

**DISCIPLINARY
BOARD
REPORTER**

Report of Lawyer Discipline Cases
Decided by the Disciplinary Board
and by the
Oregon Supreme Court
for 2012

VOLUME 26

January 1, 2012, to December 31, 2012

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 2012 decisions of the Oregon Supreme Court involving the discipline of lawyers, and related matters. Cases in this DB Reporter should be cited as 26 DB Rptr ____ (2012).

In 2012, 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 43 of the OSB 2012 Resource Directory or 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, 2012, are also available at the Oregon State Bar Web site, 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.

JOHN GLEASON
Disciplinary Counsel
Oregon State Bar

CONTENTS

<i>Oregon Supreme Court, Board of Governors, State Professional Responsibility Board</i>	iv
<i>Disciplinary Board</i>	
2013	v
2012	vi
<i>List of Cases Reported in This Volume</i>	vii
<i>Cases</i>	1–292
<i>Table of Cases</i>	293
<i>Table of Rules and Statutes</i>	298

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LIST OF CASES REPORTED

**Volume 26
DB Reporter**

(Includes Oregon Supreme Court stipulations and decisions
which also appear in the Advance Sheets)

In re Ambrose.....16
Violation of RPC 1.7(a)(2) and RPC 1.8(a). Stipulation for Discipline.
Public Reprimand.

In re Bertoni.....25
Violations of RPC 1.15-1(a), RPC 1.15-1(b), and RPC 1.15-1(c).
Stipulation for Discipline. 150-day suspension.

In re Bishop.....76
Violation of RPC 1.15-2(m) and RPC 8.1(a)(2). Stipulation for Discipline.
Public Reprimand.

In re Browning176
Violations of RPC 1.3; RPC 1.4(a); RPC 1.4(b); RPC 1.7(a)(2); and RPC 8.1(a)(2).
Trial Panel Opinion. 120-day suspension.

In re Cain55
Violations of RPC 1.5(a) and RPC 7.5(d). Stipulation for Discipline.
Public Reprimand.

In re Carl.....36
Violations of 8.4(a)(2) and ORS 9.527(2). Stipulation for Discipline.
18-month suspension.

In re Christensen.....241
Violation of RPC 8.4(a)(4). Stipulation for Discipline. Public Reprimand.

In re Cullen173
Violation of RPC 1.3, RPC 1.4(a), RPC 1.15-1(a), RPC 1.15-1(d), RPC 8.1(a)(2),
RPC 8.4(a)(2), and RPC 8.4(a)(3). Trial Panel Opinion. Disbarment.

In re Dugan277
Violation of RPC 8.4(a)(4). Stipulation for Discipline. Public Reprimand.

In re Eckrem.....104
Violation of RPC 1.15-1(c). Trial Panel Opinion. 90-day suspension, all stayed,
180-day probation.

<i>In re Franklin</i>	122
Violations of DR 6-101(B), RPC 1.3, RPC 1.4(a), RPC 1.16(c), and RPC 1.16(d). Stipulation for Discipline. 30-day suspension.	
<i>In re Fredrick</i>	129
Violation of DR 6-101(A). Trial Panel Opinion. Public Reprimand.	
<i>In re Fuller</i>	166
Violation of RPC 8.4(a)(3). Stipulation for Discipline. 90-day suspension.	
<i>In re Gonzalez</i>	98
Violations of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2). Stipulation for Discipline. 6-month suspension.	
<i>In re Gerttula</i>	31
Violations of DR 5-105(E) and RPC 1.9(a). Stipulation for Discipline. Public Reprimand.	
<i>In re Goff</i>	172
Supreme Court Opinion. 18-month suspension.	
<i>In re Goode</i>	213
Violation of RPC 4.2 and Pennsylvania RPC 1.8(j). Trial Panel Opinion. 120-day suspension.	
<i>In re Gurman</i>	42
Violation of RPC 1.15-2(m) and RPC 8.1(a)(2). Stipulation for Discipline. Public Reprimand.	
<i>In re Hight</i>	8
Violations of RPC 8.4(a)(2) and ORS 9.527(2). Stipulation for Discipline. 1-year suspension, all but 90 days stayed, 3-year probation.	
<i>In re Hunt</i>	71
Violations of RPC 1.15-2(m) and RPC 8.1(a)(2). Stipulation for Discipline. Public Reprimand.	
<i>In re Ingram</i>	65
Violation of RPC 1.2(a) and RPC 1.4(a). Stipulation for Discipline. Public Reprimand.	
<i>In re Ireland</i>	47
Violations of RPC 1.15-1(a) and RPC 1.15-1(c). Trial Panel Opinion. 30-day suspension.	

<i>In re Jordan</i>	191
Violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.16(c), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(2), RPC 8.4(a)(3), and RPC 8.4(a)(4). Stipulation for Discipline. 18-month suspension.	
<i>In re Kinney</i>	59
Violations of RPC 1.5(a), RPC 7.5(d), and RPC 8.4(a)(4). Stipulation for Discipline. Public Reprimand.	
<i>In re Klahn</i>	246
Violation of RPC 1.4(a), RPC 1.4(b), and RPC 8.4(a)(4). Stipulation for Discipline. 90-day suspension.	
<i>In re Kocurek</i>	225
Violation of RPC 3.3(a)(1), RPC 8.1(a)(1), RPC 8.4(a)(3), and RPC 8.4(a)(4). Trial Panel Opinion. 6-month suspension.	
<i>In re Marandas</i>	15
Supreme Court Opinion. Complaint dismissed.	
<i>In re McCallie</i>	207
Violation of RPC 5.5(a), RPC 8.4(a)(3), and ORS 9.160. Stipulation for Discipline. 120-day suspension.	
<i>In re Morasch</i>	146
Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.16(a)(2), RPC 1.16(d), RPC 8.1(a)(2), RPC 8.4(a)(3), and RPC 8.4(a)(4). Stipulation for Discipline. 2-year suspension.	
<i>In re Moule</i>	271
Violations of RPC 1.7(a)(1) and RPC 1.7(a)(2). Stipulation for Discipline. Public Reprimand.	
<i>In re Murphy</i>	91
Violations of RPC 1.16(d) and RPC 8.1(a)(2). Trial Panel Opinion. 270-day suspension.	
<i>In re Nesheiwat</i>	253
Violation of RPC 1.5(a) and RPC 8.4(a)(4). Stipulation for Discipline. Public Reprimand.	
<i>In re Obert</i>	184
Supreme Court Opinion. 6-month suspension.	
<i>In re Petersen</i>	186
Violation of RPC 1.15-1(e). Stipulation for Discipline. Public Reprimand.	

<i>In re Petranovich</i>	1
Violations of RPC 1.3, RPC 1.4(a), RPC 8.1(a)(2), and RPC 8.4(a)(3). Stipulation for Discipline. 60-day suspension.	
<i>In re Robins</i>	260
Violation of RPC 1.3, RPC 1.16(a)(2), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(2), RPC 8.4(a)(4), and ORS 9.160. Stipulation for Discipline. 6-month suspension, all stayed, 2-year probation.	
<i>In re Soto</i>	81
Violations of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15-1(a), RPC 1.15-1(b), RPC 1.15-1(d), RPC 1.15-2(l), RPC 1.16(a)(2), RPC 1.16(d), and RPC 8.1(a)(2). Stipulation for Discipline. 7-month suspension.	
<i>In re Stangell</i>	203
Violation of RPC 4.2. Stipulation for Discipline. Public Reprimand.	
<i>In re Steves</i>	283
Violations of RPC 1.3, RPC 1.4(a), RPC 1.5(a), RPC 1.15-1(d), RPC 8.1(a)(2), and RPC 8.4(a)(2). Stipulation for Discipline. 1-year suspension.	
<i>In re Stout</i>	115
Trial Panel Opinion. Dismissal.	

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 11-28
)
MILO PETRANOVICH,)
)
Accused.)

Counsel for the Bar: Barry J. Goehler; Stacy J. Hankin
Counsel for the Accused: Thomas H. Tongue
Disciplinary Board: None
Disposition: Violations of RPC 1.3, RPC 1.4(a), RPC 8.1(a)(2), and
RPC 8.4(a)(3). Stipulation for Discipline.
60-day suspension.
Effective Date of Order: March 1, 2012

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 March 1, 2012, for violation of RPC 1.3, RPC 1.4(a), RPC 8.1(a)(2), and RPC 8.4(a)(3).

DATED this 4th day of January, 2012.

/s/ William Crow
William Crow
State Disciplinary Board Chairperson

/s/ Nancy M. Cooper
Nancy M. Cooper, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Milo Petranovich, 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 14, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely, 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 April 12, 2011, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.3, RPC 1.4(a), RPC 8.1(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

5.

On September 24, 2008, the court appointed the Accused, who had volunteered to be on a pro bono panel, to represent John Hummasti (hereinafter “Hummasti”) in the federal district court civil case *Hummasti v. Ali et al*, Case No. 06-cv-01710-BR. Hummasti had filed the lawsuit pro se. At the time of the Accused’s appointment, the defendants had recently filed motions for summary judgment.

6.

The Accused attended a scheduling conference with the court on October 27, 2008, and the court gave the Accused until December 15, 2008, to file responses to the pending motions for summary judgment.

7.

On November 5, 2008, the Accused met with Hummasti. As a result of that meeting, Hummasti understood that the Accused would represent him in the pending civil matter.

8.

Shortly thereafter, the Accused, based upon the November 5, 2008, meeting with Hummasti and his review of the court file, concluded that Hummasti's case had no merit, that there was nothing he could file that would help Hummasti, and that it would be best for Hummasti if no further filings with the court were made. Consistent with his conclusions, the Accused determined that he would not file responses to the motions for summary judgment. The Accused knowingly did not communicate his conclusion or decision to Hummasti.

9.

After November 5, 2008, and through December 30, 2009, Hummasti periodically inquired about the status of his legal matter. The Accused did not respond to Hummasti's inquiries.

10.

On December 30, 2009, because he had not heard from the Accused, Hummasti sent an e-mail to the court asking about the status of his legal matter. He was informed that summary judgment motions were pending and that it did not appear that briefs, due on December 15, 2009, had been filed. Hummasti forwarded that e-mail to the Accused, and on January 9, 2009, sent another e-mail to the Accused asking him to include information from documents he was attaching to any pleadings he may file with the court.

11.

On January 5, 2009, the court sent a notice advising the Accused that the motions for summary judgment were under advisement with the court.

12.

On March 20, 2009, the court issued an opinion and order granting the defendants' motions for summary judgment and a judgment dismissing Hummasti's claims. The Accused failed to inform Hummasti about the opinion, order, and the judgment. The opinion, order, and the judgment were material to Hummasti.

13.

On April 1, 2009, the defendants filed a motion to impose sanctions on Hummasti claiming that, because of this lawsuit and others previously filed, he was a serial litigator. The lawyer representing those defendants tried to confer with the Accused about the motion pursuant to local court rules and asked if the Accused wanted a copy of the motion served on Hummasti by mail. The Accused did not respond to her inquiry.

14.

A response to the motion for sanctions was due on April 15, 2009. The Accused did not inform Hummasti that the motion had been filed and did not file a response to it.

15.

On April 22, 2009, the court issued a scheduling order noting that a response to the motion for sanctions was due on April 15, 2009, but giving the Accused until May 1, 2009, to file a response. The Accused did not inform Hummasti of the deadline, and did not file a response on Hummasti's behalf.

16.

On June 11, 2009, the court denied the motion for sanctions. The Accused failed to inform Hummasti of the court's decision.

17.

Between June 30, 2009, and September 1, 2009, Hummasti made inquiries to the Accused asking about the status of his legal matter. The Accused failed to respond to those inquiries.

18.

On September 15, 2009, Hummasti sent an e-mail to the Accused stating that he had discovered through the internet that there had been a decision in his case and asked the Accused to provide him with a copy of the opinion. On September 17, 2009, the Accused informed Hummasti he was uncomfortable responding to his requests, but would be happy to recommend other counsel to him. The Accused did not provide Hummasti with a copy of the court's opinion.

19.

In September 2010, Hummasti filed a complaint with the Bar regarding the Accused's conduct. The complaint was referred to Disciplinary Counsel's Office in December 2010. On December 22, 2010, Disciplinary Counsel's Office requested the Accused's response to the complaint on or before January 12, 2011. The Accused knowingly failed to respond to that letter and to a subsequent letter reminding of his duty to respond.

Violations

20.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 19, he violated RPC 1.3, RPC 1.4(a), RPC 8.1(a)(2), and RPC 8.4(a)(3).

Sanction

21.

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 duties he owed to Hummasti to be candid with him, to communicate with him, and to diligently pursue his legal matter. *Standards* §§ 4.4 and 4.6. The Accused also violated a duty he owed to the profession to cooperate in the bar’s investigation. *Standards* § 7.0.
- b. **Mental State.** The Accused acted knowingly.
- c. **Injury.** Hummasti sustained actual injury in that he lost the opportunity to seek re-consideration of or appeal from the court’s decisions. *In re Snyder*, 348 Or 307, 232 P3d 952 (2010); *In re Bourcier II*, 322 Or 561, 569, 909 P2d 1234 (1996); *In re Geurts*, 290 Or 241, 620 P2d 1373 (1980). Hummasti also experienced frustration when the Accused failed to pursue his legal matter and respond to his inquiries. *In re Knappenberger*, 337 Or 15, 31, 90 P3d 614 (2004); *In re Schaffner*, 325 Or 421, 426–27, 939 P2d 39 (1997). There was also the potential for injury to Hummasti had the court imposed sanctions on him because the Accused did not respond to the motion for sanctions. The Bar also sustained actual injury in that staff spent additional time and effort obtaining information the Accused should have provided.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Multiple offenses. *Standards* § 9.22(d).
 2. Vulnerability of victim. Hummasti was vulnerable. *Standards* § 9.22(h).
 3. Substantial experience in the practice of law. The Accused has been licensed to practice law in Oregon since 1981. *Standards* § 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances 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. Character and reputation. Members of the legal community will attest to the Accused’s good character and reputation. *Standards* § 9.32(g).

4. Remorse. The Accused is remorseful for his misconduct. *Standards* § 9.32(1).

22.

Under the ABA *Standards*, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, when a lawyer knowingly deceives a client and causes injury or potential injury to the client, and 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* §§ 4.42, 4.62 and 7.2.

23.

Oregon case law is in accord. *In re Snyder, supra* (30-day suspension of lawyer who failed to adequately communicate with a client where the mitigating circumstances outweighed the aggravating circumstances); *In re Obert*, 336 Or 640, 89 P3d 1173 (2004) (30-day suspension of lawyer who, among other things, failed to inform his client for a number of months that the client's appeal had been dismissed by the court because the lawyer failed to timely file it); *In re Jackson*, 347 Or 426, 223 P3d 387 (2009) and *In re Worth*, 337 Or 167, 92 P3d 721 (2004) (120-day suspensions imposed on lawyers who neglected a legal matter and then made a misrepresentation to the court in order to cover up their prior failure to act); *In re Miles*, 324 Or 218, 923 P2d 1219 (1996) and *In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996) (120-day suspensions, 60 days of which were attributed to the lawyer's failure to cooperate in the Bar's investigation).

24.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 60 days for violation of RPC 1.3, RPC 1.4(a), RPC 8.1(a)(2), and RPC 8.4(a)(3), the sanction to be effective March 1, 2012.

25.

In addition, on or before March 1, 2012, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$156.75, incurred for his deposition. Should the Accused fail to pay \$156.75 in full by March 1, 2012, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

26.

The Accused acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. In this regard, the

Accused has arranged for other active members of his firm to either take possession of or have ongoing access to the Accused's client files and serve as the contact person for clients in need of the files during the term of the Accused's suspension. The Accused represents that these lawyers have agreed to accept this responsibility.

27.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with Title 8.3 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

28.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

29.

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 13th day of December, 2011.

/s/ Milo Petranovich

Milo Petranovich
OSB No. 813376

EXECUTED this 15th day of December, 2011.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin
OSB No. 862028
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 11-51
)	
ANN HIGHET,	)	SC S059984
)	
Accused.)	

Counsel for the Bar:	Mary A. Cooper
Counsel for the Accused:	Allison D. Rhodes
Disciplinary Board:	None
Disposition:	Violations of RPC 8.4(a)(2) and ORS 9.527(2). Stipulation for Discipline. 1-year suspension, all but 90 days stayed, 3-year probation.
Effective Date of Order:	January 12, 2012

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, with all but 90 days of that sanction to be stayed pending completion of a three-year probationary period, effective the date of this order.

Dated: January 12, 2012

/s/ Paul J. De Muniz
Paul J. De Muniz, Chief Justice

STIPULATION FOR DISCIPLINE

Ann Highet, 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 21, 1990, 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, 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 May 14, 2011, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 8.4(a)(2) (criminal act reflecting adversely on lawyer’s honesty, trustworthiness, and fitness as a lawyer) of the Oregon Rules of Professional Conduct and ORS 9.527(2) (criminal conviction of felony or misdemeanor involving moral turpitude). 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 May 24, 2010, the Accused—accompanied by her two children, ages 6 and 11—took her dog to a veterinary clinic, where her strange behavior caused the vet’s staff to become concerned enough for the children’s safety that they called the police.

6.

The police confronted the Accused as she exited the parking lot, with her children in the car. The Accused failed standardized field sobriety tests and was arrested for DUII. When officers tried to handcuff her, she began to struggle and refused to listen to commands. She resisted as officers took her to the patrol car, kicking one officer twice in the shin. A female officer searched the Accused and found in her jacket a small bag of a white powdery substance that tested positive for cocaine.

7.

On July 8, 2010, the Accused was charged with several crimes, including Driving Under the Influence of Intoxicants. *State v. Liss*, Washington County Circuit Court Case No. C101208CR. The Accused entered into a DUII diversion and pled guilty to one Class C felony (Unlawful Possession of Cocaine) and two Class A misdemeanors (Resisting Arrest and Attempted Assault of a Public Safety Officer). A judgment of conviction was entered on November 4, 2010, placing the Accused on a three-year formal probation and requiring her to undergo drug evaluation and treatment. The Accused wrote a letter to the police apologizing for her conduct and expressing extreme remorse.

8.

The Accused immediately entered and successfully completed in-patient treatment and then began out-patient treatment, completing all of her program requirements in January 2011. She regularly attends 12-step and AA meetings, and also receives assistance from the Oregon Attorney Assistance Program (OAAP). She participates in group counseling twice a week and attends individual counseling sessions once or twice a week.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 6, she violated RPC 8.4(a)(2) (criminal act reflecting adversely on lawyer's honesty, trustworthiness, and fitness as a lawyer) and ORS 9.527(2) (criminal conviction of felony or misdemeanor involving moral turpitude).

Sanction

10.

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.** By committing criminal acts, the Accused breached her duty to the public to maintain her personal integrity. *Standards* § 5.1.
- b. **Mental State.** The Accused acted intentionally, or with the conscious objective or purpose to accomplish a particular result, when she possessed cocaine. She acted knowingly, or with the conscious awareness of the nature of her conduct but without a conscious objective or purpose to accomplish a

particular result, when she resisted arrest and assaulted a public safety officer. *Standards*, p. 7.

- c. **Injury.** The Accused's misconduct harmed the legal profession by reflecting poorly upon attorneys. It also caused potential injury in that her driving under the influence could have physically injured her passengers and/or members of the public, while her efforts to resist arrest could have physically injured law enforcement personnel.
- d. **Aggravating Circumstances.** The Accused's substantial experience in the practice of law (she was admitted to practice in 1990) is an aggravating factor under *Standards* § 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. Imposition of other penalties. The Accused was placed on a 3-year formal probation that required her to be evaluated, treated, and counseled for drugs, submit to random body substance testing, submit to polygraph testing, submit to searches by probation officers, and successfully complete a DUII diversion. *Standards* § 9.32(k).
 2. Absence of a prior disciplinary record. *Standards* § 9.32(a).
 3. Timely good faith effort to rectify consequences of misconduct. The Accused immediately began treatment for cocaine addiction. *Standards* § 9.32(d).
 4. Remorse. The Accused has demonstrated remorse for her conduct. *Standards* § 9.32(l).

11.

Under the ABA *Standards*, a suspension is generally appropriate when the lawyer knowingly engages in criminal conduct that seriously adversely reflects on her fitness to practice law. *Standards* § 5.12. Probation is appropriate for conduct that may be corrected, such as alcohol or chemical dependency. In cases involving illegal drugs, probation should be used only in conjunction with a suspension. *Standards* § 2.17. Probationary conditions must be appropriate in light of the misconduct at issue. *In re Haws*, 310 Or 741, 801 P2d 818 (1990). In this case, probation is appropriate because the Accused achieved sobriety on May 24, 2010 and continues to pursue treatment for her dependency on drugs. Probation is intended to assist the Accused in maintaining her sobriety and continued compliance with the laws of this state.

12.

Oregon case law also supports the imposition of a significant suspension. Attorneys who engage in criminal conduct relating to courts or the administration of justice are

typically disbarred. *See, e.g., In re Gustafson*, 333 Or 468, 41 P3d 1063 (2002) (attorney disbarred after intentionally obtaining and releasing juvenile court records that were subject to expunction and giving false testimony); *In re Martin*, 308 Or 125, 775 P2d 842 (1989) (attorney disbarred for bribing a witness in a client's case). However, attorneys who are convicted of drug-related crimes are typically suspended, and often placed on probation.

(a) *In re Allen*, 326 Or 107, 949 P2d 710 (1997), a lawyer provided money to a friend to purchase heroin for the friend's use. The friend died of a heroin overdose and the lawyer was convicted of attempted possession of a controlled substance, a Class C felony that was reduced to a misdemeanor pursuant to ORS 161.705(1). Although the lawyer's misconduct was an isolated act and he had no prior discipline, he was suspended for 1 year for violating ORS 9.527(1) and DR 1-102(A)(2) (RPC 8.4(a)(2)'s predecessor rule).

(b) *In re Gudger*, SC S043561, 11 DB Rptr 171 (1997), a lawyer who admitted that he had used cocaine over an extended period of time, and that it had adversely affected his judgment in professional and personal matters, was suspended for seven months for violating DR 1-102(A)(2).

(c) *In re Howlett*, SC S051261, 18 DB Rptr 61 (2004), a lawyer who admitted that he had possessed and used methamphetamines—although he was never criminally charged—was suspended for six months, all of which was stayed pending a 2-year probation, for violating DR 1-102(A)(2).

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for a period of one year, all but 90 days of which will be stayed pending successful completion of a 3-year probation, for violating RPC 8.4(a)(2) and ORS 9.527(2). The sanction will be effective immediately.

14.

During the term of the 3-year probation, the Accused shall comply with the following conditions:

(a) The Accused shall comply with all provisions of this Stipulation, the Rules of Professional Conduct, and ORS Chapter 9.

(b) The Accused shall maintain sobriety and shall abstain from using alcohol, marijuana, or any controlled substances not prescribed by a physician. Any prescribed substances shall be taken only as prescribed.

(c) The Accused shall submit to monitoring by and comply with all recommendations of the State Lawyers Assistance Committee (SLAC), which shall be responsible for supervising the Accused's probation. The Accused agrees to meet with a SLAC Supervisor in person one time each month, unless the SLAC Supervisor determines

that less frequent in-person meetings are appropriate, in which case SLAC shall notify the Disciplinary Counsel's Office of this determination. The Accused further agrees to comply with all reasonable requests of the SLAC Supervisor that are designed to achieve the purpose of the probation and protection of the Accused's clients, the profession, the legal system, and the public.

(d) The Accused shall attend at least one meeting each week of AA (or an equivalent group approved by the SLAC Supervisor) or more frequently if recommended by the SLAC Supervisor.

(e) The Accused shall submit to random urinalysis screenings for controlled substances at her own expense and at the discretion of the SLAC Supervisor.

(f) The Accused shall report to Disciplinary Counsel's Office within 14 days of occurrence of any civil, criminal, or traffic action or proceeding initiated by complaint, citation, warrant, or arrest, or any incident not resulting in complaint, citation, warrant, or arrest in which it is alleged that the Accused has possessed or consumed alcohol, marijuana, or other controlled substance not prescribed by a physician.

(g) The Accused shall continue to comply with the terms of her criminal probation currently under supervision by Washington County Corrections until she has completed that probation.

(h) The Accused shall make regular quarterly written reports to Disciplinary Counsel's Office certifying that she is in compliance with the terms of this disciplinary probation or describing and explaining any non-compliance.

(i) The Accused acknowledges that the SLAC Supervisor will also make regular quarterly written reports to Disciplinary Counsel's Office regarding the Accused's compliance or non-compliance with these terms. The Accused further acknowledges that the SLAC Supervisor is required immediately to report to Disciplinary Counsel's Office any non-compliance by the Accused with the terms of this probation. The Accused hereby waives any privilege or right of confidentiality as may be necessary to permit the SLAC Supervisor to disclose to Disciplinary Counsel's Office any information concerning the Accused's compliance or non-compliance with these probation terms.

(j) If the Accused fails to comply with any term of the probation described in paragraphs (a) through (j) above, Disciplinary Counsel's Office may petition the Oregon Supreme Court to revoke the probation in accordance with the procedure set forth in Bar Rule Procedure 6.2(d), which will result in the imposition of the remaining 275 days of the stayed suspension.

15.

The Accused acknowledges that reinstatement is not automatic on expiration of the 90-day imposed suspension. The Accused agrees and acknowledges that she is required to apply for reinstatement pursuant to BR 8.1.

16.

The Accused also acknowledges that she cannot hold herself out as an active member of the Bar or provide legal services or advice until she is notified that her license to practice has been reinstated.

17.

The Accused acknowledges that she is subject to the Ethics School requirement set forth in BR 6.4, and that a failure to complete the requirement timely under that rule may result in her suspension or the denial of her reinstatement.

18.

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

EXECUTED this 13th day of December, 2011.

/s/ Ann Highet

Ann Highet, OSB No. 902999

OREGON STATE BAR

By: /s/ Mary A. Cooper

Mary A. Cooper, OSB No. 910013

Assistant Disciplinary Counsel

Cite as 351 Or 521 (2012)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of)
)
JOHN S. MARANDAS,)
)
Accused.)

(OSB No. 07-03; SC S058559)

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

Argued and submitted November 7, 2011. Decided January 12, 2012.

Roy Pulvers, Hinshaw & Culbertson LLP, Portland, argued the cause and filed the briefs for the Accused. With him on the briefs was David J. Elkanich, Portland.

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

Before De Muniz, Chief Justice, and Durham, Balmer, Kistler, Walters, and Landau, Justices.

PER CURIAM

The complaint is dismissed.

SUMMARY OF THE SUPREME COURT OPINION

The Accused was charged with numerous violations of the Rules of Professional Conduct and Disciplinary Rules for making misrepresentations to the court and other parties, acting dishonestly, causing prejudice to the administration of justice, and making frivolous legal arguments. *Held*: The Bar failed to prove by clear and convincing evidence that the Accused’s conduct violated any rule. The Accused had a basis in law and fact for making the representations that he did, and the Bar did not prove that the Accused acted dishonestly. Furthermore, the Bar did not prove that the Accused took improper actions. Finally, the Accused advanced plausible legal positions throughout the underlying litigation. The complaint is dismissed.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 10-73
)
DAVID R. AMBROSE,)
)
Accused.)

Counsel for the Bar: Linn Davis
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of RPC 1.7(a)(2) and RPC 1.8(a). Stipulation
for Discipline. Public Reprimand.
Effective Date of Order: January 25, 2012

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 1.7(a)(2) and RPC 1.8(a).

DATED this 25th day of January, 2012.

/s/ William Crow
William Crow
State Disciplinary Board Chairperson

/s/ Nancy M. Cooper
Nancy M. Cooper

STIPULATION FOR DISCIPLINE

David R. Ambrose, 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, 1979, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On October 25, 2010, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter, "SPRB"), alleging violation of RPC 1.7(a)(2) and RPC 1.8(a). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

At all relevant times herein, J. Patrick Lucas (hereinafter "Lucas") was a businessman and property developer doing business through various entities. The Accused represented Lucas and various entities owned or controlled by Lucas over a period that includes August 2005 through on or about April 11, 2007. During this same time period, Lucas was also represented by a number of other law firms.

Bend project

6.

In or about January 2006, the Accused entered into a business venture with Lucas to acquire and develop real property in Bend, Oregon (hereinafter "the Bend project").

7.

The Accused did not, prior to entering into the Bend project with Lucas, advise Lucas in writing of the desirability of seeking the advice of independent counsel regarding the project, nor did the Accused obtain in a writing signed by Lucas the informed consent of

Lucas to the essential terms of the project, including whether the Accused was representing Lucas in the project.

8.

In or about February 2006, the Accused proposed to Lucas, and Lucas agreed, that Lucas and the Accused should utilize an entity the Accused had earlier formed, to be renamed Sage Funding Group, LLC (hereinafter “Sage Funding”) to obtain financing to purchase real property for the Bend project and to own and manage City Center Properties, LLC (hereinafter “City Center”), the entity that would develop the property. The Accused suggested to Lucas, and Lucas agreed, that Sage Funding would include only two members: an entity owned and controlled by the Accused, White Knight Ventures, LLC, and an entity owned and controlled by Lucas, which Lucas designated as Tamarack Capital, LLC. At all relevant times thereafter, the Accused represented Sage Funding.

9.

From in or about February 2006 through in or about April 2007, on behalf of Sage Funding, the Accused negotiated with other parties involved in the Bend project; drafted agreements and legal documents, including a Master Agreement and restated organizational documents for City Center; and made financing arrangements for the project.

10.

In April 2006, in the organizing documents the Accused prepared for the eventual takeover of City Center by Sage Funding, some of which were signed by Lucas, the Accused made disclosures that he and his firm had prepared the documents as counsel for Sage Funding and no other party, and that all parties were advised to seek independent counsel. However, those disclosures were not sufficient to establish the informed consent required by RPC 1.8(a) and RPC 1.0(g), or RPC 1.7 and RPC 1.0(g).

11.

In or about August 2006, a controversy developed between Lucas and the Accused over the management and control of Sage Funding and City Center. The Accused represented Sage Funding in resolving the dispute and preparing related documentation. The Accused drafted documents for Sage Funding that provided that the members of Sage Funding were White Knight Ventures, LLC, and Tamarack Capital, LLC, and specified the rights and responsibilities of the members. In those documents, signed by Lucas, the Accused made disclosures that he and his firm had prepared the Sage Funding documents as counsel for White Knight Ventures, LLC, and no other party, and that all parties were advised to seek independent counsel. However, those disclosures were not sufficient to establish the informed consent required by RPC 1.8(a) and RPC 1.0(g), or RPC 1.7 and RPC 1.0(g).

12.

The Accused represented Sage Funding in closing the purchase of real property for the Bend project and, on or about August 31, 2006, Sage Funding Group became the controlling member of City Center.

13.

In or about February 2007, a controversy developed between Lucas and the Accused concerning whom Sage Funding would designate as its legal counsel. The Accused represented Sage Funding in resolving the dispute and preparing documentation designating his law firm, Ambrose Law Group, as general counsel for Sage Funding.

14.

In 2007, Ambrose Law Group presented a substantial invoice to Sage Funding for services Ambrose Law Group had rendered to Sage Funding over the prior year. Sage Funding did not have the funds available to pay the invoice. In or about April 2007, the Accused assisted Sage Funding in entering into an agreement with Ambrose Law Group to satisfy the outstanding invoice by issuing Sage Funding junior Class B membership interests to Ambrose Law Group, which the Accused asserts improved the financial condition of Sage Funding by converting a liability to equity. The Accused also prepared the documentation necessary for the transaction.

15.

There was, at all relevant times, a significant risk that the Accused's representation of Sage Funding in the Bend project would be materially limited by the Accused's personal interests.

16.

There was, at all relevant times, a significant risk that the representation of Sage Funding in the Bend project would be materially limited by the Accused's responsibilities to White Knight Ventures, LLC.

17.

There was, at all relevant times, a significant risk that the representation of Sage Funding in the Bend project would be materially limited by the Accused's responsibilities to Lucas and entities owned or controlled by Lucas.

18.

The Accused did not obtain the informed consent, confirmed in writing, of Lucas, Tamarack Capital, LLC, or Sage Funding concerning the significant risk of impaired representation described in paragraphs 15 through 17 above.

Patitz loan

19.

In or about August 2005, the Accused represented Roland Patitz (hereinafter “Patitz”) in lending funds to Lucas and Lucas Properties, LLC (hereinafter “the Lucas Properties loan”).

20.

In or about July through August 2006, the Accused represented Patitz in lending additional funds to Lucas and Lucas Properties, LLC, and in entering into an agreement to extend the maturity date of the Lucas Properties loan.

21.

At the time that the Accused represented Patitz, Lucas and entities owned by Lucas were in substantial debt to the Accused’s law firm for legal fees and costs, and those debts were overdue. The Accused knew that a substantial portion of the additional funds to be borrowed from Patitz would be used to pay outstanding debts Lucas and his entities owed to the Accused’s law firm for legal fees and costs.

22.

At the time the Accused represented Patitz in the potential extension of the maturity date of the Lucas Properties loan and the borrowing of additional funds, the Accused also represented Lucas and entities owned or controlled by Lucas. There was a significant risk that the Accused’s representation of Lucas and entities owned or controlled by Lucas would materially limit his representation of Patitz.

23.

At the time that the Accused represented Patitz in the potential extension of the maturity date of the Lucas Properties loan and the borrowing of additional funds, there was a significant risk that the Accused’s personal interests would materially limit his representation of Patitz.

24.

Although the Accused took appropriate measures to ensure that Lucas understood that the Accused did not represent Lucas or Lucas Properties in the potential extension of the maturity date of the Lucas Properties loan and the borrowing of additional funds, the Accused did not obtain the informed consent of Patitz, confirmed in writing, prior to representing Patitz in that transaction.

Violations

25.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 24, he violated RPC 1.7(a)(2) and RPC 1.8(a).

Sanction

26.

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 avoid conflicts of interest. *Standards* § 4.3.
- b. **Mental State.** The Accused was aware he was entering into a business venture with a current client, but did so negligently without first obtaining the informed consent of that client. The Accused negligently regarded disclosures contained in organizing documents for Sage Funding and City Center to be sufficient. The Accused also acted negligently in failing to obtain Patitz’ informed consent, confirmed in writing, prior to representing Patitz in the potential extension of the maturity date of the Lucas Properties loan and the borrowing of additional funds.
- c. **Injury.** Lucas suffered potential injury in that he may have obtained independent counsel earlier and, with that counsel, he may have obtained a better position in the Sage Funding and City Center entities. Although there was some potential for injury to Patitz, no actual injury occurred.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. The Accused committed multiple offenses. *Standards* § 9.22(d).
 2. The Accused had substantial experience in the practice of law at the time of his misconduct. *Standards* § 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. The Accused has no prior disciplinary record. *Standards* § 9.32(a).

2. The Accused made full and free disclosure and showed a cooperative attitude in the disciplinary proceeding. *Standards* § 9.32(e).
3. The Accused has expressed remorse. *Standards* § 9.32(l).

27.

Under the ABA *Standards*, 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. When a lawyer is only negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client, reprimand is generally appropriate. *Standards* § 4.32; § 4.33.

28.

The court has stated that the presumptive sanction for engaging in a “patent” conflict of interest is a thirty-day suspension. *See, In re Hockett*, 303 Or 150, 164, 734 P2d 877 (1987) (where lawyer simultaneously represented two husbands with respect to their business interests and represented their wives in dissolution proceedings against them); *In re Knappenberger (II)*, 337 Or 15, 32–33, 90 P3d 614 (2004) (citing *Hockett* in discussing the court's sanctions in prior conflict of interest cases). Notably, the court found aggravating circumstances outweighed the mitigating, prior to imposing suspensions in *Hockett and Knappenberger (II)*.

29.

The court and the Disciplinary Board have also found public reprimand appropriate in conflict of interest cases, for instance: *In re Harrington*, 301 Or 18, 718 P2d 725 (1986) (where lawyer borrowed money from his elderly client and arranged for others to borrow money from the elderly client but lawyer was found to have acted without guile and in the utmost good faith); *In re Kinsey*, 294 Or 544, 660 P2d 660 (1983) (cited in *In re Campbell*, 345 Or 670, 202 P3d 871 (2009) (lawyer reprimanded where he negligently represented former majority shareholders of a corporate client against the corporate client and its minority shareholder, and continued the representation even after it became clear he ought to be called as a witness); *In re Scott*, 294 Or 606, 660 P2d 157 (1983) (where lawyer advised domestic relations client in lending funds to lawyer's home construction business); *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982) (where lawyer borrowed money from clients “highly sophisticated in business and financial matters” without full disclosure); *In re Bailey*, 21 DB Rptr 64 (2007) (where lawyer prepared stock purchase agreements for corporate client under which stock of exiting shareholder was transferred to the lawyer and lawyer loaned funds to the corporate client and his disclosures were inadequate); *In re McLaughlin*, 17 DB Rptr 247 (2003) (where lawyer entered into joint business venture with his client, formed

corporation and drafted shareholder's agreement to pursue the venture, and his disclosures were inadequate to obtain consent after full disclosure). A common element in the reprimand cases is that mitigating circumstances outweighed or, at the least, balanced the aggravating. The present matter is closer in its facts, and in the balance of aggravating and mitigating factors, to the *Montgomery*, *Bailey*, and *McLaughlin* matters, each of which resulted in a public reprimand. The parties particularly note that, similar to the lawyers in *Bailey* and *McLaughlin*, the Accused made some, albeit incomplete, disclosures to his clients.

30.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 1.7(a)(2) and RPC 1.8(a), the sanction to be effective upon the approval of this stipulation.

31.

In addition, on or before June 30, 2012, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$624.35, incurred for his deposition. Should the Accused fail to pay \$624.35 in full by June 30, 2012, 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.

32.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement in the event he transferred to a status other than active Bar membership.

33.

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.

Cite as *In re Ambrose*, 26 DB Rptr 16 (2012)

EXECUTED this 20th day of January, 2012.

/s/ David R. Ambrose

David R. Ambrose

OSB No. 791440

EXECUTED this 20th day of January, 2012.

OREGON STATE BAR

By: /s/ Linn D. Davis

Linn D. Davis

OSB No. 032221

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 09-30
)	
GARY B. BERTONI,)	
)	
Accused.)	

Counsel for the Bar:	Roscoe C. Nelson; Stacy J. Hankin
Counsel for the Accused:	Christopher R. Hardman
Disciplinary Board:	None
Disposition:	Violations of RPC 1.15-1(a), RPC 1.15-1(b), and RPC 1.15-1(c). Stipulation for Discipline. 150-day suspension.
Effective Date of Order:	March 27, 2012

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 150 days, effective 60 days from the date this order is signed, for violations of RPC 1.15-1(a), RPC 1.15-1(b), and RPC 1.15-1(c).

DATED this 27th day of January, 2012.

/s/ William B. Crow
 William B. Crow
 State Disciplinary Board Chairperson

/s/ Nancy M. Cooper
 Nancy M. Cooper, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Gary B. Bertoni, 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 February 11, 2011, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.15-1(a), RPC 1.15-1(b), RPC 1.15-1(c), RPC 8.1(a)(2), 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

5.

Between January 1, 2006, and September 2007, the Accused practiced law in the firm Bertoni & Todd. The Accused was the managing partner of the firm. Among other things, the Accused supervised the bookkeeper and managed the firm’s bank accounts and financial affairs.

6.

On numerous occasions between January 1, 2006, and September 2007, the Accused deposited or instructed a firm employee to deposit the Accused’s funds into the firm’s lawyer trust account. The deposit of the Accused’s own funds exceeded bank service charges or minimum balance requirements.

7.

The firm's credit card machine was linked directly to the firm's lawyer trust account. In order to obtain funds for his personal use, the Accused ran his personal credit card through the firm's credit card machine, resulting in charges against the personal credit card and deposits into the trust account. The Accused then withdrew the funds from the trust account.

8.

On numerous occasions between January 1, 2006, and September 2007, the Accused withdrew or instructed a firm employee to withdraw funds from the firm's lawyer trust account.

9.

As a result of the withdrawals identified in paragraph 8 herein, on numerous occasions the balance of the firm's lawyer trust account dropped below the amount the firm should have been holding in trust for its clients.

10.

The Accused failed to keep, for five years, complete records of the funds in the firm's lawyer trust account for the period January 1, 2006, through September 2007.

Violations

11.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 10, he violated RPC 1.15-1(a), RPC 1.15-1(b), and RPC 1.15-1(c).

Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 8.1(a)(2), RPC 8.4(a)(2), and RPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.

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. **Duties Violated.** On numerous occasions, the Accused violated his duty to properly handle and account for client funds and his duty not to co-mingle personal and client funds. *Standard* § 4.1.

- b. Mental State.** Initially, the Accused acted negligently when he failed to properly handle and account for client funds such that the balance of the lawyer trust account dropped below the amount the firm should have been holding in trust for clients. However, no later than the spring of 2007, the Accused knew that the firm's trust accounting was deficient and that the firm's records were inaccurate, and he did not take steps to rectify the deficiencies. With regard to co-mingling personal and client funds in the firm's lawyer trust account, the Accused acted knowingly.
- c. Injury.** No client sustained actual monetary injury or loss. However, there was substantial potential for injury to clients.
- d. Aggravating Circumstances.** Aggravating circumstances include:

 - 1. Pattern of misconduct. The Accused repeatedly engaged in the same or similar misconduct in numerous matters over a period of time. *In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996). *Standards* § 9.22(c).
 - 2. Multiple offenses. *Standards* § 9.22(d).
 - 3. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 1978. *Standards* § 9.22(i).
- e. Mitigating Circumstances.** Mitigating circumstances include:

 - 1. Absence of a prior disciplinary record. *Standards* § 9.32(a).
 - 2. Character and reputation. Members of the legal community will attest to the Accused's good character and reputation. *Standards* § 9.32(g).
 - 3. Remorse. *Standards* § 9.32(l).

13.

Under the ABA *Standards*, suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. *Standards* § 4.12.

14.

Under somewhat similar circumstances, lawyers have received suspensions of various lengths. *In re Peterson*, 348 Or 325, 334, 232 P3d 940 (2010) (60-day suspension for lawyer who, over a period of eleven months, failed to keep adequate records and, on one occasion, failed to maintain client funds in trust); *In re Skagen*, 342 Or 183, 149 P3d 1171 (2006) (one-year suspension when, for a number of years, the lawyer failed to properly maintain his trust account and then failed to cooperate in the Bar's investigation into his conduct); *In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (60-day suspension of lawyer who mishandled client funds); *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001) (four-month suspension of lawyer who, among

other things, mishandled client funds as a result of sloppy and careless office practices); *In re Starr*, 326 Or 328, 952 P2d 1017 (1998) (six-month suspension of lawyer who failed to deposit client funds into trust on two occasions and failed to notify a client that she had received funds on four occasions); *In re Gildea*, 325 Or 281, 936 P2d 975 (1997) (four-month suspension of lawyer who, among other things, failed to properly handle client funds).

The Accused's conduct here is more egregious than in *In re Eakin*, *supra*, but not as egregious as in *In re Skagen*, *supra*, and in *In re Starr*, *supra*.

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 150 days for violations of RPC 1.15-1(a), RPC 1.15-1(b), and RPC 1.15-1(c), the sanction to be effective 60 days from the date this stipulation is approved.

16.

In addition, on or before April 1, 2012, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$2,078.95, incurred for discovery. Should the Accused fail to pay \$2,078.95 in full by April 1, 2012, 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.

17.

The Accused acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. In this regard, the Accused has arranged for Corin Scott Nies and Ronnee S. Kliewer, both active members of the Oregon State Bar, to either take possession of or have ongoing access to the Accused's client files and serve as the contact person for clients in need of the files during the term of the Accused's suspension. Mr. Nies will be primarily handling the dependency and termination cases, Ms. Kliewer will be handling the delinquency and Measure 11 cases, and the privately retained cases will be handled by one or the other of them. The Accused represents that Mr. Nies and Mr. Kliewer have agreed to accept this responsibility.

18.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

19.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

20.

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 20th day of January, 2012.

/s/ Gary B. Bertoni

Gary B. Bertoni, OSB No. 781414

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin, OSB No. 862028

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 11-15
)
STEVEN D. GERTTULA,)
)
Accused.)

Counsel for the Bar: Stacy J. Hankin
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violations of DR 5-105(E) and RPC 1.9(a).
Stipulation for Discipline. Public Reprimand.
Effective Date of Order: February 27, 2012

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 5-105(E) and RPC 1.9(a).

DATED this 27th day of February, 2012.

/s/ William B. Crow
William B. Crow
State Disciplinary Board Chairperson

/s/ Pamela E. Yee
Pamela E. Yee, Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Steven D. Gerttula, 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 Clatsop County, Oregon.

3.

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

4.

On April 14, 2011, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 5-105(E) of the Code of Professional Responsibility and RPC 1.9(a) 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.

Before 2000, Oliver Dunsmoor Jr. (hereinafter “Dunsmoor”) owned a piece of real property. In February 2000, the Accused prepared, and Dunsmoor signed, a deed conveying the real property to Dunsmoor, his current wife, Vivian Engblom (hereinafter “Engblom”), and one of his nieces, Nora Skipper (hereinafter “Skipper”), as joint tenants with right of survivorship. Dunsmoor died in early 2002.

6.

On or about June 3, 2002, the Accused, representing both Engblom and Skipper, prepared deeds, which they signed, conveying the real property to themselves as tenants in common. With regard to the manner in which Engblom and Skipper owned the real property, the interests of Engblom and Skipper in the property conveyance were adverse. Insofar as informed consent was available to permit the Accused to represent both Engblom and Skipper in the 2002 conveyance, the Accused failed to obtain consent, after full disclosure, from Engblom and Skipper to the Accused’s simultaneous representation of them.

7.

In October 2008, Engblom died and her children inherited her interest in the real property. Thereafter, the Accused undertook to represent Engblom's children at their request regarding their interest in the real property. Among other things, the Accused advised Engblom's children that they could file a lawsuit against Skipper for partition and he prepared a draft lawsuit. When Engblom's children decided to pursue that lawsuit, the Accused withdrew from representing them.

8.

The Accused's representation of Engblom's children and the Accused's prior representation of Skipper were substantially related. With regard to ownership in the real property, the interests of Engblom's children were materially adverse to Skipper's interests. The Accused failed to obtain informed consent, confirmed in writing, from both Engblom's children and Skipper to his representation of Engblom's children.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, he violated DR 5-105(E) (in the 2002 conveyance) and RPC 1.9(a) (in the representation in 2008 and thereafter).

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 a duty he owed to Skipper, Engblom, and Engblom's children to avoid conflicts of interest. *Standards* § 4.3.
- b. **Mental State.** The Accused acted negligently.
- c. **Injury.** Because of the undisclosed conflict of interest, Skipper and Engblom did not understand or consent to the Accused's divided loyalty. There was the potential for Skipper to sustain injury when the Accused later undertook to represent Engblom's children.
- d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Prior disciplinary offenses. In 1998, the Accused was suspended for 60 days for violating DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), DR 7-102(A)(4), and DR 7-102(A)(7). *In re Gerttula*, 12 DB Rptr 105 (1998). *Standards* § 9.22(a).
2. Multiple offenses. *Standards* § 9.22(b).
3. Substantial experience in the practice of law. The Accused has been licensed to practice law in Oregon since 1977. *Standards* § 9.22(i).

e. Mitigating Circumstances. Mitigating circumstances include:

1. Absence of a dishonest or selfish motive. *Standards* § 9.32(b).
2. Cooperative attitude toward proceeding. *Standards* § 9.32(e).
3. Remoteness of prior offenses. *Standards* § 9.32(m).

11.

Under the ABA *Standards*, 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. 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, or whether the representation will adversely affect another client, and causes injury or potential injury to a client. *Standards* § 4.33.

12.

The Oregon Supreme Court has imposed reprimands and short suspensions for conflict of interest rule violations. *In re Hostetter*, 348 Or 574, 238 P3d 13 (2010) (affirming prior cases in which lawyers were suspended for 30 days for an obvious conflict of interest); *In re Howser*, 329 Or 404, 987 P2d 496 (1999) (reprimand imposed on lawyer when he engaged in an obvious conflict of interest and then failed to withdraw when the conflict of interest rule prohibited him from continuing with the representation); *In re Cohen*, 316 Or 657, 853 P2d 286 (1993) (reprimand imposed on lawyer for multiple conflict of interest violations while representing family members in a number of matters); *In re Trukositz*, 312 Or 621, 825 P2d 1369 (1992) (reprimand imposed on lawyer who represented husband in dissolution of marriage proceeding in which paternity of child was at issue when lawyer had previously represented wife in obtaining an affidavit of paternity from husband). See also *In re Dole*, 25 DB Rptr 56 (2011) (reprimand where lawyer violated RPC 1.4(a), RPC 1.7(a), RPC 1.9(a), and RPC 1.9(c) in similar context of disputes between family members regarding distribution of estate assets).

In this case, very little weight is given to the Accused's prior disciplinary offenses because they are remote in time and different than the violations at issue in this proceeding.

Also, the Accused's failure to comply with the conflict of interest rules in the pending case resulted in little actual injury.

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violations of DR 5-105(E) and RPC 1.9(a).

14.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

15.

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

EXECUTED this 18th day of February, 2012.

/s/ Steven D. Gerttula

Steven D. Gerttula, OSB No. 771847

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin, OSB No. 862028

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case Nos. 11-109; 11-110
)	
WILLIAM E. CARL,	)	SC S060104
)	
Accused.)	

Counsel for the Bar:	Susan Roedl Cournoyer
Counsel for the Accused:	John Fisher
Disciplinary Board:	None
Disposition:	Violations of 8.4(a)(2) and ORS 9.527(2). Stipulation for Discipline. 18-month suspension.
Effective Date of Order:	November 14, 2012

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 18 months to run consecutive to the period of suspension to which the accused is presently subject.

March 8, 2012

/s/ Paul J. De Muniz
Paul J. De Muniz, Chief Justice

STIPULATION FOR DISCIPLINE

WILLIAM E. CARL, 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 March 30, 2002, and maintained his office and place of business in Marion County, Oregon. The Accused was a member of the Bar from March 30, 2002 until January 28, 2010, when he was suspended for misconduct. He was reinstated from that suspension on March 1, 2010, and remained a member of the Bar until December 15, 2011, when he was suspended for misconduct. The Accused is currently suspended from the Bar.

3.

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

4.

On September 17, 2011, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 8.4(a)(2) of Oregon Rules of Professional Conduct and ORS 9.527(2). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

(a) As of January 10, 2011, the Accused resided with his wife and their twin five-year-old sons. The Accused knew that his wife was serving a 24-month criminal probation supervised by the Polk County Community Corrections and that, pursuant to that probation, she was prohibited from using or possessing illegal drugs, drug paraphernalia, or alcohol.

(b) On January 10, 2011, the Accused was alone in his home when his wife’s probation officer and two Salem police officers arrived to conduct an unannounced home visit. Before opening the door to let the officers into the residence, the Accused concealed a bottle of alcohol with the intent to hide it from his wife’s probation officer and the police.

(c) A person commits the crime of tampering with physical evidence if, with the intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or to the knowledge of said person is about to be instituted, the person destroys, mutilates, alters, conceals or removes physical evidence impairing its verity or availability. ORS 162.295(1)(a). Tampering with physical evidence is a Class A misdemeanor. ORS 162.295(2).

(d)(i) On January 10, 2011, the following items were located in the Accused’s bedroom: on top of a chest of drawers, plastic boxes and baggies containing marijuana

residue; inside a family photo album, marijuana residue; on the floor near the bedside table, under a chair next to the bed and in a trash can next to the bed, marijuana residue.

(d)(ii) On January 10, 2011, the following items were located in the Accused's home office: on a glass tabletop, marijuana residue and a paring knife with burnt marijuana residue on the tip; on the floor behind a collection of children's DVDs and next to a copy of the Federal Rules of Evidence, a glass bong and a blue pencil box containing marijuana.

(d)(iii) On January 10, 2011, the following items were located in the Accused's kitchen: an eyeglasses case containing marijuana; a glass pipe containing marijuana and marijuana residue; a pill bottle containing marijuana residue.

(d)(iv) On January 10, 2011, marijuana residue was located next to a children's toy on the handrail on the steps leading from the Accused's kitchen into the attached garage.

(e) A person commits the crime of endangering the welfare of a minor if the person knowingly permits a person under 18 years of age to enter or remain in a place where unlawful activity involving controlled substances is maintained or conducted. ORS 163.575(1). Endangering the welfare of a minor is a Class A misdemeanor. ORS 163.575(2).

(f) On July 29, 2011, the Accused was found guilty by a Polk County Circuit Court jury of committing two counts of endangering the welfare of a minor and one count of tampering with physical evidence. On August 11, 2011, Judge William M. Horner entered a judgment convicting the Accused of these counts. *State v. William Ellison Carl*, Polk County Court Case No. 11P50101.

Violations

6.

The Accused admits that, by engaging in the conduct described in paragraphs 5(a) through 5(f), he violated RPC 8.4(a)(2) and ORS 9.527(2).

Sanction

7.

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.** By committing criminal acts, the Accused breached his duty to the public to maintain his personal integrity. *Standards* § 5.1.

- b. **Mental State.** The Accused acted intentionally, or with a conscious objective or purpose to accomplish a particular result, when he concealed evidence from his wife's probation officer and the police. With respect to endangering the welfare of his children, the Accused acted with knowledge, or the conscious awareness of the nature of his conduct, but without a conscious objective or purpose to accomplish a particular result. *Standards*, p. 7.
- c. **Injury.** The Accused's criminal acts caused harm to the legal profession in that his convictions reflect poorly upon attorneys. His conduct also exposed his young sons to harm.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 - 1. Prior disciplinary offenses. In May 2009, the Accused pled guilty to and was convicted of one felony count of knowingly or intentionally possessing one ounce or more of marijuana and two Class A misdemeanor counts of endangering the welfare of his minor sons. The Accused was suspended for one year, all but 30 days of which was stayed pending completion of a three-year probation, for his felony conviction and for committing criminal acts that reflected adversely on his honesty, trustworthiness or fitness to practice law in other respects. *In re Carl*, SC S058149, 24 DB Rptr 17 (2010) ("*Carl I*"). The Accused was serving the probation in *Carl I* when he engaged in the conduct described in paragraphs 5(a) through 5(f). *Standards* § 9.22(a).
 - 2. A pattern of misconduct. *Standards* § 9.22(c).
 - 3. Multiple offenses. *Standards* § 9.22(d).
 - 4. Vulnerability of the victims (the Accused's young sons). *Standards* § 9.22(h).
 - 5. Substantial experience in the practice of law. The Accused has over 8 years of experience as a criminal defense attorney in Marion and Polk Counties. *Standards* § 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances present in this matter are:
 - 1. Character and reputation. Several members of the Marion and Polk County legal communities have submitted letters describing the Accused's reputation for professional and zealous advocacy for his clients. Several friends and other members of the Accused's community have submitted letters describing his commitment to

sobriety and desire to be a good parent to his sons. *Standards* § 9.32(g).

2. Imposition of other penalties. The Accused served 25 days in jail and is required to complete 100 hours of community service, pay approximately \$2,000 in fines, and serve a 24-month probation supervised by the Polk County Community Corrections as a result of his criminal conviction. *Standards* § 9.32(k).

8.

Under the ABA *Standards*, suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that seriously adversely reflects on his fitness to practice law. *Standards* § 5.12.

9.

Oregon case law also suggests that a significant suspension be imposed. Attorneys who have engaged in criminal conduct relating to courts or the administration of justice have generally been disbarred. See, e.g., *In re Gustafson*, 333 Or 468, 41 P3d 1063 (2002) (attorney disbarred after intentionally obtaining and releasing juvenile court records that were subject to expunction—a misdemeanor reflecting adversely on fitness to practice—and giving false testimony); *In re Martin*, 308 Or 125, 775 P2d 842 (1989) (attorney disbarred for bribing a witness in a client’s case). Cases involving drug convictions or illegal drug-related activity have resulted in suspensions, public reprimands, or probations. *In re Allen*, 326 Or 107, 949 P2d 710 (1997), resulted in a one-year suspension for violations of ORS 9.527(1) and DR 1-102(A)(2) (the predecessor rule to RPC 8.4(a)(2)). Allen provided money to a friend to purchase heroin for the friend’s use. The friend died of a heroin overdose. Allen was convicted of attempted possession of a controlled substance, a Class C Felony, which was reduced to a misdemeanor pursuant to ORS 161.705(1). Allen’s misconduct was an isolated act and Allen had no prior discipline.

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 18 months for violation of RPC 8.4(a)(2) and ORS 9.527(2), which suspension will run consecutively to the 335-day suspension currently imposed in *Carl I*.

11.

The Accused acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. In this regard, the Accused has arranged for Christopher C. Bocci, an active member of the Oregon State Bar, to either take possession of or have ongoing access to the Accused’s client files and to serve

as the contact person for clients in need of the files during the term of the Accused's suspension. The Accused represents that Mr. Bocci has agreed to accept this responsibility.

12.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

13.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in denial of his reinstatement.

14.

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

EXECUTED this 1st day of February, 2012.

/s/ William E. Carl

William E. Carl
OSB No. 022679

EXECUTED this 2nd day of February, 2012.

OREGON STATE BAR

By: /s/ Susan R. Cournoyer

Susan R. Cournoyer
OSB No. 863381
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 11-98
)
GAIL MARA GURMAN,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of RPC 1.15-2(m) and RPC 8.1(a)(2).
Stipulation for Discipline. Public Reprimand.
Effective Date of Order: March 8, 2012

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 1.15-2(m) and RPC 8.1(a)(2).

DATED this 8th day of March, 2012.

/s/ William B. Crow
William B. Crow
State Disciplinary Board Chairperson

/s/ Pamela E. Yee
Pamela E. Yee, Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Gail Mara Gurman, 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 October 14, 2009, 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 September 21, 2011, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 1.15-2(m) (failure to comply with annual certification of lawyer trust account) and RPC 8.1(a)(2) (failure to respond to lawful requests 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.

Facts

5.

At all times relevant herein, RPC 1.15-1(a) required that a lawyer deposit funds, including advances for costs and expenses and escrow and other funds held for another in a separate "Lawyer Trust Account" (hereinafter "IOLTA") maintained in the jurisdiction where the lawyer's office is situated.

6.

At all times relevant herein, RPC 1.15-2(m) required that every lawyer certify annually on a form and by a due date prescribed by the Oregon State Bar that the lawyer is in compliance with Rule 1.15-1 and the other provisions of RPC 1.15-2.

7.

On November 18, 2010, the Bar emailed to its members (with their 2011 OSB membership dues invoice) an IOLTA Certification of Compliance form (hereinafter "IOLTA Certification"). The form indicated that it was due on January 31, 2011. The Accused did not complete and submit the IOLTA Certification.

8.

In January, February, and March 2011, the Bar reminded the Accused that she had failed to file her IOLTA Certification. The Accused did not respond or submit the IOLTA Certification.

9.

On April 5, 2011, Disciplinary Counsel's Office (hereinafter "DCO") wrote to the Accused by first-class mail and requested that she submit her IOLTA Certification by May 2, 2011. The Accused did not respond or submit the IOLTA Certification.

10.

On May 5, 2011, DCO requested the Accused to explain by May 26, 2011, why she had not submitted her IOLTA Certification or complied with RPC 1.15-2(m). The Accused did not respond or submit the IOLTA Certification. On May 31, 2011, DCO sent an additional request by first-class and certified mail asking the Accused to explain her non-compliance. The Accused signed for the certified letter, and the first-class letter was not returned as undeliverable. Nevertheless, the Accused did not respond.

Violations

11.

The Accused admits that, by failing to complete and submit her IOLTA Certification, she violated RPC 1.15-2(m). The Accused further admits that her failures to respond to DCO violated RPC 8.1(a)(2).

Sanction

12.

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

- a. **Duty Violated.** The Accused violated duties owed to the profession to comply with the rules attendant to practicing law in this jurisdiction and to respond to inquiries from DCO. *Standards* § 7.0
- b. **Mental State.** The Accused acted negligently and knowingly. She acted negligently, insofar as she initially did not use sufficient care in reading the Bar's communications, and misunderstood what was being asked of her. When she did recognize the need to act (*i.e.*, her conduct became knowing),

her depressive state caused her to procrastinate. The *Standards* define “negligence” as a failure to heed a substantial risk that circumstances exist or that a result would follow, which failure deviates 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. *Standards*, p. 9.

- c. **Injury.** The Accused’s conduct caused some actual injury in that the Bar was forced to expend resources in repeated efforts to obtain her compliance. *Standards*, p. 9. The Accused’s failure to cooperate with the Bar’s investigation of her conduct also caused some actual harm to both the legal profession and to the public because she delayed the Bar’s investigation and, consequently, the resolution of the complaint against her. *In re Schaffner*, 325 Or 421, 427, 939 P2d 39 (1997); *In re Miles*, 324 Or 218, 222, 923 P2d 1219 (1996); *In re Haws*, 310 Or 741, 753, 801 P2d 818 (1990).
- d. Aggravating Circumstances. None.
- e. Mitigating Circumstances. Mitigating circumstances include:
 - 1. Absence of a prior disciplinary record. *Standards* § 9.32(a).
 - 2. Absence of dishonest or selfish motive. *Standards* § 9.32(b).
 - 3. Personal or emotional problems. *Standards* § 9.32(c). The Accused was experiencing severe financial distress and was emotionally depressed at the time of the misconduct in this matter.
 - 4. Full and free disclosure and a cooperative attitude once the formal proceedings were authorized. *Standards* § 9.32(e).
 - 5. Inexperience in the practice of law. *Standards* § 9.32(f). The Accused was admitted to practice in Oregon in October 2009, and has never actively practiced law.
 - 6. Physical disability. *Standards* § 9.32(h). The Accused was partially paralyzed and had very limited mobility during the period of her misconduct in this matter. She was also dealing with other medical issues.
 - 7. Remorse. *Standards* § 9.32(l). The Accused was apologetic for the delays.

Under the *Standards*, a public reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession and causes

injury or potential injury to a client, the public, or the legal system. *Standards* § 7.3. A suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury. *Standards* § 7.1. Considering the absence of any aggravating factors, and the Accused's substantial mitigating factors, a reprimand appears to be the appropriate result.

14.

A reprimand is consistent with Oregon case law, given the lack of significant injury and the Accused's significant mitigating circumstances. See *In re Ono*, 25 DB Rptr 180 (2011); *In re Barteld*, 23 DB Rptr 198 (2009) (both reprimanded for violations of RPC 1.15-2(m) & RPC 8.1(a)(2), where mitigation, and no aggravation).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 1.15-2(m) and RPC 8.1(a)(2), the sanction to be effective upon approval by the Disciplinary Board.

16.

The Accused acknowledges that she is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in her suspension or the denial of her reinstatement.

17.

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 2nd day of March, 2012.

/s/ Gail Mara Gurman

Gail Mara Gurman

OSB No. 095743

EXECUTED this 5th day of March, 2012.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 990280

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 11-12
)
LAURA J. IRELAND,)
)
Accused.)

Counsel for the Bar: Stacy J. Hankin
Counsel for the Accused: None
Disciplinary Board: Colin D. Lamb, Chair
William G. Blair
Loni J. Bramson, Public Member
Disposition: Violations of RPC 1.15-1(a) and RPC 1.15-1(c). Trial
Panel Opinion. 30-day suspension.
Effective Date of Opinion: March 24, 2012

TRIAL PANEL OPINION
PROCEEDINGS

On December 2, 2011, a trial panel convened to hear the charges against the Accused. The hearing was conducted at the offices of the Oregon State Bar, 16037 SW Upper Boones Ferry Road, Tigard, Oregon, concluding on the same day. Two charges were brought against the Accused:

1. Failing to deposit client funds in trust, in violation of RPC 1.15-1(a) and RPC 1.15-1(C) of the Oregon Rules of Professional Conduct; and
2. Failing, upon termination, to take steps to the extent reasonably practicable to protect a client's interest in violation of RPC 1.16(d) of the Oregon Rules of Professional Conduct.

The Accused is an attorney, admitted by the Supreme Court of the State of Oregon to practice law. She presently resides in Lincoln County, Oregon and is inactive. Although her date of admission is not alleged in the pleading, evidence presented at the hearing was that the Accused had substantial legal experience. The Oregon State Bar website public record indicates an admission date of December 24, 2001.

On January 25, 2011, the Oregon State Bar filed a formal complaint against the Accused.

On February 10, 2011, the Accused filed an answer.

On December 29, 2011, the transcript was settled.

GENERAL NATURE AND BACKGROUND

In January of 2008, Jim Jeffries retained attorney Scott Beckstead to pursue a civil case against Jerry and Michael Briggs for intentionally killing Jeffries' dog. Pursuant to a written fee agreement, Jeffries paid a non-refundable fee of \$2,000, earned upon receipt, with the balance of fees to be earned on a deferred contingent basis and paid out of any settlement proceeds or judgment. Subsequent to this agreement, Beckstead left the firm and the Accused undertook to represent Jeffries.

In June of 2008, the Accused filed a civil complaint against the Briggses. The matter went to trial in June of 2009, with a directed verdict in favor of one defendant and a jury verdict in favor of the other. After that trial, a conversation took place between the Accused, Jim Jeffries, and Michael and Mary Ann Jeffries (the parents of Jim Jeffries). Subsequent to that conversation, Michael and Mary Ann Jeffries mailed a check in the amount of \$5,000 payable to law firm of Gibbons and Ireland along with a note quoted *infra*. The check was not deposited into a trust account but was deposited into the personal account of the Accused.

The Accused filed an answer admitting having represented Jim Jeffries in the lawsuit against the Briggses, but denying, in effect, that she undertook any further legal representation of Jeffries or his parents and denying that any of them paid her \$5,000. At the hearing, she acknowledged having received \$5,000 from Michael and Mary Ann Jeffries, but took the position that she thought it was a gift. Although this might be considered an affirmative defense, since the Bar did not raise the issue, we will consider the defense on the merits since the disposition does not turn on that issue.

CREDIBILITY OF WITNESSES

As will be apparent in the Findings of Fact, the witnesses and the Accused had different versions of what transpired. This will be discussed in detail below, but we have no reason to doubt the truthfulness of the Accused or the witnesses. It appears that each witness and the Accused described the same events simply viewed differently. It is not necessary to question or discard the testimony of anyone to arrive at our decision.

FINDINGS OF FACT

First Complaint – Failing to Deposit Funds into Client Trust Account

In January of 2008, Jim Jeffries retained attorney Scott Beckstead under a written fee agreement, to bring a lawsuit involving the killing of Jeffries' dog by the Briggses. Attorney Beckstead then moved from the area, and by agreement the Accused continued representa-

tion of Mr. Jeffries. The Accused filed a complaint, and the case came to trial, concluding on June 18, 2009. The trial resulted in a verdict for the defendants and against Jim Jeffries. Two conversations occurred between the Accused, Jim Jeffries, and his parents, one near the end of the trial and one after the verdict was returned. In the first conversation, a deputy district attorney discussed with the Accused the possibility of bringing criminal charges against the Briggses for killing the dog.

Although each of the witnesses had a slightly different recollection of this conversation, and the deputy district attorney involved did not testify, all agreed there was a discussion about providing sufficient “demand” upon the district attorney to force a criminal action. All witnesses agreed that the deputy district attorney said that the key was convincing the county sheriff to investigate and present a case to the DA. Getting many people to write letters and a newspaper advertisement were discussed. The Accused is interested in animal rights and says she volunteered to do additional work to assist in influencing the district attorney to bring criminal charges against the Briggses. The Jeffries believed this was additional work that needed to be done and that the Accused would undertake that work as attorney for the Jeffries family. Jim Jeffries and his parents, both of whom testified, all said that they understood the Accused to say that this work would cost at least \$5,000. The Accused denies that she quoted a \$5,000 fee or fee plus costs. She understood that she would, *pro bono*, do what she could to put pressure on the sheriff and DA to pursue criminal charges against the Briggses.

The Jeffries testified that they understood that this fee would include or cover the cost of a full page newspaper advertisement exhorting the authorities to bring charges against the Briggses.

On June 22, 2009, just a few days after the conversation, Mary Ann Jeffries sent a check payable to the law firm of Gibbons and Ireland for \$5,000. Included was a note that said:

This is for Justice: Milikie [*sic*, meaning Malachi, the dog’s name]

You tell your daughter you were earning your angel wings, I hope you and Kathy can put up with Jim a little longer. Mary and I thank you both for your patience with Jim.

Mike & Mary Ann

Note that Kathy was the Accused’s secretary and Jim is their son, Jim Jeffries, who had called the Accused’s office many times each week during the representation.

On the back, the check was endorsed to Laura Ireland and deposited into her personal account. The Accused immediately wrote a “thank you” note to Mr. and Mrs. Jeffries:

Mr. & Mrs. Jeffries:

Thank you so much for your kind note and generous support. It has been my pleasure to try to honor Malachi. I enjoyed meeting you last week – you have a wonderful family. Although the trial didn't end as we all hoped, I will continue to fight anyway we can.

The Accused testified that she did not attempt to question or clarify the intent of the Jeffries in sending her this money. She did discuss the check with her partner and the law firm's accountant, and concluded that it must have been a gift recognizing that she had put in considerable time and effort on a contingent fee case that resulted in a defense verdict and thus no fee to her firm. After discussing the matter with her partner and accountant, the Accused deposited the check in her account. No part of the funds were deposited to the firm's client trust account.

In early July, a General Judgment was filed for the previously completed trial. On July 24, 2009, the law firm of Gibbons and Ireland sent a letter to Jim Jeffries, announcing that Laura Ireland was leaving private practice to work with Habitat for Humanity. Immediately thereafter, on July 24, 2009, Mike and Mary Ann Jeffries made a demand upon the Accused for the return of their \$5,000. The Accused did not immediately return the money. At the time she received the demand from the Jeffries, the Accused did not have sufficient funds in her account to write a refund check.

On August 14, she sent a business check to Michael Jeffries for \$1,300, and said she would send another check at the end of the month. She also sent an "account" for fees earned out of the \$5,000, amounting to \$2,308.38. Sometime afterward another check was sent in the amount of \$1,219.62, although both checks were dated the same day. The Accused testified that she instructed her office staff to hold the second check until there were funds in her account to cover it. From the \$5,000 fee, some of the work performed and charged against the \$5,000 occurred after the demand for a refund by Jeffries, on July 24.

During the Jeffries' testimony, it was clear that all three were still distraught about the killing of Jim Jeffries' dog. Based upon their testimony, and the fact that the check was made out to the law firm, it was clear that they paid the \$5,000 in expectation of further legal services and not as a gift for past services rendered. In reviewing the evidence in a light most favorable to the Accused, it did appear that she did not believe the \$5,000 was a fee or retainer for her further legal services. However, there was no objective reason to believe that the money was a gift. The accompanying note from Ms. Jeffries was ambiguous, at best. More importantly, there was no attempt by the Accused to seek clarification from the Jeffries as to why they wrote a check payable to her firm when she had not earned any money under the contingent fee agreement.

Clearly, the Accused had some question in her own mind as to the intent of the Jeffries in writing her a \$5,000 check seeing "justice for Milikie," since she discussed the

matter with her partner and accountant; however, she never sought clarification from the Jeffries, who wrote the check.

Although the Accused raised the issue that Mike and Mary Ann Jeffries were not her clients, we do not believe this is relevant. In her November 3, 2010 letter to the Bar (Exhibit 14), the Accused took the position that the \$5,000 was earned, which would have been referring to the trial on behalf of Jim Jeffries. In her testimony, however, the Accused acknowledged that attorney fees for the civil case were, beyond the initial \$2,000 retainer paid to Mr. Beckstead and earned upon receipt, contingent on recovery from the Briggses. Nor did the Accused consider the \$5,000 paid by Mike and Mary Ann Jeffries to be reimbursement for expenses in pursuing the trial. In fact, Mike and Jim Jeffries had given the Accused cash for her trial expenses during the trial.

Second Complaint – Failing to Surrender Client’s File upon Termination

The Oregon State Bar charged the Accused with failing to furnish the entire file to Jeffries after her termination. The file was given to Jeffries, except that handwritten notes and documents containing the Accused’s handwritten marginalia were not turned over. There is no allegation that anything substantial was left out of the file, but that there was a technical violation. Because of our conclusion below, we do not make a determination on this issue and believe it more appropriate to leave this question for some other case.

DISCUSSION AND CONCLUSIONS OF LAW

The First Cause of Complaint charges the Accused with a violation of Sections 1.15-1(a) and 1.15-1(c) in violation of the Oregon Rules of Professional Conduct, because she failed to deposit client funds in trust.

Although the Accused may have believed the \$5,000 was a gift, the circumstances are clear that at the time the money was given, the Jeffries were expecting additional legal services. The Jeffries made the check out to the law firm and not to the accused, personally. At the time the check was made out, the Jeffries were still distraught over the killing of the dog. The Accused never questioned the Jeffries’ motive for writing that check, notwithstanding admitted discussions near and after the close of trial relating to what might be done further to bring the Briggses to account, and her part in that effort.

Although the Accused sent a thank you note, it was not stated that the check was considered a gift and the Jeffries never stated it was. In that note the Accused promised to “continue to fight anyway we can.” Although the Accused may have had some question as to whether Mike and Mary Ann Jeffries were clients, under the circumstances of this case, where she knew that the killing of Malachi was a significant issue for not only Jim Jeffries but also his parents, and because the Accused failed to contact them and clarify the payment of money which, had she done so, she would have learned the Jeffries genuinely believed was an advance payment of expenses and fees to the Accused as their lawyer, the \$5,000

should have been treated by the Accused as client funds to be deposited in her firm's client trust account until the issue was resolved.

When the Accused learned on July 24, 2009, that the Jeffries' \$5,000 check was not intended to be a gift, the Accused again faced the obligation to deposit the full amount of the money into her trust account, which she did not do. Instead of treating the \$5,000 as client funds, the Accused tendered one check for a partial refund, and provided a statement of fees and costs for a portion of the remainder, acknowledging after the fact that she had acted in the capacity of attorney for the Jeffries family after resolution of the lawsuit subject of the contingent fee. This alone is a clear violation of the Oregon Rules of Professional Conduct.

We find that one of the cases cited by the Bar, *In re Fadeley*, 342 Or 403, 153 P3d 682 (2007) is on point and controlling. In that case, client gave Fadeley \$10,000 and Fadeley did not deposit it into his trust account. Fadeley contended that there was an oral agreement that the \$10,000 was earned upon receipt and not refundable. The client had a different understanding. In that case, the Supreme Court did not regard the subjective belief of the accused as relevant.

We need not resolve that factual dispute to decide this case. Even if the accused and Tidrick orally agreed that the \$10,000 minimum fee would be earned on receipt and not refundable, an oral agreement does not provide a sufficient basis for a lawyer to treat a client's funds as if they were his or her own.

Id., at pp. 409–10 Or.

The Accused should have placed the \$5,000 into her trust account, and violated RPC 1.15-1(a) and RPC 1.15-1(c) by not doing so.

SANCTION

Finding that the Accused did violate the Rules of Professional Conduct, we must impose a sanction, and look first to the *ABA Standards for Imposing Lawyer Sanctions, 2005* (“*Sanctions*”). Under Section 3.0, the following factors are considered:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

From consideration of the first three we may arrive at a baseline sanction that may be affected by aggravating or mitigating factors. We address each of the four factors in order.

a. Duty Violated

The Accused owed a duty to her client to deposit client funds into her trust account and hold them until earned as fees or otherwise properly distributable. She violated this duty.

b. Mental State

Sanctions, at p. 13, defines the relevant mental states as follows:

"Intent" is the conscious objective or purpose to accomplish a particular result.

"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

The Accused failed to deposit funds into her trust account knowing that they came from or on behalf of a client and without a clear understanding with the client as to their intended purpose. The Accused did not act with the intent of violating her duty as an attorney, but did act knowingly. Although she may have believed the \$5,000 was a gift, there was no reasonable basis for that belief. In any event, she did not immediately deposit the money into her trust account once she knew it was not intended to be a gift.

c. Injury

The Jeffries were deprived of their funds for a period of time and therefore injured by the acts of the Accused.

d. Aggravating or Mitigating Circumstances

In aggravation, although the Bar charged the Accused with a second offense, we believe it was interwoven with the fabric of the far more serious first charge, and should not affect the period of suspension. The violation is, however, aggravated by the fact that Accused does have substantial experience in practicing law, and the fact that the Jeffries were vulnerable because of the emotional bond between the Jeffries family members and the Accused.

In mitigation, the Accused does not have a prior disciplinary record, was cooperative toward the proceeding, and did indicate that she would not make the same mistake again. We further believe that the Accused is remorseful for the consequences of her conduct. In her opening statement the Accused did promise to present a case that would justify and excuse her conduct. After hearing the very emotional testimony of the Jeffries about the impact her conduct had on them, the Accused was in tears and did not offer sworn testimony on her behalf, although she did answer candidly questions from the Trial Panel. We believe her understanding of her conduct and its import shifted from denial to remorse. She had already returned the entire \$5,000 to the Jeffries.

We accept the Bar's conclusion that the aggravating and mitigating circumstances balance each other.

Cite as *In re Ireland*, 26 DB Rptr 47 (2012)

Having determined that the Accused knowingly violated RPC 1.15-1(a) and (c), the baseline sanction as suggested by *Standards* § 4.12 is suspension:

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

A 30-day suspension is consistent with that imposed in *Fadeley, supra*.

DISPOSITION

It is the decision of the Trial Panel that the Accused be suspended for a period of 30 days.

IT IS SO ORDERED.

Dated January 17, 2012

/s/ Colin D. Lamb
Colin D. Lamb, OSB No. 691007 – Trial Panel Chair

/s/ William G. Blair
William G. Blair, OSB No. 690212 – Trial Panel
Member

/s/ Loni J. Bramson
Loni J. Bramson, Ph.D. – Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case Nos. 10-109; 10-112
)	
JESSICA S. CAIN,)	
)	
Accused.)	

Counsel for the Bar:	Arnold S. Polk; Stacy J. Hankin
Counsel for the Accused:	Lawrence Matasar
Disciplinary Board:	None
Disposition:	Violations of RPC 1.5(a) and RPC 7.5(d). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	March 28, 2012

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 1.5(a) and RPC 7.5(d).

DATED this 28th day of March, 2012.

/s/ William B. Crow
 William B. Crow
 State Disciplinary Board Chairperson

/s/ Mary Kim Wood
 Mary Kim Wood, Region 6
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Jessica S. Cain, 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, 2003, 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 November 2, 2010, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.5(a), RPC 7.5(d), 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

5.

In 2008, the Accused represented Slavic and Tonya Kotsyubchuk (hereinafter “Kotsyubchuks”) in a Chapter 11 bankruptcy proceeding. Pursuant to a written fee agreement, the Kotsyubchuks agreed to pay, and the Accused agreed to charge, \$165–225 per hour for work performed by lawyers and \$100–110 per hour for work performed by non-lawyers.

6.

On or about March 5, 2009, the Accused filed with the court an application for \$153,635.50 in interim professional compensation in which she claimed a lawyer’s hourly rate for work done by a non-lawyer. The Accused applied for \$1,945.40 more than she should have.

7.

At various times, the Accused’s law firm employed associate lawyers who subsequently left the firm. For a period, the firm’s website continued to list one or more associate lawyers after they had left the firm.

Violations

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7, she violated RPC 1.5(a) and RPC 7.5(d).

Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 8.4(a)(2) and RPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.

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. **Duties Violated.** The Accused violated duties she owed to the Kotsyubchuks to only charge according to the written fee agreement and to the public to avoid inaccurate advertising. *Standards* § 7.0.
- b. **Mental State.** The Accused acted negligently.
- c. **Injury.** The Kotsyubchuks never paid the improperly charged amount. However, there was the potential for injury because they were charged more than they agreed to pay. There was the potential for injury to the public when, for a period, the firm’s website listed the names of lawyers who were no longer employed there.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Multiple offenses. *Standards* § 9.22(d).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. Absence of a prior disciplinary record. *Standards* § 9.32(a).
 2. Cooperative attitude toward the proceeding. *Standards* § 9.32(e).

10.

Under the *ABA Standards*, reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards* § 7.3.

11.

Oregon case law is in accord. *In re Paulson*, 335 Or 436, 71 P3d 60 (2003) (reprimand of lawyer who billed a client for time the client was not responsible for); *In re Potts*, 301 Or 57, 718 P2d 1363 (1986) (reprimand imposed on lawyers who charged a fee that was not supported by the time and labor involved and not in line with fees charged in similar matters); *In re Sussman*, 241 Or 246, 405 P2d 355 (1965) (public censure of two lawyers who inaccurately identified themselves as partners).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of RPC 1.5(a) and RPC 7.5(d).

13.

The Accused acknowledges that she is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in her suspension or the denial of her reinstatement.

14.

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 8th day of March, 2012.

/s/ Jessica S. Cain

Jessica S. Cain
OSB No. 030857

EXECUTED this 23rd day of March, 2012.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin
OSB No. 862028
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case Nos. 10-110; 10-113
)	
KEVIN J. KINNEY,)	
)	
Accused.)	

Counsel for the Bar:	Arnold S. Polk; Stacy J. Hankin
Counsel for the Accused:	Marc D. Blackman
Disciplinary Board:	None
Disposition:	Violations of RPC 1.5(a), RPC 7.5(d), and RPC 8.4(a)(4). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	March 28, 2012

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 1.5(a), RPC 7.5(d), and RPC 8.4(a)(4).

DATED this 28th day of March, 2012.

/s/ William B. Crow
 William B. Crow
 State Disciplinary Board Chairperson

/s/ Mary Kim Wood
 Mary Kim Wood, Region 6
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Kevin J. Kinney, 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, 1995, and has been a member of the Oregon State Bar continuously since that time, having his 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 November 2, 2010, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.5(a), RPC 3.3(a), RPC 7.5(d), and RPC 8.4(a)(3). Upon further factual inquiry, the parties agree that the alleged violations of RPC 3.3(a) and RPC 8.4(a)(3) should be and, upon the approval of this Stipulation for Discipline, are dismissed; and that 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.

Before mid-2008, the written fee agreement between the Accused and his clients specified the hourly rate the client would be charged for work performed by each attorney and staff member who worked on the matter. In mid-2008, the Accused’s computer billing program and written fee agreement were changed so that certain tasks, although performed by a non-lawyer, were charged at the supervising lawyer’s hourly rate (hereinafter “minimum billing system”).

6.

In July 2007, the Accused undertook to represent a client in a dissolution of marriage proceeding. In a written fee agreement, the Accused agreed to charge, and the client agreed to pay, \$165–200 per hour for work performed by lawyers and \$90–100 per hour for work performed by non-lawyers. After mid-2008, the Accused charged the client under the

minimum billing system when she had not agreed to those rates. In total, the Accused charged her \$140.00 more than he should have.

7.

In 2008, the Accused represented a client in a dissolution of marriage proceeding. On or about November 11, 2008, the Accused filed with the court a declaration in support of a statement for attorney fees. In the declaration, the Accused represented that either he or another attorney he employed had spent a certain amount of time rendering specific legal services in the matter. Because of the minimum billing system, this representation was inaccurate in that a non-lawyer had performed some of the legal services described in the declaration. In total, the Accused represented that he or other lawyers had performed 0.7 hours of work that had actually been performed by a paralegal.

8.

In 2008, the Accused represented a client in a restraining order proceeding. On or about November 2009, the Accused filed with the court a declaration in support of a statement for attorney fees. In the declaration, the Accused represented that either he or another attorney he employed had spent a certain amount of time rendering specific legal services in the matter. Because of the minimum billing system, this representation was inaccurate in that a non-lawyer had performed some of the legal services described in the declaration. In total, the Accused represented that he or other lawyers had performed 2.5 hours of work that had actually been performed by a paralegal.

9.

In 2009, the Accused represented a client in a dissolution of marriage proceeding. On or about November 11, 2009, the Accused filed with the court a declaration in support of a statement for attorney fees. In the declaration, the Accused represented that either he or another attorney he employed had spent a certain amount of time rendering specific legal services in the matter. Because of the minimum billing system, this representation was inaccurate in that a non-lawyer had performed some of the legal services described in the declaration. In total, the Accused represented that he or other lawyers had performed 9.2 hours more than they had actually worked.

10.

In 2009, the Accused represented a client in a dissolution of marriage proceeding. In connection with that representation, the Accused filed with the court a declaration in support of a statement for attorney fees. In the declaration, the Accused represented that either he or another attorney he employed had spent a certain amount of time rendering specific legal services in the matter. Because of the minimum billing system, this representation was inaccurate in that a non-lawyer had performed some of the legal services described in the

declaration. In total, the Accused represented that he or other lawyers had performed 20.6 hours of service that had actually performed by a paralegal.

11.

At various times, the Accused's law firm employed associate lawyers who subsequently left the firm. For a period, the firm's website continued to list one or more associate lawyers after they had left the firm.

Violations

12.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 11, he violated RPC 1.5(a), RPC 7.5(d), and RPC 8.4(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. Duties Violated.** The Accused violated a duty he owed to one client not to charge her more than what she had agreed to pay and a duty he owed to the public to avoid inaccurate advertising. *Standards* § 7.0. The Accused also violated a duty he owed to the legal system not to make inaccurate statements in documents filed with the court. *Standards* § 6.0.
- b. Mental State.** The Accused acted negligently. The Accused failed to appreciate or recognize that as a result of implementing the minimum billing system, his subsequent declarations to the court were inaccurate.
- c. Injury.** One client sustained some injury in that she was charged \$140.00 more than she should have been. There was potential for injury to the public when the firm's website listed the names of lawyers who were no longer with the firm. There was the potential for injury to the court and to opposing parties resulting from the Accused's inaccurate declarations in that they were unable to discern that some of the work, although charged at the lawyer's hourly rate, had actually been performed by a non-lawyer.
- d. Aggravating Circumstances.** Aggravating circumstances include:

1. A pattern of misconduct. On four separate occasions, the Accused filed inaccurate declarations with the court. *Standards* § 9.22(c).
 2. Multiple offenses. *Standards* § 9.22(d).
 3. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 1995. *Standards* § 9.22(l).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a prior disciplinary record. *Standards* § 9.32(a).
 2. Cooperative attitude toward the proceeding. *Standards* § 9.32(e).
 3. Remorse. Declarations the Accused now files with the court accurately describe the minimum billing system entries. *Standards* § 9.32(l).

14.

Under the ABA *Standards*, reprimand is generally appropriate when a lawyer is negligent either in 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 system. *Standards* § 6.13. Reprimand is also generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards* § 7.3.

15.

Oregon case law is in accord. *In re Paulson*, 335 Or 436, 71 P3d 60 (2003) (reprimand imposed on lawyer who improperly billed a client); *In re Boardman*, 312 Or 452, 822 P2d 709 (1991) (reprimand imposed on lawyer who inaccurately represented to the court that his client was the personal representative of an estate when his client had not yet been appointed); *In re Potts*, 301 Or 57, 718 P2d 1363 (1986) (reprimand imposed on lawyers who, among other things, charged a fee not supported by time and labor involved); *In re Sussman*, 241 Or 246, 405 P2d 355 (1965) (public censure imposed on lawyers who inaccurately advertised themselves as partners).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violations of RPC 1.5(a), RPC 7.5(d), and RPC 8.4(a)(4).

17.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

18.

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 12th day of March, 2012.

/s/ Kevin J. Kinney

Kevin J. Kinney

OSB No. 953237

EXECUTED this 23rd day of March, 2012.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 862028

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 12-34
)	
CLAUD A. INGRAM,)	
)	
Accused.)	

Counsel for the Bar:	Susan Roedl Cournoyer
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.2(a) and RPC 1.4(a). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	March 29, 2012

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 1.2(a) and RPC 1.4(a).

DATED this 29th day of March, 2012.

/s/ William Crow
 William Crow
 State Disciplinary Board Chairperson

/s/ Robert A. Miller
 Robert A. Miller, Region 2
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Claud A. Ingram, 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, 1961 and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane County, Oregon.

3.

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

4.

On January 10, 2012, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 1.2(a) and RPC 1.4(a) 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.

(a) In June 2009, the Accused represented a former Weyerhaeuser employee (“Client”). On behalf of Client, the Accused filed a legal action against Weyerhaeuser alleging wrongful discharge. Between June 2009 and February 2010, the Accused obtained information from which he concluded that Client had lied to him about her conduct and other events that preceded Weyerhaeuser’s termination of her employment. On March 23, 2010, Weyerhaeuser’s counsel filed a motion for summary judgment seeking to dismiss Client’s case (“defense motion”). The Accused determined that there was no meritorious basis on which Client could oppose the defense motion and that to do so would require Client to submit false evidence to the court. Although the Accused announced this conclusion to Client, he did not discuss the direction of the case, determine her position or provide her a copy of the defense motion.

(b) On April 8, 2010, the Accused informed Weyerhaeuser’s counsel that he would not oppose the defense motion. That same date, Weyerhaeuser’s counsel asked the Accused whether Client would agree to a stipulated judgment of dismissal without costs. The Accused did not convey this proposal to Client or otherwise determine her position with respect it.

(c) Between March 23, 2010 and April 26, 2010, the Accused made two successive appointments with Client to discuss her case. However, the Accused cancelled their first appointment (April 3, 2010) without notice to Client. Client failed to attend the re-scheduled appointment (April 10, 2010). Thereafter, the Accused did not attempt to communicate with Client.

(d) On April 26, 2010, the court granted the defense motion and dismissed Client's action against Weyerhaeuser. The Accused did not notify Client that the defense motion had been granted.

(e) Before submitting a proposed judgment of dismissal to the court, Weyerhaeuser's counsel sent a copy to the Accused. This proposed judgment provided that Weyerhaeuser was entitled to recover its costs in accord with ORCP 68. The Accused did not notify Client of the proposed judgment or determine her position with respect to it. However, the Accused told counsel for Weyerhaeuser that he did not object to the form of judgment. The court entered judgment of dismissal on May 12, 2010.

(f) The Accused did not provide Client a copy of the judgment of dismissal or otherwise notify her that the court had dismissed her case.

(g) By failing to tell Client that he had conceded the defense motion, the court had granted the defense motion, and that her case was dismissed, the Accused failed to keep his Client reasonably informed about the status of her matter. By informing Weyerhaeuser's counsel that he would not oppose the defense motion before he consulted Client about it, failing to convey to Client the defense proposal for a stipulated dismissal without costs, and failing to notify Client of the proposed judgment of dismissal with costs, the Accused failed to consult with his Client regarding her decisions with respect the representation.

Violations

6.

The Accused admits that, by engaging in the conduct described in paragraphs 5(a) through 5(g), he violated RPC 1.2(a) and RPC 1.4(a).

Sanction

7.

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 owed to his Client to act with reasonable diligence and promptness in communicating with her. *Standards* §4.4.
- b. **Mental State.** “Knowledge” is a 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. 9. The Accused acted knowingly in failing to inform Client of the developments in her case or consult her about her position on the defense motion and defense proposals.
- c. **Injury.** Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). Although the merits of Client’s claim were questionable, she was exposed to potential injury to the extent that her claim had any value and to the extent that she could have avoided an award of costs against her. However, the extent of actual injury was in fact limited because Weyerhaeuser did not ultimately seek costs against her.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Relevant prior discipline. The Accused was admonished for neglect in 1983; he was subsequently reprimanded for neglect in 1997. *In re Ingram*, Case No. 96-85, 11 DB Rptr 55 (1997). Letters of admonition are considered to be prior discipline when they involve the same or similar misconduct at issue in the present case. *In re Cohen*, 330 Or 489, 500–01, 8 P3d 953 (2000). *Standards* §§ 9.22(a), 9.32(m).
 2. The Accused has substantial experience in the practice of law. *Standards* § 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. The Accused did not act with a dishonest or selfish motive. *Standards* § 9.32(b).
 2. The Accused made full disclosure and demonstrated a cooperative attitude toward the investigation. *Standards* § 9.32(e).
 3. The prior discipline is remote in time. *Standards* § 9.32(m).

8.

Under the ABA *Standards*, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, absent aggravating or mitigating circumstances. *Standards* § 4.42. In contrast, a public reprimand is presumed to be appropriate when a lawyer is negligent in failing to act with reasonable diligence in representing a client, and thereby causes injury or potential injury.

Standards § 4.43. Given the fact that the mitigating circumstances outweigh the aggravating circumstances in this matter, reprimand is the appropriate sanction.

9.

The following cases in which attorneys have knowingly conceded, settled, or dismissed a client's case without authority to do so, but who timely informed the client of that decision, have resulted in public reprimands:

- (a) In *In re Gorham*, 17 DB Rptr 159 (2003), an attorney filed a meritorious motion to change venue in a post-conviction relief matter knowing that it contravened his client's specific instruction. Aggravating factors included prior discipline, a selfish motive, and substantial experience in the practice of law. Mitigating factors included a cooperative attitude toward the proceeding and remorse.
- (b) In *In re Dames*, 23 DB Rptr 105 (2009), an attorney determined that his client's medical malpractice action had no merit. After he informed his client of his conclusion and of his intention to withdraw, the attorney failed to do so and later conceded a defense motion for summary judgment without consulting or informing his client. Aggravating factors included multiple violations, vulnerability of the client, and substantial experience in the practice of law. Mitigating factors included absence of prior discipline, absence of dishonest or selfish motive, good character and reputation, remorse, and physical disability.
- (c) In *In re Bailey*, 25 DB Rptr 19 (2011), an attorney knowingly accepted a settlement offer without notifying or consulting his client. Aggravating factors included prior discipline and substantial experience in the practice of law. Mitigating factors included absence of a dishonest motive and remorse.

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of RPC 1.2(a) and RPC 1.4(a).

11.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

12.

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

Cite as *In re Ingram*, 26 DB Rptr 65 (2012)

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

EXECUTED this 20th day of March, 2012.

/s/ Claud A. Ingram

Claud A. Ingram

OSB No. 610410

EXECUTED this 23rd day of March, 2012.

OREGON STATE BAR

By: /s/ Susan Roedl Cournoyer

Susan Roedl Cournoyer

OSB No. 863381

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 11-108
)	
BRYAN HUNT,)	
)	
Accused.)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violations of RPC 1.15-2(m) and RPC 8.1(a)(2). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	April 4, 2012

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 1.15-2(m) and RPC 8.1(a)(2).

DATED this 4th day of April, 2012.

/s/ William B. Crow
 William B. Crow
 State Disciplinary Board Chairperson

/s/ Nancy M. Cooper
 Nancy M. Cooper, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Bryan Hunt, 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 1, 2010, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Nevada.

3.

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

4.

On October 12, 2011, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of RPC 1.15-2(m) and RPC 8.1(a)(2). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In 2011, RPC 1.15-2(m) required every lawyer to certify annually on a form and by a prescribed due date that the lawyer was in compliance with the rules governing Interest on Lawyer Trust Accounts (hereinafter “IOLTA”).

6.

In or around December 2010, an IOLTA Compliance Report form (hereinafter “Certification”) was mailed to the Accused. The Certification filing deadline was January 31, 2011. The Accused did not return the Certification by the due date.

7.

On or about April 5, 2011, the Bar sent the Accused a final notice of non-compliance for failure to submit his Certification and gave him until May 2, 2011, to comply or the matter would be forwarded to the Disciplinary Counsel's Office (hereinafter “DCO”). The Accused did not comply, and the matter was referred to DCO.

8.

By letter dated May 11, 2011, DCO notified the Accused that he was being investigated for failing to comply with the provisions of RPC 1.15(2)(m) and requested that he complete the Certification form and give an account for his prior failure to do so on or before May 27, 2011. The Accused knowingly failed to respond to the May 11, 2011, letter and to subsequent reminders.

9.

The Accused filed his Certification on November 9, 2011.

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 9, he violated former RPC 1.15-2(m) and RPC 8.1(a)(2).

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. **Duties Violated.** The Accused violated duties he owed to the profession to comply with rules attendant to practicing law in Oregon and to respond to inquiries from the Bar. *Standard* § 7.0.
- b. **Mental State.** The Accused acted negligently in that he failed to ensure that, while out-of-state for a number of months, correspondence from the Bar regarding the IOLTA Certification was forwarded to him by his staff. The Accused knowingly failed to respond to the Bar inquiries.
- c. **Injury.** The Accused’s misconduct caused some actual injury in that the Bar expended additional time and resources tracking him down in order to obtain compliance with the IOLTA reporting rules.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Multiple offenses. *Standards* § 9.22(d).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. Absence of a prior disciplinary record. *Standards* § 9.32(a).

2. Cooperative attitude toward the proceedings. *Standards* § 9.32(b).
3. Inexperience in the practice of law. *Standards* § 9.32(f).

12.

Under the ABA *Standards*, suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards* § 7.2. Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards* § 7.3.

13.

Under similar circumstances, a reprimand has been imposed. *In re Barteld*, 23 DB Rptr 198 (2009) (public reprimand for lawyer who did not use sufficient care in reading communications he received from the Bar or in keeping his telephone number updated); *In re Ono*, 25 DB Rptr 180 (2011) (public reprimand on similar facts). The Accused's conduct here is less egregious than in those cases where suspensions have been imposed. See *In re Lenihan*, 25 DB Rptr 229 (2011) (60-day suspension of lawyer who acted knowingly); *In re Nielson*, 25 DB Rptr 196 (2011) (120-day suspension imposed on lawyer with prior discipline who acted knowingly).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of former RPC 1.15-2(m) and RPC 8.1(a)(2).

15.

In addition, on or before May 31, 2012, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$313.00, incurred for attempted service. Should the Accused fail to pay \$313.00 in full by May 31, 2012, 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.

16.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

17.

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 15th day of March, 2012.

/s/ Bryan Hunt

Bryan Hunt

OSB No. 100613

EXECUTED this 2nd day of April, 2012.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 862028

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 11-117
)	
KAREN A. BISHOP,)	
)	
Accused.)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.15-2(m) and RPC 8.1(a)(2). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	April 2, 2012

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 1.15-2(m) and RPC 8.1(a)(2).

DATED this 2nd day of April, 2012.

/s/ William Crow
 William Crow
 State Disciplinary Board Chairperson

/s/ Nancy Cooper
 Nancy Cooper, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Karen A. Bishop, 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, 2000. The Accused has been a member of the Oregon State Bar continuously since that time, having her office and place of business in the County of Fairfax, State of Virginia.

3.

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

4.

On November 16, 2011, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.15-2(m) and RPC 8.1(a)(2). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

At all times relevant herein, RPC 1.15-1(a) required that a lawyer deposit funds, including advances for costs and expenses and escrow and other funds held for another in a separate “Lawyer Trust Account” (hereinafter “IOLTA”) maintained in the jurisdiction where the lawyer’s office is situated.

6.

At all times relevant herein, RPC 1.15-2(m) required that every lawyer certify annually on a form and by a due date prescribed by the Bar that the lawyer was in compliance with Rule 1.15-1 and the other provisions of RPC 1.15-2.

7.

On or about November 18, 2010, the Bar mailed to the Accused, at the address provided by the Accused, membership materials including a 2011 membership dues invoice and an IOLTA Certification of Compliance form (hereinafter “IOLTA Certification”). The materials informed the Accused that she was required to file the IOLTA Certification form with the Bar by January 31, 2011. A reminder to file the IOLTA Certification was mailed to

the Accused in January 2011. The Accused did not file the 2011 IOLTA Certification by January 31, 2011.

8.

In February and March 2011, the Bar mailed reminders to the Accused that she had failed to file her IOLTA Certification in a timely fashion and that she was required to file her IOLTA Certification. The Accused did not respond or file her IOLTA Certification.

9.

On or about April 5, 2011, Disciplinary Counsel's Office (hereinafter "DCO") sent a "last chance" letter to the Accused, informing her that if she did not file her IOLTA Certification by May 2, 2011, an investigation would follow to determine whether disciplinary action was appropriate. The Accused did not respond. The Accused did not file her IOLTA Certification.

10.

On or about May 5, 2011, DCO requested an explanation from the Accused by May 26, 2011, of why she had not filed her IOLTA Certification or complied with RPC 1.15-2(m). The Accused did not respond or file the IOLTA Certification.

11.

On or about June 8, 2011, DCO requested an explanation from the Accused, by June 15, 2011, of why she had not filed her IOLTA Certification or complied with RPC 1.15-2(m). The Accused did not respond or file the IOLTA Certification.

12.

On or about August 18, 2011, DCO requested an explanation from the Accused, by August 25, 2011, of why she had not filed her IOLTA Certification or complied with RPC 1.15-2(m). The Accused did not respond or file the IOLTA Certification.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 12, she violated RPC 1.15-2(m) and RPC 8.1(a)(2).

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 duties she owed as a professional. *Standards* § 7.0
- b. **Mental State.** The Accused negligently failed to file her IOLTA Certification. The Accused knowingly failed to respond to requests for information from disciplinary authorities concerning the failure to file the certification.
- c. **Injury.** The Accused's conduct caused some actual injury in that the Bar was forced to expend time and resources in an effort to obtain the Accused's IOLTA compliance and information regarding the Accused's failure to comply.
- d. **Aggravating Circumstances.** There are no aggravating circumstances.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. The Accused has no prior disciplinary record. *Standards* § 9.32(a).
 2. The Accused did not have a selfish or dishonest motive. *Standards* § 9.32(b).
 3. The Accused has expressed remorse. *Standards* § 9.32(1).

15.

Under the ABA *Standards*, 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. Reprimand is generally appropriate when the lawyer's conduct was negligent. *Standards* § 7.2; § 7.3.

16.

Oregon case law supports the imposition of a public reprimand where an attorney has negligently failed to file the IOLTA Certification, but knowingly failed to respond to subsequent disciplinary inquiries about that failure, and the mitigating circumstance have significantly outweighed the aggravating circumstances. *See, In re Barteld*, 23 DB Rptr 198 (2009); *In re Ono*, 25 DB Rptr 180 (2011).

17.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of RPC 1.15-2(m) and RPC 8.1(a)(2), the sanction to be effective upon the approval of this Stipulation.

18.

The Accused acknowledges that she is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in her suspension or the denial of her reinstatement.

19.

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 26th day of March, 2012.

/s/ Karen A. Bishop

Karen A. Bishop

OSB No. 000247

EXECUTED this 30th day of March, 2012.

OREGON STATE BAR

By: /s/ Linn D. Davis

Linn D. Davis

OSB No. 032221

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case Nos. 10-49; 10-50; 10-51; 10-52;
	)	10-101; 10-120; and 11-34
THERESA I. SOTO,)	
	)	SC S060254
Accused.)	

Counsel for the Bar:	Kellie F. Johnson
Counsel for the Accused:	Calon Nye Russell
Disciplinary Board:	None
Disposition:	Violations of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15-1(a), RPC 1.15-1(b), RPC 1.15-1(d), RPC 1.15-2(l), RPC 1.16(a)(2), RPC 1.16(d), and RPC 8.1(a)(2). Stipulation for Discipline. 7-month suspension.
Effective Date of Order:	April 5, 2012

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 seven months, effective April 5, 2012.

April 5, 2012.

/s/ Paul J. De Muniz
Paul J. De Muniz, Chief Justice

STIPULATION FOR DISCIPLINE

Theresa I. Soto, 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, 2006, 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, 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 April 26, 2011, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of multiple disciplinary rules, including:

Kay Kile matter – Case No. 10-49: violations of RPC 1.1 (lack of competence); RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed or respond to requests for information); RPC 1.15-1(a) (failure to hold client property in a lawyer’s possession separate from the lawyer’s own property); RPC 1.15-1(d) (failure to promptly deliver client property); and RPC 8.1(a)(2) (failure to respond to lawful demands for information from disciplinary authorities in connection with a disciplinary matter).

Eugene Mostofi matter – Case No. 10-50: RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed or respond to requests for information); RPC 1.15-1(a) (failure to hold client property in a lawyer’s possession separate from the lawyer’s own property); RPC 1.15-1(d) (failure to promptly deliver client property); RPC 1.16(a)(2) (failure to withdraw where the lawyer’s mental condition impairs the lawyer’s ability to represent the client); and 8.1(a)(2) (failure to respond to lawful demands for information from disciplinary authorities in connection with a disciplinary matter).

Heather Myers Smith matter – Case No. 10-51: RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed or respond to requests for information); RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation); RPC 1.16(a)(2) (failure to withdraw where the lawyer’s mental condition impairs the lawyer’s ability to represent the client); RPC 1.16(d) (failure upon termination of representation to take steps to

the extent reasonably practicable to protect a client's interests); and RPC 8.1(a)(2) (failure to respond to lawful demands for information from disciplinary authorities in connection with a disciplinary matter).

Jeanine A. Rosch matter – Case No. 10-52: RPC 1.1 (lack of competence); RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed or respond to requests for information); RPC 1.15-1(a) (failure to hold client property in a lawyer's possession separate from the lawyer's own property); RPC 1.16(a)(2) (failure to withdraw where the lawyer's mental condition impairs the lawyer's ability to represent the client); and RPC 1.16(d) (failure upon termination of representation to take steps to the extent reasonably practicable to protect a client's interests).

Ronald Gray matter – Case No. 10-101: RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed or respond to requests for information); RPC 1.16(a)(2) (failure to withdraw where the lawyer's mental condition impairs the lawyer's ability to represent the client); RPC 1.16(d) (failure upon termination of representation to take steps to the extent reasonably practicable to protect a client's interests) and RPC 8.1(a)(2) (failure to respond to lawful demands for information from disciplinary authorities in connection with a disciplinary matter).

Oregon State Bar matter – Case No. 10-120: RPC 1.15-1(a) (failure to hold client property in a lawyer's possession separate from the lawyer's own property); RPC 1.15-1(b) (depositing the lawyer's own funds into trust); and RPC 1.15-2(l) (failure to notify Disciplinary Counsel of trust account overdraft).

Laura Amos matter – Case No. 11-34: RPC 1.3 (neglect of a legal matter).

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.

SUMMARY OF FACTS

Kay Kile Matter – Case No. 10-49

6.

On March 27, 2009, the Accused was retained by Kay Kile to pursue her appeal of a private disability insurance determination. Kile paid the Accused a \$250 retainer and made two additional payments of \$150 in April and May 2009. The Accused failed to deposit Kile's April and May 2009 payments into a lawyer trust account. The Accused did not have the knowledge or experience necessary to advance the disability insurance appeal for Kile because private insurance disability claim denials were beyond her usual practice. The Accused failed to timely file Kile's appeal or take any other constructive action to advance her claim. The Accused failed to communicate with Kile or respond to Kile's attempts to

communicate with her and the Accused failed to respond to Kile's request for the return of her file and refund of the unearned portion of the retainer.

Eugene Mostofi Matter – Case No. 10-50

7.

In March 2009, Eugene Mostofi employed the Accused to collect a default judgment in a timber trespass case that had been entered in his favor. Mostofi paid the Accused a \$240 retainer. The Accused failed to deposit the retainer into a lawyer trust account. The Accused successfully defended against a defense motion to set aside the default judgment, but from March 16, 2009 until Mostofi terminated her services on November 11, 2009, the Accused took no further substantive action in the case. The Accused agreed to advise Mostofi weekly concerning the status of his case. Between March 2009 and November 2009, the Accused advised Mostofi once of the status of his case. Thereafter, until March 2010, the Accused failed to respond to Mostofi's attempts to contact her and failed to return his client file as Mostofi requested.

Heather Myers Smith Matter – Case No. 10-51

8.

In September 2008, the Accused undertook to represent Heather Myers Smith to petition for the dissolution of her marriage. The Accused understood from Myers Smith that the need to take action was urgent, but failed to file the petition until January 2009. Thereafter, the Accused failed to notify Myers Smith of the September 18, 2009 trial date until two days before the trial when Myers Smith contacted her. The Accused moved to postpone the trial, but the court denied the Accused's motion because of a defect in the pleading. The Accused failed to correct the defect or renew the motion. After the September 18, 2009 trial of Myers Smith's dissolution of marriage proceeding, through December 7, 2009, the Accused took little or no substantive action on the Myers Smith legal matter; failed to communicate with Myers Smith; ignored Myers Smith's request to act expeditiously to prepare a final judgment; and failed to follow-up with opposing counsel to prepare and submit to the court a final judgment of dissolution. The Accused's failure to act resulted in the court dismissing the Myers Smith dissolution proceeding for failure to submit a proposed form of judgment. Upon termination of the lawyer client relationship, the Accused failed to take reasonable steps to protect Myers Smith's interests.

Jeanine Rosch Matter – Case No. 10-52

9.

The Accused was hired by Jeanine Rosch to represent her in a foreclosure matter and personal property damage claim against the Portland Police Bureau. Rosch paid the Accused a \$100 retainer and an additional \$160 for the purpose of retaining a court reporter. The Accused failed to deposit the \$160 into a lawyer trust account. The Accused met with Rosch

to discuss her legal matter and advised her that she might have a professional negligence claim against the lawyer who had represented Rosch in a bankruptcy matter. The Accused recommended that Rosch contact the Professional Liability Fund, which denied Rosch's claim. Thereafter, the Accused failed to take any action to advance Rosch's professional negligence claim. The Accused also failed to take any action to recover Rosch's personal property. The Accused failed to advise Rosch that she was required to file a tort claim notice to preserve potential tort claims against the Portland Police Bureau; failed to file a tort claim notice; failed to file any legal action against the Portland Police Bureau or any other public body on Rosch's behalf; failed to advise Rosch to seek separate legal counsel to handle any claims against Portland Police Bureau; from September 16, 2009, through December 3, 2009, took little substantive action on Rosch's legal matters; and failed to respond to Rosch's repeated attempts to contact her. Upon termination of the lawyer-client relationship, the Accused failed to take reasonable steps to protect Rosch's interests.

Ronald Gray Matter – Case No. 10-101

10.

In April 2009, the Accused undertook to represent Heidi Post in a traffic matter. On September 28, 2009, the Accused requested that the City Prosecutor enter into a diversion agreement with Post. On October 5, 2009, the City Prosecutor sent a diversion agreement to the Accused and requested that it be returned within 10 days. Between September 2009 and March 10, 2010, the Accused failed to pursue the diversion agreement in any significant way; failed to respond to the City Prosecutor's request that the diversion agreement be returned within 10 days; failed to notify Post that a trial date was set for March 10, 2010; failed to respond to letters, inquiries, and notices from the court; failed to appear at trial on March 10, 2010; and failed to contact Post to inform her that the court had entered a default judgment against her for the traffic violation. Upon termination of the lawyer client relationship, the Accused failed to take reasonable steps to protect Post's interests.

Mostofi, Myers Smith, Rosch, and Gray Matters: RPC 1.16 (a)(2)

11.

From October 2009 through November 2009, the Accused was suffering from a physical or mental condition that materially impaired her ability to represent Mostofi, Myers Smith, Rosch, and Post. Despite her knowledge of her condition, the Accused did not make any effort to withdraw from the representation.

Kile, Mostofi, and Myers Smith Matters: RPC 8.1(a)(2)

12.

In 2010, Disciplinary Counsel's Office requested that the Accused respond to Kile's, Mostofi's, and Myers Smith's allegations. The Accused knowingly failed to respond to Disciplinary Counsel's Office request for information. In or around March 2010, DCO

referred Kile's, Mostofi's, and Myers Smith's complaints to the Multnomah County Local Professional Responsibility Committee for investigation. The LPRC investigators arranged for an in-person interview with the Accused to take place on April 23, 2010, but the Accused failed to appear. Instead, on that day, a third person informed the LPRC that the Accused would not attend her interview. The LPRC also mailed a subpoena *duces tecum* to the Accused and required that she produce legal documents, fee agreements, pleadings, and trust account records related to certain clients. The Accused made limited and untimely responses, but knowingly failed to deliver some or all of the subpoenaed documents and knowingly failed to respond to requests by the LPRC for information.

OSB Matter – Case No. 10-120

13.

Between April 2008 and March 2009, the Accused repeatedly transferred money from her personal bank account to her lawyer trust account in order to pay the monthly bills of one of her clients. On March 6, 2009, the Accused wrote a nonsufficient funds check on her lawyer trust account. The Accused failed to inform the Oregon State Bar of the resulting overdraft on her lawyer trust account. Thereafter, the Accused deposited in her lawyer trust account more than was necessary to cover the overdraft fee charged by her bank against her lawyer trust account. Between August 19 and August 28, 2008, the Accused deposited money from her personal account into her lawyer trust account and used these funds to pay various commercial vendors.

Laura Amos Matter – Case No. 11-34

14.

On August 21, 2008, Laura Amos employed the Accused to represent her in a landlord-tenant matter. On October 29, 2008, the Accused failed to appear at a hearing on the forcible entry and detainer action brought against Amos by her landlord, and Amos was evicted from her apartment. Amos negotiated a settlement with her landlord that would allow her to remain in her apartment under certain conditions. Amos was thereafter unable to meet the conditions of the settlement agreement and was locked out of the apartment before she was able to remove her property and pets. The Accused took no substantive action to help Amos gain access to the apartment to retrieve her pets and property. The landlord ultimately disposed of Amos' property, and her pets died in the apartment. Thereafter, the Accused took no significant action to advance a claim for damages on Amos' behalf.

VIOLATIONS

15.

The Accused admits that by engaging in the conduct described in this stipulation, she violated RPC 1.1 (lack of competence); RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed or respond to request for information); RPC

1.4(b) (failure to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation); RPC 1.15-1(a) (failure to hold client property in a lawyer's possession separate from the lawyer's own property); RPC 1.15-1(b) (depositing the lawyer's own funds into trust); RPC 1.15-1(d) (failure to promptly deliver client property); RPC 1.15-2(l) (failure to notify Disciplinary Counsel's Office of trust account overdraft); RPC 1.16(a)(2) (failure to withdraw where the lawyer's mental condition impairs the lawyer's ability to represent the client); RPC 1.16(d) (failure upon termination of representation to take steps to the extent reasonably practicable to protect a client's interests); and RPC 8.1(a)(2) (failure to respond to lawful demands for information from disciplinary authorities in connection with a disciplinary matter).

SANCTION

16.

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* ("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 duties of diligence and candor to her clients, as well as her duty to safeguard and properly handle client property. *Standards* §§ 4.1; 4.4; 4.5; 4.6. The *Standards* assume that the most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, p. 5. The Accused also violated her duty as a professional to cooperate in disciplinary investigations. *Standards* § 7.0.
- b. **Mental State.** Knowledge is defined as the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 9. The Accused acted knowingly in all of the matters described herein.
- c. **Injury.** The Accused caused actual injury to her clients. There is actual injury to a client where an attorney fails to actively pursue his or her case. *In re Parker*, 330 Or 541, 547, 9 P3d 107 (2000). The Accused's failure to communicate caused actual injury in the form of client anxiety and frustration. *In re Cohen III*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner II*, 325 Or 421, 426–27, 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 her conduct also caused actual harm to both the legal profession and to the public because she delayed the Bar's investigation and, consequently, the resolution of the

complaints against her. *In re Schaffner II*, *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 Circumstances.** Aggravating circumstances include:

1. A pattern of misconduct. *Standards* § 9.22(c).
2. Multiple offenses. *Standards* § 9.22(d).
3. Vulnerability of victims. *Standards* § 9.22(h).

e. **Mitigating Circumstances.** Mitigating circumstances include:

1. Personal or emotional problems. *Standards* § 9.32(c). The Accused was suffering from personal and emotional problems during a portion of the relevant time period due to ongoing disputes stemming from the breakup of her domestic partnership.
2. Inexperience in the practice of law. *Standards* § 9.32(f).
3. Remorse. *Standards* §9.32(l). The Accused has expressed remorse for her misconduct.
4. Physical Disability. *Standards* § 9.32(h). The Accused has had cerebral palsy since birth and her mobility, vision, and daily functioning are impaired.
5. Absence of prior disciplinary record. *Standards* § 9.32(a).
6. Absence of dishonest or selfish motive. *Standards* § 9.32(b).

17.

Under the ABA *Standards*, a suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect causing injury, and where a lawyer knows or should know that she is dealing improperly with client property. *Standards* §§ 4.12; 4.42. A suspension is also generally appropriate when a lawyer knowingly engages in an area of practice in which the lawyer knows she is not competent and causes injury or potential injury to a client. *Standards* § 4.52. Finally, a suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes actual or potential injury to the legal system. *Standards* § 7.2. Given that all of the aforementioned factors are present in this case a substantial suspension is appropriate for the Accused's misconduct.

18.

Lawyers who have engaged in conduct similar to the Accused's in this matter have been suspended for varying periods of time. *See, e.g., In re Chandler*, 306 Or 422, 760 P2d

243 (1988) (two-year suspension for neglect of five client matters, three violations of DR 9-101(C)(4), and substantially refusing to cooperate with Bar authorities); *In re Schaffner II*, 325 Or 421, 939 P2d 39 (1997) (attorney suspended for two years for neglect and failure to respond to the Bar, having been previously suspended for 120 days for the same type of misconduct); *In re Bourcier II*, 322 Or 561, 570, 909 P2d 1234 (1996) (attorney suspended for three years after previously stipulating to a 60-day suspension for “strikingly similar” misconduct).

19.

The Accused’s conduct is similar to that in *In re Rudie*, 294 Or 740, 662 P2d 321 (1983) (seven-month suspension imposed on lawyer who, in one matter, failed to provide competent representation, engaged in neglect, and failed to carry out a contract of employment where lawyer had been previously reprimanded for neglect). Generally, substantial suspensions have been imposed when the lawyer has also engaged in other serious misconduct like misrepresentation, where the aggravating circumstances outweighed the mitigating ones, or where the lawyer has had a previous disciplinary history. Here, the Accused did not make misrepresentations, she did not have a previous disciplinary history, and her personal, emotional problems and physical disability and her inexperience in the practice of law provide substantial mitigation of her conduct. Moreover, the Accused has closed her practice and is currently employed in a non-legal capacity.

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for seven months for violations of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15-1(a), RPC 1.15-1(b), RPC 1.15-2(l), RPC 1.16 (a)(2), RPC 1.16(d), and RPC 8.1(a)(2). The sanction shall be effective beginning on March 1, 2012, or seven days after this stipulation is approved by the court, whichever is later.

21.

In addition, on or before September 30, 2012, the Accused shall pay to the Oregon State Bar its reasonable and necessary deposition costs in the amount of \$1,043.40. Should the Accused fail to pay \$1,043.40 in full by September 30, 2012, 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.

22.

The Accused acknowledges that she has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to her clients during the term of her suspension. In this regard, the

Accused represents that she has arranged for all active clients to either take possession of or have ongoing access to their client files during the term of the Accused's suspension.

23.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. She is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that she cannot hold herself out as an active member of the Bar or provide legal services or advice until she is notified that her license to practice has been reinstated.

24.

The Accused acknowledges that she is subject to the Ethics School requirement set forth in BR 6.4, and that a failure to complete the requirement timely under that rule may result in her suspension or the denial of her reinstatement.

25.

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

EXECUTED this 24th day of February, 2012.

/s/ Theresa I. Soto

Theresa I. Soto, OSB No. 062516

OREGON STATE BAR

By: /s/ Kellie F. Johnson

Kellie F. Johnson, OSB No. 970688
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 10-130
)	
LYNN M. MURPHY,)	
)	
Accused.)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	Theresa L. Wright, Chair David W. Green John Rudoff, Public Member
Disposition:	Violations of RPC 1.16(d) and RPC 8.1(a)(2). Trial Panel Opinion. 270-day suspension.
Effective Date of Opinion:	April 11, 2012

TRIAL PANEL OPINION (Majority Opinion)

Findings of Fact and Order

THIS MATTER came before the Trial Panel after an Order of Default had been granted, for the purpose of determining sanctions. The Bar submitted written argument supported by exhibits. The Accused has not participated in this hearing process nor submitted any written material for consideration.

SANCTION

In fashioning a sanction, the ABA *Standards for Imposing Lawyer Sanctions* (amended 1992) (hereinafter “*Standards*”) and Oregon case law are considered. *In re Eakin*, 334 Or 238, 257, 48 P3d 147 (2002).

A. ABA Standards Applied to this Case.

The *Standards* require an analysis of four factors: (1) the ethical duty violated, (2) the attorney’s mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances. *Standards* § 3.0.

The Panel finds that without objection or counter-evidence that the Bar has established that: (i) the conduct of the Accused violated RPC 1.16(d) and 8.4(a)(2), (ii) her

conduct was knowing, and (iii) her conduct of neglect caused actual and potential harm. Further, her failure to reply to or cooperate with the Bar process was intentional as well as detrimental to the public confidence in the profession.

Drawing together the factors of duty, mental state, and injury, the *Standards* provide the following: “Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.” *Standards* § 7.2.

The Panel considered whether there were aggravating or mitigating circumstances. “Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.” *Standards* § 9.21. The Trial Panel considered the following factors that the Bar argued were aggravating under the *Standards* in this case:

1. **A prior record of discipline.** The Bar has asked for a suspension of “at least a year,” and cited prior disciplinary offenses as an aggravating factor, under *Standards* § 9.22(a). This factor refers to offenses that have been adjudicated before imposition of the sanction in the current case. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997). The Accused’s prior discipline is her 120-day suspension in late 2010 for violation of RPC 1.3 (neglect of a legal matter), RPC 1.4(a) (failure to communicate with a client), and RPC 8.1(a)(2) (failure to respond to the Bar’s investigation). *In re Complaint as to the Conduct of Lynn M. Murphy*, 349 Or 366, 368 (2010) (“*Murphy I*”).

The Trial Panel, however, notes that the misconduct cited by the Bar occurred in mid-to late 2009, while the Supreme Court’s decision in *Murphy I* was not issued until late 2010. The conduct that is the subject of the present case occurred during the pendency, but before the resolution, of the prior case. As a result, the Trial Panel gives somewhat lesser weight to prior discipline as an aggravating factor than it would if the present offense had occurred after the resolution of *Murphy I*.

2. **A pattern of misconduct.** The Bar cited the Accused’s failure to respond to the Bar’s inquiries as evidence of a pattern of misconduct, which is another aggravating factor under *Standards* § 9.22(c). The Trial Panel found that there was a pattern of misconduct in the Accused’s failure to respond over the last three years.

3. **Other factors.** The Trial Panel found no other relevant aggravating factors and no mitigating factors.

B. Oregon Case Law.

Considering the Accused’s conduct, and the aggravating and mitigating factors, the Trial Panel concluded that some period of suspension is appropriate.

Sanctions in disciplinary matters are not intended to penalize the accused lawyer, but instead are intended to protect the public and the integrity of the profession. *In re Stauffer*,

327 Or 44, 66, 956 P2d 967 (1998). Appropriate discipline deters unethical conduct. *In re Kirkman*, 313 Or 181, 188, 830 P2d 206 (1992). In many cases, the Oregon Supreme Court has imposed a more severe sanction on a lawyer with prior disciplinary offenses for subsequent misconduct. *See, e.g., In re Schaffner*, 325 OR 421, 939 P2d 39 (1997) (lawyer who was previously suspended for 120 days for violating DR 6.101(B) and DR 1-103(C) was subsequently suspended for two years for violating the same rules among other rules).

The Panel discussed and noted that the violation of RPC 1.16(d) (failing to take steps to protect a client's interest) is a serious matter. Another troubling aspect of this case is the failure of the Accused to participate in the Bar's investigation. Again, this is similar to the pattern demonstrated in her earlier discipline case, cited above. The Panel notes that the Accused has over ten years experience in the practice of law, with no disciplinary difficulties until the last couple of years. The Panel considers these lapses as potentially harmful to the public. The Panel is concerned that the Accused's conduct, in particular her non-cooperation with the Bar, is being repeated in more than one case.¹

The conduct of the Accused in this case is certainly not identical to the conduct that was the basis of discipline in *Murphy I*, but the Accused should have been amply alerted to the need to respond to the Bar's inquiries. When the Accused's prior discipline is taken into account, and other aggravating and mitigating factors are considered, a majority of the Trial Panel determined that the case law and facts in this case support a suspension of 270 days.

DISPOSITION

The Accused shall be suspended from the practice of law for a period of 270 days.

¹ The Trial Panel considered an additional sanction of a 15-month time probation period, starting at the end of the suspension period, during which the Accused would be required to (i) be under practice management supervision of an Oregon licensed attorney willing to provide practice management supervision to the Accused (a "Practice Management Advisor"), (ii) provide quarterly reports of caseload status to the Practice Management Advisor, and (iii) meet with the Practice Management Advisor at least on a quarterly basis to review the Accused's handling of her caseload. The Trial Panel noted that probation is an allowable sanction under the *Standards* § 2.7. The commentary on *Standards* § 2.7 states that the "conditions of probation can include: (a) quarterly or semi-annual reports of caseload status, especially appropriate in neglect cases, see *Florida Bar v. Neale*, 432 So. 2d 50 (Fla. 1980); (b) supervision by a local disciplinary committee member, see *In re Maragos*, 285 NW2d 541 (ND 1979) and *In re Hessberger*, 96 Ill2d 423, 451 NE 821 (1983)." The Trial Panel believes that some practice management supervision would be appropriate for the Accused, but did not agree on the details. Practice management supervision would also serve the goal of providing protection to the public. However, after discussion, a majority of the Trial Panel decided that it would not adopt probation and required practice management assistance as an additional (or alternative) sanction. The dissenting member of the Trial Panel has attached his dissent to the decision.

DATED this 30th day of January, 2012.

/s/ Theresa L. Wright
THERESA L. WRIGHT, OSB No. 814289
Trial Panel Chair

DATED this 30th day of January, 2012.

/s/ David W. Green
DAVID W. GREEN, OSB No. 761510
Trial Panel Member

Dissenting Opinion

Case No. 10-130

By JOHN RUDOFF, M.D., FACC

Public Member, Trial Panel

As the Public Member in the case before Panel, which I will refer to as “*Murphy II*,” I agree with the findings of default and of fact. However, I do not believe that the Panel's proposed 270-day suspension of the Accused from the practice of law is the appropriate sanction to impose.

The Panel has extensively discussed the recognized options available to it for the imposition of sanctions. The discussion reflects the expressed mission of the Bar and the Disciplinary Board (“*DB*”), namely, to protect the public and to uphold professionalism within Oregon's legal community.

I believe that the sanction proposed by the Panel falls short in achieving those goals. My belief about that is a product of my experience in this and other disciplinary cases in which I have been involved as a Public Member, including *Hartfield*, *Murphy I*, and *Koch*.

If the only goal of the DB is punishment, then the current approach to sanctions is adequate: reprimands cause public opprobrium within the legal profession; suspensions cause financial hardship and opprobrium as well. Sanctions arguably do not improve the level of professionalism, and may not have sufficient deterrent effect. They did not either deter or improve, as reflected by the fact that the RPC's that the Accused violated in *Murphy II* are similar to those she violated in *Murphy I*.

Excepting the “ultimate penalty” of disbarment, attorneys against whom professional discipline is imposed return to practice. It is not known (at least to me) the percentage of attorneys who are subjected to successive instances of discipline for the same or similar conduct.

Further, there seems to this Public Member to be a repeating pattern among cases: a marginal solo practitioner becomes involved with a legal matter that is more complex than when first undertaken; the lawyer either knowingly or incompetently violates RPC 1.3 or 1.4 (e.g., defects in calendaring, replying to client information-requests; defective communication with opposing lawyers); a complaint is filed with the Bar; the lawyer for whatever (poor) reason does not respond; and a default quite properly is entered by the Bar. A disciplinary board is then convened to impose sanctions against the lawyer.

The scenario described above was, broadly, the issue in *Murphy I*, in which part of the Accused's unsuccessful and indeed unacceptable argument on mitigation was that her records of communication were in a written notebook in her backpack, which was lost.

The current system of sanctions seems neither to improve professionalism nor—if the availability of marginal though acceptably competent and properly professional attorneys to the public is to be considered a ‘public good’—does it foster improved access to the legal system. Nevertheless, neither the Bar nor the Supreme Court currently have at their disposal alternative mechanisms that may satisfy the goal of altering the objectionable conduct of accused lawyers. Both entities are constrained by the absence of enforceable mechanisms for improvement, and must execute their legislatively defined duties in a manner that may defeat the goals. Both entities have firmly rejected sanctions that have characteristics of “probation.”

I propose the imposition of an alternative sanction in this and other appropriate cases, which has the potential benefits of:

- *Being invariably optional, not mandatory, for both Bar and DB;
- *Being entirely inapplicable in cases of clear willful dishonesty (e.g., false statements to a court, trust-account dishonesty, sexual or drug issues, etc.);
- *Being a clear and meaningful sanction upon Accused;
- *Being precisely enforceable without Bar or Court involvement;
- *Being revenue neutral to both Bar and Court;
- *Potentially improving the quality of practice by some accused lawyers.

In matters in which violations of the RPCs involve defects such as communications with client, Court, or opposing attorneys; missing deadlines for filings; record-keeping defects, etc., I believe a DB should be allowed to hand down two sanctions, not one, framed as follows:

The Panel imposes two sanctions, the choice of which is up to the Accused. The default choice, if the Accused refuses to choose or if the Accused fails to respond within a specified time, is sanction (a) below.

- (a) One-year suspension from the practice of law; or,

- (b) 180-day suspension from the practice of law, predicated upon Accused doing each of the following:
- (1) Undertaking in that interval a mentoring program to the advance satisfaction of Bar, DB, or Court;
 - (2) Purchasing and taking six months' instruction in Bar-approved practice-management software for record-keeping, calendaring, research, trust-account management, communications and billing, to be fully completed during the period of suspension;
 - (3) Taking a Bar-approved course in professional ethics including responsibility for cooperation with Bar inquiries; and
 - (4) Providing payment (in advance) to a monitor acceptable to the State Chairperson of the DB to assure, to the satisfaction of the DB, completion of all of those conditions.

If all of those four conditions in this paragraph (b) are agreed to, then the duration of suspension will be 6 months, during which time all customary Bar regulations concerning suspension from the practice of law will be followed.

If the conditions are fully satisfied, the suspension will end at six months; if not, the balance of a one-year suspension will be served by the Accused.

The arguments against such a proposal are: (1) such a sanction may appear to be more like “probation” than the Court or the Bar legislatively may be allowed to impose; (2) it may appear to the public to be a “slap on the wrist”; (3) marginal practitioners may not be able to afford the cost of the above requirements; (4) it increases the burden on DB members to determine which portion of the alleged offenses are due to dishonesty and which from other causes, and increases the work of crafting a sanction; and (5) it may provide the basis for legal actions on the part of the Accused against mentors, legal-software instructors, monitors, etc.

To overcome these objections, I submit the following:

1: If Accused chooses (b), this is publicly recorded in the Disciplinary Board Reporter as a 6-month suspension (identical to current practice), with additional terms and conditions, during which Accused is barred from the practice of law. After the six months, and upon agreement by the monitor (which Bar has selected or agreed to, and for which Accused has paid), Accused is reinstated to the practice of law. This is also identical to current notice of suspension.

2: The Disciplinary Board Reporter is a publicly accessible document, and members of the public may look at the terms and conditions; and may make their own judgment about weightiness, severity, etc.

3: The Accused will have to weigh the relative cost of (to use the example described above) six additional months without any income from law practice vs. the cost of paying for the monitoring, practice-tools, and instructions.

Re. Objection 4 above: The extra work and discussion involved are entirely at the discretion of DB members.

Re. Objection 5 above: The Accused will waive in writing any legal action against those involved in monitoring or instruction.

Because I believe that my proposed sanction will better serve the Bar and the public, I respectfully dissent from the Panel's decision to impose a 270-day suspension.

DATED this 2nd day of February, 2012.

/s/ John Rudoff

John Rudoff, M.D., FACC

Public Member, Trial Panel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 11-67
)
J. STEFAN GONZALEZ,)
)
Accused.)

Counsel for the Bar: Stacy J. Hankin
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violations of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d),
and RPC 8.1(a)(2). Stipulation for Discipline.
6-month suspension.
Effective Date of Order: April 28, 2012

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 six (6) months, effective on the day after this order is signed, for violations of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2).

DATED this 27th day of April, 2012.

/s/ William B. Crow
William B. Crow
State Disciplinary Board Chairperson

/s/ Mary Kim Wood
Mary Kim Wood, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

J. Stefan Gonzalez, 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 November 4, 1986, and has been a member of the Oregon State Bar continuously since that time, having had an office and place of business in Marion County, Oregon.

3.

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

4.

On August 12, 2011, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In August 2003, Miguel Aguilar Rodriguez (hereinafter “Rodriguez”) was injured at work. He filed a workers’ compensation claim which was accepted by SAIF Corporation (hereinafter “SAIF”). Rodriguez had surgery and other medical treatment.

6.

On September 21, 2009, Rodriguez retained the Accused to represent him in the SAIF claim. The Accused was to collect Rodriguez’s medical records and determine if there were any additional benefits Rodriguez could collect or pursue. Rodriguez was particularly interested in whether SAIF would pay for chiropractic care Rodriguez occasionally received.

7.

On September 22, 2009, the Accused requested documents from SAIF. A month later, Rodriguez signed a release allowing the Accused to obtain medical records from other sources.

8.

Between October 2009, and April 2010, the Accused failed to pursue Rodriguez's legal matter. He also failed to communicate with Rodriguez about the status of the matter despite numerous inquiries from Rodriguez.

9.

On February 7, 2011, Rodriguez requested his file from the Accused. The Accused failed to promptly deliver the file to Rodriguez.

10.

On May 12, 2011, Disciplinary Counsel's Office received a complaint from Rodriguez regarding the Accused's conduct. On May 16, 2011, Disciplinary Counsel's Office requested the Accused's response to Rodriguez's complaint and to some specific questions on or before June 6, 2011. The Accused knowingly failed to respond to that letter and to a subsequent letter reminding him of his duty to respond.

Violations

11.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 10, he violated RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2).

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. Duties Violated.** Gonzalez violated a duty he owed to Rodriguez to promptly and diligently pursue his legal matter and communicate with him. *Standards* § 4.4. Gonzalez also violated duties he owed to Rodriguez and as a professional when he failed to promptly return the file and a duty he owed to the profession to cooperate in the Bar's investigation into his conduct. *Standards* § 7.0.

- b. **Mental State.** Gonzalez acted knowingly with regard to the RPC 1.3, RPC 1.4(a), and RPC 1.15-1(d) violations. He intentionally failed to respond to the Bar.
- c. **Injury.** Rodriguez experienced frustration and anxiety when Gonzalez failed to respond to his communication. Gonzalez's failure to promptly provide the file materials delayed Rodriguez's ability to pursue his claim. The Bar spent additional time and effort obtaining information Gonzalez was required to and should have provided.
- d. **Aggravating Circumstances.** The following aggravating circumstances exist:
 - 1. Prior disciplinary offenses. Effective May 10, 2011, Gonzalez was suspended for four months for violating RPC 4.2 and RPC 8.1(a)(2) in one matter, RPC 8.1(a)(2) in a second matter, RPC 1.4(a) and RPC 8.1(a)(2) in a third matter, and RPC 8.1(a)(2) in a fourth matter. *In re Gonzalez*, 25 DB Rptr 88 (2011). In January 2011, Gonzalez was suspended for 60 days for violating RPC 3.4(c) and RPC 8.4(a)(4) in a matter. *In re Gonzalez*, 25 DB Rptr 1 (2011). *Standards* § 9.22(a).
 - 2. Multiple offenses. *Standards* § 9.22(a).
 - 3. Substantial experience in the practice of law. Gonzalez has been licensed to practice law in Oregon since 1986. *Standards* § 9.22(i).
- e. **Mitigating Circumstances.** The following mitigating circumstance exists:
 - 1. Remorse. *Standards* § 9.32(l).

13.

Under the ABA *Standards*, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. *Standards* § 4.42. 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* § 7.0.

14.

Most recently, the court imposed a 30-day suspension on a lawyer who failed to adequately communicate with a client where the mitigating circumstances outweighed the aggravating circumstances. *In re Snyder*, 348 Or 307, 232 P3d 952 (2010). The court has imposed suspensions ranging from 60 days to one year when a lawyer's neglect and inattention have resulted in lost opportunities to a client. *In re Redden*, 342 Or 393, 397-402, 153 P3d 113 (2007) (court canvassed relevant prior cases).

A lawyer's failure to cooperate in the Bar's investigation is considered serious misconduct because the public protection provided by that obligation is undermined when a

lawyer fails to participate in the investigatory process. *In re Miles*, 324 Or 218, 222–223, 923 P2d 1219 (1996). As such, the court has consistently imposed a 60-day suspension for a single violation of DR 1-103(C). *In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996); *In re Miles, supra* (120-day suspension for two instances where lawyer failed to cooperate in the Bar’s investigation).

Generally, the court imposes a greater sanction than is ordinarily warranted by the facts of a particular matter when a lawyer has a prior disciplinary record, particularly when that prior record includes misconduct similar to the misconduct at issue in the present proceeding. *In re Cohen*, 330 Or 489, 506, 8 P3d 953 (2000). The Accused’s failure to communicate and failure to cooperate in this matter are aggravated because at the time he engaged in that misconduct, he had previously been disciplined for engaging in the same misconduct.

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for six months for violation of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2), the sanction to be effective on the day after this Stipulation for Discipline is approved.

16.

In addition, on or before December 28, 2012 or on the date he submits his application for reinstatement, whichever occurs first, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$183.00, incurred for service and a deposition. Should the Accused fail to pay \$183.00 in full by December 28, 2012, 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.

17.

The Accused acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. Because the Accused has been suspended from the practice of law since May 10, 2011, he currently has no clients or client files.

18.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. In addition, the Accused acknowledges that a provision in the Stipulation for Discipline that became effective May 10, 2011, requires the Accused to apply for reinstatement under BR 8.1 (character and fitness review by Board of Governors and

Supreme Court), and that this requirement remains in effect. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

19.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

20.

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 19th day of April, 2012.

/s/ J. Stefan Gonzalez

J. Stefan Gonzalez

OSB No. 863682

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 862028

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 10-103
)
JOHN P. ECKREM,)
)
Accused.)

Counsel for the Bar: Kelly L. Andersen; Stacy J. Hankin

Counsel for the Accused: None

Disciplinary Board: Megan B. Annand, Chair
Penny Lee Austin
Philip Duane Paquin, Public Member

Disposition: Violation of RPC 1.15-1(c). Trial Panel Opinion.
90-day suspension, all stayed, 180-day probation.

Effective Date of Opinion: April 28, 2012

TRIAL PANEL OPINION

Between June 21, 2009, and August 19, 2009, John Eckrem (“the Accused” or “Eckrem”) was under a 60-day suspension from the practice of law as a result of violating a number of disciplinary rules in 2006 and 2007. On May 19, 2009, before the suspension and in anticipation of the suspension, Eckrem created an LLC entitled John Eckrem, LLC (“the LLC”). Ex. 30. The LLC contracted with another Oregon lawyer to provide services to his then current and potential clients during his suspension. While suspended, Eckrem’s LLC entered into fee agreements with three new clients. Eckrem also was paid for assuming the representation of a current client in a new matter and the LLC placed funds received from the current client in the LLC’s operating account without a written fee agreement.

The Bar charged Eckrem with violating:

RPC 1.4(b) (failing to adequately explain a matter to a client);

RPC 1.15-1(c) (failing to deposit client funds into trust);

RPC 5.5(a) (unlawful practice of law);

RPC 8.4(a)(3) (conduct involving misrepresentation); and

ORS 9.160 (practicing while not an active member).

STATEMENT OF FACTS

The Accused's Practice History

The Accused has been a practicing lawyer in Oregon since 1996. He has worked in a publishing house, as a public defender, as an associate at a small firm in Prineville, and since 2005, as a solo practitioner in Medford. TR 285.

Relationship with the Complaining Witness, Mr. Phillips

In January 2009, the complaining witness, Jackie Wayne Phillips, was arrested in Jackson County on four misdemeanor charges including menacing, disorderly conduct regarding an incident in which Mr. Phillips was drunk and waving a knife. Ex. 1, TR 71. On February 12, 2009, Mr. Phillips and the Accused entered into a written fee agreement for the Accused to represent Mr. Phillips as to those charges. Ex. 3. The fee was a non-refundable \$2500 *earned upon receipt* agreement. The fee agreement contained a statement that a trial or suppression motion and hearing would require a separately negotiated fee. Ex. 3.

Mr. Phillips had recently been discharged from the Marine Corps after five tours in Iraq and Afghanistan. He testified that he has a diagnosis of traumatic brain injury and post-traumatic stress disorder. TR 51, 84, 85. In the period around and after this first arrest, Mr. Phillips was using marijuana, alcohol, and prescription drugs for service-related pain. TR 83, 84. Mr. Phillips testified that at the time of this hearing, he was undergoing treatment and his memory slipped now and then. TR 85.

In early June 2009, Mr. Phillips was charged with a DUI count, harassment, disorderly conduct, and criminal trespass. Ex. 5. He was lodged in the Jackson County jail. Apparently there had been some communication and agreement between the Accused and Mr. Phillips by June 4, 2009, because the Accused notified the DA's office that the Accused would be representing Mr. Phillips. Ex. 6.

According to the Accused, he met with Mr. Phillips in jail twice and during one visit told Mr. Phillips that he, the Accused, would be on suspension¹. Ex. 19, TR 135, 147. There

¹ The Accused testified that he told Mr. Phillips about his upcoming suspension during one of the two visits the Accused made with Mr. Phillips in jail. The Bar submitted a document from the Jackson County Sheriff's office showing that Mr. Phillips had three visits while in custody from June 3, 2009, to June 14, 2009. Ex. 26, p. 1; TR 135–136. The document shows one visit from the Accused on June 6, 2009. Ex. 26, p. 3. Exhibit 26 was entered into evidence over the Accused's objection. The Trial Panel allowed the Accused additional time to submit any further documentary evidence that he visited the jail twice, he submitted no further documentary evidence. Mrs. Phillips, however, testified that she believed the Accused met with her husband on June 13, 2009 and that the Accused had called her on June 13, 2009, to discuss getting her husband bailed out. TR 39–40, 47. Her account verifies the second visit.

was a dispute as to whether two visits occurred but based on all the evidence it appears there were two visits. Two visits are shown on the Accused's Final Statement. Ex. 19. The Final Statement was prepared after the Accused was terminated but before any disciplinary action was initiated against the Accused. The evidence supports the Accused's assertion that he met twice with Mr. Phillips.

The Accused claims that he informed Mr. Phillips during one of the jailhouse visits that he, the Accused, was subject to a suspension but would ensure that Mr. Phillips had competent, skilled representation at the July hearing. TR 147, 56, 162–163.

The Accused points to this testimony by Mr. Phillips to show that the Accused had told of his pending suspension while Mr. Phillips was in custody:

Q I am speaking of mid-June of '09.

A That would have been the DUI.

Q Okay. After you were released, did you maintain contact with my office?

A Not really. Because we knew you were under suspension and that's when we decided that we were going to be looking for Larry Workman in representing us the rest of the case throughout.

Q No further questions.

A Because we got, about a week later is when we got the letter stating that.

TR 87–88.

On redirect, Mr. Phillips stated that his first notice of the suspension was the letter of July 16, 2009. TR 88. Mr. Phillips had earlier testified that he was not aware of the suspension until the July 16, 2009 letter. Ex. 14, TR 65–66.

By June 11, 2009, Mr. Phillips, through the Accused, was offered a plea for dismissal of counts 2 and 4 of the charges and diversion on the DUI (count 1) and guilty plea on count 3 (disorderly conduct). Ex. 7. Mr. Phillips testified that he rejected the plea offer. TR 80, 81. On June 18, 2009, the Accused notified Mr. Phillips that the trial on the first charges was set for September 2009. Ex. 10.

Suspension Begins

The Accused's 60-day suspension began on June 21, 2009, and ended on August 19, 2009. During the suspension, the Accused's LLC entered into three fee agreements with new clients and a new agreement with Mr. Phillips.

Janice Watson, Independent Contractor, Acts for Eckrem LLC

Janice Watson, then an Oregon lawyer, contracted with the Accused to provide services through his LLC to clients of the LLC during the Accused's suspension. TR 95, 96.

She was an independent contractor. TR 96–97. When Ms. Watson appeared in court on behalf of the Accused’s client, a substitution of attorneys was filed. TR 108. She met with potential clients and told them that the Accused was under suspension. TR 109. She and the Accused discussed entering into fee agreements with potential clients of the LLC. TR 114. She testified that she would meet with the potential client, discuss the merits of the case and discuss with Leanna Eckrem, the Accused’s wife and office manager, what the fee should be. TR 114–115. Ms. Watson testified that the amount of retainers could have been based upon her opinion as to an individual client, but that she could not recall specifics. TR 117–118.

Ms. Watson said that in preparation for the Accused’s suspension, she and he contacted Bar Disciplinary Counsel, the ethics “people” at the Bar and the PLF, and also watched a CD on LLCs. TR 123–124. Ms. Watson stated that in her conversation with Ms. Hankin she understood that the Accused’s clients could be covered by someone working on behalf of the Accused’s LLC. TR 124. Ms. Watson testified that the Accused did not direct her, that he was not involved in the client process and that she gave direction to the office staff. TR 124–125. Ms. Watson denies that she was ever aware that she needed to be an employee rather than an independent contractor in order to meet with the Accused’s client while he was suspended. TR 126, 127.

The Phillipes Paid \$3500 for Representation in the Second and Third Cases

The Phillipes paid a \$3,500 retainer on July 13, 2009. Ex. 12. On July 15, 2009, Kristine Huff, a paralegal who works for the Accused, forwarded to Mr. Phillips a copy of the receipt for the funds and a letter identifying the two additional cases that would be handled by Eckrem’s LLC. Ex. 13.

Eckrem LLC Enters into Three Additional Fee Agreements

On July 13, 2009, the Eckrem LLC was retained on a child custody dispute. Ex. 15. The LLC, via Mrs. Eckrem, signed off on a fee agreement on July 16, 2009. Ex. 16. Again on July 31, 2009, the LLC signed off on a fee agreement. Ex. 17. None of the clients testified at the hearing; the circumstances surrounding the signing of the agreements are unknown.

Eckrem Sends a Letter on July 16, 2009

On July 16, 2009, the Accused sent a letter to Mr. Phillips stating: “I wanted to update you on a couple of things happening within our office. I have had a situation with a very old case that has resulted in my having a very short term suspension from practice. I wanted to personally let you know so you didn’t have to hear any untrue rumors ‘through the grapevine,’ again, this was only for 60 days.” Ex. 14. Ms. Huff, the paralegal, stated that she, Mrs. Eckrem, and John Eckrem had prepared the “form” letter and the letter had gone out to all their “active” clients. TR 241–242. Ms. Huff tailored the letter to fit the client and added court dates to make it more personal. TR 243. The signature at the bottom of the page was computer-generated. TR 244.

Mr. Phillips Appears in Court for the Second Arraignment

On July 24, 2009, Mr. Phillips was arraigned on the second set of charges in Jackson County Circuit Court. The Accused had arranged for Larry Workman, a Medford lawyer, to represent Mr. Phillips at the arraignment. TR 55, 56. Mr. Phillips and his wife decided that they wanted to retain Larry Workman to represent them with respect to all the charges. TR 57, 58.

The Phillipses Terminate the Eckrem Employment

On August 27, 2009, the Phillipses met with the Accused, terminated his services, and asked for a refund of the \$6,000, which had been paid to the Accused for the three sets of cases. TR 57, 58. Mrs. Phillips testified that when the Accused's services were terminated she and her husband requested that the Accused pay Mr. Workman \$2,500 for his work and return the initial fee of \$2,500. TR 58. (The initial fee of \$2,500 is not at issue in this complaint.) The Accused prepared a billing statement based upon OJIN and calendar entries because he did not keep contemporaneous billing notes as he believed he would have an earned upon receipt fee agreement. TR 90.

Mr. Phillips testified that the reason he and his wife made a complaint against the Accused is because Mr. Workman was not paid for his services by the Accused. TR 91.

DISCUSSION

A. RPC 1.15-1(c) (failing to deposit client funds into trust)

The applicable section of RPC 1.15-1 says:

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

The Accused concedes that his office received the \$3,500 fee for Mr. Phillips' second set of charges on July 13, 2009, through a credit card transaction, and that the funds were deposited directly into an office account not a trust account. TR 196. Without a signed "earned on receipt" fee agreement, the Accused violated this ethics section. When the retainer was received from the Phillipses on July 13, 2009, the Eckrem LLC should have placed the money in the LLC's trust account. Mr. Eckrem had already rendered services before the suspension and was entitled to bill for those incurred fees. The problem here is that the Accused's office placed all the funds in an operating account, which is improper unless there is a signed earned upon receipt fee agreement or all the fees have been earned. Neither had occurred.

The Phillipses believe that the Accused should have returned the entire \$6,000, which had been paid to the Accused for the three sets of cases. The first agreement is not the subject of any disciplinary issue. There is a signed earned upon receipt fee agreement for a \$2,500 earned upon receipt fee. Ex. 3. They were not entitled to and the Bar has made no claim that any portion of the \$2,500 fee should have been returned. The Phillipses were entitled to terminate the Accused's services and receive a refund for the unearned portion of the second fee. The Accused was entitled to be paid for time spent by him and his staff prior to his suspension.

B. Allegations of Misrepresentation: RPC 1.4(b) (failing to adequately explain a matter to a client) and RPC 8.4(a)(3) (conduct involving misrepresentation)

The Rules:

RPC 1.4 (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RPC 8.4(a)(3) states that : (a) It is professional misconduct for a lawyer to: (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;

The Bar argues that it has shown by clear and convincing evidence Mr. Phillips was not told of the Accused's suspension until after Mr. Phillips paid a \$3,500 fee for representation as to the June charges. There is no writing which evidences the Accused telling Mr. Phillips of the coming suspension. The Accused says that he told Mr. Phillips of the coming suspension during one of the two meetings they had in the Jackson County jail.

Mrs. Phillips' testimony was clear that she was not aware of the suspension. The question however is whether Mr. Phillips was made aware of the suspension before the second fee was paid. On direct, Mr. Phillips represented that when he received the letter of July 16 (Ex. 14), he was surprised and would not have paid the money if he had known of the suspension. TR 65. During cross, Mr. Phillips' testimony was at best shaky. He seemed confused about the dates, times, and proceedings. At the close of the cross, he stated that he had not kept in touch with the Accused's office after he got out of jail because he knew the Accused had been suspended. TR 87.

The standard the Bar must meet is to prove a violation by clear and convincing evidence. The Panel found Mr. Phillips' situation sympathetic. He served five tours in the Afghan and Iraq wars. He now suffers a service-related traumatic brain injury and PTSD. At the time of events at issue here, he was in jail and impaired by multiple addictions.

Eckrem's testimony was clear and concise. His demeanor at the hearing was open and responsive. Eckrem testified that he had told Mr. Phillips about the suspension during their jail conversations. Eckrem's records show a total of 5 hours were spent with Mr. Phillips during those two visits. Ex. 19. Eckrem's testimony was that he told Mr. Phillips about the

suspension and that Mr. Phillips seemed to understand but quickly moved onto his principal concern—getting bailed out.

The Bar asserts that the language of the July 16th letter proves that it was the first notice of the suspension. Ms. Huff, the Accused’s paralegal, testified that she sent a similar letter out to all current clients inserting information about individual clients’ coming hearings or trials. Ms. Huff’s testimony in this area was clear and believable. There was also testimony that the letter was sent out to combat rumors that Eckrem had been disbarred.

We believe that a careful lawyer under the circumstances should have put the notice to his client in writing either before the suspension or before the payment of the fee. We do not understand why the rule for suspended lawyers does not require written notice to clients in advance of the suspension. Eckrem is not a good paper lawyer and we shall discuss that in the sanctions section.

If the standard were preponderance, the balance would be evenly weighed in Mr. Phillips’ favor. The standard, however, is clear and convincing standard. With that standard, we find that the Bar did not prove these two claims.

C. RPC 5.5(a) (unlawful practice of law), ORS 9.160

Rules:

RPC 5.5 (a) states that: A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. Similarly, ORS 9.160 states that only active members of the bar may practice law.

In re Conduct of Devers, 328 Or 230, 237–238, 974 P2d 191 (1999), the Supreme Court said: This court has held that “any exercise of an intelligent choice, or an informed discretion in advising another of his legal rights and duties, will bring the activity within the practice of the profession.” *State Bar v. Security Escrows, Inc.* 233 Or 80, 89, 377 P2d 334 (1962); *see also State ex rel Oregon State Bar v. Lenske*, 284 Or 23, 31, 584 P2d 759 (1978) (drafting a contract is the practice of law).

In the *Devers* case, the Accused, during two periods of suspension, met with opposing counsel, and reviewed and drafted a settlement agreement. 328 Or at 238. In another matter, Devers reviewed pleadings and discovery requests and finally informed the court that he would have to resign because he was suspended. 328 Or at 239. No evidence was offered that the Accused participated in any legal activity while he was suspended.

In *In re Whipple*, 320 Or 476, 485 (1994), the evidence showed that Whipple had four client or case associated contacts during his suspension. There is no evidence that the Accused here had any client contacts whatsoever. In fact, all the evidence is to the contrary that there was no client contact.

The question this Panel must answer is whether preparation and signing of a fee agreement is practicing law. According to the only testimony we have, Janice Watson met with clients to discuss the firm handling potential cases and discussed with Mrs. Eckrem what the fee should be. Mrs. Eckrem signed the fee agreement. Ms. Watson testified that she spoke with Mrs. Eckrem, the office manager, about what fees should be charged. TR 117. She could not say one way or the other whether she arrived at the dollar amount for the fees in each of the fee agreements at issue. TR 114, 117–118.

The mere signing of the fee agreement on behalf of the firm does not appear to be “the practice of law.” One of the new clients could have testified as to whether it was Ms. Watson who explained and discussed the fee agreement with them. But that testimony was not offered to us. Under these circumstances, we do not find that signing the fee agreements is by itself the unlawful practice of law.

The Bar’s next contention is that Janice Watson, because she worked as an independent contractor for Eckrem’s LLC while he was suspended, could not be the legal representative for the LLC. She testified that she talked with the Bar, the PLF, and reviewed other materials to arrive at her understanding that if the Accused’s law firm was in the form of an LLC, she as a licensed lawyer could deal with his clients and potential clients. TR 123–124. She directed the LLC staff, met with clients, and appeared in court for Eckrem’s clients. TR 124–125.

As we understand the Bar’s position, because Ms. Watson was an independent contractor rather than an employee she could not act on behalf of the LLC. For that proposition the Bar cites a Kansas case, *In re Miller*, 238 P3d 227 (2010). Mr. Miller was suspended from the practice of law for two years for improper billing practices. Mr. Miller sent a letter to opposing counsel during his suspension. The opposing counsel reported that communication to the Kansas bar. The Kansas disciplinary investigator requested a copy of the file, which was not produced. A disciplinary proceeding was initiated. Mr. Miller continued to send letters out to opposing counsel and others with his signature line but unsigned. Others letters were sent out to third parties on legal matters with Mr. Miller’s signature. Mr. Miller hired an independent contractor who signed Mr. Miller’s name to correspondence. Mr. Miller testified that he had “given” his corporation to the independent contractor and also that the independent contractor was a shareholder of the corporation. The independent contractor had no knowledge of being given the corporation or that he was a shareholder in the corporation. Mr. Miller signed documents stating that the independent contractor was the president and treasurer of the corporation, but the independent contractor had no authority over the finances of the firm. Mr. Miller never provided the Bar with the file requested for review.

There is nothing in our record which begins to equate Eckrem’s conduct with Mr. Miller’s. In this case, Ms. Watson was retained to meet with clients and to direct the staff. She did not sign documents with Eckrem’s name and there was no attempt to change the

status of the corporation to suggest Ms. Watson was now the owner. Both Ms. Watson and the Accused researched whether it would be appropriate for Ms. Watson to meet with and represent clients and potential clients of the firm in the form an LLC. There was no attempt to hide what they were doing, rather they contacted the Bar and the PLF in an attempt to comply with the rules. They sincerely believed that what they were doing was within allowable parameters. No court records or other documents were presented indicating that either Ms. Watson or Mr. Eckrem acted improperly or made misrepresentations to clients. If clients were misled by these three fee agreements or by any other conduct of the Accused's, the clients should have been produced to testify at the hearing. No evidence of that sort was produced.

We find that the Accused did not violate either of these rules.

SANCTIONS

The Panel found that the Accused violated the rule requiring that unearned funds be placed in the lawyer trust account.

To determine the appropriate sanction, we must consider (1) the duty violated, (2) the Accused's mental state, and (3) the actual or potential injury caused by the Accused's misconduct. *In re Devers*, 328 Or 230, 241, 974 P2d 191 (1999).

The Duty Violated

The duty violated is the requirement that a lawyer have a signed, written earned upon receipt fee agreement in place at the time payment is received or the client's money must be placed in the lawyer's trust account.

The Accused's Mental State

We found the Accused cooperative and open in his defense of himself. This breach occurred as a result of (1) a faulty office system which requires all client money received by credit card to be placed in the Accused's operating account and (2) failure of the Accused and his staff to ensure that a signed, earned upon receipt fee agreement was in place before placing funds into the Accused's operating account. For lawyers who accept credit cards, particularly in advance of rendering services, this area is a potential trap.

Actual or Potential Injury

The Accused had already earned a portion of the fees before the suspension and before credit card transfer was made. The Accused ensured that Mr. Phillips had competent, skilled counsel at an arraignment during the Accused's suspension. The Phillipses were satisfied with the replacement counsel. They fired the Accused and hired the replacement counsel. They were satisfied with the replacement lawyer's services in concluding all the cases. The Accused timely returned the unearned portion of the fee with an accounting. Lest we forget, the Accused met with Mr. Phillips twice while Mr. Phillips was in custody on new

charges and talked with his wife before the Accused was paid any fee. As the Accused pointed out in his testimony, he does this periodically and often never receives compensation for that time. If the fees had been paid into trust and the Accused had billed for fees incurred, there would be no violation. Upon being fired by Mr. Phillips, the Accused provided an accounting and returned the unearned portion of the fee promptly. We do not find that there was either actual or potential injury. The Accused offered to pay the unearned portion of the fee directly to the replacement lawyer, but the Phillipses declined that suggestion and received the money. According to the Phillipses, they have not paid the replacement lawyer.

We understand that any violation may lower the public view of our profession. We also recognized that Mrs. Phillips was very angry and upset. The Phillipses' life had been in turmoil. Mr. Phillips had been in serious trouble since leaving military service. He had served five tours in Afghanistan and Iraq, returning to civilian life with a brain injury and PTSD. The Trial Panel was concerned about the situation the Phillipses found themselves in with little services to help pave the way for them to return to civilian life. We also felt that the anger at the Accused was misplaced. Nonetheless, we were deeply disturbed about their situation and hope that they are able to find the support they need. Our society owes our injured servicemen and women assistance in getting back into civilian life.

Aggravating Circumstances

There is an aggravating circumstance in this case in that the Accused has a previous suspension for a failure to place unearned fees into his trust account. Because of this circumstance, the Panel will recommend an additional month of suspension.

As to mitigating circumstances, the Panel finds that the Accused assured that his client would have competent counsel, met promptly with the Phillipses at their request, prepared an accounting, and returned the unearned fee promptly. We do not find that the Accused acted dishonestly.

THE DISCIPLINE

The panel believes that Eckrem needs work on his office practices. He and his staff are apparently unaware of the problems which may arise from accepting payment by credit card. Eckrem's office received the Phillips' funds through a credit card transaction, which automatically put the funds in an operating account. Unless there is a signed fee agreement with the client, including the current language required by the rules, depositing the funds into an operating account is a violation of the rules.

Even though the Accused has practiced law for 16 years, there is no evidence that he was mentored and received the benefit of a more experienced lawyer in the business of the practice of law. He has worked as a public defender, for a small firm, and for himself. Unfortunately, many new lawyers do not have the opportunity to learn the business of the practice of law from a skilled lawyer who also understands that law is both a profession and a

business. We note that the Oregon Bar has initiated a program for the mentoring of new lawyers by seasoned lawyers. This is a boon to new lawyers and to the profession.

We sanction the Accused as follows:

1. The Accused is suspended for 90 days pursuant to BR 6.1(a)(iv);
2. The suspension is stayed in whole on the condition that the following probationary terms are met within 180 days of the effective date of this order:
 - a. The Accused is required within 30 days of the effective date of this order to request that the Professional Liability Fund (PLF) initiate a review of all his office systems, including fee agreements, credit card transaction systems, and trust accounting practices, as soon as is practicable for the PLF, to undertake all changes recommended by the PLF, to demonstrate that his office has successfully implemented the changes, and to submit a report under penalty of perjury to the Bar within 180 days of the effective date of this order describing the recommendations made by the PLF and describing how each recommendation was implemented.
 - b. The Accused must also complete the Ethics School set forth in BR 6.4 within 180 days of the effective date of this order or the next available Ethics School, whichever is later.
 - c. If the chairperson of the State Disciplinary Board or the Oregon Supreme Court deems this particular probation appropriate to appoint a person to supervise the Accused's probation, the Accused shall cooperate with that person as a condition of this probation. BR 6.2.

IT IS SO ORDERED.

February 24, 2012

/s/ Megan B. Annand

Megan B. Annand
Trial Panel, Chair

/s/ Penny Austin

Penny Austin, Attorney Member

/s/ Phil Paquin

Phil Paquin, Public Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 10-39
)	
JAMES J. STOUT,)	
)	
Accused.)	

Counsel for the Bar:	Michael Jewett; Kellie F. Johnson
Counsel for the Accused:	David J. Elkanich
Disciplinary Board:	John L. Barlow, Chair R. Paul Frasier Thomas W. Pyle, Public Member
Disposition:	Trial Panel Opinion. Dismissal.
Effective Date of Opinion:	May 1, 2012

TRIAL PANEL OPINION

Counsel for the Bar: Michael Jewett, Kellie F. Johnson

Counsel for the Accused: David J. Elkanich

Disciplinary Board: John L. Barlow, Esquire; Thomas W. Pyle, Public Member. (R. Paul Frasier attended the hearing on June 8, 2011 but resigned from the Disciplinary Board thereafter and took no part in the deliberations or decision of the panel. The Bar and the Accused stipulated to adjudication of the matter by the remaining two panel members.)

Disposition of Allegations of Violations of RPC 3.3(a)(1), RPC 3.3(d), RPC 3.5(b), RPC 8.4(a)(3), and RPC 8.4(a)(4) of the Rules of Professional Conduct

Trial Panel Opinion: No violations found.

Effective Date of Opinion: May 1, 2012

OPINION OF TRIAL PANEL

Introduction

On June 8, 2011, this matter was heard by a Trial Panel consisting of John L. Barlow, Chair, R. Paul Frasier, Esq., and Public Member Thomas W. Pyle. Kellie F. Johnson,

Assistant Disciplinary Council and Michael Jewett, Esq. represented the Oregon State Bar. David J. Elkanich, Esq. represented the Accused.

R. Paul Frasier resigned from the Disciplinary Board and his resignation was accepted by the Supreme Court on July 17, 2011. Mr. Frasier took no part in the deliberations or decision of the panel. By Stipulation dated July 29, 2011, the Bar and the Accused stipulated that this matter would proceed and be adjudicated by the remaining two members of the Trial Panel. Both parties further stipulated that the adjudication of this matter by two panel members would not be a basis or ground for appeal of the Trial Panel decision. A copy of that stipulation is attached hereto as Exhibit A. Copies of the Order correcting and settling the transcript are attached hereto as Exhibit B.

Following the hearing, both the Bar and the Accused filed Motions for Orders making corrections to the transcript. Neither party objected to the other's Motion and both Motions were granted. The Trial Panel reviewed the transcript of testimony as corrected by the Motions of each party. The order settling the transcript was signed September 19, 2011.

Both the Bar and the Accused submitted written Closing Arguments on September 26, 2011. Following the simultaneous submissions of Closing Argument, on October 5, 2011, the Accused filed a Motion to Strike portions of the Bar's Closing Argument. The Bar filed a response to that Motion on October 12, 2011. The Trial Panel concludes that such a motion is not proper under Bar Rule of Procedure 4.4 and therefore denies that motion.

The Bar's Complaint

The Bar charged the Accused with violations of RPC 3.3(a)(1) (knowingly making a false statement of law or fact to a tribunal); RPC 3.3(d) (failing to disclose material facts in an *ex parte* communication with a judge); RPC 3.5(b) (unauthorized *ex parte* communication with a judge); RPC 8.4(a)(3) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice). In its Trial Memorandum, the Bar withdrew its Complaint based on RPC 3.5(b).

The Accused's Answer

The Accused filed an Answer to the Complaint on May 24, 2010, in which he denied the alleged violations of the disciplinary rules.

Witnesses, Exhibits, and Transcript

The Bar called Matthew Sutton, Pamela Brown, Lewis Dahlin, and James Stout (adversely) to support its case. Bar Exhibits 5–11 and 13–92 were offered and received into evidence. The Accused testified on his own behalf and also called as witnesses Joseph Kellerman and Richard B. Thierolf, Jr. Court reporting services were provided by Shirley Blayne and Blayne Reporting of Medford, Oregon.

The Trial Panel considered the pleadings, exhibits, testimony, and arguments of counsel and the Accused, and offers the following finding of facts, conclusions, and dispositions.

Findings of Fact

1. In August 2008, the Accused began representing Daniel Norlander, who owned a beauty supply business in Medford, Oregon called Synergy Salon Group (hereinafter “SSG”). The business was managed by Pam Brown and Kathe Adams.

2. On or about October 29, 2007, Brown and her husband loaned \$24,000.00 to Norlander and SSG to purchase inventory and to fund SSG’s operations. At around the same time, Adams loaned \$20,000.00 to Norlander and SSG. The Adams loan was memorialized by a promissory note dated October 27, 2007. That note stated that it was “secured by a [*sic*] Inventory of Synergy Salon Group, dated October 29, 1907 [*sic*].”

3. A dispute arose between Brown and Norlander regarding Brown’s management of SSG. Norlander came to Medford, Oregon to review his accounts, to take inventory, and to terminate the employment of Brown and Adams. When Norlander came to Oregon, he learned that the current, commercial lease for SSG’s building identified Brown and Adams as the lessees. He also learned that Brown and Adams had created an Oregon LLC under the name Synergy Salon Group, LLC.

4. Norlander hired the Accused to assist him in recovering his business and property during his visit to Medford. On September 24, 2008, the Accused prepared a Complaint for Declaratory Judgment on behalf of Norlander seeking a declaration that Norlander was the sole owner of SSG and its inventory, that Brown and Adams had no interest in SSG and its inventory, and prohibiting Brown and Adams from doing business as SSG or exerting any control over its assets. At that time, the Accused did not prepare an *ex parte* motion for claim and delivery or other provisional process.

5. Brown consulted with Medford attorney Matthew Sutton regarding the matter. In Brown’s initial contact with Sutton’s office, she told his legal assistant that she believed that Norlander had a court order to take possession of SSG’s inventory. Sutton’s legal assistant called the Accused’s office and asked for a copy of that order. On the following day, September 25, 2008, Sutton called the Accused and in that conversation the Accused advised Sutton that he had not yet obtained an order from the court but would be seeking one. The Accused further stated that he was seeking an Order to Show Cause but was not seeking an order requiring the immediate transfer of the SSG premises and inventory to Norlander.

6. When Sutton met with Brown on September 25, 2008, he advised her that she did not need to take immediate action because Norlander was not seeking an emergency order. Brown decided not to retain Sutton at that time. That afternoon, Sutton sent an email to the Accused to advise him that he would not be representing Brown and that Brown would

likely be contacting the Accused to try to resolve the matter. That email bears a time stamp of 2:03 p.m.

7. At 4:58 p.m. on September 25, Norlander sent an email to the Accused and also contacted him by telephone. Norlander stated that he had found additional information regarding the activities of Brown and Adams and that he was concerned that they would hide SSG's inventory from him. Following his telephone discussions with Norlander, the Accused drafted the Motion for Claim and Delivery and an Affidavit for Norlander to sign, including the additional representations made by Norlander.

8. On September 26, 2008, the Accused spoke with Brown by telephone. In that conversation, Ms. Brown asserted that Norlander owed her money and described some documentation that she believed supported her contention. Those documents were then sent to the Accused via facsimile transmission. The documents included a list of the SSG bills Brown asserted she had paid and the Promissory Note in the amount of \$20,000.00 signed by Norlander. The Accused's conversation with Brown and the facsimile transmission occurred by 10:30 a.m. on September 26.

9. On the afternoon of September 26, 2008, the Accused filed a Motion for an *Ex Parte* Order for Claim and Delivery. The Motion was presented to Jackson County Circuit Judge Phillip Arnold without notice to Brown or Sutton. The Affidavit of Norlander attached to the Motion included representations that Norlander had paid in full for all SSG inventory, that he feared Brown would move the inventory elsewhere, and that Brown had no interest in the inventory. The Court granted the Accused's Motion but increased the bond requirement from \$1,000.00 to \$10,000.00.

10. On September 30, 2008, the Jackson County Sheriff's Office seized the SSG inventory and delivered it to Norlander. Norlander took the inventory out of the state of Oregon.

11. Some time after September 25, Brown and Adams hired Medford attorney Lew Dahlin. On October 3, 2008, Dahlin filed a Motion to Set Aside the order obtained by the Accused. He also filed an Answer, with Counterclaims, alleging that representations in Norlander's Affidavit were false and asserting claims for amounts owed by Norlander to Adams and Brown.

12. On November 7, 2008, Judge Arnold set aside the Order for Claim and Delivery. On March 25, 2009, Judge Arnold entered findings of fact, including findings that Norlander had misrepresented the facts in paragraphs 6 and 7 of his Affidavit by asserting ownership of all of the SSG inventory, by asserting that Brown and Adams had no interest in the inventory, and by asserting that he had been unaware of the formation of the LLC. Judge Arnold made no findings or comments on the record regarding the Accused's disclosures to the court.

Discussion and Conclusions of Law

First Cause of Complaint

RPC 3.3 (a) (1) Knowingly making a false statement of fact to a tribunal.

Second Cause of Complaint

RPC 3.3(d) Failing to disclose material facts in an *ex parte* communication with a judge.

The Bar has not met its burden of proof to establish violations of these two rules. Its allegations supporting the first two causes of complaint are that, in presenting his Motion for *Ex Parte* Order, the Accused represented to the Court that he did not know whether Brown had waived her right to be heard and that he failed to disclose whether he had served Brown with the complaint.

The first allegation is based on the statement in the Motion filed by the Accused which states “Plaintiff has no knowledge if the Defendants have waived their rights to be heard.” After reviewing the evidence, the Trial Panel is satisfied with the Accused’s testimony that he included that allegation to satisfy the pleading requirements of ORCP 83 A(8), which required the Accused to attach any written waiver of the right to be heard to the Motion. Given that this was the first time in his many years of practice that the Accused had filed a Motion for Claim and Delivery, the Trial Panel believes that the Accused included that language in the Motion because it was consistent with the instructions provided by the Oregon State Bar’s Continuing Legal Education (“CLE”) publications on the subject, and not because the Accused intended to mislead the court. The Bar has not met its burden to establish that the Accused knowingly made a false statement of fact to the court by including that statement in the Motion.

As to the second allegation, that the Accused failed to inform the Court that he had not served the complaint or otherwise provided notice to Brown or Adams, the Trial Panel concludes that the Accused discussed the notice issue in response to a question from Judge Arnold, informed him that he was aware of no rule that required notice, and that had Judge Arnold been dissatisfied with the Accused’s response he would not have signed the Order.

In reaching its conclusion as to the first and second causes of complaint, the Trial Panel also relies on the credible, expert testimony of attorney Joseph Kellerman. A substantial portion of Kellerman’s practice involves debt collection, including the use of provisional process under ORCP 83 A. Kellerman’s testimony established that service of the complaint before seeking *ex parte* relief is not required and that routine practice under ORCP 83 A is to serve all pleadings at the same time, including the initial complaint and the documents in support of temporary relief. As Kellerman explained, if service of the complaint were a prerequisite to seeking *ex parte* relief, the respondents in such proceedings would have an opportunity to remove the subject property before it could be seized, which would render ineffectual the remedies provided under ORCP 83 A. Kellerman also testified

that the Accused's statement that "Plaintiff has no knowledge if the Defendants have waived their rights to be heard," in the complaint, was consistent with acceptable pleading in the absence of a written waiver.

Third Cause of Complaint

RPC 8.4(a)(3) Conduct Involving Dishonesty, Fraud, Deceit, or Misrepresentation.

The Bar has not met its burden of proving this rule violation by clear and convincing evidence. The Trial Panel finds no allegation or proof of fraud. The Trial Panel also finds no clear and convincing evidence of conduct indicating the Accused's disposition to "lie, cheat or defraud," which is necessary to find a violation of this rule for dishonesty. The Trial Panel applies the same analysis to the deceit element of this rule, which leaves the allegation of misrepresentation.

Aside from the facts discussed in the first and second causes of complaint, above, the only additional conduct alleged as misrepresentation is the Accused's failure to disclose to Sutton or Brown his change of tactics after his last conversation with Sutton. The Trial Panel has found that the pleadings filed by the Accused and his meeting with Judge Arnold did not involve any material misrepresentation or failure to disclose information. The remaining issue is whether the Accused engaged in misrepresentation in his dealings with Mr. Sutton.

The statements made by the Accused to Mr. Sutton were true at the time that he made them and he did not make them with any intent to deceive or mislead Mr. Sutton. There is no violation of RPC 8.4(a)(3) arising from the Accused's conversations with Mr. Sutton or the communications between their respective offices.

The Trial Panel is more troubled by the Accused's subsequent actions later on September 25 and 26, 2008, after he received new information and instructions from Norlander. Those concerns boil down to: (1) whether the Accused is required by the Rules of Professional Conduct to contact Mr. Sutton, at a time when the Accused knew that Mr. Sutton was not representing Brown; and (2) whether the Accused had a duty to contact Brown to let her know that he was attempting to obtain *ex parte* relief after previously telling Sutton that he did not intend to do so.

In light of the Accused's duties to his client, also addressed in the Rules of Professional Conduct, and the terms of the provisional process rules contained in ORCP 83 A, the Trial Panel is satisfied that the Accused had no duty to report his client's subsequent instructions to Sutton or Brown. The Rules of Professional Conduct which address the lawyer's duty to abide by a client's decisions concerning the objectives of the representation and to maintain client confidences would not have permitted the Accused to notify Sutton or Brown. None of the circumstances identified as exceptions to those rules apply to the facts of this case. The Trial Panel is constrained to conclude that it cannot find a violation of RPC

8.4(a)(3) based upon the Accused's compliance with other rules creating his duties to Norlander.

RPC 8.4(a)(4) Conduct Prejudicial to the Administration of Justice.

The Bar has not met its burden to prove these allegations by clear and convincing evidence. This allegation depends upon the same facts discussed in the first two causes of complaint, above. The threshold requirement to establish a violation is proof that the Accused did something that he should not have done or failed to do something he should have done. The Bar has not established either of those elements.

Disposition

Based on the foregoing discussion, the Trial Panel concludes that the Bar has failed to prove, by clear and convincing evidence, that the Accused committed the charged violations. The Bar's Complaint is dismissed.

Dated this 28th day of February, 2012.

/s/ John L. Barlow

John L. Barlow, OSB No. 811590
Trial Panel Chair

/s/ Thomas Pyle

Thomas Pyle
Trial Panel Public Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 11-54
)
RICHARD D. FRANKLIN,)
)
Accused.)

Counsel for the Bar: Stacy J. Hankin
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violations of DR 6-101(B), RPC 1.3, RPC 1.4(a), RPC
1.16(c), and RPC 1.16(d). Stipulation for Discipline.
30-day suspension.
Effective Date of Order: June 6, 2012

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 thirty (30) days, effective June 6, 2012, for violations of DR 6-101(B); RPC 1.3; RPC 1.4(a); RPC 1.16(c); and RPC 1.16(d).

DATED this 29th day of May, 2012.

/s/ William B. Crow
William B. Crow
State Disciplinary Board Chairperson

/s/ Nancy M. Cooper
Nancy M. Cooper, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Richard D. Franklin, 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 24, 1982, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On July 21, 2011, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 6-101(B), RPC 1.3, RPC 1.4(a), RPC 1.16(c), and RPC 1.16(d). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

On or about October 31, 2002, the Accused, on behalf of Bonnie Maes (hereinafter “Maes”) filed a lawsuit against Fisher Implement Co. (hereinafter “Fisher”). The lawsuit alleged that Fisher acted improperly when it confiscated a tractor, a loader, and a mower implement owned by Maes.

6.

On November 18, 2003, the court granted a stipulated motion placing the Fisher lawsuit on the two-year abatement docket for the purposes of mediation and potential entry into independent arbitration. The Accused never informed Maes that her case was subject to dismissal in two years.

7.

In late January and early February 2004, the Accused and Fisher's lawyer agreed to employ a certain mediator and the Accused was to contact the mediator. The Accused failed to contact the mediator or otherwise pursue mediation despite another letter from Fisher's lawyer inquiring about the matter and offering to contact the mediator himself if the Accused was too busy to do so.

8.

The Accused informed Maes that he had entered into an agreement with Fisher's lawyer that there would be no statute of limitations on her claims. The Accused believed such an agreement existed, but failed to secure one.

9.

In or around March 2004, Maes received \$15,007.21 from Fisher in partial satisfaction of any judgment she might obtain against Fisher as a result of the lawsuit.

10.

Periodically thereafter, Maes left telephone messages for the Accused asking about the status of the matter. At times, the Accused did not promptly return her calls. When the Accused returned her calls, he re-iterated that Maes should not worry about it because there was no statute of limitations.

11.

On November 18, 2005, the abatement period expired. On May 5, 2006, the court entered a judgment of dismissal. The Accused failed to pursue Maes' lawsuit either near or at the time the abatement period expired or at anytime thereafter.

12.

Sometime after May 2006, the Accused decided he no longer wished to represent Maes in the Fisher matter. The Accused failed to file an application to resign, as required by UTCR 3.140(1), failed to notify the court and Fisher's lawyer that he was withdrawing, and otherwise failed to protect Maes' interests.

13.

Sometime in early 2008, Maes requested and obtained a copy of her file from the Accused. At that time she wanted another lawyer, who she had recently retained in another matter, to look into the Fisher lawsuit.

14.

Between June and September 2008, Maes and her other lawyer asked the Accused to provide the agreement he had with Fisher's lawyer that there was no statute of limitations on

Maes' claims. The Accused never provided Maes with the agreement. In early November 2008, Maes discovered, through her new lawyer, that the Fisher lawsuit had been dismissed in 2006.

Violations

15.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 14, he violated DR 6-101(B), RPC 1.3, RPC 1.4(a), RPC 1.16(c), and RPC 1.16(d).

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 a duty he owed to Maes to promptly and diligently pursue her legal matter and communicate with her. *Standards* § 4.4. The Accused also violated a duty he owed to Maes and as a professional when he failed protect Maes' interests and properly withdraw. *Standard* § 7.0.
- b. **Mental State.** The Accused acted knowingly when he failed to follow-up on potential mediation despite two letters from Fisher's lawyer reminding him to do so, when he failed to notify the court and others that he was no longer representing Maes, and failed to otherwise protect Maes' interests. The Accused acted negligently in failing to secure a tolling agreement and in failing to recognize that the two-year abatement period had expired.
- c. **Injury.** Maes sustained actual injury. As a result of the Accused's misconduct, she lost the opportunity to pursue her claims. *In re Obert*, 336 Or 640, 65, 89 P3d 1173 (2004). Had the Accused either informed Maes that the lawsuit was subject to dismissal in two years or properly withdrawn before the lawsuit was dismissed, Maes would have had the opportunity to pursue it on her own or with the help of another lawyer. Maes also experienced anxiety and frustration when she left numerous unanswered telephone messages for the Accused. *In re Knappenberger*, 337 Or 15, 31, 90 P3d 614 (2004).
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Multiple offenses. *Standards* § 9.22(d).

2. Substantial experience in the practice of law. The Accused has been licensed to practice law in Oregon since 1982. *Standards* § 9.22(i).

e. Mitigating Circumstances. Mitigating circumstances include:

1. Absence of a prior disciplinary record. *Standards* § 9.32(a).
2. Absence of a dishonest or selfish motive. *Standards* § 9.32(b).

17.

Under the ABA *Standards*, suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* § 4.42. 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.

18.

Generally, suspensions of 30 days or longer have been appropriate when a lawyer's neglect and inattention have resulted in lost opportunities to a client. *In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (30-day suspension imposed on lawyer who failed to communicate with his client for an extended period and failed to return the client's file for two years after it was requested); *In re Redden*, 342 Or 393, 397–402, 153 P3d 113 (2007) (court canvassed prior relevant cases and imposed a 60-day suspension on a lawyer who, for almost two years, failed to complete a client's legal matter). For the most part, longer suspensions have been imposed when a lawyer has a prior history of engaging in similar misconduct, the aggravating circumstances heavily outweigh the mitigating circumstances, or the lawyer engaged in other serious misconduct.

A suspension is also appropriate when a lawyer's failure to properly withdraw causes actual injury to a client. *In re Castanza*, 350 Or 293, 253 P3d 1057 (2011) (court affirmed a trial panel opinion suspending a lawyer for 60 days where he failed to properly withdraw resulting in dismissal of his client's lawsuit and a judgment taken against her).

This case is most similar to *In re Snyder*, *supra*, because the Accused has no prior discipline in over 20 years of practice and the aggravating circumstances do not heavily outweigh the mitigating circumstances.

19.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 30 days for violation of DR 6-101(B), RPC 1.3, RPC 1.4(a), RPC 1.16(c), and RPC 1.16(d), the sanction to be effective June 6, 2012.

20.

In addition, on or before the date the Accused is reinstated from his 30-day suspension, but in no event later than December 31, 2012, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$1,083.06, incurred for service and depositions. Should the Accused fail to seek reinstatement and fail to pay \$1,083.06 in full by December 31, 2012, 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.

21.

The Accused acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. In this regard, the Accused has arranged for Donald Ross, PO Box 22148, Milwaukie, OR 97269, an active member of the Oregon State Bar, to either take possession of or have ongoing access to the Accused's client files and serve as the contact person for clients in need of the files during the term of the Accused's suspension. The Accused represents that Donald Ross has agreed to accept this responsibility.

22.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

23.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

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.

Cite as *In re Franklin*, 26 DB Rptr 122 (2012)

EXECUTED this 21st day of May, 2012.

/s/ Richard D. Franklin

Richard D. Franklin

OSB No. 822600

EXECUTED this 23rd day of May, 2012.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 862028

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 10-115
)
CAROL J. FREDRICK,)
)
Accused.)

Counsel for the Bar: Kellie F. Johnson
Counsel for the Accused: Thomas J. Flaherty
Disciplinary Board: Pamela E. Yee, Chair
William D. Bailey
Loni J. Bramson, Ph.D., Public Member
Disposition: Violation of DR 6-101(A). Trial Panel Opinion.
Public Reprimand.
Effective Date of Opinion: May 30, 2012

DISCIPLINARY OPINION OF THE TRIAL PANEL

Counsel for the Bar Kellie Johnson, OSB No. 970688
Assistant Disciplinary Counsel
Counsel for the Accused Thomas J. Flaherty, OSB No. 740965
Disciplinary Board Pamela E. Yee, OSB No. 87372, Chair
William D. Bailey, OSB No. 690212
Loni J. Bramson, Ph.D., Public Member
Hearing Date December 28, 2011
Disposition Not guilty of a violation of DR 5-105(E)
Not guilty of a violation of DR 7-104(A)(2)
Guilty of a violation of DR 6-101(A)
Effective Date of Opinion: May 30, 2012

SECTION ONE: INTRODUCTION

Date and Nature of Charge: By Formal Complaint dated September 3, 2010, the Oregon State Bar (“the Bar”) has charged the Accused with violation of the following:

1. DR 5-105(E) of the Code of Professional Responsibility which provides, in relevant part, as follows:

Conflict of Interest: Former and Current Clients

- (E) Current Client Conflicts—Prohibition. Except as provided in DR 5-105(F) a lawyer shall not represent multiple current clients in any matters when such representation would result in actual or likely conflict.

2. DR 6-101(A) of the Code of Professional Responsibility which provides, in relevant part, as follows:

Competence and Diligence.

- (A) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

3. DR 7-104(A)(2) of the Code of Professional Responsibility which provides, in relevant part, as follows:

Communicating with a Person Represented by Counsel

- (A) During the course of the lawyer’s representation of a client, a lawyer shall not:
 - (2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have reasonable possibility of being in conflict with the interest of lawyer’s client.

The Accused.

The Accused is Carol J. Fredrick, OSB No. 883705, having an office and place of business in Yamhill County, Oregon. She is a named partner in the firm and she primarily handles family and criminal matters.

Date of Hearing and Attorneys for the Parties.

The hearing on this matter was heard on December 28, 2011. The attorneys for the parties are as follows:

Counsel for the Bar: Kellie Johnson

Counsel for the Accused: Thomas Flaherty

Witness and Exhibits Admitted.

The witnesses were as follows:

1. Shannon Venhaus (Client of the Accused);
2. Gene Venhaus (father of Shannon Venhaus);
3. Carol Fredrick (the Accused);
4. Gordon Hall, Attorney at Law (Oregon attorney specializing in bankruptcy);
5. Robert DeMary, Attorney at Law (Oregon attorney handling family law matters); and
6. Robert M. Johnstone, Attorney at Law (Oregon attorney for Gene Venhaus).

The Exhibits offered by the parties that were admitted include Bar Exhibits numbered 1 through 56 and defense Exhibits numbered 1 through 5, 7, and 8.

Prehearing Rulings.

The Bar filed a Motion to Allow Telephone Testimony of Robert M. Johnstone, which was allowed.

Summary of Complaint.

The alleged misconduct occurred prior to 2005, therefore, the Code of Professional Responsibility (DRs), rather than the Rules of Professional Conduct (RPCs), apply to this case.

First Cause of Complaint—Conflict of Interest.

The alleged misconduct of the Accused by the Bar was that the Accused violated DR 5-105(E) by representing Gene Venhaus and Shannon Venhaus, father and daughter, (hereinafter referred to as “Venhaus” and “Shannon”) when their interests were adverse and, as such, an actual conflict of interest existed.

First Complaint—Failure to Provide Competent Representation.

The Bar has alleged that the Accused failed to provide competent representation to Venhaus thus violating DR 6-101(A) when she advised him to file a security interest in real property via a UCC-1 financing statement. The Bar alleged that the Accused advised Venhaus that the security interest would attach to both Shannon and her then husband, Douglas Nelson’s (hereinafter referred to as “Nelson”), interest in property even though only Shannon signed the note and the Uniform Commercial Code does not apply to real property in this manner. Further, that the Accused did not know the security interest would not attach to the real property when a UCC-1 is filed with the Secretary of State and/or recorded with the county recorder.

As to Shannon, the Bar alleged that the Accused failed to provide competent representation when the Accused failed to advise Shannon as follows:

1. That she represented Venhaus;
2. Not to sign the note;
3. That Venhaus could recover from her the amount of the note;
4. That if she signed the note, she would be creating evidence of money owed to Venhaus; and
5. To include a provision for repayment to Venhaus in the judgment for dissolution of marriage.

Second Complaint—Advising an Unrepresented Person Whose Interests Conflict with Those of Client.

In the alternative, the Bar alleges that the Accused violated DR 7-104(A)(2) by giving legal advice to an unrepresented person (Venhaus) whose interests were adverse to her client (Shannon).

SECTION TWO: FINDINGS OF FACT

Summary of Relevant Background.

In April 2003, Shannon Venhaus (hereafter referred to as “Shannon”) retained the services of Carol Fredrick (the “Accused”) to represent her in a criminal matter arising out of a domestic disturbance. Shannon had been charged with Assault II as to her now former husband, Douglas Nelson (hereinafter referred to as “Nelson”), and was served with a restraining order barring her from the family home. Shannon was accompanied by her father, Gene Venhaus (hereinafter referred to as “Venhaus”) for the initial consultation with the Accused. Shannon signed an agreement entitled “Legal Representation Agreement” on April 7, 2003, to retain the services of the Accused. At all times, Venhaus paid the fees incurred by Shannon on this matter.

Subsequent to the Assault II charge, Shannon was charged with Distributing a Controlled Substance and Possession of a Controlled Substance (DCS/PCS) in an unrelated incident. The Accused was asked to represent Shannon as to these charges. Venhaus paid all the attorney fees for Shannon in this matter.

Venhaus accompanied Shannon to many, if not all, of her visits with the Accused. As her parent, Venhaus acted as Shannon’s authorized agent, telephoning the Accused with inquiries or to give information and instructions, relaying advice and stopping by the Accused’s office alone to deliver papers or to ask questions relating to Shannon’s cases. Shannon missed some of her appointments with the Accused, however, Venhaus would keep the appointments without Shannon to provide and gather information. Shannon was not as attentive to her cases as needed and both she and the Accused were required to rely upon her

father's assistance. Venhaus paid all the attorney fees for Shannon. Throughout the relevant time period, Shannon was unemployed, lived with her parents, and she and Venhaus received their mail at the same address.

During some of these meetings it was related to the Accused that it appeared Shannon's marriage to Nelson would be dissolved, their jointly owned home sold, and the proceeds divided. The Accused was made aware that the couple had used Shannon's money to purchase the house and the seven acres it sat on. In the context of these discussions, Shannon, Venhaus, or both told the Accused of a suspicion that Nelson would attempt to cut Shannon out of her share of the marital estate by some scheme amounting to a fraudulent transfer. The Accused was asked whether any steps could be taken in connection with the expected dissolution proceeding to protect Shannon's interest in the marital estate. It was made evident to the Accused that both Shannon and Venhaus wanted to recover money for Shannon's benefit.

In the course of formulating a strategy to obtain for Shannon an equitable division of proceeds from a sale of the home, it also came out that Venhaus had, at times during the marriage, paid various living expenses for the couple's joint benefit. Both Shannon and Venhaus told the Accused that, at the times of the transfers, there were no discussions or agreements concerning whether these payments were intended as gifts or loans but that no party had an expectation that the money would be repaid. In the presence of Shannon and Venhaus, the Accused advised Shannon that documentation of the character of the payments in the form of a promissory note in favor of Venhaus would be useful as evidence in a dissolution proceeding on the question of an equitable division of assets and liabilities. Both Shannon and Venhaus told the Accused that Nelson would certainly take the position that the transfers were gifts and that, in any event, he would never sign a voluntary acknowledgment of the debt or lien on the real property. The Accused advised Shannon in Venhaus's presence that a promissory note in favor of Venhaus, though signed by Shannon alone, could at least be used as some evidence in a domestic relations proceeding to characterize the payments as loans. On this advice, such a note was prepared by the Accused, signed by Shannon, and delivered to the Accused to be kept in the file against this contingency. Both Shannon and Venhaus acknowledge that it was understood that the note was solely for the purpose of characterizing the nature of the transfers in the expected dissolution case and not for any purpose adverse to the interests of Shannon.

Shannon and Venhaus believed that Nelson was trying to get the home for himself by means of a scheme to default on the mortgage so that his friend could buy the property at the foreclosure sale and then sell it back to him, unencumbered by Shannon's interest. Venhaus asked the Accused if anything could be done to protect Shannon's interest. The Accused suggested the filing of a UCC-1 financing statement since Nelson would not sign a voluntary lien. Whether Shannon received this advice or authorized filing a UCC-1 financing statement

is disputed, but we attach no significance to this since all parties agreed they wanted to stop Nelson from anything that could cause Shannon to lose her interest in the property.

After these discussions, but before the Accused prepared the financing statement, Venhaus notified the Accused in September or October that Nelson was going to file bankruptcy and expressed an urgent need to get the lien filed on the property and to protect Shannon's entitlement to her share of the proceeds from any sale of the real property.

The Accused prepared a promissory demand note for Shannon to sign and also a UCC-1 financing statement which indicated Shannon Venhaus as the sole debtor. The note was signed by Shannon. The UCC-1 was filed with the Secretary of State and recorded in the Yamhill County recording office. It is unclear whether the filings were done by the Accused or Venhaus.

Nelson filed a petition for relief in federal bankruptcy court under 11 USCA 701 *et seq* in mid-October 2003 and also filed for divorce from Shannon. The Accused reviewed a pleading that Shannon and Venhaus had prepared in response to the Petition for Dissolution. Shannon filed this pleading with the court on November 14, 2003. Shannon retained the Accused to represent her in the dissolution proceeding and signed a Legal Representation Agreement dated November 21, 2003.

During the dissolution proceeding, Shannon became more and more unresponsive to the Accused's requests for information. Venhaus provided some information to the Accused for Shannon's cases. Shannon testified that she "had a lot of stuff going on and missed appointments." Also, the documents that the Accused requested were in the house and Nelson had a restraining order against Shannon so she could not obtain them.

Due to lack of contact from Shannon, the Accused filed a Motion to Withdraw on September 17, 2004, in the dissolution case. The criminal matters had already been resolved at this time.

Robert DeMary, an attorney who specializes in family law was called by the Accused to give expert testimony. He expressed his opinion that generally, after review of the file, he saw no incompetency of the Accused and there was preparation reasonably necessary for the representation of Shannon. He testified that an issue which frequently arises in dissolution of marriage cases is whether payments made during the marriage by relatives to or for the benefit of the parties were gifts, which do not directly affect the division of assets and liabilities, or loans to be treated as liabilities resulting in an offsetting increase in assets awarded to the party ordered to pay these liabilities. He further testified that when a client's parent pays money to or for the benefit of the client for attorney fees, for maintenance and support, or for the preservation of marital assets *during the proceeding, as a bona fide loan*, it is his routine practice to advise the client to document these payments as loans evidenced by a promissory note, signed by the client and to keep meticulous supporting records so that

a successful argument may be made for characterizing the payments as loans rather than gifts.

Credibility of Witnesses.

A witness is presumed to speak the truth. This presumption may be overcome by the manner in which the witness testifies, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence. ORS 44.370.

Shannon had problems with recollection and was unsure as to some of the facts, especially as to how the amount of the demand note was determined. Shannon's testimony lacked clarity. Shannon admitted that she was under pressure at the time of the events and incapable of attending to her own affairs. Based upon the manner and character of her testimony, she was deemed an unreliable witness and her testimony was found to be unworthy of belief insofar as it was contradicted by other evidence.

Venhaus acknowledged that he had been initially satisfied with the Accused's services. It was some five years after these events when he received a demand from an attorney representing Nelson notifying him that the UCC-1 statement filed was a cloud on Nelson's title and demanding that the lien be removed. Venhaus sought legal advice from another attorney who prompted Venhaus to file potential ethical violations with the Oregon State Bar against the Accused and to bring a civil action against the Accused for damages caused by professional negligence in connection with the preparation of the promissory note and the failed effort to create a security interest in the realty of Nelson and Shannon by means of a UCC filing. A necessary element of the malpractice claim was the existence of an attorney-client relationship between Venhaus and the Accused. The testimony of Venhaus offered to show an attorney-client relationship between himself and the Accused was found to be unreliable. This testimony is also inconsistent with Venhaus's testimony that he did not expect repayment of the money he paid for Shannon and Nelson's expenses and that he understood that the sole reason for the documenting these payments with a promissory note and UCC filing was to advance the interests of his daughter in the dissolution proceeding.

Nothing in the manner in which the Accused testified would, in and of itself, give reason to doubt her credibility. She appeared forthright in her demeanor. Her testimony was consistent throughout the hearing, with the prior statements she made when initially confronted and thereafter, as far as we know, when the Bar conducted its investigation. Where the testimony of the Accused differed from the testimony of the Bar's witnesses, we have accepted the testimony of the Accused as more worthy of belief.

Burden of Proof.

Following the filing of the formal complaint by the Bar, the Accused filed an answer through her counsel. The Accused's counsel subsequently filed an Amended Answer on the

Accused's behalf. The Amended Answer denies the conduct in question and denies that the conduct in question is a violation of DR 5-105(E), DR 6-101(A), or DR 7-104(A)(2) of the Code of Professional Responsibility. The Bar has the burden of establishing misconduct warranting discipline 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 (1994). See also *Cook v. Michael*, 214 Or 513, 527 (1958) for a comparison of the differing degree of probability for the truth of the proposition asserted in each of the three degrees of proof:

In ordinary civil cases, the degree of proof required is a preponderance of the evidence; in some types of cases, such as those involving the issue of fraud, many courts require 'clear and convincing' evidence; and in criminal cases, guilt must be established 'beyond a reasonable doubt.' Each of these is a different degree of proof. They may be regarded as designating degrees on a graduated scale, with 'preponderance' at the lowest end of the scale, 'reasonable doubt' at the highest end, and 'clear and convincing' in the middle. *Id* at 527.

Evidentiary Rulings.

The Accused objected to the testimony of Robert Johnstone as to the skill required to prepare the necessary documents to create a valid lien on real property due to the fact that the Bar had concluded its case in chief. At the close of its case in chief, the Bar reserved the right to recall Mr. Johnstone as a witness. The Oregon Evidence Code does not apply to Bar disciplinary proceedings and rather the standard for admissibility of evidence is found in BR5.1(a), which allows the Trial Panel to admit and give effect to evidence which possessed probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The testimony of Mr. Johnstone was based upon his review of his file when he represented Venhaus to defend a quiet title action by Nelson and a malpractice claim against the Accused. After reviewing Mr. Johnstone's testimony and BR5.1(a), the Panel determined that his testimony would assist in understanding the allegations asserted by the Bar and the Accused's defense, and further determined that allowing the Bar to reopen its case in chief for the purpose of recalling Mr. Johnstone would not substantially prejudice the Accused. Therefore, the Panel overruled the objection to Mr. Johnstone's subsequent testimony.

The Bar objected to the admission into evidence of the bankruptcy petition of Venhaus, which was not prepared by an attorney. The objection was due to the potential that Venhaus could incriminate himself and he did not have the assistance of counsel present. The Trial Panel agreed that the probative value of the bankruptcy petition and testimony related thereto did not outweigh the prejudice and excluded this evidence.

SECTION THREE: CONCLUSIONS OF LAW

Conflict of Interest: Actual Conflict DR 5-105(E).

The Bar has alleged that the Accused undertook to represent Venhaus to secure a lien against the real property owned jointly by Shannon and Nelson, which was the subject of a proceeding to dissolve their marriage, at a time when the Accused also represented Shannon, whose interests were adverse to Venhaus. Because we are unable to conclude that the existence of an attorney-client relationship between the Accused and Venhaus has been proved by clear and convincing evidence, we find that the Bar has not sustained its burden of proof on this cause.

The parties all agreed that the Accused met with Shannon and Venhaus together multiple times as to Shannon's three matters (two criminal cases and the dissolution of marriage) and that the Accused met with Venhaus several times without Shannon being present. Venhaus testified that he brought documents to the Accused for Shannon's case and asked questions about the proceedings and protecting Shannon's interest in the real property. He also testified that when Shannon was arrested, he had to figure out how he was going to get her out of jail and fight the criminal charges and that would require getting an attorney. He stated that he did not sign a fee agreement with the Accused because it was Shannon's lawsuit, not his, even though he would be paying for it all. The billing statements for fees were addressed to Shannon and included charges for preparation of the note and UCC-1 financing statement.

The Accused disputed that she ever represented Venhaus. The Bar contends that the Accused represented him when she prepared the documents to secure a lien for him against the real property owned by Shannon and Nelson. Although Venhaus was a creditor and Shannon was a debtor, the note and UCC-1 that the Accused prepared were prepared in an attempt to prevent Nelson from transferring the property and to document the money Venhaus had paid over the years to help Shannon and Nelson so that perhaps, some of that debt would be delegated to Nelson as a liability in the dissolution proceedings. Venhaus never expected to be repaid any of the money he had paid over the years to Shannon and Nelson and he believed the only way to get any back would be from the real property. He did not have any expectation as to Shannon paying him.

Several exhibits were admitted which included New Client Intake Sheets, Fee Agreements, notice of representation, and correspondence. The Client Intake Sheets and Fee Agreements were all for Shannon. Venhaus testified he has retained at least five (5) attorneys for his construction business and always had signed fee agreements. He requested the Accused represent Shannon in the divorce proceeding and the Accused confirmed that request in a letter to Shannon. The testimony and exhibits indicated that Venhaus was acting as an agent for Shannon and his actions were to protect his daughter. Shannon testified that the note amount was for money she was owed by Nelson from the property and that if she got

anything, she would give it to her father. Venhaus wrote a letter to the Accused (Bar Exhibit 40) in which he asked about protecting Shannon. He was always trying to protect or look out for his daughter and Shannon consented to her father dealing directly with the Accused, although not in writing, then certainly by her conduct. She testified that it was her intent to pay Venhaus any money she received from the sale of the real property. Venhaus wanted one thing for certain, that was to protect his daughter and that came out over and over again in his testimony. The Accused testified that she reminded Shannon and Venhaus that she represented only Shannon, although not in writing.

Based upon all the evidence in this case, it is inconceivable to us that Venhaus would have considered seeking legal advice for any purpose adverse to the interests of his daughter. He candidly acknowledges that he did not then, nor ever, expect to recoup any of the money paid over the years for the benefit of Shannon and Nelson. In hindsight, he perceived an injustice in Nelson being incidentally enriched when the real object of his generosity was Shannon. After he retained the Accused to represent Shannon on the criminal matters, he retained the Accused to represent Shannon in the dissolution proceeding, in part, to maximize Shannon's recovery of her share in the marital estate. Neither Shannon nor Venhaus intended to engage the Accused for any purpose other than protecting and advancing Shannon's interests.

The legal advice regarding the note and the UCC-1 were doubtless of questionable utility. It was, in some instances, directly contrary to well settled principles of law. Moreover, it may have had the effect of hindering rather than advancing Shannon's interest. Still, all of this does not create an attorney-client relationship between the Accused and Venhaus by merely adding the fact that bad legal advice given to Shannon may have had the incidental consequence of advancing the theoretical interests of Venhaus.

The Bar has the burden of proving that Venhaus and Shannon were both clients of the Accused and there was an actual conflict of interest in representing both of them. The Bar must prove its case by clear and convincing evidence. BR 5.2. A review of evidence in this case causes us to conclude that the burden has not been met and we decline to find the Accused violated DR 5-105(E) as alleged in the formal complaint.

Competence and Diligence: DR 6-101(A)

Concerning Gene Venhaus.

The Bar alleges in several particulars that the Accused failed to provide competent representation to Venhaus. DR 6-101(A) requires that "(a) lawyer shall provide competent representation to a client." Inasmuch as we have found that the Bar has failed to prove by clear and convincing evidence that Venhaus was the Accused's client, on that basis we likewise find that the Bar has failed to meet its burden of proof as to this allegation. We express no opinion as to whether, under these circumstances, the use of the UCC-1 financing statement and the advice concerning it demonstrates a lack of knowledge, skill, thoroughness

and preparation reasonably necessary to represent Venhaus as it is unnecessary to our opinion.

Concerning Shannon.

The Bar alleges that the Accused failed to provide competent representation to Shannon Venhaus. The Accused does not dispute that Shannon was her client. DR 6-101(A) provides: “Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Accordingly, we consider whether the Accused failed to exhibit the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation of Shannon in any of the particulars alleged in the formal complaint.

One of the goals of the divorce proceeding was to obtain funds from Nelson from the real property as a result of money Shannon put into the house and the money Venhaus had loaned over the years. The note was prepared to document the loans. No one knew an exact amount of the funds given by Venhaus over the years and neither Venhaus nor Shannon provided paperwork, checks, or anything else to determine that amount. The Accused testified that she requested this information several times, and that she was assured on each occasion that the documentation existed and would be forthcoming. Neither Venhaus nor Shannon disputed this testimony. It was also undisputed that no documentation was ever forthcoming.

The Accused presented expert testimony of Robert DeMary, attorney, about the practice of using promissory notes prepared during or immediately prior to a dissolution proceeding as a means of documenting a bona fide loan made by a parent or other relative for the benefit of one or both of the parties. Mr. DeMary indicated that there is case law dealing with whether these are bona fide debts. While he has had some success in using these documents in making the argument that payment should be characterized as a marital liability, it cannot be said that his testimony, when taken as a whole, gives much support for the advice given and the methods employed by the Accused under the circumstances existing in this case. The very reason we have found that the Accused did not undertake the representation of Venhaus is because the payments by Venhaus were not bona fide loans. We do not understand the testimony of the Accused’s expert witness as supporting the notion that it is competent representation to advise the use of a promissory note for the purpose of re-characterizing and documenting as loans, expenditures made for the benefit of persons who are the natural object of one’s love and affection, made with neither the simultaneous agreement for, nor expectation of, repayment. Mr. DeMary testified that there exists case law precedent as to the factors used in determining whether a transaction is a gift or a loan in the context of a domestic relations proceeding. Evidently, the Accused was unfamiliar with the precedent. Otherwise, she would have been aware of *Street and Street*, 90 Or App 466, 470 n 7, 753 P2d 424 (1988). Had she researched this case law to make herself acquainted with the

opinion in that case, the futility of her recommended course of action would have been obvious to her.

Not one of the factors enumerated by the court in *Street* existed in favor of characterizing these payments made by Venhaus for the benefit of his daughter and her husband as loans. A promissory note prepared as an afterthought and in anticipation of litigation to portray as loans payments long since made as gifts could not have advanced the interests of either Shannon or Venhaus. At best, it was a useless exercise. At worst, if the Accused had not withdrawn prior to the dissolution trial, the offering of the note as evidence of a marital debt may well have been found to be frivolous, subjecting the Accused and her client to sanctions.

The use of a Uniform Commercial Code filing in this case was equally without merit. Aside from the fact that the creation and validity of a security interest in real property under these circumstances is entirely outside the Uniform Commercial Code, in no event could a valid encumbrance have been created since there was no bona fide obligation to secure.

The justification advanced by the Accused for this advice is that, as the client, her father, and the Accused all well knew, Nelson would not have signed any type of instrument acknowledging a debt owed nor suffered any voluntary lien on the marital property. This is not a reason to advise the use of an instrument wholly unsuited to the purpose merely because you cannot get the signature required to make a suitable instrument valid. The minimum level of competence and skill in this case required the Accused to apprise herself of the facts surrounding the payments, to identify how these facts bore on the issues in dispute, to acquaint herself with the current state of the law in the jurisdiction and to advise her client of the probable outcome of that issue at trial. Instead, the Accused prepared and advised her client to sign a specious instrument for a purpose which, had she been possessed of sufficient competence and skill, she should have known would fail to succeed.

The formal complaint alleges that the Accused lacked the knowledge, skill, thoroughness, and preparation reasonably necessary to represent Shannon. In this regard, the predominate focus of the specifications alleged is on the Accused's failure to recognize and to advise Shannon concerning a conflict between the interests of Shannon and her father. Inasmuch as we find that no attorney-client relationship existed between the Accused and Venhaus, these specifications require no discussion. However, the formal complaint also alleges that the Accused "failed to advise Shannon not to sign the note..." It is our position that this is tantamount to an allegation that advising Shannon to sign the note and preparing it for her signature, demonstrates a lack of knowledge, skill, thoroughness, and preparation reasonably necessary under the circumstances so as to provide adequate notice to the Accused of the charge against which she had to defend, and against which she actually did defend. We therefore, find the Accused violated former DR 6-101(A) of the Code of Professional Responsibility.

Giving Advice to a Person Not Represented: DR 7-104(A)(2).

The formal complaint alleges an alternative theory, to be considered in the event that, as we have done, we decline to find the existence of an attorney-client relationship between the Accused and Venhaus; that is, that during the course of representing Shannon, the Accused advised Venhaus, whose interests were, or had the reasonable possibility of being, opposed to Shannon's interests, how to go about placing an encumbrance on the real property owned by Shannon and Nelson at a time when Venhaus was unrepresented.

There are two reasons that this allegation cannot be upheld. First, our determination that no attorney-client relationship existed between the Accused and Venhaus was made, in part because Venhaus did not seek, nor did the Accused undertake to give, advise about how to protect or promote the interests of Venhaus or any interest save those of Shannon. Venhaus testified several times that he never expected to be repaid any of the funds he loaned Shannon and Nelson. There is no credible evidence that rises to the level of clear and convincing for the position that Venhaus expected, intended to receive or considered that the Accused was giving him advice. If there was any advice given to Venhaus, it was for collecting from Nelson, not Shannon. Venhaus was a go-between and stated unequivocally that everything he did with the Accused was for the purpose of advancing the interests of Shannon to obtain a larger share of the property in the dissolution proceedings. Both Venhaus and Shannon testified that the note was never intended to be enforced against Shannon.

Second, to adopt the theory that the interests of Shannon and Venhaus were, or had the reasonable possibility of being, in conflict, we would be required to accept the notion that Venhaus sought the Accused's assistance to defraud his daughter by contriving to fraudulently obtain her signature to a debt instrument and falsely representing that the only use that would be made of the instrument would be for purpose of increasing her share of the marital estate and decreasing the share that would otherwise inure to the benefit of Nelson. And for what purpose is this fraud perpetrated; so that Venhaus could later pursue debt collection against the daughter who was economically and in every other way dependent upon him and without prospect of becoming otherwise in the foreseeable future? We think that such an act of treachery would run counter to the evidence and every notion of common sense and human decency and we are unable to postulate this as a reasonable possibility under these circumstances. Both Venhaus and Shannon testified that the note was never intended to be enforced against Shannon. It would be putting form over substance to find that a conflict between the interests of Shannon and Venhaus merely because the note, on its face, purports to create a debtor/creditor relationship which is entirely fictional to begin with in this case.

The situation here is distinguishable from *In re Lawrence*, 337 Or 450, 98 P3d 366 (2004), where Lawrence was accused of giving advice to an unrepresented victim of

domestic abuse while another attorney in her firm represented the abuser on the criminal charges.

1. In *Lawrence*, the victim was informed of certain constitutional rights. There is no evidence that Venhaus ever sought or was given advice about his right under the note and UCC-1 lien as to their operation and effect.

2. In *Lawrence*, the victim was told how to proceed and pursue a specific course of action in the exercise of rights that had previously been unknown to her. In this case, inasmuch as Venhaus denied any expectation of repayment, it is hardly surprising that there is nothing in the record that the Accused and Venhaus discussed how he might best go about asserting his rights to repayment of the expenditures he had made. The discussions were about how to protect Shannon. There is insufficient evidence that the Accused gave Venhaus advice as to how to collect his money.

3. The accused in *Lawrence* prepared an affidavit for the victim (the unrepresented person) to sign to aid in pursuing her constitutional rights. In this case, the only advice to sign anything was given to Shannon, the Accused's client.

4. In *Lawrence*, the accused prepared the victim for a hearing, telling her what to say and how; nothing of this nature occurred in this case.

There is no doubt that the goal of Venhaus, Shannon, and the Accused was to protect Shannon's interest. Based upon this common goal and the lack of credible evidence or sufficient evidence to rise to the level of "clear and convincing," there is no reasonable possibility of a conflict between Venhaus and Shannon.

SANCTION

Under the *ABA Standards for Imposing Lawyer Sanctions* (1991) (as amended 1992) there are four factors to use in determining the appropriate sanction: 1) the duty violated; 2) the accused's mental state; 3) the actual or potential injury caused by the misconduct; and 4) the existence of aggravating and mitigating circumstances. *ABA Standards* § 3.0; *In re Conduct of Kluge*, 335 Or 326, 66 P3d 492, 507 (2003). The primary purpose of disciplinary proceedings is protection of the public. *In re Houchin*, 290 Or 433 (1981).

Duly Violated.

The Accused had the duty to discharge basic professional responsibilities. A lawyer should not take on matters in an area of law in which the lawyer is not qualified. *In re Conduct of Odman*, 297 Or 744, 687 P2d 153, 155 (1984). While it appears that in most respects the Accused showed herself capable of competently handling domestic relations cases, when it came to handling issues touching the areas of debtor-creditor, real property, commercial or bankruptcy law, she exceeded the bounds of her qualifications. The Accused had only a vague idea that it would be in her client's interest to characterize the Venhaus payments as loans rather than gifts. She should not have taken it upon herself to give advice

or prepare documents to be used as proof of the character of these payments without an understanding of the facts needed to legitimately evidence these expenditures as bona fide loans. The facts made known to the Accused firmly established that these expenditures were gifts. The Accused lacked the legal knowledge required to handle the matter in that she failed to understand that a promissory note, signed by a party other than the person to be charged, prepared years after the payments and in the absence of any indicia of a loan, such as a time for repayment, interest rate or repayment history, would never be accepted as evidence to prove the existence of a loan.

Mental State.

The mental state of the Accused is a factor to be used in determining the appropriate sanctions when there is a violation of DR 6-101. *In re Magar*, 335 Or 306, 66 P2d 1014 (2003). The Accused negligently failed to perform the legal research and factual investigation with the required skill, thoroughness, and preparation that would have imparted the correct legal doctrines and understanding of the relevant facts reasonably necessary for the rendering of sound legal advice.

Injury.

The note could have resulted in injury to the client if it had been offered at the dissolution trial because it could not be proven. Also, the client was injured because she incurred fees for unnecessary services, though the fees were paid by Venhaus.

Aggravating and Mitigating Factors.

After considering factors 1 through 3 of ABA *Standards* § 3.0 for sanctions, any aggravating or mitigating circumstances are then examined for adjusting the sanctions. ABA *Sanctions* § 9.2 sets forth the factors which may be considered for aggravation. Mitigating factors are set forth at § 9.3.

The aggravating factors consist of the fact that the Accused has practice law for a considerable period of time and should have substantial experience. Also, despite cooperation with the investigation, the Accused has failed to acknowledge the wrongful nature of her conduct. ABA *Standards* §§ 9.22(l) and 9.22(g).

The Trial Panel finds that the mitigating factors are no prior discipline, absence of selfish motive, and full and free disclosure to the Disciplinary Board. ABA *Standards* §§ 9.32(a) and (e).

In weighing the aggravating and mitigating circumstances, the sanctions can be adjusted. The sanction can be admonition, reprimand, suspension, or disbarment.

ABA *Standards* § 4.51 provides:

Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal

doctrines or procedures and the lawyering or conduct causes injury or potential injury to a client.

ABA *Standards* § 4.52 provides:

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.

ABA *Standards* § 4.53 provides:

Reprimand is generally appropriate when a lawyer:

- (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
- (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

ABA *Standards* § 4.54 provides:

Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

The case law addressing lack of legal knowledge and skill, discusses the knowledge of the attorney at the time of accepting the representation and knowing that he/she lacked competence in the area of representation undertaken for the client. *In re Gresham*, 318 Or 162, 864 P2d 360 (1993); *In re Odman*, 297 Or 744 (1984); *In re Magar*, 335 Or 306, 66 P2d 1014 (2003). The cases point out that an attorney may accept such employment, if, in good faith, he/she expects to become qualified through study and investigation. In this instance, the Accused's practice covered handling criminal and domestic relations matters. She was originally retained by Shannon for representation in the two criminal matters with which Shannon had been charged and this led to her representation in the dissolution. The Accused may have thought she understood notes and their application in dissolution cases, or that a UCC-1 would tie up the property, but she demonstrated a failure to understand relevant legal doctrines as to the use of notes in such cases and the proper application of UCC-1 financing statements. Consequently, she recommended a course of action which had no merit. This does not show a lack of good faith by the Accused. *In re Odman* at 751.

As noted above, ABA *Standards* § 4.53 provides:

Reprimand is generally appropriate when a lawyer:

- (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client: or

- (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

Therefore, the Trial Panel finds a reprimand is the appropriate sanction.

SECTION FOUR: CONCLUSION

It is the decision of this Trial Panel that the FIRST CAUSE OF COMPLAINT against the Accused be dismissed insofar as it alleges a violation of DR 5-105(E) of the Code of Professional Responsibility; that the FIRST CAUSE OF COMPLAINT against the Accused be sustained insofar as it alleges a violation of DR 6-101(A) of the Code of Professional Responsibility as to Shannon Venhaus and that a sanction of reprimand be imposed against the Accused; and, that the SECOND CAUSE OF COMPLAINT against the Accused be dismissed in its entirety.

/s/ Pamela E. Yee

PAMELA E. YEE OSB No. 873726

Trial Panel Chair

CONCURRING MEMBERS:

/s/ Loni J. Bramson, Ph.D.

Loni J. Bramson, Ph.D.

Public Member

/s/ William D. Bailey

William D. Bailey, OSB No. 760504

Attorney

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 11-41; 11-42; 11-43; 11-44;
) 11-45; 11-46; 11-47; 11-80; 11-81; and
MARSHA M. MORASCH,) 12-43
)
Accused.) SC S060403

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: Wayne Mackeson
Disciplinary Board: None
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC
1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d),
RPC 1.16(a)(2), RPC 1.16(d), RPC 8.1(a)(2), RPC
8.4(a)(3), and RPC 8.4(a)(4). Stipulation for Discipline.
2-year suspension.
Effective Date of Order: May 31, 2012

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration of 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 the date of this order.

May 31, 2012.

/s/ Thomas A. Balmer
THOMAS A. BALMER, Chief Justice

STIPULATON FOR DISCIPLINE

Marsha M. Morasch, 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 27, 1990, 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, voluntarily, and with advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On July 22, 2011, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed of the status of a matter or comply with reasonable requests for information); RPC 1.4(b) (failure to explain a matter to the extent necessary to allow the client to make informed decisions regarding the representation); RPC 1.5(a) (charge or collect a clearly excessive fee); RPC 1.15-1(a) (failure to hold client funds in trust and keep complete records); RPC 1.15-1(c) (withdrawal of fees from trust before earned); RPC 1.15-1(d) (failure to promptly deliver funds or property or render an accounting, upon request), RPC 1.16(a)(2) (failure to withdraw when lawyer’s physical or mental condition materially impairs lawyer’s ability to represent a client); RPC 1.16(d) (failure to take steps, upon termination, to reasonably practicable to protect a client’s interests); RPC 8.1(a)(2) (failure to respond to a lawful demand for information from a disciplinary authority); RPC 8.4(a)(3) (conduct involving misrepresentation); and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice).

On February 10, 2012, the SPRB authorized additional charges against the Accused for alleged violations of RPC 1.3, RPC 1.4(a), and RPC 1.15-1(d), in connection with the Richard Harvey complaint (Case No. 12-43). 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 foregoing proceedings.

Case No. 11-41

Kathleese Mastroieni Matter

Facts

5.

In December 2009, Kathleese Mastroieni (hereinafter “Mastroieni”) retained the Accused to file and represent Mastroieni in a dissolution of marriage proceeding. Mastroieni paid the Accused a \$3,500 retainer. Although the Accused initially deposited these funds in her lawyer trust account, the Accused cannot produce documentation evidencing that she maintained Mastroieni’s retainer in trust until fees were earned or expenses incurred.

6.

Shortly after she was retained, the Accused filed a petition for dissolution on behalf of Mastroieni and also prepared a Uniform Support Affidavit (“USA”), but did not respond to some of Mastroieni’s subsequent attempts to communicate necessary changes to the USA.

7.

From January 26, 2010, through April 7, 2010, Mastroieni telephoned and emailed the Accused numerous times, requesting information about her case. The Accused failed to respond to a number of these inquiries, particularly in March and April 2010, after the Accused was seriously injured in a fall.

8.

On April 7, 2010, after discovering through her own efforts that the Accused had been injured, Mastroieni telephoned the Accused at home. The Accused told Mastroieni that she would be in the office at the end of the week and would call to set an appointment to discuss settlement of Mastroieni’s case.

9.

When the Accused did not contact her, Mastroieni telephoned the Accused’s office on April 9, 2010, and April 12, 2010. The Accused did not respond. On April 12, 2010, Mastroieni made a written request to the Accused for an accounting of her retainer and a billing statement.

10.

Receiving no word from the Accused, Mastroieni terminated the Accused’s services and demanded the return of the unearned portion of her retainer. The Accused did not refund any portion of Mastroieni’s retainer until mid-July 2010, after Mastroieni complained to the Bar. Even then, however, the Accused did not provide Mastroieni an accounting of her retainer or the billing statement she requested. The Accused has now done so.

11.

After terminating the Accused, Mastroieni retained attorney Deanna Rusch (hereinafter “Rusch”). The Accused did not provide Rusch with a substitution of attorneys or a copy of Mastroieni’s file, despite Rusch’s requests, nor did she convey her belief that Mastroieni had all relevant portions of her file and that Rusch should be responsible for preparing a substitution of attorneys.

12.

Between December 2009, and April 2010, the Accused’s alcohol abuse, as well as physical injuries attributable thereto, materially impaired her ability to represent Mastroieni in her legal matter. The Accused accepted Mastroieni’s case in December 2009 and failed thereafter to withdraw from the representation.

13.

Mastroieni complained to the Bar, and on July 7, 2010, her complaint was referred to Disciplinary Counsel’s Office (hereinafter “DCO”), with notice to the Accused.

14.

DCO requested that the Accused respond to Mastroieni’s complaint and provide a copy of Mastroieni’s entire client file; Mastroieni’s fee agreement; the Accused’s time and billing records for Mastroieni’s case; and the banking and accounting records that showed all transactions involving Mastroieni’s retainer. The Accused made a brief response, but failed to provide all of the requested documents, including a complete accounting or billing records.

15.

On October 26, 2010, and November 10, 2010, DCO again requested that the Accused provide documents and respond to its inquiries. On November 15, 2010, the Accused provided some of the requested documents, but made no response to DCO’s inquiries.

16.

In mid-December 2010, DCO again requested that the Accused provide the remaining documents it had requested, respond to its inquiries, and explain the delay in returning the unearned portion of Mastroieni’s retainer and the absence of an accounting. The Accused did not respond.

Violations

17.

The Accused admits that she engaged in the conduct described in paragraphs 5 through 16 above and thereby violated RPC 1.3, RPC 1.4(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.16(a)(2), RPC 1.16(d), and RPC 8.1(a)(2).

Case No. 11-42

Liesle A. Memmott Matter

Facts

18.

On November 24, 2009, Liesle Memmott (hereinafter “Memmott”) retained the Accused to modify provisions of a dissolution of marriage judgment. Memmott paid the Accused a \$3,500 retainer. Although the Accused initially deposited these funds in her lawyer trust account, the Accused cannot produce documentation evidencing that she maintained Memmott’s retainer in trust until fees were earned or expenses incurred.

19.

Between November 24, 2009, and March 5, 2010, the Accused did not file a motion to modify, obtain an order to show cause, or take other substantive action on behalf of Memmott, despite email inquiries from Memmott.

20.

On March 5, 2010, Memmott’s former husband filed his own motion to modify and obtained an order to show cause. The Accused was served with a copy of this order, but did not respond to it, provide a copy of it to Memmott, or notify Memmott that a response to the order was due by April 5, 2010.

21.

On April 3, 2010, Memmott terminated the Accused’s representation and requested that the Accused return the unearned portion of her retainer, provide her with an itemized billing, and return Memmott’s file. The Accused did not respond to Memmott or provide her with a billing, her file, or the unearned portion of her retainer.

22.

Memmott retained attorney Cathy Tappel (hereinafter “Tappel”) to represent her in the modification matter. Tappel requested from the Accused a copy of Memmott’s file. The Accused did not provide Tappel with Memmott’s file.

23.

Between November 2009, and April 2010, the Accused’s alcohol abuse, as well as physical injuries attributable thereto, materially impaired her ability to represent Memmott in her legal matter. The Accused accepted Memmott’s case in November 2009 and failed thereafter to withdraw from the representation.

24.

In July 2010, Memmott's complaint to the Bar was referred to DCO, with notice to the Accused. DCO requested that the Accused respond to Memmott's complaint. The Accused made a cursory response and represented that she had refunded Memmott's retainer.

25.

In December 2010, DCO requested that the Accused provide a complete copy of Memmott's client file, an accounting for Memmott's retainer, and an explanation of why the Accused had never rendered an accounting to Memmott. The Accused did not respond. The Accused has since repaid Memmott's retainer.

Violations

26.

The Accused admits that she engaged in the conduct described in paragraphs 18 through 25 above and thereby violated RPC 1.3, RPC 1.4(a), RPC 1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.16(a)(2), RPC 1.16(d), and RPC 8.1(a)(2).

Case No. 11-43

Lori M. Tasker Matter

Facts

27.

In October 2009, Lori Tasker (hereinafter "Tasker") retained the Accused to represent her in a dissolution of marriage proceeding that involved custody issues. Tasker paid the Accused a \$5,000 retainer. Although the Accused initially deposited these funds in her lawyer trust account, the Accused cannot produce documentation evidencing that she maintained Tasker's retainer in trust until fees were earned or expenses incurred.

28.

A hearing was set for January 19, 2010. On the day of the scheduled hearing, the Accused's staff notified Tasker and opposing counsel that the Accused could not appear for hearing because she had had a medical emergency; namely, that she had broken both her feet. Opposing counsel was able to reschedule the hearing for March 2, 2010, at 2:30 p.m.

29.

In early February 2010, Tasker attempted to schedule an appointment with the Accused to prepare for the March 2, 2010 hearing. An appointment was eventually set for February 18, 2010, but the Accused cancelled the appointment on that day. Tasker was not able to obtain the Accused's agreement to another appointment prior to March 2, 2010.

30.

In the late morning of March 2, 2010, opposing counsel emailed the Accused's paralegal, Jeff Ott (hereinafter "Ott"), proposed stipulated orders, and notified Ott that the parties were required to appear in court that afternoon if the court did not receive signed orders before the 2:30 p.m. scheduled hearing time.

31.

Before noon on March 2, 2010, Tasker participated in a conference call with the Accused and Ott, and informed them that the proposed orders were unacceptable. Tasker told the Accused that she wanted to go forward with the scheduled hearing. The Accused represented to Tasker that there would be no hearing that afternoon because the case was settled and that she was not available to attend because she had another appointment.

32.

At 1:15 p.m. on March 2, 2010, Ott telephoned Tasker and reported that he could not locate the Accused. Ott advised Tasker that Tasker should attend the 2:30 p.m. hearing and represent herself, or she might lose custody. Following this conversation, Tasker attempted to reach the Accused a number of times without success.

33.

Tasker appeared for the scheduled hearing; the Accused did not. Without representation, Tasker signed the proposed temporary custody and child support orders presented by opposing counsel, despite the fact that the orders contained terms that were not favorable to Tasker.

34.

The next day, Tasker terminated the Accused's representation and retained attorney Alex Sutton (hereinafter "Sutton"). Tasker requested that the Accused send her file to Sutton, but the Accused did not do so for more than a month. In the interim, Sutton was required to renegotiate the terms of the March 2, 2010 orders and repeat the discovery requests that had been made by the Accused.

35.

Sutton requested that the Accused sign a substitution of counsel. After multiple requests from Sutton, the Accused sent a digital copy of a signed substitution, but failed to send the original document, as requested. As a consequence, Sutton had to seek permission from the court to allow the substitution upon the Accused's digital signature.

36.

The Accused did not return Tasker's unearned retainer after termination of her representation or provide any accounting of her funds until after Tasker complained to the

Bar. The Accused has since produced time and billing records demonstrating that she performed sufficient work throughout the representation to have earned the Tasker retainer.

37.

Between October 2009, and March 2010, the Accused's alcohol abuse, as well as physical injuries attributable thereto, materially impaired her ability to represent Tasker in her legal matter. The Accused accepted Tasker's case in October 2009 and failed thereafter to withdraw from the representation.

38.

In early August 2010, Tasker's Bar complaint was referred to DCO, with notice to the Accused. On August 3, 2010, DCO requested that the Accused respond to Tasker's complaint and that she also provide a copy of Tasker's client file, all records relating to funds received from or disbursed on behalf of Tasker, and documentation of any injuries the Accused suffered during her representation of Tasker.

39.

On October 4, 2010, the Accused provided some documents, but no records that described broken feet or a January 19, 2010 injury.

40.

In mid-December 2010, DCO again requested that the Accused provide a complete copy of Tasker's client file, as well as a copy of the check used to refund any portion of Tasker's retainer, with an explanation for the delay in making the refund. The Accused did not respond.

Violations

41.

The Accused admits that she engaged in the conduct described in paragraphs 27 through 40 above and thereby violated RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a); RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.16(a)(2), RPC 1.16(d), RPC 8.1(a)(2), and RPC 8.4(a)(4).

Case No. 11-44

David M. Grant Matter

Facts

42.

Prior to June 2008, David Grant (hereinafter "Grant") retained the Accused for representation in a proceeding to modify provisions of a judgment of dissolution of marriage. Grant paid the Accused an amount greater than \$1,646 as a retainer. Although the Accused

initially deposited these funds in her lawyer trust account, the Accused cannot produce documentation evidencing that she maintained Grant's retainer in trust until fees were earned or expenses incurred.

43.

The Accused completed her representation of Grant in early June 2008. As of June 30, 2008, the balance of Grant's funds was \$1,646. The Accused applied \$937.50 to Grant's bill, but failed to refund the remaining balance of \$708.50 (hereinafter "Grant surplus funds").

44.

In early 2010, Grant began to request that the Accused return the Grant surplus funds to him, and made written demand on the Accused for the return of the Grant surplus funds on July 7, 2010. The Accused failed to respond or refund the Grant surplus funds.

45.

In September 2010, Grant complained to the Bar about the Accused's conduct, and Grant's complaint was referred to DCO on October 5, 2010, with notice to the Accused.

46.

On October 12, 2010, DCO requested that the Accused respond to Grant's complaint and account for her handling of the Grant surplus funds. DCO also requested that the Accused provide Grant's client file, and records showing how the Accused had handled the Grant retainer.

47.

On November 15, 2010, the Accused provided three documents related to her representation of Grant and a copy of a letter to the court. She also provided a copy of the October 21, 2010 trust account check issued to Grant for the Grant surplus funds. The Accused did not respond to the substance of Grant's complaint.

48.

On December 16, 2010, DCO again requested documentation related to the Accused's representation of Grant, and an explanation as to the delay in returning the Grant surplus funds. The Accused did not respond.

Violations

49.

The Accused admits that she engaged in the conduct described in paragraphs 42 through 48 above and thereby violated RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 8.1(a)(2).

Case No. 11-45

Matthew James Lambert Matter

Facts

50.

In July 2009, Matthew Lambert (hereinafter “Lambert”) retained the Accused to modify provisions of a judgment of dissolution of marriage. Lambert paid the Accused a \$3,500 retainer and \$2,500 for expert costs associated with a custody evaluation. The Accused properly deposited the retainer into trust and forwarded the expert costs to the custody evaluator. However, Lambert was not notified of these events and was not aware of the disposition of his funds. The Accused cannot produce documentation evidencing that she maintained Lambert’s retainer in trust until fees were earned or expenses incurred.

51.

The Accused prepared and filed a motion for emergency relief and a motion to modify custody, parenting time, and support on Lambert’s behalf. Prior to February 10, 2010, the parties reached a settlement, without the need for a custody evaluation. For a period of approximately six months, the Accused failed to return the \$2,500 Lambert had paid for the cost of a custody evaluator.

52.

On February 10, 2010, the Accused and opposing counsel, John Moore (hereinafter “Moore”) were present in court when their clients read a settlement of the modification proceeding into the record. The court requested that the Accused prepare the judgment.

53.

The Accused failed to prepare the judgment as directed by the court, or respond to Moore’s attempts to communicate with her. As a result, on March 12, 2010, the modification proceeding was dismissed. The Accused did not notify Lambert of this event or respond to Lambert’s attempts to communicate with her.

54.

In April 2010, Lambert retained attorney John Andon (hereinafter “Andon”) to determine the status of the modification proceeding. The Accused failed to respond to Andon’s attempts to communicate with her or provide him with any of Lambert’s file materials.

55.

On April 13, 2010, Moore moved to reinstate the modification case and prepared the judgment without the Accused’s involvement or assistance. Both Lambert and mother were

required to obtain and pay for services by Moore and Andon made necessary by the Accused's failure to draft and file the judgment.

56.

The Accused did not account for Lambert's retainer, despite his requests that she do so, prior to his filing a Bar complaint. The Accused has since accounted for Lambert's retainer and demonstrated that she earned all of the \$3,500 provided to her for attorney fees.

57.

Between July 2009 and April 2010, the Accused's alcohol abuse, as well as physical injuries attributable thereto, materially impaired her ability to represent Lambert in his legal matter. The Accused accepted Lambert's case in July 2009 and failed thereafter to withdraw from the representation.

58.

In October 2010, Lambert's complaint was referred to the Bar through the Client Security Fund. On November 2, 2010, DCO requested that the Accused respond to Lambert's complaint, and provide a complete copy of Lambert's client file and an accounting of Lambert's retainer. The Accused provided a few documents but did not provide a narrative response or any of the other documents requested by DCO.

59.

In mid-December 2010, DCO again requested that the Accused provide a complete copy of Lambert's client file; an accounting of Lambert's retainer; and information that would support that the Accused had refunded Lambert's retainer. The Accused did not respond.

Violations

60.

The Accused admits that she engaged in the conduct described in paragraphs 50 through 59 above and thereby violated RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), RPC 1.16(a)(2), RPC 1.16(d), RPC 8.1(a)(2), and RPC 8.4(a)(4).

Case No. 11-46

Judge Dale Penn (Miller) Matter

Facts

61.

Prior to March 2010, the Accused undertook to represent Charity Miller-Robinson (hereinafter "Charity") in a domestic relations matter.

62.

On June 17, 2010, the Accused failed to appear for a scheduled status conference before Judge Dale Penn (hereinafter “Judge Penn”) and failed to notify the court that she would or could not appear. Judge Penn attempted to contact the Accused several times following the hearing to determine why she was not in court, but was unable to reach her. Judge Penn then mailed and faxed a letter to the Accused and left her a voicemail message wherein he informed her of a July 20, 2010 hearing date and that his staff would be calling every day to determine her intention to appear for that hearing. Judge Penn requested the Accused to respond. She failed to do so.

63.

On October 14, 2010, the Accused participated by telephone in a status conference with Judge Penn at which time a subsequent hearing was scheduled for October 22, 2010. The Accused failed to notify Charity of this hearing. On October 22, 2010, the Accused failed to appear and failed to notify the court that she would or could not appear.

64.

Between March 2010 and October 2010, the Accused’s alcohol abuse, as well as physical injuries attributable thereto, materially impaired her ability to represent Charity in her legal matter. The Accused accepted Charity’s case prior to March 2010 and failed thereafter to withdraw from the representation.

65.

In October 2010, Judge Penn’s complaint about the Accused’s conduct was referred to DCO with notice to the Accused. On November 2, 2010, DCO requested that the Accused respond to Judge Penn’s complaint and provide a complete copy of Charity’s client file, including all communications with Charity, and records of the receipt or disbursement of all funds paid by Charity to the Accused. The Accused provided some of the documents in her file, but did not provide the complete file or respond to the substance of Judge Penn’s allegations.

66.

In mid-December 2010, DCO again requested that the Accused provide a complete copy Charity’s client file and a response to Judge Penn’s allegations. The Accused did not respond.

Violations

67.

The Accused admits that she engaged in the conduct described in paragraphs 61 through 66 above and thereby violated RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.16(a)(2), RPC 8.1(a)(2) and RPC 8.4(a)(4).

Case No. 11-47

Deirdre Murphy Matter

Facts

68.

In April 2009, Deirdre Murphy (hereinafter “Murphy”) retained the Accused to modify provisions of her judgment of dissolution of marriage. Murphy’s parents paid the Accused a \$2,500 retainer on Murphy’s behalf. Although the Accused initially deposited these funds in her lawyer trust account, the Accused cannot produce documentation evidencing that she maintained Murphy’s retainer in trust until fees were earned or expenses incurred.

69.

In early January 2010, the Accused acknowledged receipt of a completed Uniform Support Affidavit (“USA”) from Murphy and represented to Murphy that she had all of the information necessary to file Murphy’s motion for modification. On February 26, 2010, Murphy instructed the Accused or her staff to proceed with the modification.

70.

Between February 2010 and May 2010, the Accused did not take any substantive action on Murphy’s matter and failed to respond to Murphy’s attempts to contact her.

71.

On May 6, 2010, May 13, 2010, and June 17, 2010, Murphy’s father made demands that the Accused refund the unearned portion of Murphy’s retainer. The Accused did not respond or refund any portion of Murphy’s retainer. The Accused has since produced time and billing records demonstrating that she performed sufficient work throughout the representation to have earned the Murphy retainer.

72.

Between April 2009 and June 2010, the Accused’s alcohol abuse, as well as physical injuries attributable thereto, materially impaired her ability to represent Murphy in her legal matter. The Accused accepted Murphy’s case prior to April 2009 and failed thereafter to withdraw from the representation.

73.

In mid-November 2010, Murphy’s Bar complaint was referred to DCO, with notice to the Accused. On November 18, 2010, DCO requested that the Accused respond to Murphy’s complaint and provide a copy of Murphy’s client file, and all records regarding Murphy’s retainer. The Accused failed to respond to the substance of Murphy’s complaint or provide any responsive documents.

74.

In mid-December 2010, DCO again requested that the Accused provide a complete copy of Murphy's client file, and information as to whether the Accused had returned any portion of Murphy's retainer. The Accused provided some of the requested documentation, but no response to DCO's inquiries.

Violations

75.

The Accused admits that she engaged in the conduct described in paragraphs 68 through 74 above and thereby violated RPC 1.3, RPC 1.4(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.16(a)(2), and RPC 8.1(a)(2).

Case No. 11-80

Shayne Barham Matter

Facts

76.

On December 8, 2009, Shayne Barham (hereinafter "Barham") retained the Accused for representation in a divorce and related custody matters. Barham paid the Accused a \$3,500 retainer.

77.

On December 11, 2009, the Accused filed a petition for dissolution of marriage on Barham's behalf. Between December 11, 2009 and June 2010, apart from notifying Barham of a pre-trial hearing set for June 18, 2010, the Accused took no action on Barham's case and had little or no communication with her.

78.

In late March 2010, the Accused suffered a serious physical injury, fracturing her pelvis in a fall, which rendered her incapable of practicing law for several months. The Accused did not notify Barham of this injury or withdraw from her representation.

79.

Beginning in May 2010, Barham tried a number of times to contact the Accused in advance of the pre-trial hearing. The Accused failed to respond. Barham appeared for the June 18, 2010 pre-trial hearing, but the Accused did not.

80.

Immediately following the pre-trial hearing, Barham notified the Accused that she was terminating her representation and demanded a final accounting of her retainer, the refund of any unused retainer, and the return of her client file. The Accused failed to comply

with these demands or subsequent demands by Barham and her new attorney between July 2010 and December 2010.

81.

Between May 2009 and July 2010, the Accused's alcohol abuse, as well as physical injuries attributable thereto, materially impaired her ability to represent Barham in her legal matter. The Accused consulted with Barham in May 2009, accepted her case in December 2009, and failed thereafter to withdraw from the representation.

Violations

82.

The Accused admits that she engaged in the conduct described in paragraphs 76 through 81 above and thereby violated RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15-1(d), RPC 1.16(a)(2), and RPC 1.16(d).

Case No. 11-81

Mark Wilson Matter

Facts

83.

Prior to March 2010, Mark Wilson (hereinafter "Wilson") retained the Accused to petition for custody of his two children. On March 19, 2010, Wilson was awarded custody, and the Accused was instructed by the court to prepare the judgment.

84.

In late March 2010, the Accused suffered a serious physical injury, fracturing her pelvis in a fall, which rendered her incapable of practicing law for several months. The Accused did not notify Wilson of this injury until he contacted her in mid-June 2010.

85.

On June 11, 2010, Wilson's case was dismissed, because the Accused failed to prepare and file the judgment. The Accused thereafter failed to notify Wilson of the dismissal prior to January 2011, when he terminated her services.

86.

Between March 19, 2010 and January 2011, the Accused failed to take any other substantive action on Wilson's legal matter. Between March 2010 and 2011, the Accused's alcohol abuse, as well as physical injuries attributable thereto, materially impaired her ability to represent Wilson in his legal matter. The Accused accepted his case before March 2010, and failed thereafter to withdraw from the representation.

Violations

87.

The Accused admits that she engaged in the conduct described in paragraphs 83 through 86 above and thereby violated RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.16(a)(2), and RPC 8.4(a)(3).

Case No. 12-43

Richard Harvey Matter

Facts

88.

In July 2009, Richard Harvey (hereinafter “Harvey”) hired the Accused to represent him in his dissolution of marriage proceeding, and paid her a retainer.

89.

Between July 2009 and August 1, 2010, Harvey did not receive any billing statements or accountings of his retainer. In addition, the Accused was often unavailable or nonresponsive to his inquires.

90.

In April 2010, opposing counsel transmitted a form of Supplemental Judgment to the Accused for execution. The Accused did not respond or contact Harvey regarding the proposed form of judgment.

91.

Harvey terminated the Accused on August 1, 2010, and demanded a billing statement and a refund of his retainer. The Accused did not respond. In August 2011, Harvey complained to the Bar. In responding to the Bar, the Accused accounted for Harvey’s retainer.

Violations

92.

The Accused admits that she engaged in the conduct described in paragraphs 88 through 91 above and thereby violated RPC 1.3, RPC 1.4(a), and RPC 1.15-1(d).

Sanction

93.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Supreme Court should consider the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”). The *Standards* require that the Accused’s conduct be analyzed by

considering the following factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

- a. **Duty Violated.** The Accused violated her duty of diligence to her clients, including her duty to adequately communicate with them. *Standards* § 4.4. She also violated her duty to her clients to preserve and properly handle their property. *Standards* § 4.1. In one instance, the Accused also violated her duty of candor to her client. *Standards* § 4.6. The *Standards* presume that the most important ethical duties are those obligations which lawyers owe to their clients. *Standards*, p. 5. The Accused also violated her duty to the profession to respond to inquiries from the Bar. *Standards* § 7.0
- b. **Mental State.** The Accused acted knowingly and negligently. "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. 9. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id.* The Accused did not knowingly convert client money or take unearned funds.
- c. **Injury.** Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The Accused's neglect of her clients' matters caused both actual and potential injury. Their cases were stalled and resolutions of their matters were delayed (especially where her inaction resulted in dismissals). The Accused's failures to act and communicate with her clients caused further actual injury in terms of 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); *In re Schaffner II*, 325 Or 421, 426–27, 939 P2d 39 (1997).

In addition, the Accused caused either potential or actual injury to those clients who did not timely receive the unearned portions of their fees or their client materials.

The Accused's failure to cooperate with the Bar's investigations of her conduct caused actual injury to both the legal profession and to the public because many requests were necessitated by her failures to respond to the Bar or provide complete information, thereby delaying the Bar's investigations and, consequently, the resolution of the complaints against her. *In re Schaffner II, supra*; *In re Miles, supra*; *In re Haws*, 310 Or 741, 753, 801 P2d 818 (1990).

- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. Prior discipline. *Standards* § 9.22(a). This factor refers to offenses that have been adjudicated prior to imposition of the sanction in the current case. Accordingly, the Accused's recent one-year suspension in *In re Morasch*, 25 DB Rptr 25 (2011), also for alcoholism-related conduct, does count as prior discipline to some extent. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997). However, its weight in aggravation is diminished by the fact that most, but not all, of the Accused's misconduct in the present matters pre-dated the imposition of that suspension. *See In re Kluge*, 335 Or 326, 351, 66 P3d 492 (2003) (fact that accused lawyer not sanctioned for offenses before committing the offenses at issue in current case diminishes weight of prior offense); *In re Huffman*, 331 Or 209, 227–28, 13 P3d 994 (2000) (relevant timing of current offense in relation to prior offense is pertinent to significance as aggravating factor); *see also In re Starr*, 326 Or 328, 347–48, 952 P2d 1017 (1998) (weight of prior discipline somewhat diminished because it occurred at roughly the same time as events giving rise to the present proceeding—*i.e.*, the subsequent misconduct did not reflect a disregard of an earlier adverse ethical determination).
 2. A pattern of misconduct. *Standards* § 9.22(c). The Accused's violations in this matter occurred over a substantial period of time. *See In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996).
 3. Multiple offenses. *Standards* § 9.22(d).
 4. Substantial experience in the practice of law. *Standards* §9.22(i). The Accused was admitted to practice in Oregon in 1990.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a dishonest motive. *Standards* § 9.32(b).
 2. Personal or emotional problems. *Standards* § 9.32(c).
 3. Chemical dependency including alcoholism. *Standards* § 9.32(i).
 4. Remorse. *Standards* § 9.32(l).

Under the ABA *Standards*, a suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* § 4.42(a) & (b). Suspension is also generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or

potential injury to a client, and when a lawyer knowingly deceives a client, and causes injury or potential injury to the client. *Standards* § 4.12; § 4.62. Finally, a suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards* § 7.2.

95.

Oregon cases also support the imposition of a substantial suspension for the Accused's misconduct. *See, e.g., In re Parker*, 330 Or 541, 9 P3d 107 (2000) (four-year suspension for knowing neglect, including failing to respond to client messages, and knowing failure to respond to Bar inquiries in four matters); *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997) (two-year suspension for neglect, failing to return client property, and failing to fully respond to the Bar); *In re Bourcier II*, 322 Or 561, 909 P2d 1234 (1996) (three-year suspension for neglect and failing to respond to the Bar, as well as misrepresentations and dishonesty); *In re Chandler*, 306 Or 422, 760 P2d 243 (1988) (two-year suspension for neglect of five client matters, three instances of failing to return client property, and substantially refusing to cooperate with Bar authorities).

See also, In re Kent, 20 DB Rptr 136 (2006); *In re O'Dell*, 19 DB Rptr 287 (2005); *In re Ames*, 19 DB Rptr 66 (2005); *In re Cumfer*, 19 DB Rptr 27 (2005); *In re Barrow*, 13 DB Rptr 126 (1999) (all stipulations to two-year suspensions for neglect and/or failures to respond to the Bar related to numerous client matters).

96.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for two years for her violations of RPC 1.3, RPC 1.4(a) & (b); RPC 1.5(a); RPC 1.15-1(a), (c) & (d); RPC 1.16(a) & (d); RPC 8.1(a)(2); and RPC 8.4(a)(3) & (4), the sanction to be effective upon approval by the Supreme Court.

97.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. She is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that she cannot hold herself out as an active member of the Bar or provide legal services or advice until she is notified that her license to practice has been reinstated.

98.

The Accused acknowledges that she is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in her suspension or the denial of her reinstatement.

99.

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

EXECUTED this 31st day of March, 2012.

/s/ Marsha M. Morasch

Marsha M. Morasch

OSB No. 900920

EXECUTED this 4th day of April, 2012.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 990280

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 11-69
)
SHELLEY L. FULLER,)
)
Accused.)

Counsel for the Bar: Jennifer K. Oetter; Stacy J. Hankin
Counsel for the Accused: Roy Pulvers
Disciplinary Board: None
Disposition: Violation of RPC 8.4(a)(3). Stipulation for Discipline.
90-day suspension.
Effective Date of Order: July 1, 2012

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 ninety (90) days, effective July 1, 2012, for violation of RPC 8.4(a)(3).

DATED this 8th day of June, 2012.

/s/ William B. Crow
William B. Crow
State Disciplinary Board Chairperson

/s/ Pamela E. Yee
Pamela E. Yee, Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Shelley L. Fuller, 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 October 2, 1998, 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, 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, 2011, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of 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

5.

Between 2008 and 2010, the Accused, through her law firm, employed a number of individuals.

6.

On a number of occasions during the period referenced in paragraph 5, paystubs provided by the Accused to her employees represented that amounts for income, Social Security, and Medicare taxes had been withheld from the employees’ compensation and they reasonably concluded that the amounts were timely paid to the taxing authorities. At the time the Accused made those representations, she knew that the amounts reportedly withheld were not being timely paid to the taxing authorities, although she timely filed the appropriate tax forms with the taxing authorities, accurately reported the amounts due, and kept detailed internal records regarding the amounts due. By January 2012, the Accused had paid in full all of the withholding tax obligations plus penalties and interest.

7.

On a number of occasions during the period referenced in paragraph 5, paystubs provided by the Accused to her employees represented that contributions by them to a

retirement fund had been withheld from their compensation and they reasonably concluded that the amounts were timely remitted to the retirement plan administrator. At the time the Accused made those representations, she knew that the amounts reportedly withheld were not being timely paid to the retirement plan administrator, although she kept detailed internal records regarding the amounts due. By October 2010, the Accused had remitted all retirement contributions in full.

8.

The Accused, because she lacked business experience, used the funds she should have timely sent to the taxing authorities or the retirement fund administrator to pay other firm obligations.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, she violated RPC 8.4(a)(3), as set forth in the Third Cause of Complaint.

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

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 a duty she owed not to engage in misrepresentation. *Standard* § 5.0.
- b. **Mental State.** The Accused knowingly led her employees to believe that amounts withheld from their paychecks were timely paid to the taxing authority or remitted to the retirement plan administrator.
- c. **Injury.** There was the potential for significant injury to the Accused’s employees had the retirement contributions never been made. There was the potential for significant injury to the taxing authorities had the tax obligations never been paid.
- d. **Aggravating Circumstances.** Aggravating circumstances include:

1. A pattern of misconduct. The Accused's misconduct occurred over an extended period. *Standards* § 9.22(c).
 2. Substantial experience in the practice of law. The Accused has been licensed to practice law in Oregon since 1998. *Standards* § 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a prior disciplinary record. *Standards* § 9.32(a).
 2. Good faith effort to make restitution or to rectify the consequences of her misconduct. The Accused eventually made all tax and retirement payments. *Standards* § 9.32(d).
 3. Character or reputation. Members of the legal community are willing to attest to the Accused's good character and reputation. *Standards* § 9.32(g).
 4. Imposition of other penalties or sanctions. The Accused paid interest and penalties as a result of the late tax payments. *Standards* § 9.32(k).

11.

Under the ABA *Standards*, reprimand is generally appropriate when a lawyer knowingly engages in non-criminal conduct that involves dishonesty, fraud, deceit, or misrepresentation, and that adversely reflects on the lawyer's fitness to practice law. *Standards* § 5.13.

12.

Although no Oregon case is precisely on point with the present facts, reprimands or suspensions have been imposed on lawyers who have engaged in misrepresentation. *In re Wilson*, 342 Or 243, 149 P3d 1200 (2006) (lawyer suspended for 180 days for making misrepresentations to the court and opposing counsel in connection with postponement of a trial); *In re Gustafson*, 327 Or 636, 968 P2d 367 (1998) (lawyer suspended for 180 days when she knew the court was relying on a false impression she had created, but failed to correct that impression); *In re Morris*, 326 Or 493, 953 P2d 387 (1998) (120-day suspension of lawyer who altered and then filed with the court a final account for services rendered as counsel for a personal representative after the statement had already been signed and notarized); *In re Jones*, 326 Or 195, 951 P2d 149 (1997) (45-day suspension of lawyer who signed bankruptcy documents in blank notwithstanding the existence of a perjury clause); *In re Williams*, 314 Or 530, 840 P2d 1280 (1992) (63-day suspension imposed on lawyer who failed to follow through on representation that he would hold certain funds in trust pending resolution of a dispute even though he believed he would do so and expected to do so when the representation was initially made); *In re Boardman*, 312 Or 452, 822 P2d 709 (1991) (reprimand imposed on lawyer who represented that his client was the personal

representative of an estate before the actual appointment); *In re Hiller*, 298 Or 526, 694 P2d 540 (1985) (120-day suspension of lawyers who filed with the court an affidavit signed by their staff attesting to the sale of property when the lawyers knew there was no consideration for the sale and the buyer was employed by the lawyers).

A suspension is appropriate here because the Accused made numerous misrepresentations over an extended period. However, this case is not as egregious as *Wilson, supra*, and *Gustafson, supra*, because the mitigating circumstances outweighed the aggravating circumstances.

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 90 days for violation of RPC 8.4(a)(3), the sanction to be effective July 1, 2012.

14.

In addition, on or before the date the Accused is reinstated from her 90-day suspension, but in no event later than December 31, 2012, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$2,291.15, incurred for deposition. Should the Accused not seek reinstatement after the 90 days and fail to pay \$2,291.15 in full by December 31, 2012, 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.

15.

The Accused acknowledges that she has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to her clients during the term of her suspension. In this regard, the Accused has arranged for Mary Kim Wood and Cynthia Mohiuddin, both active members of the Oregon State Bar, to either take possession of or have ongoing access to the Accused's client files and serve as the contact person for those clients in need of the files during the term of the Accused's suspension. Ms. Wood will handle the personal injury cases, while Ms. Mohiuddin will handle the family law and adoption cases. The Accused represents that Ms. Wood and Ms. Mohiuddin have agreed to accept this responsibility.

16.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. She is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that she cannot hold herself out as an active member of the Bar or provide legal services or advice until she is notified that her license to practice has been reinstated.

17.

The Accused acknowledges that she is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in her suspension or the denial of her reinstatement.

18.

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 4th day of June, 2012.

/s/ Shelley L. Fuller

Shelley L. Fuller, OSB No. 982332

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin, OSB No. 862028

Assistant Disciplinary Counsel

Cite as 352 Or 104 (2012)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of)
)
DANIEL W. GOFF,)
)
Accused.)

(OSB No. 08143, 0912, 0953, 1014; SC S059467)

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

Argued and submitted January 13, 2012. Decided June 14, 2012.

Robert J. Smith, Robert J. Smith, P.C., Eugene, argued the cause and filed the briefs for the Accused.

Stacey J. Hankins, Assistant Disciplinary Counsel, Oregon State Bar, argued the cause and filed the brief for the Oregon State Bar.

PER CURIAM

The Accused is suspended from the practice of law for 18 months, commencing 60 days from the date of this decision.

SUMMARY OF THE SUPREME COURT OPINION

The Oregon State Bar alleged that the Accused committed numerous disciplinary violations. The trial panel found that the Accused had committed 15 rule violations and that an 18-month suspension was the appropriate sanction. On review, the Accused challenged the trial panel's findings in full. *Held*: The record establishes by clear and convincing evidence that the Accused committed the 15 rule violations found by the trial panel. The Accused is suspended from the practice of law for 18 months, commencing 60 days from the date of this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 10-150; 10-151
)
LAWRENCE P. CULLEN,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: None
Disciplinary Board: Lisa M. Caldwell, Chair
Charles R. Hathaway
Gail C. Gengler, Public Member
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.15-1(a),
RPC 1.15-1(d), RPC 8.1(a)(2), RPC 8.4(a)(2), and
RPC 8.4(a)(3). Trial Panel Opinion. Disbarment.
Effective Date of Opinion: June 26, 2012

DECISION OF THE TRIAL PANEL

This matter came for consideration before a Trial Panel of Lisa M. Caldwell (Chair), Charles R. Hathaway (Lawyer Member) and Gail C. Gengler (Public Member).

The Oregon State Bar is represented by Amber Bevacqua-Lynott.

The Accused, Lawrence P. Cullen, never filed an Answer or otherwise appeared before the Bar or the Panel and was not represented by counsel.

The Accused was charged with violations of Oregon Rules of Professional Conduct, RPC 1.3, 1.4(a), 1.15-1(a), 1.15-1(d), 4.1, 4.4, 5.0, 7.0, 8.1(a)(2), 8.4(a)(2), and 8.4(a)(3), in connection with a matter handled for several clients.

Findings and Conclusions

1. The Panel recommends that the Accused be permanently disbarred. By the December 6, 2011, Order of Default issued by previous Region 5 chairperson, Nancy Cooper, the Panel finds that the facts stated by the Bar in its May 25, 2011, Complaint are deemed true. The Panel is struck by four facts. First, at no time has the Accused cooperated in any manner with the Bar, even failing to attend a deposition on February 22, 2011, for which deposition the Accused was successfully personally served. Second, the Accused,

between December 2005 and June 2009, repeatedly failed to keep his clients apprised and informed. Third, the Accused repeatedly failed to render an accounting when requested by his clients and his client's subsequent counsel. Fourth, and most concerning, the Accused knowingly and intentionally converted client funds. The Panel finds that the Accused is unfit to practice law.

2. The Panel finds that the Bar has sustained its burden of proof with respect to all alleged violations of RPC 1.3, 1.4(a), 1.15-1(a), 1.15-1(d), 4.1, 4.4, 5.0, 7.0, 8.1(a)(2), 8.4(a)(2), and 8.4(a)(3). The Accused was admitted to the Oregon State Bar on April 23, 1997. On May 24, 2011, the Bar filed its Formal Complaint against the Accused in this matter, and he was served with it by publication for four weeks, ending on October 31, 2011. Thereafter, the Accused failed to file an Answer or otherwise appear in this proceeding. After giving the Accused a ten-day notice of its intent to seek an order of default, the Bar filed a Motion for Order of Default. On December 6, 2011, the Disciplinary Board Regional Chairperson granted the Bar's motion with an order finding the Accused in default and ordering that the allegations in the Bar's Formal Complaint be deemed true. With the Default Order, the Bar's factual allegations against the Accused have been proven. *See*, BR 5.8(a); *In re Magar*, 337 Or 548, 551–53, 100 P3d 727 (2004); *In re Kluge*, 332 Or 251, 27 P3d 102 (2001).

3. The Panel specifically finds, based on the Default Order, that:

(a) between December 2005 and June 2009, the Accused was separately hired by, and obtained settlements on behalf of, Christopher Standing ("C. Standing") his brother, Trent Standing ("T. Standing", collectively "Standing brothers"), and Cody Geer ("Geer") in their personal injury matters;

(b) the Accused initially deposited the proceeds he received on behalf of the Standing brothers and Geer into his lawyer trust account and disbursed portions of those proceeds to the clients directly or to others on their behalf;

(c) from the remaining Geer proceeds, the Accused had agreed to pay certain of Geer's medical providers, but never did. That failure to act on Geer's behalf constituted neglect of a legal matter in violation of RPC 1.3. The Accused also failed to notify Geer that he had (and would not) pay those costs, which was necessary information that needed to be shared with Geer. The Panel finds that the Accused's failure to do so constituted a failure to keep the client reasonably informed, in violation of RPC 1.4(a);

(d) beginning in January 2008, on behalf of C. Standing, attorney Jacob Wieselmann ("Wieselmann") made a number of requests for the Accused to account for the Standing funds and remit any remaining funds. The Accused did not respond to C. Standing or Wieselmann, or provide the requested accounting. The Panel finds that the Accused's failure to respond violated RPC 1.4(a), and the Accused's failure to render an accounting when requested by a client violated RPC 1.15-1(d);

(e) as of September 30, 2008, the Accused was still in possession of at least \$7,995.01 in funds belonging to the Standing brothers. As of September 30, 2009, the Accused was still in possession of at least \$7,676 in Geer proceeds. The Panel finds that the Accused's failure to timely deliver these funds to his respective clients constituted a failure to promptly provide client property, in violation of RPC 1.15-1(d);

(f) between September 30, 2008, and December 31, 2010, the Accused knowingly and intentionally withdrew all of the remaining Standing funds and all of the remaining Geer funds from his lawyer trust account. Some of the funds were transferred into the Accused's general business account where they were used for business and personal purposes unrelated to any of these clients' matters. The Panel finds that this knowing and intentional conversion of client funds by the Accused was criminal and dishonest conduct, in violation of RPC 8.4(a)(2) and RPC 8.4(a)(3). The Panel also finds it constituted a failure of the Accused to hold client property in his possession separate from his own property, in violation of RPC 1.15-1(a). The Panel additionally finds that the Accused's failure to notify his clients of the removal of their funds also constituted additional violations of RPC 1.4(a); and

(g) after the foregoing matters were brought to the Bar's attention, Disciplinary Counsel's Office ("DCO") asked several times for the Accused to respond to the respective allegations. When the Accused failed to do so after several months (which standing alone is a violation of RPC 8.1(a)(2)), the matter was referred to the Multnomah County Local Professional Responsibility Committee ("LPRC") for further investigation. The Accused did not respond to any inquiries from the LPRC, including a valid subpoena, personally served on him, that commanded the Accused to appear for a deposition. The Panel finds that this constituted a further failure of the Accused to respond to demands from a disciplinary authority, in violation of RPC 8.1(a)(2).

DATED this 24th day of April, 2012.

/s/ Lisa M. Caldwell
Lisa M. Caldwell, Trial Panel Chair

/s/ Charles R. Hathaway
Charles R. Hathaway, Trial Panel Lawyer
Member

/s/ Gail C. Gengler
Gail C. Gengler, Trial Panel Public Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 10-59; 10-102
)
ROBERT A. BROWNING,)
)
Accused.)

Counsel for the Bar: Kellie F. Johnson
Counsel for the Accused: None
Disciplinary Board: Colin D. Lamb, Chair
Allen Reel
Loni J. Bramson, Public Member
Disposition: Violations of RPC 1.3; RPC 1.4(a); RPC 1.4(b); RPC
1.7(a)(2); and RPC 8.1(a)(2). Trial Panel Opinion.
120-day suspension.
Effective Date of Opinion: July 17, 2012

TRIAL PANEL OPINION

BACKGROUND

On April 2, 2012, a Trial Panel convened to hear the charges against the Accused. The hearing was conducted at the offices of the Oregon State Bar, 16037 SW Upper Boones Ferry Road, Tigard, Oregon. Four charges were brought against the Accused:

1. Neglect of a legal matter and failure to keep his client reasonably informed, and failure to explain a matter to his client so that the client could make informed decisions, in violation of RPC 1.3, RPC 1.4(a), and RPC 1.4(b).
2. Neglect of a legal matter and failure to keep his client (a second client) reasonably informed, and failure to deposit and maintain funds into the trust account until earned, in violation of RPC 1.3, RPC 1.4(a), and RPC 1.15(a).
3. Representing a client involving a current conflict of interest, in violation of RPC 1.7(a)(2).
4. Failure to comply with a lawful demand for information from a disciplinary authority, in violation of RPC 8.1(a)(2).

ROBERT A. BROWNING, Accused, is an attorney, admitted by the Supreme Court of the State of Oregon to practice law in 1979, having his office in the County of Washington, State of Oregon.

On May 3, 2011, the Oregon State Bar filed an Amended Complaint against the Accused.

On May 20, 2011, the Accused filed an Answer. The Answer admitted some items, but more specific admissions were made at the beginning of the hearing, which will be set forth below.

On April 2, 2012, a hearing was held. At the close of testimony, the hearing was recessed with directions that the parties were to file written closing arguments. The Bar has requested a suspension of 120 days. The Accused's Closing Statement accepts the proposed sanctions of a 120-day suspension but denies violation of RPC 1.15-1(c).

GENERAL NATURE AND BACKGROUND

In the first charge ("Hubbard"), the Accused was contacted February 2008 to save the possible sale of a failing business. At the time of the contact, the landlord had repossessed the premises. The Accused accepted a \$200 retainer. In October, an additional \$500 was paid to the Accused. Between April 2008 and July 2009, the Accused did nothing to protect the Hubbards nor inform them of the status, despite repeated requests. No bill was sent until after the Hubbards complained to the Bar. The Accused admits all of this.

In the second charge ("Poetter"), the Accused was contacted in February 2009 to administer a small estate for her father-in-law, who died 19 years earlier. He was paid a \$2,000 retainer in March, which he deposited into his lawyer trust account. In August, he withdrew \$300 from the trust account. Between February and March, no fee had been paid. Between March and May, nothing was done. In mid-May, the Accused prepared a deed from Poetter's husband to Poetter. The complaint alleges that the Accused took no further action until about August 12, when he prepared and filed an Affidavit of Claiming Successor. In September, a claiming successor's deed was filed. The transfer of legal title was only the first step in the legal proceedings. Poetter's brother-in-law had been using the property for 19 years without paying rent. Between December 2009 and March 31, 2010, the Accused failed to take any further action and failed to respond to Poetter's attempts to contact him. The Accused admits this. Poetter paid \$2,000 to the Accused and the Bar charges that the fees were not deposited into trust and retained until earned. This trust account will be discussed in greater detail below.

In the third charge ("Poetter"), prior to representing Poetter on this matter, the Accused represented Virginia Bergerson who had loaned money to Poetter on her home mortgage and was acting as a collecting agent for Bergerson. Payment was made each month at the office of the Accused. Poetter, from time to time, had been in arrears in her payment to

Bergerson. In the course of representing Poetter, the Accused did have a current conflict of interest. Although Poetter knew that the Accused represented Bergerson, she testified that she was not told of the conflict of interest and did not understand the consequences. The Accused admits that he did not obtain informed consent, confirmed in writing.

In the fourth charge (“Poetter”), the Accused failed to respond to requests by the Bar for information in the Poetter matter. Letters were sent out by the Bar in June and July 2010. Extensions of time were requested and granted, but Accused did not respond. In September 2010, an attorney from the Local Professional Responsibility Committee interviewed the Accused and found him to be cooperative and embarrassed. The Accused admits that he knowingly failed to comply with a lawful demand for information from a disciplinary authority.

ADMISSIONS

The Accused admits all of the charges except for the charge involving the trust account. The Bar has asked for a 120-day suspension and the Accused, in his written closing argument, accepts the 120-day suspension.

FINDINGS OF FACT

First Charge—Hubbard (neglect and failure to keep informed)

No testimony was taken and the Accused accepted the factual statement in the Bar’s Trial Memorandum. The Hubbards were behind in their rent and the landlord had imposed a lien on the equipment. Although a buyer had been found, no written agreement had been entered into and ultimately the buyer was not able to finance the purchase. The buyer was in possession when the landlord terminated the lease and allowed the buyer to use the liened equipment. The Hubbards came to the Accused after all this had happened and paid him a \$200 retainer. In October of 2008, the Hubbards paid an additional \$500. From February of 2008 to July of 2009, the Accused did nothing, except to review e-mails from the Hubbards, which he did not answer. He never sent a bill until after the Hubbards filed a Bar complaint. The Accused stated that he thought the Hubbards were going to file bankruptcy. Perhaps the Accused thought the case lacked merit, but he never conveyed that to them and they were placed in limbo for months. They placed their faith in the Accused and he let them down, by doing nothing. At the least, he needed to convey his conclusion to them so they could get on with their life. He gave a black eye to himself and to the legal profession.

Second Charge—Poetter (neglect, failure to keep informed, and trust account violation)

In March of 2009, Poetter gave the Accused \$2,000. She stated it was for the purpose of cleaning up a small estate. She understood that was the sole purpose of the money. Poetter’s father-in-law had died 19 years earlier and two of three lots had been willed to Poetter’s husband, but title had never transferred. Her brother-in-law had moved into a house on the third lot and been using the two lots without paying any rent for the 19 years. The

Accused filed a Small Estate Affidavit, although it took him six months to file it. A month after the Small Estate Affidavit was filed he prepared a claiming successor deed. However, that deed only gave legal title to Poetter. In September, the Accused made a demand for past rent from the brother-in-law. However, the Accused did not respond to repeated requests for information by Poetter until December 2009. Nothing was done from December 2009 to March 2010. The Accused admits he neglected this matter and failed to respond to his client's request. In addition to this small estate matter, Poetter inquired about the purchase of some property in Scappoose. The Accused opened two files, one for the estate property and one for the Scappoose property. Poetter said she talked to the Accused about both matters, but gave the \$2,000 to the Accused solely for the small estate and nothing for the Scappoose purchase. Poetter signed two fee agreements, which show the attorney fees as \$360 per hour for his fee and \$60 per hour for clerical. The Accused put the money into trust, but segregated the funds and allocated some of the funds to the small estate and some to the Scappoose purchase. Upon examination by the Bar, Poetter said all of the funds were only for the small estate. Subsequent to depositing the funds into his trust account, the Accused withdrew \$300 from the funds allocated to the Scappoose property, even though he later admitted he had not done any work on the Scappoose property. Thus the Bar charged the Accused with violation of RPC 1.15-1(c). The Accused stated that his allocation between the estate and the Scappoose property was only for his internal purposes and that he had earned the money working on the estate and simply charged it to the wrong book entry, but that he had earned the money and it came from funds belonging to Poetter. We find it odd that the Bar argues first that the Accused had no right to create two separate book entries for Poetter, without her consent, then turns around and argues that once he created the two separate accounts, which she never authorized, that he could not withdraw funds for work done unless it was work done for the particular account that it was set up for. Poetter testified the \$2,000 was for the estate and the Accused only paid himself for work done on the estate. Additionally, the Bar argues that no work was done on the Scappoose matter and that \$300 could not have been earned, yet it is clear from the file that the Accused conferred with Poetter on this matter, and opened a file and received information from Poetter, and that the Accused's fees were acknowledged by Poetter to be \$360 per hour. On the fee agreement it clearly states "I understand that payment for the first consultation with me shall be due at the end of the consultation unless otherwise agreed at the beginning of the consultation." We find that the Accused did not fail to deposit and maintain legal fees and expenses in trust until earned

Third Charge—Conflict of Interest

Prior to representing Poetter, the Accused had been collecting monthly mortgage payments from Poetter on behalf of his client Virginia Bergerson. On at least one occasion, the payments were in arrears. During the time the Accused represented Poetter, he was continuing to collect monthly payments on behalf of Bergerson. An agent of Bergerson was

told of the conflict and stated she said it was ok, but Poetter testified that although she knew the Accused was representing Bergerson, she was not told of the possible problems that could arise because of the conflict, and in any event neither Bergerson nor Poetter signed a written disclosure or consent. The Accused agrees that he violated 1.7(a).

Fourth Charge—Failure to Comply with Requests for Information

On June 28, 2010, Disciplinary Counsel sent a letter to the Accused and requested a response. He did not respond. On July 22, 2010, a second letter was sent to the Accused and he failed to respond. On September 16, 2010, J. Rain, working as a volunteer with the Local Professional Responsibility Committee, met with the Accused for two hours and found him to be cooperative and received the requested information. The Accused admits that he violated RPC 8.1(a)(2).

Witness Credibility

We find that all of the witnesses were credible. There was some variations between the witness and the Accused regarding the fee agreement and which of two matters the \$2,000 was to cover. Although there was a dispute about this point, it does not affect our decision.

DISCUSSION AND CONCLUSIONS OF LAW

The **first** charge is that the Accused neglected his client (Hubbard) and failed to keep her informed. He admits this. We find a violation by the Accused of RPC 1.3, 1.4(a), and 1.4(b).

The **second** charge is that the Accused neglected his client (Poetter) and failed to keep her informed. He admits this and we find a violation by the Accused of RPC 1.3 and 1.4(a). He is also charged with a violation of RPC 1.15-1(c), which states:

(c) A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the fee is denominated as “earned on receipt,” “nonrefundable” or similar terms and complies with Rule 1.15(c)(3).

We find that the Accused did deposit all the money paid by Poetter into his trust account and only withdrew the \$300 after he had done more than \$300 of work. This withdrawal was consistent with the intent of Poetter, who understood all of the money was for the small estate. Therefore, we find no violation of RPC 1.15(c).

The **third** charge is that the Accused violated RPC 1.7(a)(2), which states that there is a current conflict of interest if the lawyer has a personal interest. Notwithstanding the conflict, the lawyer can represent the client if each client gives informed consent in writing. The Accused was a collecting agent for Bergerson before he represented Poetter. Poetter,

knowing that the Accused represented Bergerson, asked the Accused to represent her in non-related matters. A current conflict of interest exists if:

(1) *the representation of one client will be directly adverse to another client;*

(2) *there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer*

...

On the surface of these facts, the collection of funds or assets for Poetter would not be adverse to Bergerson, but there is a risk that information gained as a result of representing Poetter would or could be used if Poetter was unable or did not make her required monthly payment or pay for the required insurance. This could have blown up into a nightmare for both Bergerson and Poetter. Neither client gave informed consent, confirmed in writing, and the Accused admits he violated RPC 1.7(a)(2). We find a violation of RPC 1.7(a)(2).

The **fourth** charge is that the Accused failed to comply with RPC 8.1(a)(2) by failing to respond to two written requests by the Disciplinary Counsel for information. The Accused admits this charge and we find a violation of RPC 8.1(a)(2).

SANCTIONS

Finding that the Accused did violate the Code of Professional Responsibility and the Rules of Professional Conduct, we must impose a sanction. Following the *ABA Standards for Imposing Lawyer Sanctions*. In Section 3.0, the following factors are considered:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

As to our finding that the Accused neglected a legal matter and failed to explain a matter to his client, in both Hubbard and Poetter, Section 4.42 of the *ABA Standards* state that a suspension is appropriate where "a lawyer engages in a pattern of neglect and causes injury or potential injury to a client." In both cases, the clients were harmed simply because of the delay. Both clients wasted significant time trying to get the Accused to respond and advise them. In both cases, we have no evidence that better results would have been achieved if the Accused had acted promptly and properly advised his clients, but at the very least the clients were harmed because they wasted much time and energy and it affected the daily lives of both.

As to our finding that the Accused had a conflict of interest without obtaining an informed consent in writing, Section 4.32 says that "suspension is appropriate when the

lawyer knows that his or her interests may be or are likely to be adverse to that of the client, but does not fully disclose the conflict, and causes injury or potential injury to a client.” While we did not find any actual injury because of the conflict of interest, there was a potential one.

As to our finding that the Accused failed to respond to requests for information from the Disciplinary Counsel this is an aggravating circumstance considered below.

Mitigating and Aggravating Circumstances

We have determined that suspension of the Accused is appropriate. Section 9.0 of the *ABA Standards* sets forth aggravating and mitigating circumstances which are to be considered when determining the period of suspension. We set forth those aggravating factors which we deem applicable:

1. Multiple Offenses. The Accused was dilatory in two different cases, thus an aggravation.

2. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or order of the disciplinary agency. The essence of Accused’s failure to comply was the failure to respond to two letters from the Disciplinary Counsel. The Accused cooperated from that point forward.

3. Substantial experience in the practice of law. The Accused has been practicing law since 1979. We find that the Accused has substantial experience and this is therefore an aggravating circumstance.

4. Absence of a prior disciplinary record. The Accused has been practicing law for over 50 years, without a prior disciplinary record, and we give this a great deal of weight in offsetting the multiple aggravating factors.

5. Absence of a dishonest or selfish motive. We find that the Accused did not violate the rules for his personal gain, which is a mitigating factor.

6. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Although the Accused failed to respond to two letters, which was an aggravating factor, he made a full and free disclosure to the Disciplinary Board and admitted many of the facts and finally consented to the proposed sanctions suggested by the Bar. This is a mitigating factor.

DISPOSITION

It is the decision of the Trial Panel that the Accused be suspended for a period of 120 days.

IT IS SO ORDERED.

Dated this 16th day of May, 2012

/s/ Colin Lamb
Colin Lamb, Trial Panel Chair

/a/ Allen Reel
Allen Reel Trial Panel Member

/s/ Loni Bramson
Loni Bramson, Trial Panel Member

Cite as 352 Or 231 (2012)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of)
)
MARK G. OBERT,)
)
Accused.)

(OSB No. 08-134, 09-122, 09-123; SC S059072)

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

Argued and submitted March 9, 2012. Decided July 19, 2012.

Jason Thompson, Ferder Casebeer French & Thompson, LLP, Salem, argued the cause and filed the briefs for the Accused.

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

Before Balmer, Chief Justice, and Durham, Kistler, Walters, Linder, and Landau, Justices.

PER CURIAM

The Accused is suspended from the practice of law for a period of six months, commencing 60 days from the date of this decision.

SUMMARY OF THE SUPREME COURT OPINION

The Oregon State Bar (the Bar) charged Mark G. Obert (the Accused) with nine violations of the Oregon Rules of Professional Conduct (RPC), arising out of his representation of two clients. On the first matter, the Bar alleged violations of RPC 1.5(a) (charging or collecting a clearly excessive fee), RPC 1.15-1(a) (failure to deposit and maintain client funds in a separate trust account), RPC 1.15-1(c) (requiring lawyer to withdraw client money only as fees are earned or expenses incurred), RPC 1.15-1(d) (failure to promptly deliver funds to a client, and RPC 8.1(a)(2) (failure to respond to lawful requests of disciplinary authority). On the second matter, the Bar alleged violations of RPC 1.1 (failure to provide competent representation), RPC 1.4(a) (failure to keep client reasonably

informed), RPC 3.1 (taking action on behalf of a client with no nonfrivolous basis), and RPC 8.4(a)(3) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation). The trial panel concluded that the Accused violated each of those rules, except for RPC 8.4(a)(3), and imposed a sanction of six months' suspension from the practice of law. The Accused timely requested review, asserting that he did not violate any of those rules and that, even if he did, the proper sanction was a public reprimand. In response, the Bar argued that the trial panel correctly found eight violations of the rules of professional conduct, but that it erred in concluding that the Accused did not violate RPC 8.4(a)(3). The Bar asserted that suspension for one year was the correct sanction. *Held*: The Bar proved, by clear and convincing evidence, that the Accused violated seven rules of professional conduct: RPC 1.1, RPC 1.5(a), RPC 1.5(a), (c), and (d), RPC 3.1, and RPC 8.1(a)(2). The Bar failed, however, to prove that the Accused violated RPC 1.4(a) and RPC 8.4(a)(3). The Accused is suspended from the practice of law for a period of six months, commencing 60 days from the date of this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 12-82
)
STEPHEN D. PETERSEN,)
)
Accused.)

Counsel for the Bar: Stacy J. Hankin
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of RPC 1.15-1(e). Stipulation for Discipline.
Public Reprimand.
Effective Date of Order: July 23, 2012

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 1.15-1(e).

DATED this 23rd day of July, 2012.

/s/ William B. Crow
William B. Crow
State Disciplinary Board Chairperson

/s/ Pamela Yee
Pamela Yee, Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Stephen D. Petersen, 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 21, 1973, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Columbia County, Oregon.

3.

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

4.

On May 19, 2012, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violation of RPC 1.15-1(e) 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.

The Accused represented Peter Rintoul (hereinafter “Rintoul”) in the Columbia County Circuit Court case *Rintoul Custom Cabinets v. Bates*. At issue was Rintoul’s entitlement to recover from Steven and Arlene Bates (hereinafter “Bates”) the value of work he had performed in connection with the fabrication and installation of cabinets in the Bates’ home. The Bates had not paid Rintoul because they were dissatisfied with his work.

6.

In April 2009, an arbitrator found in favor of Rintoul. The Bates appealed.

7.

In February 2010, while the appeal was pending, the parties agreed to settle the matter. In relevant part, the Bates agreed to remit \$12,000.00 to the Accused which he was to deposit into his lawyer trust account. Rintoul would then deliver the remaining cabinets and trim to the Bates’ home. The written settlement agreement authorized the Accused to disburse the \$12,000.00 to Rintoul only after the Bates’ lawyer informed the Accused that the delivered cabinets and trim had been accepted.

8.

On March 25, 2010, the Bates' lawyer sent the Accused a check for \$12,000.00, which he promptly deposited into his lawyer trust account.

9.

On May 20, 2010, Rintoul delivered the cabinets and trim to the Bates' home. On that same day, Rintoul went to the Accused's office and asked that the \$12,000.00 be disbursed to him. Rintoul informed the Accused that when he delivered the cabinets and trim, the Bates had not objected to them. The Accused disbursed the funds to Rintoul even though the Bates' lawyer had not informed the Accused that the cabinets and trim had been accepted.

10.

On that same day, the Bates inspected the cabinets, decided that they were not acceptable, and immediately notified their lawyer. The Bates' lawyer then notified the Accused that the cabinets had not been accepted. By then, however, the Accused had already disbursed the \$12,000.00 to Rintoul.

Violations

11.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 10, he violated RPC 1.15-1(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 a duty he owed as a professional when he prematurely distributed funds entrusted to him. *Standards* § 7.0.
- b. **Mental State.** The Accused acted negligently in that he relied upon Rintoul's representation that the Bates had not objected to the delivered cabinets and trim instead of confirming the Bates' acceptance with their lawyer.
- c. **Injury.** There was the potential for injury to the Bates because the Accused released the funds to Rintoul before the Bates' lawyer gave consent, as required by the written settlement agreement. No actual injury occurred

because eventually the Bates accepted the cabinets and trim delivered by Rintoul.

d. Aggravating Circumstances. Aggravating circumstances include:

1. Substantial experience in the practice of law. The Accused has been licensed to practice law in Oregon since 1973. *Standards* § 9.22(i).

e. Mitigating Circumstances. Mitigating circumstances include:

1. Absence of a prior disciplinary record. *Standards* § 9.32(a).
2. Absence of a dishonest or selfish motive. *Standards* § 9.32(b).
3. Cooperative attitude toward the proceeding. *Standards* § 9.32(e).

13.

Under the ABA *Standards*, reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards* § 7.3.

14.

Under somewhat similar circumstances, lawyers have been reprimanded. *In re Dorsey*, 14 DB Rptr 105 (2000) (reprimand imposed on lawyer who communicated with a represented person and then, contrary to the opposing lawyer's instructions, negotiated a settlement check without first providing an executed satisfaction signed by his client); *In re Alley*, 256 Or 51, 470 P2d 943 (1970) (reprimand imposed on lawyer who agreed to hold funds received from a third party in trust and distribute them to his client in accordance with the parties' agreement, but then wrongfully distributed some of the funds to himself to pay attorney fees incurred by his client).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of RPC 1.15-1(e).

16.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

17.

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.

Cite as *In re Petersen*, 26 DB Rptr 186 (2012)

EXECUTED this 16th day of July, 2012.

/s/ Stephen D. Petersen

Stephen D. Petersen

OSB No. 732350

EXECUTED this 19th day of July, 2012.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 862028

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case Nos. 10-106; 10-107
)	
KEITH G. JORDAN,	)	SC S060557
)	
Accused.)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	Kelly W. G. Clark
Disciplinary Board:	None
Disposition:	Violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.16(c), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(2), RPC 8.4(a)(3), and RPC 8.4(a)(4). Stipulation for Discipline. 18-month suspension.
Effective Date of Order:	August 23, 2012

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. In addition to the other terms and conditions imposed by the stipulation, the Accused is suspended from the practice of law in the State of Oregon for a period of eighteen months, effective seven days from the date of this order.

August 16, 2012.

/s/ Thomas A. Balmer
THOMAS A. BALMER, Chief Justice

STIPULATION FOR DISCIPLINE

Keith G. Jordan, 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 January 3, 2003, 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 November 17, 2010, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.16(c), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(2), RPC 8.4(a)(3), and RPC 8.4(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.

Common Facts

5.

The Accused was a member of the State Bar of California, admitted to the practice of law in California on or about June 7, 1994. On or about December 26, 2006, the Accused entered into a “Stipulation Re Facts, Conclusions of Law and Disposition” with the State Bar of California under which he would be suspended from the practice of law for two years, with all but nine months of that suspension stayed. *In re Jordan*, State Bar Court of California Case No. 04-O-13740 *et alia*. The stipulation required the approval of the State Bar Court of California and the Supreme Court of California prior to becoming effective.

6.

The Accused expected that the State Bar Court of California and the Supreme Court of California would approve the stipulation described in paragraph 5 above and that the agreed-upon discipline, including an actual nine-month suspension from the practice of law in the State of California, would be imposed soon thereafter.

7.

On or about January 31, 2007, the Accused learned that the State Bar Court of California had approved the stipulation described in paragraph 5 above and recommended the agreed-upon discipline to the Supreme Court of California.

8.

On or about May 29, 2007, the California Supreme Court approved the stipulation described in paragraph 5 above. On or about May 29, 2007, the Accused received notice that the stipulation was approved by the California Supreme Court and that his actual suspension would commence June 28, 2007.

9.

Commencing on or about June 28, 2007, the Accused was actually suspended from the practice of law in the State of California for a period of nine months. *In re Jordan*, State Bar Court of California Case No. 04-O-13740 *et alia*.

Aracely Hernandez Matter—Case No. 10-106

10.

At all relevant times herein, 8 CFR 292.1(a) permitted a person in a United States Immigration Court proceeding to be represented by an “attorney” as defined in 8 CFR 1.1(f). At all relevant times herein 8 CFR 1.1(f) provided: “The term attorney means any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.”

11.

On or about March 15, 2007, the Accused met with Aracely Hernandez (hereinafter “Hernandez”) concerning removal proceedings that had been commenced against her in United States Immigration Court (hereinafter “the immigration matter”). The Accused offered to represent Hernandez in the immigration matter without disclosing that he was subject to an imminent suspension from the practice of law in California that would preclude him from providing legal representation in the immigration matter for a substantial period of time. The Accused asserts that he did not realize his suspension in California would affect his ability to represent clients in immigration matters as he expected to remain an active member of the Oregon State Bar.

12.

On or about March 19, 2007, the Accused undertook to represent Hernandez in the immigration matter for a fixed fee of up to \$12,000, with a minimum retainer of \$2,000. On

or about the same date the Accused received a \$2,000 retainer for the representation of Hernandez.

13.

On or about April 12, 2007, the Accused filed a two page motion in the Hernandez proceeding that sought: permission for the Accused to appear by telephone at an April 16, 2007, court appearance; termination of the removal proceeding against Hernandez; and the setting of a bond that would permit Hernandez to be released from custody. In the motion, the Accused represented that one of Hernandez's criminal convictions upon which the government relied in the removal proceedings was on direct appeal and that he would confirm the status of the conviction.

14.

The Accused's representation that Hernandez's criminal conviction was on direct appeal was not accurate, and the Accused should have known it was not accurate. The Accused did not take the necessary steps to confirm the status of the conviction before he made the representation and he did not subsequently inform the court of the accurate status of the conviction.

15.

The Accused did not appear by telephone or otherwise on April 16, 2007, and the court rescheduled the appearance for April 23, 2007, to permit the Accused to appear.

16.

The Accused received notice that Hernandez's immigration matter was rescheduled for April 23, 2007. The Accused did not appear on April 23, 2007, and the hearing was rescheduled for April 26, 2007.

17.

On April 26, 2007, a hearing was held in Hernandez's immigration matter, and the Accused was present. The immigration court determined that Hernandez's conviction was not on direct appeal, and the court denied the Accused's motion to terminate removal proceedings. The court set a May 9, 2007, court date for the submission of an Application for Asylum and Application for Cancellation of Removal.

18.

The Accused told Hernandez that he would appeal the Immigration Court's April 26, 2007, rulings. The Accused failed to timely appeal the rulings.

19.

On May 9, 2007, the Accused did not appear in immigration court for the Hernandez matter and was not available to appear at the appointed time. The Accused was eventually

contacted by the court, and the court scheduled, with the participation of the Accused, an August 13, 2007, hearing on the merits of the immigration matter.

20.

On or about May 15, 2007, the Accused demanded and was paid an additional \$5,000 for his representation of Hernandez in her immigration matter. The Accused received the additional fees from Anthony Kundelius (hereinafter “Kundelius”).

21.

The Accused did not notify the Immigration Court of his June 28, 2007, suspension from the practice of law in the State of California or withdraw his notice of appearance as attorney for Hernandez in the immigration matter. The Accused did not inform Hernandez or Kundelius of his suspension from the practice of law in the State of California. The Accused continued to provide legal advice and assistance to Hernandez.

22.

On or about June 28, 2007, the United States Department of Homeland Security (hereinafter “DHS”) and the Executive Office for Immigration Review (hereinafter “EOIR”) initiated proceedings seeking disciplinary sanctions against the Accused and immediate suspension of the Accused’s permission to assist clients in immigration matters. The Accused received notice of these proceedings on or shortly after June 28, 2007.

23.

The Accused did not inform Hernandez or Kundelius of the pending DHS and EOIR actions to immediately suspend and discipline the Accused.

24.

In July 2007, without informing Kundelius or Hernandez of the pending DHS and EOIR actions to immediately suspend and discipline the Accused, the Accused requested that Hernandez and/or Kundelius pay the remainder of his \$12,000 fee. On or about July 17, 2007, in response to the Accused’s demand for additional fees, Kundelius paid the Accused \$500, which the Accused said he needed to finance his travel to Tacoma for Hernandez’s August 13, 2007, merits hearing. The Accused agreed to collect an additional \$5,000 from Kundelius at the merits hearing.

25.

On or about July 20, 2007, the EOIR immediately suspended the Accused from practicing law in immigration matters. On or about that same date, the Accused received from the EOIR notice of this suspension from the EOIR and the EOIR’s instruction that he must immediately inform his clients of his suspension and of his inability to represent them in immigration matters. The EOIR also notified the Accused that it intended to impose discipline upon him and that he could request a hearing regarding that intent. The Accused

did not request a hearing regarding the EOIR notice of intent to impose discipline. The Accused continued to give legal advice and assistance to Hernandez in the immigration matter. The Accused did not advise the immigration court that he was required to withdraw from the representation of Hernandez.

26.

The Accused did not return the \$500 Kundelius had paid on or about July 17, 2007. The Accused continued to request the remainder of his \$12,000 fee.

27.

On or about Friday, August 10, 2007, the Accused informed Hernandez, for the first time, that he was suspended from the practice of law and could not represent Hernandez at the Monday, August 13, 2007, merits hearing. The Accused also informed Hernandez that he had contacted a California immigration lawyer who agreed to represent Hernandez in the matter for additional fees. The Accused informed Kundelius on August 13, 2007, that he could not represent Hernandez at the merits hearing.

28.

The Accused admits that, by engaging in the conduct described in paragraphs 11 through 27, he violated RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 5.5(a), RPC 8.4(a)(3), and RPC 8.4(a)(4). Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 1.16(d) should be and, upon the approval of this stipulation, is dismissed.

Armando Flores-Salazar matter—Case No. 10-107

29.

On or about December 3, 2006, the Accused undertook to represent Armando Flores-Salazar (hereinafter “Flores-Salazar”) in the appeal of a criminal judgment against Flores-Salazar in Clackamas County Circuit Court Case No. CR0600856 and at an associated restitution hearing. Pursuant to a written fee agreement, the Accused agreed to represent Flores-Salazar in these matters for a fixed flat fee of \$15,000 and the Accused received the \$15,000 fee.

30.

On or about July 19, 2007, the Accused was informed that the Oregon State Bar had petitioned the Oregon Supreme Court to impose a reciprocal two-year suspension of the Accused’s Oregon State Bar membership based upon the misconduct that resulted in the discipline imposed by the California Supreme Court, described in paragraphs 5 through 9 above. In response, the Accused asked the Oregon Supreme Court to limit the reciprocal sanction to a nine-month suspension, in accord with the term of actual suspension imposed by the California Supreme Court.

31.

The Accused did not inform Flores-Salazar of his expected suspension from the Oregon State Bar. The Accused asserts that he believed he could complete and file an opening brief on Salazar's behalf prior to a term of suspension being imposed in Oregon and that he hoped to be reinstated to active Bar membership in time to orally argue Salazar's case before the Court of Appeals.

32.

On or about October 25, 2007, the Accused filed an opening brief on behalf of Flores-Salazar in the direct appeal of his Clackamas County criminal conviction.

33.

On or about November 1, 2007, the Oregon Supreme Court issued an order immediately imposing a reciprocal nine-month suspension of the Accused's Oregon State Bar membership. *In re Jordan*, SC S055065, 21 DB Rptr 287 (2007).

34.

The Accused had not made arrangements, by November 1, 2007, to protect his clients upon his suspension from the practice of law in Oregon. The Accused petitioned the Oregon Supreme Court for additional time to do so and, on or about November 30, 2007, the court moved the effective date of Accused's suspension to January 1, 2008. During this period, the Accused notified Flores-Salazar of his imminent suspension from the practice of law in Oregon. The Accused asserts that he hoped to become reinstated in time to complete the representation of Flores-Salazar.

35.

The Flores-Salazar appeal was pending before the Oregon Court of Appeals at the time the Oregon Supreme Court ordered the Accused suspended. The Accused failed, until December 2008, to move to withdraw from the representation of Flores-Salazar before the Court of Appeals, as he was required to do by ORAP 8.10(1). The Accused asserts that he notified the opposing attorney of the suspension by the time it was effective and that he assumed the Court of Appeals was aware of the suspension imposed by the Supreme Court.

36.

On or about June 24, 2008, the Accused demanded that Flores-Salazar pay the Accused an additional \$15,000 attorney fee, which the Accused claimed was owed for his representation in writing an opening brief that was far more complicated than he had expected. The Accused informed Flores-Salazar that, unless the additional fee was paid, the Accused would not complete the representation after his reinstatement to active Oregon State Bar membership. Flores-Salazar refused to pay any additional fee and demanded a refund of

a portion of the flat fee he had paid, because the Accused was unable to complete the representation for which the fee was paid.

37.

The Accused did not apply for reinstatement to active membership in the Oregon State Bar. The Accused provided no further representation to Flores-Salazar. The Accused did not respond to Flores-Salazar's subsequent requests for a refund of the unearned portion of the flat fee he had paid.

38.

In April 2010, Flores-Salazar complained to the Oregon State Bar about the conduct of the Accused. On or about May 6, 2010, Disciplinary Counsel for the Oregon State Bar requested information from the Accused concerning Flores-Salazar's complaint. The Accused knowingly failed to respond.

39.

On or about June 7, 2010, Disciplinary Counsel for the Oregon State Bar again requested information from the Accused concerning Flores-Salazar's complaint. The Accused knowingly failed to respond.

40.

The Accused admits that, by engaging in the conduct described in paragraphs 29 through 39, he violated RPC 1.5(a), RPC 1.16(c), RPC 1.16(d), RPC 8.1(a)(2), and RPC 8.4(a)(4). Upon further factual inquiry, the parties agree that the charges of alleged violation of RPC 1.4(a), RPC 1.4(b), and RPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.

Sanction

41.

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.** In the Hernandez matter, the Accused violated his duty to provide diligent representation to Hernandez. *Standards* § 4.4. By failing to inform Hernandez and Kundelius about his imminent suspension at the time he sought additional funds, the Accused violated his duty of candor to his client. *Standards* § 4.6. By charging excessive fees in both matters, practicing law in the Hernandez matter when he was not authorized to do so, failing to

properly withdraw from the representation of Flores-Salazar, failing to respond to disciplinary inquiries in the Flores-Salazar matter, and engaging in conduct prejudicial to the administration of justice in both matters, the Accused violated duties he owed as a professional. *Standards* § 7.

- b. **Mental State.** The Accused acted knowingly with respect to each violation.
- c. **Injury.** Hernandez represented herself at the merits hearing in her immigration matter and the removal proceeding was dismissed. However, there was great potential for injury in that matter and the Accused's lack of diligence and candor caused anxiety and frustration to Hernandez and Kundelius. The Court of Appeals intervened at Flores-Salazar's request and appointed a public defender to complete the appellate representation. However, there was a potential for great injury and Flores-Salazar suffered anxiety and frustration during the period he was left unrepresented. The Accused caused actual injury by his failure to refund a portion of the flat fee he charged in the Flores-Salazar matter in recognition of his inability to complete the representation for which the flat fee was paid. The Accused caused actual and potential injury to the Oregon State Bar by his failure to respond to Disciplinary Counsel's lawful requests for information regarding the Flores-Salazar matter.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 - 1. Prior disciplinary history. *Standards* § 9.22(a). In determining the weight of prior disciplinary offenses, the court considers: (1) the relative seriousness of the prior offense and resulting sanction; (2) the similarity of the prior offense to the offense in the case at bar; (3) the number of prior offenses; (4) the relative recency of the prior offenses; and (5) the timing of the current offense in relation to the prior offense and resulting sanction and whether the lawyer was sanctioned for the prior offense before engaging in the offense in the case at bar. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997).
 - i. On June 28, 2007, the Accused was suspended from the practice of law by the California Supreme Court for two years, all but nine months stayed, and placed on a three-year probation. *In re Jordan*, State Bar Court of California Case No. 04-O-13740 *et alia*. The Accused's offenses included eight counts of failing to perform legal services in immigration matters. In some cases, the Accused also failed to refund unearned fees or keep his clients informed about the status of their cases. This sanction resulted in the Accused's reciprocal nine-month suspension in Oregon, commencing January 1, 2008. *In re*

Jordan, SC S055065, 21 DB Rptr 287 (2007). The Accused's misconduct in the Hernandez matter took place while the Accused was engaged in this California disciplinary proceeding and continued for a short time after discipline was imposed. The Accused's misconduct in the Flores-Salazar matter took place after the Oregon Supreme Court imposed the reciprocal nine-month suspension.

- ii. In January 2010, after the Accused's misconduct in the Hernandez and Flores-Salazar matters, the Accused was again suspended from the practice of law by the California Supreme Court, for a three year period, with an actual suspension for a minimum of two years and until he made restitution and provided proof of rehabilitation. *In re Jordan*, State Bar Court of California Case No. 07-O-10284 *et alia*. The Accused's offenses involved taking immigration matters and failing to perform the necessary work to help the clients, failing to make court appearances, refusing to return unearned fees, and failing to notify a client that he had moved out of state.¹ The Oregon Supreme Court imposed a reciprocal two-year suspension upon the Accused, effective October 21, 2010. *In re Jordan*, 24 DB Rptr 218 (2010).
2. Selfish motive. *Standards* § 9.22(b).
 3. A pattern of misconduct. *Standards* § 9.22(c).
 4. Multiple offenses. *Standards* § 9.22(d).
 5. Vulnerable victims. *Standards* § 9.22(h).
 6. Substantial experience in the practice of law. *Standards* § 9.22(i).
 7. Indifference to making restitution. *Standards* § 9.22(j).
- e. **Mitigating Circumstances.** There are no mitigating circumstances.

42.

Under the ABA *Standards*, suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* § 4.42(b). Suspension is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes injury or potential injury to the client. *Standards* § 4.62. Suspension is generally appropriate when a lawyer knowingly

¹ The Accused was later disbarred by the California Supreme Court for his failure to comply with California Rule of Court 9.20 which required the Accused to notify clients, opposing counsel, and other relevant parties of his suspension, and file a compliance affidavit within a specified time of his suspension. *In re Jordan*, State Bar Court of California Case No. 09-O-18512.

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.

43.

Under Oregon law, lawyers who engage in repeat violations of the same ethics rules over a short period of time typically see a sharp escalation in the sanction imposed. *See, In re Schaffner I*, 323 Or 472, 918 P2d 803 (1996) (lawyer suspended for 120 days for neglecting a legal matter); *In re Schaffner II*, 325 Or 421, 939 P2d 39 (1997) (same lawyer suspended for two years for neglecting a legal matter). *See, also In re Bourcier I*, 7 DB Rptr 115 (1993) (lawyer suspended for 60 days for neglect); *In re Bourcier II*, 322 Or 561, 909 P2d 1234 (1996) (same lawyer suspended for three years for neglect, misrepresentation, and failure to cooperate); *In re Bourcier III*, 325 Or 429, 939 P2d 604 (1997) (same lawyer disbarred for neglect and failure to cooperate). An eighteen-month suspension is appropriate for the Accused's misconduct involving two Oregon clients, committed during and after the disciplinary proceedings that resulted in his nine-month suspension from the practice of law in California and Oregon, but before subsequent disciplinary proceedings in California and Oregon that resulted in further suspensions from the practice of law.

44.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for eighteen months for violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.16(c), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(2), RPC 8.4(a)(3), and RPC 8.4(a)(4), the sanction to be effective upon the approval of this stipulation.

45.

In addition, on or before December 31, 2012, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$1,202.95, incurred for the cost of his deposition. Should the Accused fail to pay \$1,202.95 in full by December 31, 2012, 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.

46.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

47.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

48.

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

EXECUTED this 16th day of July, 2012.

/s/ Keith G. Jordan

Keith G. Jordan

OSB No. 030065

EXECUTED this 17th day of July, 2012.

OREGON STATE BAR

By: /s/ Linn D. Davis

Linn D. Davis

OSB No. 032221

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 12-108
)	
ARTHUR P. STANGELL,)	
)	
Accused.)	

Counsel for the Bar:	Mary A. Cooper
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 4.2. Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	August 22, 2012

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 4.2.

DATED this 22nd day of August, 2012.

/s/ William B. Crow
 William B. Crow
 State Disciplinary Board Chairperson

/s/ Anthony A. Buccino
 Anthony A. Buccino, Region 7
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Arthur P. Stangell, 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, 1982, 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, voluntarily, and with the opportunity to seek advice from counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On July 21, 2012, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violation of RPC 4.2 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.

On or about November 30, 2011, the Accused—representing a client in a boundary line dispute—visited the real property at issue. The opposing party, who the Accused knew to be represented by counsel, was there when the Accused arrived. The Accused asked the opposing party for permission to enter onto the property, which permission was granted. The Accused then asked the opposing party about one of the property’s south boundary lines. These communications between the Accused and opposing party were on the subject of the opposing party’s representation by counsel, and the Accused did not have permission from that lawyer to communicate directly with his client. The direct communication was likewise not authorized by law or court order.

Violations

6.

The Accused admits that, by engaging in the conduct described in paragraph 5, he violated RPC 4.2.

Sanction

7.

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 owed to the legal system to avoid improper communications with a party. *Standard* § 6.3.
- b. **Mental State.** The Accused’s mental state was negligent, in that he failed to heed a substantial risk that circumstances existed or that a result would follow, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7.
- c. **Injury.** The Accused’s direct communication posed a foreseeable risk of injury to the legal system. *Standards*, p. 7.
- d. **Aggravating Circumstances.** Aggravating circumstances include: A prior disciplinary offense for the same ethics violation (an admonition in 2001, for communicating with a represented party) (*Standard* § 9.22(a)); and substantial experience in the practice of law (*Standard* § 9.22(i)).
- e. **Mitigating Circumstances.** Mitigating circumstances include: Absence of a dishonest or selfish motive (*Standard* § 9.32(b)); and full and free cooperation with the disciplinary investigation (*Standard* § 9.32(e)).

8.

Under the ABA *Standards*, a public 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. *Standards* § 6.33.

9.

Oregon case law typically reprimands lawyers who have negligently engaged in direct communications with represented persons. *See In re Newell*, 348 Or 396, 234 P3d 967 (2010); *In re McGavic*, 22 DB Rptr 248 (2008).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 4.2.

11.

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 8th day of August, 2012.

/s/ Arthur P. Stangell

Arthur P. Stangell, OSB No. 821260

OREGON STATE BAR

By: /s/ Mary A. Cooper

Mary A. Cooper, OSB No. 910013

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 12-59
)	
KEVIN M. McCALLIE,)	
)	
Accused.)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	None
Disciplinary Board:	None

Disposition:	Violation of RPC 5.5(a), RPC 8.4(a)(3), and ORS 9.160. Stipulation for Discipline. 120-day suspension.
Effective Date of Order:	August 27, 2012

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 120 days, effective the date this order is signed, for violations of ORS 9.160, RPC 5.5(a), and RPC 8.4(a)(3).

DATED this 27th day of August, 2012.

/s/ William B. Crow
 William Crow
 State Disciplinary Board Chairperson

/s/ Pamela Yee
 Pamela Yee, Region 4
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Kevin M. McCallie, 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 21, 1990, and has been a member of the Oregon State Bar continuously since that time, presently residing in Washington County, Oregon.

3.

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

4.

On March 27, 2012, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of ORS 9.160, and RPC 5.5(a) and RPC 8.4(a)(3) 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.

The Accused’s membership in the Oregon State Bar was administratively suspended on or about July 2, 2010. The Accused was not subsequently reinstated to active membership in the Oregon State Bar.

6.

At all relevant times herein, ORS 9.160(1) provided “Except as provided in this section, a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar.” No exception in the section pertained to the conduct of the Accused described in the following paragraphs.

7.

In or about June 2011, the Accused undertook to advise and assist Clorene Robertson (hereinafter “Robertson”) in the foreclosure of a trust deed (hereinafter “the foreclosure”). From about June 2011, through on or about December 20, 2011, on behalf of Clorene Robertson in the foreclosure, the Accused performed legal research, drafted and interpreted law and legal documents, and communicated with Robertson and other parties about Robertson’s legal rights and remedies.

8.

From about June 2011, through on or about December 20, 2011, in his communications with Robertson and others concerning the Robertson foreclosure, including communications with the opposing party and attorney, the Accused represented that he was an active member of the Oregon State Bar. Representations that the Accused was an active member of the Oregon State Bar were false and material to the decision-making process of the recipients of those representations, and the Accused knew they were false and material when he made them.

9.

From about June 2011, through on or about December 20, 2011, the Accused knew that Robertson and the opposing party and attorney believed the Accused was an active member of the Oregon State Bar and that the belief the Accused was an active member of the Oregon State Bar was false and material to the decision-making process of the opposing party and attorney. The Accused intentionally failed to correct the belief of the opposing party and attorney that the Accused was an active Oregon State Bar member.

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 9, he violated ORS 9.160, RPC 5.5(a), and RPC 8.4(a)(3).

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 owed to the profession by engaging in the unauthorized practice of law. *Standards* § 7.0.

- b. **Mental State.** The Accused acted knowingly, defined as the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. The Accused intended to become reinstated as an active bar member at or around the time he undertook to assist Robertson with her legal matter, and filed a reinstatement application with the Bar in June 2011. Upon receipt of the application, the Bar promptly advised the Accused that review of the application would take some time and that he was not permitted to practice law in the interim. Furthermore, in August 2011, the Bar advised the Accused that questions about his fitness would delay action on the application. Nevertheless, the Accused continued to render legal services to Robertson for months thereafter.
- c. **Injury.** For purposes of sanction, injury can be either actual or potential. *Standards*, p. 7; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). Here, there was no actual injury to the client because she eventually obtained other counsel and the legal matter settled. There was potential injury to the client in that she was represented for a time by the Accused who was not licensed or insured for professional liability. There also was potential injury to the profession in that the Accused's unauthorized practice of law could be seen as a poor reflection on lawyers generally.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. The Accused has a prior disciplinary record. *In re McCallie*, 16 DB Rptr 33 (2002). *Standards* § 9.22(a);
 2. The Accused acted over a course of several months, establishing a pattern of misconduct. *Standards* § 9.22(c);
 3. Although all of the same nature, the Accused committed multiple offenses. *Standards* § 9.22(d);
 4. The Accused was admitted in 1990, such that he has substantial experience in the practice of law. *Standards* § 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. The Accused did not charge Robertson for his services and therefore had no selfish motive. *Standards* § 9.32(b);
 2. The Accused has cooperated with the disciplinary investigation and proceeding. *Standards* § 9.32(e);
 3. The Accused suffered a stroke in 2002, from which he has been rehabilitating. *Standards* § 9.32(h);

4. The Accused is remorseful. *Standards* § 9.32(1).

12.

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

13.

Oregon case law supports a suspension in this case, as well. *See, In re Koliha*, 330 Or 402, 9 P3d 102 (2000) (lawyer suspended for one year for filing pleadings in court on behalf of a client, making a court appearance, and holding herself out as an active bar member, during a time when she was suspended from practice); *In re Smith*, 18 DB Rptr 200 (2004) (lawyer suspended for 180 days for practicing law while suspended and after being informed by the Bar that he was not yet reinstated and needed to take additional action to complete the reinstatement); *In re Stater*, 15 DB Rptr 216 (2001) (lawyer suspended for 60 days for filing a pleading, making a court appearance, and failing to disclose his suspended status). The appropriate sanction for the Accused's conduct need not be as severe as the sanctions in *Koliha* and *Smith*, because those lawyers also committed other disciplinary rule violations that contributed to the sanction imposed.

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for a period of 120 days for violation of ORS 9.160, RPC 5.5(a), and RPC 8.4(a)(3), the sanction to be effective immediately upon the approval of this stipulation by the Disciplinary Board.

15.

The Accused acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. However, the Accused has been suspended since July 2010 and has no current clients.

16.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

17.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

18.

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 30th day of July, 2012.

/s/ Kevin M. McCallie

Kevin M. McCallie

OSB No. 903364

EXECUTED this 3rd day of August, 2012.

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro

Jeffrey D. Sapiro

OSB No. 783627

Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 10-122
)
WILLIAM R. GOODE,)
)
Accused.)

Counsel for the Bar: Richard Weill; Amber Bevacqua-Lynott
Counsel for the Accused: None
Disciplinary Board: Theresa L. Wright, Chair
Lee Wyatt
Carlos G. Calderon, Public Member
Disposition: Violation of RPC 4.2 and Pennsylvania RPC 1.8(j).
Trial Panel Opinion. 120-day suspension.
Effective Date of Opinion: August 29, 2012

OPINION OF THE TRIAL PANEL

This matter came regularly before a Trial Panel of the Disciplinary Board consisting of Theresa L. Wright, Esq., Chair; Lee Wyatt, Esq.; and Carlos Calderon, Public Member, on October 24 and 25, 2011, at the offices of Lewis and Clark Legal Clinic, located at 310 S.W. Fourth Ave., #1018, Portland, Oregon. Amber Bevacqua-Lynott and Richard Weill represented the Oregon State Bar. The Accused represented himself *pro se*.

The Trial Panel has considered the pleadings, trial memoranda, and arguments of counsel. The Trial Panel also considered all testimony and exhibits that were presented by the parties. Based on the findings and conclusions made below, we find that the Accused violated RPC 4.2 and Pa RPC 1.8(j)¹ as alleged by the Bar. We find that the Accused did not

¹ During the hearing, the Accused admitted to having sexual relations with a current client (Carol Herring) in the state of Oregon. The Trial Panel offered the Bar the opportunity to amend its Complaint to allege violation of RPC 1.8(j). The Bar declined to do so.

violate DR 1-102(A)(3)² as alleged by the Bar. We further determine that the Accused should be suspended from the practice of law for a period of 120 days.

INTRODUCTION

The Complaint: A Formal Complaint was filed on or about January 6, 2011, against the Accused that asserted violations of the Oregon Rules of Professional Conduct (RCP). The Oregon State Bar (“the Bar”) claimed that the Accused: participated in conduct involving dishonesty and misrepresentation; sexual relations with a client; and communicating with a represented party.

The Answer: The Accused filed an Answer to the Formal Complaint on or about January 25, 2011. The Accused admitted some facts but generally denied most aspects of the Bar’s Complaint.

Witnesses, Exhibits, and Transcript: The Bar called as witnesses the Accused, Dr. Pamella Settlegoode, Carol Herring, Lynn Bey-Roode, and Gregory Kafoury. The Accused called as witnesses himself and Larry Tallacus.

Capri-Iverson Certified Freelance Reporters (Shellene L. Iverson, CSR) provided court reporting services. The transcript was received on or about November 10, 2011. There were no motions to correct the transcript, so it is deemed settled.

The Bar introduced Exhibits 1 through 30. The Accused introduced Exhibits 101, 102, 104, 105, 108, 109, 110, 112, 113, 117, 119, 128, and 129.

FACTUAL FINDINGS

The Accused is an attorney admitted to the Oregon bar, and has been since 1984. He presently resides in Tampa, Florida, although he is not a member of the Florida bar. The Accused and Dr. Pamella Settlegoode, Ph.D., were married for thirty-eight years when the Accused filed for the dissolution of their marriage in February 2007, in Oregon. The events involving Settlegoode in this case occurred during the last six years of their marriage and during the dissolution proceeding.

The Accused married Carol Herring in September 2008. The Accused filed for the dissolution of their marriage in November 2009.

The Settlegoode Matter

In approximately March 2000, Settlegoode filed a whistleblower and employment discrimination lawsuit against Portland Public Schools (“PPS”) in Federal District Court. Her Portland attorneys were Greg Kafoury and Mark McDougal, assisted by the Accused

² Because the conduct related to this charge occurred prior to Oregon’s adoption of the Rules of Professional Conduct on January 1, 2005, the Code of Professional Responsibility (“DRs”) applies.

throughout the litigation and appeal. Settlegoode did not sign a fee agreement with the Accused, who assured her and her other lawyers that he would not charge a fee for his legal services.

Settlegoode's case went to trial on November 6, 2001. After the first day of testimony, the Accused advised Settlegoode to convey her joint interest in their Portland home solely to him. He explained that, if PPS prevailed in its defense and obtained a judgment for attorney fees and costs against her, their home could be lost. Settlegoode believed that the Accused promised her that, if she prevailed, he would put her name back on the title. She also believed that Kafoury and McDougal approved of this strategy.

Because the Accused's practice had focused on collections, and believing that Kafoury and McDougal agreed with the Accused's advice, Settlegoode signed a warranty deed prepared by the Accused conveying all of her interest in their home to the Accused, citing for consideration "\$20,000 cash and \$150,000 in legal services rendered between December 3, 1999, and November 5, 2001." The Accused recorded the deed.

Subsequently, the parties relocated to Florida. Before the dissolution of marriage was filed, Settlegoode purchased a home in Florida, and did not put the Accused's name on the deed. He therefore did not return Settlegoode's name to the deed of the Portland home stating that "what was good for the goose was good for the gander." At the conclusion of the dissolution, the parties worked out a fair division of both homes.

Settlegoode won her case. Thereafter, the Accused refused to return her name to the deed. In July 2006, the Accused and Settlegoode separated. As noted above, the Accused filed for a dissolution of marriage from Settlegoode on February 2, 2007. In the dissolution case, the Accused was represented by William Valent, and Settlegoode was represented by Jeffery Renshaw. The parties eventually signed a Stipulated Judgment of Dissolution of Marriage, which was entered on April 9, 2008. One of the terms of the Judgment required Settlegoode to pay the parties' consolidated student loan balance (\$24,788) within ninety days of the entry of Judgment.

Following the entry of Judgment but prior to the ninety-day deadline, the Accused attempted to correspond directly with Mr. Renshaw in the divorce proceeding on an issue related to the divorce. Renshaw objected to this direct communication and asked Mr. Valent to advise the Accused that "any such" [written] "communication" [from the Accused] "will simply be returned to sender and not responded to."

When Settlegoode had not yet paid the student loan debt by August 27, 2008, the Accused wrote to her on his professional letterhead, and demanded that she pay the student loan debt immediately or else his lawyer would file a contempt Motion against her. The Accused also threatened to enforce the Judgment in Florida. The Accused's letter acknowledged that he was writing directly to Settlegoode because her lawyer had failed to respond to the Accused's previous letter on the subject. The Accused did not obtain

permission from Renshaw to contact Settlegoode directly. Renshaw continued to represent Settlegoode until late October 2008.

The Herring Matter

In mid-October 2006, Carol Herring, a Pennsylvania lawyer, contacted the Accused by telephone for assistance regarding a case involving retaliation taken against her by a Pennsylvania school district. She had located the Accused by doing an internet search and found that the Accused had some experience in similar cases involving school districts, most particularly the Settlegoode matter. The Accused and Herring spoke by telephone frequently about the case, and beginning in late October, began communicating by email. Early in their communications, the Accused agreed to represent Herring although he did not have her sign a Retainer Agreement until approximately November 3, 2006. Herring believed she was a client of the Accused's long before she signed the Retainer Agreement and sent the Accused a small retainer.

In November and early December 2006, the Accused prepared the complaint on Herring's behalf. He applied for and was granted permission from the Pennsylvania court to appear *pro hac vice* in Herring's civil action, *Carol T. Herring v. Chichester School District*, Case No. 06-5525. In late December 2006, the Accused personally met Herring for the first time when he traveled to Pennsylvania for that purpose. Between late December 2006 and May 2008 (when he withdrew from Herring's representation), the Accused engaged in sexual relations with Herring. This relationship began as intimate conversations by telephone in late December, and culminated in a physical sexual relationship beginning sometime in March 2007. They moved in together in Pennsylvania in April 2007.

DISCUSSION AND CONCLUSIONS OF LAW

DR 1-102(A)(3).

The Accused did not make misrepresentations nor engage in dishonest conduct, in violation of DR 1-102(A)(3), when he counseled Settlegoode to transfer their joint home to him to avoid a potential judgment lien, and when he subsequently refused to return it.

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. DR 1-102(A)(3).

Misrepresentation exists under DR 1-102(A)(3) when a lawyer makes a false statement of a material fact or does not disclose a material fact. *In re Leonard*, 308 Or 560, 569, 784 P2d 95 (1989); *In re Claussen*, 331 Or 252, 261, 14 P3d 586 (2000). Material information is information that, if it had been known by the court or other decision-maker, would or could have influenced the decision making process. *In re Gustafson*, 327 Or 636, 647, 968 P2d 367 (1998). Failure to make disclosure, leaving discovery of facts to investigation by a skeptical opponent is a misrepresentation. *In re Greene*, 290 Or 291, 298,

620 P2d 1379 (1980); *In re Hiller*, 298 Or 526, 533, 694 P2d 540 (1985). Likewise, a lawyer's failure to correct a false impression made by an unintentional misstatement also constitutes misrepresentation under the rule. *In re Boardman*, 312 Or 452, 822 P2d 709 (1991).

It is unnecessary to establish either damage or detrimental reliance upon the false representation or omission, or that the lawyer had an improper motive or an intent to defraud or deceive to constitute a misrepresentation under the rule. *In re Hiller*, 298 Or at 533; *In re Fulop*, 297 Or 354, 685 P2d 414 (1984); *In re McKee*, 316 Or 114, 125, 849 P2d 509 (1993); *In re Leonard*, 308 Or at 569. It is enough that the lawyer's representations were untrue and that he knew them to be untrue when they were made. *See In re Gatti*, 330 Or 517, 527–28, 8 P3d 966 (2000).

To engage in conduct involving dishonesty in violation of DR 1-102(A)(3), an accused must have acted with a mental state of knowledge or intent. *See In re Martin*, 328 Or 177, 185–86, 970 P2d 638 (1998) (stating that “the term ‘dishonesty’ imports with it a notion of knowledge or intentionality” and reviewing prior case law suggesting knowledge or intent is required). *In re Dugger*, 334 Or 602, 609, 54 P3d 595 (2002).

Here, the Trial Panel does not find that any of these criteria are met. The Trial Panel finds that the Accused was advising his client how to best to protect herself and her assets, similar to the advice a bankruptcy attorney would give to her client in how to protect the client's assets.

RCP 4.2.

The Trial Panel finds that, by sending a letter directly to Settlegoode regarding her obligations under the Judgment of Dissolution of Marriage at a time when he knew that she was represented by counsel, the Accused violated RPC 4.2.

RPC 4.2 states that:

In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

- (a) the lawyer has the prior consent of a lawyer representing such other person;*
- (b) the lawyer is authorized by law or by court order to do so; or*
- (c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.*

Communication in the manner covered by the rule is forbidden. Its purpose is to ensure that the represented party does not act without the advice of counsel. *In re Hedrick*, 312 Or 442, 449, 822 P2d 1187 (1991). It is immaterial whether the communication is intentional or negligent. *In re McCaffrey*, 275 Or 23, 28, 549 P2d 666 (1976).

The Accused claims that he did not believe Renshaw continued to represent Settlegoode because Renshaw was not responding to the Accused's requests. The Trial Panel, however, finds that at the time the Accused sent his August 27, 2008, letter to Settlegoode, he knew that Renshaw still represented her both in the matter and on the subject of his communication. In fact, the letter acknowledged that the Accused was writing directly to Settlegoode because Renshaw had failed to respond to his previous letter on the subject (Ex. 15).

Between the April 9, 2008, entry of Judgment and the Accused's August 27, 2008, letter to Settlegoode, he was never notified that Renshaw no longer represented Settlegoode. The Trial Panel believes the Accused was also aware after the Judgment was entered that Renshaw continued to represent Settlegoode with matters related to the dissolution proceeding (Ex. 10).

Additionally, when he attempted to correspond directly with Renshaw in April 2008, (Ex. 10), Renshaw rejected the letter and notified Valent that, "receiving this kind of communication directly from [the Accused] is inappropriate, especially in light of his histrionic reaction to my prior communication and his very clear demand that I discontinue communications directly with him... I do not want to receive any direct communication from him whatsoever. Any such communication will simply be returned to the sender, not responded to." (Ex. 11). Given the clear message Renshaw sent to the Accused through Valent, the Accused could not reasonably have believed that Renshaw's failure to respond to the Accused's letter three months later as a sign that Renshaw no longer represented Settlegoode.

Further, after the Accused received no response from Renshaw to his July 30, 2008, letter about the student loans, the Accused took some steps to determine whether Renshaw still represented Settlegoode. He even asked Valent whether Renshaw still represented Settlegoode (Ex. 13), but the Accused did not wait for Valent to determine Renshaw's status before he sent the August 27, 2008, demand to Settlegoode.

Renshaw continued to represent Settlegoode until late October 2008. The Accused did not obtain permission from Renshaw to speak directly with Settlegoode and his communication was not otherwise authorized by law. The circumstances support the inference permitted by the rule that the Accused "knew" that Renshaw still represented Settlegoode when he sent the August 27, 2008, demand letter. This communication violated RPC 4.2.

Pa RCP 1.8(j)

The Trial Panel finds that by beginning a sexual relationship with Herring while the Accused was representing her violated Pa RPC 1.8(j).

Pa RPC 1.8(j) is similar to Oregon's. Pa RPC 1.8(j) says:

A lawyer shall not have sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced. RPC 1.8(j).

The comments associated with client-lawyer sexual relationships in the Pa RPCs provide, in part:

(18) Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished *when the sexual relationship existed prior to the commencement of the client-lawyer relationship*. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).” (emphasis added).

The Pa RPCs became effective January 1, 2005. Prior to that time, there was no specific provision addressing sexual relations with clients, only a formal ethics opinion stating unequivocally that sexual relations between an attorney and a client is breach of the attorney's fiduciary duty to the client. *Pa Eth Op 97-100* (1997); *c.f.*, *Schwarz v. Frost*, 35 Phila 97, 110, 40 Pa D & C 4th 364, 377–79 (Pa. Ct. Common Pleas 1998) (attorney not liable for emotional distress arising out of sexual affair with client; while affair was not a good decision, it did not rise to the level of actionable civil tort; such matters “are left to the parties’ better judgment, and the attorney’s professional responsibility and code of ethics.”)

The Accused engaged in prohibited conduct under Pa RPC 1.8(j). The Accused did not have a sexual relationship with Herring that existed prior to the commencement of their client-lawyer relationship. He and Herring lived across the country from one another and never met in person before late December 2006.³ By this time, the Accused had acted as her attorney in a number of ways, including filing a Complaint on her behalf and petitioning the Pennsylvania court for *pro hac vice* admission. He was still representing Herring when they moved in together in April 2007.

The Accused argues that there was no attorney-client relationship prior to his receiving the signed Retainer Agreement and retainer in early December 2006. Herring

³ Although the Accused and Herring did not begin a physical sexually intimate relationship until after they met in person, they both testified they were participating in a “telephone sexual relationship” prior to meeting for the first time.

testified that she understood that she was the Accused's client long before that. The Accused's position is misplaced. *In re Weidner*, 310 Or 757 (1990), the Supreme Court discussed when the attorney-client relationship forms. In *Weidner*, the Court discussed a "reasonable person" standard, finding that if a person reasonably believes the attorney is her attorney, the attorney-client relationship is established, so long as there are other objective facts to support that conclusion. *Weidner*, 310 Or at 770. Here, Herring contacted the Accused in October 2006, specifically asking him to represent her in her Federal lawsuit. They had many telephone conversations in which they discussed the facts of her case, and the Accused began working on the Complaint sometime in November 2006, apparently before or immediately after Herring had returned the signed Retainer Agreement and retainer. She testified that she believed the Accused was her attorney before she signed the Retainer Agreement. As an attorney herself, she undoubtedly understood that a lawyer who is gathering facts in a case is likely the client's lawyer although there is not a signed Retainer Agreement or completed Complaint. In any case, Herring testified that the Accused accepted her case in the second telephone conversation they had. This was before any intimate sexual relationship had begun.

SANCTION

The Oregon Supreme Court refers to the ABA *Standards for Imposing Lawyer Sanctions* ("*Standards*"), in addition to its own case law for guidance in determining the appropriate sanctions for lawyer misconduct. The *Standards* establish an analytical framework for determining the appropriate sanction in discipline cases using three factors:

- A. the duty violated;
- B. the lawyer's mental state; and
- C. the actual or potential injury caused by the conduct.

Once these factors are analyzed, the court makes a preliminary determination of sanctions, after which it adjusts the sanction, if appropriate, based on the existence of aggravating or mitigating circumstances.

A. Duty Violated.

With respect to his unauthorized communication with Settlegoode, the Accused violated his duty owed to the legal system to refrain from improper communications with individuals within the legal system. *Standards* § 6.3. See *In re Schenck*, 320 Or 94, 105, 879 P2d 863 (1994). The *Standards* provide that the most important ethical duties are those obligations which lawyers owe to their clients. *Standards*, p. 5. The Accused violated his duty to Herring, who was a client, to refrain from creating a conflict of interest. *Standards* § 4.3.

B. Mental State.

“Intent” is the conscious objective or purpose to accomplish a particular result. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. “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 acted intentionally in contacting Settlegoode regarding their student loan debt, at a time when he knew that she was represented by counsel. It was his purpose and intention to get her to act outside the advice or direction of counsel. *See In re Schenck*, 320 Or at 105 (accused, as a lawyer, intended to communicate with a party he had every reason to believe was represented).

The Accused is presumed to know the rules regarding relationships with clients. *In re Devers*, 328 Or 230, 241, 974 P2d 191 (1999). Moreover, the Accused acknowledged that he was aware of the prohibition against engaging in sexual relationships with clients (Ex. 18, pp 78–79). The Trial Panel finds that the Accused similarly acted intentionally and with knowledge when he began an intimate sexual relationship with Herring, who was a client at the time the relationship began.

C. Extent of Actual or Potential Injury.

For the purposes of determining an appropriate disciplinary sanction, the Trial Panel may take into account both actual and potential injury. *Standards*, p. 6; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

The Trial Panel finds that Herring was injured by the Accused’s relationship with her. It is difficult to know to what extent the Accused’s professional judgment on her behalf was or may have been impaired by his personal interest in continuing their relationship or satisfying his own personal desires, but the court has held that the potential for such injury is enough to implicate the rule. *See In re Wolf*, 312 Or 655, 661 (1992) (although record did not disclose an actual compromise of the lawyer’s professional judgment in the client’s case, the exercise of his professional judgment on his client’s behalf reasonably might have been affected by his strong sexual interest in his client).

D. Preliminary Sanction.

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

- 4.32 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.

6.32 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 legal proceeding.

E. Aggravating and Mitigating Circumstances.

In fashioning its sanction in this case, the Trial Panel took into account both aggravating and mitigating circumstances.

The following factors, which are listed as aggravating factors under the *Standards*, exist in this case:

1. **A dishonest or selfish motive.** *Standards* § 9.22(b). The Accused communicated with a represented party for a selfish motive, namely that he wanted Settlegoode to carry out her obligations under the dissolution Judgment, and was frustrated that he was not obtaining responses to his request from Renshaw, her attorney. Additionally, the Accused pursued a sexual relationship with a client for his own pleasure, which is a selfish motive.
2. **A pattern of misconduct.** *Standards* § 9.22(c). The harm caused by the Accused was not from an isolated incident. It was caused by at least two occurring over several years. It also involved two different clients. In both cases the Accused took advantage of a personal and professional relationship with his clients for his own benefit. *See In re Paulson*, 341 Or 13, 136 P3d 1087 (2006); *see also, In re Jaffee*, 331 Or 398, 411, 15 P3d 533 (2000) (finding a “pattern of misconduct” based on four separate episodes of misconduct).
3. **Multiple offenses.** *Standards* § 9.22(d). The Accused in this case violated at least two DR/RPC’s, one under Oregon’s Disciplinary Rules, and one under Pennsylvania’s, albeit on more than one occasion.
 - i) **Refusal to acknowledge wrongful nature of conduct.** *Standards* § 9.22(g). “The [A]ccused has failed to acknowledge the wrongful nature of his conduct.” *In re Strickland*, 339 Or 595, 605 n 9, 124 P3d 1225 (2005); *In re Paulson*, 341 Or 13, 32, 136 P3d 1087 (2006); *In re Meyer*, 328 Or 211, 218, 970 P2d 652 (1999). The Accused has denied that much of his conduct in this case runs contrary to any ethical consideration. At the hearing, the Accused, however, as noted above, admitted to having sexual relations with Herring on at least one

occasion after she became his client and before he stopped representing her.

j) **Vulnerability of victim.** *Standards* § 9.22(h). Both of the women injured in these matters were clients of the Accused who were emotionally and professionally dependent on the Accused. Although there is not a complaint in this case regarding Larry Tallacus, one of the Accused's witnesses, the Trial Panel finds that he, too, is a vulnerable person who the Accused continues to represent.

4. **Substantial experience in the practice of law.** *Standards* § 9.22(I). The Accused was admitted to practice law in Oregon in 1984.

In mitigation, the Accused has demonstrated the following:

1. **Absence of a prior record of discipline.** *Standards* § 9.32(a). There was no evidence that the Accused has a prior record of discipline.
2. **Cooperation in the disciplinary proceeding.** *Standards* § 9.32(e). Since it was not raised as an issue at the trial, the Trial Panel assumes the Accused cooperated with the Bar in this case.

On balance, the aggravating factors outweigh those in mitigation both in number and in severity and justify an increase in the degree of presumptive discipline to be imposed. *Standards* § 9.21. However, even if the factors are a wash, the *Standards* suggest that some period of suspension is warranted. Oregon cases arrive at a similar conclusion.

I. Oregon Case Law.

Sanctions in disciplinary matters are not intended to penalize the accused lawyer, but instead are intended to protect the public and the integrity of the profession. *In re Stauffer*, 327 Or 44, 66, 956 P2d 967 (1998). Appropriate discipline deters unethical conduct. *In re Kirkman*, 313 Or 181, 188, 830 P2d 206 (1992).

Communication with a Represented Party

A reprimand is generally appropriate where a lawyer knowingly communicates with a represented party. *See, e.g., In re Newell*, 348 Or 396, 234 P3d 967 (2010); *In re Schenck*, 320 Or 94, 879 P2d 863 (1994); *In re Smith*, 318 Or 47, 54, 861 P2d 1013 (1993); *In re McCaffrey*, 275 Or 23, 28, 549 P2d 666 (1976); *In re Schwabe*, 242 Or 169, 175–76, 408 P2d 922 (1965); *In re Venn*, 235 Or 73, 74, 383 P2d 774 (1963); *see also, In re Lewelling*, 296 Or 702, 707, 678 P2d 1229 (1984) (court imposed 60-day suspension where multiple violations, but specifically held that “[c]ommunicating with a person the lawyer knows to be represented does not involve dishonesty or a breach of trust and if that were the only charge here we would impose only a public reprimand.”) Unfortunately, that is not the only charge in this case.

Sexual Relations with a Client

The only Supreme Court opinions in Oregon that deal with the conflicts created by sexual relationships with clients predate the existence of a rule specifically prohibiting that conduct.⁴ Nonetheless, the court did not view the conduct with favor. *See, In re Wolf*, 312 Or 655, 826 P2d 628 (1992) (court imposed a suspension of 18 months on a lawyer who provided alcohol and contributed to the sexual delinquency of 16-year-old client).

The Trial Panel could find no case in the state of Pennsylvania addressing this issue either.

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; *In re Huffman*, 328 Or 567, 587, 983 P2d 534 (1999).

Based on the foregoing, the *Standards* and Oregon case law, the Trial Panel suspends the Accused for 120 days.

DATED this 29th day of June, 2012.

/s/ Theresa L. Wright

Theresa L. Wright, OSB No. 814289
Trial Panel Chair

DATED this 25th day of June, 2012.

/s/ Lee Wyatt

Lee Wyatt, OSB No. 983808
Trial Panel Member

DATED this 22nd day of June, 2012.

/s/ Carlos Calderon

Carlos Calderon
Public Member
Trial Panel Member

⁴ DR 5-110 was adopted December 31, 1992, and was designed to make the prohibition against sexual relations with a client stronger than a possible personal-interest conflict of interest under DR 5-101(A). *See OSB Legal Ethics Op No 1991-99*. The DR 5-110 prohibition was also incorporated into the current Rules of Professional Conduct as RPC 1.8(j).

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 11-68; 11-118
)
GINGER LEE KOCUREK,)
)
Accused.)

Counsel for the Bar: Linn D. Davis
Counsel for the Accused: Charles J. Wiseman
Disciplinary Board: Duane Wm. Schultz, Chair
Joan-Marie Michelsen
Philip Duane Paquin, Public Member
Disposition: Violation of RPC 3.3(a)(1), RPC 8.1(a)(1), RPC
8.4(a)(3), and RPC 8.4(a)(4). Trial Panel Opinion. 6-
month suspension.
Effective Date of Opinion: September 1, 2012

TRIAL PANEL OPINION

Three charges were pled by the Bar in its November 15, 2011, Amended Complaint:

1. Accused made a misrepresentation to her insurance company on or about May 25, 2008, in reporting to the insurer that she had hit an object and damaged her truck when she knew this to be false, in violation of RPC 8.4(a)(3);
2. Accused filed with the Circuit Court for Klamath County a motion and affidavit in her own divorce requesting court permission to conceal marital property. In it she made material misrepresentations about a third party for the purpose of getting the order signed, which was in violation of RPC 3.3(a)(1), RPC 8.4(a)(3), and RPC 8.4(a)(4); and
3. Accused made misleading statements to the Oregon State Bar in the course of an investigation into the above conduct in violation of RPC 8.1(a)(1) and RPC 8.4(a)(3).

The Accused filed her answer on December 7, 2011, admitting and denying as follows:

1. Accused admitted that she told her insurance company that she backed into a tree while turkey hunting at about 1:00 p.m., on May 24, 2008. She denied knowing that this statement was false and material when she made it. She claims that she had no facts or definite belief that he had driven the truck when she made the statement.
2. Accused admitted that she filed an Affidavit in the Klamath County Circuit Court seeking permission from the court to conceal her marital assets and stating that her then husband's new girlfriend had been recently "convicted" of three criminal offenses. She denied that she knew that this was false claiming that she believed "convicted" meant "someone does NOT have a trial to be proven not guilty, instead (s)he takes a plea bargain or diversion and (s)he has to admit (s)he is guilty. . ."
3. She denies making false or misleading statements to the Bar in that she claims that when she told the insurance company that she was driving and hit a tree she believed that was what happened.

On April 30, 2012, the undersigned Trial Panel convened to hear the charges against the Accused Ginger Lee Kocurek. A one day hearing was conducted in Medford, Oregon. The hearing was held in Medford pursuant to the stipulation of the Accused. The Accused appeared in person, and her attorney, Charles Wiseman, appeared by phone at the request of Accused. The Bar was represented by Linn Davis.

The Accused was the only witness. The Accused submitted no exhibits. The Bar submitted Exhibits 1–48 and 50. Exhibit 8 was admitted for the limited purpose of confirming the date of Ms. Robinson's release from jail. Exhibit 21A was not offered for the truth of the matters contained in it. The first (FAX) page of Exhibit 30 was neither offered nor received. Exhibits 16, 20, and 40–44 were neither offered nor admitted.

There were no relevant pre-hearing rulings. The Accused stipulated to having the hearing in Medford, even though she lives in Klamath Falls, which the trial Panel appreciates.

SUMMARY

On or about May 23, 2008, the Accused walked outside her home and saw that her truck had been damaged and the taillight "smashed." She didn't really inspect the damage closely, was "in shock," and did not know what had happened to her truck. She claimed that she guessed that she must have hit a tree but not noticed when she did it. However, that same day she confronted her then husband Mr. Harrington (who she knew did not have a driver's

license) about the damage to the truck. He did not admit to damaging it then, although he did later.

The Accused, on May 24, 2008, reported to her insurance company that she had been driving up a road at 1:00 p.m. the day before and needed to turn around, that when she did she backed into a tree. (Ex. 2). When she made the call she was concerned that her rates would go up. She was in financial difficulty at the time and her marriage was not working very well.

Several weeks after reporting the damage to her insurance company, the Accused discovered that a tree in her driveway at her home had damage on it and determined that the truck had hit that tree.

Things went from bad to worse with the Accused's then husband Mr. Harrington. He moved out and started living with Accused's former client, Ms. Robinson. In May of 2010, the Accused checked Ms. Robinson's court records and saw that while she had been recently accused of three crimes, judgment was not entered on any of the three cases. The Accused also reviewed the court files for all three cases. On June 1, 2010, the Accused filed a divorce petition and requested, *ex parte*, that the court allow her to conceal marital property. Her affidavit stated that Ms. Robinson had been convicted of the three crimes.

When asked to account for her actions by the Bar, the Accused provided several versions of her story regarding the damage to the truck, none of which were consistent with the insurance company notes or her testimony at the divorce hearing. Accused also admitted that she did not read all of the materials that were sent to her by the Bar before responding to them.

CREDIBILITY OF ACCUSED

The Accused was the only witness. She testified about the events and many extraneous matters. The Trial Panel finds that she was not credible in her testimony regarding the circumstances surrounding the damage to the truck or her filing of the affidavit in support of her motion to conceal property.

The Trial Panel observed that when speaking of the issues directly relating to the charges the Accused's speech patterns, memory for details, rate of speech, and nervous fidgeting were noticeably different as compared to when she was discussing more neutral issues. For example, when she described the damage to the truck and her report to insurance she tended to ramble less, nod more, and avoid looking at the Trial Panel. On the other hand, when describing what happened when she found the damage on the tree in her yard she made eye contact with the Trial Panel, recalled specific details, and rambled less.

The Trial Panel observed that the Accused claimed to not remember many details relating to the accident with the truck, including what body shop did the repairs, how it

happened, and who was around when she found the damage. However, when discussing things not directly related to the charges she had a very clear recollection of details.

The Trial Panel observed that the Accused sometimes changed her story within the same story. We find these inconsistencies to be indicative of a general lack of truthfulness and candor to the Panel. For example, explaining a previous accident she testified that she was driving a friend's car, felt it hit something "and so we got out - - I mean we didn't get out. . . ." (Tr. at 46)

We find that the Accused made numerous statements during her testimony indicating her willingness to lie if the lie would better suit her perceived needs. For example, there was an incident with some guns she owned and that Mr. Harrington gave or sold to Ms. Robinson. The Accused admitted that:

So I had probably had maybe up to 20 guns then; and [my husband] sold four or five or six of them, or whatever; I can't remember what. And he sold them to Tobi [a former client]. And I said, "You sold them to Tobi?" I said, "Oh, my gosh, did you get a receipt?" Because now somebody like her that I already know she's not a sane person, I'm thinking she's going to have guns that have my name and I don't have any receipt. Either I'm going to have to call the police and say they're stolen or something. So I wrote up a receipt and said, here, give it to Tobi and say she needs to sign this, that she bought these guns from you. And I, well, I had put from me. (Tr. at 90)

The "receipt" clearly shows that she was claiming to have sold the guns to Ms. Robinson, even though she had not done so and knew she had not done so. (Ex. 6) Ms. Robinson was either a current or former client at the time. This episode was not charged by the Bar even though Accused was clearly being dishonest.

The Accused has a history of being dishonest in relation to insurance claims. She admitted that when she and Mr. Harrington were living in Klamath Falls she had some things in Grants Pass but "wasn't really living there." After a theft, she reported items stolen to the insurance company and received payment for them. She later found one of the items she had been paid for but decided not to repay the money she had been paid for its loss. She explained; "So I thought, well, I could go back and I could amend the thing and say there's these other items that we are missing, and this other one that I found. And then I decided it was a wash."

FINDINGS OF FACT

The Accused is an attorney, admitted by the Supreme Court of the State of Oregon. She resides in Klamath County, Oregon, and is under a non-disciplinary suspension for failure to pay her PLF assessment. Although her date of admission is not alleged in the pleading, evidence presented at the hearing was that the Accused had more than five (5)

years of legal experience as well as experience in other professions, such as adult foster care, teaching, and real estate, where trustworthiness and honesty are important. The Oregon State Bar website public record indicates the Accused was admitted to the Bar on September 26, 2005.

First Charge

Based on our findings of credibility, and the demeanor of the witness as discussed above, the Panel makes the following findings and observations based on clear and convincing evidence:

1. The Panel finds that on or about May 23, 2008, the Accused left her home east of Klamath Falls to greet visitors. While outside either she or they noticed that her green $\frac{3}{4}$ ton pick-up truck had been damaged and that the driver's side taillight was "smashed."
2. The Accused testified that upon noticing the damage she didn't inspect the area closely. The Panel does not find this credible. The Accused looked closely enough to notice that the taillight fixture wouldn't work and that there was bark inside the fixture. She testified that she was "in shock" and did not know what had happened to her truck. (Tr. at 35).
3. The Accused testified repeatedly that she really didn't know what happened to the truck. She testified that she figured that she must have backed into something the day before when she had been out off-road with the truck. (Tr. at 51). Later she testified that she noticed the damage a couple weeks after it occurred. (Tr. at 70).
4. Accused admitted that she confronted her then husband Mr. Harrington about the damage to the truck on May 23, 2008, which was the day she discovered the damage. She admitted that she knew he did not have a driver's license by that time. The Panel finds that this shows that on the day she discovered the damage to the truck she did not believe that she had done the damage, she knew that he had done it, and confronted him about it.
5. The Panel finds Accused's claim that at the time she discovered the damage she thought she had done it not to be credible based on her demeanor at the hearing and the variety of implausible excuses she has provided, and her admission that she confronted Mr. Harrington that very day.
6. The Accused admitted that on May 24, 2008, she reported to her insurance company that she had been driving up a road at 1:00 p.m. the day before and needed to turn around, that when she did she backed into a tree. (Ex. 2). This was a very specific statement about who was driving, when, where, and how

the damage occurred. Exhibit 45 details the various accounts Accused has subsequently given regarding this incident and is incorporated herein.

7. The Accused testified in her divorce trial that Mr. Harrington “had an accident in my truck and crashed it while he was drunk on the property when we were living on the ranch . . . and then I had to say I was driving . . .” The Panel believes this statement to be true; it was said while she was upset and emotional. The Panel observed that when the Accused was upset her answers were less premeditated, more consistent, had more detail, and were more credible.
8. Accused admitted in court during her divorce that she told the insurance company she was driving “because I thought insurance would be cancelled, but they upped it anyway and they cancelled my insurance anyway. So it didn’t matter what I did.” The Panel finds this to be an excellent example of her mental state and willingness to lie if she believes that it will benefit her. We find that she made her statement to the insurance company for personal gain. She admitted that she was financially strained at that time.
9. The Panel finds that when Accused told the insurance company she was driving at 1:00 p.m., and hit a tree while turning around, she knew this to be false.
10. Based on our credibility assessment, and as discussed above, we find that Accused knew when she made her statement to the insurance company that it was not true and that it was intended by the Accused to be material. She admitted that when she made the call she was concerned that her rates would go up. She admitted that she was in financial difficulty at the time and could not afford to repair her truck.
11. The Accused admitted that a couple of weeks after she reported the damage to the insurance company she discovered that a tree in her driveway at her home had damage on it. She checked to make sure that the damage on the truck matched the damage on the tree, showing that she hadn’t done it. She said she backed her truck up and the damage on the truck matched the damage on the tree, she also found broken bits of taillight cover on the ground under the tree. There was no information provided about when the insurance company paid the claim, to whom the money was paid, or if it was before or after this event.

There were two complaints filed regarding the events in the three charges in this case. The first was filed by Ms. Robinson and was received by the Bar on July 9, 2010. (Ex. 21—not offered for truth of contents). Although Ms. Robinson had been a client of the Accused by July of 2010, there was significant animosity between her and the Accused, including the dispute over Accused’s guns, Mr. Harrington moving in with Ms. Robinson,

and a fee dispute. The Robinson complaint raised a number of issues, most of which are irrelevant, uncharged, and which do not form the basis for the Panel's decision.

A second complaint was filed with the Bar against Accused by Circuit Court Judge for the 26th Judicial District Lane Simpson under JR 2-104(a). Judge Simpson was the trial judge for the Accused's divorce on October 1, 2010. He expressed concern that Accused had on at least two occasions admitted during the divorce hearing that she had committed insurance fraud. He noted that the "statement was made freely and voluntarily and not as a result of questioning." (Ex. 28) This complaint relates more directly to the first and third charges.

Second Charge

Based on our findings of credibility, and the demeanor of the witness as discussed above, the Panel makes the following findings and observations based on clear and convincing evidence:

1. The Panel finds that there was significant animosity between the Accused, her then husband, Mr. Harrington, and his new girlfriend Ms. Robinson. Ms. Robinson was a former client of the Accused and who Accused believed owed her substantial attorney fees.
2. The Accused admits that when she decided to pursue a divorce she did it *pro se*. There were disputes over property and she wanted to be able to conceal some of the marital property.
3. In May of 2010, Accused admitted that she checked Ms. Robinson's court records (OJIN). The court record in the shoplifting (Theft-3) charge shows that it was filed on 7-31-2009 and dismissed on 12-2-2009. The court records for the criminal mischief charge show that it was filed on 3-24-2010 and that a not guilty plea was entered on 4-28-2010. The court record on the DUII shows that it was filed on 2-17-2010 and that a diversion was entered on 3-15/16-2010. That case was subsequently dismissed. The Panel finds that in May of 2010, OJIN showed that Ms. Robinson had been accused of three crimes but there were no convictions in any of the three cases. (Ex. 3, 4, and 7).
4. Accused admitted that she next reviewed the court files for all three cases. On June 1, 2010, the Accused filed a divorce petition and requested *ex parte* relief allowing her to conceal two vehicles that were marital property. (Ex. 14). That order was granted. Accused signed an affidavit on her pleading paper before a court clerk wherein she swore that the contents of the affidavit were true to the best of her belief and knowledge. (Ex. 14). In her affidavit she swore that:
5. "Robinson. . . has the following convictions within the past approximate six months in Klamath County, showing her disregard for the law:

- a. Shoplifting
 - b. Criminal Mischief
 - c. DUII . . .”
6. The Panel finds that in making the above sworn statements to the court the Accused was attempting to gain an advantage in her divorce, that she was asking the court to allow her to conceal marital property in part due to the character and alleged behavior of Ms. Robinson.
 7. Mr. Harrington was using one of the vehicles Accused wished to, and did, conceal to haul firewood for sale. Accused knew that despite his lack of a drivers license Ms. Robinson would drive him places. Accused had at one point even paid her to do so.
 8. The Panel finds that at the time these statements were made Accused knew that they were not true. The Accused admitted that when she reviewed the pending criminal mischief case on OJIN she saw that a plea of not guilty had been entered, and that she didn’t know what she would have thought at the time. The record that Accused saw showed that case set for a trial in September of 2010.
 9. The criminal mischief case involved a case where the Accused represented Ms. Robinson. The court did not rule on that case until February of 2010. The Accused was listed by someone at the Klamath County Jail as being Ms. Robinson’s attorney in the misdemeanor matter on April 12, 2010. Accused admits that she took money for Ms. Robinson’s bail to the jail on that date. On May 6, 2010, the Accused sued Ms. Robinson for attorney fees. Accused had very clear recall of the events of that hearing, unlike other matters in this case. Accused denies that she was Ms. Robinson’s lawyer in the criminal mischief case. The Panel does not rely on any of this information in making its ruling.
 10. On September 8, 2010, Accused testified in court, in a hearing on the small claims case, that the criminal mischief case was still pending.
 11. The Panel finds that when the Accused signed her affidavit in Klamath County case number 10-01203CV before the court clerk it contained false information; that Accused knew this information about Ms. Robinson was false; that the information was part of the basis of Accused’s request; that she intended the court to rely on that representation in making its decision to grant her request; and that the court did grant her request to conceal marital property.
 12. The Accused has claimed, repeatedly, that she did not understand the meaning of the word “convicted” when she used it. Based on our credibility assess-

ment, the inherent unbelievability of that statement, her training as a lawyer, her past experience with criminal law, and her attempts to become the District Attorney of Klamath County, we find this claim to be untrue.

Third Charge

Based on our findings of credibility, and the demeanor of the witness as discussed above, the Panel makes the following findings and observations based on clear and convincing evidence:

1. The Panel finds that the findings for the First Cause are relevant here and incorporates them herein.
2. Despite the facts, her prior admission in open court that Mr. Harrington had crashed the truck, Accused continued to insist that she thought she crashed the truck. (Ex. 45).
3. The Accused admitted that she did not read everything that the Bar sent her. (Tr. at 98).
4. The Panel finds that Accused was contacted by the Oregon State Bar CAO on August 3, 2010, after Ms. Robinson filed an ethics complaint against her. There were numerous issues in those early communications, most of which are irrelevant to this proceeding.
5. On August 23, 2010, Accused respondent telling the OSB that she “was NEVER [Ms. Robinson’s] attorney for her pending criminal mischief charge.” She said that she did not post the bail, that she was simply the courier. Accused admits taking the bail money to the jail for Ms. Robinson and putting it on her books. A court appointed attorney was subsequently provided for Ms. Robinson. (Ex. 22). The Panel finds her statements that she was “never” Ms. Robinson’s attorney problematic but does not find that it meets the standards of being proven untrue by clear and convincing evidence.
6. Accused told the Bar that she did not know if Ms. Robinson’s diversions were convictions. This was the same thing she said at the hearing on this matter. Accused attached a copy of the dismissal in Ms. Robinson’s case to her answer. In her answer to the Bar regarding her statements in her Affidavit, on January 27th the Accused admitted that she had checked with the court to see what Ms. Robinson had been “charged with.”
7. On several occasions the Bar requested either information or explanations from the Accused and either did not receive the information or received information that the Panel has found to be false. For example, the Bar requested on December 27, 2010, and Jan 13, 2010, that the Accused “describe in detail the records or investigation upon which you based your

sworn statement . . .” The Accused never provided this information. She responded by FAX on Jan 27, 2010, “before I asked the judge to conceal the truck, I went to make sure what she had been charged with.” The Panel finds this to be an inadequate response.

8. The Accused proved the “entire explanation” regarding the incident discussed in the First Charge in her letter of October 29, 2010. (Ex. 30). The explanation she gives there is markedly different than that given in other locations and at other times in this proceeding. (Ex. 45).
9. The Panel finds that Accused changed her story many times when explaining events to the Bar; that when she claimed that she had damaged the truck that this was untrue; that when she claimed to not understand the meaning of “convicted” this was untrue; and that she made other statements to the Bar that were untrue, but that were of a less material nature.
10. The Panel finds that the above statements were material and were intended by the Accused to be relied upon.

DISCUSSION AND CONCLUSIONS OF LAW

The Bar has the burden of proving Accused’s misconduct by clear and convincing evidence. BR 5.2.

First Charge

The Accused is charged with making a misrepresentation to her insurance company on or about May 25, 2008, in reporting to the insurer that she had hit an object and damaged her truck when she knew this to be false in violation of RPC 8.4(a)(3). We find that the Bar did meet its burden of proof in this count.

RPC RULE 8.4 MISCONDUCT, provides that:

- (a) It is professional misconduct for a lawyer to:
 - (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - (2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
 - (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law;
 - (4) engage in conduct that is prejudicial to the administration of justice; . . .

It is not necessary for the Accused's conduct to involve the practice of law or to be a criminal or regulatory violation. *In re Carpenter*, 337 Or 226, 231 (2004). Fraud, deceit, dishonesty, and misrepresentation do overlap but are not the same things. *In re Hiller*, 298 Or 526, 533 (1985). A misrepresentation can be either an affirmatively false statement of material fact or a failure to disclose a material fact. *In re Kumley*, 335 Or 639, 644 (2003). However, an unethical misrepresentation must be knowing, false, and material. *In re Kluge*, 332 Or 251, 255 (2001). A material misrepresentation is one that would or could significantly influence the hearer's decision making process, but reliance is not necessary. *In re Kluge*, at 255–256.

Dishonest conduct is that conduct that indicates a disposition to lie. *In re Starr*, 326 Or 328, 343 (1998). A finding of dishonesty requires a finding that the Accused acted knowingly. *In re Skagen*, 342 Or 183, 203 (2006).

The Panel finds that when the Accused told her insurance company that she had been driving the truck, that she had backed into a tree, and that she damaged the truck, these statement were, and she knew to be, untrue. We find that she made her statements for the purpose of obtaining insurance coverage. We find that she intended that the insurance company rely upon her statements in deciding whether to cover the claim, set her premiums, and decide about the continuation of her coverage. We find that the insurance company could have been influenced by her statements and that the statements could have influenced the company's decision-making process as it related to the Accused. We find that this representation was false and that she knew at the time that she made it that it was false.

Based on the above we find that this conduct involved dishonesty, that it was a material misrepresentation, and that Accused has violated RPC 8.4(a)(3). We find that she intended for it to be relied upon and that this was also deceitful and fraudulent conduct.

Second Charge

The Accused is charged with making material misrepresentations about a third party in a motion and affidavit in her own divorce requesting court permission to conceal marital property. She is accused of violating RPC 3.3(a)(1), RPC 8.4(a)(3), and RPC 8.4(a)(4) (as set forth above). We find that the Bar did meet its burden of proof on this count.

When the Accused stated to the court in her sworn affidavit that Ms. Robinson had been convicted of three recent crimes she knew that statement was false. The same basis for misrepresentation discussed above applies to this matter. Also, because her statement was made in the context of her divorce it violated RPC 3.3(a)(1), which provides that:

RULE 3.3 CANDOR TOWARD THE TRIBUNAL

- (a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

As with misrepresentation, it is not necessary for the Bar to prove that the court relied on the Accused's false statements to the court. See, *In re White*, 311 Or 573 (1991) (based on former but equivalent DR 7-102(A)(5)). As we have already found, the Accused knew her statements about Ms. Robertson were false when she made them, and she never corrected her statements.

Conduct prejudicial to the administration of justice requires that the Bar show that the conduct was improper, occurred during the course of a judicial proceeding, and had or could have had a prejudicial effect upon the administration of justice. It may arise from several acts that cause some harm or a single act that causes substantial harm. It is almost axiomatic that false statements to the court by a lawyer threaten the integrity of the judicial process, and can also cause additional work for the courts. These issues are well covered by *In re Lawrence*, 350 Or 480 (2011).

We have already found that Accused acted knowingly when she made her false statements to the court. We find that these statements were material in that they could have influenced the court to allow Accused to conceal marital property. As the Bar points out, Mr. Harrington's record would justify restricting his use of the vehicle, concealing required further justification and evidence that Ms. Robinson was a threat to the property, which is exactly what the misrepresentations were intended to show. We find that Accused had a self-serving motive in making her request to conceal marital property; this was not advocacy for a client, it was her own property and divorce. We find that her statements were made outside the presence of Mr. Harrington during a judicial proceeding. We find that this conduct could have had a substantial impact on her case and on the workload of the court. Because she is only charged with a single misrepresentation to the tribunal it must cause substantial harm. We find that due to Mr. Harrington's use of the vehicle as a work truck, and use of Ms. Robinson to drive it, the concealment of the vehicle was substantially damaging to Mr. Harrington.

Therefore, we find that the Bar did meet its burden of proof and showed violation of RPC 3.3(a)(1) and RPC 8.4(a)(3). However, under the facts presented, we do not find that the Accused violated RPC 8.4(a)(4) by making a single false statement to the court where there is no evidence of substantial harm.

Third Charge

Accused is charged with making misleading statements to the Oregon State Bar in the course of an investigation into the above conduct in violation of RPC 8.1(a)(1) and RPC 8.4(a)(3). RPC 8.4(a)(3) has been discussed above. RPC 8.1(a)(1) requires that:

RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

- (a) An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:
 - (1) knowingly make a false statement of material fact; . . .

As discussed above we find that the Accused has knowingly made false statements of material fact in connection with this proceeding in violation of the above rules. Therefore, we find that the Bar has met its burden of proof to show by clear and convincing evidence that Accused violated RPC 8.1(a)(1) and RPC 8.4(a)(3).

SANCTION

Finding that the Accused did violate the Rules of Professional Conduct, we must impose a sanction, and look first to the *ABA Standards for Imposing Lawyer Sanctions, 2005* (“*Standards*”). Under Section 3.0, the following factors are considered:

- (a) the duty violated;
- (b) the lawyer’s mental state;
- (c) the potential or actual injury caused by the lawyer’s misconduct; and
- (d) the existence of aggravating or mitigating factors.

From consideration of the first three we may arrive at a baseline sanction that may be affected by aggravating or mitigating factors. We address each of the four factors in order.

a. Duty Violated

The Accused violated her duty to maintain person integrity, to the legal system and as a professional.

b. Mental State

Standards, p. 13, defines the relevant mental states as follows:

"Intent" is the conscious objective or purpose to accomplish a particular result.

"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

We find based on our credibility assessment of the Accused as discussed above that the Accused acted knowingly and with intent in all three instances.

c. Injury

The injuries in these matters were both actual and potential. The Accused caused potential injury to the insurance company by misrepresenting who was driving the vehicle

and the circumstances of the accident. There was no evidence submitted as to whether or not Mr. Harrington's firewood cutting business was impacted by the concealment of the marital property, but it certainly could have been. Further, the court could have set one or more hearings on the matter of the temporary order causing significant delay in scheduling and using scarce judicial time and resources.

The Accused, in continuing to make misrepresentations to the disciplinary system, caused the case to be prolonged and caused the Bar to spend additional time reviewing voluminous responses from Ms. Robinson.

d. Aggravating or Mitigating Circumstances

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose. Aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

Aggravating factors include:

- (a) Prior disciplinary offenses. This factor is not applicable in these cases.
- (b) Dishonest or selfish motive. This factor is applicable in these cases because in her misrepresentations to the insurance company she was attempting to obtain and maintain coverage and avoid adverse consequences. In her misrepresentations to the court she was attempting to gain an advantage in her divorce.
- (c) A pattern of misconduct. This factor is applicable in these cases. Her conduct showed a pattern of disregard for facts and honesty over several years. Accused is only charged with the three counts but in the course of the proceedings we found her to continue to be dishonest even about non-material matters.
- (d) Multiple offenses. This factor is applicable in these cases.
- (e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. We are unable to conclude that her actions in the disciplinary process were in bad faith.
- (f) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process. As discussed above this factor is applicable in these cases.
- (g) Refusal to acknowledge wrongful nature of conduct. Throughout the course of the proceedings the Accused minimized her conduct, failed to take any responsibility for her choices or actions, and compounded this by continuing a pattern of dishonesty with the Hearings Panel.

- (h) Vulnerability of victim. This factor is not applicable in these cases.
- (i) Substantial experience in the practice of law. This factor is not applicable in these cases.
- (j) Indifference to making restitution. This factor is not applicable in these cases.
- (k) Illegal conduct, including that involving the use of controlled substances. This factor is not applicable in these cases.

There are also a number of factors that should be taken into account in mitigation of the Accused's conduct. 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:

- (a) Absence of a prior disciplinary record. This factor is applicable in these cases as Accused has no other disciplinary record.
- (b) Absence of a dishonest or selfish motive. This factor is not applicable in these cases.
- (c) Personal or emotional problems. To the extent that Accused was involved with a tumultuous relationship and a bitter divorce this factor would mitigate her conduct to some degree in her initial misrepresentations to the court. However, it was not her first divorce and custody was not an issue so that mitigation is of limited scope. There was no evidence presented by the Accused that she required counseling or medical treatment due to the stress or emotional problems she may have had due to the divorce.
- (d) Timely good faith effort to make restitution or to rectify consequences of misconduct.
- (e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. This factor is not applicable in these cases.
- (f) Inexperience in the practice of law. Accused had five years of experience in the legal field but there is no evidence that she was particularly well mentored or worked with any substantive firm for any length of time. This mitigating factor is not completely inapplicable.
- (g) Character or reputation. There was no evidence presented relating to this factor.
- (h) Physical disability. This factor is not applicable in these cases.
- (i) Mental disability or chemical dependency including alcoholism or drug. This factor is not applicable in these cases.

- (j) Delay in disciplinary proceedings. The matter involving the insurance claim revolved around an incident in 2008. This is a not unsubstantial delay between the date of the incident and the hearing on this matter. The other charges were more recent. This factor is not completely inapplicable as it relates to the first charge. However, we find that while Accused often claimed to not remember facts from 2008 where they might reflect poorly on her, she did show excellent recall of other events that were similarly remote.
- (k) Imposition of other penalties or sanctions. This factor is not applicable in these cases.
- (l) Remorse. This factor is not applicable in these cases.

DISPOSITION

Based on the above, it is the decision of the Trial Panel that the Accused be suspended for a period of 6 months.

IT IS SO ORDERED.

Dated June 28, 2012

/s/ Duane Wm. Schultz
Duane W. Schultz – Trial Panel Chair

Dated June 28, 2012

/s/ Philip Duane Paquin
Philip D. Paquin – Trial Panel Member

Dated June 28, 2012

/s/ Joan-Marie Michelsen
Joan-Marie Michelsen – Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 11-105
)	
DANIEL KREGE CHRISTENSEN,)	
)	
Accused.)	

Counsel for the Bar:	Mark Morrell; Stacy J. Hankin
Counsel for the Accused:	Peter R. Jarvis
Disciplinary Board:	None
Disposition:	Violation of RPC 8.4(a)(4). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	October 1, 2012

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 8.4(a)(4).

DATED this 1st day of October, 2012.

/s/ William B. Crow
 William B. Crow
 State Disciplinary Board Chairperson

/s/ Pamela E. Yee
 Pamela E. Yee, Region 4
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Daniel Krege Christensen, 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.

On December 18, 2007, and at all relevant times, the Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon under Rule 16.05 (in-house counsel) of the Rules for Admission.

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 November 15, 2011, a Formal Complaint was filed against the Accused, based upon allegations made by his former wife, pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 3.4(c), RPC 8.4(a)(3), and RPC 8.4(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.

The Accused and his former wife were initially divorced in 2001, at which time the Accused was ordered to pay child support and provide health insurance for his children. The Accused’s child support obligation was subsequently modified, but his insurance obligation remained the same.

6.

In September 2008, the Accused’s former wife filed with the State of Oregon a request for administrative review of the Accused’s child support obligation. As part of that process, the Accused was required to provide income information to the State. On or about November 20, 2008, the Accused submitted to the State a Uniform Income Statement in which he did not list significant bonuses he had received in 2008.

7.

In the administrative review, the State accurately calculated the Accused’s monthly income. Based upon information from sources other than the Uniform Income Statement,

including information provided by the Accused, the State's calculation included bonuses the Accused had received in 2008, but had not listed in the Uniform Income Statement.

Violations

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7, he violated RPC 8.4(a)(4).

Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 3.4 and RPC 8.4(a)(3), arising from allegations made by his former wife, should be and, upon the approval of this stipulation, are dismissed.

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 a duty he owed to the legal system to avoid conduct prejudicial to the administration of justice. *Standards* § 6.0.
- b. **Mental State.** The Accused acted negligently when he did not include the bonus information on the Uniform Income Statement.
- c. **Injury.** There was the potential for injury had the State relied solely upon the Uniform Income Statement. No actual injury occurred.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Substantial experience in the practice of law. The Accused has been a licensed lawyer in other jurisdictions since 1996. *Standards* § 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. Absence of a prior disciplinary record. *Standards* § 9.32(a).
 2. Cooperative attitude toward the proceeding. *Standards* § 9.32(e).

10.

Under the ABA *Standards*, reprimand is generally appropriate when a lawyer is negligent either in 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.

11.

Dispositions in Oregon are in accord. *In re Gordon*, 23 DB Rptr 51 (2009) (reprimand imposed on lawyer who negligently made inaccurate statements in documents filed with the court); *In re Aylworth*, 22 DB Rptr 77 (2008) (reprimand imposed on lawyer who negligently made inaccurate statements in documents filed with the court and engaged in an improper ex parte communication with the court); and *In re Johnson*, 18 DB Rptr 181 (2004) (reprimand imposed on lawyer who negligently made inaccurate statements to the court and others in three separate matters).

12.

Consistent with the *Standards* and Oregon dispositions, the parties agree that the Accused shall be reprimanded for violation of RPC 8.4(a)(4).

13.

In addition, on or before November 1, 2012, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$618.75, incurred for depositions. Should the Accused fail to pay \$618.75 in full by November 1, 2012, 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.

14.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

15.

The Accused represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that he or the Bar will inform these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which the Accused is admitted: Utah and District of Columbia.

16.

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 13th day of September, 2012.

/s/ Daniel K. Christensen

Daniel K. Christensen

OSB No. 077142

EXECUTED this 27th day of September, 2012.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 862028

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 11-38; 11-40
)
ROBERT G. KLAHN,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: David J. Elkanich
Disciplinary Board: None
Disposition: Violation of RPC 1.4(a), RPC 1.4(b), and RPC
8.4(a)(4). Stipulation for Discipline. 90-day suspension.
Effective Date of Order: November 1, 2012

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 November 1, 2012, for violation of RPC 1.4(a), RPC 1.4(b), and RPC 8.4(a)(4).

DATED this 2nd day of October, 2012.

/s/ William B. Crow
William B. Crow
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Robert G. Klahn, 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 his office and place of business in Umatilla 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 21, 2012, 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 1.4(a) & (b) (duty to keep a client reasonably informed and explain a matter to the extent necessary to allow the client to make informed decisions about the representation) 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.

Between December 9, 2009, and January 8, 2010, the Accused did not appear as noticed and scheduled before the Hon. Garry Reynolds (hereinafter “Judge Reynolds”) on behalf of three separate clients in unrelated criminal matters. In each of these instances, the Accused did not take steps to notify the court that he would not appear at the scheduled hearings.

6.

On August 26, 2009, the Accused was court-appointed by Judge Reynolds to represent Brian Neal in defense of criminal assault charges, including a Measure 11 charge. Neal was alleged to have assaulted a prison guard. On September 14, 2009, the Accused met and interviewed Neal at Eastern Oregon Correctional Institution in Pendleton, Oregon, and developed a theory that the state could not establish that the officer had suffered “serious physical injury” as a result of the incident in question.

7.

Between September 14, 2009, and the trial readiness hearing on January 11, 2010, the Accused reviewed discovery in Neal's case; consulted with a former classmate (now doctor) regarding the extent of the guard's injuries; and spoke with the co-defendant's counsel. The Accused did not, however, communicate with Neal between September 14, 2009, and January 11, 2010, so was unable to advise the court on January 11, 2010, whether Neal was prepared to go to trial.

8.

At the January 11, 2010, trial-readiness hearing, the Accused was instructed by Judge Reynolds to contact Neal, because the case was going to trial as scheduled on January 21, 2012. However, since the Accused's September meeting with Neal, Neal had been moved to the Oregon State Penitentiary in Salem and then to Snake River Correctional Institution in Ontario, Oregon. The Accused was not able to track Neal down until January 20, 2012, at which point he learned that Neal was being transported for trial.

9.

The Accused contacted the Deputy District Attorney (hereinafter "DDA") handling Neal's case, to determine if he could facilitate a visit between the Accused and Neal. Concerned that the Accused was not prepared for trial, the DDA asked for a hearing before Judge Reynolds. At that hearing, Judge Reynolds confirmed that the Accused had had only limited communications with Neal and removed the Accused from the case, without Neal being present and without Neal's position.

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 9, he violated RPC 1.4(a), RPC 1.4(b), and RPC 8.4(a)(4).

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 of diligence to his client, which includes a duty to communicate. *Standards* § 4.4. The Accused also violated

his duty to the legal system to avoid abuse to the legal process. *Standards* § 6.2.

- b. **Mental State.** The Accused acted knowingly in some respects and negligently in others. “Knowledge” is 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. “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*
- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, both actual and potential injury are taken into account. *Standards*, p. 6; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

Neal experienced actual injury in the form of anxiety and frustration experienced by the Accused’s failures to communicate with him, as evidenced by his letters to the court and the Bar. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration can constitute actual injury under the *Standards*); *In re Schaffner II*, 325 Or 421, 426–27, 939 P2d 39 (1997); *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989). Although Neal’s case was also delayed by the Accused’s actions, there is no evidence that that delay actually injured his substantive case; it was, however, contrary to his subjective desire to have the matter heard within the 90-day requirement. There was also potential injury caused by the Accused’s failure to communicate with and prepare Neal for trial.

The court sustained actual injury because the Accused’s failure to communicate with the court created unnecessary work for the court, caused the court to spend more time on these matters than would otherwise have been required, and did, or at least had the potential to, disrupt the court’s ability to effectively and efficiently manage its docket. *See In re Morris*, 326 Or 493, 505, 953 P2d 387 (1998) (attorney caused harm to the administration of justice by creating circumstances requiring an ancillary inquiry by the court); *In re Wyllie*, 326 Or 447, 455, 952 P2d 550 (1998) (attorney’s court appearances while intoxicated resulted in some actual injury to the functioning of the courts by causing delays and distraction from the substantive issues that were to be tried).

- d. **Aggravating Circumstances.** Aggravating circumstances include:
 - 1. A prior record of discipline. *Standards* § 9.22(a). This factor refers to offenses that have been adjudicated prior to imposition of the sanction in the current case. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997).

In 2000, the Accused stipulated to a reprimand for his failure to timely respond to repeated inquiries from Disciplinary Counsel's Office regarding a complaint from a court-appointed client. He also charged and collected a clearly excessive fee when he billed and received payment from the State Court Administrator for his time spent responding to the Bar complaint. *In re Klahn*, 14 DB Rptr 65 (2000).

In 2005, the Accused stipulated to a reprimand for failing to deposit and maintain funds in trust and for failing to keep adequate trust records, resulting in the overdraft of his lawyer trust account, in part because he had elected not to reconcile his records with bank statements for many years. *In re Klahn*, 19 DB Rptr 1 (2005).

In 2008, the Accused stipulated to a 60-day suspension for four separate violations of the Rules of Professional Conduct including failing to communicate with clients as required by RPC 1.4(a). *In re Klahn*, 22 DB Rptr 207 (2008).

2. Multiple offenses. *Standards* § 9.22(d).
3. Vulnerability of victim. *Standards* § 9.22(h). The court has held that incarcerated clients are vulnerable because they have no ability to travel to the lawyer's office to obtain a direct answer to their inquiries, but must rely solely on mail and the telephone (and therefore are dependent on a lawyer's willingness to respond to either). *In re Obert*, 336 Or 640, 653, 89 P3d 1173 (2004).
4. Substantial experience in the practice of law. *Standards* § 9.22(i). The Accused was admitted to practice in Oregon in 1980.

e. **Mitigating Circumstances.** Mitigating circumstances include:

1. Absence of a dishonest motive. *Standards* § 9.32(b).
2. Timely good faith attempt to rectify the consequences of his misconduct. *Standards* § 9.32(d). With respect to the Neal matter, the Accused met with Neal immediately following his removal, explained what had occurred, and attempted to facilitate Neal's transition to new counsel.
3. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. *Standards* § 9.32(e).

12.

Under the ABA *Standards*, a suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a

client, or when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* § 4.42. A suspension is also 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.

13.

The court imposed a four-month suspension where a lawyer engaged in comparable misconduct in two client matters and also failed to timely and fully respond to disciplinary inquiries regarding those matters. *In re Koch*, 345 Or 444, 198 P3d 910 (2008). Koch had been reprimanded for similar misconduct only four years earlier. Because the Accused has fully cooperated with these disciplinary proceedings, a 90-day suspension is appropriate. *See also, In re Edelson*, 25 DB Rptr 172 (2011) (stipulated 90-day suspension where, in a workers' compensation appeal, attorney decided he could not file a brief that advanced a nonfrivolous position, but did not inform his client of this or respond to multiple inquiries from the client, opposing counsel, or the court); *In re Erickson*, 25 DB Rptr 64 (2011) (stipulated 90-day suspension in part for attorney's failure to file a form of domestic relations judgment with the court after agreeing to do so and then failed to appear when the court set status conferences to inquire into the missing judgment).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 90 days for violation of RPC 1.4(a),; RPC 1.4(b), and RPC 8.4(a)(4), the sanction to be effective November 1, 2012.

15.

The Accused acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. In this regard, the Accused has arranged for Craig Childress, an active member of the Oregon State Bar, to either take possession of or have ongoing access to the Accused's client files and serve as the contact person for clients in need of the files during the term of the Accused's suspension. The Accused represents that Craig Childress has agreed to accept this responsibility.

16.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

17.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

18.

The Accused represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which the Accused is admitted: none.

19.

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 22nd day of August, 2012.

/s/ Robert G. Klahn

Robert G. Klahn
OSB No. 800683

EXECUTED this 30th day of August, 2012.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott
OSB No. 990280
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 11-79
)
MICHAEL NESHEIWAT,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of RPC 1.5(a) and RPC 8.4(a)(4). Stipulation
for Discipline. Public Reprimand.
Effective Date of Order: October 15, 2012

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 1.5(a) and RPC 8.4(a)(4).

DATED this 15th day of October, 2012.

/s/ William B. Crow
William B. Crow
State Disciplinary Board Chairperson

/s/ Anthony Buccino
Anthony Buccino, Region 7
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Michael Nesheiwat, 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, 2003, 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, voluntarily, and with the opportunity to seek advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On December 5, 2011, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.5(a) (charge a clearly excessive fee); RPC 3.3(a)(1) (knowingly make, or fail to correct, a false statement to a tribunal); RPC 3.3(a)(3) (knowingly offer evidence that the lawyer knows to be false); RPC 8.1(a)(1) (knowingly submit false information to a disciplinary authority); RPC 8.4(a)(3) (conduct involving dishonesty or misrepresentation); 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.

In May 2009, the Accused agreed to conduct patent searches and draft one or more patent applications for Joseph Yusuf Smith-Sedaghaty (hereinafter “Smith”), son of Pete Seda (hereinafter “Seda”). In exchange for the Accused’s legal services, Pragmatic Services, LLC (of which Seda was part owner) agreed to provide various landscaping services for the Accused’s home at a 2:1 hourly ratio.

6.

The Accused performed art searches and worked on a draft patent. However, the Accused did not keep accurate time records and instead guessed, after the fact, at the time spent per search result.

7.

Between May 19, 2009, and June 4, 2009, the Accused claimed to Seda to have spent 45.5 hours on art searches regarding two Smith inventions. Between July 21, 2009, and August 28, 2009, the Accused also claimed to have spent 26 hours drafting the patent application. The Accused had no way to know or verify how much time he had actually spent on Smith's inventions.

8.

In the course of the performance of the barter agreement a dispute arose over, on the one hand, whether the Accused's time records were accurate and whether his work was up to reasonable standards and, on the other hand, whether Pragmatic Services performed sufficient hours of work on the Accused's home.

9.

Just before one of Smith's patent applications was to be filed in early September 2009, Pragmatic learned from another patent attorney that there was another very similar patent, which had not been discovered in the Accused's searches on that invention. No patent was ever filed on Smith's inventions.

10.

The Accused made a claim against Seda and Pragmatic with the Construction Contractors Board ("CCB") and also filed a small claims action against them in Clackamas County. In the course of pursuing his claim with the CCB, the Accused provided the CCB with emails that purported to be communications between the Accused and Seda/Pragmatic and supported the Accused's position with respect to the agreement with Seda and Pragmatic.

11.

When a complaint was later made to the Bar, the Accused also provided these emails to the Bar to support his position with respect to his agreement with Seda and Pragmatic. However, some of these emails were not accurate accounts of the Accused's communications with Seda and Pragmatic. At least four of the emails the Accused provided to the Bar and the CCB were drafts that the Accused had never sent to Seda or Pragmatic. The Accused had negligently retrieved them when he conducted a search of his email for supporting documentation. These emails, therefore, did not memorialize any understanding between Seda and the Accused, as the Accused had asserted to both the Bar and the CCB.

Violations

12.

The Accused admits that, by failing to more accurately track or account for his time while insisting that his time estimate entitled him to more than 140 hours of services from Pragmatic, the Accused charged an excessive fee, in violation of RPC 1.5(a). The Accused

further admits that his negligent submission of false documents to the CCB and the Bar was conduct prejudicial to the administration of justice, in violation of RPC 8.4(a)(4).

Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 3.3(a)(1), RPC 3.3(a)(3), RPC 8.1(a)(1), and RPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.

Sanction

13.

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

- a. **Duty Violated.** The Accused violated his duty as a professional to refrain from charging excessive fees. *Standards* § 7.0. He also violated his duty to the legal system to avoid abuse to the legal process. *Standards* § 6.2.
- b. **Mental State.** The Accused acted negligently in engaging in conduct prejudicial to the administration of justice, meaning that he failed to heed a substantial risk that circumstances existed or that a result would follow, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. However, the Accused acted knowingly when he charged an excessive fee, because he knew that he had not kept track of his time when he asserted (to the CCB, the court, and the Bar) that Pragmatic owed him certain services in exchange for time he purportedly spent on Smith’s patent application. 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.*
- c. **Injury.** An injury need not be actual, but only potential, to support the imposition of a sanction. *Standards*, p. 6; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). In this matter, there was both actual and potential injury caused by the Accused’s submission of inaccurate emails, which complicated both the CCB and Bar proceedings and delayed the completion of the Bar investigation. In addition, the Accused’s claim of excessive fees required Seda and Pragmatic to defend against two proceedings (before the CCB and circuit court) and potentially subjected them to additional costs and fees. However, both matters were eventually dismissed without costs to either side.

- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. The Accused was motivated by his personal interests. *Standards* § 9.22(b);
 2. Multiple offenses. *Standards* § 9.22(d); and
 3. The Accused has substantial experience in the practice of law, having been admitted in Oregon in 2003. This factor is mitigated somewhat, as the Accused has been in-house counsel since his admission, so he has had virtually no experience in making or maintaining time records. However, he does have considerable experience in patent law. *Standards* § 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. The Accused has no prior disciplinary record. *Standards* § 9.32(a);
 2. The Accused has cooperated in the Bar's investigation and in these formal proceedings. *Standards* § 9.32(e); and
 3. The Accused has expressed remorse for his conduct. *Standards* § 9.32(l).

14.

Under the *ABA Standards*, a reprimand is generally appropriate when a lawyer negligently engages in conduct that is 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. A suspension is generally appropriate when a lawyer knowingly charges an excessive fee in violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards* § 6.23; § 7.2.

15.

Like the *Standards*, Oregon case law suggests that a reprimand is adequate for the Accused's conduct that was prejudicial to the administration of justice. *See, e.g., In re Taylor*, 23 DB Rptr 151 (2009) (attorney reprimanded when he signed blank trial subpoenas and gave them to his investigator, who then used them, without attorney's knowledge, to obtain records to which attorney was not entitled); *In re Gordon*, 23 DB Rptr 51 (2009) (attorney reprimanded after he filed a motion for an order of default supported by attorney's affidavit in which he negligently and incorrectly represented that the defendant was indebted to the plaintiff); *In re Camacho*, 19 DB Rptr 337 (2005) (without notice to the opposing party, attorney appeared *ex parte* and obtained an order setting aside a default judgment previously entered against his clients. Relying on his clients' assertion, attorney represented to the court that the clients had never been served with the summons and complaint that led to the default, without sufficiently investigating to determine that this assertion was true).

Similarly, although excessive fees can result in suspensions, the Accused's conduct in this instance is sufficiently addressed with a reprimand. *See, e.g., In re Nishioka*, 23 DB Rptr 44 (2009) (attorney reprimanded when he billed a client at an hourly rate that exceeded the rate specified in the fee agreement); *In re Unfred*, 22 DB Rptr 276 (2008) (attorney reprimanded where he and client agreed that client was to receive a discounted hourly rate, but attorney thereafter billed and collected at his normal, undiscounted rate); *In re Gudger*, 21 DB Rptr 160 (2007) (attorney reprimanded when he charged client at an hourly rate greater than specified in the fee agreement); *In re Campbell*, 17 DB Rptr 179 (2003) (attorney reprimanded when he attempted to enforce a fee agreement and collect 1½ times his normal rate).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 1.5(a) and RPC 8.4(a)(4), the sanction to be effective upon approval by the Disciplinary Board.

17.

In addition, on or before December 31, 2012, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$282, incurred for conducting his deposition. Should the Accused fail to pay \$282 in full by December 31, 2012, 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.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

19.

The Accused represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which the Accused is admitted: none.

20.

This Stipulation for Discipline is subject 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 September, 2012.

/s/ Michael Nesheiwat

Michael Nesheiwat

OSB No. 031301

EXECUTED this 8th day of October, 2012.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 990280

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 11-102; 12-136
)
TREVOR ROBINS,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: Clayton H. Morrison, Sr.
Disciplinary Board: None
Disposition: Violation of RPC 1.3, RPC 1.16(a)(2), RPC 1.16(d),
RPC 5.5(a), RPC 8.1(a)(2), RPC 8.4(a)(4), and ORS
9.160. Stipulation for Discipline. 6-month suspension,
all stayed, 2-year probation.
Effective Date of Order: October 25, 2012

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. The Accused is suspended for six months, all of which is stayed pending completion of a two-year term of probation, for violation of RPC 1.3, RPC 1.16(a)(2), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(2), RPC 8.4(a)(4), and ORS 9.160.

DATED this 25th day of October, 2012.

/s/ William B. Crow
William B. Crow
State Disciplinary Board Chairperson

/s/ Nancy Cooper
Nancy Cooper, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Trevor Robins, 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 21, 2004, 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 January 26, 2012, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 5.5(a) (practicing law in violation of the regulation of the legal profession in a jurisdiction); RPC 8.1(a)(2) (knowing failure to respond to a lawful demand for information from a disciplinary authority); and ORS 9.160 (practicing law in Oregon while not an active member of the bar).

On September 22, 2012, the SPRB authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 1.3 (neglect of a legal matter); RPC 1.16(a)(2) (failure to withdraw when the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client); RPC 1.16(d) (failure to take reasonable steps upon termination to protect a client’s interests, including return of file); and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice).

The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of these proceedings.

Case No. 11-102
(PLF Suspension)

Facts

5.

On April 18, 2011, the Accused paid his Professional Liability Fund (hereinafter “PLF”) dues with a check written on an account in the Accused’s sole name in which there were insufficient funds. On April 22, 2011, the check was returned by Key Bank for insufficient funds.

6.

The PLF was notified that the Accused’s check had been returned NSF and the PLF notified the Oregon State Bar. The Accused was suspended from the practice of law effective April 19, 2011, and notified by mail of this event.

7.

On April 28, 2011, the Accused prepared and signed before a notary a sworn statement in support of his reinstatement to the active practice of law (hereinafter “BR 8.4 Statement”). In his BR 8.4 Statement, the Accused confirmed his business and home address. He also acknowledged that he had practiced law between April 19, 2011 and April 25, 2011.

8.

On May 5, June 8 and July 11, 2011, Disciplinary Counsel’s Office (hereinafter “DCO”) sent letters to the Accused at his business and home addresses, asking specific questions about his payment to the PLF and his activities during suspension. DCO staff followed up with telephone messages (July 1 and July 21) and an email (July 21). Robins failed to acknowledge or respond to any of these communications.

9.

The matter was referred to the Multnomah County Local Professional Responsibility Committee (hereinafter “LPRC”) for investigation on August 30, 2011. The LPRC investigators left a voice mail message, sent an email, and hand-delivered a letter to the Accused’s residence. The Accused did not acknowledge the LPRC’s communications.

Violations

10.

The Accused admits that, by continuing to practice law at a time when he was suspended and not an active member of the Oregon State Bar, he violated RPC 5.5(a) and ORS 9.160. The Accused further admits that his failures to respond to DCO and the LPRC

constituted a knowing failure to respond to a lawful demand from a disciplinary authority, in violation of RPC 8.1(a)(2).

Case No. 12-136
(Conservatorship Matter)

Facts

11.

In July 2010, the Accused represented Cheryl Feuerstein (hereinafter “Feuerstein”) in a proceeding in which Feuerstein was appointed as conservator for Rose Reiter (hereinafter “Rose”) in Washington County. In late November 2010, Rose died and Feuerstein was obligated to file her final accounting.

12.

Feuerstein surrendered the conservatorship’s financial records to the Accused, so that he could prepare the accounting. The Accused prepared a form of accounting which Feuerstein signed and left with the Accused for filing. Thereafter, the Accused represented to Feuerstein on multiple occasions that the accounting would soon be filed, but he failed to do so.

13.

On May 16, 2011, the Accused agreed to meet Feuerstein and give her the accounting to file herself. However, he did not meet her as agreed and Feuerstein was unable to timely file the accounting.

14.

On May 20, 2011, Feuerstein hired new counsel, Michael Schmidt (hereinafter “Schmidt”). In addition to submitting a Substitution of Counsel, Schmidt moved for a show cause order why the Accused should not be required to deliver to the court the conservatorship’s financial records. The Honorable Rita Batz Cobb (hereinafter “Judge Cobb”) signed the order, requiring the Accused to appear and show cause at 10 a.m. on June 16, 2011. The Accused was personally served with the show cause order on June 3, 2011.

15.

On June 16, 2011, the Accused failed to appear, although he did make efforts to communicate with the court that morning. Later that day, the Accused called Schmidt and agreed to deliver all of the conservatorship records to him by 5 p.m. on June 20, 2011. Schmidt confirmed their conversation by email but the Accused did not provide the documents on June 20.

16.

On June 22, 2011, the Accused sent Schmidt an email promising to deliver the records early the next day. He did not do so. Schmidt wrote to the Accused on July 1, 2011, recounting the Accused's multiple promises to deliver the conservatorship documents, and expressing frustration at the Accused's failure to follow through.

17.

When Schmidt had not received the conservatorship records by September 16, 2011, he file a second motion to show cause—this time for contempt—for the Accused's failure to appear on June 16 and for costs to the conservatorship incurred trying to obtain the records. Judge Cobb signed the order requiring the Accused to appear at 11 a.m. on November 16, 2011. The order was sent to the Accused, but the process server did not make personal service, so Schmidt ultimately cancelled the hearing. The Accused did not surrender all of the conservatorship documents until after Judge Cobb brought the matter to the Bar's attention.

Violations

18.

The Accused admits that his conduct with respect to the conservatorship constituted neglect of a legal matter in violation of RPC 1.3. He further admits that his physical or mental condition materially impaired his ability to represent Feuerstein in the conservatorship, and his failure to withdraw and thereafter surrender the conservatorship documents to Feuerstein violated RPC 1.16(a)(2) and RPC 1.16(d). Finally, the Accused admits that his failure to provide records, necessitating court involvement, and his subsequent failure to appear as directed by the court, was conduct prejudicial to the administration of justice, in violation of 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. **Duty Violated.** With respect to the PLF suspension matter, the Accused violated his duties to the profession to refrain from unlawful practice and to cooperate with disciplinary authorities. *Standards* § 7.0.

In the conservatorship matter, the Accused violated his duty of diligence to his client, his duty to the legal system to avoid abuse to the legal process, and his

duty to the profession to take the necessary steps to properly withdraw from representation upon termination. *Standards* §§ 4.4; 6.2; 7.0.

- b. **Mental State.** Prior to April 2011, the Accused began abusing opiates and amphetamines, and also was dependent on alcohol and marijuana. By April 2011, his judgment was very impaired, as was his ability to keep track of details, and his recall of that time period is incomplete. He did not seek any assistance for his dependency issues prior to the June 16 hearing, and did not begin treatment in earnest until late September 2011.

Accordingly, the Accused was negligent in the conduct leading to and resulting in his unlawful practice. “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. 6. However, he acted at least knowingly in failing to respond to the repeated requests of his client to provide documents, and to respond to the Bar. “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 also knowingly caused prejudice to the administration of justice, particularly when he knowingly failed to appear for the June 16 hearing.

- c. **Injury.** The Accused caused potential injury to his clients when he continued to practice law while he was suspended (*e.g.*, no PLF coverage) and at a time when he was impaired. His failure to cooperate with DCO and the LPRC’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*, 325 Or 421, 427, 939 P2d 39 (1997); *In re Miles*, 324 Or 218, 222, 923 P2d 1219 (1996); *In re Haws*, 310 Or 741, 753, 801 P2d 818 (1990). When the Accused failed to provide documents to his client and otherwise cooperate with the probate proceeding, he caused actual and potential harm to his client and the court. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of attorney neglect can constitute actual injury under the *Standards*.); *In re Schaffner*, 325 Or 421, 426–27, 939 P2d 39 (1997).

- d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Multiple offenses. *Standards* § 9.22(d).
2. The Accused has substantial experience in the practice of law, having been admitted in Oregon in 2004, and has performed probate work all of that time. *Standards* §§9.22(d); (i).

- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of prior discipline. *Standards* § 9.32(a).
 2. Absence of a dishonest motive. *Standards* § 9.32(b).
 3. The Accused was experiencing personal and emotional problems at the time of some of the misconduct in these matters. *Standards* § 9.32(c).
 4. The Accused had other penalties imposed against him, as he was never paid for any of the legal services he performed for Rose's conservatorship. *Standards* § 9.32(k).
 5. The Accused also qualifies for limited mitigation for his mental disability/chemical dependency during the time at issue in these matters. *Standards* § 9.32(i); see Commentary to ABA *Standards* § 9.32.

20.

Under the ABA *Standards*, a suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* § 4.42. A suspension is also 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. Finally, a 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. A reprimand is generally appropriate when a lawyer negligently engages in such conduct. *Standards* §§ 7.2; 7.3.

21.

Like the *Standards*, Oregon cases suggest that a suspension is appropriate for the Accused's cumulative conduct.

Unlawful practice, by itself (and especially in the absence of dishonesty), generally does not result in a suspension. See, e.g., *In re Hodgess*, 24 DB Rptr 253 (2010) (attorney reprimanded when he continued to practice law after a suspension for failure to pay timely his PLF assessment); *In re Davidson*, 20 DB Rptr 264 (2006) (attorney reprimanded after computer errors resulted in calendar entries being destroyed, and allowed her to practice law for several days without recognizing that she was suspended); *In re Kay*, 19 DB Rptr 200 (2005) (following a disciplinary suspension, attorney mistakenly resumed the practice of law before filing necessary documentation or paying the required fee for reinstatement and was reprimanded); *In re Dixon*, 17 DB Rptr 102 (2003) (attorney who was suspended for failing to pay membership dues was reprimanded when she continued to practice for 10 days without

realizing she was suspended, but admitted in her reinstatement application she had practiced law during that time).

However, the court has emphasized a no-tolerance approach to non-cooperation with the Bar. *See, e.g., In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (120 days for failing to respond to the bar where no substantive charges were brought); *In re Schaffner*, 323 Or 472, 481, 918 P2d 803 (1996) (120-day suspension; 60 days each for neglect and failing to cooperate with the Bar).

Furthermore, neglecting client matters and the court under circumstances similar to that of the Accused also warrants a suspension. *See, e.g., In re Koch*, 345 Or 444, 198 P3d 910 (2008) (attorney suspended for 120 days when she failed to advise her client that another lawyer would prepare a qualified domestic relations order for the client and thereafter failed to communicate with the client and that second lawyer when they needed information and assistance from attorney to complete the legal matter); *In re Coyner*, 342 Or 104, 149 P3d 1118 (2006) (3-month suspension plus formal reinstatement for attorney's failure to respond to a show cause order and other inquiries from the court of appeals concerning a client's appeal); *In re Worth*, 337 Or 167, 92 P3d 721 (2004) (120-day suspension when attorney failed to move a client's case forward, despite several warnings from the court and a court directive to schedule arbitration by a date certain, resulting in the court granting the opposing party's motion to dismiss); *In re Obert*, 336 Or 640, 89 P3d 1173 (2004) (30-day suspension where attorney failed to pursue a client's adoption matter when he could not locate the birth father and did not know how to proceed).

In re Purvis, 306 Or 522, 760 P2d 254 (1988) provides authority for the imposition of a six-month suspension where a lawyer fails to pursue a single client's legal matter and fails to cooperate with the Bar's inquiry. Purvis failed to take any action to pursue the reinstatement of child support over the course of four months for his client and also made misrepresentations to his client regarding the progress of the case. Purvis then failed to respond to inquiries from DCO and the LPRC investigator. Although the Accused did not make misrepresentations, he did engage in conduct prejudicial to the administration of justice and the unlawful practice of law.

22.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for six months for violation of RPC 1.3, RPC 1.16(a)(2), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(2), RPC 8.4(a)(4), and ORS 9.160, effective upon approval by the Disciplinary Board. However, the whole of the six-month suspension shall be stayed pending completion of a two-year term of probation supervised by the State Lawyers Assistance Committee ("SLAC") which shall include the following terms and conditions:

- (a) The Accused shall comply with all provisions of this stipulation, the Rules of Professional Conduct applicable to Oregon lawyers, and the provisions of ORS Chapter 9.
- (b) The Accused shall maintain sobriety and shall abstain from using alcohol, marijuana, or any controlled substances not prescribed by a physician. Any prescribed medications shall be taken only as prescribed.
- (c) A member of SLAC or such other person approved by DCO in writing shall supervise the Accused's probation ("Supervising Attorney"). The Accused currently is working with SLAC on treatment and relapse prevention. The Accused shall immediately notify SLAC of this Stipulation for Discipline when it is approved by the Disciplinary Board and discuss with SLAC whether and how to modify his current treatment plan to best accomplish the objectives of the Accused's probation.
- (d) The Accused shall continue substance abuse treatment as determined by SLAC to be appropriate, including any aftercare and relapse prevention education and therapy recommended by SLAC, and shall meet at least monthly with his Supervising Attorney for the purpose of reviewing the Accused's compliance with the terms of the probation. The Accused shall cooperate and shall comply with all reasonable requests of SLAC, including submitting to random urinalysis, and DCO that will allow the SLAC and DCO to evaluate the Accused's compliance with the terms of this stipulation for discipline;
- (e) To the extent that SLAC or the Supervising Attorney recommends that the Accused attend OAAP, AA, NA, or equivalent meetings, the Accused agrees to obtain, upon SLAC's request, verification of attendance at such meetings.
- (f) The Accused agrees that, if SLAC is alerted to facts that raise concern that the Accused may be violating his requirement to refrain from using controlled substances as described in paragraph 22(b) above, he will participate in a drug evaluation at the request and direction of SLAC.
- (g) The Accused shall report to his Supervising Attorney and to DCO within 14 days of occurrence any civil, criminal, or traffic action, or proceeding initiated by complaint, citation, warrant, or arrest, or any incident not resulting in complaint, citation, warrant, or arrest, in which is it alleged that the Accused has possessed or consumed alcohol, marijuana, or other controlled substances not prescribed by a physician.

- (h) In the event the Accused fails to comply with any condition of this stipulation, the Accused shall immediately notify his Supervising Attorney, SLAC, and DCO in writing.
- (i) At least quarterly, and by such dates as established by DCO, the Accused shall submit a written report to DCO, approved in substance by his Supervising Attorney, advising whether he is in compliance or non-compliance with the terms of this stipulation and the recommendations of his treatment providers, and each of them. The Accused's report shall also identify: the dates and purpose of the Accused's meetings with his Supervising Attorney and the dates of meetings and other consultations between the Accused and all substance abuse and mental health professionals during the reporting period. In the event the Accused has not complied with any term of probation in this disciplinary case, the report shall also describe the non-compliance and the reason for it, and when and what steps have been taken to correct the non-compliance.
- (j) The Accused hereby waives any privilege or right of confidentiality to the extent necessary to permit disclosure by SLAC, his Supervising Attorney, or any other mental health or substance abuse treatment providers, of the Accused's compliance or non-compliance with this stipulation and their treatment recommendations to SLAC and DCO. The Accused agrees to execute any additional waivers or authorizations necessary to permit such disclosures.
- (k) The Accused is responsible for the cost of all professional services required under the terms of this stipulation and the terms of probation.
- (l) In the event the Accused fails to comply with any condition of his probation, DCO may initiate proceedings to revoke the Accused's probation pursuant to BR 6.2(d), and impose the stayed period of suspension. In such event, the probation and its terms shall be continued until resolution of any revocation proceeding.

23.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

24.

The Accused represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the

Cite as *In re Robins*, 26 DB Rptr 260 (2012)

final disposition of this proceeding. Other jurisdictions in which the Accused is admitted: none.

25.

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 12th day of October, 2012.

/s/ Trevor Robins
Trevor Robins
OSB No. 041011

EXECUTED this 22nd day of October, 2012.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott
OSB No. 990280
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 11-125
)	
DAVID MOULE,)	
)	
Accused.)	

Counsel for the Bar:	Stephen J. R. Shepard; Stacy J. Hankin
Counsel for the Accused:	Jay W. Frank
Disciplinary Board:	None
Disposition:	Violations of RPC 1.7(a)(1) and RPC 1.7(a)(2). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	November 5, 2012

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 1.7(a)(1) and RPC 1.7(a)(2).

DATED this 5th day of November, 2012.

/s/ William B. Crow
 William B. Crow
 State Disciplinary Board Chairperson

/s/ Robert A. Miller
 Robert A. Miller, Region 2
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

David Moule, 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 24, 1976, 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 January 10, 2012, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.7(a)(1) and RPC 1.7(a)(2). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Prior to May 2010, and through at least September 2010, the Accused represented a trust (hereinafter “Trust”). He was also the trustee of the Trust.

6.

On May 5, 2010, the Accused undertook to represent a non-profit corporation (hereinafter “Collective”) regarding the potential lawful production of medical marijuana and operation of a dispensary.

7.

In late July 2010, the Accused, facilitated a loan from the Trust to Collective and its owner (hereinafter “Owner”). The Accused represented the Trust, Owner, and Collective in the loan transaction, although the Accused recommended that Owner seek independent legal advice. The interests of the Trust as lender were adverse to the interests of the Owner and Collective as borrowers.

8.

Owner and Collective secured the loan described in paragraph 7 with equipment, a vehicle, and inventory. Sometime before September 15, 2010, Owner and Collective received the proceeds of the loan and deposited them into a bank account.

9.

On September 15, 2010, Owner was arrested for unlawful manufacture and delivery of marijuana and money laundering. Law enforcement officials seized the loan documents and the bank account into which Owner had deposited the loan proceeds. The Accused undertook to represent Owner in the criminal matter.

10.

The prosecutor assigned to Owner's criminal case filed a motion to remove the Accused because he had a conflict of interest. The court granted the motion on October 12, 2010. The prosecutor also referred the matter to the Bar.

11.

The Trust had an interest in recovering its investment by either obtaining the remaining loan proceeds in the bank account referenced in paragraph 9 or foreclosing on its security interest as described in paragraph 8. Owner had an interest in avoiding or minimizing any consequences arising from the criminal matter.

12.

There was a significant risk that the Accused's continued representation of Trust would be materially limited by his responsibilities to Owner in the criminal matter.

13.

There was a significant risk that the Accused's representation of Owner in the criminal matter would be materially limited by the Accused's interest in avoiding potential liability to the Trust for breach of fiduciary duty or in avoiding potential liability arising from his representation of Trust in the loan transaction described in paragraph 7.

14.

Insofar as informed consent was available, the Accused failed to obtain consent, after full disclosure, from Owner and Collective.

Violations

15.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 14, he violated RPC 1.7(a)(1) and RPC 1.7(a)(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. **Duty Violated.** The Accused violated his duty to avoid improper conflicts of interest. *Standards* § 4.3.
- b. **Mental State.** The Accused acted negligently.
- c. **Injury.** There was the potential for injury to Owner and the Trust beneficiary. Neither sustained actual injury.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Multiple offenses. *Standards* § 9.22(d).
 2. Substantial experience in the practice of law. The Accused has been licensed to practice law in Oregon since 1976.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. Absence of a prior disciplinary record. *Standards* § 9.32(a).
 2. Absence of a dishonest or selfish motive. *Standards* § 9.32(b).
 3. Cooperative attitude toward the proceeding. *Standards* § 9.32(e).
 4. Character and reputation. Members of the legal community are willing to attest to the Accused’s good character and reputation. *Standards* § 9.32(g).

17.

Under the ABA *Standards*, 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, or whether the representation will adversely affect another client, and causes injury or potential injury to a client. *Standards* § 4.33.

18.

By itself, a patent conflict of interest rule violation will result in a short suspension. *In re Hostetter*, 348 Or 574, 603, 238 P3d 13 (2010); *In re Knappenberger*, 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).

However, the court has reprimanded lawyers for engaging in similar misconduct where the mitigating circumstances predominate and actual injury was absent or minimal. *In re Howser*, 329 Or 404, 987 P2d 496 (1999) (reprimand imposed on lawyer who defended his client from the claims of an alleged creditor where another lawyer in the firm had previously represented creditor and the file from that prior representation contained information relevant to the current dispute); *In re Cohen*, 316 Or 657, 853 P2d 286 (1993) (reprimand imposed on lawyer who simultaneously represented husband in criminal proceeding in which he was alleged to have abused his stepdaughter, and wife in a juvenile proceeding to keep custody of stepdaughter); *In re Trukositz*, 312 Or 621, 825 P2d 1369 (1992) (reprimand imposed on lawyer who represented husband in a dissolution proceeding where paternity was at issue when lawyer had previously represented wife in obtaining an affidavit of paternity from husband); *In re Harrington*, 301 Or 18, 718 P2d 725 (1986) (reprimand imposed on lawyer who borrowed funds from a client and arranged for other clients and an employee to also borrow funds from the same client).

19.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of RPC 1.7(a)(1) and RPC 1.7(a)(2).

20.

In addition, on or before May 31, 2013, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$195.00, incurred for deposition. Should the Accused fail to pay \$195.00 in full by May 31, 2013, 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.

21.

The Accused acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension.

22.

The Accused represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which the Accused is admitted: District Court for the District of Oregon and Ninth Circuit Court of Appeals.

23.

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 12th day of October, 2012.

/s/ David Moule

David Moule

OSB No. 762620

EXECUTED this 15th day of October, 2012.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 862028

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case No. 11-49
)	
MARIANNE G. DUGAN,)	
)	
Accused.)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	Brian L. Michaels
Disciplinary Board:	None
Disposition:	Violation of RPC 8.4(a)(4). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	November 5, 2012

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 8.4(a)(4).

DATED this 5th day of November, 2012.

/s/ William B. Crow
 William B. Crow
 State Disciplinary Board Chairperson

/s/ Robert A. Miller
 Robert A. Miller, Region 2
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Marianne G. Dugan, 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 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 November 2, 2011, 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(a)(1) (knowingly making, or failing to correct, a false statement to a tribunal); RPC 8.4(a)(3) (conduct involving misrepresentation); 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.

In November 2005, the Accused undertook to represent Pamela Koepke (hereinafter “Koepke”) in a malpractice case against attorney R. Kevin Hendrick (hereinafter “Hendrick”) in connection with Hendrick’s representation of Koepke in civil litigation by and against Jack Yarbrough (hereinafter “Yarbrough”).

6.

In January 2009, on behalf of Koepke (and shortly before the running of the statute of limitations), the Accused filed a lawsuit against Yarbrough (hereinafter “*Koepke v. Yarbrough III*”), alleging the same operative facts that Hendrick had previously raised on behalf of Koepke in 2003 and which were dismissed for want of prosecution. *Koepke v. Yarbrough III* was later dismissed without prejudice or costs.

7.

In April 2009, Yarbrough sued the Accused and Koepke for wrongful use of civil proceedings in filing *Koepke v. Yarbrough III* (hereinafter “tort case”).

8.

At all times relevant herein, ORS 31.230(2) provided: “The filing of a civil action within 60 days of the running of the statute of limitations *for the purpose of preserving and evaluating the claim* when the action is dismissed within 120 days after the date of filing shall not constitute grounds for a claim for wrongful use of a civil proceeding...” (emphasis added).

9.

The Accused filed a motion for summary judgment in the tort case, citing to ORS 31.230(2). On March 22, 2010, the Accused filed a declaration in support of this motion that stated: “When I filed [*Yarbrough v. Koepke III* in January 2009]... Ms. Koepke had just recently advised me of that claim, and that her prior attorney (Mr. Hendrick) had simply abandoned that claim; it had been dismissed for lack of prosecution. My memory is that I learned of this claim only a month or so before the statute of limitations for refileing the claim.”

10.

The Accused’s declaration was not accurate. She had actually been informed of Koepke’s claims in *Koepke v. Yarbrough III* several months before she filed *Yarbrough v. Koepke III*, but had failed to independently remember that information, and was careless insofar as she failed to review her records prior to the time she drafted and filed her declaration.

11.

Yarbrough brought this fact to the Accused’s attention after he obtained emails through discovery, demonstrating that the Accused had been aware of the claim asserted in *Koepke v. Yarbrough III* at least six months before the Accused made the claim. The Accused was subsequently permitted to withdraw her declaration.

Violations

12.

The Accused admits that, by submitting her declaration without more completely verifying the accuracy of the assertions it contained, the Accused engaged in conduct prejudicial to the administration of justice, in violation of RPC 8.4(a)(4).

Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 3.3(a) and RPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.

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 her duty to the legal system to refrain from conduct prejudicial to the administration of justice. *Standards* § 6.1
- b. **Mental State.** The Accused acted negligently, that is she failed to heed a substantial risk that circumstances existed or that a result would follow, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in the situation.
- c. **Injury.** An injury need not be actual, but only potential, to support the imposition of a sanction. *Standards*, p. 6; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). In this matter, there was some actual injury in that Yarborough had to respond to the Accused’s false declaration. However, the Accused subsequently withdrew the declaration when the correct information was brought to her attention.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Prior discipline. *Standards* § 9.22(a). The Accused was admonished in 2007 for a violation of RPC 3.1 when she alleged two affirmative defenses on behalf of a client without reasonably investigating whether they had any basis in law or fact.
 2. Substantial experience in the practice of law. *Standards* § 9.22(i). The Accused was admitted in Oregon in 1993.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. Lack of a selfish motive. *Standards* § 9.32(b).
 2. Personal or emotional problems. *Standards* § 9.32(c). The Accused provided documentation evidencing that she had medical issues that distracted her during the time of the misconduct.

3. Timely good faith effort to make restitution or to rectify consequences of misconduct. *Standards* § 9.32(d). The Accused sought to withdraw her declaration almost immediately after she was alerted that it misstated the relevant timing.
4. Full and free disclosure and cooperation with disciplinary proceedings. *Standards* § 9.32(e).
5. Character and reputation. *Standards* § 9.32(g). The Accused has provided letters from attorneys in her community supporting her reputation as a lawyer.
6. The Accused has expressed remorse for her negligent misrepresentation to the court. *Standards* § 9.32(l).

14.

Under the ABA *Standards*, a reprimand is generally appropriate when a lawyer is negligent in determining whether statements made or documents given to the court 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. *Standards* § 6.13.

15.

Oregon case law similarly holds that a reprimand is appropriate for the Accused's misconduct in this case. *See, e.g., In re Gordon*, 23 DB Rptr 51 (2009) (attorney reprimanded for negligently filing a motion for an order of default supported by an affidavit in which he represented that the defendant was indebted to the plaintiff. In fact, the defendant had paid the debt to attorney after the lawsuit was filed, but attorney failed to check his records to determine whether the debt had been satisfied prior to submitting his affidavit); *In re Camacho*, 19 DB Rptr 337 (2005) (attorney reprimanded when, without notice to the opposing party, attorney appeared *ex parte* and obtained an order setting aside a default judgment previously entered against his clients. Relying on his clients' assertion, attorney represented to the court that the clients had never been served with the summons and complaint that led to the default, without sufficiently investigating to determine that this assertion was true).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 8.4(a)(4), the sanction to be effective upon approval by the Disciplinary Board.

17.

In addition, on or before December 31, 2012, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$340.05, incurred for conducting her deposition. Should the Accused fail to pay \$340.05 in full by December 31,

2012, 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.

The Accused acknowledges that she is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in her suspension.

19.

The Accused represents that, in addition to Oregon, she also is admitted to practice law in the jurisdictions listed in this paragraph, whether her current status is active, inactive, or suspended, and she acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which the Accused is admitted: US Supreme Court, US Federal Circuit Court of Appeals, US DC Circuit Court of Appeals, US 2nd Federal Circuit, US 3rd Federal Circuit, US 6th Federal Circuit, US 8th Federal Circuit, US 9th Federal Circuit, Eastern Federal District of Michigan, Western Federal District of Michigan, and Federal District of Oregon.

20.

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 11th day of October, 2012.

/s/ Marianne G. Dugan
Marianne G. Dugan
OSB No. 932563

EXECUTED this 18th day of October, 2012.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott
OSB No. 990280
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of	)	Case Nos. 11-93; 11-94; 12-83;
	)	and 12-109
SUSAN C. STEVES,)	
	)	SC S060775
Accused.)	

Counsel for the Bar:	Philip Harry Garrow; Stacy J. Hankin
Counsel for the Accused:	Mary J. Grimes
Disciplinary Board:	None
Disposition:	Violations of RPC 1.3, RPC 1.4(a), RPC 1.5(a), RPC 1.15-1(d), RPC 8.1(a)(2), and RPC 8.4(a)(2). Stipulation for Discipline. 1-year suspension.
Effective Date of Order:	December 15, 2012

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline according to the other terms set out therein, which included suspension from the practice of law in the State of Oregon for a period of one year, effective December 15, 2012.

December 13, 2012.

/s/ Thomas A. Balmer
THOMAS A. BALMER, Chief Justice

STIPULATION FOR DISCIPLINE

Susan C. Steves, 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, 1995, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Deschutes County, Oregon.

3.

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

4.

On July 24, 2012, a Second Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.3 in the Moulton matter; RPC 1.3, RPC 1.4(a), and RPC 1.15-1(d) in the Satrom matter; RPC 1.3, RPC 1.5(a), and RPC 8.1(a)(2) in the Stoery matter; and RPC 8.1(a)(2) and RPC 8.4(a)(2) in the OSB 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.

Moulton Matter (Case No. 11-93)

Facts

5.

In September 2007, Kyra Moulton (hereinafter “Moulton”) retained the Accused to represent her in a family law matter. At the time, as a result of a prior judgment, Moulton had legal custody of her five children and her former husband had substantial parenting time.

6.

In April 2009, after a hearing, the court signed a supplemental judgment awarding legal custody to Moulton’s former husband and establishing parenting time for Moulton. In relevant part, the judgment granted Moulton liberal and seasonable parenting time and required the parties to agree upon a family counselor.

7.

On June 22, 2009, the Accused filed a motion to resolve post-trial issues, including problems with Moulton's attempt to enforce the supplemental judgment as described above. At a hearing on August 18, 2009, the court granted to Moulton most of what she had wanted and instructed the Accused to prepare and submit a proposed order.

8.

The Accused drafted a proposed order and spoke with the prospective counselor, but otherwise failed to take any action, including failing to submit a proposed order to the court, between August 19, 2009, and October 6, 2009, and failed to take any action after October 21, 2009, until early December 2009, when, as a result of other events, Moulton's former husband suspended Moulton's parenting time.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, she violated RPC 1.3 (neglect of a legal matter).

Satrom Matter (Case No. 11-94)

Facts

10.

In June 2009, the Accused undertook to represent Kimberly Satrom (hereinafter "Satrom") in obtaining legal custody of her daughter. The matter went to trial on June 23, 2010, at which time the court ruled in Satrom's favor and instructed the Accused to prepare and submit a proposed judgment.

11.

On July 6, 2010, the Accused spent one hour preparing a draft judgment, but took no further action on the matter, including failing to submit a proposed judgment to the court, until the end of January 2011, at which time Satrom discovered that the court was about to dismiss the matter because no judgment had been submitted. On or about January 28, 2011, the Accused submitted a proposed judgment to the court, which it signed on February 8, 2011.

12.

Beginning in July 2010, Satrom repeatedly asked the Accused for a copy of the judgment. The Accused promised to send it, but failed to do so until the end of January 2011.

13.

On June 12, 2009, Satrom's mother deposited with the Accused a \$2,500.00 retainer. Satrom's mother deposited another \$2,000.00 with the Accused on February 25, 2010. On May 4, 2010, the Accused sent Satrom a bill showing that Satrom still had \$1,477.50 on deposit with the Accused. After May 4, 2010, the Accused performed additional work on Satrom's legal matter in excess of the \$1,477.50 on deposit.

14.

Beginning in January 2011, Satrom requested an accounting from the Accused. No accounting was provided until May 2011.

Violations

15.

The Accused admits that, by engaging in the conduct described in paragraphs 10 through 14, she violated RPC 1.3 (neglect of a legal matter), RPC 1.4(a) (failure to communicate), and RPC 1.15-1(d) (failure to promptly account).

Stoery Matter (Case No. 12-83)

Facts

16.

In August 2006, the court approved a stipulated judgment dissolving the marriage between Scott Storey (hereinafter "Stoery") and his wife. In relevant part, the judgment provided for joint legal and physical custody of the couple's two children and alternating two weeks of parenting time.

17.

In August 2007, Stoery retained the Accused to represent him in the dissolution matter. In April 2008, the Accused obtained an order to show cause regarding enforcing the parenting plan provided for in the judgment. By then, Stoery had not had contact with his children for a number of months. Stoery's former wife opposed the motion and the matter was set for a hearing on October 9, 2008.

18.

At a hearing on October 9, 2008, Stoery's former wife agreed to a counseling and reunification plan proposed by Stoery and the Accused. In relevant part, Stoery was to spend time with his younger child during the Thanksgiving and Winter breaks. The court instructed the Accused to prepare and submit a proposed order. The Accused prepared a proposed order, but otherwise failed to pursue the matter, including failing to submit a proposed order to the court.

19.

On December 9, 2008, Stoery delivered a letter to the Accused terminating her representation and informing her that he had retained another lawyer. On the same day, Stoery delivered a letter to the court asking about the status of the order. On December 12, 2008, the court set a pre-trial conference for December 23, 2008.

20.

Stoery retained a new lawyer to represent him. The new lawyer attended the December 23rd hearing and discovered that the Accused had not yet submitted a proposed order to the court. Thereafter, Stoery's new lawyer obtained a recording of the October 9, 2008 hearing and submitted to the court a proposed order, which was signed on February 10, 2009.

21.

In the written fee agreement between the Accused and Stoery, Stoery agreed to pay the Accused \$195.00 per hour for her time. In April 2008, the Accused sent a bill to Stoery in which she charged him 3.4 hours of time for services rendered between March 25, 2008, and March 31, 2008 (\$663.00). In July 2008, the Accused sent Stoery another bill, which mistakenly charged him for the same time and services. Stoery paid both bills.

22.

The July 2008 bill sent to Stoery showed a total balance due of \$2,242.00. An August 2008 bill mistakenly showed a prior balance due of \$2,924.50, \$682.50 more than the July 2008 bill. Stoery paid the Accused based upon the inaccurate prior balance due.

Violations

23.

The Accused admits that, by engaging in the conduct described in paragraphs 16 through 22, she violated RPC 1.3 (neglect) and RPC 1.5(a) (collect an excessive fee).

Upon further factual inquiry, the parties agree that an additional charge in the Second Amended Formal Complaint of alleged violation of RPC 8.1(a)(2) (failure to respond to the Bar) should be and, upon the approval of this stipulation, is dismissed.

OSB Matter (Case No. 12-109)

Facts

24.

For the years 2004 through 2007, the Accused failed to timely file her federal income tax returns and failed to pay the federal income tax due. Under 26 USC §7203, it is unlawful for a person to willfully fail to file federal income tax returns and pay income tax due.

25.

The Accused subsequently filed her federal returns for those years and is making efforts to pay the taxes due.

26.

In early June 2012, the Bar received information about the Accused's failure to file and pay her federal income taxes and sent a letter to the Accused asking her to respond to that information and to some specific questions. The Accused provided some documents to the Bar, but knowingly failed to provide all of the documents requested and failed to respond to the specific questions posed by the Bar.

Violations

27.

The Accused admits that, by engaging in the conduct described in paragraphs 24 through 26, she violated RPC 8.1(a)(2) (failure to respond to the Bar) and RPC 8.4(a)(2) (illegal conduct).

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. Duties Violated.** In the Moulton, Satrom, and Stoery matters, the Accused violated her duty to promptly and diligently pursue client matters. *Standards* § 4.4. In the Satrom matter, the Accused also violated her duty to promptly provide an accounting. *Standards* § 4.1. In the OSB matter, the Accused violated a duty she owed to the public not to engage in criminal conduct. *Standards* § 5.0. In the Stoery and OSB matters, the Accused violated duties she owed as a professional not to collect clearly excessive fees and to cooperate with the Bar. *Standards* § 7.0.
- b. Mental State.** The Accused acted both negligently and knowingly.
- c. Injury.** Moulton and Stoery sustained actual injury as a result of the Accused's failure to pursue and obtain court orders. The court granted their requests for relief. However, they never realized many of the benefits of the court's rulings because the Accused failed to secure court orders. There was the potential for significant injury to Satrom had the court dismissed her legal

matter. Had Satrom not contacted the court on her own, the matter would have been dismissed. All three clients experienced anxiety and frustration. The Bar sustained actual injury because of the Accused's failure to cooperate. The public sustained actual injury because the Accused did not timely file or pay her federal income taxes.

d. Aggravating Circumstances. Aggravating circumstances include:

1. Prior disciplinary offenses. In 1988, the Accused was suspended for 30 days for engaging in neglect, failing to promptly deliver a file to a client, and failing to render an accounting. *In re Steves*, 12 DB Rptr 185 (1988). In 2000, the Accused was suspended for 60 days for neglect and failing to render an accounting. *In re Steves*, 14 DB Rptr 11 (2000). *Standards* § 9.22(a).
2. A pattern of misconduct. The Accused failed to diligently pursue three matters. *In re Obert*, 336 Or 640, 653, 89 P3d 1173 (2004). *Standards* § 9.22(c).
3. Multiple offenses. The Accused violated a number of rules. Compare *In re Paulson*, 341 Or 13, 32, 136 P3d 1087 (2006); *In re Chase*, 339 Or 452, 458, 121 P3d 1160 (2005); and *In re Campbell*, 345 Or 670, 689, 202 P3d 871 (2009). *Standards* § 9.22(d).
4. Failure to comply with a disciplinary order. The Accused failed to comply with the Trial Panel chair's order to produce discovery by a certain date. *Standards* § 9.22(e).
5. Substantial experience in the practice of law. The Accused has been licensed to practice law in Oregon since 1995. *Standards* § 9.22(i).
6. Illegal conduct. *Standards* § 9.22(k).

e. Mitigating Circumstances. Mitigating circumstances include:

1. Character and reputation. Members of the legal community are willing to attest to the Accused's good character and reputation. *Standards* § 9.32(g).
2. Remorse. The Accused is remorseful for her misconduct. *Standards* § 9.32(l).

Under the ABA *Standards*, suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* § 4.42. Suspension is also generally 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, and 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* §§ 5.12 and 7.2.

30.

Although no Oregon case contains the exact violations described herein, various cases provide guidance in each of the areas of violation. When the violations committed by the Accused are taken as a whole, and in light of her prior disciplinary record, a lengthy suspension is appropriate.

Suspensions ranging from 30 days to one year have been imposed on lawyers who have either neglected a client's legal matter or failed to adequately communicate with a client. *In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (60-day suspension); *In re Redden*, 342 Or 393, 397-402, 153 P3d 113 (2007) (court canvassed prior relevant cases and imposed a 60-day suspension on a lawyer who failed to complete a client's legal matter); *In re Knappenberger*, 340 Or 573, 135 P3d 297 (2006) (court will generally impose a 60-day suspension when a lawyer knowingly neglects a client's legal matter). Here, the Accused engaged in three instances of neglect. She also has a prior history of engaging in similar misconduct and, under *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997), that prior disciplinary history is given substantial weight in ascertaining the appropriate sanction in this matter.

In *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001), a lawyer was found to have violated DR 2-106(A), DR 9-101(A), and DR 5-105(E) when he collected an excessive fee, failed to deposit client funds into a trust account, and rendered a second opinion to three co-defendants in a criminal matter. In imposing a four month suspension the court recognized that collecting an excessive fee is a serious ethical violation.

Lawyers who have failed to timely file income tax returns have also been suspended, some for significant periods. *In re Lawrence*, 332 Or 502, 31 P3d 1078 (2001) (60-day suspension of lawyer who failed to timely file state and federal income tax returns for three years where the sanction was mitigated by a significant delay in the discipline proceeding and the fact that the lawyer's misconduct stemmed from errors in judgment); *In re DesBrisay*, 288 Or 625, 606 P2d 1148 (1980) (four-year suspension of lawyer who failed to file returns for four years and was convicted of tax evasion); *In re Lomax*, 216 Or 281, 338 P2d 638 (1959) (one-year suspension of lawyer who failed to file income tax returns for two years where lawyer was criminally convicted); *In re McKechnie*, 214 Or 531, 330 P2d 727 (1958) (six-month suspension of lawyer who failed to file tax returns for two years).

The court has consistently imposed a suspension of at least 60 days when a lawyer fails to cooperate in a Bar investigation. *In re Miles*, 324 Or 218, 222-223, 923 P2d 1219

(1996) (120-day suspension for two instances where lawyer failed to cooperate in the Bar's investigation); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996).

31.

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 RPC 1.3, RPC 1.4(a), RPC 1.5(a), RPC 1.15-1(d), RPC 8.1(a)(2), and RPC 8.4(a)(2), the sanction to be effective December 15, 2012.

32.

On or before May 31, 2013, the Accused shall pay restitution of \$1,345.50 directly to her former client, Scott Stoery.

33.

In addition, on or before May 31, 2013, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$1,745.05, incurred for deposition. Should the Accused fail to pay \$1,745.05 in full by June 28, 2013, 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.

34.

The Accused acknowledges that she has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to her clients during the term of her suspension. In this regard, the Accused has arranged for Dirk Sharp, an active member of the Oregon State Bar, to either take possession of or have ongoing access to the Accused's client files and serve as the contact person for clients in need of the files during the term of the Accused's suspension. The Accused represents that Dirk Sharp has agreed to accept this responsibility.

35.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. She is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that she cannot hold herself out as an active member of the Bar or provide legal services or advice until she is notified that her license to practice has been reinstated.

36.

The Accused acknowledges that she is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in her suspension or the denial of her reinstatement.

37.

The Accused represents that, in addition to Oregon, she also is admitted to practice law in the jurisdictions listed in this paragraph, whether her current status is active, inactive, or suspended, and she acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which the Accused is admitted: None.

38.

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

EXECUTED this 28th day of September, 2012.

/s/ Susan C. Steves

Susan C. Steves

OSB No. 954282

EXECUTED this 3rd day of October, 2012.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 862028

Assistant Disciplinary Counsel

TABLE OF CASES

(References are to the page numbers of the text where the citation appears.)

<i>Carol T. Herring v. Chichester School District</i> , Case No. 06-5525	216
<i>Cook v. Michael</i> , 214 Or 513 (1958)	136
<i>Florida Bar v. Neale</i> , 432 So2d 50 (Fla 1980)	93
<i>Hummasti v. Ali et al</i> , Case No. 06-cv-01710-BR	2
<i>In re Allen</i> , 326 Or 107, 949 P2d 710 (1997)	12, 40
<i>In re Alley</i> , 256 Or 51, 470 P2d 943 (1970)	189
<i>In re Ames</i> , 19 DB Rptr 66 (2005)	164
<i>In re Arbuckle</i> , 308 Or 135, 775 P2d 832 (1989)	87, 249
<i>In re Aylworth</i> , 22 DB Rptr 77 (2008)	244
<i>In re Bailey</i> , 21 DB Rptr 64 (2007)	22
<i>In re Bailey</i> , 25 DB Rptr 19 (2011)	69
<i>In re Barrow</i> , 13 DB Rptr 126 (1999)	164
<i>In re Barteld</i> , 23 DB Rptr 198 (2009)	46, 74, 79
<i>In re Boardman</i> , 312 Or 452, 822 P2d 709 (1991)	63, 169, 217
<i>In re Bourcier II</i> , 322 Or 561, 909 P2d 1234 (1996)	5, 89, 164, 201
<i>In re Bourcier I</i> , 7 DB Rptr 115 (1993)	201
<i>In re Bourcier III</i> , 325 Or 429, 939 P2d 604 (1997)	201
<i>In re Camacho</i> , 19 DB Rptr 337 (2005)	257, 281
<i>In re Campbell</i> , 345 Or 670, 202 P3d 871 (2009)	22, 258, 289
<i>In re Carl</i> , SC S058149, 24 DB Rptr 17 (2010) (“ <i>Carl I</i> ”)	39
<i>In re Carpenter</i> , 337 Or 226 (2004)	235
<i>In re Castanza</i> , 350 Or 293, 253 P3d 1057 (2011)	126
<i>In re Chandler</i> , 306 Or 422, 760 P2d 243 (1988)	88, 164
<i>In re Chase</i> , 339 Or 452, 121 P3d 1160 (2005)	289
<i>In re Claussen</i> , 331 Or 252, 14 P3d 586 (2000)	216
<i>In re Cohen</i> , 316 Or 657, 853 P2d 286 (1993)	34, 275
<i>In re Cohen</i> , 330 Or 489, 8 P3d 953 (2000)	68, 87, 102, 162, 249, 265
<i>In re Complaint as to the Conduct of Lynn M. Murphy</i> , 349 Or 366 (2010) (“ <i>Murphy I</i> ”)	92–95
<i>In re Conduct of Devers</i> , 328 Or 230, 974 P2d 191 (1999)	110, 112, 221
<i>In re Conduct of Kluge</i> , 335 Or 326, 66 P3d 492 (2003)	142, 163, 235
<i>In re Conduct of Odman</i> , 297 Or 744, 687 P2d 153 (1984)	142, 144
<i>In re Coyner</i> , 342 Or 104, 149 P3d 1118 (2006)	267
<i>In re Cumfer</i> , 19 DB Rptr 27 (2005)	164
<i>In re Davidson</i> , 20 DB Rptr 264 (2006)	266

<i>In re DesBrisay</i> , 288 Or 625, 606 P2d 1148 (1980)	290
<i>In re Dixon</i> , 17 DB Rptr 102 (2003)	266
<i>In re Dole</i> , 25 DB Rptr 56 (2011).....	34
<i>In re Dorsey</i> , 14 DB Rptr 105 (2000).....	189
<i>In re Dugger</i> , 334 Or 602, 54 P3d 595 (2002).....	217
<i>In re Eakin</i> , 334 Or 238, 48 P3d 147 (2002)	28–29, 91
<i>In re Edelson</i> , 25 DB Rptr 172 (2011).....	251
<i>In re Erickson</i> , 25 DB Rptr 64 (2011)	251
<i>In re Fadeley</i> , 342 Or 403, 153 P3d 682 (2007).....	52, 54
<i>In re Fulop</i> , 297 Or 354, 685 P2d 414 (1984)	217
<i>In re Gatti</i> , 330 Or 517, 8 P3d 966 (2000).....	217
<i>In re Gerttula</i> , 12 DB Rptr 105 (1998).....	34
<i>In re Geurts</i> , 290 Or 241, 620 P2d 1373 (1980).....	5
<i>In re Gildea</i> , 325 Or 281, 936 P2d 975 (1997).....	29
<i>In re Gonzalez</i> , 25 DB Rptr 88 (2011).....	101
<i>In re Gordon</i> , 23 DB Rptr 51 (2009)	244, 257, 281
<i>In re Gorham</i> , 17 DB Rptr 159 (2003)	69
<i>In re Greene</i> , 290 Or 291, 620 P2d 1379 (1980).....	216
<i>In re Gresham</i> , 318 Or 162, 864 P2d 360 (1993).....	144
<i>In re Gudger</i> , SC S043561, 11 DB Rptr 171 (1997)	12
<i>In re Gudger</i> , 21 DB Rptr 160 (2007)	258
<i>In re Gustafson</i> , 327 Or 636, 968 P2d 367 (1998)	169–170, 216
<i>In re Gustafson</i> , 333 Or 468, 41 P3d 1063 (2002).....	12, 40
<i>In re Harrington</i> , 301 Or 18, 718 P2d 725 (1986).....	22, 275
<i>In re Haws</i> , 310 Or 741, 801 P2d 818 (1990).....	11, 45, 88, 162, 265
<i>In re Hedrick</i> , 312 Or 442, 822 P2d 1187 (1991).....	218
<i>In re Hessberger</i> , 96 Ill2d 423, 451 NE 821 (1983).....	93
<i>In re Hiller</i> , 298 Or 526, 694 P2d 540 (1985)	170, 217, 235
<i>In re Hockett</i> , 303 Or 150, 734 P2d 877 (1987)	22, 274
<i>In re Hodgess</i> , 24 DB Rptr 253 (2010)	266
<i>In re Hostetter</i> , 348 Or 574, 238 P3d 13 (2010).....	34, 274
<i>In re Houchin</i> , 290 Or 433 (1981)	142
<i>In re Howlett</i> , SC S051261, 18 DB Rptr 61 (2004).....	12
<i>In re Howser</i> , 329 Or 404, 987 P2d 496 (1999)	34, 275
<i>In re Huffman</i> , 328 Or 567, 983 P2d 534 (1999).....	224
<i>In re Huffman</i> , 331 Or 209, 13 P3d 994 (2000).....	163
<i>In re Ingram</i> , Case No. 96-85, 11 DB Rptr 55 (1997).....	68
<i>In re Jackson</i> , 347 Or 426, 223 P3d 387 (2009).....	6
<i>In re Jaffee</i> , 331 Or 398, 15 P3d 533 (2000)	222
<i>In re Johnson</i> , 18 DB Rptr 181 (2004)	244

<i>In re Jones</i> , 326 Or 195, 951 P2d 149 (1997).....	92, 163, 169, 199, 249, 290
<i>In re Jordan</i> , SC S055065, 21 DB Rptr 287 (2007)	197, 199
<i>In re Jordan</i> , 24 DB Rptr 218 (2010)	200
<i>In re Jordan</i> , State Bar Court of California Case No. 04-O-13740 <i>et alia</i>	192–193, 199, 200
<i>In re Kay</i> , 19 DB Rptr 200 (2005)	266
<i>In re Kent</i> , 20 DB Rptr 136 (2006)	164
<i>In re Kinsey</i> , 294 Or 544, 660 P2d 660 (1983).....	22
<i>In re Kirkman</i> , 313 Or 181, 830 P2d 206 (1992).....	93, 223
<i>In re Klahn</i> , 14 DB Rptr 65 (2000).....	250
<i>In re Klahn</i> , 19 DB Rptr 1 (2005).....	250
<i>In re Klahn</i> , 22 DB Rptr 207 (2008).....	250
<i>In re Kluge</i> , 332 Or 251, 27 P3d 102 (2001)	174, 235
<i>In re Knappenberger</i> , 337 Or 15, 90 P3d 614 (2004).....	5, 22, 125, 274
<i>In re Knappenberger</i> , 340 Or 573, 135 P3d 297 (2006).....	290
<i>In re Koch</i> , 345 Or 444, 198 P3d 910 (2008)	94, 251, 267
<i>In re Koliha</i> , 330 Or 402, 9 P3d 102 (2000).....	211
<i>In re Kumley</i> , 335 Or 639 (2003).....	235
<i>In re Lawrence</i> , 332 Or 502, 31 P3d 1078 (2001)	290
<i>In re Lawrence</i> , 337 Or 450, 98 P3d 366 (2004)	141–142
<i>In re Lawrence</i> , 350 Or 480 (2011)	236
<i>In re Lenihan</i> , 25 DB Rptr 229 (2011)	74
<i>In re Leonard</i> , 308 Or 560, 784 P2d 95 (1989)	216–217
<i>In re Lewelling</i> , 296 Or 702, 678 P2d 1229 (1984).....	223
<i>In re Lomax</i> , 216 Or 281, 338 P2d 638 (1959).....	290
<i>In re Magar</i> , 335 Or 306, 66 P2d 1014 (2003).....	143–144
<i>In re Magar</i> , 337 Or 548, 100 P3d 727 (2004).....	174
<i>In re Maragos</i> , 285 NW 2d 541 (ND 1979)	93
<i>In re Martin</i> , 308 Or 125, 775 P2d 842 (1989).....	12, 40
<i>In re Martin</i> , 328 Or 177, 970 P2d 638 (1998).....	217
<i>In re McCaffrey</i> , 275 Or 23, 549 P2d 666 (1976).....	218, 223
<i>In re McCallie</i> , 16 DB Rptr 33 (2002).....	210
<i>In re McGavic</i> , 22 DB Rptr 248 (2008).....	205
<i>In re McKechnie</i> , 214 Or 531, 330 P2d 727 (1958).....	290
<i>In re McKee</i> , 316 Or 114, 849 P2d 509 (1993)	217
<i>In re McLaughlin</i> , 17 DB Rptr 247 (2003).....	22
<i>In re Meyer</i> , 328 Or 211, 970 P2d 652 (1999).....	222
<i>In re Miles</i> , 324 Or 218, 923 P2d 1219 (1996).....	6, 45, 88, 102, 162, 265, 267, 290
<i>In re Miller</i> , 238 P3d 227 (2010).....	111
<i>In re Montgomery</i> , 292 Or 796, 643 P2d 338 (1982)	22–23
<i>In re Morasch</i> , 25 DB Rptr 25 (2011)	163

<i>In re Morris</i> , 326 Or 493, 953 P2d 387 (1998).....	169, 249
<i>In re Newell</i> , 348 Or 396, 234 P3d 967 (2010).....	205, 223
<i>In re Nielson</i> , 25 DB Rptr 196 (2011)	74
<i>In re Nishioka</i> , 23 DB Rptr 44 (2009)	258
<i>In re O’Dell</i> , 19 DB Rptr 287 (2005)	164
<i>In re Obert</i> , 336 Or 640, 89 P3d 1173 (2004)	6, 125, 250, 267, 289
<i>In re Ono</i> , 25 DB Rptr 180 (2011).....	46, 74, 79
<i>In re Parker</i> , 330 Or 541, 9 P3d 107 (2000).....	87, 164
<i>In re Paulson</i> , 335 Or 436, 71 P3d 60 (2003).....	58, 63
<i>In re Paulson</i> , 341 Or 13, 136 P3d 1087 (2006).....	222, 289
<i>In re Peterson</i> , 348 Or 325, 232 P3d 940 (2010).....	28
<i>In re Potts</i> , 301 Or 57, 718 P2d 1363 (1986).....	58, 63
<i>In re Purvis</i> , 306 Or 522, 760 P2d 254 (1988)	267
<i>In re Redden</i> , 342 Or 393, 153 P3d 113 (2007).....	101, 126, 290
<i>In re Rudie</i> , 294 Or 740, 662 P2d 321 (1983)	89
<i>In re Schaffner</i> , 323 Or 472, 918 P2d 803 (1996)	6, 28, 102, 163, 201, 267, 291
<i>In re Schaffner</i> , 325 Or 421, 939 P2d 39 (1997)	5, 45, 87–89, 93, 162, 164, 201, 249, 265
<i>In re Schenck</i> , 320 Or 94, 879 P2d 863 (1994).....	220–221, 223
<i>In re Schwabe</i> , 242 Or 169, 408 P2d 922 (1965).....	223
<i>In re Scott</i> , 294 Or 606, 660 P2d 157 (1983).....	22
<i>In re Skagen</i> , 342 Or 183, 149 P3d 1171 (2006)	28–29, 235
<i>In re Smith</i> , 318 Or 47, 861 P2d 1013 (1993).....	211, 223
<i>In re Snyder</i> , 348 Or 307, 232 P3d 952 (2010).....	5, 6, 101, 126, 290
<i>In re Starr</i> , 326 Or 328, 952 P2d 1017 (1998).....	29, 163, 235
<i>In re Stater</i> , 15 DB Rptr 216 (2001).....	211
<i>In re Stauffer</i> , 327 Or 44, 956 P2d 967 (1998).....	92, 223
<i>In re Steves</i> , 12 DB Rptr 185 (1988).....	289
<i>In re Steves</i> , 14 DB Rptr 11 (2000).....	289
<i>In re Strickland</i> , 339 Or 595, 124 P3d 1225 (2005)	222
<i>In re Sussman</i> , 241 Or 246, 405 P2d 355 (1965).....	58, 63
<i>In re Taylor</i> , 319 Or 595 (1994)	136, 257
<i>In re Trukositz</i> , 312 Or 621, 825 P2d 1369 (1992).....	34, 275
<i>In re Unfred</i> , 22 DB Rptr 276 (2008)	258
<i>In re Venn</i> , 235 Or 73, 383 P2d 774 (1963).....	223
<i>In re Weidner</i> , 310 Or 757 (1990)	220
<i>In re Whipple</i> , 320 Or 476 (1994).....	110
<i>In re White</i> , 311 Or 573 (1991).....	236
<i>In re Williams</i> , 314 Or 530, 840 P2d 1280 (1992).....	68, 162, 169, 210, 221, 249, 256, 280
<i>In re Wilson</i> , 342 Or 243, 149 P3d 1200 (2006).....	169–170
<i>In re Wolf</i> , 312 Or 655 (1992)	221, 224

<i>In re Worth</i> , 337 Or 167, 92 P3d 721 (2004).....	6, 267
<i>In re Wyllie</i> , 326 Or 447, 952 P2d 550 (1998).....	249
<i>In re Wyllie</i> , 331 Or 606, 19 P3d 338 (2001).....	28, 274, 290
<i>Schwarz v. Frost</i> , 35 Phila 97, 40 Pa D & C 4th 364 (Pa. Ct. Common Pleas 1998).....	219
<i>State Bar v. Security Escrows, Inc.</i> , 233 Or 80, 377 P2d 334 (1962).....	110
<i>State ex rel Oregon State Bar v. Lenske</i> , 284 Or 23, 584 P2d 759 (1978)	110
<i>State v. Liss</i> , Washington County Circuit Court Case No. C101208CR	10
<i>State v. William Ellison Carl</i> , Polk County Court Case No. 11P50101	38
<i>Street and Street</i> , 90 Or App 466, 753 P2d 424 (1988).....	139

TABLE OF RULES AND STATUTES

(References are to the page numbers of the text where the citation appears.

The text of the former DRs can be accessed at

<www.osbar.org/_docs/rulesregs/cpr.pdf>.)

Oregon Rules of Professional Conduct

RPC 1.0(g)	18
RPC 1.1	81–83, 86, 89, 184–185
RPC 1.2(a).....	65–67, 69
RPC 1.3.....1, 2, 4, 6, 81–83, 86, 89, 92, 95, 98–102, 122, 146–147, 149, 151, 153, 156–157, 159–161, 164, 173–174, 176, 180, 191–192, 196, 201, 260–261, 264, 267, 283–287, 291	
RPC 1.4(a).....1, 2, 4, 6, 34, 65–67, 69, 81–83, 86, 89, 92, 98–102, 122–123, 125–126, 146–147, 149, 151, 153, 156–157, 159–161, 164, 173–176, 180, 184–185, 191–192, 196, 198, 201, 246–248, 250–251, 283–284, 286, 291	
RPC 1.4(b)	81–82, 86, 89, 104, 109, 146–147, 153, 157, 160–161, 164, 176, 180, 191–192, 196, 198, 201, 246–248, 251
RPC 1.5(a).....55–60, 62–63, 146–147, 151, 153, 164, 184–185, 191–192, 196, 198, 201, 253–255, 258, 283–284, 287, 291	
RPC 1.5(c).....	185
RPC 1.5(d)	185
RPC 1.7	18
RPC 1.7(a).....	34
RPC 1.7(a)(1).....	271–273, 275
RPC 1.7(a)(2).....16–17, 21, 23, 176, 180–181, 219, 271–273, 275	
RPC 1.8(a).....	16–18, 21, 23
RPC 1.8(j)	213, 219, 224
RPC 1.9(a).....	31–35
RPC 1.9(c).....	34
RPC 1.15(a).....	176
RPC 1.15(c).....	180
RPC 1.15(c)(3).....	180
RPC 1.15-1.....	43, 77, 108

RPC 1.15-1(a)	25–27, 29, 43, 47, 51–52, 54, 77, 81–83, 87, 89, 146–147, 149, 151, 153–154, 159, 164, 173–175, 184
RPC 1.15-1(b).....	25–27, 29, 81, 83, 87, 89
RPC 1.15-1(c)	25–27, 29, 47, 51, 52, 54, 104, 108, 146–147, 149, 151, 153–154, 159, 164, 177, 179–180, 184
RPC 1.15-1(d).....	81–82, 87, 98–102, 146–147, 149, 153–154, 156, 159–161, 164, 173–175, 184, 283–284, 286, 291
RPC 1.15-1(e)	186–189
RPC 1.15-2.....	43, 77
RPC 1.15-2(l).....	81, 83, 87, 89
RPC 1.15-2(m).....	42–44, 46, 71–74, 76–79
RPC 1.16(a).....	164
RPC 1.16(a)(2).....	81–83, 85, 87, 89, 146–147, 149, 151, 153, 156–157, 159–161, 260–261, 264, 267
RPC 1.16(c).....	122–123, 125–126, 191–192, 198, 201
RPC 1.16(d)	47, 49, 81–83, 87, 89, 91, 93, 122–123, 125–126, 146–147, 151, 153, 156, 160, 164, 191–192, 196, 198, 201, 260–261, 264, 267
RPC 3.1	185, 280
RPC 3.3	235
RPC 3.3(a).....	60, 280
RPC 3.3(a)(1).....	115–116, 119, 225, 235–236, 254, 256, 278
RPC 3.3(a)(3).....	254, 256
RPC 3.3(d)	115–116, 119
RPC 3.4	243
RPC 3.4(c).....	101, 242
RPC 3.5(b)	115–116
RPC 4.1	173–174

RPC 4.2.....	101, 203–205, 213, 217–218
RPC 4.4.....	173–174
RPC 5.0.....	173–174
RPC 5.5(a).....	104, 110, 191–192, 196, 201, 207–209, 211, 260–262, 267
RPC 7.0.....	173–174
RPC 7.5(d).....	55–60, 62–63
RPC 8.1.....	237
RPC 8.1(a)(1).....	225, 236–237, 254, 256
RPC 8.1(a)(2).....	1, 2, 4, 6, 26–27, 42–44, 46, 71–74, 76–79, 81–83, 85, 87, 89, 91–92, 98–102, 146–147, 149, 151, 153–154, 156–157, 159, 164, 173–176, 180–181, 184–185, 191–192, 198, 201, 260–261, 263, 267, 283–284, 287–288, 291
RPC 8.4.....	234
RPC 8.4(4).....	164
RPC 8.4(a)(2).....	8–10, 12, 26–27, 37–38, 40, 56–57, 91, 167, 173–175, 283–284, 288, 291
RPC 8.4(a)(3).....	1, 2, 4, 6, 26–27, 56–57, 60, 104, 109, 115–116, 120, 146–147, 161, 164, 166–168, 170, 173–175, 185, 191–192, 196, 198, 120, 201, 207–209, 211, 225, 234–237, 242–243, 254, 256, 278, 280
RPC 8.4(a)(4).....	59–60, 62–63, 101, 115–116, 121, 146–147, 153, 156–157, 191–192, 196, 198, 201, 225, 235–236, 241–244, 246–248, 251, 253–254, 256, 258, 260–261, 264, 267, 277–279, 281

Former Disciplinary Rules

DR 1.15-2(m).....	43
DR 1-102(A)(2).....	12, 40
DR 1-102(A)(3).....	34, 214, 216–217
DR 1-102(A)(4).....	34
DR 1-103(C).....	93, 102
DR 2-106(A).....	290
DR 5-105(E).....	31–33, 35, 129–131, 136–138, 145, 290
DR 5-105(F).....	130
DR 5-110.....	224
DR 6-101.....	122–123, 125–126, 143

DR 6-101(A).....	129–130, 131, 136, 138–140, 145
DR 6-101(B).....	93, 122–123, 125–126
DR 7-102(A)(3).....	34
DR 7-102(A)(4).....	34
DR 7-102(A)(5).....	236
DR 7-102(A)(7).....	34
DR 7-104(A)(2).....	129, 130, 132, 136, 141
DR 9-101(A).....	290
DR 9-101(C)(4).....	89

Judicial Rules

JR 2-104(a).....	231
------------------	-----

Oregon Revised Statutes

ORS 9.160.....	104, 110, 207–209, 211, 260–262, 267
ORS 9.160(1).....	208
ORS 9.527(1).....	12, 40
ORS 9.527(2).....	8–10, 12, 36–37, 38, 40
ORS 31.230(2).....	279
ORS 44.370.....	135
ORS 161.705(1).....	12, 40
ORS 162.295(1)(a).....	37
ORS 162.295(2).....	37
ORS 163.575(1).....	38
ORS 163.575(2).....	38
ORS ch 9.....	2, 9, 12, 17, 26, 32, 36, 43, 56, 60, 66, 72, 77, 82, 99, 123, 147, 167, 187, 192, 204, 208, 242, 247, 254, 261, 268, 272, 278, 284

Bar Rules of Procedure

BR 3.6.....	7, 14, 23, 30, 35, 41, 46, 58, 64, 70, 75, 80, 90, 103, 127, 165, 171, 189, 202, 206, 212, 244, 252, 258, 270, 276, 282, 292
BR 3.6(c).....	2, 8, 16, 26, 31, 36, 42, 55, 59, 65, 71, 76, 81, 99, 123, 146, 166, 186, 191, 203, 208, 241, 246, 253, 261, 271, 277, 283
BR 3.6(h).....	2, 9, 17, 26, 32, 37, 43, 56, 60, 66, 72, 77, 82, 99, 123, 147, 167, 187, 192, 204, 208, 242, 247, 254, 261, 272, 278, 284

BR 4.4	116
BR 5.2	136, 138, 234
BR 5.8(a).....	174
BR 6.1(a)(iv).....	114
BR 6.2	114
BR 6.2(d).....	13, 269
BR 6.3	6, 29, 40, 89, 102, 127, 170, 211, 251, 291
BR 6.4	7, 14, 23, 30, 35, 41, 46, 58, 63, 69, 74, 80, 90, 103, 114, 127, 164, 171, 189, 202, 212, 244, 252, 258, 269, 275, 282, 291
BR 8	29, 41, 90, 102, 127, 164, 170, 201, 211, 251, 291
BR 8.1	14, 102
BR 8.3	7
BR 8.4	262

Oregon Formal Ethics Opinions

Ethics Op No 1991-99	224
----------------------------	-----

Oregon Rules of Appellate Procedure

ORAP 8.10(1)	197
--------------------	-----

Oregon Rules of Civil Procedure

ORCP 68	67
ORCP 83 A	119–120
ORCP 83 A(8).....	119

Uniform Trial Court Rules

UTCRC 3.140(1)	124
----------------------	-----

United States Code

11 USCA 701	134
26 USC §7203.....	287

Code of Federal Regulations

8 CFR 1.1(f)	193
8 CFR 292.1(a).....	193