSE OF THE LEGAL PROCESS

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal<sup>5</sup> except for an open refusal based on an assertion that no valid obligation exists:

- 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
- 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury

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<sup>5</sup> Lawyer disciplinary proceedings are within the meaning of "administration of justice." *In re Boothe*, 303 Or 643, 740 P2d 785 (1987) ("Bar disciplinary proceedings determine whether an accused is fit to practice law in the courts of this state -a question as close to the heart of the 'administration of justice' as any could be. We conclude that bar proceedings further 'the administration of justice' within the meaning of former DR 1-102(A)(5) (current DR 1-102(A)(4)). . . .")



or potential injury to a client or a party, or causes interference or interference with a legal proceeding.

7.0 VIOLATIONS OF DUTIES OWED AS A PROFESSIONAL

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

7.2 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.

...

*Aggravating factors.* “Aggravating factors” increase the degree of discipline to be imposed. *Standards*, § 9.22. There are several aggravating factors in this case. He acted with dishonest and selfish motives when he converted and committed acts of theft of his client’s funds. *Standards*, § 9.22(b). There are multiple offenses. *Standards*, § 9.22(d). The Accused was admitted to practice in Oregon 1996 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

*Mitigating factors.* Mitigation or mitigating circumstances may justify a reduction in the degree of discipline to be imposed. *Standards*, § 9.31. The Accused has no prior record of discipline. *Standards*, § 9.32(a). While the record indicates that the Accused may have an impairment involving substance abuse (the Washington County Circuit Court’s order required the Accused to participate in the Court’s “drug package”), the accused has never presented any evidence of any impairment to the Bar, nor has the accused presented any evidence of treatment for substance abuse. As a result, the panel concludes that it cannot consider substance abuse as either an aggravating or mitigating factor in this case.

The *Standards* provide that forced or compelled restitution is neither an aggravating nor mitigating factor. *Standards*, § 9.4(a). The Accused made restitution of Cobler’s funds long after he took them and only after a complaint was lodged and inquiries made by the Bar concerning his failure to deliver the funds to the client. Restitution of converted or stolen funds does not avoid or reduce the sanction that

should be imposed for such conduct. *In re Pierson*, 280 Or 513, 518, 571 P2d 907 (1977).<sup>6</sup>

The *Standards* alone, before considering aggravating and mitigating factors, provide authority for disbarment. Aggravating factors—multiple offenses; substantial experience in the practice of law; dishonest and selfish motives—qualitatively and quantitatively outweigh any mitigating factors that may be considered and increase the sanction to be imposed.

### CASE LAW

Case law also provides guidance where similar rule violations have occurred. Virtually without exception, Oregon lawyers who knowingly or intentionally misappropriate client funds are disbarred. *In re Martin*, 328 Or 177, 192, 970 P2d 638 (1998). A single act of knowing misappropriation of client funds warrants disbarment. *In re Pierson*, 280 Or 513, 571 P2d 907 (1977). This is appropriate even when the amount is small or is repaid by the lawyer, or when the lawyer eventually earns the amount. *See, e.g., In re Whipple*, 320 Or 476, 481, 886 P2d 7 (1994). It is true when the lawyer claims other disabilities. As stated in *In re Phelps*, 306 Or 508, 520, 760 P2d 1331 (1988), “a lawyer may suffer all the claimed disabilities and may have the greatest of attributes, but if he or she steals funds from a client, the sanction is disbarment.” *See also In re Laury*, 300 Or 65, 76, 706 P2d 935 (1985).

Oregon case law has also consistently held that serious criminal conduct is deserving of disbarment. *See, e.g., In re King*, 320 Or 354, 883 P2d 1291 (1994) (lawyer disbarred for misappropriating client funds, aggravated theft in the first degree, a Class B felony). The result is the same when lawyers have committed other serious criminal conduct. *See In re Gustafson*, 333 Or 468, 41 P3d 1063 (2002); *In re Garvey*, 325 Or 34, 932 P2d 549 (1997) (lawyer disbarred for perjury, false swearing, and other crimes); *In re Taylor*, 316 Or 431, 851 P2d 1138 (1993) (lawyer disbarred for conversion, conspiracy to manufacture, possess, and distribute marijuana, and other crimes); *In re Kirkman*, 313 Or 181, 830 P2d 206 (1992); (lawyer disbarred for forgery, falsely declaring to be divorced on application for marriage license, and bigamy).

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<sup>6</sup> In relevant part, BR 2.8 provides “(n)either unwillingness nor neglect of the complainant to sign or to pursue a complaint, nor . . . restitution of any civil claim, shall, in and of itself, justify any failure to undertake or complete the investigation or the formal resolution of a disciplinary or contested reinstatement matter or proceeding.” If the Accused had not returned the funds to Cobler, in addition to disbarment the Bar would be asking the trial panel to order restitution as provided by BR 6.1(a). The rule provides: “In conjunction with a disposition or sanction referred to in this rule, an accused may be required to make restitution of some or all of the money, property or fees received by the accused in the representation of a client, or reimbursement to the Client Security Fund.”

Although the Accused's conversion and theft of client funds disposes of the sanction issue, for the trial panel's information, other violations (without the conversion or theft) would nevertheless warrant a significant sanction. The court has suspended lawyers for violations of DR 1-103(C) alone. In *In re Miles*, 324 Or 218, 923 P2d 1219 (1996), the court suspended the lawyer for 120 days for violation of DR 1-103(C) when no other substantive violations were alleged or proven. The court stated:

"In most cases, either a single, significant failure to cooperate with a disciplinary investigation or lesser, multiple failures to cooperate warrant a lengthy suspension from the practice of law." *Id.* at 223.

*See also In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (60 days of a 120-day suspension attributable to violation of DR 1-103(C)). Where there are multiple instances of failure to cooperate or respond, the sanction for such conduct significantly increases. *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997) (two-year suspension when again violated DR 1-103(C) and other rule).

Regarding the failure of a lawyer to handle client funds appropriately (DR 9-101(A)), and failure to account for client funds DR 9-101(C)(3)), sanctions vary depending on the seriousness of the violation. The court has reprimanded lawyers for unintentional or inadvertent mistakes involving the lawyer's staff. *See, e.g., In re Mannis, supra* (lawyer's bookkeeper mistakenly deposited client funds in the lawyer's general account rather than the lawyer's trust account and the lawyer was unaware of his assistant's actions). Where a lawyer "should have known" that he or she was dealing improperly with client funds coupled with the lawyer's substantial experience in the practice of law, suspension is the appropriate sanction even in the absence of a prior disciplinary record. *See In re Eakin*, 334 Or 238, 259, 48 P3d 147 (2002) (60-day suspension for violation of DR 9-101(A) and DR 9-101(C)(3) when the lawyer had no prior record of discipline and substantial experience in the practice of law). *Compare In re Miller*, 303 Or 253, 735 P2d 591 (1987) (lawyer inexperienced in the practice of law and had no prior record of discipline was disbarred when he violated DR 2-106(A) and DR 1-102(A)(3) by billing according to his own needs and not according to the work he actually performed).

## CONCLUSION

The purpose of lawyer discipline is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties. *Standards*, § 1.1, p. 7. The Disciplinary Panel finds that the *Standards* and case law dictate that the Accused be disbarred. Aggravating and mitigating factors do not change that disposition.

DATED: May 24, 2006.

/s/ Thomas H. Nelson

Thomas H. Nelson, Chair

/s/ Sandra A. Hansberger

Sandra A. Hansberger, Panelist

/s/ Barbara Anderson

Barbara Anderson, Public Member

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 06-70  
)  
JAMES W. BRITT, )  
)  
Accused. )

Counsel for the Bar: Jane E. Angus  
Counsel for the Accused: George L. Derr  
Disciplinary Board: None  
Disposition: Violation of RPC 1.15-1(d). Stipulation for  
Discipline. Public reprimand.  
Effective Date of Order: August 17, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by James W. Britt (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 is publicly reprimanded for violation of RPC 1.15-1(d) of the Rules of Professional Conduct.

DATED this 17th day of August 2006.

/s/ Gregory E. Skillman

Gregory E. Skillman, Region 2  
Disciplinary Board Chairperson

/s/ John A. Berge

John A. Berge  
State Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

James W. Britt, 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 September 25, 1996, 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, 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, 2005, the State Professional Responsibility Board directed that the Accused be charged with violating RPC 1.15-1(d) of the Rules of Professional Conduct.

5.

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 VIOLATION

6.

In or about May 2004, the court appointed the Accused to represent Bradley S. Sumner (hereinafter “Sumner”) concerning a criminal matter, *State of Oregon v. Bradley S. Sumner*, Lane County Circuit Court Case No. 200403265 (hereinafter “Criminal Case”). Sumner was convicted of the crimes charged in the Criminal Case. New counsel was appointed to represent Sumner on appeal.

7.

On November 20, 2005, Sumner sent a letter to the Accused in which he requested a copy of the file the Accused maintained concerning the Criminal Case. The Accused did not respond. On December 23, 2005, Sumner sent a second letter

to the Accused and again requested a copy of his file. Again, the Accused did not respond.

8.

On January 26, 2006, the Client Assistance Office of the Oregon State Bar (hereinafter “CAO”) received a complaint from Sumner concerning the Accused’s conduct. On February 2, 2006, CAO asked the Accused for an explanation by February 16, 2006. On February 6, 2006, the Accused left a telephone message for CAO in which he acknowledged Sumner’s earlier requests for a copy of the file, and represented that he did not consider the requests to be a priority.

9.

On February 9, 2006, the Accused sent the file to the client, but mistakenly failed to break up the material into small packets to comply with prison restrictions. The envelope was returned to the Accused. On February 21, 2006, the Accused again sent a copy of the file material to Sumner, but did not send certain recordings that were part of the file because the prison would not accept CD and audio records. After some delay, the recordings were delivered to Sumner’s appellate attorney on or about April 30, 2006.

10.

The Accused admits that the aforesaid conduct constituted violation of RPC 1.15-1(d) of the Rules of Professional Conduct.

### SANCTION

11.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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. *Duties violated.* The Accused violated duties to his client. *Standards*, § 4.1.

b. *Mental state.* The Accused’s conduct demonstrates negligence. “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. The Accused knew that Sumner requested a copy of his file, but was negligent in attending to the matter. The Accused failed to recognize that he was required to promptly deliver the file or communicate with his former client concerning the request.

c. *Injury.* The *Standards* define “injury” as “harm to the client, the public, the legal system or the profession which results from a lawyer’s conduct.” “Potential injury” is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s conduct. *Standards*, p. 7. An injury does not need be actual, but only potential to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

The Accused caused actual and potential injury to his former client. Sumner was frustrated because the Accused failed to respond or communicate with him concerning the request. *In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000), citing *In re Schaffner*, 325 Or 421, 426–427, 939 P2d 39 (1997) (frustration constitutes actual injury). Sumner’s receipt of the file was delayed because the Accused did not respond in a timely manner. The Accused responded to his former client’s request only after the client contacted the Bar for assistance.

d. *Aggravating factors.* “Aggravating factors” are considerations that justify an increase in the degree of discipline to be imposed. *Standards*, § 9.22. The Accused has substantial experience in the practice of law. *Standards*, § 9.22(i). He also has a prior record of formal discipline (*In re Britt (I)*, 20 DB Rptr 100 (2006)), although the disposition of that case did not occur until after the conduct that is alleged in this proceeding and it is therefore given little weight. *Standards*, § 9.22(a); *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997).

e. *Mitigating factors.* The *Standards* also recognize mitigating factors. *Standards*, § 9.32. The Accused did not act with dishonest or selfish motives. *Standards*, § 9.32(b). He cooperated with the disciplinary authorities in the investigation and in resolving this disciplinary proceeding. *Standards*, § 9.32(e). Also, the Accused is remorseful, and when contacted by CAO, promptly took action to deliver the file to the former client. *Standards*, § 9.32(l), (d).

12.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards*, § 4.13.

13.

Case law is in accord with the *Standards*. *In re Kneeland*, 281 Or 317, 574 P2d 324 (1978) (lawyer reprimanded for unexplained 49-day delay in delivering client file). See also *In re Moore*, 14 DB Rptr 129 (2000).

14.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be reprimanded for violation of RPC 1.15-1(d) of the Rules of Professional Conduct.



EXECUTED this 7th day of August 2006.

/s/ James W. Britt

James W. Britt  
OSB No. 96484

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. 05-195  
)  
BENJAMIN E. FREUDENBERG, )  
)  
Accused. )

Counsel for the Bar: John M. Junkin; Stacy J. Hankin  
Counsel for the Accused: Rene C. Holmes  
Disciplinary Board: None.  
Disposition: Violation of RPC 1.7(a) and RPC 8.4(a)(4).  
Stipulation for Discipline. 30-day suspension.  
Effective Date of Order: October 16, 2006

**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 30 days, effective the 60th day after the date of this order or October 2, 2006, whichever is later, for violation of RPC 1.7(a) and RPC 8.4(a)(4).

DATED this 10th day of August 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff  
Susan G. Bischoff, Esq., Region 5  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Benjamin E. Freudenberg, attorney at law (hereinafter “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 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 Josephine County, Oregon.

3.

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

4.

On July 24, 2006, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.7(a)(1) and RPC 8.4(a)(3) of the Oregon Rules of Professional Conduct. Upon further factual inquiry, the parties agree that: the alleged violation of RPC 8.4(a)(3) should be, and upon the approval of this Stipulation for Discipline is, dismissed; and an alleged violation of RPC 8.4(a)(4) is the more appropriate charge under the facts of this case. 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.

Irina and Barton McElyea were husband and wife. As of mid-2004, Irina McElyea was living in a long term care facility. Barton McElyea was spending or anticipated spending a considerable amount of the couple’s monthly income paying for Irina McElyea’s care.

6.

On June 2, 2004, the Accused met with Jerry McElyea, the adult son of Irina and Barton McElyea, to discuss his parents’ situation. At that time, Jerry McElyea

signed a retainer agreement with the Accused. Thereafter, all substantive communications by the Accused about the estate planning and medicaid matters were with Jerry McElyea. The next day the Accused opened a new file regarding estate planning and medicaid for Irina and Barton McElyea. On July 14, 2004, the Accused sent a letter to Jerry McElyea. In that letter, the Accused referenced medicaid and planning for Irina McElyea and made some specific recommendations as to what Jerry McElyea's parents should do with regard to their home and a living trust.

7.

As of June 2, 2004, the Accused undertook to represent Barton McElyea in estate planning and Medicaid matters. The Accused did not believe he was representing Irina McElyea in the same matters, but failed to inform Jerry McElyea of his belief. In light of all of the circumstances present, the McElyeas had a reasonable expectation that the Accused was also representing Irina McElyea in estate planning and medicaid matters.

8.

In November 2004, as part of the Accused's representation of Barton McElyea in the estate planning and Medicaid matters, the Accused filed a petition for support of spouse and transfer of assets pursuant to ORS 108.110 (hereinafter "support petition"). In the support petition, the Accused sought to (1) transfer Irina McElyea's interest in some marital assets to Barton McElyea and (2) require Irina McElyea to make monthly support payments to Barton McElyea.

9.

In the support petition, the Accused had a duty to contend for something on behalf of Barton McElyea that he had a duty to oppose on behalf of Irina McElyea. As a result, the Accused represented both McElyeas when such representation resulted in an actual conflict of interest.

10.

By letter of November 19, 2004, Joanne Schiedler (hereinafter "Schiedler"), from the Oregon Department of Human Services objected to some of the terms in the support petition described in paragraph 8 herein. In her letter, Schiedler described in detail the concerns she had and the changes that needed to be made before she would approve any transfer of assets or support payments from Irina to Barton McElyea.

11.

Sometime before January 2, 2005, the Accused prepared a stipulated judgment regarding the support petition. The stipulated judgment he prepared incorporated some, but not all, of the changes requested by Schiedler. On January 2, 2005, Jerry

McElyea as Irina McElyea's purported guardian *ad litem*, signed the last page of the stipulated judgment.

12.

On January 5, 2005, the Accused sent the stipulated judgment executed by Jerry McElyea to Schiedler. The Accused's file does not show that a copy was sent to Jerry McElyea. Shortly thereafter, Schiedler telephoned the Accused's office and indicated that some of the changes she had requested in her letter of November 19, 2004, were not contained in the stipulated judgment.

13.

On January 7, 2005, the Accused sent a revised stipulated judgment to Schiedler. The Accused's file does not show that a copy was sent to Jerry McElyea. Shortly thereafter, Schiedler telephoned the Accused's office again and indicated that some of the changes she had requested in her letter of November 19, 2004, and the telephone conversation described in paragraph 13 above, still were not contained in the revised stipulated judgment.

14.

On January 12, 2005, the Accused sent another revised stipulated judgment to Schiedler. The Accused's file does not show that a copy was sent to Jerry McElyea.

15.

On January 13, 2005, Schiedler informed the Accused's office that the revised stipulated judgment he had sent the day before was acceptable. However, because some of the information in the stipulated judgment had been changed after January 2, 2005, it was not the same version that Jerry McElyea had signed. On January 13, 2005, the Accused removed the last page of the original stipulated judgment that had been signed by Jerry McElyea on January 2, 2005, and attached it to the revised stipulated judgment which Schiedler had orally approved. On that same day, he sent the revised stipulated judgment to Schiedler for her signature.

16.

Sometime after January 13, 2005, Schiedler and Barton McElyea signed the revised stipulated judgment.

17.

On February 2, 2005, the Accused appeared *ex parte* and presented the revised stipulated judgment to the court for its approval. The Accused did not inform the court that there had been changes to the stipulated judgment after Jerry McElyea signed it on January 2, 2005. The Accused also did not inform the court that he had removed the last page of the original stipulated judgment and attached it to the

stipulated judgment he was presenting to the court for its approval. The court approved the stipulated judgment presented by the Accused.

### Violations

18.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 17, he violated RPC 1.7(a)(1) and RPC 8.4(a)(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 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. *Duties Violated.* The Accused violated his duties to avoid conflicts of interest and to avoid conduct prejudicial to the administration of justice. *Standards*, §§ 4.3, 6.1.

b. *Mental State.* The Accused was negligent in failing to document and make clear that he was only representing Barton McElyea in the estate planning and Medicaid matters. The Accused acted negligently in failing to disclose to the court that he had removed the last page of the original stipulated judgment containing Jerry McElyea’s signature and had attached it to a revised stipulated judgment which he was presenting to the court. At the time, the Accused knew that he had not spoken with Jerry McElyea about the changes, but was under the mistaken impression that Jerry McElyea had gotten notice of and was aware of the changes that had been made after January 2, 2005.

c. *Injury.* The court sustained actual injury because it understood that the stipulated judgment Jerry McElyea signed was the same stipulated judgment that it was being asked to approve. The court was unaware that the Accused had made changes to the stipulated judgment after Jerry McElyea signed it and was unaware that the Accused had removed the signature page from the original stipulated judgment and attached it to a revised stipulated judgment. There was potential injury to both Irina and Barton McElyea. Because of the undisclosed conflict of interest, they did not understand or consent to the Accused’s divided loyalty.

d. *Aggravating Circumstance.* The following aggravating circumstances exist:

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

2. Substantial experience in the practice of law as the Accused has been a lawyer in Oregon since 1977. *Standards*, § 9.22(i).

e. *Mitigating Circumstances*. The following mitigating circumstances exist:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Absence of a selfish motive. *Standards*, § 9.32(b).
3. Personal or emotional problems. At the time of the events described above, the Accused was treating for depression. *Standards*, § 9.32(c).
4. Character and reputation. *Standards*, § 9.32(g).
5. Remorse. *Standards*, § 9.32(m).

20.

The *Standards* provide that 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. *Standards*, § 4.33. Reprimand is generally appropriate when a lawyer is negligent in determining whether statements or documents are false 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, and causes injury or potential injury to a client. *Standards*, § 6.13. In this case, because there are multiple violations and significant injury, a suspension is the more appropriate sanction.

21.

Lawyers who engage in an improper conflict of interest and who are careless with regard to representations they make to a court have received reprimands or short suspensions. *In re Genna*, 19 DB Rptr 109 (2005) (60-day suspension of lawyer who, among other things, did not carefully check his file regarding the status of a case engaged in conduct prejudicial to the administration of justice when, without notice to the opposing lawyer, he instructed the court clerk to place the case on the court's docket, presented the case to the court, and obtained an amended judgment that was inconsistent with a prior judgment issued by the court a few months earlier); *In re Johnson*, 18 DB Rptr 181 (2004) (30-day suspension of lawyer who should have known that statements she made to the court in three separate matters were not accurate or complete, or that she had failed to make sufficient inquiry to assure that the statements were accurate and complete); *In re Page*, 326 Or 572, 955 P2d 239 (1998) (30-day suspension imposed in a reciprocal discipline case where lawyer altered and then filed original documents signed by the opposing lawyer without notifying the opposing lawyer or the court); *In re Schmechel*, 7 DB Rptr 95 (1993) (lawyer who submitted defective accountings to the probate court was reprimanded when she subsequently corrected errors, traced over the signatures of beneficiaries and the personal representative, and then refilled the documents without the purported signators' review and approval). By itself, a patent improper conflict of interest

**Cite as *In re Freudenberg*, 20 DB Rptr 190 (2006)**

justifies a 30-day suspension. *In re Knappenberger II*, 337 Or 15, 33, 90 P3d 614 (2004); *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001); *In re Hockett*, 303 Or 150, 734 P2d 877 (1987).

22.

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 RPC 1.7(a)(1) and RPC 8.4(a)(4), the suspension to be effective the 60th day after this Stipulation for Discipline is approved or October 2, 2006, whichever date is later.

23.

In addition, on or before the Accused is reinstated to the practice of law, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$1,209.05, incurred for taking depositions. Should the Accused fail to pay \$1,209.05 in full by the date he is eligible to be reinstated to the practice of law, 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 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 27th day of July 2006.

/s/ Benjamin E. Freudenberg  
Benjamin E. Freudenberg  
OSB No. 77182

EXECUTED this 3rd day of August 2006.

OREGON STATE BAR

By: /s/ Stacy J. Hankin  
Stacy J. Hankin  
OSB No. 86202  
Assistant Disciplinary Counsel



**ORDER APPROVING STIPULATION TO  
EXTEND EFFECTIVE DATE OF SUSPENSION**

This matter having been heard upon the Stipulation to Extend Effective Date of Suspension entered into by Benjamin E. Freudenberg (hereinafter “Accused”) through his lawyer, and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation is approved. The Accused shall be suspended from the practice of law for 30 days, effective October 16, 2006.

DATED this 21st day of September 2006.

/s/ John A. Berge

John A. Berge, Esq.

State Disciplinary Board Chairperson

/s/ Susan G. Bischoff

Susan G. Bischoff, Esq., Region 5

Disciplinary Board Chairperson

**STIPULATION TO EXTEND  
EFFECTIVE DATE OF SUSPENSION**

Benjamin E. Freudenberg, attorney at law (hereinafter “Accused”), through his counsel, and the Oregon State Bar (hereinafter “Bar”) hereby stipulate as follows:

1.

At the direction of the State Professional Responsibility Board, the Accused was charged with misconduct in an Formal Complaint filed in this proceeding on January 17, 2006.

2.

On July 27, 2006, the Accused signed a Stipulation for Discipline agreeing that he violated RPC 1.7(a) and RPC 8.4(a)(4), and suspending him from the practice of law for a period of 30 days, effective October 2, 2006, or the 60th day after the date of the order approving the Stipulation for Discipline was signed by the Disciplinary Board, whichever was later.

3.

At the time the Accused signed the Stipulation for Discipline, he was scheduled to try a land use matter on August 31, 2006.

4.

On August 10, 2006, the Disciplinary Board signed the Order Approving the Stipulation of Discipline. Pursuant to the terms of the order, the Accused's suspension was to begin on October 9, 2006.

5.

After the order was signed on August 10, 2006, trial in the land use matter was postponed until October 10, 2006.

6.

In order to avoid any prejudice to the Accused's client in the land use matter, the parties agree to extend the effective date of his suspension to October 16, 2006.

DATED this 14th day of September 2006.

/s/ Rene C. Holmes

Rene C. Holmes

OSB No. 98253

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. 05-188, 05-189, 05-190,  
) 06-21  
DAVID E. GROOM, )  
)  
Accused. )

Counsel for the Bar: Jane E. Angus  
Counsel for the Accused: Susan D. Isaacs  
Disciplinary Board: None  
Disposition: Violation of DR 6-101(B), RPC 1.3, and RPC  
1.4. Stipulation for Discipline. 30-day  
suspension.  
Effective Date of Order: September 1, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by David E. Groom (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 is suspended from the practice of law for 30 days for violation of DR 6-101(B) of the Code of Professional Responsibility, and RPC 1.3 and RPC 1.4 of the Rules of Professional Conduct, effective September 1, 2006, or three days after the date of this order, whichever is later.

DATED this 28th day of August 2006.

/s/ John A. Berge  
John A. Berge  
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff  
Susan G. Bischoff, Region 6  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

David E. Groom, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1978, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 December 16, 2005, 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, and RPC 1.3 and RPC 1.4 of the Rules of Professional Conduct concerning Case Nos. 05-188, 05-189, and 05-190. On March 18, 2006, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of RPC 1.3 and RPC 1.4 concerning Case No. 06-21. 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

**Case Nos. 05-188, 05-189, 05-190**

5.

On or about April 2, 2001, Gregory Shoemaker (hereinafter “Shoemaker”) filed a petition for post-conviction relief in the Circuit Court of the State of Oregon for the County of Umatilla, *Gregory Shoemaker v. Jean Hill, Superintendent, Eastern Oregon State Correctional Institution*, Case No. CV-010448 (hereinafter “Post-Conviction Case”). The court denied and dismissed Shoemaker’s petition and filed its Judgment of Dismissal on January 8, 2003. On February 14, 2003, Shoemaker filed a notice of appeal in the Post-Conviction Case, Appellate Case No. CA 120636

(hereinafter “Shoemaker Appeal”). On August 5, 2003, the Court of Appeals appointed the Accused to represent Shoemaker in the Shoemaker Appeal.

6.

On or about February 7, 2003, Michael James (hereinafter “James”) filed a petition for post-conviction relief in the Circuit Court of the State of Oregon for the County of Malheur, *Michael James v. Jean Hill, Superintendent, Snake River Correctional Institution*, Case No. C0302262 (hereinafter “Post-Conviction Case”). The court denied and dismissed James’ petition on or about March 30, 2004. On April 23, 2004, James filed a notice of appeal in the Post-Conviction Case, Appellate Case No. CA 120636 (hereinafter “James Appeal”). On July 29, 2004, the Court of Appeals appointed the Accused to represent James in the James Appeal.

7.

On or about August 7, 2003, Robert Jones (hereinafter “Jones”) filed a petition for post-conviction relief in the Circuit Court of the State of Oregon for the County of Multnomah, *Robert Jones v. James Bartlett, Superintendent, Oregon State Correctional Institution*, Case No. 01C-18588 (hereinafter “Post-Conviction Case”). The court denied and dismissed Jones’ petition on June 7, 2004. On June 24, 2004, Jones filed a notice of appeal in the Post-Conviction Case, Appellate Case No. CA 125144 (hereinafter “Jones Appeal”). On July 26, 2004, the Court of Appeals appointed the Accused to represent Jones in the Jones Appeal.

8.

During the representation, the Accused filed opening briefs in the Court of Appeals for each of the clients. The Accused provided the clients with a copy of the appellate brief he filed in their cases. Thereafter, the state filed motions for summary affirmance of the trial court decisions. In each of the cases, the Court of Appeals granted the state’s motion for summary affirmance. The Accused received a copy of the court’s orders.

9.

During the representation of Jones, Shoemaker and James, the Accused failed to promptly notify the clients that the state had filed motions for summary affirmance or provide the clients with a copy of the motions. He also failed to promptly notify the clients that the appellate court had granted the state’s motions or provide the clients with a copy of the court’s decisions. During the representation, the Accused failed to keep the clients reasonably informed about the status of their appeals and failed to provide the clients with explanations reasonably necessary to permit them to make informed decisions regarding the representation. The Accused failed to timely file petitions for review of the decisions granting the state’s motions for summary affirmance. Later, the Accused filed motions for relief from default to reinstate the Jones and Shoemaker cases to permit them to file petitions for review.

James, on his own behalf, filed a motion for relief from default to file a petition for review. The court granted the motions. In each of the cases, the Supreme Court ultimately denied the clients' petitions for review.

10.

The Accused admits that the aforesaid conduct constituted neglect of legal matters entrusted to him and failure to communicate with the clients in violation of DR 6-101(B) of the Code of Professional Responsibility, and RPC 1.3 and RPC 1.4 of the Rules of Professional Conduct.

**Case No. 06-21**

11.

On or about July 23, 2003, Jerry Hardaway (hereinafter "Hardaway") filed a petition for post-conviction relief in the Circuit Court of the State of Oregon for the County of Umatilla, *Jerry Hardaway v. Anthony J. Santos, Superintendent, Eastern Oregon State Correctional Institution*, Case No. CV-030977 (hereinafter "Post-Conviction Case"). The court denied and dismissed Hardaway's petition and filed its judgment on October 14, 2004.

12.

Hardaway filed a notice of appeal in the Post-Conviction Case, Appellate Case No. CA 126443 (hereinafter "Hardaway Appeal"). On or about December 6, 2004, the Court of Appeals appointed the Accused to represent Hardaway in the Hardaway Appeal. The Accused filed an opening brief in the Hardaway Appeal and sent Hardaway a copy of the brief.

13.

Hardaway sent a letter to the Accused concerning the sufficiency of the arguments and issues identified in the opening brief. The Accused failed to respond. Thereafter, Hardaway filed a motion to allow him to file a supplemental brief. The court granted the motion and filed an order allowing pro se filing of a supplemental brief and sent a copy of the order to the Accused. Pursuant to the terms of the order, the brief was to be submitted to the Accused for filing in proper form and had to be filed with the court within 21 days from the date of the court's order.

14.

Hardaway sent his supplemental pro se brief to the Accused. The Accused failed to file the pro se brief with the court; failed to seek an extension of time to file the pro se brief, and failed to notify Hardaway that he had not filed the brief. Hardaway sent a letter to the court to determine if the Accused had filed the supplemental pro se brief. The court received the letter, a copy of which Hardaway had also sent to the Accused. The court sent a letter to the Accused and instructed

him to respond to Hardaway's letter. The Accused failed to communicate with Hardaway. After Hardaway sent another letter to the court, the Accused filed Hardaway's pro se supplemental brief.

15.

During the representation, the Accused failed to respond to Hardaway's communications and requests; failed to timely file Hardaway's supplemental pro se brief; and failed to advise Hardaway concerning the issues Hardaway wished to be considered in the Hardaway Appeal. The Accused also failed to timely comply with the court's directives.

16.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to him and failure to communicate in violation of RPC 1.3 and RPC 1.4 of the Rules of Professional Conduct.

### SANCTION

17.

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. *Standards*, § 3.0.

A. *Duty*. In violating DR 6-101(B), RPC 1.3, and RPC 1.4, the Accused violated his duty to act with reasonable diligence and promptness when representing his clients. *Standards*, § 4.4.

B. *Mental state*. The Accused's conduct demonstrates negligence, 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 knew that he was responsible for and needed to take action concerning each of his client's legal matters, but failed to act. The Accused failed to establish and implement procedures to adequately communicate with his clients to keep them informed and provide explanations necessary to permit the clients to make informed decisions.

C. *Injury*. The *Standards* define "injury" as harm to the client, the public, the legal system or the profession that results from a lawyer's conduct. "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Standards*, p. 7. An injury does not need be actual, but only potential

to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

The Accused caused actual injury and potential injury to each of his clients. All of the clients were frustrated because the Accused failed to communicate with them. The Accused caused potential injury to his clients when he jeopardized their ability to pursue appellate remedies. Each of the clients' cases was eventually reinstated and the clients allowed to pursue appellate review.

D. *Aggravating factors.* "Aggravating factors" are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. There are several aggravating factors in this case. There are multiple offenses and a pattern of misconduct. *Standards*, § 9.22(d), (c). The Accused has substantial experience in the practice of law. He was admitted to practice in Oregon in 1978. *Standards*, § 9.22(i). The clients were vulnerable. They were incarcerated and relied on the Accused to protect and advance their interests and to consult and keep them informed concerning their legal matters. *Standards*, § 9.22(h).

E. *Mitigating factors.* The Accused has no prior record of discipline. *Standards*, § 9.32(a). There is an absence of selfish or dishonest motives. *Standards*, § 9.32(b). The Accused is remorseful. *Standards*, § 9.32(l). Also, he cooperated in the investigation of his conduct. *Standards*, § 9.22(e). The Accused reports that he has established procedures that will insure that communication problems similar to those involved in the cases that are the subject of this stipulation will not reoccur.

18.

The *Standards* provide suspension is generally appropriate when a lawyer fails to perform services for a client and causes injury or potential injury to a client; or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42. Case law is in accord. *See, e.g., In re Barnett*, 14 DB Rptr 5 (2000); *In re Doherty*, 17 DB Rptr 1 (2003). *See also In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (lawyer reprimanded for violation of DR 6-101(B) when mitigating circumstances substantially outweighed aggravating factors, including prior disciplinary record).

19.

The Bar and the Accused agree that the Accused shall be suspended from the practice of law for 30 days for violations of DR 6-101(B), RPC 1.3, and RPC 1.4, the suspension to be effective September 1, 2006, or three days after this stipulation is approved, whichever is later.

20.

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 this stipulation shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 16th day of August 2006.

/s/ David E. Groom

David E. Groom

OSB No. 77153

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case Nos. 05-139, 05-140, 05-197,  
) 06-65  
STEVEN B. JOHNSON, )  
)  
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott  
Counsel for the Accused: Susan D. Isaacs  
Disciplinary Board: None  
Disposition: Violation of DR 5-105(E), DR 6-101(B), DR  
9-101(A), DR 9-101(C)(3), RPC 1.3, RPC 1.4(a),  
RPC 1.4(b), and RPC 8.1(a)(2). Stipulation for  
Discipline. 90-day suspension.  
Effective Date of Order: September 30, 2006

**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 for violations of DR 5-105(E), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 8.1(a)(2), the sanction to be effective September 15, 2006, or 30 days after the stipulation is approved, whichever is later.

DATED this 31st day of August 2006.

/s/ John A. Berge

John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ R. Paul Frasier

R. Paul Frasier, Esq., Region 3  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Steven B. Johnson attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1994, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Jackson 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 June 7, 2006, 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 5-105(E) (current client conflict of interest); DR 6-101(B) (neglect of a legal matter); DR 9-101(A) (failure to deposit or maintain client funds in trust) (three counts); DR 9-101(C)(3) (failure to account for client funds or property) (three counts); RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter) (two counts); RPC 1.4(b) (failure to communicate with client sufficient to allow the client to make informed decisions regarding the representation); and RPC 8.1(a)(2) (failure to respond to a lawful demand for information from a disciplinary authority). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

**Case No. 05-139**

**Frederick Bucci Matter**

**Facts**

5.

On or around March 30, 2004, the Accused was hired by Frederick Bucci (hereinafter “Bucci”) for representation on a number of criminal charges. Bucci and

the Accused entered into a “Flat Fee Agreement” for \$15,000.00, but with no provision regarding when that money was earned. The Accused was given \$15,000.00 on behalf of Bucci. The Accused did not deposit or maintain Bucci’s funds in his lawyer trust account. The Accused did not make or maintain records clearly and expressly reflecting the date, amount, source, and explanation for deposits, withdrawals, deliveries, and disbursements of Bucci’s funds and was not otherwise able to account for Bucci’s funds. Following the initiation of this Bar proceeding, the Accused accounted for Bucci’s funds through the extent of the legal services he performed on his behalf and investigation expenses.

### **Violations**

6.

The Accused acknowledges that his conduct in the Bucci matter constituted a failure to deposit or maintain client funds in an identifiable trust account and a failure to maintain complete records of all client funds and property in his possession and render appropriate accounts regarding them in violation of DR 9-101(A) and DR 9-101(C)(3).

### **Case No. 05-140**

#### **Dean Matters**

#### **Facts**

7.

In or around August 2003, Jennifer Dean (hereinafter “Jennifer”) hired the Accused to defend her against several criminal charges. Jennifer and the Accused entered into a “Flat Fee Agreement” providing for “\$5,000.00 for pre trial representation with \$1,000.00 to be placed in the trust account, and \$1,500.00 for retainer fees...”. There was no provision regarding when Jennifer’s money would be earned. At the initiation of representation, Jennifer paid the Accused \$1,500.00 in cash. She later provided the Accused an additional \$4,500.00. The Accused did not deposit or maintain Jennifer’s funds in his lawyer trust account. The Accused did not make or maintain records clearly and expressly reflecting the date, amount, source and explanation for deposits, withdrawals, deliveries, and disbursements of Jennifer’s funds and was not otherwise able to account for Jennifer’s funds. Following the initiation of this Bar proceeding, the Accused accounted for Jennifer’s funds through the extent of the legal services he performed on her behalf and investigation or other expert expenses.

8.

In or around April 2004, Jennifer was charged with unlawfully obtaining public assistance and the matter was consolidated with the representation undertaken by the Accused described in paragraph 7.

9.

In or around June 2004, Jennifer's husband, Edward Dean (hereinafter "Edward," collectively "the Deans") was also charged in connection with unlawfully obtaining public assistance and hired the Accused to defend him on the charge. There was no written fee agreement. Edward paid the Accused \$1,000.00. The Accused did not deposit or maintain Edward's funds in his lawyer trust account. The Accused did not make or maintain records clearly and expressly reflecting the date, amount, source, and explanation for deposits, withdrawals, deliveries, and disbursements of Edward's funds and was not otherwise able to account for his funds. Following the initiation of this Bar proceeding, the Accused accounted for Edward's funds through the extent of his legal services and has made a partial refund.

10.

The Accused represented both Jennifer and Edward in connection with the criminal matters referenced in paragraphs 8 and 9 when their interests were in actual or likely conflict. Insofar as consent after full disclosure may have been available to cure a likely conflict between the interests of Jennifer and Edward, the Accused did not obtain consent from either Jennifer or Edward for his continued representation of both of them after full disclosure.

11.

On May 3, 2005, Disciplinary Counsel's Office of the Oregon State Bar requested that the Accused provide specific documentation regarding the payments provided by the Deans and the disbursement thereof. The Accused did not provide the requested documentation, despite additional requests on May 31, 2005, June 29, 2005, and August 2, 2005, that he do so.

### **Violations**

12.

The Accused acknowledges that his conduct in the Dean matters constituted a current client conflict of interest in violation of DR 5-105(E); failure to deposit or maintain client funds in an identifiable trust account and a failure to maintain complete records of all client funds and property in his possession and render appropriate accounts regarding them in violation of DR 9-101(A) (two counts) and DR 9-101(C)(3) (two counts); and failure to respond to a lawful demand for information from a disciplinary authority in a disciplinary matter in violation of RPC 8.1(a)(2).

**Case No. 05-197**

**Nick Stauber Matter**

**Facts**

13.

On or about May 2004, Nick Stauber (hereinafter “Stauber”) hired the Accused to defend him against a misdemeanor criminal charge in Jackson County Circuit Court. Stauber provided the Accused with \$1,000.00 flat fee. Stauber then left the state for employment purposes. Stauber later gave the Accused permission to enter a guilty plea on his behalf and to pay the costs and fees associated with that plea from the \$1,000.00 Stauber had paid the Accused. The Accused agreed to do so.

14.

The Accused entered a change of plea on behalf of Stauber on March 4, 2005. On May 31, 2005, the Accused paid the court \$130.00 on Stauber’s behalf. The receipt issued by the court showed a remaining balance owing for Stauber of \$115.99. The Accused did not pay this remaining balance. The Accused did not communicate to Stauber that there was a remaining balance. The Accused did not otherwise make arrangements for Stauber’s balance to be paid.

15.

In or around June 2005, Stauber received a demand for payment from the Oregon Department of Revenue on behalf of the Jackson County Circuit Court. In response, Stauber attempted to contact the Accused without success.

16.

Unable to contact the Accused, Stauber remitted \$115.99 to the Oregon Department of Revenue on July 13, 2005. That same day, Stauber also complained to the Oregon State Bar. In October 2005, the Accused reimbursed the \$115.99 to Stauber.

**Violations**

17.

The Accused admits that his conduct in the Stauber matter constituted neglect of a legal matter entrusted to him in violation of RPC 1.3, and a failure to keep a client reasonably informed about the status of a matter in violation of RPC 1.4(a).

**Case No. 06-65**

**Dorothy Heavilin Matter**

**Facts**

18.

In or around July 2002, Dorothy Heavilin (hereinafter “Dorothy”), an elderly diabetic, was injured as a result of abuse and neglect at Kindred Nursing Centers d/b/a Medford Rehabilitation Center (“Kindred”) following vascular surgery.

19.

In or around April 2003, Dorothy and her sister hired the Accused on a contingency fee basis to represent Dorothy in pursuing a claim against Kindred.

20.

In early August 2004, the Accused filed suit on behalf of Dorothy, but did not properly effectuate service on Kindred. As a result, the case was dismissed in December 2004. In March 2005, Johnson filed a second complaint against Kindred on behalf of Dorothy.

21.

Throughout the Accused’s representation of Dorothy, he failed to regularly or adequately communicate with her regarding the status of her case and failed to notify her of his imminent move out of state.

**Violations**

22.

The Accused admits that his conduct in the Heavilin matter constituted neglect of a legal matter entrusted to him in violation of DR 6-101(B); failure to keep a client reasonably informed about the status of a matter in violation of RPC 1.4(a); and failure to communicate with client sufficient to allow the client to make informed decisions regarding the representation in violation of RPC 1.4(b).

**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 duties to his clients to diligently attend to their legal matters, to avoid conflicts of interest, and to protect their property. *Standards*, §§ 4.4, 4.3, 4.1. The *Standards* provide that the most important ethical duties are those which a lawyer owes his clients. *Standards* at 5. The Accused also violated his duty to the profession to cooperate in a disciplinary investigation. *Standards*, § 7.0.

b. *Mental State.* The Accused's failures to timely and properly account for client funds were knowing. "Knowledge" is the conscious awareness of the nature of attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. The Accused negligently engaged in a conflict of interest with the Deans. "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. Finally, the Accused's failure to fully respond to the Bar was knowing, but not intentional. The Accused was reportedly unable to comply with the Bar's request for specific documentation since he closed his Oregon practice, stored his records in Oregon, and relocated to Hawaii.

c. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). Bucci and the Deans were both potentially injured by the Accused's failure to account for their funds. Edward was also actually injured to the extent that he had a refund owing and unpaid by the Accused. The Deans were also potentially injured by the Accused's undisclosed conflict of interest.

It is difficult to assess the extent of actual injury to Stauber and Dorothy by the Accused's failure to actively pursue their cases. However, the Accused's failure to communicate with all of his clients caused actual injury in the form of client anxiety and frustration. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of the attorney neglect can constitute actual injury under the *Standards*); *In re Schaffner*, 325 Or 421, 426–427, 939 P2d 39 (1997); *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989).

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 complaints against him. *In re Schaffner*, *supra*, 325 Or at 427; *In re Miles*, 324 Or 218, 222, 923 P2d 1219 (1996); *In re Haws*, 310 Or 741, 753, 801 P2d 818 (1990).

d. *Aggravating Factors.* Aggravating factors include:

1. The Accused engaged in a pattern of misconduct by failing to attend to or communicate with a number of clients during the wind up of his practice in Oregon. *Standards*, § 9.22(c);

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



3. Dorothy was a vulnerable client. *Standards*, § 9.22(h); and
4. The Accused has substantial experience in the practice of law, having been admitted in Oregon in 1994. *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 motive. *Standards*, § 9.32(b);
  3. The Accused was experiencing personal or emotional problems at the time of the misconduct at issue, in that his father had recently passed away and he was in the process of closing his practice and relocating his young family back to Hawaii. *Standards*, § 9.32(c);
  4. The Accused has expressed remorse to the affected clients. *Standards*, § 9.32(l).

24.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect, or when a lawyer knows that he is dealing improperly with client property. *Standards*, §§ 4.42, 4.12. The *Standards* also suggest that a reprimand is 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. *Standards*, § 4.33. Suspension is also 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.

25.

Oregon case law reaches a similar result on each of the Accused's violations. *See, e.g., In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (60-day suspension for knowing neglect of clients' case, with additional 60-day suspension for noncooperation with the Bar); *In re Holm*, 285 Or 189, 194, 590 P2d 233 (1979) (60-day suspension for dilatoriness and neglect); *In re Morrow*, 297 Or 808, 688 P2d 820 (1984) (lawyer who failed to timely file a legal action and repeatedly led the client to believe that he had done so received 60-day suspension); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (60-day suspension for neglect and failing to inform client of dismissal of case). The court has held that reprimands are generally the appropriate sanction for unintentional mistakes in trust account management. *In re Eakin*, 334 Or 238, 48 P3d 147 (2002); *see also In re Mannis*, 295 Or 594, 668 P2d 1224 (1983) (lawyer reprimanded for commingling office and client funds through mistakes of bookkeeping assistant).

Finally, failing to respond to the Bar's requests for information frequently warrants a multiple-month suspension. *See, e.g., In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (120-day suspension for noncooperation charge alone); *In re Hereford*,

**Cite as *In re Steven B. Johnson*, 20 DB Rptr 206 (2006)**

306 Or 69, 756 P2d 30 (1988) (attorney's attempts to avoid bar investigation and its consequences during period of suspension resulted in additional 126-day suspension). However, the Accused's conduct in this regard was not as egregious as much of the case law. Although he failed to provide requested documentation regarding payments received from the Deans, he continued to correspond on the issue. Under circumstances such as these, a reprimand has been found sufficient. *See, e.g., In re Nester*, 19 DB Rptr 134 (2005) (reprimand for failure to cooperate violation and personal interest conflict); *In re Nelson*, 17 DB Rptr 41 (2003) (reprimand for failure to cooperate due to personal circumstances and unlawful practice of law).

26.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 90 days for violations of DR 5-105(E), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 8.1(a)(2), the sanction to be effective September 15, 2006, or 30 days after the stipulation is approved, whichever is later.

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 8th day of August 2006.

/s/ Steven B. Johnson

Steven B. Johnson  
OSB No. 94099

EXECUTED this 24th day of August 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott  
OSB No. 99028  
Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 05-101, 06-41, 06-42
	)	
GLENN M. FEEST,	)	SC S53795
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violations of DR 6-101(B), DR 9-101(C)(4), RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2). Stipulation for Discipline. One-year suspension.
Effective Date of Order:	November 5, 2006

**ORDER ACCEPTING STIPULATION FOR DISCIPLINE**

Upon consideration by the court.

The court accepts the Stipulation for Discipline. The accused is suspended from the practice of law in the State of Oregon for a period of one year, effective 60 days from the date of this order.

DATED this 6th day of September 2006.

/s/ Paul J. De Muniz  
Paul J. De Muniz  
Chief Justice

**STIPULATION FOR DISCIPLINE**

Glenn M. Feest, attorney at law (hereinafter “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 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 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 June 22, 2006, 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 6-101(B) (neglect of a legal matter) (two counts) and DR 9-101(C)(4) (failure to promptly provide client property upon request) (two counts) of the Code of Professional Responsibility; and RPC 1.3 (neglect of a legal matter), RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter or promptly comply with reasonable requests for information) (two counts), RPC 1.15-1(d) (failure to promptly deliver client property to which the client is entitled), and RPC 8.1(a)(2) (failure to respond to a lawful demand for information from a disciplinary authority) (three counts) of the Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

**Case No. 05-101**

**ROY MUNOZ MATTER**

**Facts**

5.

In September or October 1999, the Accused undertook to represent Roy Munoz (hereinafter "Munoz") to protect his interests in, or recover his financial investment from, a piece of real property.

6.

During some portion of 2000, the Accused performed some work on behalf of Munoz. However, during 2000 and thereafter, the Accused failed to apprise Munoz of the status of the case, and failed to inform him of a proposed settlement.

7.

In December 2000, events occurred that the Accused knew would make it easier for him to arrive at a settlement regarding Munoz's financial or property interests. However, the Accused failed to take any significant action on Munoz's case and failed to respond to Munoz's or his family's attempts to contact the Accused.

8.

In June 2003, Munoz sent the Accused a letter that requested a status report on his legal matter. The Accused did not respond.

9.

In June 2004, Munoz sent the Accused another letter that requested a response from the Accused regarding his legal matter or, in the alternative, the return of Munoz's original documents in the Accused's possession. The Accused did not respond and did not provide Munoz with the documents he requested.

10.

On or about April 27, 2005, Disciplinary Counsel's Office of the Oregon State Bar received a complaint from Munoz related to the Accused's conduct. On May 2, 2005, Disciplinary Counsel's Office requested that the Accused respond to Munoz's complaint by May 23, 2005. The Accused was granted two extensions to respond by June 6, 2005, and June 16, 2005, respectively. The Accused did not respond to Disciplinary Counsel's inquiry despite an additional request on June 21, 2005, that he do so. On July 18, 2005, having received no response from the Accused, Disciplinary Counsel's Office was required to submit the matter to the Washington County Local Professional Responsibility Committee (hereinafter "LPRC") for investigation. The Accused ultimately cooperated with the LPRC investigation.

### **Violations**

11.

The Accused admits that his conduct in handling the Munoz matter constituted neglect of a legal matter entrusted to him; and failure to promptly provide requested client property in his possession in violation of DR 6-101(B) and DR 9-101(C)(4). The Accused further admits that his failure to respond to Disciplinary Counsel's requests for information violated RPC 8.1(a)(2).

**Case No. 06-41**

**DALE MOFFETT MATTER**

**Facts**

12.

In late April 2005, the Accused was appointed to represent Dale Moffett (hereinafter “Moffett”) in a criminal matter. Following his appointment, the Accused took little substantive action on Moffett’s case, and did not respond to numerous attempts to communicate with him by Moffett and Moffett’s wife until the court terminated his representation in August 2005.

13.

On November 9, 2005, Disciplinary Counsel’s Office of the Oregon State Bar received a complaint from Moffett related to the Accused’s conduct. On November 15, 2005, Disciplinary Counsel’s Office requested that the Accused respond to Moffett’s complaint by December 6, 2005. The Accused did not respond to Disciplinary Counsel’s inquiry despite additional requests on December 8, 2005, and December 30, 2005, that he do so.

**Violations**

14.

The Accused admits that his conduct in handling the Moffett matter constituted neglect of a legal matter entrusted to him and failure to keep a client reasonably informed of the status of his case in violation of RPC 1.3 and RPC 1.4(a). The Accused further admits that his failure to respond to Disciplinary Counsel’s requests for information violated RPC 8.1(a)(2).

**Case No. 06-42**

**ELIZABETH ENG MATTER**

**Facts**

15.

In 2000, the Accused represented Elizabeth Eng (hereinafter “Eng”) in a juvenile termination of parental rights proceeding that was eventually dismissed. In February 2003, the Accused was again appointed by the court to represent Eng on a criminal charge of mistreatment of one of her children. This charge was resolved by a plea in November 2003. In conjunction with these matters, Eng provided the Accused with a number of original documents and personal items from and related to her children.

16.

On November 26, 2003, the Accused was appointed to represent Eng on kidnapping and assault charges (hereinafter “kidnapping charge”). Although the Accused took steps to represent Eng on her kidnapping charge, he failed to communicate with her or substantively respond to numerous requests from Eng and Eng’s family and friends, that he communicate with her.

17.

Between November 2003 and November 2005, Eng wrote the Accused several letters in which she inquired about the status of her children and requested specific information from her file necessary for her ongoing legal matters. She also requested that he return the items she had received from her children and had given to the Accused. The Accused did not respond or otherwise return to Eng any of her file materials or other property.

18.

On November 30, 2005, Disciplinary Counsel’s Office of the Oregon State Bar received a complaint from Eng related to the Accused’s conduct. On December 7, 2005, Disciplinary Counsel’s Office requested that the Accused respond to Eng’s complaint by December 28, 2005. The Accused did not respond to Disciplinary Counsel’s inquiry despite an additional request on December 29, 2005 that he do so.

### **Violations**

19.

The Accused admits that he failed to communicate and keep Eng informed about her case in violation of DR 6-101(B) and RPC 1.4(a). The Accused also admits that his failure to promptly provide Eng her requested property violated DR 9-101(C)(4). The Accused further admits that his failure to respond to Disciplinary Counsel’s requests for information violated RPC 8.1(a)(2).

### **Sanction**

20.

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 most important ethical duties are those obligations that a lawyer owes to clients. *Standards*, p. 5. In this case, the Accused violated his duty to act with reasonable diligence and promptness in representing his clients, (*Standards*, § 4.4), and failed to properly handle and preserve client property

(*Standards*, § 4.1). The Accused also violated his duty as a professional by failing to respond fully to inquiries by Disciplinary Counsel’s Office. *Standards*, § 7.0. Although he did ultimately cooperate with the LPRC and with Disciplinary Counsel’s Office following the initiation of formal proceedings, the court has held that while partial cooperation may reduce the extent of the violation, it will not absolve a lawyer from his or her obligation under this rule. *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997).

b. *Mental State*. The most culpable mental state is that of “intent,” when the lawyer acts with the conscious objective or purpose to accomplish a particular result. *Standards*, p. 6. “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.* The Accused knowingly or intentionally failed to perform services for or communicate with his clients. *See In re Recker*, 309 Or 633, 789 P2d 663 (1999) (when attorney neglected client’s legal matter and also failed to respond to her client’s repeated inquiries, such a failure to maintain client communication was also found to be intentional). The Accused also acted knowingly in failing to promptly return client property and in failing to respond fully to Bar inquiries in violation of RPC 8.1(a)(2).

c. *Injury*. Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). It is difficult to assess the extent of actual injury, if any, to Munoz and Moffett by the Accused’s failure to actively pursue their cases. However, the Accused’s failure to communicate with all of his clients caused actual injury in the form of client anxiety and frustration. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of the attorney neglect can constitute actual injury under the *Standards*); *In re Schaffner*, 325 Or 421, 426–427, 939 P2d 39 (1997); *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989).

In addition, the Accused’s failure to promptly provide client property caused potential injury to Eng, who—although unable to take personal custody of her documents while incarcerated—has been unable to determine for herself an appropriate custodian of those materials provided to the Accused.

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 complaints against him. *In re Schaffner*, *supra*, 325 Or at 427; *In re Miles*, 324 Or 218, 222, 923 P2d 1219 (1996); *In re Haws*, 310 Or 741, 753, 801 P2d 818 (1990).

d. *Aggravating Factors*. Aggravating factors include:

1. Prior disciplinary offenses. The Accused was suspended for 30 days in 2004 for violations of DR 6-101(B) (neglect of a legal matter), DR 9-101(A) (failure to deposit or maintain client funds in trust), and DR 9-101(C)(4) (failure to promptly provide client property). *In re Feest*, 18 DB Rptr 87 (2004). A prior reprimand



demonstrates that the Accused had “both warning and knowledge of the disciplinary process” when he engaged in the later misconduct. *In re Hereford*, 306 Or 69, 75, 756 P2d 30 (1988). The Accused was also admonished in 1996 for violations of DR 1-102(A)(4) (conduct prejudicial to the administration of justice) and DR 6-101(B) (neglect of a legal matter). A letter of admonition is considered as evidence of past misconduct where the misconduct that gave rise to the admonition was of the same or similar type as the misconduct at issue in the case at bar. *In re Cohen*, 330 Or 489, 500, 8 P3d 953 (2000).

2. A pattern of misconduct. The Accused’s transgressions occurred over a substantial period of time. *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. The Accused’s clients were all incarcerated and dependent on him to communicate and act on their behalf. *Standards*, § 9.22(h).

5. Substantial experience in the practice of law. The Accused has been admitted in Oregon since 1980. *Standards*, § 9.22(i).

e. *Mitigating Factors*. The only mitigating factor is the Accused’s absence of a dishonest or selfish motive. *Standards*, § 9.32(b).

21.

The *Standards* provide that a suspension is generally appropriate when a lawyer knowingly improperly handles client property. *Standards*, § 4.12. A suspension is also appropriate where a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42. Suspension is again 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. Finally, suspension is generally appropriate when a lawyer has been reprimanded 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. *Standards*, § 8.2.

22.

Oregon case law also suggests that a lengthy suspension is appropriate. See, e.g., *In re Rudie*, 294 Or 740, 662 P2d 321 (1983) (seven-month suspension for neglect and incompetence where prior similar discipline); *In re Lombard*, Or S Ct No. SC S41883 (1994) (seven-month suspension for neglect and failing to cooperate with bar where attorney had prior suspension for neglect and dishonesty); *In re Meyer*, 328 Or 220, 970 P2d 647 (1999) (prior discipline for neglect aggravated sanction resulting in one-year suspension for second offense).

**Cite as *In re Feest*, 20 DB Rptr 215 (2006)**

The Accused's conduct is more aggravated than that in *Rudie* or *Lombard*, because this is the third time the Accused engaged in misconduct involving the same rules or types of rules. *See, e.g., In re Derby*, 19 DB Rptr 306 (2005) (one-year suspension for neglect and noncooperation, among other violations, when lawyer was twice disciplined for similar violations). *See also In re Chandler*, 306 Or 422, 760 P2d 243 (1988) (two-year suspension for prolonged neglect, among other violations, including failing to cooperate with the Bar, where lawyer was twice disciplined for identical violations).

23.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for one year for violations of DR 6-101(B), DR 9-101(C)(4), RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2), the sanction to be effective 60 days after approval by the Supreme Court.

24.

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

EXECUTED this 19th day of July 2006.

/s/ Glenn M. Feest

Glenn M. Feest

OSB No. 80222

EXECUTED this 21st day of July 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 99028

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case Nos. 05-32, 05-153  
)  
MARY W. JOHNSON, )  
)  
Accused. )

Counsel for the Bar: Jeffrey D. Sapiro; Stacy J. Hankin  
Counsel for the Accused: Christopher R. Hardman  
Disciplinary Board: Mary Kim Wood, Chair; Llewellyn Fischer;  
Marvin Hines, Public Member  
Disposition: Violation of DR 3-101(B) and ORS 9.160. Trial  
Panel Opinion. 30-day suspension.  
Effective Date of Opinion: September 15, 2006

**OPINION OF TRIAL PANEL**

This matter came on regularly before a Trial Panel of the Disciplinary Board consisting of Mary Kim Wood, Chair; Llewellyn Fischer, Member, and Marvin Hines, Public Member, on April 28, 2006. The Oregon State Bar was represented by Jeffrey Sapiro as Bar Counsel and Stacy J. Hankin, Assistant Disciplinary Counsel. The Accused was represented by Christopher R. Hardman. The Trial Panel has considered the stipulations, pleadings, exhibits, testimony, trial memoranda, arguments of counsel, and closing briefs.

**INTRODUCTION**

Beginning July 16, 2004, the Accused was suspended from the practice of law for 30 days pursuant to a disciplinary stipulation. Bar Rule (BR) 8.3 sets out the procedure for reinstatement after a suspension for less than six months. The Accused failed to follow that procedure or to verify the status of her reinstatement before resuming the practice of law.

In a second matter, the accused was engaged in a fee dispute with a former client. Following discussions with counsel for the former client (counsel), the Accused sent a letter requesting that an answer be filed within 10 days. Counsel served his Answer on the Accused but stated he would delay filing to allow the Accused time to reconsider settlement. The Accused made no response and did not

talk to counsel or otherwise advise him to file the Answer. As soon as the 10 days had run, she appeared *ex parte* and obtained a default against Defendant.<sup>1</sup> She did not inform the court that she had received an Answer from counsel nor that he was planning to file an appearance. She did not notify counsel that she was appearing *ex parte*.

The Bar argued that the Accused's resumption of her legal practice prior to reinstatement violated DR 3-101(B) of the Code of Professional Responsibility and ORS 9.160, which prohibits the practice of law by someone who is not an active member of the Oregon State Bar. It argues that in obtaining the default, she violated RPC 3.3(d) and RPC 8.4(a)(4), which require an attorney to provide the court with all relevant information it needs to reach a decision, even if that information is harmful to the attorney's position.<sup>2</sup>

### GENERAL FACTUAL FINDINGS

Based upon the testimony and admissions received, the Panel finds that:

1. The Accused had been suspended from the practice of law.
2. She was provided with the proper procedures for reinstatement.
3. She failed to follow those procedures.
4. She was advised by her counsel not to practice law until she had been reinstated.
5. She resumed the practice of law without confirming reinstatement.
6. The Accused initiated an action.
7. She sent opposing counsel a 10-day letter to file an answer.
8. She received an answer and a request for further settlement discussions within the 10 days.
9. She had previously lost a default by discussing settlement with opposing counsel.
10. Despite her stated desire to have an answer filed, she actually wanted to obtain a default.
11. She failed to respond to counsel's letter, or inform him that she intended to proceed with the default.

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<sup>1</sup> The default was subsequently reversed by the trial court. The Accused appealed the reversal but no decision has yet been issued.

<sup>2</sup> In January 2005, the ethical rules applicable to Oregon attorneys changed from the Disciplinary Rules of the Code of Professional Conduct to the Oregon Rules of Professional Conduct. Accordingly the question of practicing while suspended was decided under the old rules, and the issue relating to the default was decided under the new rules.

12. She confirmed with the court that the answer had not been filed.

13. She failed to inform the court that defendant had provided her with an answer prior to her *ex parte* appearance.

### **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).

### **ALLEGATIONS AND DETERMINATION RELATED TO PRACTICING WHILE SUSPENDED**

The Bar alleges that the Accused violated DR 3-101(B), which states:

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of the regulations of the profession in that jurisdiction.

The Bar further alleges that the Accused's conduct violated ORS 9.160, which states:

Except for the right reserved to litigants by ORS 9.320 to prosecute or defend a cause in person, no person shall practice law or represent that person as qualified to practice law unless that person is an active member of the Oregon State Bar.

The Accused stated that she had negotiated a 30-day suspension and believed she was entitled to resume practicing law as soon as that 30 days had run. She had received a letter from the Bar referencing the reinstatement requirements, which stated:

Finally I have enclosed information about the reinstatement process. You are eligible to be reinstated upon the payment of all applicable fees as provided in BR 8.3. However, please note that the compliance affidavit must be filed with the Bar within 6 months from the date your suspension begins.

The Accused admitted reading BR 8.3, which details the procedure, but argued that the alleged omission of certain enclosures from the letter made it misleading as to the procedures to follow.<sup>3</sup> She argued that the Bar's subsequent modifications to the

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<sup>3</sup> The Accused claims, and the Bar does not dispute, that the letter failed to include five enclosures. They would have included a memorandum addressing the procedures for attorneys applying for reinstatement under BR 8.3, 8.4, and 8.5; a copy of Title 8 of the Bar Rules of Procedure; a copy of a draft form compliance affidavit; a memorandum regarding the fees to be paid as part of the re-application process and a change of address form.

text of the letter<sup>4</sup> established that the language in the letter she received was misleading or at least ambiguous.<sup>5</sup> She claims that as she understood the letter, all she needed to do to be reinstated was file the affidavit and pay the fee sometime within six months after her suspension ended and that in the interim, she was entitled to practice law.

The Panel does not find the Accused's position credible. In the first place, she offered no explanation for why she thought she would be automatically reinstated at the end of thirty days, in light of the information she received and admitted reading, which dealt with the requirements which must be met **prior** to reinstatement. In the second place, even if she believed that she could submit the compliance affidavit within six months, the Bar letter is quite clear that reinstatement did not occur until **after** the payment of the applicable fees. the Accused knew she had not met those requirements or paid any fees when she resumed the practice of law.

In addition, the Panel does not find the information that the Accused admits reading to be misleading. Even if it did, the Accused offered no justification for her failure to contact the Bar and confirm reinstatement before she resumed practice. Her argument that she thought she understood what was required and therefore had no questions is not credible given the totality of circumstances presented.

The Accused has argued that in order to be actionable, her practice of law while suspended had to be knowing. The Panel disagrees. There is nothing in the language of ORS 9.160 which requires that a person knowingly engage in the unlawful practice of law. Instead it is a bright line standard that one must be "an active member of the Oregon State Bar." Even if there were a knowledge requirement, it is the Panel's opinion that the Accused's failure to contact the Bar and confirm reinstatement before she resumed practice amounted to willful ignorance and is tantamount to intentional misconduct.

More specifically, during her suspension it is undisputed but that the Accused was not an active member of the bar and that her practice of law while suspended would violate the statute. After the expiration of the suspension, Assistant Disciplinary Counsel Angus who handled the case noticed that no request for reinstatement had been received. She contacted the Accused's then-counsel, Peter Jarvis, who passed the inquiry onto the Accused. At that same time, attorney Jarvis warned the Accused not to practice law until she was reinstated.

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<sup>4</sup> The Bar later added the following language to its letter: "Please note that reinstatement is not automatic following a term of disciplinary suspension."

<sup>5</sup> As further support for this argument, the Accused alleges that an attorney named Kay was similarly misled into making the same mistake. The Panel did not find this assertion persuasive given the number of persons suspended who were not misled by that same language.

The Accused claims that in response to Jarvis' communication she prepared an affidavit of reinstatement delivered to the Bar along with a check for \$2,000.00. She continued practicing law without confirming her reinstatement. The Accused contends that the Bar returned her affidavit and check telling her she needed to complete an affidavit in the approved form and that the fee was \$200.00. In response, the Accused claims she completed a new affidavit, which, with a second check, was delivered to the Bar. That same day she was reinstated.

In support of her version of events, the Accused provided an invoice for the second delivery and a ledger print-out including the \$2,000.00 check. She was unable to provide an invoice for the first delivery, and claimed that she had destroyed the affidavit she had allegedly prepared and deleted from her computer. It also called Vicki Fichtner, the person who would have received the check and affidavit, as a witness. Ms. Fichtner testified that she would have recalled a \$2,000.00 check if it had been received.

The Panel finds the Accused's claim that she had a \$2,000.00 check cut credible, but given the absence of a delivery receipt and her claimed destruction, and computer deletion, of the alleged affidavit, does not believe the Accused made the first submission to the Bar. Her testimony to the contrary is simply not credible. Based upon the totality of the evidence presented, the Panel believes the only submission made was the one accompanying the \$200.00 check, the submission for which a receipt exists and which resulted in her reinstatement.

Finally, the Panel finds that the Bar has established by clear and convincing evidence that the Accused was warned by her counsel not to practice law without being reinstated and that he advised her of the requirements to be reinstated. Instead of relying upon her counsel to handle or assist her with the reinstatement, the Accused decided to handle the matter herself. Then, despite her attorney's warning, and without confirming her reinstatement, she resumed the practice of law. Under questioning, the Accused had various explanations<sup>6</sup> for her failure to call the Bar and confirm her status before resuming the practice of law. In the opinion of the Panel, none of those reasons justified her conduct.

### DISPOSITION

Based upon the foregoing, the Trial Panel unanimously concludes that the Accused engaged in the practice of law while suspended and that her conduct violated DR 3-101(B) and ORS 9.160.

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<sup>6</sup> Those rationales focused on her claim that she did not believe she needed to call as in her opinion, she had done all that was necessary to be reinstated.

## ALLEGATIONS AND DETERMINATION RELATED TO OBTAINING DEFAULT

The Bar alleges that the Accused violated RPC 3.3(d), which states:

In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

RPC 8.4(a)(4) provides that

It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

The Bar contends that the Accused violated the Rules when she appeared *ex parte* to obtain a default judgment without advising the court that defense counsel had served her with an Answer or that she had been in contact with him and knew that defendant intended to make an appearance. The Accused contends that this information did not need to be communicated to the court since ORCP 69 mandates that the moving party is entitled to default if written demand has been made for filing within 10 days and no response has been filed. In support of her position the Accused also relied on ORCP 9 which states that filing requires that the motion or answer be submitted to the court in addition to being served on the plaintiff.

The Bar introduced testimony from Judge Robert Herndon, who granted the default, that had he known of defendant's answer he would not have signed the order. Upon cross-examination however, he admitted that the language of ORCP 69 is mandatory and that he might have granted the default even if he had known about the answer submitted to the Accused.

## DISPOSITION

Based upon the foregoing, the Trial Panel concludes that although the Accused's actions constitute a "sharp practice"<sup>7</sup> the Bar has failed to meet its burden of proof and that the Accused did not violate RPC 3.3(d) or RPC 8.4(a)(4).

## SANCTION

In determining an appropriate sanction, one first looks to the *ABA Standards for Imposing Lawyer Sanction (Standards)*. Those *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 or mitigating circumstances. Applying those factors, the Panel finds that:

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<sup>7</sup> Defense counsel Hardman, Trial transcript, pg. 209, ln. 24.



1. The Accused violated DR 3-101(B) by practicing law while still suspended. The Panel does not accept the Accused's contention that her violation must be knowing.

2. The Accused's actions cannot be justified as a mistake given the specific warning from her counsel not to practice law until reinstated.

3. As of the date of the hearing, there does not appear to be any evidence that any of Accused's clients were actually harmed by her actions. However, since PLF coverage only applies to active attorneys, then for the admittedly limited period the Accused was practicing while suspended, those clients were exposed to a risk of an uncovered loss.

4. Among the aggravating circumstances is the substantial experience of the Accused who was admitted to the Oregon Bar in 1984. Additionally the Accused has a prior disciplinary record for misrepresentation made to the court which are similar to the misrepresentations the Panel finds she made in this case.

5. The mitigating factors include the Accused's cooperation during these proceedings.

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. The *Standards* also provide that reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards*, § 6.23.

It is undisputed that the Accused practiced law while suspended. The Panel finds that conduct violates DR 3-101(B). Her actions in resuming the practice of law without confirming reinstatement, constitutes willful ignorance of her status tantamount to a knowing violation of DR 3-101(B). Given the totality of the facts established in this matter, it is the unanimous opinion of the Trial Panel that the Accused be suspended.

The Bar has recommended a suspension of 120 days in this proceeding based on the Accused's "continuing to practice unlawfully for several days after she was on notice that she should not do so" and "additional violations arising from her failure to disclose material information to the court"<sup>8</sup> in a fee dispute with a former client. Additionally, there is a prior disciplinary record.

As noted above, the Panel concluded that the Bar failed to meet its burden of proof with regard to the failure to disclose charge and imposes no sanction for the conduct which gave rise to that charge. The Panel also notes that due to the Labor Day holiday, the actual time within which the Accused was unlawfully practicing,

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<sup>8</sup> OSB Trial Memorandum, at page 23.

**Cite as *In re Mary W. Johnson*, 20 DB Rptr 223 (2006)**

and the related potential harm to her clients, was minimal. Counsel for the Accused argued in his sanctions brief that interim rehabilitation and remorse should be taken into account as mitigating factors. However, the Panel found no evidence of either.

Having considered and weighed the aggravating and mitigating factors, the Panel members concluded a 30-day suspension was appropriate.

DATED this 25th day of July 2006.

/s/ Mary Kim Wood

Mary Kim Wood  
Trial Panel Chair

/s/ Llewellyn M. Fischer

Llewellyn M. Fischer  
Trial Panel Member

/s/ Marvin C. Hines

Marvin C. Hines  
Trial Panel Public Member

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-84
	)	
JUDSON M. CARUSONE,	)	
	)	
Accused.	)	

Counsel for the Bar:	Susan Roedl Cournoyer
Counsel for the Accused:	Stephen R. Moore
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4), DR 7-110(B)(2), and DR 7-110(B)(3). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	September 12, 2006

**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, effective immediately, for violation of DR 1-102(A)(4), DR 7-110(B)(2), and DR 7-110(B)(3) of the Code of Professional Responsibility.

DATED this 12th day of September 2006.

/s/ John A. Berge  
 John A. Berge, Esq.  
 State Disciplinary Board Chairperson

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

### STIPULATION FOR DISCIPLINE

Judson M. Carusone, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1994, 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 22, 2006, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(4), DR 7-110(B)(2), and DR 7-110(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

5.

The Accused represented Robert K. Clark (“Robert”) in the dissolution of Robert’s marriage from Maria F. D. Clark (“Maria”). Maria and Robert had four minor children. Pursuant to a Marital Settlement Agreement between Maria and Robert, certain assets would be placed into a trust created for the benefit of Maria and the children in lieu of child and spousal support.

6.

Judgment of Dissolution was entered in Lane County Circuit Court on June 26, 2003. In late August 2003, Robert and Maria signed an agreement creating the Clark Family Trust (“Trust”). Maria was named trustee of the Trust.

7.

In September 2003, a dispute arose between Maria and Robert regarding assets to be placed into the Trust, the use of Trust assets and the Judgment of Dissolution itself. The Accused knew that Maria was represented by counsel in these post-judgment matters.

8.

On November 24, 2003, the Accused filed, on behalf of Robert: a Motion and Order for Appointment of Guardian ad Litem (seeking to appoint Robert as guardian ad litem for the four children for purposes of filing an action against Maria as trustee); a Motion for Appointment of Receiver to the Trust (seeking to temporarily suspend Maria as trustee and appoint a receiver to administer the Trust); the Accused's Affidavit of Counsel in support of the Motion for Appointment of Receiver; and an Order Appointing Receiver (hereinafter collectively referred to as "the motions and orders").

9.

The Accused did not provide copies of the motions and orders to Maria or her counsel until after the Order Appointing Receiver and the Order Appointing Guardian ad Litem had already been granted by the court.

10.

On or about November 24, 2003, the Accused appeared in person before the Lane County Circuit Court to present the motions and orders to the court. The Accused did not notify Maria or her counsel that he would be appearing in court on the matters.

11.

UTCR 5.060(2) requires that ex parte motions contain the term "ex parte" in the caption. Although the Accused prepared, filed and presented the Motion for Appointment of Receiver to Trust and the Motion and Order Appointing Guardian ad Litem ex parte, neither motion contained the term "ex parte" in its caption.

12.

ORCP 80 C states that no receiver shall be appointed without notice to the adverse party at least five days before the time specified for a hearing, unless a different period is fixed by order of the court. The Accused was not aware of this notice requirement. The Accused did not provide advance notice to Maria or her counsel, and the court had not fixed a different notice period, when the Accused filed the motion and obtained the order appointing a receiver.

13.

By filing the motions and orders ex parte, the Accused communicated in writing on the merits of the cause with the judge in an adversary proceeding without delivering a copy of the writing to opposing counsel or to the adverse party.

14.

By appearing before Lane County Circuit Court Judge Charles Carlson to present the motions and related pleadings ex parte, the Accused communicated orally as to the merits of a cause in an adversary proceeding without adequate notice to opposing counsel or the adverse party.

15.

By engaging in improper ex parte contact and by failing to provide advance notice to the opposing party of the Motion to Appoint a Receiver, the Accused engaged in conduct that was prejudicial to the administration of justice.

### **Violations**

16.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(4), DR 7-110(B)(2), and DR 7-110(B)(3) 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 “ABA Standards”). ABA *Standards* requires 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 the legal system and the profession. ABA *Standards*, §§ 6.0, 7.0.

b. *Mental State.* The Accused acted knowingly, or with a conscious awareness of the nature or attendant circumstances of his conduct but without a conscious objective or purpose to accomplish a particular result, when he presented the motions and related pleadings ex parte. ABA *Standards*, p. 17. In failing to comply with the ORCP 80 C requirement to provide advance notice of a motion to appoint receiver, the Accused acted negligently, in that he failed to heed a substantial risk that circumstances existed or that a result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

c. *Injury.* The Accused's conduct resulted in actual injury to Maria, who was temporarily suspended as trustee without notice or the opportunity to object to Robert's Motion for Appointment of Receiver to the Trust, and who was not afforded the opportunity to respond and defend against Robert's Motion for Appointment of Guardian ad Litem over the four children, three of who were living in her home at the time. Maria incurred additional attorney fees in filing a motion to vacate the ex parte orders.

d. *Aggravating Factors.* Aggravating factors are those considerations that may justify an increase in the degree of discipline to be imposed. There are no aggravating factors present in this case.

e. *Mitigating Factors.* Mitigation or mitigating factors are those considerations that may justify a reduction in the degree of discipline to be imposed. Mitigating factors present in this case include:

1. The Accused has no prior record of formal discipline. *ABA Standards*, § 9.32(a).
2. The Accused has made full and free disclosure to the Disciplinary Counsel's Office and has cooperated with the Bar's investigation. *ABA Standards*, § 9.32(e).

18.

*ABA Standards* provides that, absent aggravating or mitigating factors, suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the proceeding. *ABA Standards*, § 6.32. Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding. *ABA Standards*, § 6.33. 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. *ABA Standards*, § 7.3.

19.

Oregon case law supports a public reprimand in this matter. See *In re Schenck*, 320 Or 94, 879 P2d 863 (1994); *In re Burrows*, 291 Or 135, 629 P2d 820 (1981); *In re Penz*, 16 DB Rptr 169 (2002).

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 1-102(A)(4),

**Cite as *In re Carusone*, 20 DB Rptr 231 (2006)**

DR 7-110(B)(2), and DR 7-110(B)(3) of the Code of Professional Responsibility, the sanction to be effective upon the Disciplinary Board's approval of this stipulation.

21.

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 August 2006.

/s/ Judson M. Carusone

Judson M. Carusone

OSB No. 94223

EXECUTED this 28th day of August 2006.

OREGON STATE BAR

By: /s/ Susan R. Cournoyer

Susan Roedl Cournoyer

OSB No. 86338

Assistant Disciplinary Counsel



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 06-32  
)  
MICHAEL E. ROSE, )  
)  
Accused. )

Counsel for the Bar: Jane E. Angus  
Counsel for the Accused: Wayne Mackeson  
Disciplinary Board: None  
Disposition: Violation of DR 6-101(B), RPC 1.3, RPC 1.4,  
DR 2-106(A), RPC 1.5(a), DR 9-101(A), and  
RPC 1.16(d). Stipulation for Discipline. Public  
reprimand.  
Effective Date of Order: October 13, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Michael E. Rose (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 is publicly reprimanded for violation of DR 6-101(B), RPC 1.3, RPC 1.4, DR 2-106(A), RPC 1.5(a), DR 9-101(A), and RPC 1.16(d).

DATED this 13th day of October 2006.

/s/ John A. Berge  
John A. Berge  
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff  
Susan G. Bischoff, Region 5  
Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

Michael E. Rose, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law on September 19, 1975, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On October 14, 2005, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 6-101(B), RPC 1.3, RPC 1.4, DR 2-106(A), RPC 1.5(a), DR 9-101(A), and RPC 1.16(d). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

### FACTS AND VIOLATIONS

5.

In October 1999, Steven E. Miller, *aka* Cameron Nightingale (hereinafter “Miller”) was convicted of multiple charges of Sodomy III and Sexual Abuse II, *State of Oregon v. Steven E. Miller*, Coos County Circuit Court Case Nos. 99CR0025 and 99CR1102 (hereinafter “Criminal Case”).

6.

In or about October 1999, Miller retained the Accused to pursue a direct appeal of his convictions concerning the Criminal Case. Pursuant to a written fee agreement, the Accused agreed to represent Miller. Miller’s mother paid the fee to the Accused. On or about November 12, 1999, Miller filed a notice of appeal concerning the Criminal Case (hereinafter “Miller Appeal”). On or about March 13, 2002, the Court of Appeals affirmed, without opinion, Miller’s convictions in the

Criminal Case. The Accused timely filed a petition for review with the Oregon Supreme Court. On December 3, 2002, the court denied review and on January 15, 2003, entered the appellate judgment.

7.

Thereafter, Miller retained the Accused to pursue a petition for post conviction relief. Pursuant to a written fee agreement, the Accused agreed to represent Miller. Miller's mother paid the fee to the Accused. On or about December 2, 2003, the Accused filed Miller's petition for post-conviction relief, *Steven E. Miller v, Jean Hill, Superintendent, Snake River Correctional Institution*, Malheur County Circuit Court Case No. 03123311M (hereinafter "Post-Conviction Case").

8.

On September 14, 2004, the court held a trial concerning the Post-Conviction Case, and on September 23, 2004, denied the petition. The court filed the judgment in the Post-Conviction Case on September 23, 2004. On October 4, 2004, Miller filed a notice of appeal concerning the Post Conviction Case and a motion for appointment of counsel, Case No. CA A126209 (hereinafter "Post-Conviction Appeal"). On October 5, 2004, the court-appointed the Oregon Appellate Consortium to represent Miller in the Post-Conviction Appeal. An attorney with the consortium was assigned to represent Miller concerning the Post-Conviction Appeal.

9.

In or about mid-October 2004, Miller retained the Accused to represent him concerning the Post-Conviction Appeal. Pursuant to an oral agreement, the Accused agreed to represent Miller. The Accused represented to Miller that he would notify the court that he would be representing Miller in the Post-Conviction Appeal. On November 12, 2004, the court-appointed attorney sent Miller a letter notifying that he had been substituted for the consortium to represent Miller. On December 5, 2004, Miller sent the court-appointed attorney a letter notifying that his services would not be needed because he had retained the Accused to represent him.

10.

On or about November 12, 2004, Miller's mother paid the fee for the Post-Conviction appeal to the Accused. The funds were initially deposited in the Accused's lawyer trust account, but on or about November 17, 2004, the Accused withdrew the funds and deposited them in his general account.

11.

Between about November and January 2005, Miller sent letters to the Accused regarding legal issues for his appeal and made requests, including requests for certain

documents and the opportunity to review the opening brief before it was filed with the court. The Accused did not respond.

12.

On or about January 20, 2005, the court sent the court-appointed attorney notice that the opening brief was past due and that Miller's Post-Conviction Appeal would be dismissed unless good cause was shown in writing why the case should be retained on the court's docket. On January 24, 2005, the court-appointed attorney filed a motion for relief from default and for extension of time to file the opening brief. On January 24, 2005, the court-appointed attorney sent Miller a letter advising that the Accused had not notified the Court of Appeals that he represented Miller concerning the Post-Conviction Appeal; that the Accused would need to file a motion for substitution of counsel if he intend to represent Miller; and that he had filed a motion for relief from default and motion for extension of time for Miller to file his opening brief. On January 30, 2005, Miller sent the Accused a letter in which he terminated the Accused's representation and demanded the return of the funds paid to the Accused for representation concerning the Post-Conviction Appeal. The Accused did not respond.

13.

In and between November 2004 and April 2005, the Accused did not communicate with Miller, the court, and the court-appointed attorney concerning the Post-Conviction Appeal; did not file or prepare an opening brief concerning the Post-Conviction Appeal; did not file a motion for extension of time to file an opening brief concerning the Post-Conviction Appeal; did not send Miller the documents he requested; and did not take action to advance Miller's appeal rights and objectives.

14.

On termination of the Accused's employment, the Accused failed to promptly deliver all papers and funds that Miller was entitled to receive. In April 2005, Miller brought his concerns to the attention of the Bar. In June 2005, the Accused returned the funds paid to the Accused for the Post-Conviction Appeal to the client's mother.

15.

The Accused admits that the aforesaid conduct constituted violation of DR 6-101(B) of the Code of Professional Responsibility and RPC 1.3 of the Rules of Professional Conduct (neglect of a legal matter entrusted to him); RPC 1.4 of the Rules of Professional Conduct (failure to communicate); DR 2-106(A) of the Code of Professional Responsibility and RPC 1.5(a) of the Rules of Professional Conduct (collecting an excessive fee); DR 9-101(A) of the Code of Professional Responsibility (failure to maintain client funds in trust); and RPC 1.16(d) (failure to comply with obligations on termination of employment).

## SANCTION

### 16.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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. *Standards*, § 3.0.

a. *Duty Violated.* In violating DR 6-101(B), RPC 1.3, RPC 1.4, DR 2-106(A), RPC 1.5(a), DR 9-101(A), and RPC 1.16(d), the Accused violated duties to his client and the profession. *Standards*, §§ 4.3, 4.4, 7.0.

b. *Mental State.* “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. “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. The Accused knew he had agreed to handle the client’s case and that he was not attending to it or communicating with his client as he should. The Accused believed he was going to correct the problems. The Accused was negligent in failing to communicate and to take action to address the client’s concerns.

The Accused was negligent in failing to ensure that he obtained a written fee agreement, which provided that the fee was earned on receipt. The Accused had such agreements with Miller for earlier matters and incorrectly assumed that he had sent and the client had signed such an agreement for the Post-Conviction Appeal. Because the client’s mother had paid the fee, the Accused was unsure if he should be returning the funds to the client’s mother or to the client as the client demanded.

c. *Injury.* The *Standards* define “injury” as harm to the client, the public, the legal system or the profession that results from a lawyer’s conduct. “Potential injury” is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. *Standards*, p. 7.

The Accused caused actual and potential injury to his client. The client’s appeal was delayed. There was also delay in returning the funds paid to the Accused to the client’s mother. The Accused’s client was frustrated by the Accused’s failure to communicate with him.

d. *Aggravating Factors*. “Aggravating factors” are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. There are multiple offenses. *Standards*, §9.22(d). The Accused has substantial experience in the practice of law. He was admitted to practice in 1975. *Standards*, § 9.22(i).

e. *Mitigating Factors*. “Mitigating factors” are considerations that may decrease the degree of discipline to be imposed. *Standards*, § 9.32. The Accused has no prior record of formal discipline. *Standards*, § 9.32(a). There is an absence of selfish or dishonest motives. *Standards*, § 9.32(b). The Accused has acknowledged his misconduct and cooperated fully in the investigation and the resolution of this case. *Standards*, § 9.22(e). Also, the Accused has a good reputation and is remorseful. *Standards*, § 9.32(g), (l).

17.

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. Reprimand is also generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards*, § 4.13.

18.

Oregon case law is in accord. *See, e.g., In re Koch*, 18 DB Rptr 92 (2004) (reprimand for violation of DR 2-110(A) and (B), DR 6-101(B), DR 9-101(C)(4)); *In re Russell*, 18 DB Rptr 98 (2004) (reprimand for violation of DR 6-101(B)); *In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (reprimand for violation of DR 6-101(B) when lawyer had prior record of neglect and significant mitigating factors present).

19.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be reprimanded for violation of DR 6-101(B), RPC 1.3, RPC 1.4, DR 2-106(A), RPC 1.5(a), DR 9-101(A), and RPC 1.16(d).

20.

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 this stipulation shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 4th day of October 2006.

/s/ Michael E. Rose

Michael E. Rose

OSB No. 75322

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

Cite as 341 Or 542 (2006)  
IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
 )  
Complaint as to the Conduct of )  
 )  
LAUREN PAULSON, )  
 )  
Accused. )

(OSB No. 04-26; SC S53185)

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

Argued and submitted September 6, 2006. Decided October 19, 2006.

Lauren Paulson, Aloha, argued the cause and filed the brief for himself.

Stacy J. Hankin, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before De Muniz, Chief Justice, and Gillette, Durham, Riggs, Balmer, and Kistler, Justices. (Riggs, J., retired September 30, 2006, and did not participate in the decision of this case. Carson and Walters, JJ., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for a period of four months, with the period of suspension to run consecutively to the period of suspension imposed on the Accused in *Paulson* [I].

**SUMMARY OF THE SUPREME COURT OPINION**

The Accused challenged the decision of a trial panel of the Disciplinary Board of the Oregon State Bar finding that he had violated Oregon Code of Professional Responsibility Disciplinary Rule (DR) 7-104(A)(1), DR 4-101(B)(1), DR 4-101(B)(2), and DR 1-103(C), and suspending him from the practice of law for four months. The Accused sought review, raising several affirmative defenses but not challenging the trial panel's findings or sanction. Specifically, the Accused argued that the Bar had initiated this and other disciplinary proceedings against him in retaliation for his Bar activities and to prevent him from expressing his opinion. The Accused also argued that the court does not exercise independent authority over the appointment of members of the Bar's Disciplinary Board, from which the three-person trial panel that



heard his case was drawn. *Held*: The Accused's affirmative defenses were without basis in law or fact. The Accused is suspended from the practice of law for a period of four months, with the period of suspension to run consecutively to the period of suspension imposed on the Accused in *In re Paulson*, 341 Or 13, 136 P3d 1087 (2006).

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 04-127  
)  
PHYLLIS KOESSLER, )  
)  
Accused. )

Counsel for the Bar: Conrad E. Yunker; Martha M. Hicks  
Counsel for the Accused: None  
Disciplinary Board: Lewellyn M. Fischer, Chair; Mary Kim Wood;  
Joan J. LeBarron, Public Member  
Disposition: Violation of DR 1-103(C), DR 6-101(B), and  
DR 9-101(C)(3). Trial Panel Opinion. Two-year  
suspension.  
Effective Date of Opinion: October 29, 2006

**OPINION OF THE TRIAL PANEL**

**Introduction**

On June 19 and June 20, 2006, this matter came before a trial panel consisting of Lewellyn M. Fischer, Chair; Mary Kim Wood, Esq.; and Public Member Joan L. LeBarron. Martha M. Hicks, Assistant Disciplinary Counsel, and Conrad E. Yunker, Esq., represented the Oregon State Bar. The Accused appeared in person and represented herself.

**The Complaint**

On July 3, 2002, the Accused was retained by Tiffany Hollman and her husband, Jeremy, to represent them in a stepparent adoption proceeding. Jeremy Hollman sought to adopt Tiffany's daughter by a previous marriage. The Hollmans signed a fee agreement and gave the Accused a check for \$1,000 as a retainer. It was this attorney-client relationship that gave rise to controversy.

Based on her handling of the Hollman matter, the Accused has been charged with four instances of misconduct: DR 9-101(C)(3) (failing to maintain complete records of client funds), DR 9-101(A) (failing to timely deposit client funds to a

lawyer trust account), DR 6-101(B) (neglecting a legal matter), and DR 1-103(C) (failure to cooperate with the disciplinary process).

## DISCUSSION AND ANALYSIS

### DR 9-101(A)

The Bar alleges that the Accused did not deposit her client's check into her trust account for 26 days and thereby violated DR 9-101(A) by failing her duty to deposit the check "promptly."<sup>1</sup> But, DR 9-101(A) contains no requirement that a client check must be deposited into the lawyer's trust account "promptly" or within any specified number of days. Even if a standard of "promptly" could be implied, the Trial Panel finds that the Accused's action of depositing the Hollman check within 26 days would not necessarily violate that standard. In this regard, the Panel agrees with the Accused's argument that the check was deposited within a normal 30-day business cycle and well before any draws were made against it.<sup>2</sup> The Bar has therefore failed to carry its burden of proving by clear and convincing evidence that the Accused violated this provision.<sup>3</sup>

### DR 9-101(C)(3)

As alleged by the Bar, DR 9-101(C)(3) requires that a lawyer maintain trust account records for a period of at least five years after final disposition and that the plain meaning of this provision is that these records must be kept in her possession. The Bar notes that, despite repeated requests and the trial panel's order requiring her to produce those records, she did not do so. According to the Bar, the purported trust account statement she did finally produce has so many errors and omissions that it is useless to demonstrate what happened to the Hollmans' money. At the hearing in this matter, the Accused produced a billing statement that she conceded did not show

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<sup>1</sup> The Panel notes that the Bar's original complaint charged the Accused with a failure to deposit the retainer into a trust account. OSB Formal Complaint dated April 5, 2005 at paragraph 3: "The Accused failed to deposit Hollman's retainer into a lawyer trust account. . . ." After the Appellant objected to the charge in her Trial Memorandum and requested that the charge be dismissed, the Bar informally "revised" its charge to an untimely deposit of the retainer. The Accused did not appear to be prejudiced by this development and, in effect, ratified this "amendment" to the complaint and rendered it moot by arguing the issue of untimeliness.

<sup>2</sup> Koessler Closing Argument at 1-2 (July 17, 2006). Nonetheless, to accept this argument one must rely on the dates of the checks involved in these transactions rather than the Accused's billing sheet.

<sup>3</sup> There is no dispute that the Bar has the burden of proving by clear and convincing evidence that the Accused committed the misconduct as charged. Bar Rules of Procedure 5.2 (hereafter "BR") (2005). "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).

her payment of attorney fees. Although she referred to additional trust account records stored elsewhere she was unable or unwilling to produce them. DR 9-101(C)(3) specifies in some detail the types of records that must be maintained.<sup>4</sup> The Accused argued vigorously that her billing statement satisfied this requirement.<sup>5</sup> The Trial Panel does not agree. Significantly, even her former counsel, an experienced practitioner who appeared as a witness on her behalf at the hearing, did not agree that this document satisfied the rule.<sup>6</sup> For all the foregoing reasons, the Trial Panel finds that the Bar has carried its burden on this charge.

#### DR 6-101(B)

As charged by the Bar, the Accused engaged in a course of negligent conduct in representing Ms. Hollman in the adoption proceeding. It is noted that although the Accused represented the Hollmans for about 21 months, she did not complete the adoption process. After the Accused filed the petition for adoption, Ms. Hollman experienced difficulty in communicating with her by telephone calls to her office. After she expressed her frustration in a letter to the Accused dated December 15, 2002, the latter suggested she communicate with her by e-mail. Although Ms. Hollman wrote e-mails to the Accused inquiring about the status of the proceeding between January and March 2003 she did not receive a response. Furthermore, the Accused did not advise Ms. Hollman that the court had signed an order of default against her former husband during April 2003. Although the court notified the Accused that she needed to submit the Hollman adoption decree within 30 days she did not do so and the matter was eventually dismissed. At this time the Accused was in the process of moving her residence from Oregon to New York but she did not

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<sup>4</sup> That provision specifies that a lawyer shall “(M)aintain *complete* records of all funds, securities and other properties of a client...and render appropriate accounts to the lawyer’s client regarding them.” Moreover, the records specified include “checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings or other statements of disbursements rendered to clients or equivalent records *clearly and expressly* reflecting the date, amount, source and explanation for all receipts, withdrawals deliveries and disbursements of funds or other property of the client (emphasis added).

<sup>5</sup> The Accused referred to this billing statement as a “one stop shopping” accounting statement.

<sup>6</sup> Hearing Transcript Volume II pages 232-252. (By Mr. Yunker Bsr Counsel cross examining Mr. Kobelin) “Q. And it’s (referring to the billing statement) not something you would submit to this trial panel as meets the requirement of the rule, correct? A. That’s correct. . . .” *Id.* at 275.

advise Ms. Hollman either of this development or that the adoption petition had been dismissed.<sup>7</sup>

When Ms. Hollman inquired by e-mail concerning the status of her case during October 2003, the Accused responded that she had inadvertently closed the Hollman file but would correct that situation. The Accused then reportedly wrote the Hollmans on November 18, 2003 that she was resigning from their case. On April 20, 2004, Ms. Hollman again inquired about a status report and stated that she would file a complaint with the Bar unless she heard from the Accused within 30 days. Ms. Hollman did not learn that the adoption had been dismissed until after she filed a complaint with the Bar during May 2004.

The Accused denies the charge of inadequate communications with her client even though she never responded to Ms. Hollman's telephone calls or advised her initially that she had moved from Oregon to New York. However, it is clear that she never advised the Hollmans that the adoption proceeding had been dismissed and, although the Accused insists that she wrote Ms. Hollman stating that she was withdrawing from the case, the evidence strongly suggests that she did not do so.<sup>8</sup> From all indications, the last time Accused communicated with Ms. Hollman was in an e-mail dated October 23 when she admitted that she had inadvertently closed her file but "would get this straightened out in the next few weeks."<sup>9</sup> This, despite the fact that Ms. Hollman wrote the Accused on April 20, 2004, stating she had received no communications from the Accused and would contact the Bar in 30 days unless she heard from her.<sup>10</sup> Distressingly, in the view of the Panel, the Accused attempted to shift the blame to her client by suggesting that the latter should have been more diligent in following up with the Accused before contacting the Bar.<sup>11</sup> In the same vein, she sought to blame the Bar for her problems by implying that personal animus

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<sup>7</sup> Unaccountably, the Accused agreed to perform the adoption for the Hollmans at a time she knew she would be relocating and moving or winding down her law practice, yet she failed to advise the Hollmans or her other clients of this significant development.

<sup>8</sup> The Accused does not deny that she sent her termination letter to the wrong address and did not follow up by any other form of communication to ensure the Hollmans received her letter of termination.

<sup>9</sup> Koessler Trial Memorandum (June 12, 2006), Exhibit N.

<sup>10</sup> Bar Exhibit 24.

<sup>11</sup> See, Koessler Closing Argument at 5. "Interestingly, Hollman also admitted she did nothing for almost six months, between late October and April, although she had been in regular touch prior to then. Perhaps, she late found the November letter, perhaps she did not wish to continue the adoption, perhaps she did not have the funds to continue the adoption, perhaps her mind was far more and understandably focused on her difficult pregnancy . . . many things are possible."

by Assistant Disciplinary Counsel Hicks actuated the charges against her, rather than any wrongdoing on her part. This refusal to acknowledge that she had done anything wrong, had harmed her client, and had harmed the legal profession, raises significant concerns about her ability to reform her future conduct.

Neglect in the context of DR 6-101(B) is the failure to act or the failure to act diligently. *In re Magar*, 335 Or 306, 321, 66 P3d 1014 (2003).<sup>12</sup> The Panel finds that the Accused's conduct was inexcusable and constitutes neglect under the applicable standards set forth in case law. *In re Knappenberger*, 337 Or 15, 90 P3rd 614 (2004); *In re Bourcier*, 325 Or 429, 939 P2d 604 (1997).

### **DR 1-103(C)**

The Bar began asking the Accused to respond to the Hollman complaint by a letter dated May 25, 2004. She did not respond until her counsel at the time, Mr. Kobelin, submitted a reply on June 28, 2004, at which time the matter was referred to the Disciplinary Counsel's Office.

On July 19, 2004, the Disciplinary Counsel's Office asked the Accused to account for her conduct and to provide further evidence that she had written a November 18, 2003 termination of representation letter to the Hollmans. Between June 28, 2004, and September 20, 2004, the Accused failed to respond to the Bar despite the urgings of her counsel<sup>13</sup> until November 1, 2004, after the matter had been referred to the Local Professional Responsibility Committee (LPRC) for investigation. As alleged by the Bar, the Accused never cooperated fully with the LPRC Investigator by providing the necessary documents before the Bar filed a

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<sup>12</sup> The Accused notes that *In re Magar* stands for the proposition that the evidence must show along a temporal continuum, the lawyer engaged in a course of neglectful conduct that reflects a failure to act or a failure to act diligently, that principle is of no assistance to the Accused. Closing Argument at 6. Although she asserts, her handling of the Hollman matter "went along fine" for the first year, there is little question that she failed to act in a diligent manner after that right up to the time Ms. Hollman filed a complaint with the Bar. The Accused also suggested that Ms. Hollman should have used the Professional Liability Fund to obtain a remedy for any misconduct and was somehow remiss in not doing so instead of pursuing a Bar complaint. That argument is specious and is consistent with a disturbing inclination by the Accused to shift the blame for her neglect to her client.

<sup>13</sup> The Accused was represented by Attorney Jerry Kobelin until he was allowed to withdraw for physical health reasons during a telephone conference call with the parties on March 12, 2006. An Order was issued by the Trial Panel Chair on May 18, 2006, granting his motion and allowing the Accused additional time to seek new representation. She did not obtain new counsel.

formal complaint on April 5, 2005, and the Accused engaged in dilatory behavior up to and through the hearing on June 19-20, 2006.<sup>14</sup>

The Accused responded to these charges by asserting that she did provide information to the Bar through her counsel and that, in essence, her counsel's secretary, Ms. Little, was responsible for any noncommunication with the Bar.<sup>15</sup> Ms. Little appeared as a witness at the hearing and the Panel finds her testimony credible. She testified that almost all of Mr. Kobelin's contacts with the Accused were through her and that the Accused was nonresponsive when she attempted to communicate with her.<sup>16</sup> The Panel does not find credible the Accused's argument that Ms. Little was to blame for her failure to cooperate with the Bar in this proceeding. The record in this proceeding contains ample evidence of the Accused's fractious, contentious, and dilatory behavior toward the Bar and the Office of Disciplinary Counsel. Under

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<sup>14</sup> The history of this proceeding reflects contentious and, at times, acrimonious, exchanges between the Accused and Bar representatives—in the view of the Panel well beyond the point of vigorous advocacy on the part of the Accused—concerning the production of documents and other issues. Moreover, the scheduling of the Accused's appearance at a hearing in Oregon was distinguished by repeated requests for continuances, primarily at the insistent of the Accused. During the initial scheduling of the hearing, the Accused stated she would be unable to travel to Oregon from her residence in New York State and would appear by telephone. The Bar objected to this as early as October 5, 2005 on the grounds that her personal presence was needed to enable the trial panel to assess her demeanor and credibility. When the hearing was scheduled for March 2, 2006, Mr. Kobelin, the Accused's counsel objected based, in part, on her alleged misunderstanding that she would be able to appear by telephone. When Mr. Kobelin suggested hearing dates of April 20-21 to allow her to appear in person., the Accused requested another continuance was granted on April 13, 2006 after the Accused said she would not be available until May 30, 2006. Finally, the Accused was granted yet another continuance when she said she needed additional time to obtain new counsel and she would be unable to travel because of a sports injury to her 17-year old son. It was then that the hearing dates of June 19-20 were established despite the Accused's objection that "JUNE IS OUT. Our son is graduating, we are packing up a house to move to Ohio, and traveling to Oregon is NOT going to happen." (Emphasis in original.) See Order granting the Bar's Motion to Require the Accused's Personal Appearance at a Scheduled Hearing dated June 8, 2006.

<sup>15</sup> Closing Argument at 4. This was yet another attempt by the Accused to assign blame to anyone but herself.

<sup>16</sup> Hearing Transcript, Vol. I, pp. 147-228.

the rule, the Accused had a duty to respond “fully and truthfully” to inquiries from the Bar and did not do so. *In re Haws*, 310 Or 741, 801 P2d 818 (1990).<sup>17</sup> The Panel finds that the Bar has carried its burden of demonstrating that the Accused failed to satisfy her duty to cooperate as prescribed by that rule.

### SANCTION

In determining the appropriate sanction, guidance is provided by the ABA *Standards for Imposing Lawyer Sanctions* (“Standards”) and Oregon case law. According to the *Standards*, the following factors are suggested for assessing an appropriate sanction: (1) the duty violated, (2) the lawyer’s mental state, (3) the actual or potential injury caused by the lawyer’s misconduct; and (4) the existence of aggravating or mitigating circumstances.

The Bar has recommended that the Accused be suspended from practice for a period of two years. For the following reasons, the Trial Panel agrees with that recommendation.

As reflected above, the Trial Panel has found that the Accused failed to maintain and produce trust account records pertaining to the retainer paid by the Hollmans, that she engaged in a course of neglectful conduct in handling their case, and that she violated her duty to cooperate with the Bar in its disciplinary inquiry. However, the Bar did not meet its burden to show that the Accused violated any rule by delaying the deposit of her retainer check for 26 days. Based on the foregoing, the Accused violated ABA *Standards* § 4.1 and § 4.4 in failing to diligently perform services and to preserve their property. Moreover, she is found to have violated her duty to cooperate with the Bar as prescribed by § 7.0.

It is the Trial Panel’s unanimous conclusion that the Accused’s failure to cooperate with the Bar’s investigation was intentional. She had just previously been disciplined for similar misconduct; her failure to communicate with the Bar despite the warnings of her counsel together with her disrespectful behavior toward those involved in this disciplinary process underscore the willfulness of her conduct. The Panel is not unmindful of the disrupting circumstances surrounding the Accused’s personal life including a geographic move across the country and unspecified emotional difficulties. These factors suggest that her lack of diligence in performing her duties to her clients may not have been intentional. But her conduct was at least “knowing” in that she acted with conscious awareness of what she was doing and a total disregard of the potential consequences for her client.

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<sup>17</sup> The court in *Haws* noted that the obstreperous conduct of the Accused in that case was “a primer of what not to do when a complaint is forwarded to a lawyer for a response. 310 Or at 749. The Accused’s behavior in this case is likewise a primer of what not to do when dealing with a Bar complaint.



The Panel finds that the Accused's conduct did cause harm to her clients because the adoption proceeding was never completed and, as reflected in Ms. Holman's credible testimony at the hearing, the Hollmans suffered anxiety and lost faith in the legal profession to the extent that they are unwilling to retain another attorney to complete the process.<sup>18</sup> Under the applicable *Standards* at §§ 4.42 and 7.2 a suspension is generally appropriate when these duties are violated.

The aggravating circumstances that are present in this case include the Accused's prior multiple and similar disciplinary offenses which she admitted by stipulation during May 2004. The Accused also engaged in multiple offenses here and refused to acknowledge the wrongful nature of her conduct. Moreover, the Panel noted a disturbing failure by the Accused to take responsibility for her actions and a tendency to blame her clients and others, including overzealousness by the Bar, for her problems. An additional aggravating factor is that she is an experienced attorney, having been admitted to practice in 1994.

In the course of this proceeding, the Accused several times referred to the "blackest and most hellish year of my life"<sup>19</sup> as a potentially mitigating factor in her neglect of clients and prior disciplinary offenses. Nonetheless, the Accused failed to allege that these same circumstances should be considered as mitigating in determining an appropriate sanction for the offenses at issue here.

In applying Oregon case law to this proceeding, the Trial Panel concludes that circumstances in *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997), are most analogous to those found here. There, the court found that neglect of a client's case, failure to return the client's property and nonresponsiveness in the disciplinary process, together with a lack of mitigating factors, warranted a two-year suspension. The court also found that the accused had been disciplined for nearly the same type of conduct within the previous year. Thus, a two-year suspension was deemed an appropriate sanction.

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<sup>18</sup> Ms. Hollman testified that rather than proceed with the adoption, they simply changed the child's name to match that of the rest of the family. To her discredit, the Accused indicated that this development demonstrated that there had been no harm to the client and suggested that it was the Hollman's fault that the adoption proceeding failed because they should have sought a name change in the first place.

<sup>19</sup> Hearing Transcript Vol. II at 402-403. Closing Argument at 3. The Bar considered the Accused's personal problems in determining the sanction for her previous discipline in 2004. It was observed that in the period of time in which the Accused's previous misconduct occurred, her husband had undergone several surgeries and contracted a serious medical condition, which temporarily left him a quadriplegic. It was noted that the burden of caring for him fell to the Accused and that, contemporaneously, her son suffered from ADHD and her daughter became dependent on illegal drugs, all of which required the Accused's care and attention. *In re Koessler*, 18 DB Rptr 105, 112 (2004).

### CONCLUSION

The Trial Panel finds the Accused violated DR 9-101(C)(3), DR 6-101(B), and DR 1-103(C), but that she did not violate DR 9-101(A). It is ordered that the Accused be suspended from the practice of law for a period of two years.

/s/ Llewellyn M. Fischer

Llewellyn M. Fischer

Trial Panel Chair

/s/ Mary Kim Wood

Mary Kim Wood

Trial Panel Member

/s/ Joan L. LeBarron

Joan L. LeBarron

Trial Panel Public Member

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 05-121
	)	
DENNIS L. DUNN,	)	SC S54154
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	Christopher R. Hardman
Disciplinary Board:	None
Disposition:	Violations of DR 1-102(A)(3), DR 1-103(C), DR 4-101(B), and DR 5-101(A). Stipulation for Discipline. One-year suspension.
Effective Date of Order:	November 30, 2006

**ORDER ACCEPTING STIPULATION FOR DISCIPLINE**

Upon consideration by the court.

The court accepts the Stipulation for Discipline. The accused is suspended from the practice of law in the State of Oregon for a period of one year, effective 30 days from the date of this order.

DATED this 31st day of October 2006.

/s/ Paul J. De Muniz  
 Paul J. De Muniz  
 Chief Justice

**STIPULATION FOR DISCIPLINE**

Dennis L. Dunn, attorney at law (hereinafter "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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 19, 1986, 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, and with the advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On August 12, 2005, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 1-102(A)(3), DR 1-103(C), DR 4-101(B), and DR 5-101(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 AND VIOLATIONS**

5.

At all material times, the focus of the Accused's law practice was estate planning. Since about January 1987, the Accused also conducted activities as a securities salesperson in Oregon. The Accused was not authorized to conduct business as a securities salesperson in Oregon unless he was licensed as a securities salesperson by the Oregon Division of Finance and Corporate Securities (hereinafter "Division"), and employed and supervised by a broker-dealer licensed to conduct business in Oregon by the Division. At all material times, the Accused operated his securities business activities from his law office. The Accused promoted, offered for sale and sold securities to his law practice clients and other persons (hereinafter "Investors").

6.

First Fidelity Acceptance Corp (hereinafter "FFAC") was incorporated in Nevada on or about October 3, 1988. The business purpose for FFAC was to buy automobile retail installment sales contracts (hereinafter "Autoloans") through a nationwide network of factory-authorized automobile dealers. FFAC entered into

agreements with dealers to purchase Autoloans made to borrowers with marginal creditworthiness. FFAC issued stock that traded on the NASDAQ Bulletin Board. At all material times, the price of the FFAC stock was less than one dollar per share.

7.

Magellan Securities, Inc. (hereinafter “Magellan”) was a broker-dealer firm with a principal place of business located in Minnesota. Magellan became licensed as a broker-dealer in Oregon on January 10, 1997. On or about February 12, 1997, the Accused became licensed in Oregon as a securities salesperson for Magellan.

8.

In and between about 1996 and 1998, the Accused acquired a large quantity of FFAC stock in his own name. Between about February 1997 and February 1998, while working as a securities salesperson for Magellan, the Accused promoted, offered for sale and sold approximately 1,056,496 shares of stock issued by FFAC for approximately \$317,730.80 to at least 33 Oregon Investors. The Accused paid approximately \$275,111.56 for the shares, generating a profit for the Accused of approximately \$42,619.24, or 15.5%. The FFAC shares were not registered securities in Oregon.

9.

The Accused used Investors’ funds to purchase shares of FFAC stock in his own name through his personal brokerage account outside of Magellan, and later had certificates reissued in the Investors’ names. The Accused sold some of the FFAC stock shares from his own inventory that he had acquired in his own name. Whether the Accused sold FFAC stock shares from his own inventory or purchased stock shares through a personal brokerage firm, the Accused sent FFAC stock certificates to a transfer agent with instructions to split and reissue the shares in the Investors’ names.

10.

In conducting the transactions for the sale of the FFAC shares of stock to the Investors, the Accused filled out Magellan “buy” tickets for the transactions. The transactions were not conducted through Magellan. Magellan did not charge or receive commissions for the FFAC stock transactions. The Accused failed to provide broker-dealer confirmations for each of the FFAC stock transactions to the Investors. Instead, the Accused sent letters to some of the Investors that omitted information that was material and required by law to be disclosed to the Investors.

11.

The Accused represented to Investors that he charged a 5% commission for the sale of the FFAC shares. The maximum commission allowed under NASD rules

was 5% per transaction. In some cases, the Accused marked up the price for the stock and collected commissions that exceeded 5%.

12.

The Accused also promoted, offered for sale and sold interests in at least three different FFAC loan pool portfolios to Oregon Investors. FFAC and the Accused did not register the loan pool interests or the FFAC stock with the Division. The Accused represented to some Oregon Investors that he organized the loan pool transactions as an attorney, not as a securities salesperson for Magellan. Nevertheless, the Accused filled out Magellan order tickets for the loan pool transactions. Magellan did not charge or receive commissions in connection with the Accused's loan pool sale transactions. The Accused sold the FFAC loan pool interests to approximately 16 Oregon Investors for a total of approximately \$379,893.00. The Accused charged and collected commissions in connection with the loan pool transactions. The Accused's commissions for the loan pool transactions totaled at least \$14,332.00.

13.

The FFAC stock and loan pool interests were securities subject to the securities laws, which required that they be registered with the Division. The shares of FFAC stock and loan pool interests were not registered with the Division as required by the securities laws. The Accused promoted, offered for sale, and sold unregistered securities in violation of the securities laws.

14.

The letterhead the Accused used in connection with FFAC stock transactions with the Investors contained a representation of membership in SIPC. SIPC is a non-profit corporation that protects investors' funds in the event that a licensed broker-dealer becomes insolvent. SIPC only protects investors' funds that are held by a licensed broker-dealer firm. Magellan was both a licensed broker-dealer and a member of SIPC. The Accused was not a licensed broker-dealer and was not a member of SIPC. The Accused deposited some Investors' funds in his law firm account and not in a separate licensed broker-dealer special reserve bank account exclusively for the benefit of investor customers. He failed to disclose that his legal malpractice insurance excluded claims related to investment advice, and that neither SIPC nor the Accused's malpractice insurance protected the Investors' funds deposited in his law firm bank account. The Accused failed to disclose that SIPC did not protect the funds that the Investors paid to the Accused by checks payable to "Dennis Dunn" to purchase investments; that the funds paid by Investors were not held in an account of a licensed broker-dealer; and that he was selling-away or selling FFAC shares on his own account.

15.

In or about May 1998, the Accused became a director of FFAC. Nevada state records also identified the Accused as FFAC's corporate secretary. In and after May 1998, the Accused disregarded information concerning the financial soundness and condition of FFAC and continued to promote, offer to sell and sell FFAC shares of stock and loan pool interests to Investors. The Accused failed to disclose and timely disclose that FFAC had serious financial problems; had lost its funding source; was late in filing financial reports with the Securities Exchange Commission; and that claims had been filed against FFAC's corporate officers, trustees and other related persons. The Accused failed to disclose and timely disclose that he had not conducted adequate research and investigation concerning FFAC and its operations and had insufficient information upon which to recommend the investments..

16.

The Accused was never licensed in Oregon as a broker-dealer. In promoting, offering for sale and selling some shares in FFAC stock and FFAC loan pool interests, the Accused conducted business as a broker-dealer when he was not authorized or licensed to conduct business as a broker-dealer in Oregon. By promoting, offering for sale and selling shares in FFAC stock and FFAC loan pool interests when he represented that he was effecting the transactions as lawyer and not as a registered salesperson for Magellan, the Accused conducted business as an unlicensed securities salesperson.

17.

Based on the foregoing, the Accused engaged in conduct that violated the securities laws of the State of Oregon, including (a) ORS 59.055, (b) ORS 59.115, (c) ORS 59.135(2), and (d) ORS 59.165(1), (5).

18.

In promoting, offering for sale, and selling FFAC stock and FFAC loan pool interests to his law practice clients/Investors, the Accused used confidences or secrets concerning his law practice clients' financial affairs to his advantage. The Accused recommended, accepted and continued employment as a lawyer for some of the Investors, when the interests of the Investors and his own interests were in conflict concerning the sale and purchase of FFAC investments sold by the Accused to the Investors. The Accused failed to obtain the clients' consent to his representation, after full disclosure as that term was defined by DR 10-101(B).

19.

The Accused admits that the aforesaid conduct constituted a violation of DR 1-102(A)(3), DR 4-101(B)(3), and DR 5-101(A) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged

violation of DR 1-103(C) set forth in the Bar's Formal Complaint, upon the approval of this stipulation, is dismissed.

## SANCTION

### 20.

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. *Standards*, § 3.0.

a. *Duty Violated.* In violating DR 1-102(A)(3), DR 4-101(B), and DR 5-101(A), the Accused violated duties of candor, confidentiality, and to avoid conflicts of interest. *Standards*, §§ 4.2, 4.3, 4.6.

b. *Mental State.* "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. "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. "Intent" is the conscious awareness of the nature or attendant circumstances of the conduct with the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. The Accused's conduct demonstrates negligence, knowledge and intent.

The Accused was negligent in his handling of the transactions for sale of the FFAC shares and loan pool interests to ensure that they complied with the law and that the Investors to whom he promoted, offered and sold the securities were provided with complete and accurate disclosures as required by law. The Accused knew he was not licensed as a broker-dealer and that his activities as a securities' salesperson had to be conducted, but were not conducted, through and supervised by Magellan as required by the securities laws.

The Accused disregarded the limitations on his activities in effecting transactions with the Investors. The Accused knew that the FFAC shares and loan pool interests were not registered securities. He made no inquiry with the Division or other qualified authority to determine if they had to be registered. The Accused acted with knowledge when he purchased FFAC shares outside of Magellan and then used Magellan buy tickets and confirmations (which were not accurate or complete) when effecting transactions with the Investors.

c. *Injury.* The *Standards* define "injury" as harm to the client, the public, the legal system or the profession that results from a lawyer's conduct. "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct, and which, but for some



intervening factor or event, would probably have resulted from the lawyer's misconduct. *Standards*, p. 7. An injury does not need be actual, but only potential to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

The Accused caused actual and potential injury to his clients/Investors. The clients/Investors purchased FFAC shares and loan interests that they may not have purchased if the Accused had complied with the law, or if the Accused had made complete and accurate disclosures. The Accused also caused at least potential injury to the profession. The profession is judged by the conduct of its members.

d. *Aggravating Factors*. "Aggravating factors" are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. There are several aggravating factors in this case. The Accused acted with selfish motives. *Standards*, § 9.22(b). There are multiple offenses and a pattern of misconduct. *Standards*, § 9.22(d), (c). The Accused has substantial experience in the practice of law. He was admitted to practice in Oregon in 1986. *Standards*, § 9.22(i). The clients/Investors were vulnerable. The Accused used clients' confidences and secrets concerning their financial resources. The Investors relied on the Accused to provide all required and material information to the investments. *Standards*, § 9.22(h).

e. *Mitigating Factors*. The Accused has no prior record of discipline. *Standards*, § 9.32(a). The Accused cooperated in the investigation of his conduct. *Standards*, § 9.32(c). The Accused has repaid the excess commissions paid by the Investors as required by the Division. Although forced or compelled restitution is not a mitigating factor (*Standards*, § 9.4(a)), the Accused has voluntarily made payments and is making payments to make restitution and rectify the consequences of his conduct to the Investors by repaying the principal amount of the Investors' investments. The Accused has taken steps to ensure that payments will be completed even in the event of his incapacity or death. *Standards*, § 9.32(d). The Accused is remorseful. *Standards*, § 9.32(l). Also, other penalties have been imposed. The Division suspended the Accused's license as a securities salesperson for two years. *Standards*, § 9.32(k).

21.

The *Standards* provide 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 when a lawyer deceives a client, and causes injury or potential injury to the client. *Standards*, §§ 4.32, 4.62. Suspension is also generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client. *Standards*, § 4.22.

22.

Case law is in accord with the *Standards*. See, e.g., *In re Wittemyer*, 328 Or 448, 980 P2d 148 (1999) (four-month suspension for multiple violations of the conflict rules); *In re Sawyer*, 331 Or 240, 13 P3d 112 (2000) (nine-month suspension for violations of DR 1-102(A)(3), DR 5-105(C), DR 7-104(A), and ORS 9.460(2)). See also *In re Phillips*, 338 Or 125, 107 P3d 615 (2005) (three-year suspension for violations of DR 1-102(A)(3), DR 4-101(B), and DR 5-101(A)). In *Phillips*, the lawyer sent insurance agents to review clients' trusts, disclosed confidential information, and did not disclose to the clients that he and his law firm had a financial interest in the agents' sale of any insurance products. The lawyer entered into an arrangement with a network of insurance salespersons who met with the lawyers' clients and made recommendations regarding the clients' purchase of insurance products. The lawyer essentially sold his client list (and the clients' financial information) to the insurance group, who in turn paid the lawyer a portion of the commissions generated from the sales. The lawyer used his clients and their financial information for his own advantage.

Although there are similarities between the Accused's conduct and the lawyer's conduct in *Phillips*, the conduct may also be distinguished. The Accused's conduct and the conduct of the lawyer in *Phillips* each served a selfish motive—financial gain. The lawyer in *Phillips* disclosed the clients' confidences and secrets to third parties—insurance salespersons. The Accused did not disclose information to third parties. The clients in *Phillips* did not know that the lawyer would share in the commissions generated by their purchase of insurance products from the insurance salespersons. The Accused's clients knew that the Accused would receive a commission, but the amount of that commission or the actual mark up in price to the clients/Investors was not fully or accurately disclosed. The Accused has admitted his misconduct. The lawyer in *Phillips* did not. The lawyer in *Phillips* did not make or attempt to make full restitution to the clients. The Accused has made restitution of the excess commissions/mark-up, which was required by the Division, and has voluntarily made and is making payments to reimburse the clients/Investors the full principal amount of their investments. The number of clients and the amount of money involved in *Phillips* is substantially greater than the number of clients and amount of money involved with the Accused's conduct.

23.

The Bar and the Accused agree that the Accused shall be suspended from the practice of law for one year for violations of DR 1-102(A)(3), DR 4-101(B), and DR 5-101(A) of the Code of Professional Responsibility, the suspension to be effective 30 days after this stipulation is approved.

24.

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

EXECUTED this 4th day of October 2006.

/s/ Dennis L. Dunn

Dennis L. Dunn

OSB No. 86183

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. 06-104  
)  
DEBRAH D. DAVIDSON, )  
)  
Accused. )

Counsel for the Bar: Linn D. Davis  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of RPC 5.5(a) and ORS 9.160.  
Stipulation for Discipline. Public reprimand.  
Effective Date of Order: November 9, 2006

**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 RPC 5.5(a) and ORS 9.160.

DATED this 9th day of November 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Jill A. Tanner  
Hon. Jill A. Tanner, Region 6  
Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

Debrah D. Davidson attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on August 12, 2002. At the time of the violations described herein, the Accused maintained her office and place of business in Polk 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 22, 2006, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 5.5(a) of the Rules of Professional Conduct and ORS 9.160. 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.

ORS 9.160 prohibits the practice of law by a person who is not an active member of the Bar. ORS 9.191(1) requires members of the Bar to pay an annual Oregon State Bar membership fee. ORS 9.200(1) provides that an Oregon lawyer in default in payment of annual membership fees for a period of 90 days shall, after 60 days written notice of the delinquency, be suspended from membership in the bar.

6.

On or about December 1, 2005, the Bar mailed a statement to the Accused assessing the 2006 Oregon State Bar membership fee. Payment of the 2006 membership fee was due by January 31, 2006. On January 25, 2006, the Bar sent a reminder to the Accused via her email account. The Accused did not pay her membership fee by January 31, 2006. The Accused was in default on her payment of the 2006 annual membership fee after January 31, 2006.

7,

On or about February 6, 2006, the Bar mailed a second fee statement to the Accused. The Accused did not pay the 2006 Oregon State Bar membership fee. On May 4, 2006, the Bar mailed a final billing notice to the Accused. The notice informed the Accused that she was delinquent in paying her 2006 Oregon State Bar membership fee and that if she failed to pay the membership fee within sixty days, by 5:00 p.m. July 3, 2006, she would be automatically suspended from membership in the Oregon State Bar. A courtesy notice sent to the Accused via email on June 27, 2006, reminded her of the need to have paid her membership fee by 5:00 p.m., July 3, 2006, to avoid suspension. The Accused did not pay the 2006 Oregon State Bar membership fee by 5:00 p.m., July 3, 2006, and on July 5, 2006, she was suspended from membership in the Oregon State Bar.

8.

On July 6, 2006, Davidson wrote and mailed a letter to a judge of the Marion County Circuit Court asking that the court set aside a default judgment entered against her client in a small claims matter.

9.

On July 6, 2006, Davidson prepared, filed and served a motion to withdraw from a dissolution of marriage matter in Lincoln County Circuit Court on the basis that the attorney-client relationship had concluded.

10.

Although the Accused had earlier been informed that she would be automatically suspended from membership in the Bar if she failed to pay her membership fee before 5:00 p.m. on July 3, 2006, and the Accused was aware she had not paid her membership fee, the Accused did not realize that she was suspended from membership in the Bar until on or about July 10, 2006. The Accused had entered the final deadline for payment of membership fees into her computer but her computer required repairs and the repairs destroyed her calendar entries. Continuing computer difficulties contributed to Davidson's failure to realize the deadline had passed.

11.

Upon realizing that she was suspended, the Accused promptly submitted a Statement in Support of BR 8.4 Reinstatement to the Bar and paid her 2006 Oregon State Bar membership fee. The Accused disclosed her practice of law while suspended in the application for reinstatement. The Accused was reinstated as an active member of the Bar on July 11, 2006.

## Violations

12.

The Accused admits that, by engaging in the conduct described in this stipulation, she practiced law in a jurisdiction in violation of the regulations of the legal profession in that jurisdiction; and practiced law when not an active member of the Bar, in violation of RPC 5.5(a) of the Rules of Professional Conduct and ORS 9.160.

## 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 a duty to the profession. *Standards*, § 7.0.

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. “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 knew that she would be automatically suspended on a date certain if she did not pay her membership fee. The Accused was negligent when she practiced law after that date without having paid her membership fee.

c. *Injury.* An injury does not need to be actual, but only potential to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The Accused caused potential injury to her clients. During the time the Accused was not authorized to practice law, she may not have been covered by malpractice insurance. The Accused placed at risk all clients for whom she performed legal services while she was suspended in the event of malpractice claims against her. The Accused also caused potential injury to the legal profession. The public judges the profession by the conduct of its members.

d. *Aggravating Factors.* Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. *Standards*, § 9.22. The Accused’s misconduct is aggravated by her prior disciplinary

history. *Standards*, § 9.22(a). On November 2, 2005, the Accused received a letter of admonition for practicing law while suspended for failure to pay her 2005 membership fees. Since the admonition involves the same (or similar) misconduct as the present misconduct, it constitutes prior discipline for the purpose of determining sanction. *In re Cohen*, 330 Or 489, 500-501, 8 P3d 953 (2000).

e. *Mitigating Factors*. Mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. *Standards*, § 9.32. Mitigating factors include the absence of dishonest or selfish motives, *Standards*, § 9.32(b); a cooperative attitude during the investigation of the complaint and in resolving this disciplinary proceeding, *Standards* § 9.32(e); and remorse. *Standards*, § 9.32(l).

14.

The *Standards* provide that reprimand is 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.

15.

Oregon case law is in accord. Lawyers who inadvertently practiced unlawfully for relatively brief periods of time have generally received public reprimands. *See, e.g., In re Casey*, 19 DB Rptr 105 (2005) (practiced unlawfully 40 days); *In re Bassett*, 16 DB Rptr 190 (2002) (practiced unlawfully 15 days).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 5.5(a) and ORS 9.160.

17.

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



EXECUTED this 2nd day of November 2006.

/s/ Debrah D. Davidson

Debrah D. Davidson

OSB No. 02186

EXECUTED this 3rd day of November 2006.

OREGON STATE BAR

By: /s/ Linn D. Davis

Linn D. Davis

OSB No. 03222

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 06-108  
)  
JILL R. FOX, )  
)  
Accused. )

Counsel for the Bar: Susan Roedl Cournoyer  
Counsel for the Accused: Christopher R. Hardman  
Disciplinary Board: None  
Disposition: Violation of RPC 1.3. Stipulation for Discipline.  
60-day suspension.  
Effective Date of Order: November 20, 2006

**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 November 15, 2006, or as of the date of this order, whichever is later, for a violation of RPC 1.3.

DATED this 20th day of November 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Jill A. Tanner  
Jill A. Tanner, Esq., Region 6  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Jill R. Fox, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1993, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Yamhill 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 20, 2006, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for an alleged violation of RPC 1.3 of the Oregon Rules of Professional Conduct. 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 a 1996 dissolution decree, Sharon Robertson (hereinafter “Robertson”) was awarded monthly spousal support and one-half of her husband’s retirement benefits. Neither party prepared a QDRO to divide the retirement account. Beginning in late 1999, Robertson’s former husband made an irrevocable election to take a 10-year payout of the retirement benefits, thus dissipating the account principal to Robertson’s detriment. The Accused did not represent Robertson in the 1996 dissolution proceeding or during the other events described in this paragraph.

6.

In 2004, Robertson’s former husband sought to modify his monthly support obligation. Robertson opposed this modification and the retirement benefits payout. Robertson retained the Accused to represent her in the dispute.

7.

The parties negotiated a stipulated judgment, which reduced monthly support but established that Robertson's former husband owed her an arrearage for past due payments. The stipulation further provided that a QDRO provider would analyze Robertson's former husband's retirement account to determine the value to which Robertson was entitled; if the remaining principal was found to be insufficient, Robertson's former husband agreed to pay the shortage from another retirement account. On August 31, 2005, the parties placed the stipulation into the record and the court ordered the Accused to prepare the supplemental judgment.

8.

Between September 1, 2005, and April 2006, the Accused prepared a rough draft of the supplemental judgment but did not finalize it for review by opposing counsel or submission to the court. The Accused also did not contact a QDRO specialist to analyze the retirement accounts until March 2006.

9.

Between September 1, 2005, and April 2006, Robertson contacted the Accused numerous times requesting that the Accused prepared the supplemental judgment so she could begin receiving support and retirement benefits. The Accused's opposing counsel also inquired about the delay.

10.

During this period, the Accused was also representing Robertson in a dispute with the trustee of a family trust in which Robertson was a beneficiary. The Accused believed that Robertson considered the family trust dispute to be more urgent than submitting the supplemental judgment and obtaining the QDRO.

11.

In April 2006, after Robertson complained to the Bar and retained a new attorney, the Accused finalized the supplemental judgment and submitted it to her opposing counsel. The Accused also referred her opposing counsel to the QDRO specialist she had contacted the previous month.

### **Violation**

12.

The Accused admits that, by engaging in the conduct described in this stipulation, she engaged in neglect of a legal matter in violation of RPC 1.3.

## 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.* In neglecting to prepare and submit the supplemental judgment and obtain a QDRO, the Accused violated her duty of diligence to her client. *Standards*, § 4.4.

b. *Mental State.* The Accused did not intend to neglect Robertson’s supplemental judgment and QDRO. However, the Accused received numerous telephone messages from Robertson expressing urgency and deepening financial hardship due to the delay in reducing the parties’ stipulation to an enforceable judgment. Thus, the Accused knew that she was not completing the support modification matter with reasonable diligence. *See 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”).

c. *Injury.* For purposes of determining a sanction, injury may be either actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). In addition to the anxiety caused by the Accused’s failure to reduce the parties’ stipulation to a judgment and to obtain a QDRO, Robertson also experienced actual injury: her former husband continued to receive benefits distributions from his retirement accounts after the parties had stipulated that Robertson would receive a share of these distributions. Each month that Robertson’s former husband received benefits without the entry of an enforceable supplemental judgment or QDRO, Robertson did not receive her share of the benefits and the principal available to pay her share was further dissipated.

d. *Aggravating Factors.* Aggravating factors include:

1. *Prior discipline.* The Accused was admonished in November 2002 for neglect and conduct prejudicial to the administration of justice arising from her delay in obtaining a stalking order on behalf of a client. In a separate matter, the Accused received a public reprimand for neglect and failure to return client property. (The Accused failed to take action on a client matter for 14 months and failed to refund the client’s retainer for over two months after he requested it). *In re Fox*, 17 DB Rpt 169 (2003). *Standards*, § 9.22(a);

2. The Accused has substantial experience in the practice of law, having been admitted in 1993. *Standards*, § 9.22(i).

e. *Mitigating Factors*. Mitigating factors include:

1. The Accused's misconduct did not arise from a dishonest or selfish motive. *Standards*, § 9.32(b);

2. From the outset of this investigation, the Accused has made full and free disclosure to the bar. *Standards*, § 9.32(e);

3. The Accused has expressed remorse and regret and has taken full responsibility for her actions. *Standards*, § 9.32(l).

14.

ABA *Standards* suggest that, absent aggravating or mitigating factors, a suspension is generally appropriate when the lawyer knowingly fails to perform services for a client and thereby causes injury. *Standards*, § 4.42. Given the recent discipline for two instances of similar misconduct and the injury caused to the Accused's client, a suspension of 60 days is appropriate in this matter.

15.

A 60-day suspension in this case is in accord with Oregon case law. *See In re LaBahn*, 335 Or 357, 65 P3d 381 (2001) (60-day suspension for one charge of neglect when attorney was previously admonished for similar conduct).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 60 days for a violation of RPC 1.3, effective November 15, 2006, or immediately upon the approval of this stipulation, whichever is later.

17.

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

EXECUTED this 10th day of November 2006.

/s/ Jill R. Fox

Jill R. Fox

OSB No. 93272

EXECUTED this 13th day of November 2006.

OREGON STATE BAR

By: /s/ Linn D. Davis

Linn D. Davis

OSB No. 03222

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 06-30  
)  
THOMAS J. DITTON, )  
)  
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of DR 9-101(A). Stipulation for  
Discipline. 60-day suspension.  
Effective Date of Order: December 15, 2006

**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 December 15, 2006, for violation of DR 9-101(A).

DATED this 20th day of November 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Carl W. Hopp  
Carl W. Hopp, Esq., Region 1  
Disciplinary Board Chairperson



## STIPULATION FOR DISCIPLINE

Thomas J. Ditton, attorney at law (hereinafter “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 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 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 May 23, 2006, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 9-101(A) (failure to deposit or maintain client funds in trust). 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 April 13, 2004, the Accused undertook to represent Sharee Cate (hereinafter “Cate”) in an anticipated termination of parental rights proceeding. The Accused and Cate orally agreed upon a \$2,500 flat fee for the representation, but did not commemorate this understanding in a written fee agreement.

6.

On April 15, 2004, Cate paid the Accused \$1,000 (representing the first installment of the agreed upon fee). As of April 15, 2006, the Accused had not performed sufficient work to have earned the \$1,000 installment. Nevertheless, upon receipt, the Accused immediately deposited the funds into his business account rather

than into his lawyer trust account. The Accused subsequently performed sufficient work to earn the first and all subsequent installments.

### Violations

7.

The Accused admits that, by engaging in the conduct described above, he failed to promptly deposit and maintain client funds in trust until earned in violation of DR 9-101(A).

### 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 his clients to properly handle and preserve client property. *Standards*, § 4.1. The most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, p. 5.

b. *Mental State.* The Accused acted with serious negligence. “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. The Accused failed to recognize that he was not taking adequate measures to properly handle client funds given the oral nature of his fee agreement with Cate. However, he did not intend to draw on any funds prior to his entitlement to those funds.

c. *Injury.* “Injury” is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. Injury can be actual or potential. *Standards*, p. 7. Cate was potentially injured by the Accused’s failure to properly deposit and maintain her funds. However, the Bar does not assert that she suffered actual injury.

d. *Aggravating Factors.* Aggravating factors include:

1. Prior disciplinary offenses. *Standards*, § 9.22(a). The Accused received a reprimand in March 2003 for the identical conduct and violation at issue in this matter, specifically DR 9-101(A). *In re Ditton*, 16 DB Rptr 69 (2002).

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

3. Substantial experience in the practice of law; the Accused was admitted in Oregon in 1974. *Standards*, § 9.22(i).

- e. *Mitigating Factors*. Mitigating factors include:
  - 1. Absence of dishonest motive. *Standards*, § 9.32(a).
  - 2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. *Standards*, § 9.32(e).
  - 2. Good character or reputation. *Standards*, § 9.32(g).
  - 3. Remorse. *Standards*, § 9.32(l).

9.

Combining the factors of duty, mental state and injury, the *Standards* provide that a reprimand is generally appropriate when a lawyer negligently deals improperly with client property and causes injury or potential injury to a client. *Standards*, § 4.13. However, a suspension is appropriate where a lawyer has been previously reprimanded for identical misconduct. *Standards*, § 8.2.

10.

Oregon case law is in accord. See *In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (60-day suspension for violation of DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4)); *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001) (four-month suspension for violation of DR 9-101(A), DR 2-106(A), and DR 5-105(E)); *In re Williams*, 314 Or 530, 840 P2d 1280 (1992) (63-day suspension for violation of DR 9-101(A), among other rules); *In re Lancefield*, 19 DB Rptr 247 (2005) (60-day suspension for long-time lawyer for violations of DR 9-101(A) and DR 9-101(C)(3) (failing to account for client property) where he had a prior admonition for identical misconduct). See also *In re Knappenberger*, 337 Or 15, 90 P3d 614 (2004) (90-day suspension for neglect and self-interest conflict where he had a prior admonition for neglect); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (60-day suspension for neglect violation where he had a prior admonition for neglect).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 60 days for violation of DR 9-101(A), the sanction to be effective December 15, 2006.

12.

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.

Cite as *In re Ditton*, 20 DB Rptr 276 (2006)

EXECUTED this 6th day of November 2006.

/s/ Thomas J. Ditton

Thomas J. Ditton

OSB No. 74078

EXECUTED this 9th day of November 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 99028

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 06-90  
)  
PATRICK J. FURRER, )  
)  
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott  
Counsel for the Accused: Stephen R. Moore  
Disciplinary Board: None  
Disposition: Violation of DR 1-102(A)(4) and DR 7-110(B).  
Stipulation for Discipline. 30-day suspension.  
Effective Date of Order: November 28, 2006

**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 November 28, 2006, or two days after approval by the Disciplinary Board if approval is on or after November 28, 2006, for violation of DR 1-102(A)(4) and DR 7-110(B).

DATED this 20th day of November 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Arnold S. Polk  
Arnold S. Polk, Esq., Region 4  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Patrick J. Furrer, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 17, 1971, 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 July 22, 2006, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(4) (conduct prejudicial to the administration of justice) and DR 7-110(B) (unauthorized ex parte communication) 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 fall of 2003, the Accused undertook to represent a client (hereinafter “Wife”) in a dissolution of marriage proceeding in Washington County, wherein the parties had been married for more than 20 years. Husband was represented by attorney Thomas A. Davis (hereinafter “Davis”).

6.

In October 2003, without prior notice to Husband or Davis, the Accused served a subpoena on Husband’s employer, commanding it to appear at the Accused’s office in November 2003, and bring with it a variety of documents related to Husband’s employment. At all times relevant herein, ORCP 55 D specifically required that Davis and/or Husband be given seven days notice prior to service of the

subpoena on Husband's employer. The Accused was unaware of the requirements of ORCP 55 D.

7.

On January 21, 2004, the court awarded Wife \$2,000.00 per month spousal support, ordered the family home to be sold, and further ordered Husband exclusive use of the family residence pending sale. On March 30, 2004, the parties entered a stipulated judgment into the record, part of which awarded Wife her personal property (some of which was located at the family residence) and part of which reaffirmed that Husband had exclusive use of the family residence.

8.

On Tuesday April 6, 2004, Davis notified the Accused by letter that Wife could remove her personal property from the family residence during a 4 hour period in the morning the following Monday, April 12, 2004. Davis reported that Husband would be present, but would not interfere. The Accused believed that the time granted and constraints imposed by Husband were insufficient for Wife to obtain her personal property.

9.

On Thursday April 8, 2004, the Accused prepared an Order Re: Exclusive Possession of Family Home, granting Wife exclusive use of the family home for 8 hours on Sunday April 11, 2004 (i.e., prohibiting Husband from being present on the property on that date). Within approximately 30 minutes of leaving for the Washington County Courthouse to present the order, the Accused transmitted a fax to Davis' office attaching the proposed order and notifying Davis of the Accused's imminent intent to present the order (but without specifics as to time or location). The Accused appeared ex parte before the judge assigned to the case. The order was not supported by a motion, affidavit or certification even though these were requirements of Washington County Local Rule 7.021. After obtaining the judge's signature, the Accused immediately faxed an executed copy to Davis that same afternoon.

10.

In September 2004, the Accused mistakenly believed that Husband had not paid his spousal support obligation. (The payment had been combined with funds identified as Wife's portion of a tax refund without explanation or itemization.) Accordingly, the Accused obtained an ex parte order directing Husband's employer to withhold \$2,000.00 a month from Husband's paycheck and to transmit those monies directly to Wife. The order was not supported by a motion, affidavit or certification even though these were requirements of Washington County Local Rule 7.021. The Accused also did not comply with the statutory requirements for the

issuance of an ex parte wage holding order under ORS 25.378 and ORS 25.399. Through an oversight, neither Husband nor Davis was provided notice of this order.

11.

Neither Husband nor Davis learned of the withholding order until monies were removed from Husband's paycheck in November 2004. Thereafter Davis notified the Accused that he had erred in believing that Husband was in arrears on spousal support and that no statutory basis existed for the withholding order because Husband was not delinquent. However, the Accused did not release the wage withholding order, and continued to assert its validity, believing he had an appropriate basis for maintaining the withholding order because of alleged prior delinquent payments by Husband. In fact, none of these alleged delinquent payments identified by the Accused were support payments. In any event, there was no dispute that Husband was not in arrears at the time the wage withholding order was obtained. A hearing was necessary to address the Accused's claim of entitlement to the wage withholding order, following which the court vacated the order, finding that Husband was not delinquent.

### **Violations**

12.

The Accused acknowledges that the conduct referenced in paragraph 9 constituted an unauthorized ex parte communication with an adjudicator in violation of DR 7-110(B). The Accused further acknowledges that his service of the subpoena on Husband's employer without the required notice to Husband or Davis; his appearance ex parte to allow Wife additional time to secure her personal property without complying with local rules or otherwise being authorized by law; his failure to properly notify Husband or Davis of the wage withholding order, as required by statute; and his continued pursuit of the wage withholding order after he learned that Husband was not delinquent in support, all collectively amounted to conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4).

### **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.* By engaging in conduct prejudicial to the administration of justice the Accused violated his duty to the legal system. *Standards* § 6.1. By appearing ex parte without complying with court and local rules, the Accused



violated his duty to refrain from improper communications with individuals in the legal system. *Standards*, § 6.3.

b. *Mental State*. The Accused acted negligently. 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.

c. *Injury*. Injury can be actual or potential. Husband was without a portion of his income for a brief period due to the mistaken withholding. Husband was potentially injured by the Accused's failure to notify him of the Exclusive Possession Order for the family residence and the subpoena and withholding order on his employer, to the extent that he was given no opportunity to object to these. Husband was also potentially injured by the possible stigma associated with Husband's employer mistakenly being notified that Husband had failed to pay his support obligation.

d. *Aggravating Factors*. Aggravating factors include:

1. The Accused has a prior record of discipline insofar as he was admonished in 1983 for unauthorized ex parte contact with officials in violation of DR 7-110(B)—one of the same rules at issue in this matter. *Standards* § 9.22(a). A letter of admonition is considered as evidence of past misconduct if the misconduct that gave rise to that letter was of the same or similar type as the misconduct at issue in the case at bar. *In re Cohen*, 330 Or 489, 500, 8 P3d 953 (2000).

2. The Accused engaged in similar and recurring types of misconduct in asserting and defending Wife's positions in the dissolution. *Standards*, § 9.22(c).

3. The Accused engaged in multiple violations of the disciplinary rules. *Standards*, § 9.22(d).

4. The Accused has substantial experience in the practice of law. He has been a lawyer in active practice in Oregon since 1971. *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(b).

2. The Accused has been cooperative in these disciplinary proceedings. *Standards*, § 9.32(e).

14.

Without considering aggravation or mitigation, the *Standards* provide that a reprimand is generally appropriate when a lawyer negligently engages in conduct prejudicial to the administration of justice, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards*, § 6.23. A reprimand is similarly appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an

individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding. *Standards*, § 6.33. Taking into consideration the Accused's aggravating and mitigating factors, including the Accused's prior discipline and substantial experience, the presumptive sanction is increased from a reprimand to suspension to account for the fact that the Accused's aggravating factors outweigh those in mitigation.

15.

Oregon cases have also held that short suspensions are appropriate for one or both of the Accused's violations. *See, e.g., In re Thompson*, 325 Or 467, 940 P2d 512 (1997) (63-day suspension for violations of DR 1-102(A)(4) and DR 7-110(B) where experienced lawyer confronted appellate judge regarding an adverse ruling); *In re Bell*, 294 Or 202, 655 P2d 569 (1982) (30-day suspension for violation of DR 7-110(B) where attorney presented an ex parte form of decree to the judge which effectively eliminated the adverse party's right to plead further, without disclosing personal interest in the matter). *See also In re Roberts*, 335 Or 476, 71 P3d 71 (2003) (attorney acted incompetently and engaged in conduct prejudicial to administration of justice in representing the conservator of an estate); *In re Mary Johnson*, 18 DB Rptr 181 (2004) (attorney failed to inquire of her client's assets prior to filing request with court that required bond be waived; negligently asserted misinformation in a motion to withdraw; and negligently misstated in an affidavit the position taken by the insurer); *In re Hobson*, 13 DB Rptr 120 (1999) (attorney presented form of judgment to judge for signature ex parte and delivered an unsigned service copy to opposing counsel without informing him that it had already been signed); *In re Pierson*, 12 DB Rptr 2 (1997) (attorney obtained a default and a divorce decree without notice to opposing counsel).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 30 days for violation of DR 1-102(A)(4) and DR 7-110(B), the sanction to be effective November 28, 2006, or two days after approval by the Disciplinary Board, if approval is on or after November 28, 2006.

17.

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

EXECUTED this 15th day of November 2006.

/s/ Patrick J. Furrer

Patrick J. Furrer

OSB No. 71066

EXECUTED this 15th day of November 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 99028

Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 06-01  
)  
KASIA QUILLINAN, )  
)  
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott  
Counsel for the Accused: Christopher R. Hardman  
Disciplinary Board: None  
Disposition: Violation of RPC 1.6(a), RPC 1.9(c)(1), and  
RPC 1.9(c)(2). Stipulation for Discipline. 90-day  
suspension.  
Effective Date of Order: December 27, 2006

**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 December 15, 2006, or 30 days after approval by the Disciplinary Board, whichever is later, for violation of RPC 1.6(a), RPC 1.9(c)(1), and RPC 1.9(c)(2).

DATED this 27th day of November 2006.

/s/ John A. Berge  
John A. Berge, Esq.  
State Disciplinary Board Chairperson

/s/ Jill A. Tanner  
Jill A. Tanner, Esq., Region 6  
Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

Kasia Quillinan, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 18, 1980, 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 March 15, 2006, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.6(a) (revealing information relating to the representation of a client); RPC 1.9(c)(1) (using information relating to the representation of a former client to the disadvantage of the former client); and RPC 1.9(c)(2) (revealing information relating to the representation of a former client). 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 October 27, 2005, the Accused sent an email message to members of the Oregon State Bar Workers Compensation Section listserv (consisting of 275 bar members) regarding a former client. This email disclosed personal and medical information that the Accused had learned during the course of her representation of the client. The Accused’s email also characterized the Accused’s former client as “difficult” and suggested that she was now “attorney shopping” because she was unwilling to accept a “very fair” offer from a workers compensation insurer.

6.

The Accused stated in her email that the reason she was sending this information to the listserv attorneys was to “provide some background on (the client’s) case, in the event you are contacted by her.” The Accused’s disclosures in her email were or were likely to be disadvantageous to the Accused’s former client’s efforts to find another qualified attorney to represent her.

### Violations

7.

The Accused admits that, by drafting and transmitting the email disclosing information regarding her former client’s representation, she violated RPC 1.6(a), RPC 1.9(c)(1), and RPC 1.9(c)(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.* The Accused violated her duty to preserve client confidences. *Standards*, § 4.2. The most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, p. 5.

b. *Mental State.* The Accused knowingly disclosed information related to her former client’s representation. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious object or purpose to accomplish a particular result. *Standards*, p. 7.

c. *Injury.* Injury can be actual or potential. In this case, the Accused’s client was caused potential injury insofar as the Accused’s disclosures potentially inhibited her client’s ability to obtain replacement counsel through the Accused’s unfavorable characterization of her former client’s demeanor and participation in her case.

d. *Aggravating Factors.* Aggravating factors include:

1. The Accused drafted and transmitted the email, referencing an attorney lien in the case. *Standards*, § 9.22(b).

2. There are multiple offenses, insofar as more than one violation of the Rules of Professional Conduct occurred. *Standards*, § 9.22(d).

3. The Accused has substantial experience in the practice of law. She was admitted in Oregon in 1980. *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 made a full and free disclosure of her conduct in connection with the disciplinary investigation and has demonstrated a cooperative attitude toward the proceedings.
3. The Accused has expressed remorse for her conduct.

9.

Taking into account all of the factors, the *Standards* provided that a suspension is generally appropriate where a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client. *Standards*, § 4.22.

10.

Oregon cases also support the imposition of a term of suspension. For example, in *In re Lackey*, 333 Or 215, 37 P3d 172 (2001), the attorney was suspended for one year for disclosing confidences and secrets of his former client (and employer) to the press. The court in *Lackey* found that, after being forced to resign, the attorney divulged his client's information in an effort to embarrass or injure and thereby "exact revenge" on his former client and employer. 333 Or at 229. While the Accused's disclosure in this matter was not favorable to her client and could be viewed as detrimental, the aim and effect of the Accused's conduct was not nearly as serious as that in *Lackey*. Accordingly, while the Accused's conduct is deserving of a suspension, it does not merit the length or severity of that imposed in *Lackey*. See also *In re Paulson*, 341 Or 542, 145 P3d 171 (2006) (four-month suspension for disclosure and use of former-client information on behalf of current client, among other violations); *In re Jennings*, 18 DB Rptr 49 (2004) (30-day suspension for conflicts and confidential disclosures in an estate-planning matter).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 90 days for violations of RPC 1.6(a), RPC 1.9(c)(1), and RPC 1.9(c)(2), the sanction to be effective December 15, 2006, or 30 days after approval by the Disciplinary Board, whichever is later.

12.

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.

**Cite as *In re Quillinan*, 20 DB Rptr 288 (2006)**

EXECUTED this 14th day of November 2006.

/s/ Kasia Quillinan

Kasia Quillinan  
OSB No. 80098

EXECUTED this 16th day of November 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott  
OSB No. 99028  
Assistant Disciplinary Counsel



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 05-160
	)	
MICHAEL M. PACHECO,	)	SC S54311
	)	
Accused.	)	

Counsel for the Bar:	William D. Bailey; Martha M. Hicks
Counsel for the Accused:	Daniel Goff
Disciplinary Board:	None
Disposition:	Violation of ORS 9.527(1) and (2), RPC 3.3(a)(1), RPC 8.4(a)(2), and RPC 8.4(a)(3). Stipulation for Discipline. Four-year suspension.
Effective Date of Order:	December 10, 2006

**ORDER ACCEPTING STIPULATION FOR DISCIPLINE**

Upon consideration by the court.

The court accepts the Stipulation for Discipline. The accused is suspended from the practice of law in the State of Oregon for a period of four years, effective five days from the date of this order.

DATED this 5th day of December 2006.

/s/ Paul J. De Muniz  
 Paul J. De Muniz  
 Chief Justice

**STIPULATION FOR DISCIPLINE**

Michael M. Pacheco, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 1991, and has been a member of the Oregon State Bar continuously since that time, 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 December 6, 2005, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of ORS 9.527(1), RPC 3.3(a)(1), RPC 8.4(a)(2), and RPC 8.4(a)(3). On July 25, 2006, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board, alleging violation of ORS 9.527(1) and (2), RPC 3.3(a)(1), RPC 8.4(a)(2), and RPC 8.4(a)(3). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

## **Facts**

### **Misconduct Toward Employees**

5.

On or about October 14, 2003, the Accused met in his office with a former employee, Raquel Martinez (hereinafter referred to as “Martinez”), to discuss an offer the Accused had previously made to provide financial assistance to Martinez for her education.

6.

During the course of his meeting with Martinez, the Accused made a sexual advance toward Martinez. When Martinez attempted to leave his office, the Accused blocked the door, physically restrained Martinez, and knowingly touched Martinez’s breasts with his lips. Martinez did not consent to this sexual contact.

7.

Between about December 1, 2003, and December 19, 2003, the Accused employed [REDACTED] (hereinafter referred to as “[REDACTED]”) as an office clerk and translator. During [REDACTED]’s employment, the Accused knowingly attempted to subject [REDACTED] to sexual contact by restraining her and attempting to kiss her on the lips. [REDACTED] was 17 years of age and did not consent to this sexual contact.

8.

In about May 2005 and continuing at all relevant times thereafter, the Accused employed Linda Wraich (hereinafter referred to as “Wraich”) as his legal secretary. Shortly after he employed Wraich, the Accused began to make sexual advances toward Wraich at his office.

9.

On or about May 19, 2005, without Wraich’s consent, the Accused knowingly touched Wraich’s buttocks, attempted to kiss her, made multiple attempts to remove Wraich’s pants, and exposed his genitals to Wraich. Wraich did not consent to this sexual contact.

10.

On or about May 24, 2005, during a sexual encounter at the Accused’s office, the Accused knowingly exposed his genitals to Wraich, touched Wraich’s genital area, compelled Wraich to touch his genitals, and masturbated in Wraich’s presence. Wraich did not consent to this sexual contact.

11.

On June 7, 2006, in *State v. Michael Mauro Pacheco*, Marion County Circuit Court Case No. 05C46368, the Accused was convicted of two counts of Sex Abuse in the Third Degree and one count of Attempted Sex Abuse in the Third Degree for his conduct toward Martinez, Wraich, and [REDACTED].

### **Diez-Sanchos Matter**

12.

On and before May 17, 2005, the Accused represented the plaintiff in a wrongful death law suit against several defendants, two of whom were represented by Kenneth Ammann (hereinafter referred to as “Ammann”) and Lawrence Blunck (hereinafter referred to as “Blunck”), respectively.

13.

On or about May 17, 2005, the court entered a judgment of dismissal that dismissed the clients of Ammann and Blunck from the wrongful death litigation as a result of the Accused's failure to prosecute the litigation against them.

14.

On or about May 22, 2005, the Accused filed with the court a motion to set aside the judgment of dismissal described in paragraph 13 above. In this motion, the Accused made the following representation: "Plaintiff's attorney (the Accused) has consulted with Ken Amman (sic), attorney for Mac Williams, and Larry Blunck, attorney for Richard Lawson, and they have no objection to this motion." This representation was false with respect to Ammann, and the Accused knew it was false when he made it.

15.

On or about May 20, 2005, in an affidavit filed with the court in support of the motion described in paragraph 14 above, the Accused made the following representation: "I have consulted with the law offices of attorneys Ken Amman (sic) and Larry Blunck and they have no objection to this motion." This representation was false with respect to Ammann, and the Accused knew it was false when he made it.

### **Violations**

16.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated ORS 9.527(1) and (2), RPC 3.3(a)(1), RPC 8.4(a)(2), and RPC 8.4(a)(3).

### **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 his duty to the public to maintain his personal integrity and obey the law (*Standards*, § 5.1) and his duty to the legal system to avoid making false statements or misrepresentations to the court (*Standards*, § 6.1)

b. *Mental State.* In his conduct toward Martinez, Wraich and [REDACTED], the Accused acted intentionally, i.e., with the conscious objective or purpose to

accomplish a particular result. *Standards*, p. 7. In the Diez-Sanchos matter 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*. The Accused's misconduct towards Martinez, Wraich and [REDACTED] was unwanted and caused the women fear and revulsion.

Although the court was not actually misled by the Accused's false representations in the Diez-Sanchos litigation, there was the potential that the integrity of the legal system could have been compromised by the Accused's false statements and that the court could have reached a decision in reliance on them. *Standards*, p. 6.

d. *Aggravating Factors*. Aggravating factors include:

1. The Accused acted with a selfish motive. *Standards*, § 9.22(b).
2. The Accused engaged in a pattern of misconduct that involved multiple disciplinary offenses. *Standards*, § 9.22(c) and (d).

3. Wraich and [REDACTED] were particularly vulnerable because the Accused was their employer. [REDACTED], moreover was only 17 years of age. *Standards*, § 9.22(h).

4. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1991. *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 was incarcerated for approximately one year pending the outcome of criminal proceedings against him and is on probation, which includes attending and completing sexual offender counselling. *Standards*, § 9.32(k).

18.

The ABA *Standards* suggests that a suspension is appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard* § 5.11 and that seriously adversely reflects on the lawyer's fitness to practice. *Standards*, § 5.12.<sup>1</sup>

---

<sup>1</sup> The factors listed in *Standards* 5.11 are intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses.

Case Law

19.

Oregon case law is in accord. Lawyers have received substantial suspensions for single instances of sexual misconduct. See *In re Wolf*, 312 Or 655, 826 P2d 628 (1992) (lawyer was suspended for 18 months for one instance of sexual activity with a client who was a minor); *In re Clark*, 7 DB Rptr 69 (1993) (lawyer was suspended for 18 months for breaking into a former girlfriend's home and subjecting her to unwanted sexual contact). Because of the number of instances of sexual misconduct in which the Accused engaged, the parties agree that a suspension of more than 18 months is appropriate.

For the purposes of this stipulation, the bar does not seek the Accused's disbarment. To date, the court has disbarred lawyers in sexual misconduct cases only for ongoing sexual misconduct with a minor or with multiple clients. In *In re Nash*, 299 Or 310, 702 P2d 399 (1985), the lawyer was disbarred for violation of ORS 9.527(2) after the lawyer pled guilty to the crime of Sodomy I. The acts of sodomy took place over a number of years and involved a six-year-old girl who was the daughter of a former client. In *In re Hassenstaab*, 325 Or 166, 934 P2d 1110 (1997), the lawyer was disbarred for violation of DR 5-101(A) (two counts) and DR 1-102(A)(2) when the lawyer had engaged in a pattern, spanning four years, of engaging in sexual contact with many (more than 15) of his female clients. The contact ranged from inappropriate touching and attempting to kiss his clients, to acts of masturbation and sexual intercourse. The lawyer insinuated to some of the clients that they could exchange sex for legal services, and several clients felt compelled to submit to sexual contact for fear that refusal might jeopardize the defense of their legal matters.

The conduct that resulted in disbarment in *Nash* and *Hassenstaab* is distinguishable from and more egregious than the Accused's conduct. Accordingly, the parties agree that the Accused should be suspended for a substantial period of time.

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of 4 years for violation of ORS 9.527(1) and (2), RPC 3.3(a)(1), RPC 8.4(a)(2), and RPC 8.4(a)(3), the sanction to be effective beginning on the fifth day following the court's acceptance of this stipulation.

21.

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 State Professional Responsibility Board (SPRB) on September 22, 2006. 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 11th day of October 2006.

/s/ Michael M. Pacheco

Michael M. Pacheco

OSB No. 91085

EXECUTED this 18th day of October 2006.

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. 06-48  
)  
DEBORAH L. ABERNATHY, ) SC S54074  
)  
Accused. )

**ORDER IMPOSING PUBLIC REPRIMAND**

Upon consideration by the court.

This court accepts the Oregon State Bar's State Professional Responsibility Board's Disciplinary Board Trial Panel's recommendation that the accused be publicly reprimanded in Oregon. Deborah L. Abernathy (OSB No. 85383) is publicly reprimanded in Oregon.

DATED this 5th day of December 2006.

/s/ Paul J. De Muniz  
Paul J. De Muniz  
Chief Justice

**SUMMARY**

On December 5, 2006, the Oregon Supreme Court reprimanded Deborah L. Abernathy, imposing reciprocal discipline for ethics violations that led to Abernathy's censure in Arizona where she practices law.

Abernathy represented a client in a child support matter, but did not appear at a scheduled evidentiary hearing or move for a continuance. Abernathy also failed to appear at a subsequent show cause hearing or keep her client informed about the status of the proceeding. Abernathy was found in contempt by the trial judge. In the Arizona disciplinary proceeding that followed, Abernathy was found to have violated Arizona's Rules 1.1 (competence), 1.2 (abiding by client's decisions), 1.3 (neglect), 1.4 (communication with client), 3.2 (failure to expedite litigation), 3.4 (disobeying a court rule), and 8.4(d) (conduct prejudicial to the administration of justice). Evidence of substantial mitigating circumstances resulted in an agreement that Abernathy be censured and placed on probation for one year. The Arizona Supreme Court approved this disposition in January 2006.



Cite as 342 Or 104 (2006)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)
	)
Complaint as to the Conduct of	)
	)
CRAIG C. COYNER III,	)
	)
Accused.	)

(OSB Nos. 03-49, 03-57, 04-103; SC S53254)

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

Argued and submitted September 7, 2006. Decided December 14, 2006.

Craig C. Coyner, III, Bend, argued the cause and filed the brief for himself.

Stacy J. Hankin, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before De Muniz, Chief Justice, and Carson, Gillette, Durham, Balmer, and Kistler, Justices. (Riggs, J., retired September 30, 2006, and did not participate in the decision of this case. Walters, J., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for three months, effective 60 days from the date of this decision. Should he apply for reinstatement to the Bar, the Accused shall be required to follow the procedure set out in Bar Rule 8.1(b).

**SUMMARY OF THE SUPREME COURT OPINION**

Lawyer was found guilty by a trial panel of the Oregon State Bar of a total of nine violations of the Code of Professional Responsibility . Some of the charges arose out of lawyer’s dealings with two separate clients and others arose out of lawyer’s conviction on charges of resisting arrest and criminal contempt. The trial panel imposed a six-month suspension with the proviso that the Accused be required to make a formal application for reinstatement. Lawyer appealed, challenging both the trial panel’s findings of guilt and its choice of sanction. *Held*: Lawyer was guilty of each disciplinary violation alleged, but term of suspension greater than three months was unnecessary, especially given the requirement that the Accused go through the formal reinstatement process. The Accused is suspended from the practice

**Cite as *In re Coyner*, 20 DB Rptr 301 (2006)**

of law for three months, effective 60 days from the date of this decision. Should he apply for reinstatement to the Bar, the Accused shall be required to follow the procedure set out in Bar Rule 8.1(b).

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-91
	)	
LEONARD C. OSTROW,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3 and RPC 1.4. Stipulation for Discipline. Public reprimand.
Effective Date of Order:	December 13, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Leonard C. Ostrow (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 is publicly reprimanded for violation of RPC 1.3 and RPC 1.4 of the Rules of Professional Conduct.

DATED this 13th day of December 2006.

/s/ John A. Berge  
 John A. Berge  
 State Disciplinary Board Chairperson

/s/ Arnold S. Polk  
 Arnold S. Polk, Region 4  
 Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

Leonard C. Ostrow, attorney at law (hereinafter “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 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 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 July 22, 2006, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of RPC 1.3 and RPC 1.4 of the Rules of Professional Conduct. 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 June 17, 2003, Monique Weir (hereinafter “Weir”) was convicted of Solicitation to Commit the Crime of Aggravated Murder, *State of Oregon v. Monique Weir*, Clackamas County Circuit Court Case No. CR0300506. (hereinafter “Criminal Case”).

6.

On or about April 23, 2004, Weir filed a petition for post conviction relief in the Washington County Circuit Court, *Monique R. Weir v. William Hoefel, Superintendent, Coffee Creek Correctional Facility*, Case No. C041396CV (hereinafter “Post-Conviction Case”). On or about May 5, 2004, the court appointed the Accused to represent Weir concerning the Post-Conviction Case.

7.

On or about June 7, 2004, Assistant Attorney General Stacia Baker (hereinafter “AAG”) notified the Accused by letter, dated June 3, 2004, that her office had received a copy of Weir’s petition for post-conviction relief, requested that no default be taken without 10 days notice, and asked the Accused if he intended to file an amended or formal petition. The Accused did not respond.

8.

On or about June 30, 2004, the Accused notified Weir that he had been appointed to represent her concerning the Post-Conviction Case. The Accused also sent Weir a form of release to be signed and returned by Weir to the Accused to permit him to obtain a copy of her file from Weir’s counsel in the Criminal Case. On or about July 1, 2004, Weir received the Accused’s letter. Weir signed the form of release and returned it to the Accused the same day.

9.

On or about June 30, 2004, the Accused requested copies of selected documents from the Criminal Case trial court file. On or about July 16, 2004, the Clackamas County Circuit Court provided the Accused with copies of the documents he requested.

10.

Between about July 1, 2004, and December 9, 2004, the Accused did not communicate with Weir, did not respond to inquiries and requests from the AAG’s office concerning the Post-Conviction Case, and did not substantively pursue or advance Weir’s interests and objectives in the Post-Conviction Case.

11.

On or about October 25, 2004, the court filed a notice of intent to dismiss the Post-Conviction Case for lack of prosecution unless good cause was shown within 28 days why the case should not be dismissed. Between about October 25, 2004, and December 9, 2004, the Accused took no action, and on December 9, 2004, the court dismissed the Post-Conviction Case. The Accused received a copy of the judgment of dismissal on or about December 16, 2004. On or about January 6, 2005, the Accused filed a motion to set aside the judgment dismissing Weir’s Post-Conviction Case, and for a 60-day extension of time to file an amended petition for post-conviction relief. The court granted the motion and signed the order on January 6, 2005.

12.

Between about January 6, 2005 and March 4, 2005, the Accused did not communicate with Weir; did not communicate with the AAG’s office concerning the

Post-Conviction Case, and did not substantively pursue or advance Weir's interests and objectives. On or about March 4, 2005, the court again dismissed the case. On or about April 25, 2005, Weir filed a motion with the court for the appointment of new counsel to represent her interests.

13.

In and between July 2004 and May 2005, the Accused did not keep Weir reasonably informed about the status of her Post-Conviction Case and did not provide explanations reasonably necessary for Weir to make informed decisions regarding the representation.

14.

The Accused admits that the aforesaid conduct constituted violation of RPC 1.3 (neglect of a legal matter) and RPC 1.4 (failure to communicate) of the Rules of Professional Conduct.

### SANCTION

15.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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. *Standards*, § 3.0.

a. *Duty violated.* By violating RPC 1.3 and RPC 1.4, the Accused violated his duty to diligently represent his client. *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 to accomplish a particular result. "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. The Accused knew he had agreed to handle the client's case, but was negligent in not attending to it or communicating with his client as he should.

c. *Injury.* The *Standards* define "injury" as harm to the client, the public, the legal system or the profession that results from a lawyer's conduct. "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Standards*, p. 7.

The Accused caused actual and potential injury to his client and the legal system. The client's case was delayed. The court was required to devote additional time to address the dismissal and reinstatement of the case because the Accused had failed to take action. The Accused's client was frustrated by the Accused's failure to communicate with her.

d. *Aggravating factors*. "Aggravating factors" are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. There are multiple offenses. *Standards*, § 9.22(d). The Accused has substantial experience in the practice of law. He was admitted to practice in 1983. *Standards*, § 9.22(i). Also, his client was vulnerable. She was incarcerated and relied on the Accused to protect and advance her claim. *Standards*, § 9.22(h).

e. *Mitigating factors*. "Mitigating factors" are considerations that may decrease the degree of discipline to be imposed. *Standards*, § 9.32. The Accused has no prior record of formal discipline. *Standards*, § 9.32(a). He did not act with selfish motives. *Standards*, § 9.32(b). The Accused has acknowledged his misconduct and cooperated in the resolution of this case. *Standards*, § 9.22(e). Also, the Accused is remorseful. *Standards*, § 9.32(l).

16.

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.

17.

Oregon case law is in accord. *See, e.g., In re Koch*, 18 DB Rptr 92 (2004) (reprimand for violation of DR 2-110(A) and (B), DR 6-101(B), and DR 9-101(C)(4)); *In re Russell*, 18 DB Rptr 98 (2004) (reprimand for violation of DR 6-101(B)); *In re Lebenbaum*, 19 DB Rptr 154 (2005) (reprimand for violation of DR 6-101(B)).

18.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be reprimanded for violation of RPC 1.3 and RPC 1.4 of the Rules of Professional Conduct.

19.

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 this stipulation shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

Cite as *In re Ostrow*, 20 DB Rptr 303 (2006)

EXECUTED this 29th day of November 2006.

/s/ Leonard C. Ostrow

Leonard C. Ostrow

OSB No. 83298

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel



Cite as 342 Or 183 (2006)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of )  
)  
CHRISTOPHER KNUTE SKAGEN, )  
)  
Accused. )

(OSB No. 03-64; SC S52940)

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

Argued and submitted September 11, 2006. Decided December 21, 2006.

Christopher Knute Skagen, Portland, argued the cause and filed the briefs for himself.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar. With her on the brief was Roscoe C. Nelson, II.

Before De Muniz, Chief Justice, and Carson, Gillette, Durham, Balmer, and Kistler, Justices. (Riggs, J., retired September 30, 2006, and did not participate in the consideration or decision of this case. Walters, J., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for one year, commencing 60 days from the filing of this decision.

**SUMMARY OF THE SUPREME COURT OPINION**

The Oregon State Bar (Bar) charged the Accused with violating the following Disciplinary Rules (DR) of the Oregon Code of Professional Responsibility: DR 9-101(A) (requiring lawyer to maintain client funds in trust account and to identify account with phrase “Lawyer Trust Account”); DR 9-101(C)(3) (requiring lawyer to maintain complete records of client funds in possession of lawyer and to render appropriate accounts to client regarding funds); DR 9-101(D)(1) (requiring lawyer trust account to be interest bearing); DR 1-102(A)(3) (prohibiting dishonesty, fraud, deceit, and misrepresentation); DR 2-106(A) (prohibiting illegal or clearly excessive

fee); DR 1-102(A)(4) (prohibiting conduct prejudicial to administration of justice); and DR 1-103(C) (requiring lawyer who is subject of disciplinary proceeding to cooperate and respond fully and truthfully to inquiries and requests of disciplinary counsel). The Bar charged those violations based on the Accused's conduct in four different situations: (1) the Accused's handling of and accounting for funds held in his lawyer trust account on behalf of a client; (2) the fee that the Accused charged that client and a bill that he submitted to her; (3) the Accused's actions in establishing and maintaining his lawyer trust account; and (4) the Accused's conduct during the Bar's investigation of the complaint against him and during the subsequent disciplinary proceeding.

A trial panel of the Disciplinary Board concluded that the Accused had violated all the rules as charged, except DR 2-106(A) and one of the two alleged violations of DR 9-101(A). The trial panel suspended the Accused from the practice of law for three years and imposed an additional two-year probationary term upon his reinstatement. The Accused sought review. *Held*: The Bar proved by clear and convincing evidence that the Accused's conduct constituted violations of DR 9-101(A), DR 9-101(C)(3), DR 9-101(D)(1), DR 1-102(A)(4), and DR 1-103(C). The Bar failed to prove, however, that the Accused had violated DR 1-102(A)(3) and DR 2-106(A). The Accused is suspended from the practice of law for one year.

Cite as 342 Or 243 (2006)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of )  
)  
LINDA J. WILSON, )  
)  
Accused. )

(OSB Nos. 04-155, 04-157; SC S53377)

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

Argued and submitted November 1, 2006. Decided December 29, 2006.

John Halpern, Jr., Eugene, argued the cause and filed the brief for the Accused.

Stacey J. Hankin, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before De Muniz, Chief Justice, and Carson, Gillette, Durham, Balmer, and Kistler, Justices. (Walters, J., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for six months, commencing 60 days from the effective date of this decision.

**SUMMARY OF THE SUPREME COURT OPINION**

This case arises out of the Accused's actions while representing a client in a domestic relations matter. The Accused, with the desire to postpone the date of a trial, engaged in dishonest conduct with opposing counsel and the court. In a formal complaint, the Bar alleged that the Accused's conduct violated DR 1-102(A)(3) and DR 1-102(A)(4). Following a hearing, a trial panel found the Accused had violated those Disciplinary Rules and recommended a six-month suspension. The Accused

**Cite as *In re Wilson*, 20 DB Rptr 311 (2006)**

sought review. *Held:* In a per curiam opinion and on *de novo* review, the Oregon Supreme Court determined that the Accused's conduct constituted a violation of DR 1-102(A)(3) and DR 1-102(A)(4). The court concluded that the trial panel was correct in their determination and that the Accused failed to provide any cogent legal argument to the contrary.

Cite as 342 Or 232 (2006)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of )  
)  
WADE P. BETTIS, )  
)  
Accused. )

(OSB No. 05-31; SC S53231)

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

Argued and submitted September 6, 2006. Decided December 29, 2006.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause for the Oregon State Bar. With her on the briefs was Jonel Ricker, Bar Counsel.

Lawrence W. Erwin, Bend, argued the cause and filed the brief for the Accused.

Before De Muniz, Chief Justice, and Carson, Gillette, Durham, Balmer, and Kistler, Justices. (Riggs, J., retired September 30, 2006, and did not participate in the consideration or decision of this case. Walters, J., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for 30 days, commencing 60 days from the effective date of this decision.

**SUMMARY OF THE SUPREME COURT OPINION**

This case arises out of the Accused’s representation of a criminal defendant, in custody at the Umatilla County Jail. While representing that defendant, the Accused confused his identity with that of another client. Additionally, the Accused, without having reviewed any discovery from the prosecutor, and without having conducted any factual or legal investigation on his own, recommended to his client to waive his right to a jury trial. In a formal complaint, the Bar alleged that the Accused violated DR 6-101(A) in failing to exercise his skill, thoroughness, and preparation reasonably necessary for his client’s representation. In the ensuing disciplinary proceeding, a trial panel found the Accused not guilty of that charge. The

**Cite as *In re Bettis*, 20 DB Rptr 313 (2006)**

Bar sought review. *Held*: In a per curiam opinion, and on *de novo* review, the Oregon Supreme Court determined that the Accused's conduct in representation of his client in the above matter constituted a violation of DR 6-101(A). The court concluded that, under the circumstances, the Accused's omissions demonstrated beyond any doubt that the Accused's representation of his client fell below the competence standard required by DR 6.101(A). In particular, the court took issue with the fact that the Accused sought his client's waiver of a fundamental constitutional right without any basis to conclude that such a waiver was in the client's best interest.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 06-93  
)  
THOMAS W. NAWALANY, )  
)  
Accused. )

Counsel for the Bar: Jane E. Angus  
Counsel for the Accused: Christopher R. Hardman  
Disciplinary Board: None  
Disposition: Violation of DR 6-101(A). Stipulation for  
Discipline. Public reprimand.  
Effective Date of Order: December 31, 2006

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Thomas W. Nawalany (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 is publicly reprimanded for violation of DR 6-101(A) of the Code of Professional Responsibility.

DATED this 31st day of December 2006.

/s/ John A. Berge  
John A. Berge  
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff  
Susan G. Bischoff, Region 5  
Disciplinary Board Chairperson

### STIPULATION FOR DISCIPLINE

Thomas W. Nawalany, attorney at law (hereinafter “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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1993, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On August 18, 2006, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violation of 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 AND VIOLATION

5.

Lucy Wright (hereinafter “Wright”) was a Ukrainian immigrant who came to the United States in the 1940’s. In 2001, Wright was about 93 years old. Wright received services from the Mid Willamette Valley Senior Services Department (hereinafter “Senior Services”). Since about 1998, Wright demonstrated deterioration in her mental health, including paranoia and dementia, but continued to be able to reside in her own home.

6.

On or about August 27, 2001, Wright was suffering from arterial fibrillation and congestive heart failure and was admitted to the hospital. On August 30, 2001, Wright was released from the hospital. Senior Services placed Wright temporarily in



an adult foster home operated by Ivan and Tamara Lemesko (hereinafter collectively “Lemeskos”) until such time as Wright gained sufficient strength to return home.

7.

On September 7, 2001, Tamara Lemesko contacted the Accused’s Portland law office and spoke with the Accused’s assistant. Tamara Lemesko told the Accused’s assistant that she needed someone to draft a will; that the testator wanted to leave her house to Tamara; and that time was of the essence. Tamara Lemesko did not disclose to the Accused or his assistant that she was operating a care facility. The Accused traveled from Portland to Salem that evening to meet with Wright. The Accused had no previous relationship with and did not know either Wright or the Lemeskos.

8.

The Accused met with Wright the evening of September 7, 2001. The same evening, the Accused prepared and Wright signed a will in which Wright bequeathed all of her possessions, including her home, to Tamara Lemesko. Tamara Lemesko’s 19 year old son was named in the will as the personal representative of Wright’s estate. The Accused also prepared and Wright signed a durable general power of attorney in which the son was named Wright’s agent and attorney-in-fact.

9.

The Accused failed to make sufficient inquiry and to devote sufficient time with Wright to determine her mental state, the extent of her affairs, her relationships with the Lemeskos and their son, and living arrangements before preparing and presenting the will and power of attorney to Wright and obtaining her signature on the documents. In addition, foster care providers were prohibited from accepting gifts from those persons in their care. The Accused failed to use the requisite thoroughness and preparation reasonably necessary for the representation.

10.

The Accused admits that the aforesaid conduct constituted violation of DR 6-101(A) (failure to provide competent representation) of the Code of Professional Responsibility.

### SANCTION

11.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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. *Standards*, § 3.0.

a. *Duty violated.* In violating DR 6-101(A), the Accused violated his duty to provide competent representation to his client. *Standards*, § 4.5.

b. *Mental state.* “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. The Accused was negligent in failing to obtain adequate information and failing to adequately assess the client’s mental state, her circumstances, and her relationship with the care providers.

c. *Injury.* The *Standards* define “injury” as harm to the client, the public, the legal system or the profession that results from a lawyer’s conduct. “Potential injury” is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. *Standards*, p. 7.

The Accused caused actual and potential injury to his client. The client executed a will when she was not competent to do so, and in which she bequeathed property to persons who had exercised undue influence and were not permitted or entitled to receive any portion of her estate. After the documents were signed, Senior Services learned about them. Wright’s mental condition coupled with the foster care rules prohibiting foster care providers from accepting gifts from their clients led Senior Services to take action. Guardianship and conservatorship proceedings were filed. However, Wright died prior to the hearing in those proceedings. A will contest followed Wright’s death. A Marion County Circuit Court judge found that the Lemeskos had engaged in conduct constituting undue influence over Wright and invalidated the will. The Lemeskos were also criminally prosecuted and convicted of criminal mistreatment.

d. *Aggravating factors.* “Aggravating factors” are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. The Accused has substantial experience in the practice of law. He was admitted to practice in 1993. *Standards*, § 9.22(i). Also, his client was vulnerable. She was elderly and physically ill. In addition, the client was mentally vulnerable and not competent to execute the will and power of attorney. *Standards*, § 9.22(h).

e. *Mitigating factors.* “Mitigating factors” are considerations that may decrease the degree of discipline to be imposed. *Standards*, § 9.32. The Accused has no prior record of formal discipline. *Standards*, § 9.32(a). He did not act with selfish or dishonest motives. *Standards*, § 9.32(b). The Accused cooperated with law enforcement and other state authorities in the investigation and criminal prosecution of the Lemeskos and in probate proceedings to invalidate the client’s will. The Accused has acknowledged his misconduct and cooperated in the investigation and resolution of this disciplinary case. *Standards*, § 9.22(e). The conduct that is the subject of this proceeding occurred in 2001, but was not brought to the attention of

the disciplinary authorities until December 2005. *Standards*, § 9.32(i). Also, the Accused is remorseful. *Standards*, § 9.32(l).

12.

The *Standards* provide that reprimand is generally appropriate when a lawyer demonstrates a failure to understand relevant doctrines or procedures, or is negligent in determining whether he is competent to handling a legal matter, and causes injury or potential injury to a client. *Standards*, § 4.43.

13.

Oregon case law is in accord. *See, e.g., In re Magar*, 276 Or 799, 681 P2d 93 (1984) (reprimand for violation of former DR 6-101(A)); *In re Greene*, 276 Or 1117, 557 P2d 644 (1976), *reh'g denied*, 277 Or 89 (1977) (reprimand for failing to provide competent representation and conflict of interest).

14.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be reprimanded for violation of DR 6-101(A) of the Code of Professional Responsibility.

15.

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 this stipulation shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 5th day of December 2006.

/s/ Thomas W. Nawalany  
Thomas W. Nawalany  
OSB No. 93083

OREGON STATE BAR

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

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