DISCIPLINARY BOARD REPORTER

Report of Lawyer Discipline Cases Decided by the Disciplinary Board and by the Oregon Supreme Court for 2017

VOLUME 31
January 1, 2017, to December 31, 2017
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 2017 decisions of the Oregon Supreme Court involving the discipline of lawyers, and related matters. Cases in this DB Reporter should be cited as 31 DB Rptr ___ (2017).

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

DAWN EVANS
Disciplinary Counsel
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IN THE SUPREME COURT  
OF THE STATE OF OREGON  

In re:  

Complaint as to the Conduct of  

ANDREW J. LOPATA,  
Accused.  

Counsel for the Bar:  Angela W. Bennett  
Counsel for the Accused:  None  
Disciplinary Board:  None  
Disposition:  Order revoking probation and imposing stayed suspension. 90-day suspension.  
Effective Date of Order:  January 15, 2017  

ORDER REVOKING PROBATION  

This matter came on before William G. Blair, State Chairperson of the Disciplinary Board of the Oregon State Bar, upon the Bar’s Petition to Revoke Probation pursuant to BR 6.2(d). The State Chairperson, being fully advised in the premises, now therefore,  

IT IS HEREBY ORDERED that Andrew J. Lopata’s probation is revoked and the original 90-day suspension is imposed, effective ten days from the date of this order.  

EXECUTED this 5th day of January, 2017.  

/s/ William G. Blair  
William G. Blair, OSB No. 690212  
State Disciplinary Board Chairperson
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:  )
) Case No. 15-119
Complaint as to the Conduct of  ) SC S064630
) ANTHONY A. ALLEN,  )
)  Accused.
) Counsel for the Bar: Angela W. Bennett
Counsel for the Accused: None
Disciplinary Board: None
Effective Date of Order: February 13, 2017

AMENDED ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. The accused is suspended from the practice of law in the State of Oregon for a period of one-year, effective 10-days from the date of this order.

/s/ Thomas A. Balmer
02/03/2017 10:06 AM
Thomas A. Balmer
Chief Justice, Supreme Court

STIPULATION FOR DISCIPLINE

Anthony A. Allen, attorney at law (“Allen”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).
1. The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2. Allen was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 14, 1989, and has been a member of the Bar continuously since that time, having his office and place of business in Topanga, California.

3. Allen 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 31, 2016, a Formal Complaint was filed against Allen pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of RPC 3.4(b), RPC 5.5(a), RPC 8.1(a)(1), RPC 8.4(a)(2), and RPC 8.4(a)(4) 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. Allen resides and works in California but has never been admitted to the California State Bar, and, at all relevant times herein, was not licensed or authorized to practice law in the state of California, nor did he advertise or otherwise hold himself out as a practicing attorney in that state.

6. At all relevant times herein, California Business and Professions Code § 6126(a) (Unauthorized practice of law) provided in relevant part:

   Any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars ($1,000), or by both that fine and imprisonment.

8. In or around February 2013, GVP sued Fassnacht for defamation and trespass, and sought $300,000 in damages.

9. Shortly before his answer to GVP’s complaint was due, Lance Roberts (“Roberts”), a friend of Fassnacht, referred him to Allen to assist with Fassnacht’s legal matter. Allen told Fassnacht that he was not licensed to practice law in California, but accepted payment totaling approximately $2,300 from Fassnacht in return for providing legal advice and assistance to Fassnacht in the GVP litigation.

10. Allen agreed to apply his legal knowledge to Fassnacht’s case by ghostwriting pleadings, and counseling and coaching Fassnacht before court appearances. Allen told Fassnacht that Fassnacht would need to appear pro per in the GVP litigation. Pursuant to their agreement, Allen drafted an answer and a cross-complaint, which Fassnacht signed and filed in April 2013.

11. GVP moved against Fassnacht’s answer and cross-complaint, and served discovery requests and interrogatories on Fassnacht. Allen agreed to prepare discovery responses and a memorandum opposing GVP’s motion for Fassnacht to sign and file pro per. Allen also coached Fassnacht on what to say at the motion hearing.

12. Allen admits that his conduct as described in paragraphs 5-11 constituted the practice of law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, and the commission of a criminal act reflecting adversely on his honesty, trustworthiness or fitness as a lawyer, in violation of the following standards of professional conduct established by law and the Bar:

A. RPC 5.5(a); and

B. RPC 8.4(a)(2) of the Oregon Rules of Professional Conduct.

13. Fassnacht reported Allen’s conduct to the Bar. On or about June 15, 2015, while Disciplinary Counsel’s Office (“DCO”) was investigating Fassnacht’s complaint against Allen,
Allen asked Roberts to convey an offer to Fassnacht in which Allen offered to pay Fassnacht $1,000 in exchange for Fassnacht’s facilitation of the dismissal of the Bar complaint against Allen. Allen proposed that he would author a letter for Fassnacht to sign in which Fassnacht would tell the Bar he wanted to withdraw his complaints against Allen. Once Fassnacht signed the letter, Allen would place the money in an account with a third party, to be held pending resolution of the Bar complaints.

14.

Allen made his offer to pay Fassnacht contingent on Fassnacht obtaining a dismissal of the Bar complaint; Fassnacht would only receive the money if the Bar complaint was dismissed. Allen further specified the funds would be returned to Allen if the complaint was not dismissed.

15.

Allen admits that his conduct as described in paragraphs 13-14 constituted offering to pay a witness contingent upon the content of testimony or outcome of a case; and conduct prejudicial to the administration of justice, in violation of the following standards of professional conduct established by law and the Bar:

A. RPC 3.4(b); and


Violations

16.

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 8.1(a)(1) should be and, upon the approval of this stipulation, is dismissed with prejudice.

Sanction

17.

Allen 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 Allen’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. Allen violated his duties to the public and the profession when he practiced without a license in California (which also constituted a misdemeanor under California law). Standards §§ 5.0, 7.0. Allen also violated his duties to the legal system regarding engaging in conduct prejudicial to the administration of justice and in offering an improper inducement to a witness. Standards § 6.3.
b. **Mental State.** The Standards recognize three types of 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* at 9.

Allen acted knowingly with regard to all of his actions. He knew he was providing legal advice to Fassnacht, and he knew he was not licensed in California.

Further, when Allen tried to induce Fassnacht to drop his complaints, Allen’s conduct was knowing, insofar as he made statements and written communications to Fassnacht urging him to get the complaint dismissed, and making the payment contingent on him actually getting the complaint dismissed.

c. **Injury.** Both actual and potential injury are relevant to determining the sanction in a disciplinary case. *In re Williams*, 312 Or 530 (1992). “Potential injury” is the reasonably foreseeable harm to a client at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. “Injury” is harm to a client which results from a lawyer’s misconduct. *Standards* at 9.

Allen’s misconduct caused actual and potential harm to the public and the profession by charging for and providing legal services when he was not licensed to do so.

Allen’s actions also caused potential injury to the Bar and the profession’s ability to regulate itself if he had been able to successfully convince Fassnacht to withdraw his complaint and no longer participate with the Bar’s investigation.

d. **Aggravating and Mitigating Circumstances.** All of the following factors which are recognized as aggravating under the *Standards* exist in this case:

1. **A selfish motive.** *Standards* § 9.22(b). Allen’s attempts to interfere with Fassnacht’s continued pursuit of his complaint were selfishly motivated.

2. **Multiple offenses.** *Standards* § 9.22(d). Allen is charged with multiple offenses, resulting from multiple actions.

3. **Substantial experience in the practice of law.** *Standards* § 9.22(i). Prior to moving to California, Allen practiced law in Oregon for approximately 8 years.
In mitigation, Allen has demonstrated the following:


18.

Under the ABA Standards, a 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 interference or potential interference with the outcome of the legal proceeding. Standards § 6.32. 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 potential injury to a client, the public, or the legal system. Standards § 7.2.

In light of Allen’s collective misconduct, together with his aggravation, a suspension is appropriate.

19.

Oregon cases support a suspension of a year or more for similar collective misconduct. Substantial suspensions are warranted where a lawyer’s misconduct includes practicing while suspended. See, e.g., In re Koliha, 330 Or 402 (2000) (attorney suspended for one year for violations of RPC 8.4(a)(3) (former DR 1-102(A)(3)), RPC 8.4(a)(4) (former DR 1-102(A)(4)), RPC 8.1(a) (former DR 1-103(C)), RPC 5.5(a) (former DR 3-101(B)), and ORS 9.160, where attorney engaged in unauthorized practice of law while suspended for failure to pay bar dues and subsequently failed to cooperate with Bar investigation); In re Kluge, 332 Or 251 (2001) (lawyer suspended for three years where, contrary to statute and Bar bylaw, attorney engaged in the private practice of law in Oregon without professional liability insurance coverage). See also, In re Boly, 27 DB Rptr 136 (2013) (lawyer suspended for one year by trial panel where, as an inactive lawyer, he provided substantial legal advice and assistance to a plaintiff who relied heavily upon that advice and assistance in two different legal matters); In re Hill, 25 DB Rptr 260 (2011) (attorney received 8-month suspension for, while inactive, filing pleadings and engaging in negotiations in guardianship proceeding on behalf of a client, in violation of RPC 3.4(c), 3.5(d), RPC 4.2, RPC 5.5(a), RPC 8.4(a)(4) and ORS 9.160).

20.

Consistent with the Standards and Oregon case law, the parties agree that Allen shall be suspended for one year for violation of RPC 3.4(b), RPC 5.5(a), RPC 8.4(a)(2), and RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct, the sanction to be effective February 1, 2017, or 10 days after approval of this Stipulation for Discipline, whichever is later.

21.

Allen 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, Allen represents that he does not maintain a law practice in Oregon and has no clients.

22.

Allen 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. Allen 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.

Allen 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. This requirement is in addition to any other provision of this agreement that requires Allen to attend or obtain continuing legal education (CLE) credit hours.

24.

Allen represents that he is not admitted to practice law in any jurisdiction other than Oregon. Upon that representation, the Bar will not notify any other jurisdiction of Allen’s discipline.

25.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 3rd day of January, 2017.

/s/ Anthony A. Allen
Anthony A. Allen
OSB No. 890163

EXECUTED this 9th day of January, 2017.

OREGON STATE BAR
By: /s/ Angela W. Bennett
Angela W. Bennett
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. 16-169
 )
ANDREW L. VANDERGAW, )
 )
Accused. )

Counsel for the Bar: Susan R. Cournoyer
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of RPC 1.6(a). Stipulation for discipline.
Public Reprimand.
Effective Date of Order: February 13, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Andrew L. Vandergaw is publicly reprimanded for violation of RPC 1.6(a).

DATED this 13th day of February, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ John E. Davis
John E. Davis, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Andrew L. Vandergaw, attorney at law (Vandergaw), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).
1. The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2. Vandergaw was admitted by the Oregon Supreme Court to the practice of law in Oregon on July 15, 1988, and has been a member of the Bar continuously since that time, having his office and place of business in Jackson County, Oregon.

3. Vandergaw 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 December 3, 2016, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Vandergaw for alleged violation of RPC 1.6(a) [revealing information relating to the representation of a client] 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. Vandergaw represented a client (Rockwell) on criminal charges pending in Jackson County. Rockwell’s release agreement required him to maintain contact with his attorney at all times. Between April 2014 and August 2015, Rockwell failed to appear at several status hearings and to maintain contact with Vandergaw.

   Vandergaw appeared for an August 2015 status hearing in the matter. When the judge called Rockwell’s case, Vandergaw was surprised to discover that Rockwell was also present. The judge asked Vandergaw whether Rockwell was his client; Vandergaw responded, “Allegedly he is my client. I haven’t heard from him.”

   Rockwell’s failure to maintain contact with Vandergaw was information relating to the representation of a client.

   The judge had Rockwell arrested for violating his release agreement. Rockwell was released that same date on his own recognizance.
Violations

6.
Vandergaw admits that, by disclosing in court that Rockwell had not kept in contact with him, he revealed information relating to the representation of a client, in violation of RPC 1.6(a).

Sanction

7.
Vandergaw 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 (“Standards”). The Standards require that Vandergaw’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.


b. Mental State. Vandergaw acted negligently and spontaneously when he told the court that Rockwell had not been in contact with him. Because Rockwell was in court for the status-check hearing, Vandergaw did not anticipate that his spontaneous utterance would be detrimental to Rockwell. “Negligence” is the failure to heed a substantial risk that circumstances exist or that a result will follow, which failure deviates from the standard of care that a reasonable lawyer would exercise in the situation.

c. Injury. Vandergaw’s statement to the court led to Rockwell’s arrest for violation of his release agreement.

d. Aggravating Circumstances. Aggravating circumstances include:

1. Prior discipline. Standards § 9.22(a). Vandergaw was admonished in 2006 for revealing in court confidential information that was detrimental to his client. While letters of admonition are generally not considered discipline, they may be viewed as an aggravating factor when they involve similar misconduct. In re Cohen, 330 Or 489, 500–01, 8 P3d 953 (2000).

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

e. Mitigating Circumstances. Mitigating circumstances include:

1. Absence of a dishonest or selfish motive. Standards § 9.32(b).

2. Full and free disclosure. Standards § 9.32(e).
Under the ABA Standards, public reprimand is generally appropriate when a lawyer negligently reveals information relating to the representation of a client and the disclosure causes injury or potential injury. Standards § 4.23.

8.

Cases involving disclosures of client confidences have resulted in public reprimands. See, e.g., In re Langford, 19 DB Rptr 211 (2005) (in her motion to withdraw from representing a client, attorney disclosed confidential client communications and her own judgments as to the client’s honesty and the merits of the case).

9.

Consistent with the Standards and Oregon case law, the parties agree that Vandergaw shall be reprimanded for violation of RPC 1.6(a), the sanction to be effective upon Disciplinary Board approval of this Stipulation.

10.

Vandergaw 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.

11.

Vandergaw 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 Vandergaw is admitted: none.

12.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Bar and to approval by the SPRB. If approved by the SPRB, the parties agree that the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.
EXECUTED this 2nd day of February, 2017.

/s/ Andrew L. Vandergaw
Andrew L. Vandergaw
OSB No. 881420

EXECUTED this 7th day of February, 2017.

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  
ANGELA T. LEE-MANDLIN,  
Accused.  

Counsel for the Bar:  Susan R. Cournoyer  
Counsel for the Accused:  Nathan Gabriel Steele  
Disciplinary Board:  None.  
Disposition:  Violation of RPC 3.5(b) and RPC 8.4(a)(4). Stipulation for Discipline. Public Reprimand.  
Effective Date of Order:  February 24, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Angela T. Lee-Mandlin and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Angela T. Lee-Mandlin is publicly reprimanded for violation of Oregon Rules of Professional Conduct (RPC) 3.5(b) and RPC 8.4(a)(4).

DATED this 24th day of February, 2017.

/s/ William G. Blair  
William G. Blair  
State Disciplinary Board Chairperson

/s/ Jennifer Kimble  
Jennifer Kimble, Region 1  
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Angela T. Lee-Mandlin, attorney at law (“Lee-Mandlin”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

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

2. Lee-Mandlin was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 19, 1997, and has been a member of the Bar continuously since that time, having her office and place of business in Deschutes County, Oregon.

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

4. On October 22, 2016, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Lee-Mandlin for alleged violations of RPC 3.5(b) and RPC 8.4(a)(4) 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. Lee-Mandlin represented the respondent (“Father”) in a postjudgment dispute over parenting time and other terms of a marital dissolution judgment. The petitioner (“Mother”) was represented by attorney Ronald M. Johnson (“Johnson”).

At the conclusion of an April 2014 show cause hearing on whether the judgment should be modified, Lee-Mandlin agreed to prepare the appropriate judgment reflecting the parties’ stipulations and the court’s ruling. Lee-Mandlin prepared an Order After Hearing (“the order”) and asked her staff to fax and mail a copy to Johnson; her paralegal told her that she had done so. However, unbeknownst to Lee-Mandlin, the paralegal did not fax or mail a copy of the order to Johnson.

After hearing no objection from Johnson for several weeks, and not realizing that Johnson had not previously received a copy of the proposed form of order, Lee-Mandlin filed the order with the court on May 19, 2014. By doing so, Lee-Mandlin violated UTCR 5.100.
(requiring that any proposed judgment or proposed order submitted in response to a ruling of the court first be served on opposing counsel at least three days prior to submission to the court).

Furthermore, Lee-Mandlin inadvertently did not serve a copy of the order on Johnson when she filed it with the court. Her certificate of service stated only that she served a copy on “the Respondent” (her own client).

The court signed the order on May 22, 2014. However, two weeks later, the court instructed Lee-Mandlin to re-submit it as a “Supplemental Judgment with Money Award.” On July 3, 2014, Lee-Mandlin served Johnson with her proposed Supplemental Judgment (“proposed judgment”), which mirrored the language of the order. Lee-Mandlin advised Johnson that, if he did not object by July 9, 2014, she would submit the proposed judgment to the court as drafted. On July 9, 2014, Johnson emailed Lee-Mandlin a letter stating his objections (“July 9 letter”).

Although Lee-Mandlin received the July 9 letter, she failed to notice that it referred to the proposed judgment and instead mistakenly understood that it set out Johnson’s objections to the order. She waited for Johnson to convey separate objections to the proposed judgment and, when she did not receive any, she prepared to submit the proposed judgment to the court on July 30, 2014. When Lee-Mandlin’s staff printed a copy of the July 9 letter in preparation to submit the proposed judgment, the computer program “auto-filled” the current date (July 29, 2014) on the letter. In reliance on this printed document, Lee-Mandlin incorrectly determined that Johnson had not objected to the form of judgment until July 29, 2014. In her cover letter to the court, Lee-Mandlin stated inaccurately that Johnson had not timely objected to the form of judgment.

Mother, who was no longer represented by Johnson, informed the court that the order had improperly been filed ex parte and that Lee-Mandlin’s representation that Johnson had not timely objected to the proposed judgment was incorrect. Lee-Mandlin recognized her error and advised the court that Johnson had in fact timely served his objections to the proposed judgment. Although the court did not sign the proposed judgment, the order (which contained the same provisions and which had been inappropriately submitted to the court) remained in place until the court set it aside in January 2015 as a result of Mother’s motion for relief.

Violations

6.

Lee-Mandlin admits that, by filing the order without serving a copy on Johnson, she engaged in unauthorized ex parte communication on the merits of the matter in violation of RPC 3.5(b); and, by failing to comply with UTCR 5.100, filing the order ex parte, and misinforming the court that Johnson had not timely objected to the proposed judgment when
he had done so, she engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

Sanction

Lee-Mandlin 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 (“Standards”). The Standards require that Lee-Mandlin’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.** Lee-Mandlin violated her duty to abide by procedural and substantive rules that affect the administration of justice.

b. **Mental State.** Lee-Mandlin acted with negligence in failing to ascertain that she had not complied with UTCR 5.100 before submitting the order to the court, that she submitted the order to the court *ex parte*, and that her statement to the court that Johnson had not timely conveyed Mother’s objections to the supplemental judgment was inaccurate. “Negligence” is the failure to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

c. **Injury.** Lee-Mandlin’s conduct resulted in actual harm to Mother, who incurred additional legal fees in moving for relief from the order, and to the court, which was required to expend resources on a December 2014 hearing and to eventually set aside the order.

d. **Aggravating Circumstances.** The sole aggravating circumstance is:

   1. Multiple offenses. *Standards § 9.22(d).*

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

   1. Absence of prior discipline. *Standards § 9.32(a)*;
   2. Absence of a dishonest or selfish motive. *Standards § 9.32(b)*;
   3. Full and free disclosure *Standards § 9.32(e)*; and
   4. Remorse. *Standards § 9.32(l).*

Under the ABA Standards, public “[r]eprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.” *Standards § 6.23.*
8.

Public reprimand is consistent with prior Oregon cases in which RPC 3.5(a) and RPC 8.4(a)(4) have been implicated under similar circumstances. See, e.g., In re Jaspers, 28 DB Rptr 211 (2014) (attorney reprimanded where, in filing an \textit{ex parte} emergency custody order, he failed to disclose material information about the current custody judgment or the circumstances of the parties, necessary for the court’s assessment of the motion); In re Bean, 20 DB Rptr 157 (2006) (attorney reprimanded for presenting an \textit{ex parte} custody order to a judge without disclosing to the court that the \textit{pro se} opposing party was in the hallway waiting to be heard).

9.

Consistent with the \textit{Standards} and Oregon case law, the parties agree that Lee-Mandlin shall be publically reprimanded for violation of RPC 3.5(b) and RPC 8.4(a)(4), the sanction to be effective upon the Disciplinary Board’s approval of this stipulation for discipline.

10.

Lee-Mandlin 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.

11.

Lee-Mandlin represents that she is not admitted to practice law in any other state jurisdictions, whether active, inactive, or suspended.

12.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Bar and to approval by the SPRB. If approved by the SPRB, the parties agree that the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.
EXECUTED this 2nd day of February, 2017.

/s/ Angela T. Lee-Mandlin
Angela T. Lee-Mandlin,
OSB No. 974598

APPROVED AS TO FORM AND CONTENT:

EXECUTED this 3rd day of February, 2017.

/s/ Nathan G. Steele
Nathan G. Steele, OSB No. 004386

EXECUTED this 7th day of February, 2017.

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. 15-114
 )
TYLER FRIESEN,  )
 )
Accused.  )

Counsel for the Bar: Angela W. Bennett
Counsel for the Accused: None.
Disciplinary Board: None.
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.16(d), and RPC 8.1(a)(2). Stipulation for Discipline. 6-month suspension.
Effective Date of Order: March 9, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Tyler Friesen is suspended for six months, effective ten days after approval by the Disciplinary Board, for violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.16(d), and RPC 8.1(a)(2).

DATED this 27th day of February, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Jennifer Kimble
Jennifer Kimble, Region 1
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

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

1.

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

2.

Friesen was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 2005, and has been a member of the Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

Friesen 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 June 20, 2016, a Formal Complaint was filed against Friesen pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.16(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 September 2014, Mikala Saccoman, Ph.D. (“Saccoman”) retained Friesen to begin the process of drafting a will. Between September 2014 and January 2015, Saccoman made many requests for information and updates regarding the status of Friesen’s drafting of the will to which Friesen did not respond. As of January 2015, Friesen had not completed the will.

6.

In June of 2015, Saccoman made multiple attempts to contact Friesen by both email and telephone, requesting updates. Friesen did not respond.

7.

Also in June of 2015, Friesen closed his law practice. Prior to closing his practice, he did not notify Saccoman that he intended to close his practice, nor did he assist her in finding replacement counsel, or return her client file or any unearned portion of her retainer.
8.

On July 1, 2015, Saccoman wrote a letter to Friesen requesting that he respond to her contact attempts by July 15, 2015. Saccoman also requested that Friesen complete the will by August 31, 2015, or provide a full refund. Friesen did not respond, did not notify Saccoman that he had closed his practice, and did not return her file or refund her retainer.

9.

Friesen eventually provided a refund to Saccoman nearly a year after he was initially retained, and after he was made aware that the Bar was investigating the complaint Saccoman had filed.

10.

In August 2015, after Saccoman complained to the Bar about Friesen’s conduct, the Bar’s Client Assistance Office (“CAO”) contacted Friesen regarding Saccoman’s complaint. Friesen acknowledged Saccoman’s complaint, and corresponded with CAO using his email address then on file with the Bar (“record email address”).

11.

In October of 2015, Disciplinary Counsel’s Office (“DCO”) sent two letters of inquiry to Friesen, the first to both his record email address and his address then on record with the Bar (“record address”) by first-class mail, and the second to his record address via first-class and certified mail. Neither the letters nor the email were returned as undelivered or undeliverable. Friesen did not respond to them.

Violations

12.

Friesen admits that, by neglecting Saccoman’s legal matter, failing to keep Saccoman reasonably informed about the status of her matter, failing to sufficiently communicate with Saccoman so she could make informed decisions regarding the representation, and failing to timely return Saccoman’s property at the termination of the representation, he violated RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 1.16(d).

13.

Friesen further admits that his failure to respond to DCO in its investigation of Saccoman’s complaint constituted a knowing failure to respond to a lawful demand from a disciplinary authority, in violation of RPC 8.1(a)(2).
Sanction

14.

Friesen 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 (“Standards”). The Standards require that Friesen’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. Standards § 3.0. In determining the appropriate sanction, the court also examines the conduct of the accused attorney in light of the court’s prior case law. In re Garvey, 325 Or 34, 42, 932 P2d 549 (1997).

a. **Duty Violated.** The most important ethical duties a lawyer owes are to his client. Standards at 5. Friesen violated his duty to his client to diligently attend to her matter, which duty includes the obligation to timely and effectively communicate with her. Standards § 4.4. Friesen likewise violated his duty to Saccoman when he failed to promptly return her property. Standards § 4.1. Friesen violated his duties to the profession to cooperate with disciplinary authorities and to properly withdraw from Saccoman’s representation. Standards § 7.0.

b. **Mental State.** The Standards recognize three possible mental states: negligent; knowing; and intentional. Standards at 9. Friesen acted negligently when he neglected Saccoman’s matter and failed to communicate with her or inform her that he was closing his legal office; that is, he failed to heed a substantial risk that circumstances existed or that a result would follow, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Id. Friesen acted at times negligently and knowingly when he failed to promptly return Saccoman’s file and funds because, even if he did not realize she was trying to contact him, he still held her money in trust and should have known that he was obliged to return it upon closing his office. A knowing mental state 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. Finally, Friesen’s failure to respond to the Bar was knowing, in that he was aware of Saccoman’s pending complaint when he ceased communicating with the Bar.

c. **Injury.** Both actual and potential injury are relevant to determining the sanction in a disciplinary case. Standards § 3.0; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). Friesen caused actual and potential harm to his client when he neglected Saccoman’s matter, failed to timely return her file and her funds, and did not provide her updates on her case. 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). His failure to cooperate with the DCO’s investigation of his conduct also caused actual harm to both the legal profession and the public because he delayed the Bar’s investigation and, consequently, the resolution of the complaint against him. In re Schaffner, 325 Or at 427; In re Miles, 324 Or 218, 222, 923 P2d 1219 (1996); In re Haws, 310 Or 741, 753–54, 801 P2d 818 (1990).

d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Friesen engaged in a pattern of misconduct, including avoidance of inquiries from first his client, and later the Bar. Standards § 9.22(c).


3. Substantial experience in the practice of law (ten years at the time of the misconduct). Standards § 9.22(i).

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


2. Absence of a dishonest or selfish motive. Standards § 9.32(b).

3. Friesen reported remorse for his actions. Standards § 9.32(l).

15.

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(a). 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. Further, where a suspension is appropriate, it should be for a period of time equal to or greater than six months. Standards § 2.3.

Friesen’s aggravating and mitigating factors are in equipoise, and therefore do not alter the presumptive sanction under the Standards. As a result, a period of suspension is the appropriate sanction. Standards §§ 4.42, 7.0.

16.

Oregon cases also support the imposition of a suspension for neglect in action or communication, with or without a failure to respond to the Bar. Friesen’s neglect of his client’s matter and failure to communicate with his client warrant at least a short suspension. See, e.g., In re Murphy, 349 Or 366, 245 P3d 100 (2010) (per curiam) (120-day suspension); In re Redden, 342 Or 393, 153 P3d 113 (2007) (60-day suspension for attorney’s failure to complete
a child support arrearage matter for a client for nearly two years); In re Jackson, 347 Or 426, 223 P3d 387 (2009) (120-day suspension where attorney was not prepared for a settlement conference he had requested, failed to send his calendar of available dates to an arbitrator, failed to respond to messages from the arbitrator’s office and failed to take steps to pursue the arbitration after a second referral to arbitration by the court); and 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).

Where a lawyer failed to properly withdraw, in violation of RPC 1.16(d), the Court has imposed a 60-day suspension. In re Castanza, 350 Or 293, 253 P3d 1057 (2011). See also In re Devers, 317 Or 261, 855 P2d 617 (1993) (six-month suspension imposed on lawyer who, among other things, neglected cases and failed to return client files upon termination of the representation).

Finally, the court has repeatedly held that the “failure to cooperate with a disciplinary investigation, standing alone, is a serious ethical violation.” In re Parker, 330 Or 541, 551, 9 P3d 107 (2000); In re Bourcier, 325 Or 429, 434, 939 P2d 604 (1997). Further, the court has emphasized that it has no patience for violations of this rule, and it has consistently imposed a 60-day suspension for a single violation of RPC 8.1(a)(2). See, e.g., In re Miles, 324 Or 218, 923 P2d 1219 (1996) (although no substantive charges were brought, attorney was suspended for 120 days for noncooperation with the Bar in two separate matters); In re Schaffner, 323 Or 472, 918 P2d 803 (1996) (attorney with no prior disciplinary history suspended for 120 days: 60 days for his neglect and 60 days for his failure to cooperate with the Bar).

Consistent with the Standards and Oregon case law, the parties agree that Friesen shall be suspended for six months for his violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.16(d), and RPC 8.1(a)(2), with the sanction to be effective February 15, 2017, or 10 days after this stipulation for discipline is approved by the Disciplinary Board, whichever is later. The parties further agree that Friesen will be required to apply for reinstatement under BR 8.1 (“Formal Reinstatement”), which requires action by the Board of Governors and the Supreme Court.

Friesen 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, Friesen represents that he has no client files, active or inactive, in his possession.
19.

Friesen understands that reinstatement is not automatic upon the expiration of the period of suspension and that he cannot resume the practice of law until he has taken all steps necessary to re-attain active membership status with the Bar. Friesen further understands he is subject to the formal reinstatement requirements under BR 8.1. During the period of suspension, and continuing through the date upon which Friesen re-attains his active membership status with the Bar, Friesen shall not practice law or represent that he is qualified to practice law; shall not hold himself out as a lawyer; and shall not charge or collect fees for the delivery of legal services other than for work performed and completed prior to the period of suspension.

20.

Friesen 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 the denial of his reinstatement. This requirement is in addition to any other provision of this agreement that requires Friesen to attend or obtain continuing legal education (CLE) credit hours.

21.

Friesen represents that, apart from Oregon, he is not admitted to practice law in any other jurisdictions (whether his current status is active, inactive, or suspended).

22.

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

EXECUTED this 14th day of February, 2017.

/s/ Tyler Friesen
Tyler Friesen, OSB No. 052569

EXECUTED this 21st day of February, 2017.

OREGON STATE BAR

By: /s/ Angela W Bennett
Angela W. Bennett
OSB No. 092818
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case Nos. OSB 14-06, OSB 14-142;
Complaint as to the Conduct of ) OSB 14-143; OSB 15-37
DALE MAXIMILIANO ROLLER, ) SC S064359
Accused. )

En Banc

On review of the decision of a trial panel of the Disciplinary Board.
Submitted January 12, 2017.
No appearance for the Oregon State Bar.
No appearance contra.

PER CURIAM

In this lawyer disciplinary proceeding, the Oregon State Bar charged Dale Maximiliano Roller (the accused) with multiple violations of the Oregon Rules of Professional Conduct (RPC). A trial panel of the Disciplinary Board conducted a hearing, found that the accused had violated a number of those rules, and determined that the appropriate sanction was suspension from the bar for a period of four years. We affirm.
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 16-166
Complaint as to the Conduct of )
LYNNE B. MORGAN, )
Accused. )

Counsel for the Bar: Susan Roedl Cournoyer
Counsel for the Accused: Lawrence Matasar
Disciplinary Board: None.
Disposition: Violation of RPC 1.15-1(a); RPC 1.15-1(c) and RPC 1.15-1(d). Stipulation for Discipline. Public reprimand.
Effective Date of Order: March 16, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Lynne B. Morgan is publicly reprimanded for violation of RPC 1.15-1(a), RPC 1.15-1(c) and RPC 1.15-1(d).

DATED this 16th day of March, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Ronald Atwood
Ronald Atwood, Region 5
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Lynne B. Morgan, attorney at law (Morgan), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Morgan was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 14, 1989, and has been a member of the Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

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

4.

On December 3, 2016, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Morgan for alleged violations of RPC 1.15-1(a) [failing to keep client funds separate from lawyer’s own property], RPC 1.15-1(c) [failing to maintain client funds paid in advance in trust until fees are earned or costs are incurred], and RPC 1.15-1(d) [failing to promptly deliver and, upon request, failing to render an accounting of, client funds] 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.

A client [Client] retained Morgan to represent him on a criminal matter in which he was eventually indicted on charges of racketeering, aggravated theft (16 counts) and the unregistered sale of securities (16 counts). Over the next three years, Morgan and Client entered into three fee agreements. Their first two retainer agreements (April 2010 and August 2011) provided that Morgan would deposit retainers into trust and bill against the funds at an agreed hourly rate; Client agreed to pay all out-of-pocket expenses. As trial approached in the criminal case, Morgan and Client signed a third fee agreement in October 2012, which provided for a new $45,000 flat fee earned upon receipt. The agreement explained that the fee would not be deposited into Morgan’s trust account and that, if Client discharged Morgan, he
would pay $300 per hour for the time she had expended on the matter. Client also agreed to pay a $15,000 cost advance, which Morgan agreed to deposit into trust.

6. Between October 2012 and May 2013, Client paid the $15,000 cost advance and $40,000 toward the flat fee. Because Morgan still held $2,285 in trust from the second retainer, the $15,000 cost advance brought the total funds Morgan held in trust for Client to $17,285.

7. Client terminated the representation on May 29, 2013, after Morgan had taken substantial steps to complete the work, including participating in a judicial settlement conference and preparing for trial that was scheduled to begin June 3, 2013.

8. In July 2013, Morgan instructed her staff to transfer the full $17,285 from trust to her general account. This transfer covered payments for incurred costs totaling $12,333.50 (for paralegal services and investigator fees, expenditures about which she had previously informed Client). At the time, Morgan believed that she had earned all of Client’s prior advance fees and had incurred all of the costs advanced, and was therefore entitled to withdraw all funds remaining in trust. However, Morgan had not balanced her trust account ledger or taken other appropriate steps to determine that $4,951.50 of the funds in her trust account were the unspent balance of Client’s $15,000 cost advance and that he was entitled to a refund of that amount.

9. Almost two years later, in late May 2015, Client requested an accounting and return of all funds. Morgan did not provide an accounting of the $15,000 cost advance or return the unincurred $4,951.50 balance that she had not spent on Client’s case costs until April 2016. Morgan offered to refund, and eventually tendered to Client, the full $40,000 paid toward her flat fee, even though at the time she was discharged she had substantially completed the work.

Violations

10. Morgan admits that, by withdrawing from trust $4,951.50 of Client’s funds that had not been incurred for expenses, she violated RPC 1.15-1(a) and RPC 1.15-1(c). Morgan further admits that, by failing to promptly deliver funds Client was entitled to receive, and failing to render a full accounting of client funds promptly upon request, she violated RPC 1.15-1(d).

Sanction

11. Morgan 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.
(“Standards”). The Standards require that Morgan’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

a. **Duty Violated.** By failing to maintain client funds in trust, to promptly account for those funds, or to promptly return funds her client was entitled to receive, Morgan violated duties to preserve client property.

b. **Mental State.** With respect to her improper withdrawal of client funds from trust, Morgan acted negligently, which is the failure to heed a substantial risk that circumstances exist or that a result will follow, which failure deviates from the standard of care a reasonable lawyer would exercise in the situation. Standards at 9. In delaying to refund the $4,951.50 or to provide an accounting upon Client’s request, Morgan acted knowingly, which is with the conscious awareness of the nature or attendant circumstances of her conduct but without the conscious objective or purpose to accomplish a particular result. Standards at 9.

c. **Injury.** Morgan’s conduct resulted in actual injury to Client, who was denied for almost three years $4,951.50 that he was entitled to receive upon termination of the representation.

d. **Aggravating Circumstances.** There are two aggravating circumstances:

1. Substantial experience in the practice of law. Standards § 9.22(i). However, although Morgan has practiced law for 24 years, she has little experience in handling client funds, as her practice has involved almost exclusively court-appointed criminal defense.


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


2. Absence of a dishonest or selfish motive. Standards § 9.32(b).

3. Good reputation in the legal community. Standards § 9.32(g).


Under the ABA Standards, reprimand is generally appropriate “when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.” Standards § 4.13. When “a lawyer knows or should know that [she] is dealing improperly with client property and causes injury or potential injury to a client,” suspension is generally appropriate. Standards § 4.12.
Negligent or knowing mishandling of client property has resulted in sanctions ranging from public reprimand to 60-day suspensions.

*In re Peterson*, 348 Or 325, 232 P3d 940 (2010), resulted in a 60-day suspension when clients gave their attorney a $2,000 advance, $1,000 of which was earmarked to pay their share of a property survey. One day after depositing the check into his trust account, the attorney withdrew the full $2,000. The court found as aggravating factors substantial experience (30 years in civil practice) and multiple violations; mitigating factors included lack of prior discipline and good reputation.

*In re Coran*, 27 DB Rptr 170 (2013), resulted in a 30-day suspension, all stayed pending a 24-month probation, when a lawyer failed to promptly return client property (the file) in one matter and failed to deposit advance fees and costs into trust in another. Aggravating factors included prior discipline: Coran had previously been reprimanded three times, once for improperly handling an advance fee.

*In re Cottle*, 27 DB Rptr 22 (2013), resulted in a 30-day suspension when an attorney failed to account for or return any unearned portions of advance fees and costs in two client matters. Cottle charged one client for work he did not perform. Cottle also committed violations involving neglect, failing to communicate, and failing to respond to the Bar. Aggravating factors included substantial experience in the practice of law; mitigating factors included lack of prior discipline.

*In re Fjelstad*, 27 DB Rptr 68 (2013), resulted in a 30-day suspension when, in addition to engaging in improper *ex parte* communication and failing to communicate with his client, an attorney failed for over three years to deliver to his client the funds and checks that he had received in settlement of his client’s claims. Aggravating factors included multiple offenses, substantial experience, and selfish motive.

*In re Kleen*, 27 DB Rptr 213 (2013), resulted in a public reprimand when an attorney collected advance costs to hire an expert in his client’s case, but never retained an expert. He did not refund the advance for eight months after he withdrew from representation. Kleen also engaged in neglect and failed to communicate with this client. Aggravating factors included substantial experience; mitigating factors included lack of prior discipline.

The present case can be distinguished from each of these matters. Unlike *Peterson*, Morgan’s substantial experience does not involve decades of handling client funds or managing a trust account; furthermore, she tendered a full refund of her $40,000 fee notwithstanding having completed a substantial amount of the work before she was discharged. The attorneys in *Cottle*, *Fjelstad*, and *Kleen* engaged in additional misconduct not present here. The prior discipline present in *Coran* was significant.
14.

Consistent with the Standards and Oregon case law, the parties agree that Morgan shall be publicly reprimanded for violation of RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.15-1(d), the sanction to be effective upon approval of this stipulation by the Disciplinary Board.

15.

Morgan 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.

16.

Morgan 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 Morgan is admitted: none.

17.

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

EXECUTED this 28th day of February, 2017.

/s/ Lynne B. Morgan
Lynne B. Morgan, OSB No. 890994

APPROVED AS TO FORM AND CONTENT:

Dated: March 2, 2017

/s/ Lawrence Matasar
Lawrence Matasar, OSB No. 742092

EXECUTED this 2nd day of March, 2017.

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. 16-165 )
) )
BRENDAN ENRIGHT, ) )
) )
Accused. )

Counsel for the Bar: Susan Roedl Cournoyer
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c) and RPC 1.16(d). Stipulation for Discipline. 60-day suspension.
Effective Date of Order: April 5, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Brendan Enright is suspended for 60 days, effective immediately, for violation of RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.16(d).

DATED this 5th day of April, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Ronald Atwood
Ronald Atwood, Region 5
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

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

1.

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

2.

Enright was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1984, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

Enright 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 December 3, 2016, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Enright for alleged violations of RPC 1.5(c)(3) [charging or collecting a fee denominated as earned on receipt without required disclosures in fee agreement]; RPC 1.15-1(a) [failing to keep client funds in trust]; RPC 1.15-1(c) [failing to maintain in trust until earned legal fees paid in advance]; and RPC 1.16(d) [upon termination of representation, failing to refund unearned fees paid in advance]. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In August 2013, a married couple (“Clients”) retained Enright to file a Chapter 7 bankruptcy. Their fee agreement provided for a nonrefundable $1,636 flat fee (consisting of a $1,195 fee plus costs), earned upon receipt.

6.

Pursuant to RPC 1.5(c)(3), a lawyer may not charge or collect a nonrefundable fee earned on receipt unless the fee agreement explains that the funds will not be deposited into the lawyer trust account and the client may discharge the lawyer at any time, in which event the client may be entitled to a refund if the services for which the fee was paid are not completed. Enright’s fee agreement did not contain these explanations.
7. Because Enright’s fee agreement did not comply with RPC 1.5(c)(3), he was required to deposit and maintain in trust the advance fees he received from Clients until he earned the fee or incurred the costs.

8. Clients paid Enright a total of $1,338 in monthly installments until they ceased making payments in early 2014. Enright closed his practice in November 2014 without completing the bankruptcy petition, notifying Clients, or refunding any portion of Clients’ advance fee. At the time Enright closed his practice, no portion of the advance fee paid by Clients remained in his trust account.


Violations

10. Enright admits that, by charging and collecting a nonrefundable fee earned upon receipt without the required provisions in his fee agreement, he violated RPC 1.5(c)(3); by failing to keep the advance fee separate from his own property and to maintain it in trust until he earned the fee or incurred expenses, he violated RPC 1.15-1(a) and RPC 1.15-1(c); and by closing his practice and terminating representation without refunding any portion of the advance payment of fee or expense that he had not earned or incurred, he violated RPC 1.16(d).

Sanction

11. Enright and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA Standards for Imposing Lawyer Sanctions (ABA Standards). The ABA Standards require that Enright’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.** Enright violated duties he owed to his clients to safe keep their funds in his possession and to take reasonable steps to protect their interests upon termination of the representation.

   b. **Mental State.** Enright acted negligently in, having failed to recognize that his fee agreement did not comply with RPC 1.5(c)(3), failing to maintain Clients’
uneared advance fees in trust and to refund all or part of the advance fee upon
termination of representation.

c. **Injury.** Enright’s misconduct resulted in actual injury, as Clients were deprived
of their funds for two years.

d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Prior discipline. *Standards* § 9.22(a). Enright has twice been admon-
ished for collecting improper fees, most recently in 2015 for using (in
July 2014) the same type of noncompliant fee agreement as at issue here.
While letters of admonition are generally not considered discipline, they
may be viewed as an aggravating factor when they involve similar

2. Multiple offenses. *Standards* § 9.22(d). Within a one-year period,
Enright collected nonrefundable fees under an improper fee agreement
in this matter and in the matter that resulted in the 2015 admonition. Had
they been reported to the Bar at the same time, they would have been
treated as multiple violations, and would have justified a public repri-
mand for the improper fee agreement alone.

Under the ABA *Standards*, absent aggravating and mitigating factors, 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. Because the
aggravating factors are not offset by any mitigating factors, a 60-day suspension is appropriate.

12.

Oregon case law is in accord. *In re Fadeley*, 342 Or 403, 153 P3d 682 (2007), resulted
in a 30-day suspension when the attorney failed to refund the unearned portion of a retainer
when the representation ended. *In re Balocca*, 342 Or 279, 151 P3d 154 (2007), resulted in a
90-day suspension when an attorney failed to return unearned client funds after closing his file.
(The court also found conflict of interest and trust account violations.) *In re Eckrem II*, 28 DB
Rptr 77 (2014), resulted in a 90-day suspension, 60 days stayed pending a two-year probation,
when an attorney used a flat-fee agreement that complied with RPC 1.5(c)(3), but failed to
promptly refund the unearned portion of that fee when the client terminated representation
before completion of the matter. *In re Eckrem I*, 23 DB Rptr 84 (2009), resulted in a 60-day
suspension when, after a client fired the attorney for neglect, the attorney failed to notify the
court that he no longer represented the client and failed to promptly refund any unearned fees
and unincurred costs. In another client matter, the attorney failed to return file materials or
funds to the client upon termination.
Consistent with the ABA Standards and Oregon case law, the parties agree that Enright shall be suspended 60 days for violation of RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.16(d), the sanction to be effective immediately upon approval of this Stipulation by the Disciplinary Board.

Enright 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, Enright certifies that he closed his practice in November 2014 and has no client files or records in his possession.

Enright 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. Enright 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 law has been reinstated.

Enright 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.

Enright 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 Enright is admitted: none.

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

I, Brendan Enright, hereby declare under penalty of perjury under the laws of Oregon that: I am the Accused in the above-entitled proceeding; the statements contained above are true and correct; and that I am physically outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.
EXECUTED on the 3rd day of March, 2017.

/s/ Brendan Enright
Brendan Enright, OSB No. 843550

EXECUTED this 21st day of March, 2017.

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. 16-06
) ) SC S064741
SHANE A. REED, )
) )
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: Marc K. Sellers
Disciplinary Board: None
Disposition: Violation of RPC 1.15-1(a), RPC 8.4(a)(3), and ORS 9.527(2). Stipulation for Discipline. 1-year suspension, all but 6 months stayed, 2-year probation.
Effective Date of Order: April 13, 2017

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. Effective as of the date of this order, the accused is suspended from the practice of law in the State of Oregon for a period of one year, all but six months of which shall be stayed pending the accused’s successful completion of a two year period of probation, on the terms and conditions recited in the parties’ Stipulation for Discipline.

/s/ Thomas A. Balmer
04/13/2017 8:04 AM
Thomas A. Balmer
Chief Justice, Supreme Court

STIPULATION FOR DISCIPLINE

Shane A. Reed, attorney at law (“Reed”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).
1. The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2. Reed was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 3, 1996, and has been a member of the Bar continuously since that time, having his office and place of business in Jackson County, Oregon.

3. Reed 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 26, 2016, a Formal Complaint was filed against Reed pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 1.15-1(a) (failure to maintain client funds separate from the his own property); RPC 1.15-1(b) (depositing his own funds in a lawyer trust account for impermissible purposes); RPC 8.4(a)(3) (conduct involving dishonesty, fraud, deceit or misrepresentation); and ORS 9.527(2) (conviction of a federal crime punishable by imprisonment). 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. Reed was a practicing attorney in Jacksonville, Oregon, practicing as a plaintiff’s personal injury lawyer, when he filed federal income tax returns for 2006, 2007, and 2008. Although the returns collectively reflected that he had earned a total of approximately $880,000 in income for which he had a tax obligation of approximately $129,000, Reed failed to pay the taxes owed.

6. When the Internal Revenue Service (IRS) began communicating with Reed in writing, seeking to address his nonpayment of taxes as reflected on his tax returns, Reed was initially nonresponsive. Letters sent by the Collection Division were returned unopened. After a time, the IRS initiated formal collection proceedings, as a result of which Reed was aware that the IRS might seek to levy identifiable bank accounts in order to secure payment of income taxes Reed had acknowledged he owed by the filing of income tax returns.
7.

At some point beginning in 2009, Reed began using his lawyer trust account as a place to retain earned fees. Recognizing that the IRS and other creditors would be hesitant to levy a lawyer trust account, Reed sheltered his income from being levied by knowingly and intentionally leaving it in his lawyer trust account. Periodically, and without regard to when the fees had been earned, Reed accessed earned fees by writing a check to himself from the trust account, which would then be cashed and used to pay personal expenses. Reed continued to commingle earned fees with client funds in his lawyer trust account through 2010 and 2011.

8.

On May 13, 2015, Reed pled guilty to one count of failure to pay income tax for tax years 2007 through 2009, in violation of 26 USC § 7203. USA v. Reed, US District Court Case No. 6:15-CR-00010-MC. The crime was a federal misdemeanor punishable by imprisonment of not more than one year.

Violations

9.

Reed admits that his failure to pay his tax when due was the commission of a federal crime, punishable by imprisonment, which violated ORS 9.527(2).

10.

Reed further admits that his election to utilize his lawyer trust account to shelter his personal funds was a decision that lacked integrity and caused his own funds to be commingled with those of his clients, in violation of RPC 1.15-1(a) and RPC 8.4(a)(3).

11.

Upon further factual inquiry, the parties agree that the alleged violation of RPC 1.15-1(b) as set forth in the Bar’s Formal Complaint, should be, and upon the approval of this stipulation, is dismissed.

Sanction

12.

Reed 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 Reed’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.** Reed violated his duty to clients to safeguard client property and keep it separate from his own. Standards § 4.1. The Standards provide that the most important ethical duties are those obligations which a lawyer owes to
clients. *Standards* at 5. Reed also violated his duty to the public to comply with the laws and maintain his personal integrity. *Standards* § 5.1.

b. **Mental State.** Reed acted with knowledge; that is, he acted with the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards* at 9.

c. **Injury.** Injury can be either actual or potential under the *Standards.* In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). There was actual injury to the taxing authorities as a result of Reed’s elections to shelter his funds and not timely pay his obligations. In addition, by failing to comply with the trust account rules, Reed “caused actual harm to the legal profession.” In re Peterson, 348 Or 325, 343, 232 P 3d 940 (2010); In re Obert, 352 Or 231, 260, 282 P 3d 825 (2012).

d. **Aggravating Circumstances.** Aggravating circumstances include:

1. **A prior record of discipline.** *Standards* § 9.22(a). In 2007, Reed was reprimanded for a violation of RPC 8.4(a)(3) (misrepresentation) for signing his client’s name to a release of claims without informing the opposing party that the client had not signed the release or that he had signed the client’s name as the client’s attorney in fact. Reed also violated former RPC 7.5(c)(1) (misleading firm name) by advertising that he was in a firm with “associates” when he was the only lawyer. In re Reed, 21 DB Rptr 222 (2007).

2. **A dishonest or selfish motive.** *Standards* § 9.22(b).

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

4. **Multiple offenses.** *Standards* § 9.22(d). Reed violated ORS 9.527(2), RPC 1.15-1(a), and RPC 8.4(a)(3).

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

6. **Illegal conduct.** *Standards* § 9.22(k).

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

1. **Personal problems.** *Standards* § 9.32(c). Reed was experiencing significant financial stressors during the period at issue in this formal proceeding.

2. **Cooperative attitude toward proceedings.** *Standards* § 9.32(e).
3. Imposition of other penalties or sanctions. *Standards* § 9.32(k). Following his criminal conviction, Reed was sentenced to five (5) years of probation and 250 hours of community service.

13.

Under the ABA *Standards*, a 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. Similarly, a suspension is also generally appropriate when a lawyer knowingly violates his duty to the public to maintain his personal integrity. *Standards* § 5.12.

14.

Oregon case law is in accord. *See, e.g.*, *In re Millar*, 29 DB Rptr 197 (2015) (respondent attorney with no prior discipline was suspended for 6 months where he willfully failed on repeated occasions over nine years to pay over amounts deducted and withheld from employee wages at the time said amounts were due, in violation of federal law. In paystubs, paychecks, and year-end wage and tax statements provided to his employees for the relevant tax periods, attorney falsely represented that a portion of their gross wages had been withheld and paid over to state and federal taxing authorities on their behalf for income, social security, and Medicare taxes.); *In re Steves*, 26 DB Rptr 283 (2012) (attorney suspended for one year where, over a period of years, she willfully failed to file federal income tax returns timely or pay the tax due, and where she had been previously disciplined for unrelated misconduct); *In re Street*, 24 DB Rptr 258 (2010) (attorney with no prior discipline was suspended for one year, 8 months stayed, for failing to file personal income tax returns for several years or pay the taxes due); *In re Bowman*, 24 DB Rptr 144 (2010) (attorney with no prior discipline was suspended for one year, 8 months stayed, for willful failure to file income tax returns or pay income tax due, over a three-year period); *In re Levie*, 22 DB Rptr 66 (2008) (attorney who intentionally used his trust account as his own personal account, deposited his own funds therein, and paid personal and business expenses directly from that account in order to shield those funds from creditors was suspended for six months).

15.

BR 6.2 recognizes that probation can be appropriate and permits a suspension to be stayed pending the successful completion of a probation. *See also Standards* § 2.7 (probation can be imposed alone or with a suspension and is an appropriate sanction for conduct which may be corrected). In addition to a period of suspension, a period of probation designed to ensure the adoption and continuation of better practices will best serve the purpose of protecting clients, the public, and the legal system.
16. Consistent with the *Standards* and Oregon case law, the parties agree that Reed shall be suspended for one (1) year for his violations of RPC 1.15-1(a); RPC 8.4(a)(3); and ORS 9.527(2), with all but six (6) months of the suspension stayed, pending Reed’s successful completion of a two (2)-year term of probation. The sanction shall be effective April 1, 2017, notwithstanding an earlier date upon which this Stipulation for Discipline is approved by the Supreme Court (“effective date”).

17. Reed’s license to practice law shall be suspended for a period of six (6) months beginning on the effective date (“actual suspension”), assuming all conditions have been met. Reed understands that reinstatement is not automatic and that he cannot resume the practice of law until he has taken all steps necessary to re-attain active membership status with the Bar. During the period of actual suspension, and continuing through the date upon which Reed re-attains his active membership status with the Bar, Reed shall not practice law or represent that he is qualified to practice law; shall not hold himself out as a lawyer; and shall not charge or collect fees for the delivery of legal services other than for work performed and completed prior to the period of active suspension.

18. Probation shall commence upon the date Reed is reinstated to active membership status following his actual suspension (“reinstatement date”) and shall continue for a period of two (2) years, ending on the day prior to the second (2\(^\text{nd}\) ) year anniversary of the reinstatement date (the “period of probation”). During the period of probation, Reed shall abide by the following conditions:

(a) Reed will communicate with Disciplinary Counsel’s Office (“DCO”) and allow DCO access to information, as DCO deems necessary, to monitor compliance with his probationary terms.

(b) Reed shall comply with all provisions of this Stipulation for Discipline, the Rules of Professional Conduct applicable to Oregon lawyers, and ORS Chapter 9.

(c) During the period of probation, Reed shall attend not less than eight (8) CLE accredited programs, for a total of twenty-four (24) hours, all of which shall emphasize law-practice management, time management, and trust account practices. These credit hours shall be in addition to his Ethics School requirement pursuant to BR 6.4, and those MCLE credit hours required of Reed for his normal MCLE reporting period.

(d) Upon completion of the CLE programs described in paragraph 18(c), and prior to the end of his period of probation, Reed shall submit an Affidavit of
Compliance to DCO that identifies the MCLE-accredited programs attended by Reed in compliance with paragraph 18(c).

(e) Every month for the period of probation, Reed shall:

(1) Comply with all terms set forth in the Conditions of Probation and Supervised Release in US District Court for the District of Oregon Docket No. 6: 15CR00010-001-MC.

(2) Pay the monthly installment on his tax obligation for tax years 2011-2013, pursuant to the Department of the Treasury — Internal Revenue Service Installment Agreement (Form 433-D) dated November 23, 2015.

(3) Maintain complete records, including individual client ledgers, of the receipt and disbursement of client funds and payments on outstanding bills.

(4) Remove earned funds from his lawyer trust account on a regular basis and account for the receipt of earned funds in accounting and tax documents.

(5) Review his monthly trust account records and client ledgers and reconcile those records with his monthly lawyer trust account bank statements.

(f) For the period of probation, Reed will timely file his personal state and federal tax returns, including quarterly filings, if appropriate.

(g) For the period of probation, Reed will employ a bookkeeper approved by DCO, to assist in the

(1) Monthly reconciliation of his lawyer trust account records.

(2) Monthly reconciliation of client funds, including client ledger cards.

(3) Timely and proper removal of earned funds from trust on a regular basis.

(4) Appropriate accounting of earned funds.

(5) Reporting of gross receipts and tax obligations.

(h) On a monthly basis, the bookkeeper employed by Reed will prepare and sign a written declaration that confirms that the bookkeeper has performed the tasks outlined in paragraph 18(g), identifies any problems encountered in the performance of those tasks, and provides explanation, as necessary.

(i) On or before the day prior to the first and second year anniversary of the reinstatement date, Reed shall arrange for an accountant to conduct an audit of
his lawyer trust account and to prepare a report of the audit for submission to DCO within 30 days thereafter.

(j) William E. Schireman shall serve as Reed’s probation supervisor (“Supervisor”). Reed shall cooperate and comply with all reasonable requests made by Supervisor that Supervisor, in his or her sole discretion, determines are designed to achieve the purposes of the probation and the protection of Reed’s clients, the profession, the legal system, and the public.

(k) Beginning with the first month of the period of probation, Reed shall meet with his Supervisor in person at least once a month for the purpose of permitting his Supervisor to inspect and review Reed’s accounting and recordkeeping systems to confirm that Reed is:

(1) Reviewing and reconciling his lawyer trust account records monthly;

(2) Maintaining complete records of the receipt and disbursement of client funds; and

(3) Not commingling his own funds with client funds, but is timely and appropriately removing his own funds from his lawyer trust account when earned or otherwise owed.

Reed agrees that his Supervisor may contact all employees and independent contractors who assist Reed in the review and reconciliation of his lawyer trust account records.

(l) Reed authorizes his Supervisor to communicate with DCO regarding Reed’s compliance or noncompliance with the terms of his probation and to release to DCO any information DCO deems necessary to permit it to assess Reed’s compliance.

(m) On or before seven (7) days after his reinstatement date, Reed shall contact the Professional Liability Fund (“PLF”) and schedule an appointment on the soonest date available to consult with PLF practicemanagement advisors in order to obtain an evaluation of whether he would benefit from changes to his office practices (including file management, docket management, calendaring, and client communication) and trust accounting procedures. Reed shall schedule the first available appointment with the PLF and notify the Bar of the time and date of the appointment.

(n) Reed shall attend the appointment with the PLF practice management advisor and adopt and implement any recommendations no later than thirty (30) days after recommendations are made by the PLF. Prior to the first (1st) anniversary of his reinstatement date, Reed shall participate in at least one follow-up review
by the PLF. Reed shall promptly report the PLF recommendations and implementation of the PLF recommendations to his Supervisor and DCO.

(o) In his first quarterly report described in paragraph 18(p) below, Reed shall provide a copy of the Office Practice Assessment from the PLF and file a report with DCO stating the date of his consultation(s) with the PLF; identifying the recommendations that he has adopted and implemented; and identifying the specific recommendations he has not implemented and explaining why he has not adopted and implemented those recommendations. Subsequent PLF recommendations and/or implementation of PLF recommendations shall be reported in the next quarterly report, as applicable.

(p) On a quarterly basis, on dates to be established by Disciplinary Counsel beginning no later than ninety (90) days after the reinstatement date, Reed shall submit to DCO a written “Compliance Report,” signed under oath and approved as to substance by his Supervisor, advising whether Reed is in compliance with the terms of this Stipulation for Discipline, including

1. That Reed is in compliance with all terms set forth in the Conditions of Probation and Supervised Release in US District Court for the District of Oregon Docket No. 6: 15CR00010-001-MC.

2. That Reed has timely filed any personal state and federal tax returns, including any required quarterly filings, due in the period covered by the Compliance Report.

3. Provide financial documents sufficient to establish, as to the preceding calendar quarter (consisting of three complete months prior to the month during which the information is being provided), that Reed has paid all monthly installments in the period covered by the Compliance Report on his tax obligation for tax years 2011-2013, pursuant to the Department of the Treasury — Internal Revenue Service Installment Agreement (Form 433-D) dated November 23, 2015. Financial documents may include copies of cancelled checks or records of wire transfers.

4. That Reed has employed and utilized the services of a bookkeeper during the entirety of the period covered by the Compliance Report.

5. That Reed has maintained complete records, including individual client ledgers, of the receipt and disbursement of client funds and payments on outstanding bills.

6. That Reed has removed earned funds from his lawyer trust account on a regular basis and accounted for the receipt of earned funds in accounting and tax documents.
(7) That Reed has reviewed his trust account records and client ledgers on a monthly basis and reconciled those records with his lawyer trust account bank statements.

(8) That any withholding requirements as to Reed’s income for the quarter applicable to the report have been met.

(9) Attaching any tax filings for the period covered by the Compliance Report.

(10) Attaching the bookkeeper declarations described in paragraph 18(h) for the period covered by the Compliance Report.

(11) The dates and purpose of Reed’s meetings with Supervisor.

(12) Whether Reed has complied with the other requests made by Supervisor, if applicable.

(13) Any PLF recommendations made in the period covered by the Compliance Report and whether Reed has complied with those recommendations.

(14) In the event Reed 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.

(q) Reed is responsible for any costs required under the terms of this stipulation and the terms of probation.

(r) Reed’s failure to comply with any term of this agreement, including conditions of timely and truthfully reporting to DCO, or with any reasonable request of Supervisor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.

(s) A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to Disciplinary Counsel on or before its due date.

(t) The SPRB’s decision to bring a formal complaint against Reed for unethical conduct that occurred or continued during the period of his suspension or probation shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.

19.

Reed 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, Reed has arranged for
Talon J. Reed, an active member of the Bar, to either take possession of or have ongoing access to Reed’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Reed represents that Talon J. Reed has agreed to accept this responsibility.

20.

Reed 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. Reed 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 law has been reinstated.

21.

Reed 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. This requirement is in addition to any other provision of this agreement that requires Reed to attend or obtain continuing legal education (CLE) credit hours.

22.

Reed represents that, in addition to Oregon, he also is admitted to practice law in California, and he acknowledges that the Bar will be informing California of the final disposition of this proceeding. Reed represents that California is the only jurisdiction, apart from Oregon, where he is licensed to practice.

23.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Bar and to approval by the SPRB. If approved by the SPRB, the parties agree that the stipulation is to be submitted to the Supreme Court for consideration pursuant to the terms of BR 3.6.
EXECUTED this 15th day of February, 2016.

/s/ Shane A. Reed
Shane A. Reed
OSB No. 961597

APPROVED AS TO FORM AND CONTENT:

/s/ Mark K. Sellers
Marc K. Sellers
OSB No. 791077

EXECUTED this 27th day of February, 2016.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott
OSB No. 990280
Chief Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) )
Complaint as to the Conduct of ) Case Nos. 16-122 & 16-138 )
) )
DWIGHT L. FAULHABER, )
) )
Accused. )

Counsel for the Bar: Nik T. Chourey
Counsel for the Accused: John Fisher
Disciplinary Board: None
Disposition: Violation of RPC 1.5(c)(3), RPC 1.9(a), and RPC 1.15-1(c). Stipulation for Discipline. 30-day suspension.
Effective Date of Order: April 30, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Faulhaber is suspended for 30 days, effective 10 days after approval by the Disciplinary Board, or April 1, 2017, whichever is later for violation of RPC 1.5(c)(3), RPC 1.9(a), and RPC 1.15-1(c).

DATED this 20th day of April, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Jet Harris
Jet Harris, Region 2
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Dwight L. Faulhaber, attorney at law (“Faulhaber”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Faulhaber was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 17, 1971, and has been a member of the Bar continuously since that time, having his office and place of business in Lane County, Oregon.

3.

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

4.

On September 10, 2016, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Faulhaber for an alleged violation of RPC 1.9(a) of the Oregon Rules of Professional Conduct (“Domestic Relations Matter”).

5.

On October 22, 2016, the SPRB authorized formal disciplinary proceedings against Faulhaber for alleged violations of RPC 1.5(c)(3) and RPC 1.15-1(c) of the Oregon Rules of Professional Conduct (“Bankruptcy Petition Matter”). The SPRB consolidated the Domestic Relations and Bankruptcy Petition Matters.

6.

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 consolidated proceeding.

Domestic Relations Matter

OSB Case No. 16-122

Facts

7.

In 2005, Faulhaber represented co-petitioners Wife (“Wife”) and Husband (“Husband”) to complete Husband’s step-parent adoption of Wife’s minor daughter. After the
judgment of adoption was entered in October 2005, Faulhaber’s representation of Wife and Husband was concluded.

8. In 2013, Faulhaber represented Husband in a marital dissolution proceeding (“dissolution proceeding”) against Wife, in which custody of the parties’ daughter and the fitness of both parties were hotly contested issues.

9. Faulhaber’s original representation of Wife and Husband in 2005 involved both Wife’s and Husband’s interests with respect to parenting of their daughter. Faulhaber’s representation of Husband in the parties’ 2013 divorce and custody dispute also involved both Wife’s and Husband’s interests with respect to parenting of their daughter.

10. Faulhaber reports that he had no independent recollection of previously handling the adoption matter for Wife and Husband. Additionally, Faulhaber reports that he did not find a reference to either Wife or Husband in his conflict system.

Violation

11. Faulhaber admits that, by representing Husband in the dissolution proceeding, he engaged in a former client matter-specific conflict of interest in violation of RPC 1.9(a).

Bankruptcy Petition Matter

OSB Case No. 16-138

12. Faulhaber was retained by J.A. (“J.A.”) in September 2014 for a Chapter 7 bankruptcy petition. J.A. paid Faulhaber a $900 advance flat fee subject to a written fee agreement that:

- Did not designate the payment as earned-upon-receipt;
- Did not disclose that the funds would not be deposited into Faulhaber’s trust account; and
- Did not explain that J.A. would be able to discharge Faulhaber at any time, in which event she might be entitled to a refund of all or part of the fee if the services for which the fee had been paid had not been completed.
13.

Faulhaber did not deposit J.A.’s $900 payment into his trust account. Instead, he treated it as earned-on-receipt and placed it directly into his business account.

Violations

14.

Faulhaber admits that by collecting a flat fee pursuant to an agreement that did not comply with RPC 1.5(c)(3), he violated the provisions of that rule. Faulhaber further admits that in failing to have an agreement in compliance with RPC 1.5(c)(3), he was required to deposit the client’s funds into trust and leave them there until earned. Accordingly, his failure to do so violated RPC 1.15-1(c).

Sanction

15.

Faulhaber 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 ("Standards"). The Standards require that Faulhaber’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. Faulhaber violated his duties to his former client to preserve client funds and to avoid conflicts of interest. Standards §§ 4.1, 4.3. The Standards provide that the most important duties a lawyer owes are those owed to clients. Standards at 5. Faulhaber also violated his duty to the profession when he failed to use the required form of written fee agreement and treated the client’s payment as earned upon receipt. 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 at 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.

Faulhaber’s conduct was arguably knowing, in that he engaged in a clear conflict of interest when he represented Husband against Wife in a dispute that involved the same parental rights at issue in the prior representation of both Husband and Wife. However, it is also arguable that Faulhaber acted negligently, in that he reports that his conflict screening system failed and therefore he failed to heed the risk that his representation of his current client against his former client constituted a former client conflict.
Faulhaber was negligent in preparing and utilizing a fee agreement with J.A. that failed to comport with the requirements of RPC 1.5(c)(3). Similarly, Faulhaber was negligent in treating J.A.’s funds as earned on receipt.

c. **Injury.** Injury can either be actual or potential under the *Standards.* In re *Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Faulhaber’s subsequent efforts, on behalf of Husband, to remove the daughter from Wife’s custody and restrict her parenting time damaged Wife’s parental interests in connection with the preceding adoption proceeding. Faulhaber’s fee-agreement and trust-account violations as it related to J.A.’s funds caused potential injury to the client by failing to ensure that her funds were readily available for her legal matter.

d. **Aggravating Circumstances.** Aggravating circumstances include:

1. **Prior disciplinary offenses.** *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 1993, Faulhaber was suspended for 120 days (60-days stayed, pending a 1-year probation) for violations of DR 2-110(B)(2) (*current* RPC 1.16(a)(1)) (duty to withdraw where lawyer knows continued representation will result in violation of a Disciplinary Rule); and DR 5-101(A) (*current* RPC 1.7(a)) (personal interest conflict of interest). In re *Faulhaber*, Or S Ct No S39959 (1993) (“Faulhaber I”). The charges in *Faulhaber I* stemmed from Faulhaber’s personal feelings and resulting conduct toward one of his female personal-injury clients.

   In 2016, Faulhaber received a letter of admonition for violations of RPC 1-15-1(c) and RPC 1.5(c)(3). In re *Faulhaber*, OSB Case No. 15-51 (“Faulhaber II”). Specifically, as in the Bankruptcy Petition Matter, Faulhaber failed to use a written fee agreement and treated his client’s payment as “earned on receipt.” A letter of admonition is considered as evidence of past misconduct if the misconduct that gave rise to that letter was of the same or similar type as the misconduct at issue in the case at bar. In re *Cohen*, 330 Or 489, 500, 8 P3d 953 (2000). However, some of the conduct that led to Faulhaber’s admonition occurred within the same time period as the case at issue here. To the extent that the conduct in this case predates the imposition of the prior discipline, the prior discipline is given little weight as an aggravating factor. *Jones*, 326 Or at 200.

2. **Multiple offenses.** *Standards* § 9.22(d). Faulhaber’s conduct resulted in violations in two different matters.
3. **Vulnerable victim. Standards** § 9.22(h). Wife was unrepresented in the Domestic Relations Matter.

4. **Substantial experience in the practice of law. Standards** § 9.22(i). Faulhaber was admitted to practice law in 1971.

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

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

2. **Full and free disclosure to disciplinary board and a cooperative attitude toward proceedings. Standards** § 9.32(e).

3. **Remoteness of his prior offense. Standards** § 9.32(m). The conduct at issue in Faulhaber I was more than 20 years old at the time of Faulhaber’s actions in these matters.

   16.

Under the *ABA Standards*, and without considering aggravating or mitigating factors, 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. Additionally, 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. Here, the mitigating factors temper the aggravating factors. On the balance, however, a suspension is still warranted under the *Standards* for Faulhaber’s collective conduct for both matters.

17.

Oregon case law also supports the imposition of a suspension in this matter. The court has held that a finding that a lawyer has engaged in a conflict of interest, standing alone, can justify a 30-day suspension. See *In re Campbell*, 345 Or 670, 689, 202 P 3d 871 (2009); *In re Knappenberger*, 338 Or 341, 361, 108 P 3d 1161 (2005) (court ordinarily suspends lawyers who engage in conflicts); *In re Hockett*, 303 Or 150, 164, 734 P 2d 877 (1987) (30-day suspension appropriate for single violation of former-client-conflict rule). Suspensions are also imposed when an attorney fails to use a written fee agreement, but treats their client’s funds as earned on receipt. See also *In re Ireland*, 26 DB Rptr 47 (2012) (30-day suspension appropriate when attorney violated RPC 1.15-1(a) and RPC 1.15-1(c) in failing to deposit client funds in trust upon receipt).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that Faulhaber shall be suspended for 30 days for his violations of RPC 1.5(c)(3), RPC 1.9(a), and RPC 1.15-1(c), the sanction to be effective 10 days after approval by the Disciplinary Board, or April 1, 2017, whichever is later.
19.

Faulhaber 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, Faulhaber has arranged for Bruce W. Newton (OSB No. 803254), an active member of the Bar, to either take possession of or have ongoing access to Faulhaber’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Faulhaber represents that Bruce W. Newton has agreed to accept this responsibility.

20.

Faulhaber 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. Faulhaber 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 law has been reinstated.

21.

Faulhaber 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. This requirement is in addition to any other provision of this agreement that requires Faulhaber to attend or obtain continuing legal education (CLE) credit hours.

22.

Faulhaber 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 Faulhaber is admitted: none

23.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Bar and to approval by the SPRB. If approved by the SPRB, the parties agree that the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.
EXECUTED this 10th day of March, 2017.

/s/ Dwight L. Faulhaber
Dwight L. Faulhaber, OSB No. 710584

APPROVED AS TO FORM AND CONTENT:

EXECUTED this 16th day of March, 2017.

/s/ John Fisher
John Fisher, OSB No. 771750

EXECUTED this 20th day of March, 2017.

OREGON STATE BAR

By: /s/ Nik T. Chourey
Nik T. Chourey, OSB No. 060478
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:  

Complaint as to the Conduct of  

JONATHAN G. BASHAM,  

Accused.  

Counsel for the Bar:  Amber Bevacqua-Lynott  
Nik T. Chourey  

Counsel for the Accused:  None  

Disciplinary Board:  Jennifer F. Kimble, Chairperson  
Craig A. Crispin  
Carrie Bebout, Public Member  

Disposition:  Violation of RPC 1.6(a), RPC 1.9(a), and RPC 1.9(c).  
Trial Panel Opinion. 1-year suspension.  

Effective Date of Opinion:  April 25, 2017  

DECISION OF THE TRIAL PANEL

This matter came on for trial on December 5, 6, and 7, 2016. The Trial Panel consisted of the Trial Panel Chair, Jennifer F. Kimble (“Chair”), Craig A. Crispin, Esq., and public member Carrie Bebout. Amber Bevacqua-Lynott, Assistant Disciplinary Counsel and Nik T. Chourey, Assistant Disciplinary Counsel represented the Oregon State Bar (“Bar”), and the Accused, Jonathan G. Basham (“Accused”), appeared pro se.

Procedural History

This matter is before this Trial Panel based on a Formal Complaint filed and served by the Bar on March 4, 2016. The Accused filed and served his Response to the Formal Complaint on April 18, 2016. On June 6, 2016, the Bar took the Accused’s deposition.

On September 22, 2016, the Accused filed his Requests for Admission, to which the Bar responded on October 17, 2016. On October 28, 2016, the Accused filed a Motion to Determine the Sufficiency of the Bar’s Response to the Requests for Admission, and the Bar responded to that Motion on November 7, 2016. On November 19, 2016, the Trial Panel Chair advised the parties that no ruling would be made with regard to the apparent dispute regarding
Requests for Admission, as the only permissible pleadings, pursuant to Rules 4.4 and 4.8, are the Formal Complaint and Answer, and a Trial Brief. Both parties submitted a Trial Memorandum. At the conclusion of the trial, due to the lateness of the hour, each side was given two weeks to submit a written Closing Argument, which both sides did.

**OPINION**

The Accused was admitted to practice law in Oregon in 1990, and maintained his office in Deschutes County, Oregon.

The Bar submitted approximately 71 documents as exhibits. These exhibits included copies of correspondence between the Accused and the Bar, legal documents regarding various litigations involving the Accused and the Complainant, and the deposition transcript of the Accused’s deposition by the Bar. The Accused submitted approximately 77 documents as exhibits. Those exhibits, along with the in-person testimony of witnesses appearing at the Trial, establish the facts set forth below.

The Accused denied each of the Bar’s allegations which claimed violations of any Disciplinary Rules.

In approximately 1998, the Accused began representation of Todd A. Goodew (“Goodew”) and his related companies, including Goodew’s company, RTT Corporation (“RTT”), which manufactured food products, including various sauces. In November of 2008, during Basham’s representation of Goodew and RTT (“Goodew/RTT”), the Accused’s brother-in-law, Dr. Adam Angeles (“Angeles”), purchased $200,000 in common shares of RTT stock.

From approximately 2007 to 2009, the Accused represented Goodew/RTT in litigation against a supplier of RTT’s ingredients, Brenntag Pacific (“Brenntag litigation”). During and because of that litigation, the Accused obtained a list of certain of Goodew/RTT’s sauce recipes and their ingredients (“secret recipes”). The Accused was aware that the secrecy of the sauce recipes was vital to Goodew/RTT’s business interests.

The Accused provided a significant level of legal services to Goodew/RTT, to the extent that Goodew/RTT became the primary source of the Accused’s income.

During the Brenntag litigation, the attorney-client relationship between the Accused and Goodew/RTT deteriorated, and in November of 2009, the Accused resigned from his representation of Goodew/RTT by filing a Motion to Withdraw as Counsel with the Court. In support of his Motion to Withdraw, the Accused’s sworn Declaration included the following representations to the Court:

a) “The relationship between me and RTT Corporation has deteriorated to such an extent that I am no longer able to represent RTT Corporation effectively in this matter.”
b) “Over the last few months, the tension between me and RTT Corporation has deteriorated to such an extent that RTT Corporation no longer accepts my legal opinions, listens to my advice, or cooperates with me to prosecute this case. Furthermore, despite its ability to do so, RTT Corporation is not paying its significant outstanding legal bills owed to me.”

c) “RTT Corporation has supplemental discovery that is due to Defendant Brenntag Pacific, Inc. However, the deterioration of the relationship between me and RTT Corporation has prevented a timely follow-through with that production. That deterioration in relationship, if left to continue, will harm RTT Corporation.”

The Accused also resigned from other on-going litigation and cases in which he had appeared on behalf of Goodew/RTT, citing similar reasons. The Accused terminated his representation of Goodew and his companies in all other matters in approximately November of 2009. In the Brenntag litigation, opposing counsel cited the Accused’s described above in support of a motion to compel discovery.

The Accused then brought an action against RTT for unpaid attorney fees. The Accused and RTT settled this fee dispute on March 30, 2010, and executed a mutual release of all claims. Goodew was not individually a party to this litigation.

On April 15, 2010, Goodew made a complaint about the Accused to the Bar regarding the information disclosed by the Accused in his Declaration supporting his motion to withdraw from representation of Goodew/RTT. On November 19, 2010, the Bar sent a letter to Goodew, indicating it was declining to pursue his complaint against the Accused, and explaining that RPC 1.6(b) contains exceptions to the general rule relating to the preservation of client confidences or secrets, including disclosure necessary to establish a claim on behalf of the lawyer. The Bar went on to explain its reasons for not prosecuting the Accused for this alleged violation, stating:

“First, the email exchange between you and Mr. Basham between November 12 and November 16, 2009 is sufficient to establish that you gave informed consent to his filing a motion to withdraw that disclosed he was having difficulty getting your cooperation, the communication between you was hostile, you would not accept his advice, and you were not paying. This email communication establishes that he told you he would have to state reasons for withdrawing sufficient to comply with RPC 1.16(b). He advised that this would not be helpful to you and suggested an alternative to this procedure. You elected to have him file motions to withdraw, nonetheless. Because of this very strong evidence that you consented to the disclosures Mr. Basham made, we would be unable to establish a necessary element of RPC 1.6(a), and therefore have no probable cause to believe that Mr. Basham violated this rule.”
Mr. Basham’s conduct also falls within an exception to RPC 1.6(a). Because the courts to which Mr. Basham applied for permission to withdraw required him to establish cause to do so under RPC 1.16(b), the disclosures in his motions were reasonably necessary to establish a claim on his behalf in a controversy between you and him regarding his continued representation. That Mr. Basham’s conduct falls within an exception to RPC 1.6(a) is another reason that the Bar has no probable cause to believe he violated RPC 1.6.”

For a number of years after his withdrawal from representation, Goodew made several demands for the Accused to return all of Goodew/RTT’s client files. Although the Accused returned some materials to Goodew, he failed to provide all of Goodew/RTT’s files. In particular, the Accused failed to return an electronic file containing Goodew’s correspondence to the Accused which included the secret recipes.

In 2012, RTT went out of business, and Angeles therefore lost his $200,000 investment in RTT. Goodew had not personally guaranteed Angeles’s investment in RTT and did not assume personal liability for Angeles’s loss.

In 2013, Goodew and his wife (the “Goodews”) jointly filed for personal bankruptcy. Based on the March 30, 2010, mutual release of all claims between Goodew and the Accused, the Goodews did not personally owe the Accused any money. Evidence at trial was that both the Accused and Angeles were aware of the Goodews’ personal bankruptcy filing, but neither person filed a creditor’s claim or proof of claim. The Goodews’ bankruptcy debts totaled approximately $11 million. The assets of the Goodews’ personal bankruptcy estate included their trademarks and the current variations of the secret recipes (“evolved secret recipes”). On June 28, 2013, the Goodews’ personal debts were discharged by the bankruptcy court.

On September 6, 2013, on behalf of himself and Angeles, the Accused offered to purchase the evolved secret recipes from the bankruptcy trustee, Michael Batlan (“Trustee”), for $3,500. Although the Accused and Angeles had no prior experience with the production or marketing of sauces, the Accused and Angeles claimed that they intended to manufacture and sell the sauces. The Accused represented to the Trustee that he had prior knowledge of the secret recipes, and the Accused requested that the Trustee disclose to him the full content of the actual ingredients of the evolved secret recipes before he and Angeles would complete their purchase of the evolved secret recipes. In response, the Trustee required the Accused and Angeles to execute a nondisclosure agreement before he would disclose the evolved secret recipes to them. The Accused and Angeles executed the nondisclosure agreement on September 10, 2013, and were provided with a copy of the evolved secret recipes by the Trustee.

The Accused compared the evolved secret recipes to the secret recipes that he had retained from his prior representation of Goodew/RTT, notwithstanding Goodew’s demands for the return of all records. The Accused determined that there were variations between the recipes he had retained from his prior representation of Goodew/RTT and the evolved secret
recipes that the Trustee had shared with him. Based on this difference between the two sets of recipes, including variations on ingredients and the complete absence of some of the original recipes from the set of evolved secret recipes, the Accused concluded that the Goodews had committed fraud in their bankruptcy, and, on September 20, 2013, reported this to the Trustee. In spite of the Accused’s information, the Trustee did not reopen the Goodews’ bankruptcy or seek a revocation of their discharge in bankruptcy.

On May 8, 2014, the Accused filed a complaint to have the Goodews’ bankruptcy discharge revoked (“Adversary Action”), claiming that the Goodews had fraudulently concealed property from the Trustee. The Accused’s complaint included allegations that the evolved secret recipes provided to him by the Trustee were not complete or accurate renditions of the correct recipes held by Goodew, that Goodew had falsely represented and swore to the Trustee that some of the recipes had been abandoned prior to the bankruptcy proceeding, that some of the recipes had changed since the time of the Accused’s original possession of them during his prior representation of Goodew, and that Goodew did not own or possess other particular recipes sought by the Accused. The Accused also alleged that Goodew had formed a new sauce company on August 20, 2013, in “anticipation of keeping both the disclosed and the undisclosed recipes to begin once again making sauces and seasonings.” Additionally, the Accused alleged that Goodew had withheld a recipe that was a “major ingredient for several of the recipes he produced” to the Trustee. All of the information contained in the Accused’s complaint to the Trustee were dependent in whole or in part on information that the Accused had learned during the course of his representation of Goodew/RTT.

11 USC § 727(d) and (e) provide that adversary actions in a bankruptcy case may only be filed by creditors or the bankruptcy trustee. In order to have standing to file an adversarial action to revoke discharge, a creditor must have had a claim against the debtor that arose at or before the Order for Relief concerning the debtor. 11 USC § 101 (10)(A). The Accused was not a creditor of the Goodews and therefore lacked standing to file and prosecute his Adversary Action against the Goodews.

The Goodews hired attorney Martin Hansen to defend against the Accused’s Adversary Action. In response to an assertion by Hansen that the Accused had no standing, the Accused filed an unopposed Motion to Amend Complaint to join Angeles as a plaintiff. The Accused asserted that Angeles was a proper plaintiff by claiming that Angeles was a creditor of the Goodews. The Accused briefly represented Angeles in this claim, and then attorney Milly Whatley assumed representation of Angeles. The Motion to Amend alleged that the Accused was a creditor due to pre-bankruptcy petition unspecified “defamatory statements” allegedly made at some time by Goodew to “several individuals.” Although the timing of these allegedly defamatory statements was not specified by the Accused during said litigation, in response to an inquiry from the Bar during the within disciplinary proceeding, the Accused claimed that these allegedly defamatory statements occurred in November of 2009. In Oregon, the Statute of Limitations for a claim of defamation is generally one year from the date of the statement.
or publication. ORS 12.120(2). Prior to this allegation of defamation asserted in the Motion to Amend Complaint in the Adversary Action, the Accused had never taken any action in any arena to address the alleged defamatory statements.

The Accused’s claim of defamation in the Adversary Proceeding was time barred. The Accused argues that the claim was not barred because he did not discover the allegedly defamatory statements until less than a year before he filed his adversary proceeding. The Panel concludes it is not necessary to its disposition to resolve that factual issue. See Gaston v. Parsons, 318 Or 247, 256, 864 P2d 1319 (1994) (whether a plaintiff knew or should have known each element of the tort is a question of fact).

During the Adversary Action, the Accused objected to Goodew’s discovery requests for the Accused’s correspondence with Goodew in the Brenntag litigation, notwithstanding that the Accused had previously disclosed the content of these communications to the Trustee and used the content of these communications as the basis of the Adversary Action. The Accused asserted Goodew/RTT’s attorney-client privilege as a basis to refuse to produce this correspondence, and Goodew was forced to file a motion to compel discovery of his own communications with his former attorney made during the course of that representation.

In January of 2014, Goodew made a second complaint to the Bar regarding the Accused’s conduct, this time raising concerns about the Accused’s use and disclosure of the secret recipes, his representation of Angeles in the Adversary Proceeding, and the frivolous nature of the Adversary Proceeding.

In approximately September of 2014, the Accused offered to dismiss the Adversary Action and allow the Goodews’ bankruptcy discharge to remain undisturbed, if Goodew paid the Accused and Angeles $15,000. This offer was declined by the Goodews. The parties eventually agreed to dismissal of the Adversary Action without costs or fees to any party, and the Order dismissing the case was entered by the bankruptcy court on December 3, 2014.

Credibility of Witnesses

The Bar has requested that the Panel make a finding as to the credibility of each witness, and identify the basis for any credibility assessments. The Panel finds the credibility of the witnesses as follows:

**JUDY SNYDER, expert witness in General Civil Litigation for the Bar.** Ms. Snyder was a credible witness and did not reflect any bias towards either side in her straightforward testimony. Ms. Snyder demonstrated no resistance to the Accused questions. Nonetheless, Ms. Snyder’s testimony was not particularly helpful and did not inform the Panel’s conclusions.

**DAN STEINBERG, expert witness in Bankruptcy Litigation for the Bar.** Mr. Steinberg was extremely credible in demeanor. He clearly had an opinion with regard to the Accused’s actions in this case, but did not appear to overly advocate for the Bar’s position. He displayed no resistance to the Accused’s questions. His ease of answering the questions and
knowledge of the bankruptcy code was impressive. The Panel’s opinions and conclusions were informed materially by Mr. Steinberg’s explanation of the Bankruptcy Code.

**MARTIN HANSON, attorney representing Goodew in Adversarial Proceeding in the Bankruptcy case.** Mr. Hanson was somewhat resistant on cross-examination by the Accused and mildly adversarial in demeanor. Although the Panel does not discredit his testimony, we did not give it great weight because (1) We found his demeanor to be less than fully forthcoming; and (2) much of his testimony was judgmental and inadmissible speculation.

**MARY COOPER, Disciplinary Counsel for the Oregon State Bar.** Ms. Cooper had a highly credible demeanor and the Panel gave great weight to her testimony.

**ALITA GORMAN, Attorney Representing Brenntag in Litigation.** Ms. Gorman provided background information, including that she used the Accused’s Declaration in the Motion to Withdraw in an effort to seek sanctions against Goodew/RTT. This witness appeared credible.

**DONNA SMITH, Former Secretary to the Accused.** Ms. Smith’s demeanor was particularly credible, and she demonstrated no apparent adverse views of the Accused. This witness was very credible, but her testimony was not particularly relevant to the issues in the proceedings.

**TODD GOODEW, Complainant.** The Panel had mixed conclusions regarding Mr. Goodew’s credibility, based on his demeanor. He was fidgeting and hesitant initially. At one point, when the Panel considered taking a break for the lunch hour, Mr. Goodew became indignant that he would be made to wait to complete his testimony. Later, he explained that he was ill, and, as testimony continued, his comfort level improved. Toward the end of the Bar’s questioning of Mr. Goodew, his demeanor became credible. However, during cross-examination, Mr. Goodew made very little eye contact with the Accused and claimed a lack of understanding, which the Panel viewed as resistant and unlikely. Further, Mr. Goodew went back and forth on some of his answers, with conflicting responses. The Panel found his multiple “I do not recall” responses not to be credible. Based on his demeanor and interest in the matter, the Panel credits his testimony with serious caution and does not rely on it for the basis of its conclusions.

**MICHAEL BATLAN, Bankruptcy Trustee.** Mr. Batlan’s testimony was highly credible, informative, and he did not appear to have any sort of bias towards either side in the matter. The Panel gave great weight to his testimony.

**TODD TRIERWEILER, Bankruptcy Attorney expert for the Accused.** Mr. Trierweiler testified by telephone. His testimony was credible to the extent that a person could demonstrate a demeanor by telephone.
DAVID HERON, Former Employee of Goodew/RTT. Mr. Heron appeared involuntarily. His testimony was severely limited, but the Panel had no reason to doubt his credibility based on demeanor.

MILLY WHATLEY, Attorney Representing Angeles in Adversarial Proceeding: Ms. Whatley testified that she took over representing Angeles in the Bankruptcy Adversarial Proceeding shortly after the Accused indicated to parties that he would be representing Angeles. Ms. Whatley is an expert in Bankruptcy proceedings, and the Panel found her testimony to be forthright and highly credible. It did not appear to the Panel that Ms. Whatley was aware of the extent of the conduct of the Accused.

SCOTT ANDREAS, Former Employee of Goodew/RTT. Mr. Andreas was called as a witness by the Accused to testify regarding the veracity of his purported signature on a document. The Panel did not find Mr. Andreas to be credible by demeanor. The Panel further found his comments about his signature to lack credibility based on his carefully worded answers regarding his signature. Although the Panel did not find Mr. Andreas’ testimony credible, the Panel also did not find anything highly relevant in his testimony.

MR. BASHAM, the Accused. The Panel found Mr. Basham credible in demeanor, though somewhat evasive in some responses. Of note was that Mr. Basham did not seem to dispute many of the factual allegations, only whether they constituted violations of the Rules of Professional Conduct. Mr. Basham repeatedly characterized his relationship with his former client Goodew/RTT to be a war.

Other witnesses who may have testified did not play a significant role in the Panel’s decision, and the Panel did not have an opinion as to their credibility.

Violations Found

By Clear and Convincing evidence, the Bar has proven:

Violation of RPC 1.6(a) - Confidentiality of Information

The Accused violated RPC 1.6(a) of the Oregon Rules of Professional Conduct by his unauthorized disclosure and unnecessary use of Goodew/RTT’s confidential information by using, comparing, and transmitting information about Goodew/RTT’s secret recipes in relation to initially attempting to purchase the evolved secret recipes from the bankruptcy Trustee, and again in the course of the bankruptcy Adversarial Action.

The Accused argues that he had an absolute duty to at least notify the trustee about the recipes he had discovered in his archived email. See 11 USC § 542(a). The Panel agrees with the Accused’s contention that he had an obligation under the statute, but concludes that he exceeded the scope of that obligation and violated RPC 1.6(a) when he revealed confidential information to Trustee Batlan relating to the Accused’s representation of Goodew without informed consent or within the confines of any exception. The Bar’s contention that the Accused “pointed out alleged inaccuracies and discrepancies and argued that they were
violation of rpc 1.9(a) - duties to former clients (representation of others in related matter)

the accused violated rpc 1.9(a) when he represented angeles, albeit briefly, in the adversarial action against goodew, as the subject of the action was the perceived discrepancy between the secret recipes and the evolved secret recipes, and the accused obtained the information regarding the secret recipes through the course of his representation of goodew/rtt, and the accused failed to secure goodew/rtt’s written consent to the representation of angeles. the accused’s prior representation of goodew/rtt, in business, financial, corporate, and recipes litigation, was all “substantially related” to his subsequent representation of angeles because there was a substantial risk that confidential factual information obtained in the prior information of goodew/rtt would materially advance angeles’s position in the subsequent matter.

violation of rpc 1.9(c) - duties to former clients (use of information to the disadvantage of former client)

the accused violated rpc 1.9(c) when he revealed information regarding the secret recipes to the trustee in the course of attempting to purchase the evolved secret recipes, and for the purpose of accusing goodew of fraud in the bankruptcy proceeding.

violations not found

the bar has failed to prove by clear and convincing evidence violations of rpc 1.6(a) as it pertains to the accused’s disclosure of confidential information in his declaration for withdrawal from representation, rpc 3.1, and rpcs 8.4(a)(2) and 8.4(a)(4).

violation of rpc 1.6(a) - confidentiality of information

the bar alleges accused violated rpc 1.6(a) of the oregon rules of professional conduct by his unauthorized disclosure and unnecessary use of goodew/rtt’s confidential information in his withdrawal from representation of rtt in the brenntag litigation. however, in a letter to goodew on november 19, 2010, the bar declined to pursue this very same allegation, finding that the accused had acted within the bounds of the rpc 1.16(b).

violation of rpc 3.1 - meritorious claims and contentions

the bar alleges accused violated rpc 3.1 of the oregon rules of professional conduct by asserting a frivolous legal position on behalf of himself and/or angeles in the bankruptcy adversarial action, in that neither the accused nor angeles were a bona fide creditor of the goodews, and therefore lacked standing to initiate such a proceeding. the bar has failed to prove that the accused had a complete lack of basis in fact and law to file the
Adversary Proceeding. The evidence demonstrated that the defamation assertion was negligently brought, but there is insufficient evidence that there was no basis in fact or law at the time it was filed. The limitations period begins to run when the plaintiff knows, or in the exercise of reasonable care should have known, facts that would make a reasonable person aware of a substantial possibility that he or she had suffered harm that was caused by tortuous conduct. See ORS 12.120(2); Gaston v. Parsons, 318 Or at 255.

Violation of RPC 8.4(a)(2) - Commission of a Criminal Act that Reflects Adversely on a Lawyer

The Bar argues that the Accused violated RPC 8.4(a)(2) when he demanded that Goodew pay him and Angeles $15,000 to be “allowed” to keep his discharged bankruptcy, and that his conduct rises to the level of the crime of Theft by Extortion. RPC 8.4(a)(2) prohibits attorneys from committing crimes that reflect adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects. Such a violation is a breach of a lawyer’s fiduciary duty of honesty to his or her clients. However, no criminal proceedings have been initiated against the Accused regarding any aspect of his representation of Goodew, particularly regarding the attempt to settle the Adversary Proceeding for $15,000. The Trial Panel concludes that the Bar has failed to prove by clear and convincing evidence that the Accused’s settlement efforts, though questionable, contained any misrepresentations or were outside the scope of permissible settlement efforts.

Violation of RPC 8.4(a)(4) - Engage in Conduct that is Prejudicial to the Administration of Justice

The Bar contends that the Accused’s baseless interjection of himself into the Goodew’s bankruptcy was a thinly disguised tool to help him recoup attorney fees for which he had previously signed a settlement agreement years before. The Bar argues that the Accused caused a staggering amount of unnecessary litigation in an essentially no asset personal bankruptcy, and deliberately created and pursued a conflict with his former client by asserting unwarranted claims. The Bar puts forth that the Accused caused substantial harm to both the procedural functioning of the bankruptcy court and the substantive interests of the Goodews by serving a host of harassing and unsupported subpoenas, causing the unnecessary depositions of the Goodews, himself and Angeles, and basically abused the bankruptcy process to be vindictive towards Goodew. Although the Accused’s involvement in the bankruptcy proceeding did violate other areas of the RPCs, the Bar has failed to prove conduct rising to the level of being prejudicial to the administration of justice.

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. As noted in the Standards, 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 properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.” *Standards* § 1.1. The Trial Panel is required to consider four factors when determining the appropriate sanction for violations of the Rules of Professional Conduct: 1) the nature of the duty violated; 2) the mental state of the accused; 3) the actual or potential injury resulting from the conduct; and 4) the existence of aggravating and mitigating circumstances. *Standards* § 3.0. See *In re Biggs*, 318 Or 281, 295, 864 P2d 1310 (1994); *In re Spies*, 316 Or 530, 541, 852 P2d 831 (1993). The Panel’s consideration of the factors is also guided by Oregon case law that has interpreted and supplemented the *Standards*. “A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgment that the lawyer has engaged in professional misconduct.” *Standards* § 2.1.

The final criteria before imposing sanctions are the existence of any aggravating or mitigating circumstances. In the instant action, The Trial Panel finds several aggravating factors to be present:

A) **Prior history of discipline.** *Standards* § 9.22(a). The Accused has a record of prior disciplinary offenses:

In 2000, the Accused was admonished for a multiple-client conflict of interest (DR 105(E), *current* RPC 1.7(a)).

B) **Dishonest or selfish motive.** *Standards* § 9.22(b). The Accused acted vindictively towards Goodew throughout this matter in retaliation for the breakdown of their attorney-client relationship, which had become the primary source of the Accused’s income, and the Accused’s ensuing perception that Goodew had defamed him. The Accused’s motive was to punish Goodew for the dissolution of their professional relationship.

C) **A pattern of misconduct.** *Standards* § 9.22(c). The Accused’s misconduct began with his withdrawal from representation in the Brenntag litigation, and may have been emboldened by the Bar’s failure to prosecute him for the content of his Declaration supporting his motion to withdraw. The Accused thereafter monitored Goodew’s actions sufficiently to become aware of the bankruptcy proceeding and interject himself in the proceeding, first by attempting to accuse Goodew of hiding assets (secret recipes) and, then by inserting himself and Angeles into the bankruptcy with the Adversary Proceeding.

D) **Multiple offense.** *Standards* § 9.22(d). There are both multiple rules implicated by the Accused’s conduct, and multiple instances of misconduct. The Accused repeatedly violated a number of rules throughout his prosecution of his former client in the bankruptcy proceeding.

E) **Refusal to acknowledge wrongful nature of conduct.** *Standards* § 9.22(g). Throughout this proceeding, the Accused did not dispute many of the factual
assertions, only arguing that they were not ethical violations. The Accused portrays himself as the victim throughout his representation of Goodew/RTT and the ensuing bankruptcy litigation. Rather than taking the Bar’s denial of Goodew’s first complaint against him as a warning that his feud with Goodew should cease, the Accused became dauntless in his pursuit of reparation for perceived wrongs by Goodew.

F) **Substantial experience in the practice of law.** Standards § 9.22(i) The Accused has been admitted in Oregon since 1990, and has worked in bankruptcy and business matters a majority of that time.

One mitigating factor is that shortly after the Accused announced he would be representing Angeles in the Adversarial Proceeding, he abandoned that plan, and attorney Milly Whatley was retained to represent Angeles.

Sanctions in disciplinary matters are not intended to penalize the accused lawyer, but “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). This case is most closely similar to the conduct described in *In re Lackey*, 333 Or 215, 37 P3d 172 (2002), where the Bar charged attorney Lackey with twice revealing client confidences and secrets in violation of former Disciplinary Rule (“DR”) 4-101(B) and ORS 9.460(3). Lackey defended, in part, on the theory that his disclosures revealed allegedly corrupt government practices and, therefore, were exempt from the prohibitions in former DR 4-101(B) on public-policy grounds. Lackey further contended that one of the disclosures had involved information that was neither a client secret nor a confidence. The Oregon Supreme Court rejected those arguments and concluded that the accused had committed the violation of former DR 4-101(B)(1) to (3) and ORS 9.460(3) on one occasion, but concluded that the Bar had not met its burden of proving by clear and convincing evidence that the accused disclosed information that constituted client confidences or secrets on a second occasion. Accordingly, the Court suspended Lackey for one year. The case at bar is similarly as aggravated as the facts presented in Lackey, given that the Accused disclosed confidential information to the Trustee for the purpose of causing harm to his former client in the bankruptcy proceeding.

On balance, the Trial Panel finds that the Accused’s numerous aggravating factors, and paucity of mitigating factors, justify the presumptive discipline to be imposed.

The Bar has requested that the Accused be suspended from the practice of law for a period of at least twenty four (24) months and be required to seek formal reinstatement should he elect to return to the practice of law in Oregon. The Accused presented scant evidence to warrant mitigation of any potential penalty, and was in agreement with most of the factual assertions made by the Bar, only denying that his actions were a violation of the RPCs or that his claim in the Goodews’ bankruptcy proceeding was frivolous. However, the Bar failed to
prove by Clear and Convincing Evidence four of the Rules it alleged the Accused to have violated. Having considered the authority cited by the Bar, and because of his repeated pattern of conduct, raising concern that the Accused would engage in similar conduct in the future, the Trial Panel believes that a suspension from the practice of law for a period of one (1) year is warranted.

**ORDER**

For the foregoing reasons, and having found by clear and convincing evidence that the Accused violated RPC 1.6(a), RPC 1.9(a), and RPC 1.9(c),

IT IS HEREBY ORDERED that the Accused, Jonathan G. Basham, be suspended from the practice of law in the State of Oregon for a period of one year.


/s/ Jennifer F. Kimble
Jennifer F. Kimble (OSB # 913375)
Trial Panel Chairperson

/s/ Craig A. Crispin
Craig A. Crispin (OSB # 824852)
Trial Panel Member

/s/ Carrie Bebout
Carrie Bebout
Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
)
Complaint as to the Conduct of ) Case No. 16-92
)
J. KEVIN HUNT, )
)
Accused. )

Counsel for the Bar: Nik T. Chourey
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.15-1(d).
Stipulation for Discipline. 90-day suspension.
Effective Date of Order: April 27, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Hunt is suspended for 90 days, effective upon approval by the Disciplinary Board, for violation of RPC 1.3; RPC 1.4(a); RPC 1.5(c)(3); RPC 1.15-1(a); RPC 1.15-1(c) and RPC 1.15-1(d).

DATED this 27th day of April, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Andrew Cole
Andrew Cole, Region 7
Disciplinary Board Chairperson
In re Hunt, 31 DB Rptr 73 (2017)

STIPULATION FOR DISCIPLINE

J. Kevin Hunt, attorney at law (“Hunt”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Hunt was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1984, and has been a member of the Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3.

Hunt 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 September 9, 2016, a Formal Complaint was filed against Hunt pursuant to the authorization of the State Professional Responsibility Board (“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 promptly comply with reasonable requests for information]; RPC 1.5(c)(3) [collection of a non-refundable fee without adequate disclosures in a written fee agreement]; RPC 1.15-1(a) [failure to safeguard and keep separate client property]; RPC 1.15-1(c) [failure to deposit advance fees and costs into trust]; and RPC 1.15-1(d) [failure to promptly deliver funds client is entitled to receive]. 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 December 2014, Hunt was retained by a client (“M.D.”) to file pleadings necessary for expungement of a juvenile adjudication and an adult criminal conviction. Hunt agreed to complete M.D.’s legal matter in exchange for a flat fee of $500. In representing M.D., Hunt believes that he utilized a written fee agreement for the representation, but he has been unable to locate a copy of such an agreement.
6. M.D. sent Hunt a $500 check for the flat fee (“Fee Check 1”) and an additional $80 check, payable to Oregon State Police, for a fingerprint search (“Costs Check 1”). In the absence of a written fee agreement indicating that Hunt’s fee was earned on receipt and complying with the other requirements of RPC 1.5(c)(3), Fee Check 1 remained client funds. Although Hunt acknowledged receipt of both Fee Check 1 and Costs Check 1 in early January 2015, he did not deposit Fee Check 1 into his lawyer trust account or take other steps to ensure that the client’s funds represented by both checks were properly safeguarded until earned or utilized for their designated purpose.

7. By the end of January 2015, M.D. completed and returned to Hunt certain paperwork. There is a dispute as to whether M.D. provided all necessary paperwork to Hunt at this time. Shortly thereafter, Hunt notified M.D. that he had misplaced Fee Check 1 and Costs Check 1 and asked M.D. to issue new ones. M.D. sent new checks to Hunt in the amount of $500 for his flat fee (“Fee Check 2”) and $80 payable to Oregon State Police for a fingerprint search (“Costs Check 2”). In the absence of a written fee agreement indicating that Hunt’s fee was earned on receipt and complying with the other requirements of RPC 1.5(c)(3), at least a portion of Fee Check 2 remained client funds. Hunt did not deposit Fee Check 2 into his lawyer trust account or take other steps to ensure that the client funds represented by both checks were properly safeguarded until earned or utilized for their designated purpose.

8. M.D. heard nothing further from Hunt until late March 2015, when Hunt informed M.D. that he would file the documents shortly. However, he did not do so. And during April, May and June of 2015, despite inquiries from M.D. for information and status updates as to her case, Hunt did not complete the documents necessary for expungement of M.D.’s juvenile and criminal records.

9. In late June 2015, Hunt advised M.D. that a new law relating to expungement would be going into effect later in the summer and that it would be favorable to M.D. to wait for the law to take effect. In accordance with Hunt’s advice, M.D. allowed Hunt additional time to allow the new law to become effective and for him to complete her expungement matter.

10. M.D. heard nothing from Hunt about her case between early July and mid-September 2015, despite requests for information. On September 19, 2015, Hunt told M.D. that new forms would need to be completed.
11. By the end of September 2015, M.D. had completed and returned to Hunt the requested papers. Hunt acknowledged receipt of these materials on October 3, 2015.

12. On December 28, 2015, Hunt disclosed to M.D. that he had misplaced her entire client file, and had not yet filed any pleadings on her behalf. M.D. terminated Hunt’s representation and demanded a refund of her payments to Hunt.

13. Hunt did not refund the unearned portion of Fee Check 2 or Costs Check 2 because he lacked the funds to do so. Hunt advised M.D. to make a claim on the Client Security Fund, which was ultimately approved.

Violations

14. Hunt admits that by failing to timely accomplish his client’s objectives, he neglected a legal matter entrusted to him, in violation of RPC 1.3. Hunt further admits that his failures to respond to M.D.’s reasonable requests for information violated RPC 1.4(a).

Hunt admits that by failing to place his client’s fees in a lawyer trust account in the absence of a locatable written fee agreement, he violated RPC 1.5(c)(3) and RPC 1.15-1(c). In misplacing M.D.’s checks and file, Hunt also admits that he failed to safeguard client property, in violation of RPC 1.15-1(a). Finally, Hunt admits that his failure to deliver funds M.D. was entitled to receive violated RPC 1.15-1(d).

Sanction

15. Hunt 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 (“Standards”). The Standards require that Hunt’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.** Hunt violated his duties to his client to preserve his client’s property and to act with reasonable diligence and promptness in representing her, including the duty to adequately communicate with her. Standards §§ 4.1, 4.4. The Standards provide that the most important duties a lawyer owes are those owed to clients. Standards at 5.

b. **Mental State.** There are three recognized mental states under the Standards. “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. In consideration of Hunt’s personal and physical problems during the material time period, Hunt generally acted negligently in this matter. His conduct was arguably knowing, to the extent that he failed to act or respond to his client following her multiple attempts to communicate with him.

Injury. An injury need not be actual, but only potential, to support the imposition of a sanction. Injury can either be actual or potential under the Standards. See In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). Hunt’s client was actually injured to the extent that she paid for services that did not benefit her. See, e.g., In re Parker, 330 Or 541, 547, 9 P3d 107 (2000). Further, the lack of communication caused actual injury in the form of client anxiety and frustration. See In re Knappenberger, 337 Or 15, 23, 90 P3d 614 (2004); In re Obert, 336 Or 640, 652, 89 P3d 1173 (2004); In re Cohen, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of the attorney neglect can constitute actual injury under the Standards); In re Schaffner, 325 Or 421, 426–27, 939 P2d 39 (1997); In re Arbuckle, 308 Or 135, 140, 775 P2d 832 (1989).

Aggravating Circumstances. Aggravating circumstances include:

1. A prior record of relevant discipline. Standards § 9.22(a). Hunt was admonished in 1993 for a violation of DR 6-101(B) (current RPC 1.3 & RPC 1.4(a)) (neglect of a legal matter, including failing to adequately communicate with a client). Specifically, Hunt was retained in early 1990 to assist a client in expunging a criminal conviction. Thereafter and until November 1992, Hunt failed to communicate with his client and failed to advance the client’s legal matter. In re Hunt, OSB Case No. 93-37, Ltr of Adm (Apr 2, 1993) (“Hunt I”). A letter of admonition is considered as evidence of past misconduct if the misconduct that gave rise to that letter was of the same or similar type as the misconduct at issue in the case at bar. In re Cohen, 330 Or at 500.

Hunt was reprimanded in 2007 for violations of RPC 1.4(a) and RPC 8.1(a)(2) (failure to respond to requests from a disciplinary authority) in connection with Hunt’s pro bono representation of a client in a potential appeal of an unemployment benefits compensation matter. Hunt did not adequately and fully communicate with his client in response to her
inquiries about her matter. When Hunt’s client complained to the Bar, Hunt was initially responsive to the Bar’s inquiries. However, Hunt did not respond to follow-up inquiries from the Bar requesting additional details. Believing that he had already provided responsive information, Hunt made no further response to the Bar, despite additional correspondence from the Bar requesting that he do so. In re Hunt, 21 DB Rptr 29 (2007) (“Hunt II”). As with this matter, Hunt II involved a failure to adequately communicate with his client.

Hunt was again reprimanded in 2011 for violations of RPC 1.4(a) and RPC 1.4(b) (failure to explain a matter to the extent necessary to enable his client to make informed decision regarding the representation). In re Hunt, 25 DB Rptr 233 (2011) (“Hunt III”). In that matter, Hunt represented a client pro bono at a hearing on a petition for modification of child custody filed by the client’s ex-husband. Thereafter, counsel for the client’s ex-husband sent drafts of the proposed judgment and a request for attorney fees to Hunt. Hunt did not provide copies of the drafts to his client or consult with his client about the content of the draft judgments or the request for attorney fees. Subsequently, the court notified Hunt that it had signed and entered the supplemental judgment against Hunt’s client for attorney fees. Hunt did not send a copy of the supplemental judgment to the client or otherwise notify her that it had been entered. Similar to Hunt II and this matter, Hunt III related to Hunt’s failure to adequately communicate information to his client.

2. Multiple offenses. Standards § 9.22(d). Hunt’s conduct involved neglect, communication issues, and a failure to properly safeguard and manage client funds.

3. Substantial experience in the practice of law. Standards § 9.22(i). Hunt has been a lawyer in Oregon since 1984.

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

1. Absence of a dishonest or selfish motive. Standards § 9.32(b).

2. Personal problems. Standards § 9.32(c). During at least some of the time relevant to his misconduct in this matter, Hunt was dealing with the disruption and collapse of his law practice related to debilitating health issues, and other serious personal challenges. Among these were difficulties he reports managing matters related to a dying parent in another state, PTSD related to police activity against him that was found
to be unwarranted, in conjunction with the interruption of his medication (see subparagraph 4, infra), significantly impaired his ability to restore order to his practice environment.


4. Physical disability. Standards § 9.32(h). Hunt suffered an interruption in his healthcare, including his access to prescription medications that led to debilitating health issues during the time period relevant to this matter, all of which caused him to suffer a disruption of his practice.

5. Remorse. Standards § 9.32(l). Hunt has expressed extreme remorse for his conduct in this matter and inability to refund his client’s payments. Hunt appreciates the seriousness of his conduct and the impact upon his client.

6. Remoteness of prior offense. Standards § 9.32(m). The conduct at issue in Hunt I was more than 20 years old at the time of Hunt’s actions in this matter.

Under the Standards, reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. Standards § 4.13. 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. The substantial aggravation created by Hunt’s prior similar discipline is tempered in large part by Hunt’s significant mitigation. Nonetheless, on balance, a suspension is still warranted under the Standards for Hunt’s conduct.

Oregon case law also supports the imposition of a suspension in this matter. See In re Knappenberger, 337 Or at 32–33 (court stated that it has generally imposed a 60-day suspension is appropriate for neglectful conduct, including failing to adequately communicate with clients). See also In re Castanza, 350 Or 293, 253 P3d 1057 (2011) (attorney suspended for 60 days where he improperly withdrew from representing two clients in a civil action, and neglected other aspects of the case); In re Snyder, 348 Or 307, 232 P3d 952 (2010) (attorney suspended for 30 days for failing to adequately communicate with his client); In re Obert, 352 Or at 262–64 (attorney suspended 6 months, in part for taking a credit-card payment from a client and depositing it directly into his business account without a written agreement allowing him to do so and before the fee was earned); In re Balocca, 342 Or 279, 151 P 3d 154 (2007) (attorney was suspended for 90 days for failing to deposit and hold client funds in trust without
a clear written agreement that payment by his client was a nonrefundable retainer earned on receipt; even though attorney believed that such an agreement existed, he could not locate it).

18.

Consistent with the Standards and Oregon case law, the parties agree that Hunt shall be suspended for 90 days for his violations of RPC 1.3; RPC 1.4(a); RPC 1.5(c)(3); RPC 1.15-1(a); RPC 1.15-1(c); and RPC 1.15-1(d), effective upon approval by the Disciplinary Board.

19.

Hunt 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, Hunt has arranged for Richard L. Wolf (12940 NW Marina Way, Slip A, Portland, OR 97231), an active member of the Bar, to either take possession of or have ongoing access to Hunt’s client files and to serve as the contact person for clients in need of the files and appearances by counsel during the term of suspension. Hunt represents that Richard L. Wolf has agreed to accept this responsibility.

20.

Hunt 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. Hunt 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 law has been reinstated.

21.

Hunt 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. This requirement is in addition to any other provision of this agreement that requires Hunt to attend or obtain continuing legal education (CLE) credit hours.

22.

Hunt represents that, in addition to Oregon, he also has been admitted to practice law in the courts listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar may be informing these courts of the final disposition of this proceeding. Other courts in which Hunt has been admitted: the Supreme Court of the United States, the United States Court of Appeals for the Ninth Circuit, and the United States District Court for the District of Oregon.
23.

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

EXECUTED this 19th day of April, 2017.

/s/ J. Kevin Hunt

J. Kevin Hunt
OSB No. 842529

EXECUTED this 24th day of April, 2017.

OREGON STATE BAR

By: /s/ Nik T. Chourey

Nik T. Chourey
OSB No. 060478
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:  )
) Case No. 16-155
Complaint as to the Conduct of )
) THOMAS P. MCELROY,
) Accused.

Counsel for the Bar: Theodore W. Reuter
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: May 1, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Thomas P. McElroy is publically reprimanded for violation of RPC 1.7(a)(2) and RPC 1.8(a).

DATED this 1 day of May, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Ronald W. Atwood
Ronald W. Atwood, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Thomas P. McElroy, attorney at law (“McElroy”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).
1. The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2. McElroy was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 20, 2001, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3. McElroy 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 22, 2016, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against McElroy for alleged violations of RPC 1.7(a)(2) [self-interest conflict of interest]; and RPC 1.8(a) [improper business transaction with a client] 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


6. In May 2013, McElroy hired Sprague as an employee in his law firm. Sprague and McElroy were on good terms and had oral discussions regarding the terms of their relationship. However, McElroy had an obligation to set out the terms of that employment in writing, to advise Sprague to seek legal counsel, and to obtain her confirmed consent in writing. McElroy did not do so.

7. In October 2012, McElroy told Sprague that he could no longer afford to pay her salary. McElroy and Sprague negotiated a new agreement, whereby Sprague would continue to work to offset her legal bill to McElroy and McElroy would settle the additional amount owed to Sprague after selling some real estate he had inherited. McElroy had an obligation to set out the new terms of employment in writing, to advise Sprague to seek legal counsel, and to obtain
her confirmed consent in writing. McElroy did not do so. These new terms of employment were also not in compliance with state and federal laws regulating employment.

**Violations**

8. McElroy admits that there was a significant risk that his representation of Sprague was impaired by his own interest in the employment contract between himself and Sprague, and that he did not advise Sprague of that risk or seek Sprague’s consent to that conflict of interest, in violation of RPC 1.7(a)(2).

9. McElroy further admits that, by negotiating employment with his current client, he entered into a business transaction with a client, without ensuring that the terms were fair and reasonable to his client and set forth in a writing in a manner that could be reasonably understood by his client. He also acknowledges that he also failed to advise his client in writing of the desirability of seeking independent counsel before agreeing to the transaction, and failed to obtain her informed consent, in violation of RPC 1.8(a).

**Sanction**

10. McElroy 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* ("Standards"). The *Standards* require that McElroy’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.** McElroy violated his duty to his client to avoid conflicts of interest. *Standards* § 4.3.

   b. **Mental State.** McElroy acted negligently with respect to his obligation to avoid conflicts of interest. “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* at 9.

   c. **Injury.** Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Here, Sprague was deprived of the protections afforded by the requirements of RPC 1.7(a)(2) and RPC 1.8(a) that McElroy did not follow in initially hiring her and in striking the agreement for her to continue working without the usual benefits of being an employee, including a regular paycheck, having withholding taxes paid, and being covered by unemployment insurance.
d. **Aggravating Circumstances.** Aggravating circumstances include:

a. **Prior disciplinary offenses.** *Standards § 9.22(a).* McElroy was previously reprimanded in 2011, for violations of RPC 1.15-1(a) & (c) [failure to deposit and maintain client funds in trust and maintain complete records regarding them]. *In re McElroy, 25 DB Rptr 224 (2011).* That conduct is dissimilar to that at issue in this matter.

b. **Vulnerability of the victim.** *Standards § 9.22(h).* As both a client and an employee of McElroy, Sprague had less ability than the usual client to speak up in defense of her own interests.

c. **Substantial experience in the practice of law.** *Standards § 9.22(i).* McElroy has been practicing law in Oregon for more than 15 years.

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

a. **Full and free disclosure and cooperation with the Disciplinary Counsel’s Office.** *Standards § 9.32(e).* McElroy promptly and fully responded to the Bar’s inquires in this matter.

b. **Remorse.** *Standards § 9.32(l).* McElroy expressed remorse for his actions as well as any unforeseen consequences of those actions.

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

12. Oregon case law also supports that a public reprimand is appropriate for a conflict of interest related to doing business with a client where there are not multiple offenses or significant prior history. *See, e.g., In re Seligson, 27 DB Rptr 314 (2013)* (attorney took security interest from client to secure attorney’s fees); *In re Ghiorso, 27 DB Rptr 110 (2013)* (attorney became co-borrower with client and either loaned or advanced same client fees).

13. Consistent with the *Standards* and Oregon case law, the parties agree that McElroy shall be publically reprimanded for violations of RPC 1.7(a)(2) and RPC 1.8(a), the sanction to be effective upon approval of the Disciplinary Board.

14. McElroy acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his
suspension. This requirement is in addition to any other provision of this agreement that requires McElroy to attend or obtain continuing legal education (CLE) credit hours.

15.

McElroy 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 McElroy is admitted: none.

16.

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

EXECUTED this 23rd day of March, 2017.

/s/ Thomas P. McElroy
Thomas P. McElroy
OSB No. 010763

EXECUTED this 27th day of March, 2017.

OREGON STATE BAR

By: /s/Theodore W. Reuter
Theodore W. Reuter
OSB No. 084529
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:

Complaint as to the Conduct of

WILLARD MERKEL,

Accused.

Counsel for the Bar: Angela W. Bennett
Counsel for the Accused: Stephen P. Rickles
Disciplinary Board: None
Disposition: Violation of RPC 1.15-1(a) and RPC 1.15-2(b).
Stipulation for Discipline. 30-day suspension, all stayed, pending 1-year probation.

Effective Date of Order: May 12, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Willard Merkel is suspended for 30 days, with all of the suspension stayed, pending Merkel’s successful completion of a one-year term of probation, effective ten days after approval by the Disciplinary Board for violation of RPC 1.15-1(a) and RPC 1.15-2(b).

DATED this 2 day of May, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Ronald W. Atwood
Ronald W. Atwood, Region 5
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

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

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

2. Merkel was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 20, 1979, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3. Merkel 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 12, 2016, a Formal Complaint was filed against Merkel pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 1.15-1(a) [failure to hold funds belonging to clients or third persons separate from lawyer’s own property]; RPC 1.15-1(d) [failure to notify a third person of receipt of funds and to promptly deliver funds a third person is entitled to receive]; RPC 1.15-2(b) [failure to deposit client funds into IOLTA account (with interest paid to Oregon Law Foundation) unless net interest can be earned for the client]; and RPC 8.4(a)(3) [conduct involving dishonesty or misrepresentation]. 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 late October 2014, Merkel settled a personal injury case on behalf of his client, the plaintiff, for $62,500. Pursuant to their contingent fee agreement, Merkel’s client was entitled to $45,000 of the settlement funds.

6. In early November 2014, defendant’s insurer sent Merkel a check (the “settlement check”) in the amount of $62,500, which represented the settlement proceeds. In mid-November 2014, Merkel deposited the settlement check into his business account—not his lawyer trust account. In late November 2014, Merkel wrote a check in the amount of $45,000.
from his business account to his client as full payment for his client’s portion of the settlement proceeds, which the client negotiated in mid-December 2014.

Violations

7.

Merkel admits that, by failing to deposit and maintain client funds separate from his own in an interest-bearing lawyer trust account, he violated RPC 1.15-1(a) and RPC 1.15-2(b).

Upon further factual inquiry, the parties agree that the charges of RPC 1.15-1(d) and RPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.

Sanction

8.

Merkel 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 (“Standards”). The Standards require that Merkel’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

a. Duty Violated. The most important ethical duties a lawyer owes are those owed to clients. Standards at 5. By failing to deposit and maintain client funds in trust, Merkel violated his duty to preserve client property. Standards § 4.12.

b. Mental State. When Merkel deposited and held client funds in his business account instead of his trust account, he acted knowingly, which is with the conscious awareness of the nature or attendant circumstances of his conduct but without the conscious objective or purpose to accomplish a particular result. Standards at 9.

c. Injury. Merkel’s conduct resulted in potential injury to his client in that the client’s funds were not protected from Merkel’s potential creditors in the intervening time period. Merkel’s conduct resulted in actual injury to the Oregon Law Foundation in that it did not receive interest on those funds for the period of time the funds were in Merkel’s business account.

d. Aggravating Circumstances. Aggravating factors include:

1. Prior discipline. Merkel was publicly reprimanded by a trial panel in 2007 for violations of RPC 4.1(a) [false statement of material fact or law to a third person] and RPC 8.4(a)(3) [conduct involving dishonesty or misrepresentation] after he asserted to opposing counsel that a statute on which opposing counsel’s client had relied had been found unconstitutional by the court of appeals, when Merkel knew that was untrue,
as he had been counsel for one of the parties in the referenced appeal. *In re Merkel*, 21 DB Rptr 211 (2007). *Standards* § 9.22(a).

2. Substantial experience in the practice of law. Merkel had practiced law in Oregon for over 30 years at the time of the misconduct at issue. *Standards* § 9.22(i).

e. **Mitigating Circumstances.** Mitigating factors include:


9.

Under the ABA *Standards*, a 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.

10.

Prior Oregon cases indicate that a reprimand to a short suspension is an appropriate sanction for an attorney’s mishandling of client property in similar circumstances. See *In re Fadeley*, 342 Or 403, 153 P3d 682 (2007) (attorney suspended for 30 days when he relied on oral agreement with clients and deposited client funds into personal checking account rather than lawyer trust account); *In re Coran*, 27 DB Rptr 170 (2013) (30-day suspension, all stayed pending a 24-month probation, when a lawyer failed to promptly return the client file in one matter and failed to deposit advance fees and costs into trust in another. The case was aggravated by prior discipline, as Coran had previously been reprimanded three times, once for improperly handling an advance fee); *In re Kleen*, 27 DB Rptr 213 (2013) (attorney publicly reprimanded after he collected advance costs to hire an expert in his client’s case but never retained an expert, and did not refund the advance for eight months after he withdrew from representation. Kleen also engaged in neglect and failed to communicate with this client. Aggravating factors included substantial experience; mitigating factors included lack of prior discipline); and *In re Smith*, 23 DB Rptr 172 (2009) (attorney publicly reprimanded after he accepted a flat fee to file for a name change and failed to deposit the fee into his lawyer trust account, even though he did not have a written fee agreement that provided that the funds were earned on receipt and nonrefundable). Merkel’s misconduct is aggravated by his prior discipline and substantial experience and mitigated by a lack of a selfish motive; as a result a reprimand would be inappropriate, and a short, stayed suspension is warranted.

11.

BR 6.2 recognizes that probation can be appropriate and permits a suspension to be stayed pending the successful completion of a probation. See also *Standards* § 2.7 (probation can be imposed alone or with a suspension and is an appropriate sanction for conduct which may be corrected). In addition to a period of suspension, a period of probation designed to
ensure the adoption and continuation of better practices will best serve the purpose of protecting clients, the public, and the legal system.

12.

Consistent with the Standards and Oregon case law, the parties agree that Merkel shall be suspended for 30 days for violations of RPC 1.15-1(a) and RPC 1.15-2(b), with all of the suspension stayed pending Merkel’s successful completion of a one-year term of probation. The sanction shall be effective ten days after this stipulation is approved, or as otherwise directed by the Disciplinary Board (“the effective date”).

13.

Probation shall commence upon the effective date, and shall continue for a period of one year, ending on the day prior to the first year anniversary of the effective date (the “period of probation”). During the period of probation Merkel shall abide by the following conditions:

(a) Merkel shall comply with all provisions of this Stipulation for Discipline, the Rules of Professional Conduct applicable to Oregon lawyers, and ORS Chapter 9.

(b) Within 7 days of the effective date, Merkel shall contact the Professional Liability Fund (PLF) and schedule an appointment on the soonest date available to consult with PLF practice management advisors in order to obtain practice management advice. Merkel shall schedule the first available appointment with the PLF and notify the Bar of the time and date of the appointment.

(c) Merkel shall attend the appointment with the PLF practice management advisor and seek advice and assistance regarding procedures for properly and ethically managing client and third party funds and his trust accounts. No later than 30 days after recommendations are made by the PLF, Merkel shall adopt and implement those recommendations.

(d) No later than 60 days after recommendations are made by the PLF, Merkel shall provide a copy of the Office Practice Assessment from the PLF and file a report with Disciplinary Counsel’s Office stating the date of his consultation(s) with the PLF; identifying the recommendations that he has adopted and implemented; and identifying the specific recommendations he has not implemented and explaining why he has not adopted and implemented those recommendations.

(e) Greg Zeuthen shall serve as Merkel’s probation supervisor (“Supervisor”). Merkel shall cooperate and comply with all reasonable requests made by Supervisor that Supervisor, in his or her sole discretion, determines are designed to achieve the purpose of the probation and the protection of Merkel’s clients, the profession, the legal system, and the public. Beginning with the first month
of the period of probation, Merkel shall meet with Supervisor in person at least once a month for the purpose of allowing his supervisor to inspect and review Merkel’s accounting and record keeping systems, including his trust account and operating account transactions, to confirm that Merkel is properly depositing client or third party funds in trust, and if not, that Merkel has a fee agreement or other documentation to support an alternative arrangement. Each month during the period of probation, Supervisor shall conduct a random audit of Merkel’s trust account and operating account to determine whether Merkel is timely, competently, diligently, and ethically handling client and third party funds. Merkel agrees that Supervisor may contact, communicate with and seek information from all employees and independent contractors who assist Merkel in his banking transactions or handling client or third party funds, and that Merkel will authorize all such persons to respond and provide information as requested by Supervisor.

(f) During the period of probation, Merkel shall attend not less than six MCLE accredited programs, for a total of twelve hours, which shall emphasize law practice management and proper trust account management. These credit hours shall be in addition to those MCLE credit hours required of Merkel for his normal MCLE reporting period. The Ethics School requirement does not count towards the twelve hours needed.

(g) Each month during the period of probation, Merkel shall review all client files to ensure that he is appropriately depositing and maintaining client and third party funds in trust unless and until those funds have been earned.

(h) On a quarterly basis, on dates to be established by Disciplinary Counsel beginning no later than 90 days after his reinstatement to active membership status, Merkel shall submit to Disciplinary Counsel’s Office a written “Compliance Report,” approved as to substance by Supervisor, advising whether Merkel is in compliance with the terms of this agreement. In the event that Merkel has not complied with any term of the agreement, the Compliance Report shall describe the noncompliance and the reason for it.

(i) Merkel authorizes Supervisor to communicate with Disciplinary Counsel regarding his compliance or noncompliance with the terms of this agreement, and to release to Disciplinary Counsel any information necessary to permit Disciplinary Counsel to assess Merkel’s compliance.

(j) Merkel is responsible for any costs required under the terms of this Stipulation and the terms of probation.

(k) Merkel’s failure to comply with any term of this agreement, including conditions of timely and truthfully reporting to Disciplinary Counsel’s Office, or
with any reasonable request of Supervisor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.

(l) A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to Disciplinary Counsel on or before its due date.

(m) The SPRB’s decision to bring a formal complaint against Merkel for unethical conduct that occurred or continued during the period of his probation shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.

14. In addition, on or before May 1, 2017, Merkel shall pay to the Bar its reasonable and necessary costs in the amount of $461.35, incurred for deposition costs. Should Merkel fail to pay $461.35 in full by May 1, 2017, the Bar may thereafter, without further notice to him, obtain a judgment against Merkel 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. In the event Merkel’s probation is revoked and the stayed suspension imposed, Merkel 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. Should this contingency occur, Merkel will arrange for an active member of the Bar to either take possession of or have ongoing access to Merkel’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Additionally, Merkel will immediately (within 72 hours of notice of the revocation) provide DCO with the name of the attorney who agrees to accept this responsibility.

16. In the event Merkel’s probation is revoked and the stayed suspension imposed, Merkel acknowledges that reinstatement is not automatic on expiration of the period of suspension and that he is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Merkel also acknowledges that during any term of suspension, 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 law has been reinstated.

17. Merkel 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. This requirement is in addition to any other
provision of this agreement that requires Merkel to attend or obtain continuing legal education (CLE) credit hours.

18.

Merkel 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 Merkel is admitted: none.

19.

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

EXECUTED this 26th day of April, 2017.

/s/ Willard Merkel
Willard Merkel
OSB No. 790852

EXECUTED this 1st day of May, 2017.

OREGON STATE BAR

By: /s/ Angela W. Bennett
Angela W. Bennett
OSB No. 092818
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )

Complaint as to the Conduct of ) Case No. 16-88

PAUL LARS HENDERSON, III, )

Accused. )

Counsel for the Bar: Nik T. Chourey
Counsel for the Accused: None
Disciplinary Board: John E. Davis, Chairperson
Joel Benton
Thomas W. Pyle, Public Member
Disposition: Violation of RPC 1.3; RPC 1.4(a); RPC 1.16(a)(1);
RPC 1.16(d); and RPC 8.1(a)(2). Trial Panel Opinion.
4-month suspension.
Effective Date of Opinion: May 9, 2017

TRIAL PANEL OPINION

The Oregon State Bar filed a formal Complaint in this matter on October 28, 2016 in Case No. 16-88. The Accused was personally served with the formal Complaint on November 9, 2016. The Accused did not file an answer to the formal Complaint. The Accused was served with the Notice of Intent to take a default by mail on November 28, 2016. Based on the Motion for Default dated December 19, 2016 which was mailed to the Accused on December 19, 2016 an Order of Default was granted and signed by the Region 3 Panel Chairperson on December 21, 2016. The Trial Panel agreed to decide the sanction without a hearing. The Bar submitted trial memoranda regarding Sanctions on February 7, 2017. The Accused submitted nothing.

Nature of Charges and Defenses

The Bar has alleged five causes of Complaint against the Accused.

1) Neglect of a Legal Matter. The Bar asserts the Accused neglected a legal matter entrusted to him in violation of RPC 1.3.
2) **Lack of Communication.** The Bar asserts the Accused failed to keep Mrs. Malgorejo informed about the status of her case and to properly comply with her reasonable request for information in violation of RPC 1.4a.

3) **Failure to Withdraw.** The Bar asserts the Accused although unable to practice law remained Mrs. Malgorejo’s attorney of record in the post judgment dissolution proceeding and took no steps to withdraw. The Bar asserts the Accused failed to withdraw from the case when suspended violated RPC 1.16(a)(1).

4) **Failure to return client’s property at the termination of the representation.**

   The Bar asserts the Accused did not inform Mrs. Malgorejo that he had been administratively suspended and that he could no longer and would no longer represent her or act on behalf of her in the postjudgment decree proceeding.

   The Bar asserts the Accused failed to forward to Mrs. Malgorejo a copy of her file or refund any funds she paid in advance.

   The Bar asserts this conduct violates RPC 1.16(d), which provides that on termination of representation a lawyer shall take steps to the extent reasonably practicable to protect the client’s interest such as giving reasonable notice to the client and allow time for employment of other counsel and surrendering papers and property which a client is entitled and refunding any advanced payment of fees or expenses that have not been earned or incurred.

5) **Failure to Respond.** The Bar asserts that the Accused failed to respond to disciplinary counsel in violation of RPC 8.1(a)(2).

**SUMMARY OF UNDISPUTED FACTS**

All facts are undisputed as Henderson did not appear and an order of default has been entered.

**CONCLUSIONS OF LAW**

1) **First Cause of Complaint**

   a) **Neglect of a Legal Matter.** In or around 2012, Guadalupe Rios Malgorejo [“Husband”] filed a pro se petition for dissolution of marriage [“petition”] from Micaela Malgorejo [“Wife”]. Wife hired Henderson to respond to the petition.

   A judgment of dissolution [“judgment”] was entered on or about December 26, 2014, in which Wife was awarded indefinite spousal support.

   In or around February 2015, Husband hired an attorney, who moved to vacate the judgment and for a new trial. Husband’s attorney served Henderson with the pleadings, and Henderson appeared for Wife at a
March 20, 2015, hearing, at which Henderson stipulated to reopening
the judgment for the limited purpose of modifying the property award
and to permit additional evidence on spousal support. In exchange,
Husband agreed to withdraw his motion for a new trial and to vacate the
judgment. After March 30, 2015, Henderson did not respond to any of
Husband’s counsel’s attempts to confer.

b) Lack of Communication. Beginning in or around October 2015,
Henderson ceased returning Wife’s phone calls requesting that
Henderson provide her with information and status updates about her
case. When Wife last spoke with Henderson in October 2015,
Henderson apologized for not returning her calls and promised to call
her when he returned to his office from Portland. He did not do so. Wife
was forced to consult with new counsel, Laura Lindley-Gutierrez
[“Lindley-Gutierrez”] in her matter.

c) Failure to return client’s property. After their last phone conversation
in October 2015, Henderson did not inform Wife of any of the
postjudgment developments in her case. Henderson did not respond to
Wife’s or Lindley-Gutierrez’s efforts to obtain a copy of her file or a
refund of any of the money she paid him in advance for his legal services
in the post-judgment matter.

d) Failure to Withdraw. On or about May 3, 2016, Henderson was admin-
istratively suspended for failing to pay his Bar membership assessment
and failing to submit his 2015 IOLTA compliance report. Between May
3, 2016, and the filing of this Formal Complaint, Henderson did not seek
reinstatement.

Despite his May 3, 2016, suspension, Henderson failed to withdraw as
Wife’s attorney of record in her matter. Henderson failed to inform Wife
of his suspension and failed to inform her that he was no longer
representing her in her matter, including the postjudgment proceedings.

In late June 2016, Husband’s attorney filed a motion to set trial on the
property division and spousal support. In his motion, Husband’s
attorney certified that Henderson had not responded to his attempts to
confer, that Henderson had been suspended, and that Henderson’s
phone number on record with the Bar was no longer in service. The
court set the matter for trial.

2) Second Cause of Complaint. The facts as outlined above are incor-
porated herein
Pursuant to BR 2.6, Disciplinary Counsel’s Office [“DCO”], disciplinary authorities for the Bar, sent by first-class mail and email, multiple letters to Henderson, at his office and email addresses of record with the Bar, requesting information regarding Wife’s Complaint about his representation in her legal matter. Henderson did not respond. DCO’s letters and emails were returned as undeliverable.

On June 13, 2016, DCO sent a letter by certified mail to Henderson requesting information regarding Wife’s legal matters. This letter was sent to an address that appeared to be Henderson’s home address. On June 23, 2016, Henderson executed the certified mail receipt for the June 13, 2016, letter delivered to his apparent home address. Henderson did not respond to the Bar’s letter.

**CONCLUSION OF LAW**

1) **First Cause of Complaint.**

a) **Neglect of a Legal Matter.** RPC 1.3 provides, “A lawyer shall not neglect a legal matter entrusted to the lawyer”

Based upon Husband’s counsel’s June 2016 description of Henderson’s unavailability, it is evident that Henderson ceased working on Wife’s matter sometime after he appeared on her behalf at the March 2015 hearing. Given that the dissolution proceeding had been reopened in order to introduce additional evidence and possibly amend the support and pension provisions, the matter was active, and Henderson had a duty to act on Wife’s behalf as her attorney of record, including responding to opposing counsel’s efforts to confer on a motion for new trial. His failure to do so was neglect, in violation of RPC 1.3.

b) **Lack of Communication.** RPC 1.4(a) provides, “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

Henderson failed to inform Wife of any postjudgment developments in her dissolution, including the trial setting; nor did he respond to her or her substitute counsel’s multiple requests for case information, a refund, and her file. Henderson did not inform Wife that he had been suspended in early May 2016 and was no longer able to represent her.

Henderson also failed to respond to Wife’s and Lindley-Gutierrez’s attempts to communicate with him, on Wife’s behalf. These failures to communicate with Wife and respond to Wife regarding her matter violated RPC 1.4(a).
c) **Failure to Withdraw.** RPC 1.16(a)(1) provides in relevant part: that a lawyer shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.

As of May 3, 2016, Henderson was suspended for failing to pay his membership assessment and to file his IOLTA compliance report. He has not sought reinstatement. Even though he was unable to practice, he remained Wife’s attorney of record in the postjudgment dissolution proceeding and took no steps to withdraw from representing her. Henderson’s continued status as Wife’s attorney of record in the proceeding once he was suspended meant that he would continue to receive court notices and communications from opposing counsel, potentially depriving his client of information that she might have otherwise received had she either been pro se or, having been notified that her lawyer was suspended, afforded the opportunity to obtain other counsel.

Henderson’s failure to withdraw from the case when he was suspended violated RPC 1.16(a)(1).

d) **Failure to return client’s property.** RPC 1.16(d) provides in relevant part, “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred.”

Henderson did not inform Wife that he had been administratively suspended or that he could no longer, and would no longer, represent her or act on her behalf in the postjudgment proceeding. He has not responded to her efforts to obtain a copy of her file or a refund of the money she paid in advance.

Henderson’s failure to give Wife reasonable notice that he had ceased representing her and failure to return her property violated RPC 1.16(d).

2) **Second Cause of Complaint [Failure to Respond to the Bar]** An attorney violates RPC 8.1(a)(2) when he knowingly fails to respond to a lawful demand for information from a disciplinary authority, unless the request requires the disclosure of information otherwise protected by Rule 1.6.
Henderson’s signature on a certified mail receipt pertaining to the DCO letter evidences he received it and, as such, was aware as of mid-June 2016 that DCO had asked him to provide information in response to Wife’s complaint regarding his conduct in this matter. His subsequent conversation with ADC Chourey substantiated his knowledge of DCO’s efforts to reach him. Apart from answering a telephone call from ADC Chourey, Henderson has provided no response to DCO’s previous requests for information and an accounting.

Henderson’s failure to respond in substance to DCO’s inquiries violated RPC 8.1(a)(2).

SANCTIONS

The Oregon Supreme Court refers to the ABA Standards for Imposing Lawyer Sanctions [“Standards”], and its own case law, for guidance in determining the appropriate sanction for lawyer misconduct. In re Eakin, 334 Or 238, 257, 48 P3d 147 (2002).

A. ABA Standards. The Standards establish an analytical framework for determining the appropriate sanction in discipline cases using four (4) factors: the general duty violated, the lawyer’s mental state, the actual or potential injury caused, and the existence of aggravating and mitigating circumstances. Once these factors are analyzed, the sanction may be adjusted based on the existence of aggravating or mitigating circumstances.

B. General Duties Violated. The Standards provide that the most important ethical duties are those which lawyers owe their clients. Standards at 5. Henderson violated his duty to his client to act with reasonable diligence and promptness in representing her, including his duty to adequately communicate with her. Standards § 4.4. Henderson violated his duty to the profession in failing to properly withdraw from the representation and to cooperate in the investigation of professional misconduct by the Bar. Standards § 7.0.

C. Mental State. Intent is the conscious awareness of the nature or attendant circumstances of the conduct with the intent to cause a particular result. Knowledge is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. Standards at 9.

“A lawyer’s failure to act can be characterized as intentional, rather than attributed to mere neglect or procrastination, if the lawyer fails to act over a significant period of time, despite the urging of the client and the lawyer’s knowledge of a professional duty to act.” In re Sousa, 323 Or 137, 144, 915 P2d 408 (1996). See also In re Loew, 292 Or 806, 810–11, 642 P2d 1171 (1982).

Henderson is an attorney with substantial experience. Henderson is presumed to know the law and the disciplinary rules. See In re Devers, 328 Or 230, 241, 974 P2d 191 (1999) (so stating). Henderson’s repeated disregard of basic and reasonable requests for information from
his client about her case was at least knowing. Henderson’s repeated disregard of reasonable requests for information from the DCO was also at least knowing.

**D. Extent of Actual or Potential Injury.** For the purpose of determining an appropriate sanction, both actual and potential injury may be taken into account. *Standards* at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). *Injury* is defined as “harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct.” *Standards* at 9. Because the purpose of attorney discipline is to protect the public, the Bar need not prove actual injury. Potential injury is sufficient. *Standards* § 3.0. Potential injury is “harm that is reasonably foreseeable at the time of the lawyer’s misconduct.” *Standards* at 9.


Henderson’s knowing refusal to cooperate during the Bar’s investigation is conduct that caused actual injury to both the legal profession and to the public by wasting the Bar’s time and resources, delaying and preventing the Bar from fulfilling its responsibility to protect the public. See *In re Schaffner*, 325 Or at 426–27; *In re Miles*, 324 Or 218, 222–23, 923 P2d 1219 (1996); *In re Haws*, 310 Or 741, 753, 801 P2d 818 (1990). See also *In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993) (Court concluded that, when a lawyer persisted in his failure to respond to the Bar’s inquiries, the Bar was prejudiced because the Bar had to investigate in a more time-consuming way, and the public respect for the Bar was diminished because the Bar could not provide a timely and informed response to complaints).

**E. Preliminary Sanction.** Absent aggravating or mitigating circumstances, the following *Standards* apply:

4.42(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.

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

**F. Aggravating and Mitigating Circumstances.** The following factors recognized as aggravating under the *Standards* exist in this case:

1. **Multiple offenses.** *Standards* § 9.22(d). Henderson violated multiple rules involving duties owed to both his client and the profession.
2. **Bad faith obstruction of the disciplinary proceeding.** *Standards § 9.22(e).* Henderson knowingly failed to provide information and documentation in respond to disciplinary inquiries.

3. **Substantial experience in the practice of law.** *Standards § 9.22(i).* Henderson has been admitted in Oregon since 1989.

In mitigation is Henderson’s lack of a prior relevant disciplinary record. *Standards § 9.32(a).* Henderson’s single discussion with ADC Chourey indicated that he was dealing with personal problems related to his wife’s health during at least some of the relevant time frame. *Standards § 9.32(c).*

In the aggregate, those factors in aggravation outweigh those in mitigation in both number and severity, and, therefore, should adjust the sanction accordingly. The sanction of a suspension is supported and appropriate.

**G. Oregon Case Law.** Like the *Standards*, Oregon case law holds that a suspension is warranted for Henderson’s conduct. 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).

1. **Neglect of a Legal Matter:** RPC 1.3. The Court has indicated that at least a 60-day suspension is generally appropriate for neglectful conduct. See *In re Knappenberger*, 337 Or at 32–33; *In re Redden*, 342 Or 393, 153 P3d 113 (2007); *In re LaBahn*, 335 Or 357, 365, 67 P3d 381 (2003); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996); *In re Kissling*, 303 Or 638, 740 P2d 179 (1987); *In re Dugger*, 299 Or 21, 697 P2d 973 (1985); *In re Morrow*, 297 Or 808, 688 P2d 820 (1984). See also:

   *In re Koch*, 345 Or 444, 198 P3d 910 (2008) **[120-day suspension]** Attorney failed to communicate or cooperate with client and 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 + formal reinstatement]** Attorney committed neglect when he was appointed to handle a client’s appeal but took no action on the matter for nearly a year and allowed the appeal to be dismissed. In another matter, attorney failed to respond to a motion to dismiss from opposing counsel and did not inform the client when the motion was granted.

   *In re Knappenberger*, 340 Or 573, 135 P3d 297 (2006) **[1-year suspension]** Attorney’s eight-year neglect in obtaining and filing a qualified domestic relations order for a client violated rule. Evidence of harm or injury to the client is not necessary to establish a violation.
2. **Failure to Take Adequate Steps to Protect Client Interests Following Termination:** RPC 1.16(a)(1) & RPC 1.16(d)

*In re Castanza*, 350 Or 293, 253 P3d 1057 (2011) [60-day suspension]

Attorney withdrew from representing two clients in a civil action, but failed to allow the clients sufficient time to employ other counsel, make any attempt to postpone the trial date, file a notice of change or withdrawal of counsel, respond to a pending motion to dismiss filed by the opposing party, respond to opposing counsel’s proposed general judgment and cost bill, or communicate with the clients about the judgment and cost bill.

*In re Balocca*, 342 Or 279, 151 P3d 154 (2007) [90-day suspension]

Attorney failed to return unearned client funds after closing his file.

3. **Failure to Cooperate with Disciplinary Authority:** RPC 8.1(a)(2). A lawyer who cannot or will not respond to disciplinary inquiries undermines the regulatory system of the court and public confidence in the Bar, alone warranting—at minimum—a suspension from practice. See, e.g., *In re Miles*, 324 Or at 222–24; *In re Hereford*, 306 Or 69, 756 P2d 30 (1988). The court has adopted a no-tolerance approach in cases where a lawyer fails to respond to Bar inquiries. See *In re Miles*, 324 Or at 222–23 (lawyer was suspended for 120 days solely for two failures to fully cooperate with the Bar).

**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 unlikely to properly discharge their professional duties. *Standards* § 1.1. See *In re Huffman*, 328 Or 567, 587, 983 P2d 534 (1999).

Henderson breached his duties to promptly reply to his client’s requests for information, action, her file, and refund in her matter.

Henderson also breached his duty to cooperate in the Bar’s investigation of his conduct. Henderson’s conduct injured his client and the Bar.

In light of the foregoing, Henderson has demonstrated in this matter that he is unwilling or unable to conform his conduct to the required ethical standards.

Henderson is suspended for a period of four (4) months. He shall not be requested to seek formal reinstatement [other than may be required by the administrative suspension].
Dated this 1st day of March, 2017.

/s/ John E. Davis  
John E. (Jack) Davis, Trial Panel Chairperson

/s/ Joel Benton  
Joel Benton, Trial Panel Member

/s/ Thomas W. Pyle  
Thomas W. Pyle, Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
 )
Complaint as to the Conduct of ) Case No. 16-01
 )
JESSICA S. CAIN, )
 )
Accused. )

Counsel for the Bar: Stacy R. Owen
Counsel for the Accused: None.
Disciplinary Board: None.
Disposition: Violation of RPC 1.4(a) and RPC 1.4(b). Stipulation for Discipline. Public Reprimand.
Effective Date of Order: May 10, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Cain is publicly reprimanded for violation of Oregon Rules of Professional Conduct (RPC) 1.4(a) and RPC 1.4(b).

DATED this 10th day of May, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Kathy Proctor
Kathy Proctor, Region 4
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Jessica S. Cain, attorney at law (“Cain”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Cain was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 2003. On January 16, 2015, Cain was suspended for failure to pay Professional Liability Fund fees, and, on May 5, 2015, she was suspended for failure to pay Bar dues. Between January 20, 2016 and February 7, 2016, Cain was suspended pursuant to BR 7.1. Her office and place of business is in Yamhill County, Oregon.

3.

Cain 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 February 25, 2017, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Cain for alleged violations of Oregon Rules of Professional Conduct (“RPC”) 1.4(a); RPC 1.4(b) and RPC 8.1(a)(2). On April 8, 2017, the SPRB approved a settlement offer submitted by Cain. 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.

James R. Mitchell (“Mitchell”) hired Cain on or about July 2013 to review a small claims court decision and, if feasible, seek reconsideration. In October 2015, Mitchell filed an Application for Reimbursement (“Application”) with the Client Security Fund (“CSF”). Mitchell alleged that Cain took no action on his case and failed to respond to his attempts to contact her. He alleged that Cain never returned his file materials to him and he sought reimbursement of the $500 retainer that he paid to her.

6.

Cain stated that she reviewed Mitchell’s case and determined that reconsideration was not feasible. Cain stated that she informed Mitchell about her decision by telephone, but she
could not recall if she spoke with him or left her assessment via voicemail message. At that point, Cain considered the matter closed. After closing the matter, she stated that she received messages from Mitchell that she did not return. During the course of the Bar investigation, Cain returned Mitchell’s file materials to him.

**Violations**

7. Cain admits that, by failing to ensure that Mitchell received her message about her assessment of his case and by failing to respond to his subsequent messages, she violated RPC 1.4(a) and RPC 1.4(b). Upon further factual inquiry, the parties agree that the charge of an alleged violation of RPC 8.1(a)(2) should be and, upon the approval of this stipulation, is dismissed.

**Sanction**

8. Cain 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 (“Standards”). The Standards require that Cain’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.** Cain violated her duty to act with reasonable diligence and promptness in representing a client, which includes adequate communication with the client. Standards § 4.4.

b. **Mental State.** The most culpable mental state is that of “intent,” when the lawyer acts with the conscious objective or purpose to accomplish a particular result. Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Id. “Negligence” is the failure to be aware of a substantial risk that circumstances exist or that a result will follow and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. Id.

Cain was negligent in failing to ensure that Mitchell was apprised about the status of his case and by failing to explain the matter to Mitchell such that he could make informed decisions about his case.

c. **Injury.** Injury can be either actual or potential under the Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992).

Mitchell was injured by not being informed about the outcome of Cain’s work on his matter until he filed his CSF Application. Mitchell also suffered actual
injury in the form of the anxiety and frustration that he experienced as the result of Cain’s failure to keep him informed. See In re Cohen, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as the result of attorney neglect can constitute actual injury under the Standards.)

d. **Aggravating Circumstances.** Aggravating circumstances include:
   
   1. Multiple offenses. Standards § 9.22(d).

e. **Mitigating Circumstances.** Mitigating circumstances include:
   
   1. Delay in disciplinary proceedings. Standards § 9.32(j). Due in part to staffing changes in DCO, there were periods of delay in DCO’s investigation of this matter.

   9.

   Under the ABA Standards, public reprimand “is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.” Standards § 4.43.

   10.

   The Oregon cases are in accord. See, e.g., In re Hunt, 25 DB Rptr 233 (2011); In re Misfeldt, 24 DB Rptr 25 (2010); In re Dames, 23 DB Rptr 105 (2009); In re Nielson, 22 DB Rptr 286 (2008); In re Farthing, 22 DB Rptr 281 (2008) (all reprimanded for violations of RPC 1.4(a) or RPC 1.4(a) & (b)).

   11.

   Consistent with the Standards and Oregon case law, the parties agree that Cain shall be publicly reprimanded for violation of RPC 1.4(a) and RPC 1.4(b), the sanction to be effective ten days after approval by the Disciplinary Board.

   12.

   Cain 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 the denial of her reinstatement.

   13.

   Cain 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 Cain is admitted: South Dakota.
14.

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

EXECUTED this 5th day of May, 2017.

/s/ Jessica S. Cain
Jessica S. Cain, OSB No. 030857

EXECUTED this 8th day of May, 2017.

OREGON STATE BAR

By: /s/ Stacy R. Owen
Stacy R. Owen, OSB No. 074826
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 14-115
Complaint as to the Conduct of )
) TRAVIS W. HUISMAN,
) Accused.

Counsel for the Bar: Kellie F. Johnson
Counsel for the Accused: None
Disciplinary Board: Ronald W. Atwood, Chairperson
Lisa M. Caldwell
Michael Wallis, Public Member
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15-1(a), RPC 1.15-1(d), RPC 1.16(d). Trial Panel Opinion. 18-month suspension.
Effective Date of Opinion: May 13, 2017

TRIAL PANEL OPINION

The Oregon State Bar (The Bar) filed a formal complaint in this matter on June 8, 2015. The Accused failed to file an answer to the formal complaint. A motion for a default order was filed on June 6, 2016; an Order of Default was signed by the Region 5 Chair on June 15, 2016. As a result, the allegations of the complaint are deemed true.

The Bar submitted a trial memorandum in advance of the scheduled hearing, which took place on December 12, 2016. Assistant Disciplinary Counsel Kellie F. Johnson represented the Bar. The Accused failed to make an appearance at the hearing. At hearing, the Bar offered exhibits number 1 to 34; all were admitted. (TR. 5)

Nature of Charges and Defenses

The Bar has alleged in two causes of complaint that the Accused:

1. Undertook to represent Ms. Carla Muss-Jacobs in a medical malpractice claim filed in Multnomah County, Oregon, but thereafter neglected that legal matter to a point where judgment was entered against her, failed to keep her reasonably informed of the status of the matter, failed to explain her rights adequately so
she could make informed decisions, failed to keep adequate records of client funds, failed to keep client funds in a client trust account until earned, failed to return client property at the end of the representation, failed to protect the client’s interests at the end of the representation, and failed to respond to the Bar’s lawful demand for information, in violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d).

2. Failed to respond to lawful requests for information from the Disciplinary Counsel’s Office in violation of RPC 8.1(a)(2).

The Accused failed to file an answer to the formal complaint, failed to appear at the hearing and provided no defense to the charges or the sanction.

Summary of Undisputed Facts


At all times pertinent to this matter, the Accused was authorized to practice law in the State of Oregon. At the time of the hearing in this matter, he had closed his Oregon office and was assumed to be practicing law in the State of North Dakota.

Carla Muss-Jacobs (Muss-Jacobs) had a knee replacement surgery that failed. She then had corrective surgery. In September 2010, she filed suit in Multnomah County Circuit Court alleging medical malpractice. At the time, she was representing herself. Defense counsel filed a motion for summary judgment in June 2011; Muss-Jacobs filed a response on her behalf. The court granted summary judgment on July 28, 2011.

On or about July 28, 2011, Muss-Jacobs hired the Accused to represent her in the medical malpractice claim.\(^1\) She paid him a fee of $750 and costs of $210.\(^2\) At the time, the Accused promised to find a products liability lawyer to sue the maker of the device. He also agreed to file two motions to set-aside the summary judgment all in preparation to file an appeal.

Multnomah County Circuit Court entered judgment in the malpractice matter on August 22, 2011. (Ex. 5).\(^3\) The Accused promptly filed a motion for a new trial. The motion was denied and Muss-Jacobs then had 30 days to file an appeal. The Accused failed to appeal either the judgment or the order denying a new trial.

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\(^1\) There is some evidence Muss-Jacobs also hired the Accused to help her deal with a Small Claims Judgment; we will not deal with that issue because it was not pled in the complaint.

\(^2\) Money was paid over time and is best outlined in Exhibit 4. We are comfortable Muss-Jacobs paid the Accused the amounts noted in the complaint. She may have paid more.

\(^3\) There is a cost bill associated with this judgment in the sum of $802. (Ex. 6).
Between September 2011 and June 2012, the Accused failed to take any substantive steps to protect his client’s interests or to advance the malpractice claim. He failed to inform her of the filing deadline and failed to file an appeal.

In June 2012, the Accused moved to set aside the judgment; the court denied that motion in July. The Accused advised Muss-Jacobs the motion had been denied and that he had decided not to file an appeal. However, he promised to find her a products liability lawyer. She paid him an additional $500 and asked the Accused for her client file. The Accused failed to return the file and failed to find a products liability lawyer.

During the summer of 2012, the Accused moved to North Dakota. He failed to return the client file or find her a products liability lawyer. Muss-Jacobs wrote the Accused a letter dated September 4, 2012. (Ex. 9). She demanded a copy of her file and a refund of $750. In response, the Accused mailed Muss-Jacobs a check for $250. He said he would have his ex-wife deliver some of her documents.

2. Failure to respond to the Disciplinary Counsel’s Office.

Muss-Jacobs filed a complaint with the Bar’s Client Assistance Office in May 2013. (Ex. 11). The file was referred to disciplinary counsel in August 2013. (Ex. 12).

Disciplinary Counsel sought information from the Accused by letter of August 23, 2013. (Ex. 13). A second letter was sent October 3, 2013. (Ex. 14). A partial response was sent by the Accused October 12, 2013. (Ex. 15). A third demand was made October 14, 2013. (Ex. 17). Again, the Accused responded with partial and incomplete responses. (Ex. 18, 21, 23). Additional demands were sent September 8, 2014 and September 29, 2014.

On October 15, 2014, the Accused was advised the Bar was seeking to suspend his license to practice law in the State of Oregon. (Ex. 24, 25). The Accused failed to file a response to the petition. The Accused was suspended effective October 27, 2014. (Ex. 27). However, the Accused did notify disciplinary counsel he had resigned. (Ex. 28). Because charges were pending, the resignation was ineffective. BR 9.1.4

4 It bears noting this hearing was to some extent unnecessary. The Accused made it clear he wanted to resign. His resignation was ineffective because he failed to sign the proper form. This is the second case that the Trial Panel Chair is aware in which an accused lawyer has indicated a wish to resign, but it was not accepted because of BR 9.1. As a result, a hearing in each case was needed. While this is part of Disciplinary Counsel’s job, the members of the trial panel are donating their time. Would it not be better to modify BR 9.1 to allow counsel to resign in any form that is clear as to the attorney’s intent? The rule could be written in such a way that if charges are pending or under investigation they would need to be dealt with if the attorney applies for admittance in the future. The rule could accomplish what the form is intended to accomplish now.
Conclusions of Law

First Cause for Complaint.

The First Cause of Complaint addresses multiple rules; we will take each in turn.

A. RPC 1.3 provides a lawyer shall not neglect a legal matter entrusted to the lawyer.

The Bar, in its argument, alleges the Accused neglected both a malpractice matter and a landlord/tenant matter. We will not address that latter matter since it was not pleaded in the complaint. Nor do we feel the need to address that issue given the other charges in the complaint.

However, the Bar has proven the Accused has violated this rule and neglected this matter by clear and convincing evidence. There is a lack of activity of the matter between September 2011 and June 2012. The Accused failed to find a products liability lawyer for Muss-Jacobs. The Accused abandoned Muss-Jacobs in September 2012 when he moved to North Dakota without making a clean break in the relationship. There are steps to be taken when an engagement ends and the Accused did none of them, with the exception of reimbursing Muss-Jacobs $250 without an adequate accounting. The Accused admits as much. (Ex 16).

B. RPC 1.4 (a) provides that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

The Bar has proven by clear and convincing evidence the Accused has violated this rule. The best statement of this error is found in the September 10, 2013 email sent by the Accused to Disciplinary Counsel. He states he talked to his client, but failed to reduce his advice to writing. It is impossible to determine how much advice was given. (Ex. 16). It is clear some advice was given and reduced to writing. (Ex. 22). On balance, what is in the record and what can be inferred from the statements of the Accused, indicates that whatever communication that occurred between the two was insufficient to allow Muss-Jacobs to make informed decisions and to know what was happening with the matters entrusted to her counsel.

As a note, the Accused makes reference to some mental health issues suffered by Muss-Jacobs. She admitted as much in her testimony. We are not in a position to determine just how much any mental health issues interfered with the representation and communication here. Our point is that the Accused knew of some problems, which should have alerted him to be more diligent to document the steps he was taking and their reasons. In short, written communication is more important if the lawyer is worried the client for some reason cannot understand the advice that is being given. The Accused failed in that regard. He admitted as much. (Ex. 21).
C. RPC 1.4(b) provides that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decision regarding the representation.

The Bar has proven by clear and convincing evidence the Accused has violated this rule. There is a dearth of explanation by the Accused with a rationale in our record. While at least one decision is confirmed, the reasons to take individual actions remain unexplained. A lawyer has an obligation to make a recommendation and to explain the basis for that recommendation. We cannot see that such communication occurred here.

D. RPC 1.15-1(a) provides in pertinent part that a lawyer shall hold funds in a lawyer trust account and keep records of the account funds for a period of five years following termination of the representation.

The Bar has proven by clear and convincing evidence the Accused has violated this rule. In his email to Disciplinary Counsel of September 10, 2013, he states, “I do not contest failing to follow, Rule 1.15-1(a): … .” In that same note he admitted to having problems maintaining his accounting and bookkeeping. (Ex. 16). See also Exhibit 21 where he admits to no longer having his ledger and cannot recreate deposits, withdrawals or transfers.

E. RPC 1.15-1(c) provides that a lawyer shall deposit funds received from a client in a lawyer trust account and those funds can only be withdrawn as they are earned unless the fee is denominated earned upon receipt or nonrefundable.

The Bar has not proven by clear and convincing evidence the Accused has violated this rule. We do have his attorney retention agreement. (Ex 22). It is not an earned upon receipt attorney retention agreement. Thus, any funds received from his client should have gone into a trust account.

What is difficult about this issue is that the Bar cannot establish where the Accused put any money received from Muss-Jacobs. He failed to produce bank statements, his ledger or any other financial records. He stated he could prove where he put the money if he had his records. (Ex. 16). However, he admitted he did not have access to those records. His statement is unrebutted.

We are mindful of the fact the Bar asked the Accused for his records. He advised the Bar he did not have access to his records; by then, some were destroyed during his divorce and he was living and practicing law in North Dakota. He advised the Bar it would cost money to get the bank records.

We resolve this against the Bar for a couple of reasons. First, there is nothing in the complaint that outlines facts to address this issue. Thus, his failure to file an answer and the default that flows from that failure do not provide admitted facts. Second, the Bar has subpoena power, so could have asked the bank for those records. Third, the Accused denied violating this rule. Finally, there is no contrary evidence. Since the burden of proof is on the Bar to prove
by clear and convincing evidence the Accused violation of this rule, it is incumbent upon the Bar to establish where that money went. They have not done so on this issue.

F. RPC 1.15-1(d) provides that upon receiving funds or other property in which a client has an interest, a lawyer shall promptly notify the client and a lawyer shall promptly deliver to the client any funds or property that the client is entitled to receive and, upon request, render a full accounting.

The Bar has proven by clear and convincing evidence the Accused has violated this rule as well.

There is documentation in the file Muss-Jacobs paid as much as $2,075 to cover fees and costs. (Ex 4). The accounting provided by the Accused is found in Exhibit 22. He alleges payments of $1,520, costs of $261.50 and fees earned of $1,400. As a result, he provided a refund of $250. One problem with this document is that the Accused has no bank records or his ledger to support these figures. Muss-Jacobs provided some records to indicate she paid more money to the Accused than he notes in his accounting. Finally, the listing of fees earned is laughable. There are no dates. Each entry is in even hours; that is, there are no partial hours noted. There are no contemporaneous records. (Ex. 21). In short, they appear to be guesswork. We do not accept them.

An accounting is to be based upon contemporaneous records the Accused admits he failed to keep, lost in his move from Oregon to North Dakota or were destroyed by his ex-wife during the divorce. What he submitted is insufficient to satisfy this rule.

G. RPC 1.16(d) provides that upon termination of representation a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

The Bar has proven by clear and convincing evidence there was a violation of this rule. An attorney has an obligation to make sure this transition goes smoothly; that did not occur here.

An attorney has an obligation to provide copies of file documents. That did not occur here. An attorney has an obligation to provide an accounting; that did not occur here. An attorney has an obligation to either complete the work, transition it to another attorney or to terminate the relationship so the client can find other counsel on their own if additional work needs to be done. That did not occur here either. What records were sent were incomplete. (Ex. 30). Some were destroyed. (Ex. 16).
Second Cause for Complaint

The Bar alleges a violation of RPC 8.1(a)(2). The rule requires a lawyer who is involved in a disciplinary matter to fully respond to a lawful demand for information from a disciplinary authority. We find the Bar has failed to prove this allegation by clear and convincing evidence.

This is a close case, but the Bar has failed to prove this allegation. The complaint was filed May 17, 2013. (Ex. 11). The matter was referred to disciplinary counsel on August 16, 2013. The referral letter indicates material was submitted, but the letter does not indicate who submitted what. Thus, we cannot say the Accused failed to cooperate at this stage of the investigation.

A request for records was mailed to the Accused’s address in North Dakota on August 23, 2013. (Ex. 13). A second request was filed October 3, 2013. (Ex. 14). However, it looks like the Accused had emailed a response to disciplinary counsel on September 10, 2013. (Ex. 16). He made certain admissions we have relied upon here. Further, he admitted to not having certain records requested by the Bar. (Ex. 16).

Additional records were requested October 14, 2013. (Ex. 17). The Accused responded to that letter on October 25, 2013. (Ex. 18). Although attachments are mentioned, the material submitted at hearing does not let us know what, if anything, was attached. We only have the transmittal letter. Exhibit 19 is another submission from the Accused, although it is impossible to date the document or identify when it was received by the Bar. The Accused filed another response December 6, 2013. (Ex. 21). He filed a short response February 11, 2014. (Ex. 23).

Between October 14, 2013 and October 15, 2014, there is no indication in our record anyone at the Bar asked the Accused for additional records. However, on that latter day, the Bar filed a petition to suspend the Accused’s license pursuant to BR 7.1. (Ex. 25). The Accused did respond to the petition to suspend, although it turns out it was mailed the date the suspension order was signed. (Ex. 27, 28). In his letter of October 27, 2014, he expresses some frustration with the process. He admits he does not have the records requested and indicates some were destroyed during his divorce. (Ex. 28). He then attempts to resolve the discipline issue by resigning. As indicated above, since he did not sign the proper form, his resignation was ineffective. He was notified of that fact by letter of November 6, 2014. (Ex. 29). For reasons that are unknown to the trial panel, disciplinary counsel did not send the Accused a copy of the form with that letter. Had the form been sent, it is possible the matter would have resolved then.

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5 We recognize the affidavit of Martha M. Hicks of October 15, 2014 makes reference to a letter of September 29, 2014. A copy of that letter is not in the record. Nor is there an explanation why there was no activity between October 14, 2013 and September 29, 2014. In short, this record cannot tell us what was requested September 29, 2014.
The Accused did not provide all of the records requested. Some he did not have. One set of records resided with a bank and would have cost money to obtain; the Bar did not explain why those records were not subpoenaed. The Accused did file a number of responses to disciplinary counsel; in short, he did not ignore the process. He did not refuse to participate. A number of cases were cited in the Bar’s memorandum. However, the facts in those cases were much more egregious than the conduct of the Accused here. We find he responded to the best of his ability, even though it was incomplete. As a result, we cannot say the Bar has proven by clear and convincing evidence he failed to respond.

Sanction

Having found that the Accused violated provisions of the Rules of Professional Conduct, we next determine the appropriate sanction. We are guided by the ABA Standards for Imposing Lawyer Sanctions (“Standards”) and case law from the Oregon Supreme Court.

ABA Standards. The ABA Standards require consideration of (1) the duty violated by the Accused; (2) the Accused’s mental state; (3) the actual or potential injury that the misconduct caused; and (4) any aggravating or mitigating circumstances.

(1) Duty violated:

We have determined the Accused violated six separate rules. All of the violations relate to the Accused’s duty to his client. He violated his duty of loyalty and his duty of diligence.

(2) Mental state:

A lawyer acts with intent when he acts with a “conscious objective or purpose to accomplish a particular result. A lawyer acts with knowledge when the lawyer has a conscious awareness of the nature of the conduct, with or without the conscious objective or purpose to accomplish a particular result. Negligence is the failure of the lawyer to heed a substantial risk that a result will follow and that failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

The Bar argues that the Accused acted with knowledge, but with the passage of time, that knowledge became intent. The Bar urges discipline in this matter be based upon intent. We reject that argument.6

The Accused clearly violated several rules in this matter. However, at no time did the Accused intend to harm Muss-Jacobs or act with a conscious objective to accomplish a particular result. He took on a difficult case. He did not handle it well. It is clear to us he had

6 It bears remembering we are not considering any actions related to the landlord tenant matter since that matter was not pled in the complaint. The complaint centered on the malpractice action and the failure to respond to the Bar. In short, while there is evidence on the landlord tenant matter, there are no allegations in the complaint.
some amount of verbal contact with Muss-Jacobs. There is a dispute on what was said when. He did not document their decisions. Muss-Jacobs was having her own personal issues; the Accused was going through a divorce through part of this time. There is a period of months the Accused did not work on this matter; there is a period of about a year in which the Bar did not act on the investigation.

Balancing the evidence in this matter and our review of the cases, it is clear the Accused acted with knowledge. That is, he knew what he was doing, but did not have a conscious objective or purpose behind his actions. *See In re Sousa*, 323 Or 137, 915 P2d 408 (1996).

(3) Injury:

We find Muss-Jacobs sustained actual injury. She was lead to believe her malpractice claim could be resurrected, when that was unlikely. There was delay in the process with its attendant distress and worry. She likely should have received a refund greater than she received.

(4) Preliminary sanction:

Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury. In this case, at a minimum, the Accused failed to keep proper records of the money paid to him by his client so that at the end of the representation, he could not produce an accurate accounting. The Accused admitted his records were poor to begin with; many of his records were lost during his move to North Dakota and during his divorce.

Further, for the Accused’s lack of diligence, suspension is generally appropriate when a lawyer knowingly fails to perform or engages in a pattern of neglect that causes injury. The Accused failed to conscientiously document the advice he gave to his client on steps to take and decision they made. What he told her may have been appropriate and it might not. We will never know because it was not adequately documented. While there was injury, it was not a serious injury.

It is our preliminary determination that the appropriate sanction is suspension of some length. We now turn to any aggravating or mitigating circumstances.

(5) Aggravating and mitigating circumstances:

A. Dishonest or selfish motive. *Standards* § 9.22(b):

The Bar argues there is a dishonest or selfish motive. It points to the failure to provide a refund and the failure to respond to the Bar during the investigation. We have held the Bar did not prove that latter charge. Thus, we only look at whether the failure to provide a refund in this case demonstrates a dishonest or selfish motive.

In this case, the accounting was insufficient in our eyes. In part, we came to that conclusion because the accounting was not documented with contemporaneous records or a ledger.
Thus, it looks like a refund might be due. However, the Bar has not proven a refund was actually due, particularly as it relates to the malpractice claim, by clear and convincing evidence.

B. Multiple offenses. Standards § 9.22(d):

We agree the Bar has proven the Accused violated multiple rules; this aggravating factor applies.

C. Bad-faith obstruction of the disciplinary proceeding. Standards § 9.22(e):

This factor is not applicable because the Bar did not prove a violation of the applicable rule.

D. Refusal to acknowledge the wrongful nature of his misconduct. Standards § 9.22(g):

This factor does not apply. The Accused admitted he violated at least one rule and could not disprove his violation of another. (Ex. 16). He also admitted he closed his private practice and became an employee of a firm because of his failure to keep good records. The Bar has not proven this factor.

E. Absence of a prior disciplinary record. Standards § 9.32(a):

This factor does apply. There is nothing in our record to indicate the Accused had been disciplined in the past.

There may be other mitigating factors that apply. One example is an absence of a dishonest or selfish motive. Inexperience in the practice of law might also apply. However, since the Accused did not make an appearance, we do not address any other mitigating factors.

We are guided to not be influenced by several factors. The only factor that applies in this situation is the attempt to resign prior to the completion of disciplinary proceedings. Thus, we do not consider that attempt as either an aggravating or mitigating factor.

We have found one aggravating factor and one mitigating factor. The analysis under the ABA Standards leads the panel to conclude that a term of suspension is the appropriate sanction for the violations committed by the Accused. We next turn to Oregon case law for comparable cases.

Oregon Case Law:

The Bar argues this case is much like In re Thies, 305 Or 104, 750 P2d 490 (1988). We disagree. There the Court found the lawyer acted with intent; in this case, the Accused acted knowingly. Further, the Court found the lawyer failed to cooperate in the disciplinary matter; we did not make that finding here.

The Bar also cited In re Dixson, 305 Or 83, 750 P2d 157 (1988). Again, we disagree this case applies. In this case, the Court found the Accused lacked veracity. There were ten
causes of complaint. Five causes related to five separate individuals; the other five were separate complaints for failure to cooperate with the Bar. Not only did the Court find the Accused deceitful to his clients and the Bar, it also found the Accused was deceitful to State and Federal judges. We have no such conduct here.

As noted in at least one case, trying to find a prior decision that fits the facts and findings of this matter is nearly impossible. There are many with similar facts. We will review just a couple.

*In re Schaffner*, 325 Or 421, 939 P2d 39 (1997), involved a case in which the lawyer was found to have neglected a legal matter, failed to deliver property to the client, failed to fully respond to inquiries from disciplinary counsel and to return client documents to the client. The Court imposed a two-year suspension. The difference between *Schaffner* and this case is our finding the Bar failed to prove by clear and convincing evidence the Accused failed to cooperate with the disciplinary process.

*In re Redden*, 342 Or 393, 153 P3d 113 (2007), involved a case in which the lawyer was found to have neglected a legal matter. The neglect in *Redden* lasted some 21 months. The Court imposed a 60-day suspension. Only a single violation was proven in *Redden*.

There are many more cases that could be discussed. However, these two give a good range. *Redden* involved a single violation; *Schaffner* involved multiple violations. *Schaffner* is more consistent with this matter. The Accused in this case violated multiple rules. We conclude the Accused should be suspended a total of 18 months.

We suspend the Accused from the practice of law for 18 months, the suspension to begin as provided under the applicable rules of procedure.

Dated this 3rd day of March, 2017.

/s/ Ronald W. Atwood
Ronald W. Atwood, Trial Panel Chair

/s/ Lisa Caldwell
Lisa Caldwell, Trial Panel Member

/s/ Michael Wallis
Michael Wallis, Trial Panel Public Member
TRIAL PANEL OPINION

Introduction and Decision

This matter came before the trial panel of the Disciplinary Board named above based on a Formal Complaint filed by the Bar on July 5, 2016, to which Kathleen Y. Rinks, “the Respondent,” failed to respond. Amber Bevacqua-Lynott represented the Oregon State Bar (“Bar”). The Respondent has not appeared, and is not represented in this matter. On August 29, 2016, the Regional Chairperson granted the Bar’s motion for default.

The holding of default means that the allegations in the Bar’s Formal Complaint are deemed true. Oregon State Bar Rules of Procedure 5.8(a). Therefore, it stands to the trial panel to determine if those facts constitute the disciplinary violations alleged by the Bar, and, if so, what sanction is appropriate. See In re Kluge, 332 Or 251, 27 P3d 102 (2001).

Based on the pleadings presented by the Bar, the lack of any rebuttal by the Respondent, the Oregon Rules of Professional Conduct, and the ABA Standards for Imposing Lawyer Sanctions (Standards), and for the reasons stated below, the Trial Panel concludes that the conduct of the Respondent violated several provisions of the Oregon Rules of Professional
Conduct, and her multiple violations warrant disbarment. The Trial Panel recommends a sanction of disbarment.

**Procedural History**

The Bar filed a Formal Complaint on July 5, 2016, against the Respondent, alleging several violations of the Oregon Rules of Professional Conduct (RPC). The Respondent was served and failed to respond to the Bar’s Formal Complaint. The Respondent was found in default on August 29, 2016.

**Findings of Fact**

The Trial Panel makes the following findings of fact.

The Respondent was admitted to practice law in Oregon on May 4, 1993, also having been previously admitted to practice in both New Jersey (in which it appears her license has been administratively revoked) and Pennsylvania (in which it appears that she is subject to Administrative Suspension). See Bar’s Sanctions Memorandum, Exhibits 2 and 3.

At all times substantive to this process, the Respondent was a member of the Oregon State Bar, maintaining an office and place of business in Multnomah County.

On or about April 2014, Citibank foreclosed on a residential real property owned by the Respondent.

Between September 24 and 28, 2015, the Respondent knowingly and intentionally sold redemption rights to her real property to at least five separate entities. The Trial Panel understands redemption rights to be a stick in the bundle of sticks property owners have, but, once sold to one buyer the property owner cannot then re-sell the same rights to a second, or in this case, third, fourth, or fifth buyer. Therefore, even if the first sale was lawful, the later four sales may have constituted theft in the first degree. The total of all sales of the redemption rights gained the Respondent at least $19,000, $10,000 of which was gained by deception on the part of the Respondent. These appear to be theft. Bar’s Sanctions Memorandum at 5. Under ORS 164.015(4), “[a] person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person . . . [c]ommits theft by deception as provided in ORS 164.085.” (Emphasis added.) ORS 164.085(1)(d) states that “[a] person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, the person . . . [s]ells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record.” (Emphasis added.) ORS 164.055 defines theft in the first degree, stating that “[a] person commits the crime of theft in the first degree if, by means other than extortion, the person commits theft as defined in ORS 164.015 and . . . [t]he total value of the property in a single or aggregate transaction is $1,000 or more.” (Emphasis added.) Therefore, it appears that were the Respondent to be prosecuted for the activities described above, there would be a case for at
least four counts of theft in the first degree, one for each of the four redemption deals that the Respondent made after having sold redemption rights a first, arguably valid, time.

The record does not reflect that the Respondent was ever indicted for, convicted of, or acquitted of any crime in connection with the sale of redemption rights.

On or about November 3, 2015, the Respondent was referred to Disciplinary Counsel’s Office (DCO) by an anonymous complaint. The DCO wrote letters to the Respondent, and reminded her of her obligation to respond.

On or about December 3, 2015, DCO filed a motion pursuant to BR 7.1, requesting the suspension of the Respondent for failure to respond to DCO’s inquiries. The Respondent, again, did not respond. An order suspending Respondent from the practice of law was signed by the State Bar Disciplinary Board Chairperson on December 14, 2015.

On July 5, 2016, the Bar filed its Formal Complaint against the Respondent, of which she acknowledged personal service on July 20, 2016.

The Respondent did not respond to the Formal Complaint, and was found in default on August 29, 2016. Thereby, the facts alleged by the Bar in its Formal Complaint are deemed true, and it is up to the Trial Panel to determine if the facts establish violations of the Rules of Professional Conduct, and, if so, the appropriate sanction.

Discussion and Conclusions of Law

The Bar’s factual allegations against the Respondent in the Formal Complaint were deemed true once the Respondent was held in default, pursuant to BR 5.8(a). See In re Magar, 337 Or 548, 551–53, 100 P3d 727 (2004); In re Kluge, 332 Or 251, 27 P3d 102 (2001). However, the Trial Panel still must decide whether the facts deemed true constitute a violation of the Oregon Rules of Professional Conduct, and if so, what sanctions may be appropriate. See In re Koch, 345 Or 444, 198 P3d 910 (2008). See also In re Kluge, 332 Or at 251. The Bar has the burden of proving misconduct by the Respondent by clear and convincing evidence. BR 5.2.


A. The Respondent knowingly refused to respond to a lawful demand for information in connection with this disciplinary matter, in violation of RPC 8.1(a)(2).

It is the duty of all attorneys to be responsive to the Bar in connection with disciplinary inquiries.

ORPC 8.1(a)(2) reads in pertinent part: “a lawyer . . . in connection with a disciplinary matter, shall not: (2) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority.” Emphasis added.
The Supreme Court has held that violating just this provision of the Rules is a “serious ethical violation.” In re Parker, 330 Or 541, 551, 9 P3d 107 (2000); In re Bourcier, 325 Or 429, 434, 939 P2d 604 (1997). The record clearly shows that the Bar has contacted and attempted to contact the Respondent regarding this matter several times via mail and email. Respondent has not chosen to participate in these proceedings in any way. The Trial Panel Chair also has emailed the Respondent, and received no response from her. The Trial Panel therefore finds, by clear and convincing evidence, that the Respondent violated RPC 8.1(a)(2) by failing to respond when the Bar made a lawful demand for information.

B. The Respondent violated RPC 8.4(a)(2) by committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.

The Respondent stands facing facts that allege at least four instances of theft for her own personal profit. Theft and deceit are crimes that by their very nature when committed by attorneys diminish the public’s view of all attorneys.

ORPC 8.4(a)(2) reads: “It is professional misconduct for a lawyer to: (2) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” Emphasis added.

In order for the Bar to prove a violation of this rule there does not have to be a criminal conviction. In re Hassenstab, 325 Or 166, 176, 934 P2d 1110 (1997). However, there must be some rational connection between the conduct and the Respondent’s fitness to practice law. In re Carpenter, 337 Or 226, 232, 95 P3d 203 (2004). The Bar has proved by clear and convincing evidence that the Respondent committed acts of theft. Theft, as defined by Oregon law, can take many forms. The specific type of theft indicated by the action of the Respondent is theft by deception. It follows that a crime involving deception would therefore reflect adversely on the honesty and trustworthiness of the attorney. The Bar has established the Respondent took actions that were the criminal act of theft by deception, of selling and re-selling redemption rights in her house. The first sale may have been legal; however, nothing in the record reflects that the subsequent four sales of redemption rights were anything but fraudulent attempts to make money. The later sales were therefore criminal acts which reflect adversely on the honesty and trustworthiness of the Respondent. There is no evidence in the record that after the Respondent made the first sale that she let the subsequent buyers know that she no longer had the right to sell the redemption rights. It is therefore clear to the Trial Panel, based on clear and convincing evidence, that the Respondent violated RPC 8.4(a)(2) by committing a criminal act that reflects adversely on her honesty or trustworthiness.
C. The Respondent violated RPC 8.4(a)(3) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on her fitness to practice law.

ORPC 8.4(a)(3) states it is professional misconduct to:

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.

Emphasis added. The distinction between RPC 8.4(a)(2), discussed above, and RPC 8.4(a)(3) is that the former requires a criminal act, whereas the latter simply requires engaging in conduct that is dishonest, fraudulent, deceitful, or a misrepresentation. “An attorney can be found to have engaged in “dishonest” conduct when the evidence demonstrates that he or she engaged in knowing or intentional conduct that indicates a disposition to lie, cheat, or defraud, and/or that the attorney lacks integrity. In re Carpenter, 337 Or 226, 234, 95 P3d 203 (2004); In re Sanchez 29 DB Rptr 21, 38 (2015). A lawyer engages in “misrepresentation” when the lawyer makes a representation that is affirmatively false or false by omission, knowing the representation to be false and material such that it could significantly influence the decision making process of the party to whom the representation is made. In re Gatti, 356 Or 32, 53, 333 P3d 994 (2014).

It should be noted that the Respondent was not acting in her capacity as a lawyer at the time of these violations, and that acting as a lawyer is not required for conduct to violate the Rules. In other words, the fact that the Respondent was not acting as a lawyer when she made the false statements of fact does not affect her culpability. The Disciplinary Rules apply to the conduct of lawyers even when they are acting on their own behalf. See, e.g., In re Glass, 308 Or 297, 779 P2d 612 (1989), adh’d to on recons, 309 Or 218, 784 P2d 1094 (1990) (respondent violated several ethical rules in the course of his private dispute with a contractor); In re Germundson, 301 Or 656, 662, 724 P2d 793 (1986) (lawyer who signed promissory notes on behalf of a corporation in which he had an interest, without authority to do so, violated former DR 1-102(A)(3) (now RPC 8.4(a)(3)); In re Houchin, 290 Or 433, 622 P2d 723 (1981) (lawyer violated former DR 1-102(A)(4) (now RPC 8.4(a)(4)) by enrolling in a college course as a student, while also teaching the same course, in order to qualify for educational benefits); In re Staar, 324 Or 283, 289, 924 P2d 308, 311 (1996).

The trial panel finds that the Respondent intentionally misrepresented her ability to sell redemption rights in her property to at least four companies, over a span of four days.

The Bar has therefore established by clear and convincing evidence that the Respondent made misrepresentations that were knowingly false and material, and that those misrepresentations would or could significantly influence the hearer’s decision-making process. See In re Eadie, 333 Or 42, 36 P3d 468 (2001); In re Kluge, 332 Or at 255. In this case, whatever the Respondent said to the subsequent redemption-rights buyers was sufficient to encourage them to give her money; thus, their decision-making process was influenced
enough to purchase what the Respondent purported to be able to sell. There is no evidence to suggest that what the Respondent said to encourage those buyers to give her money was anything other than knowingly stated. In each sale, save the first, the buyers of the redemption rights relied on the Respondent’s representation that she had those rights to sell.

SANCTION

In fashioning a sanction, the Oregon Supreme Court refers to the ABA Standards for Imposing Lawyer Sanctions (“Standards”), in addition to its own case law. In re Eakin, 334 Or 238, 257, 48 P3d 147 (2002); In re Biggs, 318 Or 281, 295, 864 P2d 1310 (1994).

A. The ABA Standards for Imposing Lawyer Sanctions

The Standards require an analysis of four factors by the Trial Panel:

(1) The ethical duty violated,
(2) The attorney’s mental state,
(3) The actual or potential injury, and

The Trial Panel analyzes the first three factors and reaches a presumptive sanction. That sanction can then be adjusted by the Trial Panel under the Standards based upon the presence of aggravating or mitigating circumstances. In re Jackson, 347 Or at 441. Finally, the Trial Panel evaluates whether the sanction is consistent with Oregon law. Id.

(1) The Ethical Duty Violated.

The Rules of Professional Conduct generally fall into four categories regarding the nature of the duties owed by an attorney:

(1) duty to clients;
(2) duty to the public;
(3) duty to the legal system; and
(4) duty to the legal profession.

The Respondent’s conduct involves violations of her duty to the public and duty to the legal profession. The duty to the public exists because the public “expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty, fraud.” Standards at 10. The duty to the legal profession includes, among other things, the duty to maintain the integrity of the profession. Standards at 10. See In re Sanchez, 29 DB Rptr at 31.
The Respondent violated her duties to the public and the legal profession. The Respondent violated these duties by intentionally and knowingly misrepresenting to at least four companies her right to sell redemption rights to property which had already been sold. The Respondent failed to live up to the “highest standards of honesty and integrity,” as required by both the duty to the public and the duty to the legal profession. Standards at 10. See In re Sanchez, 29 DB Rptr at 31. Her actions in selling redemption rights lacked honesty and integrity.

(2) The Attorney’s Mental State

The Standards set forth the following definitions regarding mental state of a Respondent.

— “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 at 13 (emphasis added).

The distinction between intent and knowledge is that intent requires attempting to accomplish a particular result. Given the facts stated above, it is impossible for the Trial Panel to conclude that the Respondent acted in any manner other than intentionally. It is simply not possible to believe that the occurrence of the events described above happened without a specific objective or purpose in mind, that of Respondent being given money ($10,000) in exchange for something that was no longer hers to sell.

(3) The Actual or Potential Injury

The third inquiry when examining the ABA Standards is assessing the injury, or potential injury, which occurred or could have occurred as a result of the actions of the Respondent. Injury can be actual or potential. Standards § 3.0(c). The Respondent appears to have actually injured at least four companies that purchased redemption rights after the initial sale of those rights. The total injury to those four companies was at least $10,000. The Trial Panel notes that the companies injured were not clients, but does not find that an important factor in this inquiry. Thus, there was actual injury stemming from the Respondent’s violations of RPC 8.4(a)(2) and (3).

Further, failure to cooperate with the Bar’s investigation of a Respondent’s conduct has been found to cause actual injury to both the legal profession and the public. In re Schaffner, 325 Or 421, 939 P2d 39 (1997); In re Miles, 324 Or 218, 221–22, 923 P2d 1219 (1996); In re Haws, 310 Or 741, 753–54, 801 P2d 818 (1990); see also In re Gastineau, 317 Or 545, 558,
857 P2d 136 (1993) (court concluded that, when a lawyer persisted in his failure to respond to the Bar’s inquiries, the Bar was prejudiced because the Bar had to investigate in a more time-consuming way, and the public respect for the Bar was diminished because the Bar could not provide a timely and informed response to complaints); In re Ireland, 29 DB Rptr 53, 60 (2015). Thus, the Respondent’s violation of RPC 8.1(a)(2) also caused injury, though not an injury easily stated in terms of dollars.

Without considering aggravating or mitigating circumstances, the Standards establish levels of sanctions that are appropriate based on the nature of the duty violated, mental state of the Respondent, and injury. The possible sanctions based on the analysis above range from admonition to disbarment. Standards §§ 5.11–5.14.

(4) The existence of Aggravating and Mitigating Circumstances.

The fourth and final factor to take into consideration as a Trial Panel when determining an appropriate sanction is the existence of aggravating or mitigating circumstances. As discussed below, the record establishes several aggravating circumstances, but very little in the way of mitigating circumstances.

a. Aggravating Circumstances

A list of aggravating factors are provided in Standards § 9.22; those that are raised by this case are discussed below.

Aggravating Factor: Standards § 9.22(b) (dishonest or selfish motive).

The acts of the Respondent clearly indicate that she profited from her actions in selling the redemption rights to her property repeatedly. The Bar provided evidence of at least four fraudulent sales of redemption rights. The money from those sales appears to have been pocketed by the Respondent; thus, a dishonest or selfish motive is established.

Aggravating Factor: Standards § 9.22(d) (multiple offenses).

The Respondent perpetrated a fraud at least four times per the evidence presented by the Bar. The aggravating factor of multiple offenses has been established.

Aggravating Factor: Standards § 9.22(e) (bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency).

The Respondent did not respond in any way to this disciplinary process. There is no way for the Trial Panel to conclude that this failure was anything other than intentional on behalf of the Respondent. The Disciplinary Counsel’s Office contacted the Respondent, and she never responded. Therefore, the Trial Panel finds it clearly established that this aggravating factor exists in this case.
Aggravating Factor: *Standards § 9.22(g)* (refusal to acknowledge wrongful nature of conduct).

The Bar states that it is unaware of any repayment made by the Respondent. Bar Sanctions Memorandum at 11. The Respondent was sued in small claims court in Multnomah County by one of the buyers of her redemption rights. Bar Sanctions Memorandum, Exhibit 7. Therefore, it is clear that at least at the time of that suit, that injured party had not been made whole. Further, the Respondent did not file any paper in this proceeding on this issue. Absent any evidence to the contrary, the Trial Panel finds that the Respondent has in no way acknowledged the wrongful nature of her conduct.

Aggravating Factor: *Standards § 9.22(h)* (vulnerability of victim).

The Bar argues that regardless of the sophistication of the purchasers, the pattern followed by the Respondent made it impossible for them to discover her deceptive practices until it was too late. The Trial Panel is not completely convinced by this argument. The buyers at issue knew they were approaching a homeowner likely to lose her home to foreclosure in the coming days. The buyers are knowingly dealing with people who are desperate, and therefore should carry out such business with an abundance of caution. Further, the buyers should have known that a homeowner in the situation of the Respondent might be desperate for money. We do not find that such buyers would be vulnerable victims, and do not find that the “vulnerability of victim” is an aggravating factor in this case.

Aggravating Factor: *Standards § 9.22(i)* (substantial experience in the practice of law).

The Bar points to the Respondent’s lengthy admission to practice not only in Oregon, but also in New Jersey and Pennsylvania, as substantive aggravating factors. The Trial Panel does not find that this aggravating factor applies. There is nothing in the record before the Trial Panel to establish that real property transactions were a part of the Respondent’s practice area, or that the sale of redemption rights is an area in which she had any level of experience. It has not been established, for example, that the Respondent spent years buying and selling real estate for clients or practicing foreclosure law, therefore no particular knowledge or expertise in the area of redemption rights is established by the record. Therefore, the trial panel finds that this is not an aggravating factor in this case.

Aggravating Factor: *Standards § 9.22(j)* (indifference to making restitution).

As discussed above regarding *Standards § 9.22(g)*, neither the Bar nor the Trial Panel is aware of any repayment to the buyers victimized by Respondent. This tends to establish indifference by the Respondent towards making restitution.

Aggravating Factor: *Standards § 9.22(k)* (illegal conduct, including that involving the use of controlled substances).

The conduct of the Respondent appears to have been illegal; thus, this aggravating factor is clearly established.
B. Mitigating Circumstances

Given that the Respondent presented no pleadings, there is very little to establish the existence of any of the mitigating factors. The Standard’s Section 9.32 lists mitigating factors. The only mitigating factor that the Trial Panel can find applies to the Respondent is 9.32: “(a) absence of a prior disciplinary record.” The record does not establish any previous disciplinary record for the Respondent.

The Trial Panel notes that absent aggravating or mitigating circumstances, upon application of the factors set out in Standards § 3.0, disbarment is “generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation” and when the “lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft,” or when the “lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice.” Standards §§ 5.1, 5.11 (emphasis added). Given the Respondent’s actions, and the ABA Standards, it is impossible for the Trial Panel to find that any sanction other than disbarment is appropriate.

Adding the above discussed aggravating and mitigating circumstances to the determination of the appropriate sanction does not affect the Trial Panel’s decision. There are many aggravating circumstances, and only one mitigating circumstance, and the Trial Panel therefore concludes that disbarment is still the appropriate sanction.

(5) The sanctions’ consistency with Oregon Law.

The final task of the Trial Panel is to determine if its proposed sanction is consistent with Oregon Law. In Oregon, lengthy suspensions have been imposed on lawyers who have engaged in conduct somewhat similar to the conduct at issue in the present proceeding. Misrepresentations to the court and others for the lawyer’s benefit have yielded long-term suspensions. See, e.g., In re Davenport, 334 Or 298, 49 P3d 91, modified on recons, 335 Or 67, 57 P3d 897 (2002) (lawyer suspended for two years for knowingly giving false testimony under oath during bankruptcy examination). See also In re Claussen, 322 Or 466, 909 P2d 862 (1996) (lawyer, without prior disciplinary history, suspended for one year for making material misrepresentations to bankruptcy court, failing to disclose connection to creditor or adverse interest and settlement of claims against debtor); In re Sundstrom, 250 Or 404, 442 P2d 604 (1968), receded from In re Laury, 300 Or 65, 706 P2d 935 (1985) (lawyer suspended 5 years for giving willfully deceitful testimony before the trial committee, being unavailable to clients and the public, misappropriating client funds, and issuing insufficient-funds bank checks); In
re Dang, 29 DB Rptr 46, 51 (2015). A distinguishing characteristic between In re Dang and the present case is that Dang participated in the disciplinary process. From In re Dang, it is clear to the Trial Panel that participating in the disciplinary process shows some interest in maintaining the right to practice law, and regaining the trust lost by the Respondent’s actions.

Similar to the above discussed cases, in In re Gregg, the Oregon Supreme Court held that “[i]f it appears likely that a disciplined attorney may become rehabilitated within a few years, and therefore, should be permitted to resume the practice of law, suspension and not disbarment is the appropriate discipline.” In re Gregg, 252 Or 174, 179, 446 P2d 123, modified, 252 Or 174, 448 P2d 547 (1968), receded from In re Laury, 300 Or 65, 75–76 & n 5, 706 P2d 935 (1985). However, the Trial Panel cannot reach that conclusion here. We simply have no evidence that suggests the Respondent is interested in rehabilitating, because she has never communicated to the Panel or engaged in the disciplinary procedure.

In another case involving deceit, a Respondent lied on a restraining order, and she was suspended for two years. However, again there are distinguishing factors from this proceeding, because there, the lawyer did not profit from her fraud. The trial panel in that case also found no aggravating factors, and the respondent also had a present mitigating factor of suffering from a mental disability. See In re Staar, 324 Or 283, 312, 924 P2d 308 (1996). Here, however, there are a number of aggravating factors and few mitigating factors; thus, the Trial Panel is confident that a disbarment is consistent with Oregon state law.

Finally, there are other cases in which the Respondent lawyer committed theft, and was disbarred. In In re Phinney, 354 Or 329, 311 P3d 517 (2013), for example, the lawyer was disbarred for writing checks to himself from an association’s account, which, given the circumstances, was tantamount to theft. In that case, the Oregon Supreme Court also examined a number of comparable cases in which theft was alleged as the basis for disbarment. See In re Murdock, 328 Or 18, 968 P2d 1270 (1998) (disbarment appropriate when law-firm associate knowingly embezzled more than $9,000 from law firm); In re Laury, 300 Or 65, 76, 706 P2d 935 (1985) (disbarment appropriate when attorney converted $1,100 in client funds to his own personal use); In re Pierson, 280 Or 513, 519, 571 P2d 907 (1977) (disbarment appropriate when attorney converted $56,000 from client trust funds to his own personal use, notwithstanding full restitution of the funds by the attorney).

Ms. Rinks has displayed no interest in rehabilitating or rejoining the legal profession. She has provided the Trial Panel with no mitigating circumstances, no explanation, and no reason to believe that she wants to maintain her license to practice law. Given this level of

7 Other examples include In re Benson, 317 Or 164, 854 P2d 466 (1993) (six-month suspension for assisting a client in preparing and recording a fraudulent trust deed); In re Brown, 298 Or 285, 692 P2d 107 (1984), superseded by rule as stated in In re Smith, 318 Or 47, 53 n 5, 861 P2d 1013 (1993) (two-year suspension for preparing a false affidavit); In re Beach, 29 DB Rptr 92, 106 (2015).
indifference, Respondent’s behavior that led to this proceeding, and the duties Respondent breached to the Bar and the public, we must act to protect the public.

ORDER

For the foregoing reasons, and having found by clear and convincing evidence that the Respondent violated RPC 8.1(a)(2), 8.4(a)(2) and 8.4(a)(3), IT IS HEREBY ORDERED that the Respondent, Kathleen Y. Rinks, be disbarred.

Respectfully submitted this 9th day of March, 2017.

By:

/s/ Kristina Reynolds
Kristina Reynolds, OSB 061262
Trial Panel Chairperson

/s/ Bryan D. Beel
Bryan D. Beel, OSB 073408
Trial Panel Member

/s/ Stephen D. Butler
Stephen D. Butler
Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) )
Complaint as to the Conduct of ) Case No. 16-68
) )
CONRAD E. YUNKER, )
) )
Accused. )

Counsel for the Bar: Angela W. Bennett
Counsel for the Accused: Christopher R. Hardman
Disciplinary Board: None
Disposition: Violation of RPC 1.3 and RPC 1.4(b). Stipulation for Discipline. 60-day suspension, all stayed, two-year probation.
Effective Date of Order: June 30, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Conrad E. Yunker is suspended for 60 days, with all of the suspension stayed, pending the successful completion of a two-year term of probation, effective ten days after approval by the Disciplinary Board, for violation of RPC 1.3 and RPC 1.4(b).

DATED this 20th day of June, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ James C. Edmonds
James C. Edmonds, Region 6
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Conrad E. Yunker, attorney at law (“Yunker”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

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

2. Yunker was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 25, 1987, and has been a member of the Bar continuously since that time, having his office and place of business in Marion County, Oregon.

3. Yunker 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 21, 2016, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Yunker for alleged violations of RPC 1.3 [neglect of a legal matter]; and RPC 1.4(b) [duty to explain a matter to the extent necessary to allow a client to make informed decisions regarding the representation] of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5. In August 2013, Michael P. Shubin (“Shubin”) hired Yunker to handle a civil rights claim against the Reedsport Police Department (“Claim 1”). The state law claims were subject to the Oregon Tort Claims Act, requiring a tort claims notice, which Yunker sent to the Mayor and City Attorney of Reedsport in mid-September 2013.

6. In October 2013, Yunker entered into a written fee agreement with Shubin to represent him on Claim 1.

7. In January 2014, Shubin was allegedly assaulted by a police officer in his home when he called the police to deal with a disruptive dinner guest (“Claim 2”). Shubin approached
Yunker to also handle Claim 2. Yunker was initially receptive to representing him on Claim 2, although they did not enter into a new fee agreement.

8. Yunker asked an investigator to interview witnesses relevant to Claim 2 and told Shubin that he would file a tort claim notice after obtaining the police report.

9. In March 2014, Shubin delivered the police report on Claim 2 to Yunker, but Yunker did not file the tort claim notice. Also by March 2014, Shubin was finding it increasingly difficult to get timely, substantive responses to his requests for information and updates regarding his matters.

10. Between March and July 2014, Shubin regularly contacted Yunker and his private investigator with questions and information related to the two cases. In early July, Shubin began to request that the complaints in his cases (both claims) be filed promptly.

11. The deadline for filing a tort claim notice on Claim 2 was in late July 2014. As the deadline approached, Yunker did not attempt to calculate the deadline or inform Shubin that he no longer intended to file a tort claim notice.

12. In late July, Shubin began contacting Yunker with increased frequency, expressing his desire to have both cases filed as soon as possible. Approximately three weeks later, Yunker disclosed to Shubin that he had missed the tort-claim-notice filing deadline on Claim 2 and that his health would require him to withdraw from representation as to both Claim 1 and Claim 2.

13. Within the next few months, Yunker returned all the money Shubin had paid him and withdrew from the matter.

**Violations**

14. Yunker admits that, by failing to more timely attend to Shubin’s legal matter, including ensuring that the tort claim notice in Claim 2 was properly filed, he neglected his legal matter, in violation of RPC 1.3.

Yunker further admits that his failure to sufficiently communicate to Shubin that he was disinterested in pursuing Claim 2, and that he had not filed, and did not plan to file, the
tort claim notice on Claim 2, prevented Shubin from being able to make informed decisions regarding the representation, in violation of RPC 1.4(b).

**Sanction**

Yunker 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* (“Standards”). The *Standards* require that Yunker’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. *Standards* § 3.0. In determining the appropriate sanction, the court also examines the conduct of the accused attorney in light of the court’s prior case law. *In re Garvey*, 325 Or 34, 42, 932 P2d 549 (1997).

- **Duty Violated.** The most important ethical duties a lawyer owes are those owed to clients. *Standards* at 5. Yunker violated his duty to his client to diligently attend to his matter, which duty included the obligation to timely and effectively communicate with his client. *Standards* § 4.42.

- **Mental State.** The *Standards* recognize three possible mental states: negligent; knowing; and intentional. *Standards* at 9. Yunker acted negligently and knowingly, at various stages, in failing to attend to Shubin’s case, and in failing to inform Shubin of necessary information regarding his case. Although Yunker’s avoidance of the claims may have been initially negligent, it became knowing when he was alerted of the need to act by Shubin’s inquiries but took no action to move the matters forward. Similarly, Yunker’s election not to inform Shubin of information related to Shubin’s cases became knowing in advance of Yunker’s election to withdraw from the matters.

- **Injury.** Both actual and potential injury are relevant to determining the sanction in a disciplinary case. *Standards* § 3.0(c); *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Yunker’s lack of diligence and failure to communicate with Shubin regarding Claim 2 caused actual and potential injury to his client, in that he lost his state claim, and would have lost his cause of action had he not been able to pursue the matter federally.

- **Aggravating Circumstances.** Aggravating circumstances include:
  1. Yunker has recent prior, relevant discipline for the same and similar rule violations: in 2011 he was reprimanded for violations of RPC 1.3 and 1.4(a), for failing to timely file a petition to confirm an arbitration award, which resulted with in the case being dismissed without
prejudice, and for failing to communicate with his client about developments in the matter. \textit{In re Yunker}, 25 DB Rptr 50 (2011). \textit{Standards} § 9.22(a); see also \textit{Standards} § 8.2.

2. There is a pattern of misconduct over the course of several years, as Yunker’s prior discipline involved similar misconduct as his conduct in this matter. \textit{Standards} § 9.22(c).

3. Substantial experience in the practice of law (over 25 years at the time of the misconduct). \textit{Standards} § 9.22(i).

\textbf{e. Mitigating Circumstances.} Mitigating circumstances include:

1. Absence of a dishonest or selfish motive. \textit{Standards} § 9.32(b).

2. Yunker was reportedly suffering from unidentified personal health issues at the time of at least some of the misconduct in this matter; health issues which his counsel asserts are now resolved. These health issues purportedly caused Yunker to be absent from his office for extended periods of time and diverted his attention from Shubin’s matters. \textit{Standards} § 9.32(c).

3. Timely, good faith efforts to make restitution, insofar as Yunker returned all of the money he received from Shubin at the time that he withdrew. \textit{Standards} § 9.32(d).


5. Yunker provided support for his good character and reputation in the legal community. \textit{Standards} § 9.32(g).

6. Yunker expressed remorse for his actions, including by refunding all of the fees paid by his client. \textit{Standards} § 9.32(l).

16.

Under the ABA \textit{Standards}, a suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury, or when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. \textit{Standards} § 4.42(a), (b). A suspension is also generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client. \textit{Standards} § 8.2.

17.

Generally, lawyers who knowingly neglect a legal matter or fail to keep clients informed are suspended. \textit{In re Snyder}, 348 Or 307, 321, 232 P3d 952 (2010). Further, prior
cases indicate a 30- to 60-day suspension would be an appropriate sanction for neglect and failure to communicate under similar circumstances. See In re Redden, 342 Or 393, 153 P3d 113 (2007) (60-day suspension for lawyer’s failure to complete a client’s child support arrearage matter for nearly two years); In re Schaffner, 323 Or 472, 918 P2d 803 (1996) (attorney suspended for 120 days, 60 days of which were attributed to lawyer’s knowing neglect of clients’ case for several months by failing to communicate with clients and opposing counsel); In re Colby, 24 DB Rptr 47 (2010) (30-day suspension for attorney who failed to adequately communicate with clients and failed to take action in two client matters, resulting in the clients’ claims being dismissed by the court for lack of prosecution).

18.

BR 6.2 recognizes that probation can be appropriate and permits a suspension to be stayed pending the successful completion of a probation. See also Standards § 2.7 (probation can be imposed alone or with a suspension and is an appropriate sanction for conduct which may be corrected). In addition to a period of suspension, a period of probation designed to ensure the adoption and continuation of better practices will best serve the purpose of protecting clients, the public, and the legal system.

19.

Consistent with the Standards and Oregon case law, the parties agree that Yunker shall be suspended for 60 days for his violations of RPC 1.3 and RPC 1.4(b), with all of the suspension stayed, pending Yunker’s successful completion of a two-year term of probation. The sanction shall be effective ten days after approval by the Disciplinary Board (the “effective date”).

20.

Probation shall commence upon the effective date and shall continue for a period of two years, ending on the day prior to the second year anniversary of the effective date (the “period of probation”). During the period of probation, Yunker shall abide by the following conditions:

(a) Yunker shall comply with all provisions of this Stipulation for Discipline, the Rules of Professional Conduct applicable to Oregon lawyers, and ORS Chapter 9.

(b) Within seven days of the effective date, Yunker shall contact the Professional Liability Fund (PLF) and schedule an appointment on the soonest date available to consult with PLF practice management advisors in order to obtain practice management advice. Yunker shall schedule the first available appointment with the PLF and notify the Bar of the time and date of the appointment.

(c) Yunker shall attend the appointment with the PLF practice management advisor and seek advice and assistance regarding procedures for diligently pursuing
client matters; communicating with clients; effectively managing a client caseload; and calendaring, managing, and tracking correspondence and deadlines. Yunker will also seek information and advice regarding updating his case management systems and what technological solutions are available for doing so. No later than 30 days after recommendations are made by the PLF, Yunker shall adopt and implement those recommendations.

(d) No later than 60 days after recommendations are made by the PLF, Yunker shall provide a copy of the Office Practice Assessment from the PLF and file a report with Disciplinary Counsel’s Office stating the date of his consultation(s) with the PLF; identifying the recommendations that he has adopted and implemented; and identifying the specific recommendations he has not implemented and explaining why he has not adopted and implemented those recommendations.

(e) Gary Abbott Parks shall serve as Yunker’s probation supervisor (“Supervisor”). Yunker shall cooperate and comply with all reasonable requests made by Supervisor that Supervisor, in his sole discretion, determines are designed to achieve the purpose of the probation and the protection of Yunker’s clients, the profession, the legal system, and the public. Beginning with the first month of the period of probation, Yunker shall meet with Supervisor in person at least once a month for the purpose of reviewing the status of Yunker’s law practice and his performance of legal services on the behalf of clients. Each month during the period of probation, Supervisor shall conduct a random audit of 10 files or 10% of Yunker’s active files, whichever is more, to determine whether Yunker is timely, competently, diligently, and ethically attending to matters, adequately communicating with clients and others involved in his cases, monitoring and calendaring deadlines, and taking reasonably practicable steps to protect his clients’ interests upon the termination of employment.

(f) During the period of probation, Yunker shall attend not less than 12 CLE accredited programs, for a total of 24 credit hours, which shall emphasize law practice, client, and case management, as well as adequately and competently utilizing technology in his law practice. These credit hours shall be in addition to those MCLE credit hours required of Yunker for his normal MCLE reporting period. The Ethics School requirement does not count towards the 24 hours needed.

(g) Each month during the period of probation, Yunker shall review all client files to ensure that he is timely attending to his clients’ matters, maintaining adequate communication with clients, the court, and opposing counsel, and staying current on deadlines and other important dates.
(h) On a quarterly basis, on dates to be established by Disciplinary Counsel beginning no later than 90 days after the effective date, Yunker shall submit to Disciplinary Counsel’s Office a written “Compliance Report,” approved as to substance by Supervisor, advising whether Yunker is in compliance with the terms of this agreement. In the event that Yunker has not complied with any term of the agreement, the Compliance Report shall describe the non-compliance and the reason for it.

(i) Throughout the term of probation, Yunker shall diligently attend to client matters and adequately communicate with clients regarding their cases.

(j) Yunker authorizes Supervisor to communicate with Disciplinary Counsel regarding his compliance or non-compliance with the terms of this agreement, and to release to Disciplinary Counsel any information necessary to permit Disciplinary Counsel to assess Yunker’s compliance.

(k) Yunker is responsible for any costs required under the terms of this stipulation and the terms of probation.

(l) Yunker’s failure to comply with any term of this agreement, including conditions of timely and truthfully reporting to Disciplinary Counsel’s Office, or with any reasonable request of Supervisor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.

(m) A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to Disciplinary Counsel on or before its due date.

(n) The SPRB’s decision to bring a formal complaint against Yunker for unethical conduct that occurred or continued during the period of his probation shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.

21.

In the event Yunker’s probation is revoked and the stayed suspension imposed, Yunker 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. Should this contingency occur, Yunker will arrange for an active member of the Bar to either take possession of or have ongoing access to Yunker’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Additionally, Yunker will immediately (within 72 hours of notice of the revocation) provide DCO with the name of the attorney who agrees to accept this responsibility.
22.

In the event Yunker’s probation is revoked and the stayed suspension imposed, Yunker acknowledges that reinstatement is not automatic on expiration of the period of suspension and that he is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Yunker also acknowledges that during any term of suspension, 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.

Yunker 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 is a violation of his probation for which his probation may be revoked and the stayed suspension imposed. This requirement is in addition to any other provision of this agreement that requires Yunker to attend or obtain continuing legal education (CLE) credit hours.

24.

Yunker 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 Yunker is admitted: Washington.

25.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 May, 2017.

/s/ Conrad E. Yunker
Conrad E. Yunker, OSB No. 873740

APPROVED AS TO FORM AND CONTENT:

/s/ Christopher R. Hardman
Christopher R. Hardman, OSB No. 792567

EXECUTED this 16th day of May, 2017.

OREGON STATE BAR

By: /s/ Angela W. Bennett
Angela W. Bennett, OSB No. 092818
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )

) Case No. 16-103

) Michael E. Haglund,

) Accused.

Counsel for the Bar: Theodore W. Reuter
Counsel for the Accused: Roy Pulvers
Disciplinary Board: None.
Disposition: Violation of RPC 1.7(a) and RPC 1.16(a)(1).
Stipulation for Discipline. Public Reprimand.
Effective Date of Order: June 22, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Michael E. Haglund is publicly reprimanded for violations of RPC 1.7(a) and RPC 1.16(a)(1).

DATED this 22nd day of June, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Ronald W. Atwood
Ronald W. Atwood, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Michael E. Haglund, attorney at law (“Haglund”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).
1. The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2. Haglund 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 Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3. Haglund 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 9, 2016, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Haglund for alleged violations of RPC 1.7(a) (current-client conflict of interest) and RPC 1.16(a)(1) (obligation to withdraw where continued representation will violate the RPCs or other law) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5. In February 2013, Haglund agreed to represent brothers Stewart Butler (“Stewart”) and Robert Butler (“Robert”) in a guardianship and conservatorship proceeding in response to their concerns about the potential financial abuse of their mother. Although Haglund did not regularly handle estate or probate matters, he agreed to help the brothers because Stewart had been Haglund’s long-time client.

6. The same day Haglund initiated a guardianship and conservatorship proceeding on behalf of Stewart and Robert, their mother passed away. Haglund then initiated a probate of their mother’s estate (“Estate Proceeding”). The single purpose of the probate was to investigate a potential claim on behalf of the estate. The estate had no other assets, which were all in trust.

7. While the Estate Proceeding was still open, a dispute arose between Stewart and Robert regarding the administration of their father’s trust (“Trust Dispute”). Haglund erroneously
believed that his representation of Stewart and Robert as the personal representatives in the Estate Proceeding did not preclude him from bringing an action against Robert on behalf of Stewart as the trustees in the Trust Dispute. To the extent that Haglund may have been permitted by RPC 1.7(b) to represent Stewart in the Trust Dispute, Haglund did not obtain informed consent, confirmed in writing, from either Stewart or Robert. Robert Butler was represented by separate counsel during part of the trust dispute, and that counsel did not assert that Mr. Haglund had a conflict.

8. Four months after Robert objected to Haglund’s representation of Stewart in the Trust Dispute and three months after Robert filed a Bar complaint, that Haglund withdrew from his representation of Stewart. Mr. Haglund withdrew promptly once he retained counsel in response to the bar complaint, who explained that Oregon law treats the personal representative as an individual client and not just as a representative of the estate. He also voluntarily renounced any fee which he had earned from work potentially implicated by a conflict of interest and apologized to the complainant, during the investigation.

Violations

9. Haglund admits that his representation of Stewart in the Trust Dispute against Robert was a current-client conflict of interest that violated RPC 1.7(a). Haglund further admits that his failure to sooner recognize the conflict and extract himself from the Trust Dispute amounted to a continuing conflict that violated RPC 1.16(a)(1).

Sanction

10. Haglund 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 (“Standards”). The Standards require that Haglund’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.** Haglund violated his duty to his clients to avoid conflicts of interest. Standards § 4.3. The Standards provide that the most important ethical duties are those which lawyers owe to clients. Standards at 5.

b. **Mental State.** Haglund acted knowingly. That is, he acted with the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Standards at 9. For the purposes of determining a lawyer’s knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by exercise of
reasonable care should have known, are attributed to the lawyer. RPC 1.0(h). Haglund knew that he was an attorney for Robert as a personal representative in the Estate Proceeding at the point in time that he brought suit against him individually in the Trust Dispute.

c. **Injury.** Injury can be either actual or potential under the *Standards. In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). In this case, the reputation of the profession was potentially and actually injured by impropriety of a lawyer prosecuting a case against his current client. Robert’s interests were also potentially and actually harmed when actions were taken against him by his current attorney. *See In re Campbell*, 345 Or 670, 688, 202 P3d 871 (2009) (indicating multiple-client conflicts result in actual harm).

d. **Aggravating Circumstances.** Aggravating circumstances include:


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


2. Full and free disclosure to the bar and cooperative attitude towards proceedings *Standards* § 9.32(e). Haglund was forthright regarding his conduct and the consequences of that conduct.

3. Good character or reputation. *Standards* § 9.32(g). Haglund provided information that supporting that he has been a leader in the Bar encouraging pro bono representation by lawyers for nearly forty years, and he is generally well regarded by his fellow legal professionals.

4. Remorse. *Standards* § 9.32(l). Haglund voluntarily renounced any fee which he earned from the work potentially implicated by this conflict of interest and apologized before any formal determination of wrong doing had been made.

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. In this case, mitigation significantly outweighs aggravation, making a public reprimand the appropriate sanction.

12.

A public reprimand is also in keeping with Oregon cases for conflicts of interest which caused minimal harm, and where mitigating factors strongly outweigh any aggravating ones. *In re Howser*, 329 Or 404, 413, 987 P2d 496 (1999) (so stating). *See also In re Cohen*, 316 Or 657, 664, 853 P2d 286 (1993) (imposing reprimand in knowing-conflict case when mitigating
factors outweighed aggravating factors); In re O’Rourke, 28 DB Rptr 3 (2014) (lawyer with aggravating and mitigating factors nearly mirroring Haglund’s was reprimanded where he assisted husband in removing property from a trust he helped wife set up, contrary to the terms of that trust); In re Dole, 25 DB Rptr 56 (2011) (lawyer reprimanded after he represented parents, and then parent and children, and then child adverse to parent without adequate disclosures all in relation to the same entity and family trusts, and where mitigation was twice that of his aggravating factors).

13.

Consistent with the Standards and Oregon case law, the parties agree that Haglund shall be publicly reprimanded for his violations of RPC 1.7(a) and RPC 1.16(a)(1). The sanction shall be effective upon approval by the Disciplinary Board.

14.

Haglund 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.

15.

Haglund represents that, apart from Oregon, he is not admitted to practice law (whether his current status is active, inactive, or suspended) in any other jurisdictions.

16.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 7th day of June, 2016.

/s/ Michael E. Haglund
Michael E. Haglund
OSB No. 772030

EXECUTED this 20th day of June, 2016.

OREGON STATE BAR

By: /s/ Theodore W. Reuter
Theodore W. Reuter
OSB No. 084529
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )

) Case Nos. 14-23 & 14-28

Complaint as to the Conduct of )

) KEVIN CAROLAN,

) Accused.

Counsel for the Bar: Amber Bevacqua-Lynott
Nik T. Chourey
Counsel for the Accused: David J. Elkanich
Disciplinary Board: Paul B. Heatherman, Chairperson
Jet Harris
Steven P. Bjerke, Public Member
Effective Date of Opinion: June 27, 2017

TRIAL PANEL OPINION

This matter came before a Trial Panel of the Disciplinary Board consisting of Paul B. Heatherman, Chair; Jet Harris, Member; and Steven P. Bjerke, Public Member, on January 23-25, 2017. The Oregon State Bar is represented by Amber Bevacqua-Lynott, Chief Assistant Disciplinary Counsel. The Accused is represented by David J. Elkanich. The trial panel has considered the pleadings, exhibits and testimony of witnesses. Based on the findings and conclusion made below, we find that the Accused has violated no rules of professional conduct.

INTRODUCTION

The Bar filed its Formal Complaint against the Accused on February 12, 2015. The Accused filed an Answer to the Formal Complaint on or about April 1, 2015. The Bar subsequently filed an Amended Formal Complaint on or about August 19, 2016, and the Accused filed an Answer to the Amended Formal Complaint on October 4, 2016.

FACTS & FINDINGS

At all relevant times, the Accused, Kevin Carolan, was an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member
of the Oregon State Bar, having his office and place of business in the County of Deschutes, State of Oregon.

**AVERY MATTER (Case No. 14-23)**

James Avery (and his former wife, Catherine Avery) retained the Accused to look into post-conviction relief options based on ineffective assistance of counsel in two criminal cases, one in Oregon and one in Maryland. The Accused’s engagement agreement asked the Averys to acknowledge that they understood the Accused may assign work to an associate within or outside of his firm. The Accused contacted attorney Jerome Larkin, through the Oregon Women Lawyer’s Association listserv for contract lawyers, to research pertinent legal issues. The Accused agreed to pay Mr. Larkin $50/hour for his work. The Accused billed the Averys at $165/hour for all lawyer time, including time spent by Mr. Larkin. On or about November 4, 2011, Mr. Larkin notified the Accused that he had reached his 10-hour limit. He provided to the Accused a memo of his research.

The Averys paid an initial retainer deposit of $2,500 to the Accused’s trust account, and agreed to replenish that amount when it was depleted. After the initial work was performed on the case, the Accused invoiced the Averys for legal services. At that point, the trust funds were depleted. On or about January 27, 2012, the Accused told Ms. Avery that he could not continue working on the case unless she paid the outstanding amount due of $706 and provided an additional $2,000 retainer. Ms. Avery took some time to raise the funds, and provided the Accused with at least an additional $2,000 in total between February and mid-April 2012.

Once the Accused received the additional funds in trust, he contacted Mr. Larkin to ask if he was still available to assist with the matter. Mr. Larkin reported he was no longer available and the Accused then hired another contract attorney, Sarah Foreman, a former deputy district attorney and a personal friend, to assist him with the case. The Accused agreed to pay Ms. Foreman $75/hour for her work.

In September of 2012, the Averys terminated the Accused and asked for a refund and copies of the file, including copies of any Oregon and Maryland records the Accused had obtained. The Accused refunded about $600 to the Averys and gave them a redacted version of Mr. Larkin’s research memo.

At the hearing, an expert for the Bar and an expert for the Accused testified to conflicting opinions on whether the Accused’s conduct constituted incompetent representation.

**COWAN/WINSTEAD MATTER (Case No. 14-28)**

On or about April 8, 2011, Carol Winstead was sentenced to 30 days in jail following a conviction for theft related to misappropriation of money from the Kids Club of Harney County — a nonprofit organization at which she had been the executive director. Ms. Winstead had been represented by attorney Markku Sario in entering her plea. She tried unsuccessfully to withdraw her plea at sentencing. On or about April 15, 2011, Cran Cowan, a friend of Ms.
Winstead, consulted with the Accused regarding an appeal of Ms. Winstead’s criminal conviction and other matters, including a potential malpractice lawsuit against Mr. Sario and a lawsuit against the victim, Sharon Davis. On or about April 19, 2011, the Accused opened a file and Mr. Cowan agreed to pay the Accused $200/hour to represent Ms. Winstead. Mr. Cowan sent the Accused a $1000 retainer.

Ms. Winstead’s consent was delayed as she was in jail at the time, but the Accused, with Mr. Cowan’s assistance, obtained a signed engagement/fee agreement from Ms. Winstead on or about May 5, 2011. The agreement authorized the Accused to file a notice of appeal and to review Ms. Winstead’s case for possible causes of action against Mr. Sario and the alleged victim, Sharon Davis. Ms. Winstead also requested that the Accused research possible claims against the county DA’s office, the victim, and the trial judge.8

Also on May 5, 2011, the Accused made inquiries of the technical support arm of the court of appeals e-filing system, expressing that he had registered and needed his password to complete a filing the next day. The Accused was apparently manually registered by the technical team to facilitate this. The Accused had never e-filed before.

The Accused electronically filed Ms. Winstead’s notice of appeal the next day, (May 6, 2011) which was within the filing deadline.9 He received the following confirmation:

“The document has been successfully submitted to the Oregon Court of Appeals. You will receive notification of the acceptance or rejection of this document from the Clerk’s Office.”

Thereafter, he received nothing from the Clerk’s Office, either accepting or rejecting the filing. Because he never received a second email, the Accused assumed that the Notice of Appeal was successfully filed. On or about June 29, 2011, the Accused told Mr. Cowan that he was still trying to figure out whether Ms. Winstead had a viable appeal.

After further investigation and research of the merits of the appeal, on July 25, 2011, the Accused advised Ms. Winstead (via voicemail) that there was not a good chance of prevailing in the appeal. Over the following few days, and in particular on July 28, 2011, the Accused, Ms. Winstead, and Mr. Cowan communicated regarding options going forward. During those communications, Ms. Winstead told the Accused that she no longer wished to

8 Ms. Winstead did not appear at the Disciplinary Hearing.

9 At the hearing, the Bar argued that the Accused filed the Notice of appeal just inside of the 30-day deadline, suggesting incompetence. However, one of the Bar’s expert witnesses, Jason Thompson, testified that filing the day before the deadline is “going to be fine.”
pursue the appeal. (Although the Bar argued to the contrary, we find the Accused’s account on this to be persuasive.)\(^{10}\)

The Accused’s representation of Ms. Winstead was subsequently terminated on September 16, 2011, and he provided a copy of his file to her. Mr. Cowan and/or Ms. Winstead paid the Accused a total of $3720 (the equivalent of 18.6 hours at $200/hour). The Accused’s records reflect 24.7 hours of time spent on the matter. Of that time the Accused spent approximately 11.6 hours communicating with Ms. Winstead and Mr. Cowan; that total is in large part attributable to the numerous lengthy emails Mr. Cowan sent to the Accused. Additionally, the Accused spent over 6.8 hours reviewing documents and information from the underlying record.

On or about October 7, 2011, after his representation had terminated, appellate court staff first notified the Accused that the May 6, 2011, Notice of Appeal had encountered a filing error. On or about October 21, 2011, the Accused contacted the Oregon Court of Appeals to try to determine what had happened. He also researched whether an electronic filing could be amended or re-filed after the deadline for filing had passed. Beginning on October 23, 2011, the Accused made several calls and sent several emails to the Oregon Court of Appeals. Court staff told him that the system had rejected the document because it was somehow corrupted but they could not say why, perhaps a problem with the scanning of PDF conversion software.

The Accused and Ms. Winstead then discussed the filing error on or about October 25, 2011, via telephone and email. The Accused offered to help fix the filing error. The Accused again understood from those communications that Ms. Winstead did not wish to pursue the appeal. The Accused confirmed this in an email dated October 25, 2013, to Ms. Winstead. In an email dated October 26, 2013, Ms. Winstead disputed that she did not wish to pursue the appeal, and confirmed the Accused’s previous offer to further assist with the appeal.

In November 2013, Ms. Winstead complained to the Bar. In a letter to the Bar dated November 4, 2013, the Accused stated, in part:

“I assumed the transaction was successful. I did not receive notice of the rejection of the [Notice of Appeal] until October 7, 2011 when I received a phone message from a staff person at the Court of Appeals. Immediately after receiving this message I made several calls to the Court of Appeals, but was told nothing more than the document had failed conversion. Next, I contacted Ms. Winstead who reiterated her position that she did not wish to pursue an appeal.”

\(^{10}\) On this contested fact, we found that the Accused’s placid demeanor, memory recollection, fluidity of speech, and willingness to answer the questions to be supportive in establishing credibility of the testimony.
DISCUSSION AND CONCLUSIONS OF LAW

A. The Bar first argues that the Accused violated RPC 1.1 by failing to provide competent representation to Avery in his post-conviction matter. We disagree. The Bar asserts that the two contract attorneys hired by the Accused were more diligent than the Accused with their factual investigation. Certainly the contract attorneys’ competent investigation is imputed to the attorney that hired them, the Accused. The Bar’s expert faulted the generalities of a memo prepared by one of the contract attorneys. The Accused’s expert, Todd Grover, testified that the Accused was making progress and that there is no particular approach to the initial research, which contrasted with the Bar’s expert who testified that the underlying judgments and files should have been researched as a first step. The Panel will not micro-manage what steps an attorney should initially review when researching a file.

B. The Bar next argues that the Accused violated RPC 1.5(a) and/or 1.5(d) when he charged and when the Accused charged his client $165/hour for legal services that were performed by a contract attorney at $50/hour. Both RPC 1.5(a) and (d)(2) prohibit clearly excessive fees. RPC 1.5(d) requires the client’s informed consent to a division of fees between lawyers:

(d) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) The client gives informed consent to the fact that there will be a division of fees, and

(2) The total fee of the lawyers for all legal services they rendered the client is not clearly excessive.

RPC 1.5(a) and (d).

The Bar relies upon In re Wyllie, 331 Or 606, 19 P3d 338 (2001), and In re Yacob, 318 Or 10, 860 P2d 811 (1993). In Wyllie, the attorney billed more than four-fold the amount of time actually spent. In Yacob, the attorney withheld an additional $3,300 as attorney fees for his associate’s time when his associate had agreed to a flat fee of $150 to perform the legal services.

The Bar’s reasoning is as follows: When the Accused paid an hourly rate to a lawyer outside his firm, he shared fees with that lawyer. Because this was a shared fee, he was required by RPC 1.5(d) to obtain his client’s informed consent. Although the Accused’s fee agreement advised the Averys that he “may assign work . . . to an associate within or outside the firm,” the Bar contends this disclosure is insufficient. The Bar asserts that informed consent could only be obtained by advising the client in writing of the specific rate, background, and experience of the contract lawyer. The Bar further concludes that billing contract attorney services as legal services at a rate greater than what the Accused paid is an excessive fee.
The only authority cited by the Bar in support of its contention that the Accused improperly shared fees with Mr. Larkin is *In re Potts*, 301 Or 57, 718 P2d 1363 (1986). In *Potts*, the court found that the attorney improperly shared fees because the fee he received was not in proportion to the overall services rendered by that attorney. *In re Potts* was decided under *former* DR 2-107(A), which had a proportionality component not present in RPC 1.5(d). The determination by the *Potts* Court turned on the proportionality requirement. Therefore, *Potts* does not provide the authority sought by the Bar in light of the proportionality analysis.11

The Panel does not find that the Accused’s contractual arrangement with Mr. Larkin constitutes division of a fee pursuant to RPC 1.5(d). The Panel does not agree that *Yacob* supports the proposition that the Accused violated RPC 1.5(a) given what he charged his client under these circumstances, and has no authority to and otherwise declines to expand the reach of the holdings cited above.

C. The Bar contends that the Accused failed to provide competent representation to Winstead, in violation of RPC 1.1, by engaging in a pattern of ignorance in his handling of Winstead’s Notice of Appeal. The Panel disagrees. The conduct as set forth in the findings does not rise to the level of actionable incompetence. The Bar correctly outlines the competence standard in *In re Obert*, 352 Or 231, 282 P3d 825 (2012). The attorney in *Obert*, however, engaged in a pattern of material mishaps, including multiple occasions where he forgot to respond to a time-sensitive letter, and missed a deadline on filing a Notice of Appeal on two occasions.

In this case, the conduct shown is insufficient. As the Bar’s expert acknowledged, waiting to file the appeal the day before the deadline is not an unusual practice. The Accused testified that he conferred with a clerk at the Court of Appeals to set up the e-filing process. Given that, after the confirmation from the Court of Appeals that stated his filing was “successfully submitted,” the failure to follow-up was not ideal, but not unreasonable. The certificate of service and filing that the Accused filed was technically incorrect, but that amounted to a clerical error with no consequence to Winstead or to the process.

The Bar further contends that, in the Notice of Appeal, the Accused included arguments that were not permitted by statute. However, the Bar did not furnish evidence to demonstrate that the additional arguments in the Notice of Appeal caused the court to deny, dismiss, or otherwise harm Ms. Winstead’s case.

11 In *Potts*, the attorney charged the client $9,000, a clearly excessive fee under *former* DR 2-106(A), because he kept no time records, had no reasonable explanation for how his fee was fixed, and relied upon a single magazine article regarding current fees and his own intuition to establish his fee. The attorney also violated *former* DR 2-107(A) because the total fee charged by all lawyers was excessive in light of the fact that the accused’s fee was not in proportion to the overall services rendered. In re *Potts*, 301 Or 57 (1986).
D. The Bar argues that the Accused violated RPC 1.3 and RPC 1.16(d) by neglecting Ms. Winstead’s legal matter and failing to act to protect her interests after learning that the Notice of Appeal had not been properly filed. The Bar is in error. The only rule that applies to this post-termination scenario is RPC 1.16(d):

> “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment . . . that had not been earned . . . .”

In this case, after his client terminated the Accused, he researched the filing error and discussed it with her. In an email, Ms. Winstead confirmed that the Accused told her he was willing to provide further assistance. Although in a subsequent email he stated that he would not represent her in an appeal, he offered that “it’s something we can discuss.” The two and a half week delay in contacting his former client to inform her of the Notice of Appeal filing error was not unreasonable per se. The Bar’s reliance on *In re Castanza*, 350 Or 293, 253 P3d 1057 (2011), is misplaced. The acts (more notably, omissions) attributed to the Castanza attorney denote a stark impression that the attorney completely “dropped the ball” by ignoring several pending tasks at issue, the totality of which put the client’s case at risk. The conduct in this case did not reach to that level.

E. The Bar asserts that the Accused violated RPC 1.5(a) by charging and collecting a clearly excessive fee from Winstead and Cowan. This is incorrect. The Panel found that the Accused made multiple inquiries to get electronically linked to facilitate the filing pursuant to his client’s instructions. He also researched potential causes of action against her former attorney, the victim, a district attorney, and a judge. The research included the review of documents. It was also unrefuted that the Accused necessarily reviewed voluminous emails (including attachments) by Winstead and Cowan.

F. The Bar alleges that the Accused violated RPC 8.4(a)(3) by knowingly misrepresenting his client and a disciplinary authority. RPC 8.4(a)(3) provides that:

> “It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.”

Specifically, the Bar asserts that the Accused violated RPC 8.4(a)(3) when he wrote to the Bar to represent that he “immediately” contacted Ms. Winstead upon learning (on October 7, 2011) that the Notice of Appeal was rejected. The Bar reminds the panel that the Accused did not contact Ms. Winstead until on or about October 25, 2011.

This argument fails. In the Accused’s November 4, 2011 letter to the Bar, the Accused never represented that he “immediately” contacted Ms. Winstead. He stated that he “contacted
Ms. Winstead . . .” The Bar’s interpretation finds no support in the express language at issue. The Bar also contends that the Accused violated RPC 8.4(a)(3) by misrepresenting to the Client Assistance Office that he offered to assist Ms. Winstead with the appeal, when he sent a letter to her dated October 26, 2011, stating in part: “As far as representing you on appeal, I don’t think I offered to do that. But it’s something we could discuss.”

At trial, the Accused testified, with a credible demeanor and conviction, (see Footnote 3) that he had offered to assist Ms. Winstead as it related to the filing. While not a model of clarity, the Accused’s communication not to represent her on appeal does not conflict with any statement that he was willing to assist at the filing stage of the appeal.

**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 21st day of April, 2017.

/s/ Paul B. Heatherman
Paul B. Heatherman, Trial Panel Chairperson

/s/ Jet Harris
Jet Harris, Trial Panel Member

/s/ Steven P. Bjerke
Steven P. Bjerke, Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) )
Complaint as to the Conduct of ) Case Nos. 15-94, 16-42 & 16-58 )
MATTHEW C. DAILY, )
) )
Accused. )

Counsel for the Bar: Angela W. Bennett
Counsel for the Accused: Michael J. Slominski
Disciplinary Board: None
Disposition: Violation of RPC 1.4(a), RPC 1.5(c), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.16(d), RPC 8.1(a)(2), RPC 8.1(c)(3), and RPC 8.1(c)(4). Stipulation for Discipline. 180-day suspension, formal reinstatement required.
Effective Date of Order: July 10, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Matthew C. Daily is suspended for 180 days, effective ten days after approval by the Disciplinary Board for violations of RPC 1.5(c), RPC 1.15-1(a),RPC 1.15-1(c), and RPC 1.16(d) in Case No. 15-94; RPC 1.4(a) and RPC 8.1(a)(2) in Case No. 16-42; and RPC 8.1(c)(3), RPC 8.1(c)(4), and RPC 8.1(a)(2) in Case No. 16-58.

IT IS FURTHER ORDERED that Matthew C. Daily will be subject to the formal reinstatement requirements under BR 8.1.
STIPULATION FOR DISCIPLINE

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

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

2. Daily was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1992, and has been a member of the Bar continuously since that time, having his office and place of business in Washington County, Oregon, and later in Tillamook County, Oregon.

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

4. On August 11, 2016, a Formal Complaint was filed against Daily pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of the Oregon Rules of Professional Conduct (“RPC”): RPC 1.5(c) [requirement of a written fee trust account and maintain complete trust account records], RPC 1.15-1(c) [failure to deposit client funds into trust], and RPC 1.16(d) [failure to return client property at the termination of representation] in Case No. 15-94; RPC 1.4(a) [failure to keep a client reasonably informed about the status of a matter] and RPC 8.1(a)(2) [failure to respond to DCO inquiries] in Case No. 16-42; and RPC 8.1(a)(2) [failure to respond to DCO inquiries], RPC 8.1(c)(3) [failure to participate in interviews with SLAC or its designees], and RPC 8.1(c)(4) [failure to participate
in and comply with a remedial program established by SLAC or its designees] in Case No. 16-58.

The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Case No. 15-94

OSB (CSF Lipnicki) matter

Facts

5.

In early April 2015, John Lipnicki (“Lipnicki”) hired Daily to pursue a civil dispute. Daily agreed to draft, file and serve a complaint for a $1,500 flat fee.

6.

There was no signed, written fee agreement disclosing that the funds paid to Daily would be considered “nonrefundable” or “earned on receipt” and would not be placed in a lawyer trust account; nor was there a provision that the client could discharge the lawyer at any time and, in that event, may be entitled to a refund of all or part of the fee if the services for which the fee was paid were not completed.

7.

Pursuant to their oral flat fee agreement, Lipnicki gave Daily a $1,500 check. Although the services for which the check was paid were not completed at the time of his receipt of the check, Daily negotiated the check without depositing it into his lawyer trust account.

8.

Shortly after Daily began working on the matter, he was hospitalized for more than a month. During this time, Lipnicki was not able to contact Daily despite multiple attempts via voicemail, letter and email.

9.

In mid-May 2015, Lipnicki sent Daily a letter terminating the representation and asking Daily to return his $1,500 payment, less any fees Daily had earned for work performed. Daily did not respond until mid-June 2015, and did not return any fees.

10.

On June 22, 2015, Lipnicki sent Daily an email again requesting a refund of the unearned portion of his $1,500 payment and an itemization of Daily’s charges. Daily did not respond. On June 30, 2015, Lipnicki sent Daily a letter with the same requests. Daily did not respond. In late July 2015, after receiving no response from Daily for over a month, Lipnicki
applied for reimbursement from the Client Security Fund. Daily did not refund the $1,500 payment to Lipnicki until mid-September 2015.

Violations

11. Daily admits that, by collecting an earned-on-receipt fee in absence of required terms; failing to segregate and protect Lipnicki’s funds; failing to deposit Lipnicki’s funds into trust; and failing upon termination to timely refund Lipnicki’s funds, he violated RPC 1.5(c), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.16(d).

Case No. 16-42

OSB (CSF Sumandea) matter

Facts

12. Magdalena Sumandea (“Sumandea”) hired Daily in December 2013 to represent her in a foreclosure matter. They entered into a written fee agreement, and Sumandea paid Daily $1,500, against which he agreed to bill $200 per hour. In October 2014, Sumandea paid Daily another $1,500.

13. Between December 2013 and August 2015, Daily did not notify Sumandea of developments in her case, nor did he respond to her multiple requests for updates.

14. In August 2015, Sumandea received an eviction notice. Daily had not informed Sumandea that eviction was imminent, nor had he kept her apprised of the status of her case. Sumandea again attempted to contact Daily, and Daily continued to ignore her requests for information. Sumandea lost possession of her house in October 2015.

15. In December 2015, after Sumandea sought reimbursement of Daily’s fee from the Client Security Fund, Disciplinary Counsel’s Office (“DCO”) requested Daily’s response to several specific inquiries regarding his representation of Sumandea. Daily acknowledged Sumandea’s complaint, and briefly corresponded with DCO, using his email address then on file with the Bar (“record email address”), but did not provide a substantive response.

16. In January 2016, at Daily’s request, DCO granted him an extension to respond to Sumandea’s complaint; however, Daily provided no further response to Sumandea’s complaint.
Violations

17.

Daily admits that, by failing to communicate the status of Sumandea’s matter to her and to promptly comply with Sumandea’s reasonable requests for information, he failed to sufficiently communicate with his client in violation RPC 1.4(a).

18.

Daily further admits that his failure to respond to DCO in its investigation of the OSB (CSF Sumandea) complaint constituted a knowing failure to respond to a lawful demand from a disciplinary authority, in violation of RPC 8.1(a)(2).

Case No. 16-58

OSB matter

Facts

19.

In April 2015, Daily was referred to the State Lawyers Assistance Committee (“SLAC”) for an initial inquiry to determine whether SLAC would assert jurisdiction to establish a remedial program for him. On April 29, 2015, SLAC sent Daily a letter notifying him of the referral and enclosed copies of RPC 8.1(c) and ORS 9.568.

20.

On June 25, 2015, SLAC determined that Daily was appropriately under its jurisdiction. SLAC notified Daily of its decision via letter on June 30, 2015. Pursuant to RPC 8.1(c), Daily was required to cooperate with SLAC.

21.

On July 21, 2015, Daily entered into a Monitoring and Cooperation Agreement with SLAC (the “Monitoring Agreement”). As set forth in the Monitoring Agreement, and in addition to other requirements, Daily agreed to:

a. abstain from all alcohol and controlled substances;

b. execute all documents and releases necessary for his SLAC monitor (monitor) to obtain information from Daily’s healthcare providers;

c. maintain in-person contact with his monitor as required by his monitor;

d. regularly attend sobriety support group and OAAP meetings, and provide attendance logs immediately upon request;

e. notify his monitor within eight hours of any relapse; and,
f. successfully complete the terms of his Washington County DUII diversion agreement.

22.

Between July 21, 2015 and October 5, 2015, Daily failed to cooperate with SLAC, or to comply with his Monitoring Agreement, in a number of ways, including:

a. failing to make contact with his monitor;

b. failing to respond to contact attempts from his monitor; and,

c. failing to cause a valid, signed release of information to be entered into his file at his treatment center such that his monitor could obtain information regarding his compliance with treatment.

23.

On October 5, 2015, Daily notified his monitor that he had returned to inpatient treatment, but did not sign a release of information with his treatment program. Daily’s monitor was not able to confirm, or obtain information about, Daily’s treatment.

24.

In November 2015, Daily met with his monitor and failed to provide any documents to substantiate his compliance with the Monitoring Agreement, despite promises he would provide such documents.

25.

Between November 2015, and late-January 2016, Daily did not answer a series of letters or emails from his monitor. In late-January 2016, Daily contacted his monitor and promised compliance. Thereafter, Daily did not contact his monitor or respond to his monitor’s attempts to contact him.

26.

On February 1, 2016, Daily telephoned DCO staff. During that conversation, Daily sounded intoxicated and admitted to being “totally drunk.”

27.

On March 7, 2016, the Washington County Circuit Court revoked Daily’s DUII diversion program and entered a judgment of conviction. The court imposed a two-year probation and a $2,500 fine.

28.

On March 14, 2016, Daily’s monitor referred Daily to DCO for noncooperation with the Monitoring Agreement.
29.

In March 2016, DCO received a referral from SLAC about Daily’s conduct. On April 7, 2016, DCO mailed a letter to Daily requesting that he respond to the facts alleged in the SLAC referral. The letter also informed Daily that failing to respond may constitute a violation of RPC 8.1(a)(2). The letter was addressed to Daily at the address on record with the Bar (“record address”) and was sent by first class mail. The letter was not returned undelivered, and Daily did not respond.

30.

By letter dated April 29, 2016, in which the April 7, 2016 letter was enclosed, DCO informed Daily that he had not responded to the SLAC complaint, and that the matter would be referred to the SPRB for review at its next meeting. The letter was sent via first class mail to Daily’s record address. It was not returned undelivered, and Daily did not respond.

Violations

31.

Daily admits that, when he failed to cooperate with SLAC and abide by the terms of his monitoring agreement, he failed to participate in interviews with SLAC and failed to comply with a remedial program established by SLAC, in violation of RPC 8.1(c)(3) and RPC 8.1(c)(4).

32.

Daily further admits that his failure to respond to DCO in its investigation of the OSB (SLAC) matter constituted a knowing failure to respond to a lawful demand from a disciplinary authority, in violation of RPC 8.1(a)(2).

Sanction

33.

Daily 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 (“Standards”). The Standards require that Daily’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

a. Duty Violated. The most important ethical duties a lawyer owes are to his client. Standards at 5. Daily violated duties owed to Lipnicki to promptly preserve and promptly return client property. Standards § 4.1. Daily violated his duty of diligence to Sumandea when he failed to respond to her communication attempts or to keep her informed on the status of her matter. Standards § 4.4. In the Lipnicki matter, Daily violated his duties to the profession to avoid improper fee agreements and to properly withdraw from the
representation upon termination. *Standards* § 7.0. Daily further violated his duties to the profession to cooperate with disciplinary authorities when he failed to respond to DCO and failed to cooperate and comply with SLAC. *Id.*

b. **Mental State.** Knowledge is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards* § 1.0. 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.*

Daily acted negligently in failing to determine that he was obligated to deposit Lipnicki’s advance fee into trust, but he acted knowingly when he failed to refund the unearned portion of the fee for twelve weeks after Lipnicki terminated the representation. Daily acted negligently in not responding to Sumandea’s contact attempts. When Daily failed to timely respond to DCO’s requests for information, he acted knowingly as he knew complaints were pending against him. Finally, Daily knowingly failed to comply with the SLAC Monitoring Agreement.

c. **Injury.** Both actual and potential injury are relevant to determining the sanction in a disciplinary case. *In re Williams*, 312 Or 530 (1992). “Potential injury” is the reasonably foreseeable harm to a client at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. *Standards* § 1.0. “Injury” is harm to a client which results from a lawyer’s misconduct. *Id.*

Daily’s actions resulted in actual injury to Lipnicki, who was denied the use of his funds for four months. Lipnicki was also exposed to additional potential injury, in that Daily did not preserve his funds in trust during the months Daily was unavailable to work on his legal matter. Daily’s failure to respond to Sumandea caused actual injury in the form of anxiety and frustration for her. *See In re Knappenberger*, 337 Or 15, 31, 90 P3d 614 (2004).

Daily’s failure to cooperate with the Bar and SLAC caused actual harm to both the legal profession and the public because he delayed the Bar’s investigation and, consequently, the resolution of the complaint against him. *See In re Schaffner*, 323 Or 472, 918 P2d 803 (1996); *In re Miles*, 324 Or 218, 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 (avoidance of the Bar, clients, matters, obligations, etc.). *Standards* § 9.22(c).

3. Substantial experience in the practice of law (over 20 years at the time of the misconduct). *Standards* § 9.22(i).

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


3. Daily was experiencing severe personal and emotional problems at the time of the misconduct, including substance abuse. *Standards* § 9.32(c).

34. Under the ABA *Standards*, a 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. A reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards* § 4.13.

A suspension is also generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. *Standards* § 4.42. A reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards* § 4.43.

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.

Although a reprimand may be appropriate for some of Daily’s misconduct, when all charges are considered collectively, a suspension would be the presumptive sanction. Daily’s aggravating and mitigating factors are in equipoise, and therefore do not alter the presumptive sanction under the *Standards*. As a result, a period of suspension is the appropriate sanction. *Standards* §§ 4.12, 4.42, 7.2. The *Standards* provide that where a suspension is appropriate, it should be for a period of time equal to or greater than six months. *Standards* § 2.3.

35. Oregon cases support a suspension of 180 days or more for similar collective misconduct. In cases where attorneys have failed to enter into proper fee agreements or properly handle client funds, a reprimand to a short suspension has been imposed. See *In re Grimes*, 25 DB Rptr 242 (2011) (attorney reprimanded for entering into an oral, flat-fee agreement and depositing client funds into her business account, not realizing that the funds had to be deposited and maintained in a trust account until earned); *In re Fadeley*, 342 Or 403, 153 P3d
682 (2007) (lawyer suspended for 30 days where he treated funds received pursuant to an oral fee agreement as his own and failed to deposit them in trust).

The Court has imposed a 60-day suspension where a lawyer failed to properly withdraw from the representation in violation of RPC 1.16(d). See In re Castanza, 350 Or 293, 253 P3d 1057 (2011).

Daily’s failure to communicate with Sumandea, standing alone, would typically result in a reprimand or a short suspension. See In re Slininger, 25 DB Rptr 8 (2011) (attorney reprimanded when he failed to respond to his incarcerated client’s requests for assistance in correcting the criminal judgment that erroneously stated the client was not eligible for good time credit. A corrected judgment ultimately was entered, but not until the client had nearly completed the full term of his sentence.); In re Snyder, 348 Or 307, 320, 232 P3d 952 (2010) (attorney received 30-day suspension for failure to respond to his client’s status inquiries, failure to inform the client of communications with the other side, and failure to explain the strategy attorney decided upon regarding settlement negotiations).

A 60-day suspension would be appropriate for Daily’s failures to cooperate with DCO’s investigations. The Court has emphasized that it has no patience for failure to cooperate with the Bar, and it has consistently imposed a 60-day suspension for single violations of RPC 8.1(a)(2). See, e.g., In re Miles, 324 Or 218, 923 P2d 1219 (1996) (although no substantive charges were brought, attorney was suspended for 120 days for noncooperation with the Bar in two separate matters); In re Schaffner, 323 Or 472, 918 P2d 803 (1996) (attorney with no prior disciplinary history suspended for 120 days; 60 each for his neglect and his failure to cooperate with the Bar).

Suspensions of 60 to 120 days, and a formal reinstatement requirement, are commonly imposed on lawyers who have not cooperated with SLAC in similar situations. See In re Bennett, 23 DB Rptr 192 (2009) (attorney suspended for 60 days each for failure to cooperate with the Bar in a disciplinary investigation and failure to cooperate with SLAC, in violation of RPC 8.1(a)(1) and RPC 8.1(c), with formal reinstatement required); In re Andersen, 18 DB Rptr 172 (2004) (four-month suspension imposed on lawyer who failed to cooperate with SLAC, among other things, with formal reinstatement required).

Daily’s collective misconduct warrants a 180-day suspension, plus a formal reinstatement requirement.

Consistent with the Standards and Oregon case law, the parties agree that Daily shall be suspended for 180 days for violation of RPC 1.5(c), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.16(d) in Case No. 15-94; RPC 1.4(a) and RPC 8.1(a)(2) in Case No. 16-42; and RPC 8.1(c)(3), RPC 8.1(c)(4), and RPC 8.1(a)(2) in Case No. 16-58, the sanction to be effective June 1, 2017, or 10 days after approval by the Disciplinary Board, whichever is later. The
parties further agree that Daily will be required to apply for reinstatement under BR 8.1 (“Formal Reinstatement”), which requires action by the Board of Governors and the Supreme Court.

37.

Daily 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, Daily has arranged for the PLF to take possession of his client files. Daily has no other active files in his possession.

38.

Daily understands that reinstatement is not automatic upon the expiration of the period of suspension and that he cannot resume the practice of law until he has taken all steps necessary to re-attain active membership status with the Bar. Daily further understands he is subject to the formal reinstatement requirements under BR 8.1. During the period of suspension, and continuing through the date upon which Daily re-attains his active membership status with the Bar, Daily shall not practice law or represent that he is qualified to practice law; shall not hold himself out as a lawyer; and shall not charge or collect fees for the delivery of legal services other than for work performed and completed prior to the period of suspension.

39.

Daily 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. This requirement is in addition to any other provision of this agreement that requires Daily to attend or obtain continuing legal education (CLE) credit hours.

40.

Daily 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 Daily is admitted: none.

41.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 14th day of June, 2017.

/s/ Matthew C. Daily
Matthew C. Daily
OSB No. 922710

EXECUTED this 27th day of June, 2017.

OREGON STATE BAR

By: /s/ Angela W. Bennett
Angela W. Bennett, OSB No. 092818
Assistant Disciplinary Counsel
ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Howard W. Collins is publicly reprimanded for violation of RPC 1.5(c)(3), RPC 1.15-1(c) and RPC 1.15-1(d).

DATED this 3rd day of July, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ James Edmonds
James Edmonds, Region 6
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Howard W. Collins, attorney at law ("Collins"), and the Oregon State Bar ("Bar") hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Collins 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 Bar continuously since that time, having his office and place of business in Marion County, Oregon.

3.

Collins 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 May 20, 2017, the State Professional Responsibility Board ("SPRB") authorized formal disciplinary proceedings against Collins for alleged violations of Oregon Rules of Professional Conduct (RPC) 1.5(c)(3), RPC 1.15-1(c) and RPC 1.15-1(d). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

A client ("client") retained Collins to represent him in a criminal investigation in or around November 2015.

6.

Client agreed to pay a $2,500 advance fee pursuant to a written fee agreement that designated the fee as a "minimum fee, earned upon receipt." The minimum fee was to be credited against the overall fee, which Collins would earn at $285 per hour. The agreement did not state that the fee would not be deposited into trust, or that if client decided to terminate Collins’s representation, client might be entitled to a refund of all or part of the fee if the services for which the fee was paid were not completed.
7. Client paid Collins $2,500 on or around November 25, 2015; Collins deposited the funds into trust. However, by February 10, 2016, Collins withdrew all of the funds from trust even though his total fees earned to that point in time was only $1,630.

8. In or around June 2016, Collins informed client that the authorities had closed the investigation and no charges would be filed. Client requested an itemized bill on or around June 17, 2016. Collins did not provide one until October 21, 2016, after client complained to the Bar. That itemized statement reflected a total fee of $2,084.50 based upon Collins’s activity on the matter from November 24, 2015 through June 28, 2016. Collins sent client a $415.50 refund.

9. At all relevant times, RPC 1.5(c)(3) provided: A lawyer shall not enter into an arrangement for, charge or collect a fee denominated as “earned on receipt,” “nonrefundable” or in similar terms unless it is pursuant to a written fee agreement signed by the client which explains that: (i) the funds will not be deposited into the lawyer trust account, and (ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all of part of the fee if the services for which the fee was paid are not completed.

Violations

10. Collins admits that, by collecting a nonrefundable fee pursuant to an agreement that did not comply with RPC 1.5(c)(3), he violated the provisions of that rule. Collins admits that, because his fee agreement did not comply with RPC 1.5(c)(3), he was required to deposit the client’s funds into trust and to maintain those funds in trust until earned. Accordingly, his failure to do so violated RPC 1.15-1(c). Collins further admits that, in failing to promptly return requested client property, he violated RPC 1.15-1(d).

Sanction

11. Collins 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 (“Standards”). The Standards require that Collins’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. Collins violated his duties to his client to preserve client funds. Standards § 4.1. The Standards provide that the most important duties a lawyer owes are those owed to clients. Standards at 5. Collins also violated his duty to
the profession when he failed to use the required form of written fee agreement and treated the client’s payment as earned upon receipt. *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* at 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.*

Collins acted negligently when he failed to include necessary language in his flat-fee agreement and to maintain client’s funds in trust until earned. Arguably, his failure to promptly account for and refund client’s advance fee was knowing.

c. **Injury.** Injury can either be actual or potential under the *Standards*. *See In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Collins’s conduct resulted in injury to client, who waited for four months to receive an accounting and refund that should have been provided promptly upon his request.

d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Substantial experience in the practice of law. *Standards* § 9.22(i). Collins was admitted to practice law in 1981.

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

1. Lack of prior discipline over a lengthy career. *Standards* § 9.32(a).
2. Lack of dishonest or selfish motive. *Standards* § 9.32(b).
5. Timely good-faith effort to rectify the consequences of his misconduct. *Standards* § 9.32(d).

12.

Under the ABA *Standards*, public reprimand is generally appropriate when an attorney is negligent in dealing with client property and causes injury or potential injury to a client. ABA *Standards* § 4.13. When a lawyer knows or should know that he is dealing inappropriately with client property and causes injury or potential injury, suspension is generally appropriate. *Standards* § 4.12. Here, the mitigating factors outweigh the aggravating factors and warrant a public reprimand.
13. Recent similar cases have resulted in public reprimand for similar violations:

   In re Morgan, 31 DB Rptr ___ (2017) (public reprimand). Attorney who represented client for a period of over three years withdrew client’s cost advance from trust before costs were incurred, and thereafter delayed for 11 months to account for and return the funds upon request. Aggravating factors were substantial experience and multiple violations; mitigating factors included lack of prior discipline over a long career; absence of dishonest or selfish motive; good reputation; and remorse.

   In re Kleen, 27 DB Rptr 213 (2013) (public reprimand). Attorney collected advance costs to hire an expert in his client’s medical-malpractice claim, but never retained an expert. He did not refund the advance for eight months after he withdrew from representation. Kleen also engaged in neglect and failed to communicate with this client. Like Collins, Kleen had substantial experience but no prior discipline.

14. Consistent with the Standards and Oregon case law, the parties agree that Collins shall be publicly reprimanded for violations of RPC 1.5(c)(3), RPC 1.15-1(c), and RPC 1.15-1(d), the sanction to be effective upon approval by the Disciplinary Board.

15. Collins 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.

16. Collins 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 Collins is admitted: None.

17. This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Bar and to approval by the SPRB. If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.
EXECUTED this 21st day of June, 2017.

/s/ Howard W. Collins
Howard W. Collins, OSB No. 811909

EXECUTED this 26th day of June, 2017.

OREGON STATE BAR

By: /s/ Nik T. Chourey
Nik T. Chourey, OSB No. 060478
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )

) Case Nos. 16-70 & 16-71

Complaint as to the Conduct of )

ROBERT C. WILLIAMSON, )

Accused.

Counsel for the Bar: Angela W. Bennett
Counsel for the Accused: Jennifer J. Brown
Disciplinary Board: None.
Disposition: Violation of RPC 1.5(c)(3), RPC 1.6(a), and RPC 1.8(a). Stipulation for Discipline. Public Reprimand.
Effective Date of Order: July 14, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Robert C. Williamson is publicly reprimanded for violations of RPC 1.5(c)(3) in Case No. 16-70; and RPC 1.5(c)(3), RPC 1.6(a) and RPC 1.8(a) in Case No. 16-71.

DATED this 14th day of July, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ James Edmonds
James Edmonds, Region 6
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

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

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

2. Williamson was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 25, 1986, and has been a member of the Bar continuously since that time, having his office and place of business in Marion County, Oregon.

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

4. On October 26, 2016, a Formal Complaint was filed against Williamson pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of the Oregon Rules of Professional Conduct (“RPC”): RPC 1.5(c)(3) [charging or collecting a fee denominated as earned on receipt without a written fee agreement with required disclosures] in Case No. 16-70; and RPC 1.5(c)(3) [charging or collecting a fee denominated as earned on receipt without a written fee agreement with required disclosures], RPC 1.6(a) [duty to maintain client information], and RPC 1.8(a) [improper business transaction with client] in Case No. 16-71. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

Case No. 16-70 – David McCaffery

5. In December 2013, David McCaffery (“McCaffery”) was convicted of murder. In February 2014, McCaffery retained Williamson and his associate, Jesse Barton (“Barton”), to represent him in seeking postconviction relief.

6. Williamson agreed to represent McCaffery for a $15,000 nonrefundable flat fee, plus costs. There was a written fee agreement; however, the fee agreement failed to indicate that
the nonrefundable flat fee described therein would not be deposited into a lawyer trust account or that McCaffery could discharge Williamson and might be entitled to a full or partial refund if he did so. Williamson did not collect $15,000 from McCaffery and instead billed at an hourly rate for his work.

**Case No. 16-71 – Mac Wolleat**

7. Between 2011 and 2013, Mac Wolleat (“Wolleat”) was a general contractor and a client of Williamson’s. In 2011, pursuant to a written fee agreement, Wolleat retained Williamson to represent him in a criminal matter in which he was charged with a felony theft in the first degree, for which Wolleat paid Williamson a flat fee of $3,000 for his legal services. The felony was dismissed. The fee agreement failed to indicate that the nonrefundable flat fee would not be deposited into a lawyer trust account or that Wolleat, if the representation ended earlier than upon completion of the legal work, might be entitled to a full or partial refund.

8. In March 2012, pursuant to a written fee agreement, Williamson agreed to represent Wolleat in a construction contract dispute (“construction dispute”). Wolleat initially paid Williamson $3,000, $1,000 of which was designated as a nonrefundable, “preliminary” flat fee, earned upon receipt. The fee agreement failed to indicate that the nonrefundable flat fee would not be deposited into a lawyer trust account or that Wolleat, if the representation ended earlier than upon completion of the legal work, might be entitled to a full or partial refund.

9. Williamson was not able to reach a settlement with the opposing party on Wolleat’s behalf in the construction dispute, and in October 2012, the property owner filed suit. The matter was set for arbitration to occur on May 15, 2013.

10. In the interim, on or about April 3, 2012, Wolleat was arrested for DUII, and Williamson agreed to defend him in that criminal matter. Wolleat paid Williamson a flat fee of $3,200 for his services. However, to the extent that there was any written fee agreement for the DUII representation, it failed to indicate that the nonrefundable flat fee would not be deposited into a lawyer trust account or that Wolleat, if the representation ended earlier than the completion of the legal work, might be entitled to a full or partial refund.

11. Beginning in December 2012, Williamson asked Wolleat to do carpentry work on his office building. Williamson and Wolleat negotiated a barter or trade agreement through which Wolleat would trade his labor/construction services for Williamson’s legal services in the construction dispute (“trade agreement”). This trade agreement was not formalized in any
written fee agreement signed by either Williamson or Wolleat. At the time the trade agreement
was struck, Williamson represented Wolleat in both the construction dispute and his DUII
criminal matter.

12.

Prior to entering into the trade agreement with Wolleat, Williamson did not insure that
the transaction and terms of the agreement were fair and reasonable to Wolleat and fully
disclosed and transmitted in writing in a manner that could be reasonably understood by
Wolleat; Wolleat was not advised in writing of the desirability of seeking nor given a
reasonable opportunity to seek the advice of independent legal counsel on the trade agreement;
and Wolleat did not give informed consent, in a writing signed by Wolleat, to the essential
terms of the trade agreement and to Williamson’s role in the transaction, including whether
Williamson was representing Wolleat in the trade agreement.

13.

On May 8, 2013, a week before the arbitration in the construction dispute, Wolleat fired
Williamson, Williamson withdrew from the representation, and Wolleat hired new counsel. In
the declaration that accompanied Williamson’s motion to withdraw, Williamson disclosed—
without prior notice to Wolleat and without obtaining Wolleat’s permission—that Wolleat had
been convicted of DUII; that he had lost his driver’s license and received other sanctions when
he was convicted; that Wolleat blamed Williamson for his conviction; and that Wolleat had
failed to appear that morning at Williamson’s office to do construction work. The arbitrator
granted the motion to withdraw on or prior to the scheduled arbitration date.

Violations

14.

Williamson admits that, by entering into an earned-on-receipt fee agreement without
including the required language, he violated RPC 1.5(c)(3) [charging or collecting a fee
denominated as earned on receipt without written fee agreement with required disclosures] in
Case No. 16-70 and Case No. 16-71.

Williamson further admits that, by revealing information relating to his representation
of Wolleat without his client’s consent, he violated RPC 1.6(a) [duty to maintain client infor-
mation] in Case No. 16-71. Finally, Williamson admits that, when he entered into a business
transaction with a client without first obtaining informed consent, he violated RPC 1.8(a)
[improper business transaction with client] in Case No. 16-71.

Sanction

15.

Williamson 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
(“Standards”). The Standards require that Williamson’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.** Williamson violated duties to his client to preserve his client’s confidences and to avoid conflicts of interest. Standards §§ 4.2, 4.3. The Standards presume that the most important ethical duties are those which a lawyer owes to clients. Standards at 5.

In addition, Williamson violated his duty to the profession to refrain from charging improper fees through the usage of an improper fee agreement. Standards § 7.0.

b. **Mental State.** Williamson acted negligently when he utilized a fee agreement in three different instances that did not include the required language and failed to have a written agreement in a fourth matter pertaining to flat fees that complied with the Rules of Professional Conduct.

When he included information about his client that was protected by RPC 1.6 in his motion to withdraw without his client’s consent, Williamson acted knowingly (i.e., with the conscious awareness of the nature and attendant circumstances of his conduct but without the conscious objective or purpose to accomplish a particular result).

Williamson also acted knowingly when he entered into the trade agreement with Wolleat and negotiated their payment arrangement without obtaining informed consent regarding the potential conflict of interest.

c. **Injury.** Injury is defined as harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. Potential injury is the harm that is reasonably foreseeable at the time of the misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. Standards at 5. For the purposes of determining an appropriate disciplinary sanction, the court will consider both actual and potential injury. Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992).

Williamson caused potential injury to Wolleat when he disclosed information about Wolleat to the arbitrator, because that information could have prejudiced the arbitrator against Wolleat in the arbitration. Williamson also caused potential injury to Wolleat when they entered into the trade agreement without written informed consent, as they had competing interests and there was a material risk that Williamson would prioritize his own interests ahead of Wolleat’s. Williamson’s failure to utilize proper fee agreements caused actual
or potential injury to the profession, as it reflects poorly on the profession and undermines the public’s trust in lawyers.

d. **Aggravating Circumstances.** Aggravating circumstances include:

2. Substantial experience in the practice of law. *Standards* § 9.22(i). Williamson was admitted to practice in 1986.

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

3. Full and free disclosure and cooperative attitude toward proceedings. *Standards* § 9.32(e).
4. Remorse. Williamson has expressed remorse for his actions in the Wollett matter and for not updating his fee agreements. *Standards* § 9.32(l).

16.

Under the ABA *Standards*, a suspension is appropriate when the lawyer is not intentionally using the professional relationship to benefit himself or another, but nevertheless knowingly breaches a client’s confidence such that the client suffers injury or potential injury. *Standards* § 4.22. A suspension is also “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.

A 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.

The presumptive sanction for Williamson’s misconduct would be a suspension; however, because the mitigating factors outweigh those in aggravation, a downward departure in the degree of presumptive discipline imposed is appropriate. *Standards* § 9.31. This is particularly true here, where Williamson has practiced for over 30 years with no prior discipline. As a result, a public reprimand is an appropriate sanction. *Standards* §§ 4.23, 4.33, 7.3.

17.

Oregon case law and prior disciplinary board decisions are in accord. In cases where attorneys have failed to enter into proper fee agreements in similar circumstances, a reprimand has been imposed. See, e.g., *In re Coran*, 24 DB Rptr 269 (2010) (attorney reprimanded for
using a written fee agreement that failed to provide that funds would not be deposited in trust and depositing the funds into an account other than his lawyer trust account).

In prior Oregon cases, a public reprimand or a short period of suspension has been imposed for a conflict of interest similar to that found here. See, e.g., *In re Ambrose*, 26 DB Rptr 16 (2012) (attorney received public reprimand after he utilized various business entities to enter into business transactions with a current client without sufficient disclosures concerning possible conflicts between attorney and the client); *In re Ghiorso*, 27 DB Rptr 110 (2013) (attorney publicly reprimanded for participating as co-borrower with his client on one loan and separately loaning money or advancing assistance to that same client on at least two other occasions, and at all times failed to obtain informed consent in writing); *In re Baer*, 298 Or 29, 688 P2d 1324 (1984) (attorney received 60-day suspension where he represented both the sellers of real property and his wife as buyer without sufficient disclosure to the sellers of the nature of the conflict of interest, in violation of former DR 5-101(A) (now RPC 1.7(a)(2)), former DR 5-104(A) (now RPC 1.8(a)), and former DR 5-105(A)-(C) (now RPC 1.7(b) and RPC 1.9(a)). Williamson’s failure to abide by the requirements of RPC 1.8(a) in entering into a business transaction with his client is more akin to the facts in *Ambrose* and *Ghiorso* than in *Baer*.

The court has also imposed a public reprimand where lawyers have failed to protect client secrets and engaged in a conflict of interest. *In re Jayne*, 295 Or 16, 663 P2d 405 (1983) (attorney reprimanded for violating client confidences and secrets and for engaging in a conflict of interest when she represented a husband in a dissolution proceeding after representing wife in various matters; court surveyed previous decisions and identified the majority of cases imposed a public reprimand for same rule violations).

Considering the Standards, prior Oregon cases, and Williamson’s significant mitigation, a public reprimand is an appropriate sanction for Williamson’s collective misconduct in this matter.

18.

Consistent with the Standards and Oregon case law, the parties agree that Williamson shall be publicly reprimanded for violation of RPC 1.5(c)(3) in Case No. 16-70, and RPC 1.5(c)(3), RPC 1.6(a) and RPC 1.8(a) in Case No. 16-71, the sanction to be effective immediately.

19.

In addition, on or before July 15, 2017, Williamson shall pay to the Bar its reasonable and necessary costs in the amount of $70.50 incurred for deposition appearance. Should Williamson fail to pay $70.50 in full by July 15, 2017, the Bar may thereafter, without further notice to him, obtain a judgment against Williamson for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.
20. Williamson 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. This requirement is in addition to any other provision of this agreement that requires Williamson to attend or obtain continuing legal education (CLE) credit hours.

21. Williamson represents that, in addition to Oregon, he also is admitted to practice law in the jurisdiction listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing this jurisdiction of the final disposition of this proceeding. Other jurisdictions in which Williamson is admitted: Arizona.

22. This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 June, 2017.

/s/ Robert C. Williamson
Robert C. Williamson
OSB No. 861043

APPROVED AS TO FORM AND CONTENT:

/s/ Jennifer J. Brown
Jennifer J. Brown
OSB No. 084797

EXECUTED this 28th day of June, 2017.

OREGON STATE BAR

By: /s/ Angela W. Bennett
Angela W. Bennett
OSB No. 092818
Assistant Disciplinary Counsel
ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. Effective 60 days after the date of this order, the accused is suspended from the practice of law in the State of Oregon for a period of five years.

/s/ Rives Kistler 07/20/2017 9:18 AM
Presiding Justice, Supreme Court

STIPULATION FOR DISCIPLINE

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

1.

The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.
2.

Heinzelman was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 2, 2005, and has been a member of the Bar continuously since that time, having her office and place of business in Marion County, Oregon, and later in Polk County, Oregon.

3.

Heinzelman 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 15, 2016, a Formal Complaint was filed against Heinzelman pursuant to the authorization of the SPRB, alleging violations of the Oregon Rules of Professional Conduct (“RPC”): RPC 1.3 (neglect of a legal matter), RPC 1.4(a) [failure to keep a client reasonably informed about the status of a matter]; RPC 1.15-1(c) [failure to deposit client funds into trust]; RPC 1.16(a)(2) [failure to withdraw from representation when required by physical or mental condition]; and RPC 8.4(a)(3) [conduct involving dishonesty, fraud, deceit or misrepresentation that reflecting adversely on fitness to practice law] in Case No. 15-147; and RPC 1.1 [failure to provide competent representation]; RPC 1.3 [neglect of a legal matter]; RPC 1.4(a) [failure to keep a client reasonably informed about the status of a matter]; RPC 1.15-1(c) [failure to deposit client funds into trust]; RPC 1.15-1(d) [failure to account for and return client property]; and RPC 8.4(a)(3) [conduct involving dishonesty, fraud, deceit or misrepresentation that reflecting adversely on fitness to practice law] in Case No. 16-40. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Case No. 15-147

Adams matter

Facts

5.

In March 2015, Andrea Adams (“Adams”) hired Heinzelman to file an uncontested divorce petition on her behalf and paid her a $775 advance fee (the “Adams funds”).

6.

A written fee agreement signed by Adams recited that Heinzelman would hold the Adams funds in her lawyer trust account. Although Adams and Heinzelman agreed orally that $500 of the funds would be a flat fee for Heinzelman’s time, the fee agreement did not reflect their understanding. Further, approximately $275 of the Adams funds were to be used to pay the petition filing fee.
7.
Heinzelman did not deposit the Adams funds into trust. Instead, Heinzelman deposited the Adams funds into her personal account and commingled them with her personal funds.

8.
In August 2015, Adams’s husband Jeffrey (“Jeffrey”) paid Heinzelman another $273 for the filing fee (the “Jeffrey funds”). Heinzelman did not deposit the Jeffrey funds into trust.

9.
Heinzelman did not file the Adams’s dissolution petition. From approximately March through September of 2015, Adams attempted to contact Heinzelman on numerous occasions to obtain a status update on the matter, and then to ask for an explanation for the delay. Heinzelman did not substantively respond to Adams’s contact attempts, and in July 2015, Heinzelman stopped responding to Adams altogether.

10.
In the meantime, Jeffrey retained his own attorney, who was also unable to make contact with Heinzelman. In September 2015, when it became clear Heinzelman would not respond to their contact attempts, Jeffrey’s attorney completed and filed the dissolution paperwork. Adams then requested a refund of the Adams funds and Jeffrey requested a refund of the Jeffrey funds.

11.
In October 2015, Heinzelman fully repaid Adams. Jeffrey was repaid in December 2015.

12.
Although Heinzelman asserted that depression impaired her ability to adequately represent Adams, Heinzelman did not decline to undertake or thereafter withdraw from representation of Adams.

Violations

13.
Heinzelman admits that, by failing to take action on Adams’s legal matter for several months, failing to respond to Adams’s requests for information or provide updates in the matter, and failing to withdraw when depression interfered with her representation of Adams, she neglected her client’s legal matter, failed to adequately communicate with her client, and failed to properly withdraw when her mental health condition impaired her ability to fulfill the representation, in violation of RPC 1.3; RPC 1.4(a); and RPC 1.16(a)(2).
Heinzelman further admits that her failure to deposit the Adams’s funds and the Jeffrey funds in trust and to segregate those funds from her own was a failure to protect and preserve client funds in trust in violation of RPC 1.15-1(c).

Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 8.4(a)(3), related to the allegations that Heinzelman knowingly converted client funds, should be and, upon the approval of this Stipulation for Discipline, are dismissed.

**Case No. 16-40**

**Jimenez matter**

**Facts**

14. In or around November 2014, Tammie Jimenez (“Jimenez”) hired Heinzelman to represent her as the respondent in a dissolution petition filed pro se by Jimenez’s estranged husband.

15. Jimenez signed a written fee agreement, which provided that Jimenez would pay Heinzelman a $1,000 retainer, and Jimenez paid Heinzelman $1,000 in cash (“Jimenez funds”).

16. Heinzelman did not deposit the Jimenez funds into her lawyer trust account, and instead commingled them with her own.

17. Jimenez and her estranged husband, Enrique (“Enrique”), owned a mobile home. As part of the asset division in the dissolution proceeding, Jimenez wanted to receive the full value of the mobile home in lieu of any spousal support (“the offer”).

18. In late December 2014, Heinzelman conveyed the offer to Enrique. At Enrique’s request, Heinzelman agreed to give Enrique a few weeks to consider the offer. That wait stretched from weeks to months. During that time, Heinzelman did not file an appearance for Jimenez, did not take steps to monitor the status of the case, and did not provide information or updates to Jimenez.

19. In March 2015, Heinzelman arranged for a meeting with Enrique to review and sign a stipulated judgment. Heinzelman cancelled the meeting at the last minute without notifying her client. She did not reschedule the meeting, nor did she promptly respond to Jimenez’s multiple messages asking whether the meeting had taken place.
20.

On April 1, 2015, the court issued a notice of intent to dismiss because Jimenez had not filed an answer in the matter. Jimenez informed Heinzelman that she had received the court’s notice of intent to dismiss the case, and Heinzelman agreed to take action. Thereafter, Jimenez made multiple inquiries with Heinzelman, but no action was taken.

21.

On April 20, 2015, Enrique filed a motion for default and entry of judgment. A default judgment was signed and entered on April 24, 2015. Later that day, Heinzelman filed paper copies of a fee-deferral request, and an answer and counterclaim on Tammie’s behalf, which had no effect because they had not been e-filed and because the default had already been entered.

22.

Although Heinzelman promised Jimenez that she would file a motion to set aside the default, she did not do so and did not follow up with Tammie to inform her of the developments.

23.

In May of 2015, Jimenez asked Heinzelman to fix the situation or provide a refund. Heinzelman did neither. Heinzelman did not know, and failed to learn, the process for filing the motion to set aside the default. Heinzelman also did not respond to Jimenez’s requests for information about the matter, nor did she return the Jimenez funds despite Jimenez’s requests.

Violations

24.

Heinzelman admits that, by failing to learn how to e-file documents, missing filing deadlines, and failing to determine how to move to set aside the default judgment against her client, she failed to provide competent representation in violation of RPC 1.1.

Heinzelman also admits that her failures to take action on Jimenez’s legal matter and communicate with or respond to Jimenez regarding the status of her legal matter, constituted neglect of a client’s legal matter and failure to adequately communicate with a client in violation of RPC 1.3 and RPC 1.4(a).

Heinzelman further admits that her failure to deposit and maintain the Jimenez funds in trust, and her commingling of client funds with her own, was a failure to safeguard client funds, and a failure to deposit and maintain client funds in trust until earned, in violation of RPC 1.15-1(c).

When Heinzelman failed to provide an accounting or refund for Jimenez’s funds upon request, she failed to account for or return client property in violation of RPC 1.15-1(d).
Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 8.4(a)(3), related to the allegations that Heinzelman knowingly converted Jimenez’s funds, should be and, upon the approval of this Stipulation for Discipline, are dismissed.

Sanction

25.

Heinzelman 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 Heinzelman’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

a. **Duty Violated.** The most important ethical duties are those obligations that a lawyer owes to clients. Standards at 5. In this case, Heinzelman violated her duties to Adams and Jimenez to preserve and return their property, and to act with reasonable diligence and promptness in representing them, including maintaining adequate communication. Additionally, Heinzelman violated her duty to Jimenez to competently represent her. Standards §§ 4.1, 4.4, 4.5.

Finally, Heinzelman violated her duty to Adams and the profession to properly withdraw from representation when her self-avowed mental condition materially impaired her ability to provide adequate representation to Adams. Standards § 7.0.

b. **Mental State.** “Intent” is the conscious awareness of the nature or attendant circumstances of the conduct with the intent to cause a particular result. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. Standards at 9.

Heinzelman acted knowingly and intentionally when she neglected her clients’ legal matters, failed to provide updates and information to clients, and avoided her clients’ attempts to communicate with her. See In re Sousa, 323 Or 137, 144, 915 P2d 408 (1996) (“A failure to act can be characterized as intentional, rather than attributed to mere neglect or procrastination, if the lawyer fails to act over a significant period of time, despite the urging of the client and the lawyer’s knowledge of the professional duty to act.”); see also In re Phelps, 306 Or 508, 513, 760 P2d 1331 (1988) (lawyer’s mental state can be inferred from the facts). Heinzelman’s failure to withdraw once her self-avowed mental condition began interfering with her representation of Adams was also knowing, as Heinzelman was aware of - and told her client about - the impact.
her mental health condition was having on her ability to attend to Adams’s legal matter.

Heinzelman acted knowingly when she failed to deposit client funds into her trust account, and commingled client funds with her own. Heinzelman acted knowingly when she failed to provide a refund or an accounting when her client requested one. Heinzelman’s conduct became intentional after she was reminded of her obligation by both her client and the Bar, and still failed to provide a refund.

c. Injury. For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992).

Heinzelman’s mishandling of client funds caused actual and potential injury to both Adams and Jimenez by depriving them of their funds for a substantial period of time and by exposing them to the risk of losing those funds. See, e.g., In re Maroney, 324 Or 457, 927 P2d 90 (1996) (finding actual injury where the acts of the accused caused substantial delay in the client’s use of his own funds). Further, there was potential injury in that their entitlement to their funds was unclear, given that the funds were not in trust, and Heinzelman did not segregate them from her own.

Heinzelman’s failure to account for or return Jimenez’s funds constitutes actual, ongoing, serious injury, as it has deprived Jimenez of the use of her funds for a substantial period of time (two years).

Heinzelman’s neglect and failure to communicate in both the Adams and Jimenez matters caused actual injury in the form of anxiety and frustration for her clients. See In re Cohen, 330 Or 489, 496, 8 P3d 953 (2000); In re Schaffner, 325 Or 421, 426–27, 939 P2d 39 (1997). Further, Heinzelman’s conduct unnecessarily prolonged the resolution of both cases. In addition to her neglect, Heinzelman’s incompetence in the Jimenez case allowed for a default judgment against Jimenez, which adversely affected her in the court’s division of marital property.

Finally, Heinzelman’s knowing disregard for and failure to comply with her ethical obligations resulted in substantial actual and/or potential injury to her clients, and to the profession.

d. Aggravating Circumstances. Aggravating circumstances include:

1. A selfish motive. Standards § 9.22(b). Most or all of Heinzelman’s misconduct was selfishly motivated: her mishandling of client funds, failure to respond to clients or attend to their legal matters, and failure to
withdraw or provide a refund all arose out of her attending to her own interests, or those of her family’s, before her clients’.

2. A pattern of misconduct. *Standards* § 9.22(c). Heinzelman’s conduct demonstrates a pattern of ignoring her duties to her clients when those duties interfered with her own self-interest.

3. Multiple offenses. *Standards* § 9.22(d). In addition to multiple clients, there are multiple charges associated with each victim.

4. Bad-faith obstruction of the disciplinary proceeding. *Standards* § 9.22(e). Heinzelman obstructed the investigation and prosecution of this matter, thereby forcing the Bar to take uncommon measures to obtain her responses to Bar inquiries or compliance with discovery requests.

5. Vulnerability of victim. *Standards* § 9.22(h). Heinzelman was fully aware that Jimenez was struggling with financial and health issues, with little to no income, when Heinzelman took on her legal matter.

6. Substantial experience in the practice of law. *Standards* § 9.22(i). Heinzelman has been licensed to practice for almost 20 years, the last twelve of which have been in Oregon.

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


2. Personal or emotional problems. *Standards* § 9.32(c). During the relevant time period, Heinzelman was experiencing personal and emotional difficulties that impacted her ability to fulfill her ethical duties. However, where Heinzelman acted intentionally, personal and emotional problems will not provide mitigation. See, e.g., *In re Morin*, 319 Or 547, 565, 878 P2d 393 (1994).

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

Suspension is also 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 as
a result. *Standards* § 4.52. Finally, 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.

The aggravating factors significantly outweigh those in mitigation, both in number and in severity; therefore, a substantial upward departure from the presumptive sanction is appropriate. *Standards* § 9.21.

27.

Oregon cases support the imposition of a substantial term of suspension for Heinzelman’s mishandling of client funds. See, e.g., *In re Skagen*, 342 Or 183, 149 P3d 1171 (2006) (attorney was suspended for one year when it was determined that he never reconciled his monthly trust-account statements or maintained a trust-account ledger to keep track of client funds and was negligent in his trust-accounting practices); *In re Harvey*, 268 Or 390, 521 P2d 327 (1974) (respondent suspended for three years for commingling clients’ funds and failing to turn over funds to clients or their designees).

The court typically imposes a presumptive sanction of at least 60 days for freestanding neglect. See *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (court held that a 60-day suspension was appropriate for each of attorney’s neglect and his failure to cooperate with the Bar); *In re Worth*, 337 Or 167, 92 P3d 721 (2004) (attorney who 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, was suspended for 120 days, where his neglect resulted in the court’s granting the opposing party’s motion to dismiss). Further, the court typically imposes some term of suspension for lapses in communication. See, e.g., *In re Koch*, 345 Or 444, 198 P3d 910 (2008) (attorney suspended for 120 days where 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) (three-month suspension, plus formal reinstatement, was appropriate for attorney appointed to handle a client’s appeal and thereafter took no action and failed to disclose the ultimate dismissal to the client); *In re Knappenberger*, 337 Or 15, 90 P3d 614 (2004) (90-day suspension for attorney who appealed a spousal support determination, failed to keep the client informed of the status of the appeal, did not respond to the client’s inquiries, and essentially abandoned the client after oral argument).

The Court has expressed a dim view of failing to remit client funds and client property. For those violations, the court has also generally imposed some period of suspension. See, e.g., *In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (attorney suspended for 30 days where he failed to return a personal-injury client’s file materials, including medical records, despite numerous requests from the client); *In re Fadeley*, 342 Or 403, 153 P3d 682 (2007) (attorney suspended for 30 days for refusal to refund any portion of flat fee owing to client despite that he did not
complete the contemplated representation); In re Coyner, 342 Or 104, 149 P3d 1118 (2006) (attorney was suspended for three months where oral accounting—in response to a client’s repeated requests for how his retainer was applied—was insufficient).

The court has required formal reinstatement where an attorney has failed to withdraw when impaired by a physical or mental condition. See In re Lowe, 296 Or 328, 676 P2d 294 (1984) (court required reinstatement, after prior suspension, to be conditioned upon presenting satisfactory evidence of being sufficiently free of emotional difficulties to practice law competently where attorney failed to promptly deliver client’s files to substituted counsel, and failed to withdraw from representation of client when suffering from mental and physical condition rendering it unreasonably difficult to carry out employment effectively).

The Court has also imposed suspensions where an attorney failed to provide competent representation. See, e.g., In re Obert, 352 Or 231, 282 P3d 825 (2012) (attorney suspended for six months when, despite instructions from a trial judge in a civil case that the judge would grant a motion for JNOV in favor of attorney’s client if one was filed and a caution about when such a motion was due, attorney failed to timely file the motion and instead filed a notice of appeal, which deprived the trial court of jurisdiction. The notice of appeal was defective, the appeal ultimately was dismissed, and attorney failed to refile his posttrial motions timely. He also filed a second, untimely notice of appeal, intending to argue that a criminal statute that permitted the late filing of a notice of appeal should apply to his client’s civil case); In re Bettis, 342 Or 232, 149 P3d 1194 (2006) (attorney failed to provide competent services to a criminal-defense client when he sought and obtained his client’s waiver of the right to a jury trial without first reviewing any discovery or conducting any factual or legal investigation into the issues in the case. Court suspended attorney for 30 days); In re Worth, 337 Or 167, 92 P3d 721 (2004) (attorney was suspended for 120 days when he 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’s granting the opposing party’s motion to dismiss).

Under the foregoing cases, and in light of the Standards and the significant aggravating factors, Heinzelman’s collective misconduct warrants a lengthy suspension.

28.

Consistent with the Standards and Oregon case law, the parties agree that Heinzelman shall be suspended for five (5) years for violations of RPC 1.1; RPC 1.3; RPC 1.4(a); RPC 1.15-1(c); RPC 1.15-1(d); and RPC 1.16(a)(2), the sanction to be effective July 15, 2017, or 60 days after this Stipulation for Discipline is approved by the Supreme Court, whichever is later (“effective date”).

29.

In addition, on or before November 1, 2017, Heinzelman shall pay to the Bar its reasonable and necessary costs in the amount of $1,803.32, incurred for process service and
deposition transcript costs. Should Heinzelman fail to pay $1,803.32 in full by November 1, 2017, the Bar may thereafter, without further notice to her, obtain a judgment against Heinzelman for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

30.

On or before September 1, 2017, Heinzelman will make restitution to Jimenez for the $1,000 Jimenez paid to Heinzelman, and for which Jimenez received no benefit. Heinzelman will contemporaneously send confirmation of Jimenez’s repayment to Disciplinary Counsel’s Office.

31.

Heinzelman 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, Heinzelman has arranged for Thomas Daniel O’Neil, Bar No. 900983, an active member of the Bar, to either take possession of or have ongoing access to Heinzelman’s client files and serve as the contact person for clients in need of the files during the term of her suspension. Heinzelman represents that Thomas Daniel O’Neil has agreed to accept this responsibility.

32.

Heinzelman 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. Heinzelman 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.

33.

Further, Heinzelman agrees that, if she chooses to apply for reinstatement when eligible, she will first undergo a comprehensive psychological evaluation by a licensed professional acceptable to Disciplinary Counsel’s Office, and will make the full record and findings of the evaluation available to Disciplinary Counsel’s Office. Further, prior to reinstatement, Heinzelman will comply with any and all treatment recommendations as set forth in the psychological evaluation report.

34.

Heinzelman 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. This requirement is in addition to any other provision of this agreement that requires Heinzelman to attend or obtain continuing legal education (CLE) credit hours.
35. Heinzelman 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 Heinzelman is admitted: Utah.

36. This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 22nd day of May, 2017.

/s/ Dana C. Heinzelman
Dana C. Heinzelman
OSB No. 051695

APPROVED AS TO FORM AND CONTENT:

/s/ Kurt F. Hansen
Kurt F. Hansen
Counsel for Dana C. Heinzelman
OSB No. 842400

EXECUTED this 22nd day of May, 2017.

OREGON STATE BAR
By: /s/ Angela W. Bennett
Angela W. Bennett
OSB No. 092818
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 16-174
Complaint as to the Conduct of )
GREGORY L. POWELL, )
Accused. )

Counsel for the Bar: Theodore W. Reuter
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of RPC 1.5(a), RPC 1.5(c)(3), RPC 1.15-1(a),
RPC 1.15-1(c), and RPC 1.15-1(d). Stipulation for
Discipline. 90-day suspension.
Effective Date of Order: August 30, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and
Gregory L. Powell is suspended for ninety days, effective thirty days after approval of this
stipulation, or as otherwise directed by the Disciplinary Board for violation of RPC 1.5(a),
RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.15-1(d).

DATED this 31st day of July, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Ronald W. Atwood
Ronald W. Atwood, Region 5
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Gregory L. Powell, attorney at law (“Powell”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

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

2. Powell was admitted by the Oregon Supreme Court to the practice of law in Oregon on December 18, 1990, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3. Powell 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 December 3, 2016, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Powell for alleged violations of RPC 1.5(a), RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.15-1(d) 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. Steve Baird (“Baird”) is the CEO of S-Ray, Inc. (“S-Ray”). In September 2015, Baird hired Powell to assist him in changing S-Ray from an Oregon corporation to a Delaware corporation. Baird made an initial payment to Powell of $6,500, representing an advance payment for legal work yet to be performed by Powell. Powell took possession of the funds and did not place them in a trust account.

6. Powell drafted an engagement letter that did not include the language required by RPC 1.5(c)(3) but did specify that the $6,500 represented payment for 20 hours of legal work. Although Powell completed less than 15 hours of work on matters for S-Ray, he retained the entire amount of the fee paid.
Violations

7.

Powell admits that, by failing to deposit the $6,500 in a trust account prior to performing the legal work he was hired to do, in the absence of a written fee agreement with the required language, and by failing to return the unearned portion of the client funds received, he violated RPC 1.5(a), RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.15-1(d).

Sanction

8.

Powell 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 (“Standards”). The Standards require that Powell’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. Powell violated his duty of candor to his client by failing to make adequate disclosures in his fee agreement. Standards § 4.6. He violated his duty to preserve client property by collecting an excessive and unearned fee, failing to return the unearned portion of the fee, and failing to account for that fee. Standards § 4.1.

b. Mental State. Powell knew that he had collected a fee and that he had not completed the amount of work that the fee was supposed to represent. He was negligent in determining what his obligations were with respect to structuring the fee agreement and refunding money received when work was unfinished.

c. Injury. Powell’s client was injured because he paid more than he had agreed to pay for services which were not completed.

d. Aggravating Circumstances. Aggravating circumstances include:

1. Multiple Offenses. Standards § 9.22(d).

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

e. Mitigating Circumstances. Mitigating circumstances include:


9.

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. The parties agree that Powell should have known of his obligations with respect his treatment of the funds received from his client and that his failure
to maintain the advance payment of fees in trust until earned potentially injured his client by not maintaining money in trust available for any refund that might be owed in the event the work was not completed. The parties agree that a suspension is an appropriate remedy in this case.

10. Oregon cases support the imposition of a suspension for Powell’s misconduct. See, e.g., In re Obert, 352 Or 231, 282 P3d 825 (2012) (6-month suspension for an excessive fee and failure to refund any portion of the fee after taking a flat fee and not taking any substantial step toward completing the work); In re Fadeley, 342 Or 403, 153 P3d 682 (2007) (30-day suspension for an excessive fee where the lawyer failed to perform much work before being terminated by the client but asserted that a $10,000 retainer was nonrefundable and earned upon receipt); and In re Balocca, 342 Or 279, 151 P3d 154 (2007) (90-day suspension for an excessive fee where attorney agreed to perform specific work for a flat fee, failed to complete the work, and sought to keep entire fee by claiming it was owed based upon calculating the fee based upon an hourly rate). While stipulations do not have a precedential value, they illustrate what the parties have agreed is an appropriate outcome. See, e.g., In re Eckrem, 28 DB Rptr 77 (2014) (attorney stipulated to a 90-day suspension, all but 30 days stayed, pending successful completion of a 2-year probation for failing to promptly pay a third party upon receipt of funds to do so in violation of RPC 1.15-1(d), using a flat fee agreement that did not contain the language required by RPC 1.5(c)(3), and failing to refund the unearned portion of the flat fee in violation of RPC 1.5(a) and RPC 1.16(d)); and In re Coran, 27 DB Rptr 170 (2013) (attorney stipulated to a 30-day suspension, all stayed, pending successful completion of a 24-month probation based upon a failure to deliver a client file in violation of RPC 1.15-1(d), using a fee agreement without the required language in a flat-fee arrangement in violation of RPC 1.5(c)(3), and accepting a flat fee without an appropriate fee agreement and failing to place the fee in a trust account in violation of RPC 1.5(c)(3), RPC 1.15-1(a) and RPC 1.15-1(c)).

11. Consistent with the Standards and Oregon case law, the parties agree that Powell shall be suspended for ninety days for violations of RPC 1.5(a), RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.15-1(d). The sanction shall be effective thirty days after approval of this stipulation, or as otherwise directed by the Disciplinary Board.

12. Powell 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. Powell represents that, at this time, he has no active client matters and no client files that are under his control.
13.

Powell 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. Powell 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.

14.

Powell 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. This requirement is in addition to any other provision of this agreement that requires Powell to attend or obtain continuing legal education (CLE) credit hours.

15.

Powell 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 Powell is admitted: None.

16.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 July, 2017.

/s/ Gregory L. Powell  
Gregory L. Powell  
OSB No. 904830

EXECUTED this 28th day of July, 2017.

OREGON STATE BAR  
By: /s/ Theodore W. Reuter  
Theodore W. Reuter  
OSB No. 092818  
Assistant Disciplinary Counsel
ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and James M. Monsebroten is publicly reprimanded for violation of RPC 1.4(a); RPC 1.4(b); RPC 1.5(c)(3); RPC 1.15-1(a); and RPC 1.15-1(c). Stipulation for Discipline. Public Reprimand.

DATED this 31st day of July, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ John E. Davis
John E. Davis, Region 3
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

James M. Monsebroten, attorney at law (“Monsebroten”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

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

2. Monsebroten was admitted by the Oregon Supreme Court to the practice of law in Oregon on July 20, 1998, and has been a member of the Bar continuously since that time, having his office and place of business in Coos County, Oregon.

3. Monsebroten 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 25, 2017, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Monsebroten for alleged violations of Oregon Rules of Professional Conduct (“RPC”) 1.4(a) [duty to keep client reasonably informed]; RPC 1.4(b) [duty explain matters sufficiently to permit the client to make informed decisions]; RPC 1.5(c)(3) [requirement of a written fee agreement for earned-upon-receipt fees]; RPC 1.15-1(a) [duty to hold client’s property separate from the lawyer’s] and RPC 1.15-1(c) [duty to deposit unearned fees in trust]. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5. On or about July 28, 2014, Monsebroten entered into a $1,200 “Flat-Fee Agreement” with the Hancocks. The agreement specified that the fee “is earned when paid, is non-refundable, and is not deposited in the lawyer’s trust account[.]” that “[t]he Client may terminate this agreement at any time[.]” and that “if the Client discharges the attorney, then the attorney is entitled to fees at the attorney’s standard hourly rate on a quantum meruit basis.”

6. Upon receiving the $1,200 from the Hancocks, in accordance with the terms of the Flat-Fee Agreement, Monsebroten deposited the money into his business account rather than his
trust account based upon his mistaken understanding that he had a valid earned-on-receipt fee agreement and was, therefore, required to deposit the money into his business account.

7.

Monsebroten represented the Hancocks in connection with a protective order hearing. Both before the hearing and during a break in the hearing, Monsebroten engaged in settlement negotiations with opposing counsel based on input from the Hancocks, who were at the hearing. During the break, the parties reached agreement on the settlement terms. The material terms of the settlement were put on the record in front of the Judge. The judge asked the Hancocks if the settlement as stated on the record was the agreement. The Hancocks agreed on the record. The judge instructed opposing counsel to draft the resulting order. Opposing counsel drafted the order and submitted it to Monsebroten. The order contained the key terms discussed on the record, plus additional details. Monsebroten understood the additional details to be within the scope of his express and implied settlement authority based on his prior communications with the Hancocks, and he, therefore, agreed to the form of the order without reviewing the order with his clients. The Hancocks thereby did not have an opportunity to object to the form of the Order before it was entered. After the court signed the order, Monsebroten forwarded it to the Hancocks. The Hancocks then indicated that they had not agreed to certain terms in the order.

Violations

8.

Monsebroten admits that, by failing to consult with his clients, the Hancocks, before assenting to the entry of the stipulated order, he violated RPC 1.4(a) and RPC 1.4(b). Monsebroten further admits that, by failing to include the language required by RPC 1.5(c)(3) in his written agreement before accepting a flat fee from his client, he violated that rule. Because Monsebroten’s Flat-Fee Agreement did not comply with RPC 1.5(c)(3), the $1,200 should have been deposited in trust. Monsebroten’s failure to do so violated RPC 1.15-1(a) and RPC 1.15-1(c).

Sanction

9.

Monsebroten 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 (“Standards”). The Standards require that Monsebroten’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. After the clients agreed to the oral statement of the material terms of the stipulated order on the record in front of a judge, Monsebroten’s failure to communicate with his clients before agreeing to the written form of
the stipulated order was a violation of his duty to diligently represent his clients, governed by Standards § 4.4. Monsebroten’s failure to include the required language in his fee agreement that the client may be entitled to a refund, and his subsequent collection of that fee, violated his duty to hold client property separate from the lawyer’s own property, because an earned-on-receipt fee agreement that does not strictly comply with RPC 1.5(c)(3) is invalid and any funds received from the client must be deposited in trust until earned. Standards § 4.1 and his duty of candor Standards § 4.6.

b. **Mental State.** Monsebroten was negligent with respect to these duties.

c. **Injury.** The primary injury that resulted from Monsebroten’s conduct was that his clients lost the opportunity to review the order proposed by the opposing counsel and negotiate more favorable wording.

d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Multiple offenses. Standards § 9.22(d).
2. Substantial experience in the practice of law. Standards § 9.22(i). Monsebroten has been practicing in Oregon continuously since 1998.

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

2. Full and free disclosure to disciplinary authority and a cooperative attitude towards the proceedings. Standards § 9.32(e).

10. Under the ABA Standards, a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. Standards § 4.43. Here, the parties agree that aggravating and mitigating factors are roughly in equipoise, making a reprimand an appropriate sanction.

11. Where communication violations are paired with other violations and relate to the outcome of the case, the Disciplinary Board has approved stipulations to a public reprimand. See In re Rose, 20 DB Rptr 237 (2006) (stipulation to reprimand where attorney accepted representation of a client on appeal, collected a fee, and then did not respond to client requests for information and did not file a brief for the appeal, violating RPC 1.3 [neglect of a legal matter], RPC 1.4 [failure to communicate], RPC 1.5(a) [collecting an excessive fee], RPC 1.16(d) [failure to comply with obligations on termination of employment]); In re Dames, 23 DB Rptr 105 (2009) (stipulation to reprimand where attorney agreed to take on medical malpractice suit on behalf of client, indicated an intent to withdraw to his client, and then subsequently conceded a summary judgment motion disposing of his client’s case without
consulting his client in violation of RPC 1.3 [neglect of a legal matter], RPC 1.4(a) and (b) [failure to communicate], and RPC 1.2(a) [abiding by client’s decision regarding whether to settle a case]); In re Kleen, 27 DB Rptr 213 (2013) (Attorney stipulated to a reprimand where attorney agreed to represent a client in a medical malpractice case, did not hire an expert, did not respond to requests for information from client, did not communicate to client that he believed client’s case was not viable until client complained to the Client Assistance Office and failed to timely return funds to client or inform client of a suit served on him by client’s creditors in violation of RPC 1.3, RPC 1.4(a) and (b), and RPC 1.16(d)).

12. Consistent with the Standards and prior orders approving stipulations, the parties agree that Monsebroten shall be publicly reprimanded for violation of RPC 1.4(a); RPC 1.4(b); RPC 1.5(c)(3); RPC 1.15-1(a) and RPC 1.15-1(c), the sanction to be effective upon approval by the Disciplinary Board.

13. Monsebroten acknowledges that he is subject to the “Ethics School” requirement set forth in BR 6.4.

14. Monsebroten 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 Monsebroten is admitted:

   Federal District Court of Oregon
   Ninth Circuit Court of Appeals
   Washington
   Texas
   England and Wales

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

EXECUTED this 21st day of July, 2017.

/s/ James M. Monsebroten
James M. Monsebroten
OSB No. 981523
APPROVED AS TO FORM AND CONTENT:

EXECUTED this 24th day of July, 2017.

/s/ Calon Nye Russell
Calon Nye Russell
OSB No. 094910
ATTORNEY FOR RESPONDENT

EXECUTED this 27th day of July, 2017.

OREGON STATE BAR

By: /s/ Theodore W. Reuter
Theodore W. Reuter, OSB No. 084529
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) )
Complaint as to the Conduct of )
) )
JAMES R. KIRCHOFF, )
) )
Accused. )

(OSB 15-05; SC S064308)

En Banc

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


C. Robert Steringer, Harrang Long Gary Rudnick PC, Portland, argued the cause and filed the briefs for the Accused.

Susan R. Cournoyer, Assistant Disciplinary Counsel, Tigard, argued the cause and filed the brief for the Oregon State Bar.

PER CURIAM

In this lawyer disciplinary proceeding, the Oregon State Bar charged James R. Kirchoff (the accused) with multiple violations of the Oregon Rules of Professional Conduct (RPC), based on his submission of false evidence to a tribunal. A trial panel of the Disciplinary Board conducted a hearing, found that the accused had violated those rules, and determined that the appropriate sanction was suspension from the practice of law for a period of two years. The accused seeks review of the trial panel’s finding that he committed the alleged violations. We review the trial panel’s decision de novo. ORS 9.536(2); Bar Rule of Procedure (BR) 10.6. The Bar has the burden of establishing misconduct by clear and convincing evidence. BR 5.2. Clear and convincing evidence is evidence establishing that “the truth of the facts asserted is highly probable.” In re Ellis/Rosenbaum, 356 Or 691, 693, 344 P3d 425 (2015). For the reasons that follow, we agree with the trial panel that the Bar presented evidence establishing the alleged violations under that standard. The accused does not challenge the sanction imposed by the trial panel; accordingly, we suspend the accused from the practice of law for a period of two years.

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IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 16-123
Complaint as to the Conduct of )
) JAMES C. HILBORN,
) Accused.

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: None.
Disciplinary Board: None.
Disposition: Violation of RPC 3.1 and RPC 4.4(a). Stipulation for Discipline. 90-day suspension.
Effective Date of Order: August 24, 2017

ORDER APROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and James C. Hilborn is suspended for 90 days, effective ten (10) days after the date this Order is signed, for violations of RPC 3.1 and RPC 4.4(a).

DATED this 14th day of August, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Kathy Proctor
Kathy Proctor, Region 4
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

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

1.

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

2.

Hilborn 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 Bar continuously since that time. At a majority of relevant times herein, Hilborn had his office and place of business in Washington County, State of Oregon. Beginning in or around December 2014, Hilborn moved from Oregon to Louisiana, and currently resides in Stone County, State of Arkansas.

Hilborn 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).

3.

On December 19, 2016, a Formal Complaint was filed against Hilborn pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 3.1 [frivolous claim or position]; and RPC 4.4(a) [action solely to delay, harass or burden another] 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

4.

Prior to March 2013, Hilborn represented Robert Johnson in estate planning matters, and, in that capacity, prepared a revocable living trust and pour-over will. Rhonda Johnson was the sole beneficiary of both the trust and the will, identified as the co-personal representative in the will and, until March 2013, was named as successor trustee of the trust, to serve upon Robert Johnson’s death.

5.

In April 2013, at Robert Johnson’s request, Hilborn prepared an amended trust document naming Hilborn as the successor trustee instead of Rhonda Johnson.

7. When Hilborn did not accede to her request, Rhonda Johnson hired attorney Matthew Whitman (“Whitman”) to assist in having Hilborn removed.

8. On October 22, 2014, Whitman wrote to Hilborn, reiterating Rhonda Johnson’s request and enclosing a declination for Hilborn’s signature. Whitman’s letter also pointed out then-recent amendments to ORS 130.625 which permitted a trust beneficiary to remove a trustee by a simple request. Whitman notified Hilborn that, if it were necessary to file suit to remove Hilborn as trustee, his client would seek attorney’s fees pursuant to ORS 130.815.

9. On November 4, 2014, Hilborn responded to Whitman via email, stating in part: “I may willing [sic] to resign upon 2 conditions. I want a mutual release from Rhonda Johnson in her capacity as a beneficiary and successor trustee. I also want a reasonable trustee fee in the amount of $10,000, which I believe is an approximation of what I would have made had no one interfered with my office.”

10. At the time that Hilborn sent his November 4, 2014 email to Whitman, he had not performed substantive work on behalf of the trust or estate in his capacity as trustee, and the only work that was likely to be required of him as trustee was the execution of a deed conveying the residence (and principal asset) to Rhonda Johnson.

11. In response to Whitman’s subsequent request for documentation of any significant work that had been done for the trust prior to Rhonda Johnson’s request that he execute the declination, Hilborn synopsized the factors listed in RPC 1.5(b) used in determining whether an attorney’s fee is reasonable and inquired whether Whitman was going to make a counter offer.

12. Hilborn thereafter left a phone message for Whitman, acknowledging that he had no basis to claim trustee fees but instead asserting that he was now seeking payment for the 20-
25 hours he had spent preparing the amended trust document for which he had previously waived his fee. Accordingly, he refused to sign and return the declination.

13. After Hilborn failed to return the signed declination, Whitman was required to file suit on behalf of Rhonda Johnson to have Hilborn removed as successor trustee. Following service, Hilborn did not make an appearance, and a judgment removing him was obtained.

Violations

14. Hilborn admits that, by seeking payment for legal services he had not and would not perform as a condition of delivering a declination he was statutorily required to grant, he asserted a frivolous position and engaged in conduct that solely harassed and burdened Rhonda Johnson, in violation of RPC 3.1 and RPC 4.4(a).

Sanction

15. Hilborn 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 (“Standards”). The Standards require that Hilborn’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. Under the Standards, both rules at issue fall within the gambit of duties to the legal system. Hilborn violated his duties to the legal system to make meritorious claims and avoid abuse to the legal process. Standards § 6.2.

b. Mental State. Mental state is measured against a continuum ranging from negligent to intentional. Negligence is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Knowledge is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Intent is the conscious objective or purpose to accomplish a particular result. Standards at 9.

Hilborn acted intentionally in making a demand for money, but perhaps without an intention that Rhonda Johnston would be required to file suit to secure his removal as trustee. It was Hilborn’s stated intention to prompt a negotiated fee. He was surprised that Whitman would not engage in that process.

However, at the same time, despite being asked, Hilborn declined to provide any legal basis upon which he based his belief in an entitlement to a fee for
work he had not yet and would not perform because of his discharge. Moreover, Hilborn’s conduct in the face of Whitman’s initial letter (informing Hilborn of Rhonda Johnston’s statutory ability to discharge him) was at least knowing; as a trustee bound by the provisions of the Trust Code, he was acting in contravention of the statute requiring him to abide by a trust beneficiary’s decision to discharge him.

And, to the extent that Hilborn may have believed that Rhonda Johnston was not the sole beneficiary before he acceded to her request to step down, it was his responsibility as the trustee to know the status of the beneficiaries, and to communicate that as a basis for declining Rhonda Johnston’s demand that he step down. In addition, whether accurate or not, her status had no effect on his knowing request for future or previously waived fees.

c. Injury. Injury can either be actual or potential under the Standards. See In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). “‘Potential injury’ is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct.” Standards at 9. Hilborn’s unwillingness to sign and deliver the declination document to Whitman necessitated his filing of a suit to have him removed as trustee, costing Rhonda Johnston both money and time. That was actual injury.

d. Aggravating Circumstances. Aggravating circumstances include:

1. A prior history of discipline. Standards § 9.22(a). In assessing the impact of prior sanctions, the factors articulated in In re Jones, 326 Or 195, 200, 951 P2d 149 (1997), must be considered. These include: (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 offense; and (5) the timing of the current offense in relation to the prior offense and resulting sanction, specifically, whether the accused lawyer had been sanctioned for the prior offense before engaging in the offense in the case at bar. These considerations can serve to heighten or diminish the significance of earlier misconduct.

Hilborn has two prior instances of relevant discipline. In 2008, he was suspended for 9 months, with all but 60 days stayed, and placed on probation for 2 years, based on two complaints, both of which involved neglect [RPC 1.3] and communication issues [RPC 1.4] and one of which included a competence violation [RPC 1.1]. He also failed to
respond to the Bar [RPC 8.1(a)(2)] and engaged in conduct involving dishonesty [RPC 8.4(a)(3)]. In re Hilborn, 22 DB Rptr 102 (2008).

In 2010, Hilborn was suspended for 30 days for violations of RPC 1.4(a) and (b) [communication with client]; RPC 1.7(a)(1) and (2) [personal and multiple-client conflicts]; and RPC 8.4(a)(4) [conduct prejudicial to the administration of justice]. In re Hilborn, 24 DB Rptr 233 (2010).

In consideration of the *Jones* factors, 326 Or at 200, the conduct at issue in this matter occurred a little more than four years after Hilborn was last sanctioned, and the rules at issue here were not replicated in the earlier matters. See *Standards* § 9.22(a).

2. A selfish motive. Hilborn was motivated to extract a fee for work as a trustee that he would not perform. *Standards* § 9.22(b).


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


16.

Under the ABA *Standards*, a suspension is generally appropriate when a lawyer knowingly causes abuse to the legal process, and there is injury or potential injury to a client or party, or interference or potential interference with a legal proceeding. *Standards* § 6.22. The application of the aggravating and mitigating factors support that a suspension is appropriate.

17.

Oregon case law also supports the imposition of some period of suspension. See, e.g., *In re Anderson*, 27 DB Rptr 243 (2013) (attorney suspended for 90 days where she pursued multiple contempt and civil proceedings that lacked any good-faith factual or legal basis. These filings were motivated by and the result of animosity toward the client’s former wife and sister-in-law, and were “reckless, willful, malicious and in bad faith.”); *In re Obert*, 352 Or 231, 282 P3d 825 (2012) (attorney with prior discipline suspended for 6 months where, despite instructions from a trial judge in a civil case that the judge would grant a motion for JNOV in favor of attorney’s client if one was filed and a caution about when such a motion was due, attorney failed to timely file the motion and instead filed a notice of appeal which deprived the trial court of jurisdiction. The notice of appeal was defective, the appeal ultimately was dismissed, and attorney failed to refile his post-trial motions timely. He also filed a second, untimely notice of appeal, intending to argue that a criminal statute that permitted the late filing
of a notice of appeal should apply to his client’s civil case. This argument had no basis in law or fact and therefore was the assertion of a frivolous position); In re Smith, 348 Or 535, 236 P3d 137 (2010) (attorney who represented a client who had disputes with her employer, a nonprofit corporation that operated a medical marijuana clinic, was suspended for 90 days where he advised his client that, because the nonprofit was administratively dissolved, the client had a right to enter the clinic premises and attempt to take control of the operations, a position that attorney knew was frivolous); In re Andersen, 18 DB Rptr 172 (2004) (attorney suspended for 4 months when, without any legal right to do so, he threatened to withhold from an opposing party bank records and rental files belonging to them unless they settled the case on terms attorney proposed); In re Hopp, 291 Or 697, 702, 634 P2d 238 (1981) (attorney was suspended for 60 days after he, out of animosity for a company’s counsel, caused his secretary to register for the company’s expired assumed business name and refused to relinquish the name until paid $100. Hopp involved only a single incident, the attorney acted out of “inexperience and overzealousness,” and he acknowledged that he used bad judgment.); In re Paulson, 341 Or 13, 136 P3d 1087 (2006), cert den, 549 US 1116 (2007) (attorney with significant prior discipline suspended for 6 months where attorney filed a pleading in a bankruptcy proceeding purportedly on behalf of the debtors when he was not attorney of record and knew that the debtors, who were his clients in a related state court matter, objected to the filing. In addition, the attorney’s cumulative actions in ignoring and violating procedural rules resulted in the litigation becoming more complicated, protracted, and expensive, which served to prejudice the administration of justice.); In re Glass, 308 Or 297, 779 P2d 612 (1989), adh’d to on recons, 309 Or 218, 784 P2d 1094 (1990) (attorney, who was in litigation with an unregistered contractor to whom he owed a debt, was suspended for 91 days when he registered himself under the contractor’s assumed name in order to prevent the contractor’s collection of the debt, and then failed to cooperate with the Bar).

18.

Consistent with the Standards and Oregon case law, the parties agree that Hilborn shall be suspended for 90 days for his violations of RPC 3.1 and RPC 4.4(a). The sanction will be effective ten (10) days following approval by the Disciplinary Board.

19.

Hilborn 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, Hilborn has not lived in the State of Oregon since December 2014, and has no active clients in Oregon.

20.

Hilborn 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. Hilborn 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.

21.

Hilborn 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. This requirement is in addition to any other provision of this agreement that requires Hilborn to attend or obtain continuing legal education (CLE) credit hours.

22.

Hilborn 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 Hilborn is admitted: none.

23.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 July, 2017.

/s/ James C. Hilborn
James C. Hilborn
OSB No. 772205

EXECUTED this 31st day of July, 2017.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott
OSB No. 990280
Chief Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 16-154
Complaint as to the Conduct of )
) Sheryl S. McConnell,
) Accused.
Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: David J. Elkanich
Disciplinary Board: None.
Disposition: Violation of RPC 3.1. Stipulation for Discipline. 90-day suspension.
Effective Date of Order: August 17, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Sheryl McConnell is suspended for 90 days, effective August 5, 2017, or three (3) days after approval by the Disciplinary Board, whichever is later, for violation of RPC 3.1.

DATED this 14th day of August, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Kathy Proctor
Kathy Proctor, Region 4
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

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

1.

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

2.

McConnell 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 Bar continuously since that time, having her office and place of business in Yamhill County, Oregon.

3.

McConnell 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 March 14, 2017, a Formal Complaint was filed against McConnell pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 1.2(c) [assist a client in illegal or fraudulent conduct]; RPC 3.1 [knowingly take frivolous action or assert a frivolous position without basis in law or fact]; RPC 4.1(a) [knowingly make a false statement of material fact to a third person]; RPC 4.1(b) [failure to disclose material fact when disclosure is necessary to avoid assisting in illegal or fraudulent act]; and RPC 8.4(a)(3) [conduct involving dishonesty, fraud, deceit, or misrepresentation reflecting adversely on fitness to practice law]. 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 1987, John (“John”) and Violet (“Violet”) Wells executed the John L. Wells Trust. It created two identical revocable trusts (“the John Trust” and “the Violet Trust,” respectively), of which they were both co-trustees.

6.

The John Trust document stated that on Violet’s death, the trustee was to distribute the balance of the trust as then constituted by giving the common stock of Wells Plastic, Inc.,
together with all real estate, equipment, fixtures, or other property directly related to the Wells Plastic, Inc., and saw shop (“WPI”) business, to William Vermilyea (“Vermilyea”).

7. On December 6, 1988, John died, making his trust irrevocable; but Violet’s trust remained revocable. As a result of John’s death, Violet became the sole trustee of the John Trust and the Violet Trust.

8. At some time after John’s death, Violet transferred the equipment and the stock to the Violet Trust.

9. In September 2012, McConnell began representing Violet with respect to the Violet Trust and in December 2012 with respect to the John Trust. At Violet’s request, McConnell amended both trust documents to appoint William Mead (“Mead”) as the successor trustee to both the John Trust and the Violet Trust upon Violet’s death. Mead had previously been named him as a specific beneficiary of the Violet Trust, by which he would be given all of the stock in WPI and Violet’s undivided one-half interest in her trust’s real estate.

10. After Violet died, McConnell undertook to represent Mead in his capacity as successor trustee for both trusts. During the period when Mead served as the successor trustee of the John Trust, no property from the John Trust was distributed to Vermilyea.

11. In July 2013, with McConnell’s assistance, Mead completed the purchase of the John Trust real property to himself that had been initiated before Violet’s death, without notice to Vermilyea.

12. At all times relevant herein, ORS 130.540 provided that, unless otherwise provided by the terms of the trust instrument, a contract of sale made by a trustee to convey property that is the subject of a specific distribution is not a revocation of the specific distribution. If all or part of the property that is the subject of the contract of sale has not been delivered at the time set in the trust instrument for the specific distribution, the property passes by the specific distribution but is subject to the terms of the contract of sale. In addition, at all relevant times herein, ORS 130.520 provided that a “specific distribution” means a distribution of specific property to a specific beneficiary that is required under the terms of a trust instrument.
13.
On January 30, 2014, Vermilyea wrote to McConnell asking about the John Trust and seeking a copy of the trust agreement.

14.
On February 14, 2014, McConnell responded to Vermilyea that he was neither a permissible distributee nor a “qualified beneficiary” of the John Trust and, therefore, was not entitled to a copy of the trust instrument. Although this was Mead’s position, and McConnell’s interpretation of the provisions of the trust, it was not supported by law or fact.

15.
After receiving McConnell’s February 14 letter, Vermilyea hired attorney Wilson Muhlheim (“Muhlheim”). On April 4, 2014, Muhlheim followed up with McConnell and asked whether the John Trust contained “a specific provision to distribute specific real estate to William Vermilyea upon termination of the trust.”

16.
On April 29, 2014, McConnell responded to Muhlheim:

“To clarify my letter of February 14, 2014 to Mr. William Vermilyea, the John L. Wells Trust does not contain a ‘specific provision to distribute specific real estate to William Vermilyea.’”

Violations

17.
McConnell admits that her assertions that the John Trust did not contain a specific provision applicable to Vermilyea, and her position that Vermilyea was not entitled to view the John Trust document were without a non-frivolous basis in law or fact and thus violated RPC 3.1.

18.
Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 1.2(c), RPC 4.1(a), RPC 4.1(b), and RPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.

Sanction

19.
McConnell 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 (“Standards”). The Standards require that McConnell’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.** McConnell violated her duty to the legal system to avoid abuse of the legal process and prejudice to the administration of justice. *Standards* § 6.22

b. **Mental State.** McConnell’s conduct was knowing, that is, with the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards* at 9.

c. **Injury.** Injury can be actual or potential. *Standards* at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). McConnell caused actual injury to Vermilyea, in that he had to hire and pay Muhlheim to determine his rights. McConnell also caused significant potential injury to Vermilyea insofar as McConnell’s statements and position may have prevented Vermilyea from making or pursuing any claims against the John Trust.

d. **Aggravating Circumstances.** Aggravating circumstances include:

1. McConnell was in control of information necessary for Vermilyea to be able to determine his legal rights. *Standards* § 9.22(h).

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

2. McConnell has been cooperative with the Bar in its investigation of her conduct and in the disciplinary proceeding. *Standards* § 9.32(e).
3. There has been delay in the disciplinary proceedings. *Standards* § 9.32(j).

Under the ABA *Standards*, a suspension is generally appropriate when a lawyer knows that 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. Given that McConnell’s mitigation outweighs the aggravating factors, something less that the presumptive 6-month suspension suggested by the *Standards* is sufficient.
Oregon cases also hold that some period of suspension is appropriate. See, e.g., In re Anderson, 27 DB Rptr 243, 246 (2013) (attorney suspended for 90 days where she pursued multiple contempt and civil proceedings that lacked any good-faith factual or legal basis; rather, filings were motivated by and the result of animosity toward the client’s former wife and sister-in-law, and were “reckless, willful, malicious and in bad faith”); In re Obert, 352 Or 231, 282 P3d 825 (2012) (attorney suspended for 6 months where, despite instructions from a trial judge in a civil case that the judge would grant a motion for JNOV in favor of attorney’s client if one was filed and a caution about when such a motion was due, attorney failed to timely file the motion and instead filed a notice of appeal, which deprived the trial court of jurisdiction. The notice of appeal was defective, the appeal ultimately was dismissed, and attorney failed to refile his posttrial motions timely; attorney also filed a second, untimely notice of appeal, intending to argue that a criminal statute that permitted the late filing of a notice of appeal should apply to his client’s civil case; this argument had no basis in law or fact and therefore was the assertion of a frivolous position.); In re Smith, 348 Or 535, 236 P3d 137 (2010) (attorney suspended for 90 days where he represented a client who had disputes with her employer, a nonprofit corporation that operated a medical marijuana clinic, and advised the client that, because the nonprofit was administratively dissolved, the client had a right to enter the clinic premises and attempt to take control of the operations, a position that attorney knew was frivolous); In re Andersen, 18 DB Rptr 172 (2004) (attorney was suspended for 4 months and required to formally reinstate where, without any legal right to do so, he threatened to withhold from an opposing party bank records and rental files belonging to them unless they settled the case on terms attorney proposed).

Consistent with the Standards and Oregon case law, the parties agree that McConnell shall be suspended for 90 days for her violation of RPC 3.1, the sanction to be effective August 5, 2017, or three days after approval by the Disciplinary Board, whichever is later.

McConnell 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, McConnell has arranged for Steven F. Cox (Bar No. 133374), at Northwest Property Law, 125 NE 3rd St., McMinnville, Oregon, an active member of the Bar, to either take possession of or have ongoing access to McConnell’s client files and serve as the contact person for clients in need of the files during the term of her suspension. McConnell represents that Mr. Cox has agreed to accept this responsibility.
24.

McConnell 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. McConnell 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.

25.

McConnell 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.

26.

McConnell 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 McConnell is admitted: None.

27.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 31st day of July, 2017.

/s/ Sheryl S. McConnell
Sheryl S. McConnell
OSB No. 953538

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich
David J. Elkanich
OSB No. 992558

EXECUTED this 1st day of August, 2017.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott
OSB No. 990280
Chief Assistant Disciplinary Counsel
TRIAL PANEL OPINION

The Oregon State Bar [“the Bar”] filed a formal Amended Complaint in this matter on June 8, 2016, alleging Michael Reuben Stedman [“the Accused”] violated the Rules of Professional Conduct [RPC] in 22 violations. The Accused was served with the formal Complaint on January 9, 2017 and failed to appear. The Accused did not file an Answer to the formal Amended Complaint.


NATURE OF CHARGES AND DEFENSES

The Bar has alleged causes of complaint against the Accused as follows:

1. **First Cause of Complaint: In Case No. 15-40 [the Goss matter]** In the Goss matter, the Accused knowingly made false statements to a tribunal, engaged in conduct involving misrepresentation and dishonesty reflecting adversely on the fitness of the accused
to practice law and engaging in conduct prejudicial to the administration of justice in violation of RPC 3.3A and RPC 8.4(a)(3) and RPC 8.4(a)(4).

2. **Second Cause of Complaint: In Case No. 15-27 [the Husel matter]** In the Husel matter the Accused is charged with neglect of a legal matter, failure to keep a client reasonably informed about the status of a matter or respond to a request for information, collecting a clearly excessive fee, failing to hold client property separate from his own property, failing to deposit into Trust fees and expenses paid in advice and engaging in conduct involving misrepresentation and dishonesty in violation of RPC 1.3, RPC 1.4(a), RPC 1.5(a), RPC 1.15-1(a) RPC 1.15-1(c) and RPC 1.4(a)(3).

3. **Third Cause of Complaint:** Failing to respond relative to the Husel matter in violation RPC 8.1(a)(2).

4. **Fourth Cause of Complaint: In Case No. 15-61 [the Renn matter]** In the Renn matter, the Bar asserts the Accused neglected a legal matter intrusted to him and failed to comply with applicable law requiring notice of a tribunal when terminating a representation, knowingly disobeying an obligation under the rules of a tribunal in conduct prejudicial to the administration of justice in violation of RPC 1.3, RPC 1.16(c), RPC 3.1(c) and RPC 8.4(a)(4).

5. **Fifth Cause of Complaint:** The Bar asserts the Accused in the Renn matter failed to respond to lawful demands from the Disciplinary Authority in violation of RPC 8.1(a)(2).

6. **Sixth Cause of Complaint: In Case No. 15-99 [the Barreras matter]** In the Barreras matter, the Bar asserts the Accused neglected a legal matter, failed to communicate with a client, failed to explain a matter to permit a client to make an informed decision regarding the representation, charging or collecting an excessive fee, failure to refunds upon termination of representation and conduct involving dishonesty or misrepresentation in violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.16(d) and RPC 8.4(a)(3).

7. **Seventh Cause of Complaint:** The Bar asserts the Accused in the Barreras matter failed to respond to lawful demand to a Disciplinary Authority in violation of RPC 8.1(a)(2).

   Based on a Motion for Default, an Order of Default was entered on March 20, 2017, by the Region 3 Chair Person.


**SUMMARY OF UNDISPUTED FACTS**

All facts are undisputed, as the Accused did not appear and an Order of Default has been entered.
8. The Presiding Administrative Law Judge Robert L. Goss Matter - Case No. 15-40: From approximately July 2011 through 2012, Stedman filed requests for “implied consent” hearings for individuals who had been stopped by law enforcement officers for vehicular code violations. Stedman did not represent most of these individuals and, in most cases, had never met or communicated with them prior to requesting hearings on their behalf.

In response to Stedman’s requests for hearing, the Oregon Office of Administrative Hearings scheduled hearings and issued subpoenas, including subpoenas ducès tecum that directed law enforcement officers to produce discovery.

In many instances, Stedman failed to notify the individuals in whose names he had filed requests for “implied consent” hearings that hearing had been scheduled for them. Some of these individuals failed to appear for the hearings. Others appeared at the hearings, unrepresented and unaware of why they had been required to attend. Toward the end of 2012, the presiding administrative law judge ultimately refused to set hearings on requests Stedman filed and directed Stedman to contact him. Stedman failed to do so.

At the time he filed the requests for hearing with the Office of Administrative Hearings, Stedman knew he did not represent most of the individuals described above. He was also aware that the petitions he filed for them were false and misleading, in that they contained material misrepresentations, including that he represented the named individuals.

Stedman also knew his conduct in repeatedly filing the false requests for hearing lacked integrity and was dishonest when he engaged in it.

9. The Richard Husel Matter - Case No. 15-27: In January 2012, Richard Husel [“Husel”] retained Stedman to represent him in a criminal matter alleging theft by deception [“Husel matter”]. Husel paid Stedman a retainer of $6,500 [“Husel retainer”] pursuant to an oral fee agreement for which Stedman agreed to pursue a civil compromise on Husel’s behalf. Stedman failed to deposit the Husel retainer into a lawyer trust account. Stedman did not keep adequate records of his receipt or the disposition of the Husel retainer, and instead knowingly converted some or all of it to his own personal use, unrelated to the Husel matter.

Between January 2012 and July 25, 2013, Stedman failed to take any substantive steps to resolve the Husel matter or obtain a civil compromise, and failed to respond to Husel’s multiple attempts to communicate with him regarding the status of his case. On July 25, 2013, Stedman stated to Husel that he had negotiated a civil compromise for a payment to Husel’s alleged victim of $5,000. This representation was false and material, and Stedman knew it was false and material when he made it.

On July 25, 2013, Husel paid Stedman $5,000 to effect the civil compromise agreement [“Husel payment”]. Stedman did not deposit the Husel payment into his lawyer trust account. Stedman did not keep adequate records of his receipt or the disposition of the Husel payment,
and did not pay the money to Husel’s alleged victim. Rather, Stedman knowingly converted some or all of the Husel payment to his own personal use, unrelated to the Husel matter.

In October 2013, when Husel heard nothing more from Stedman, but received a second trial notice from the court, Husel contacted Stedman about the status of the civil compromise. Stedman advised Husel that he was closing his law office. Husel requested an accounting of the Husel payment. Stedman did not respond and Husel could not thereafter reach him. Following demand from Husel’s new attorney, Stedman sent $5,000 to Husel’s new attorney in funds drawn from an account other than Stedman’s lawyer trust account.

On April 13, 2015, the Disciplinary Counsel’s Office [“DCO”] of the Bar requested that Stedman account for his conduct in the Husel matter. Stedman did not respond. On or about May 14, 2015, DCO again requested Stedman’s account of his conduct. Stedman did not respond and, pursuant to BR 7.1, DCO petitioned the Disciplinary Board for Stedman’s suspension and notified Stedman of this action. Stedman did not respond to DCO’s petition and, on June 23, 2015, Stedman was suspended by Order of the Disciplinary Board.

10. The Honorable Thomas M. Renn Matter - Case No. 15-61: Local Bankruptcy Rule [“LBR”] 10-06-1(b) provides that payment of the filing fee was required when a bankruptcy petition was filed with the court. A debtor was required to tender not less than the amount specified on the current version of LBR #110.

On September 19, 2013, Stedman filed a bankruptcy petition with the court on behalf of Brandi Lyn Brickey [“Brickey”] without paying the required filing fee. On or about September 20, 2013, Stedman also filed a bankruptcy petition on behalf of his client, Joan H. Gill [“Gill”], without paying the required filing fee. As a result of his failure to pay the filing fees in the Brickey and Gill matters, on October 4, 2013, the bankruptcy court for the District of Oregon ordered Stedman to appear on October 23, 2013, and show cause why his attorney fee in both matters should not be reduced.

On October 8 and 11, 2013, Stedman paid the bankruptcy court filing fees in the Brickey and Gill matters, but did not advise the court that he had done so. As a result of his failure to so advise the court, the October 23, 2013 show cause hearing remained on the calendar. Stedman failed to appear at the October 23, 2013 show cause hearing. The court reviewed both the Gill and Brickey matters and noted that Stedman had subsequently paid the filing fee, but ordered Stedman to disgorge $500 in attorney fees to each client and submit proof of payment to the court within ten days. Stedman failed to comply with the court’s order, and on or about November 8, 2013, the court ordered Stedman to attend a mediation before Judge Alley to address his failure to comply.

Stedman failed to contact Judge Alley or respond to Judge Alley’s attempts to contact him. The court also attempted to contact Stedman and discovered that his telephone and facsimile numbers were disconnected, and his website was not operational. Stedman did not
comply with the court’s order to attend mediation. The following conduct by Stedman interfered with the court’s ability to conduct its business.

11. his failure to pay the filing fees;
12. his failure to respond to the court’s efforts to contact him;
13. his failure to appear at the show cause hearing;
14. his failure to disgorge fees; and
15. his failure to cooperate with Judge Alley’s attempts to schedule a mediation.

LBR 9010-1(f)(2) required attorneys for Chapter 7 debtors to file motions to withdraw upon completion of services to a client and obtain the court’s permission to withdraw. Despite failing to advance or complete the Brickey or Gill bankruptcies, Stedman failed to file a motion to withdraw from either matter and failed to obtain the court’s permission to withdraw.

On April 9, 2014, DCO received a complaint from Bankruptcy Court Judge Thomas M. Renn regarding Stedman’s conduct, and requested that Stedman respond to Judge Renn’s allegations on or before April 30, 2014. Stedman did not respond. On May 22, 2014, DCO again requested that Stedman respond to Judge Renn’s complaints. Stedman received this request on or about May 27, 2014, and attorney Larry B. Workman [“Workman”] forwarded Stedman’s written response.

On March 19, 2015, DCO made further inquiries about Stedman’s conduct. Workman provided an incomplete response to the additional inquiries on Stedman’s behalf. On or about April 10, 2015, DCO requested Stedman provide a complete response to its inquiries. On or about May 20, 2015, Workman withdrew from the representation, and Stedman thereafter failed to respond to DCO’s March 19, April 10, and subsequent inquiries.

16. The Christopher Simon Barreras Matter - Case No. 15-99: In April 2013, Christopher Simon Barreras [“Barreras”] retained Stedman to represent him in a criminal DUII matter in Jackson County. Barreras paid Stedman a total of $7,500 to represent him at all pretrial conferences, any motion to suppress and trial. Shortly after Barreras paid Stedman’s retainer, he was unable to reach Stedman by email or telephone because Stedman abandoned his law practice without notice to his clients.

When Stedman closed his law office, he effectively terminated his representation of Barreras and took no steps to protect his interest. He failed to inform Barreras that he would no longer represent him; obtain Barreras’ consent to transfer his file to another attorney; provide him with a copy of his file; or refund any unearned portion of his retainer.

Barreras learned at his first court appearance that Stedman no longer represented him and that his criminal case had been transferred to another attorney, Garren Pedemonte.
Before he abandoned his law practice, Stedman contacted Pedemonte and paid him a lump sum to represent certain of Stedman’s clients without further charge to them. Stedman affirmatively and knowingly represented to Pedemonte that he had obtained Barreras’ consent to have Pedemonte substitute unto the case. Stedman knew that it was false and material when he made it.

Shortly after contacting Pedemonte, Stedman left Oregon and moved to Mexico. Stedman failed to refund Barreras’ $7,500 retainer, knowing he had not earned most of it and thereafter knowingly converted Barreras’ funds to his own personal use.

On or about July 20, 2015, DCO received a complaint from Barreras regarding Stedman’s conduct and requested that Stedman respond to Barreras’ allegations on or before August 14, 2015. Stedman did not respond. On August 27, 2015, DCO again requested by first class mail and by certified mail, return receipt requested, that Stedman respond to Barreras’ complaints. The letter sent by certified mail was returned on September 28, 2015 as “unclaimed/unable to forward.” The first class letter was not returned. Stedman did not respond.

On October 1, 2015, the bar moved to suspend Stedman pursuant to BR 7.1. On November 6, 2015, DCO sent a letter by certified mail to Stedman with notice of the petition to his address on record with the Bar but Stedman did not respond.

CONCLUSIONS OF LAW

1. First Cause of Complaint: In Case No. 15-40 [the Goss matter]:

RPC 3.3(a) - False Statements to tribunal

RPC 3.3(a) prohibits lawyers from knowingly making a false statement of law or fact to a tribunal. RPC 1.0(p) defines tribunal as court, an arbitrator in a binding arbitration proceeding, or legislative body, administrative agency, or other body acting in an adjudicative capacity. The rule further states that a legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will then render a binding legal judgment directly affecting a party’s interest in a particular matter.

By sending letters to the Office of Administrative Hearings, purportedly from persons who had no idea the requests were being made in their names, Stedman made misrepresentations of material fact to a tribunal, in violation of RPC 3.3(a).

RPC 8.4(a)(3) - Conduct involving dishonesty & misrepresentation:

RPC 8.4(a)(3) prohibits lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law. An
affirmative misrepresentation is a knowing, false statement of material fact. In re Kumley, 335 Or 639, 644, 75 P3d 432 (2003). Dishonesty, as contemplated by the rule, is a broader concept than deceit or fraud, and does not require the same level of culpable mental state. In re Leonard, 308 Or 560, 569, 784 P2d 95 (1989). Dishonesty is conduct that indicates that the attorney “lacks aspects of trustworthiness and integrity that are relevant to the practice of law.” In re Carpenter, 337 Or 226, 236, 95 P3d 203 (2004).

Stedman made misrepresentations to the Office of Administrative Hearings because he sent “Stedman letters” on behalf of persons who did not authorize him to do so. The misrepresentations were material in that they were likely to - and did - affect the decision making process of the recipient by inducing Office of Administrative Hearings to schedule hearings, issue subpoenas, send notices and subpoenas to the purported petitioners, and have administrative law judges and police officers travel to and appear for hearings. See In re Roberts, 15 DB Rptr 133 (2001) (attorney guilty of misrepresentation by omission/dishonesty when he initiated an arbitration proceeding in the name of a client and a party he did not represent and negotiated with the opposing party without disclosing that he did not represent one of the plaintiffs).

Stedman’s letter writing campaign was also “dishonest” conduct, within the meaning of RPC 8.4(a)(3). See In re Carpenter, 330 Or at 234–37 (attorney engaged in dishonesty when he created an internet bulletin account in the name of a high school teacher in his community and posted a message purportedly written by the teacher that suggested that the teacher had engaged in sexual relations with his students).

Stedman’s conduct was dishonest because his conduct disregarded the legal rights of those members of the public that he involved in his campaign and demonstrates that he lacks “the requisite trustworthiness and integrity to handle important matters involving legal rights that clients commonly entrust to lawyers.” Id. at 237.

Stedman’s misrepresentations and dishonest conduct violated RPC 8.4(a)(3).

RPC 8.4(a)(4) - Conduct prejudicial to the administration of justice.

RPC 8.4(a)(4) prohibits lawyers from engaging in conduct that is prejudicial to the administration of justice.

A lawyer violates RPC 8.4(a)(4) when he does something he should not do or fails to do something he should do, and thereby prejudices the administration of justice. In re Hartfield, 349 Or 108, 115 (2010). “Prejudice” for purposes of RPC 8.4(a)(4) can be either to the administrative functioning of the case or the substantive interests of a party. In re Gustafson, 327 Or 636, 643 (1998). Where a lawyer has engaged in a single wrongful act, the court requires the Bar to demonstrate substantial harm to the administration of justice. In re Haws, 310 Or 741, 748 (1990). Where the lawyer has engaged in repeated conduct, the Bar need only demonstrate some harm. Id.
Stedman sent out many letters requesting hearings on behalf of persons who were not his clients and who had no idea he was doing so. In several instances, the court scheduled a hearing and sent out notices and subpoenas. Administrative law judges and police officers appeared for hearing but often the purported petitioner did not. Office of Administrative Hearings resources were wasted, as well as the time of administrative law judges and police officers. Stedman engaged in as many wrongful acts as he sent misrepresentative letters to the Office of Administrative Hearings, and he also caused significant actual harm to the procedural functioning of Office of Administrative Hearings, all in violation of RPC 8.4(a)(4).

2. Second Cause of Complaint: The Richard Husel Matter - Case No. 15-27

RPC 1.5(a) - Clearly excessive fee

RPC 1.5(a) & (c) - Duty to deposit client funds ($6,500 Husel retainer) into trust

RPC 1.5(a) prohibits lawyers from charging or collecting a clearly excessive fee. See In re Fadeley, 342 Or 403, 153 P3d 682 (2007) (even though attorney considered the $10,000 retainer he accepted in a divorce case to be nonrefundable and earned on receipt, it became a clearly excessive fee when the client terminated him before much work had been done and the legal matter was not completed); In re Balocca, 342 Or 279, 151 P3d 154 (2007) (attorney may not agree to perform specified legal services for a flat fee, fail to complete the work, and then claim that he has earned the fee; in this context, keeping the fee without completing the work is collecting an excessive fee).

RPC 1.15-1(a) and RPC 1.15-1(c) require client funds to be held separate from the lawyer’s own property and deposited into a lawyer trust account to be withdrawn only as fees are earned or costs expended.

Stedman was required to refund some or all of Husel’s $6,500 retainer because he failed to complete the objective of the representation when he took no substantive steps to resolve Husel’s matter or to obtain a civil compromise. Stedman’s failure to make any refund to his client of the unearned portion or all of the retainer makes the fee “clearly excessive” in violation of RPC 1.5(a). Id.

Stedman treated Husel’s payment of the $6,500 retainer as a flat fee without any written fee agreement containing the language required by RPC 1.5(c)(3). Stedman failed to meet his obligation to prove the existence of a written fee agreement that would have allowed him to treat the funds as a flat fee and not deposit them into his lawyer trust account. In In re Balocca, 342 Or at 288–89, the court stated: “client funds must be deposited into a lawyer trust account unless a written agreement provides that the funds are nonrefundable and are deemed earned upon receipt... although the Bar has the burden of proving the alleged violations by clear and convincing evidence, it does not have the burden of proving the nonexistence of the fee agreement. Rather, because the accused sought to rely on the existence of the fee agreement to
justify his handling of [his client’s] payments, it is his burden to demonstrate the existence of such an agreement.”

In the absence of a written fee agreement containing the appropriate language, Husel’s $6,500 retainer represented an advance retainer to be billed against hourly; as such Stedman was required to deposit the money into trust and withdraw it only as earned. His failure to have done so, under these circumstances, also violated RPC 1.15-1(a) and (c).

**RPC 1.3 - Neglect of Husel’s legal matter**

**RPC 1.4(a) - Failure to communicate with client Husel**

**RPC 8.4(A)(3) - Misrepresentation to client Husel**

RPC 1.3 prohibits lawyers from neglecting legal matters entrusted to them. In order to find a violation of this rule, the lawyer’s conduct must be viewed in the broader context of the representation as a whole, rather than by focusing on specific aspects of the representation, and must display a course of neglectful conduct. *In re Magar*, 335 Or 306, 321, 66 P3d 1014 (2003). Failure to take constructive action to advance or protect a client’s legal position, even though some services are rendered, can be neglect. *In re Meyer*, 328 Or 220, 225, 970 P2d 647 (1999).

RPC 1.4(a) requires a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. See *In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (attorney’s failure to respond to his personal injury client’s status inquiries, failure to inform the client of communications with the adverse party and with the client’s own insurer, and failure to explain the strategy attorney decided upon regarding settlement negotiations, were not just poor client relations; attorney kept from the client precisely the kind of information that the client needed to know to make informed decisions about the case).

RPC 8.4(a)(3) prohibits lawyers from making misrepresentations reflecting adversely on the lawyer’s fitness to practice. A lawyer who lies to a client about the status of a case violates this rule. *In re Groom*, 22 DB Rptr 124 (2008).

Stedman neglected Husel’s case over the course of a nearly two-year period when he failed to do anything to meet his client’s objective, failed to keep Husel reasonably informed and respond to his inquiries, misrepresented to Husel that he had negotiated a civil compromise in an amount of $5,000 and then fled to Mexico.

Stedman’s conduct violated RPC 1.3, RPC 1.4(a), and RPC 8.4(a)(3).
RPC 1.15-1(a) & (c) - Duty to deposit client funds (Husel $5,000 for the supposed civil compromise) into trust.

RPC 8.4(a)(3) - Knowing & dishonest conversion of client funds

RPC 1.15(a) and (c) require client funds to be deposited into trust and withdrawn only as fees are earned or costs expended.

RPC 8.4(a)(3) prohibits conduct involving dishonesty, deceit, fraud or misrepresentation reflecting adversely on a lawyer’s fitness to practice law.

The $5,000 that Husel paid to Stedman for the civil compromise that Stedman falsely claimed had been negotiated in July 2013 constituted client funds. Stedman was required to deposit Husel’s $5,000 into trust; in failing to do so, he violated RPC 1.15-1(a) and RPC 1.15-1(c).

Taking a client’s money before it is earned constitutes conversion (i.e., the intentional exercise of dominion or control over a chattel that so seriously interferes with another’s right of control that the actor may justly be required to pay the other the full value of the chattel). *In re Martin*, 328 Or 177, 184–88, 970 P2d 638 (1998); *In re Whipple*, 320 Or 476, 481, 886 P2d 7 (1994). It is intentional or knowing conversion to take client money before it is earned, even though legal work may be underway or completed in the near future. *In re Martin*, 328 Or at 188; *In re Whipple*, 320 Or at 481.

Stedman had possession and use of Husel’s $5,000 between July 2013 and December 2013. Stedman had no right to possession or use of Husel’s $5,000 as Husel provided it to Stedman for payment of a purported civil compromise. Stedman procured the funds by falsely asserting that he had negotiated a civil compromise. Stedman had no claim himself to the funds; rather, they were intended to be paid to a third party. Stedman did not pay Husel’s alleged victim. Instead, Stedman knowingly and dishonestly converted Husel’s funds in violation of RPC 8.4(a)(3). The fact that the later (indirectly) repaid the client does not negate the wrongful taking of the funds in the first place. See *In re Pierson*, 280 Or 513, 571 P2d 907 (1977) (notwithstanding his full restitution to client, attorney disbarred for a single count of dishonest conversion of client funds).

It is well-established in Oregon that attorney “discipline is not dependent upon the attorney’s financial ability to rectify the results of his unethical conduct.” *Id.* at 518.

Given the circumstances under which the Husel money was paid (the supposed civil compromise) to Stedman: (i) the failure to deposit the money into trust, (ii) the failure to effectuate a civil compromise, (III) the abandonment of clients, closure of his law practice and unannounced departure to Mexico, and (iv) the repayment of the money only after Husel’s Nevada attorney made repeated demands upon him, Stedman knowingly and dishonestly converted the client’s $5,000 for his own use, in violation of RPC 8.4(a)(3).
RPC 8.2(a)(2) - Failure to respond to disciplinary inquiry

RPC 8.2(a)(2) prohibits lawyers from knowingly failing to respond to lawful demands for information from disciplinary authority. Stedman’s knowing failures to respond to DCO violates RPC 8.1(a)(2).

3. Third Cause of Complaint: The Honorable Thomas M. Renn Matter - Case No. 15-61

RPC 1.3 - Neglect of a legal matter

RPC 1.3 prohibits lawyers from neglecting legal matters entrusted to them. Stedman violated RPC 1.3 when he failed to act timely to advance or protect the interests of his bankruptcy clients. In re Meyer, 328 Or 220, 225 (1999) (emphasis added) provides that:

...the trial panel concluded that the accused did not violate DR 6-101(B) [now RPC 1.3], because his failures constituted an “isolated instance of neglect rather than a pattern of neglect.” On review, the Bar asserts that, even though the accused’s course of conduct lasted only two months, and even though he did render some services during that period, the accused violated [what is now RPC 1.3], because he took no constructive action to advance or to protect [his client’s] legal position, especially as to the issue of temporary spousal and child support, which was [his client’s] primary concern. We agree.

LBR 1006-1(b) requires filing fees to be paid at the time of the filing. When the bankruptcy clerk tried to contact him about his failure to pay the Brickey and Gill bankruptcy filing fees, Stedman did not respond. As a result, the court ordered Stedman to appear and show cause why his attorney fees should not be reduced as a sanction.

Because Stedman paid the filing fees a few days after the court sent him the show cause order, it is reasonable to conclude that he received the order. The court did not take the show cause hearing off the calendar. After the hearing - which Stedman did not attend - he failed to respond or comply with the court’s order to disgorge some of his attorney fees, and he failed to comply with the order requiring him to attend mediation. Timely payment of the required filing fees and responding to the bankruptcy court on behalf of Gill and Brickey were legal matters entrusted to Stedman. So too, was the general obligation to timely comply with the court’s order. See, e.g., In re Derby, 19 DB Rptr 316 (2005) (attorney guilty of neglect for repeatedly failing to file required documents in a probate proceeding despite numerous inquiries and directives from the court). Stedman violated RPC 1.3.

RPC 1.16(c) - Duty to comply with notice to or permission of a tribunal when terminating representation

RPC 1.16(c) requires lawyers to comply with applicable law requiring law requiring notice or permission of a tribunal when terminating a representation.
LBR 9010-1(e)(2) requires attorneys for Chapter 7 debtors to file motions to withdraw upon completion of services. Stedman did not answer DCO’s inquiry about whether he completed the objective of his representation of Brickey and Gill. The PACER reports show that their Chapter 7 bankruptcy matters continued for months after Stedman’s last appearance. Stedman never filed any motion to withdraw.

In failing to comply with LBR 9010-1(e)(2), Stedman violated RPC 1.16(c).

RPC 3.4(c) - Knowingly disobeying an obligation under the rules of a tribunal

RPC 3.4(c) prohibits lawyers from knowingly disobeying an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

Stedman knowingly failed to comply with three court orders: (i) that he appear and show cause on October 23, 2013; (ii) that he disgorge fees to Brickey and Gill; and (iii) that he attend mediation before Judge Alley.

With respect to the first (show cause order), Stedman’s payment for filing fees several days after the court issued this order supports the reasonable inference that he did indeed receive it. With respect to the second order (disgorgement), Stedman knew about the show cause hearing in advance and thus that the court might make a further order. Stedman did not comply with the court’s order to attend mediation.

Stedman violated RPC 3.4(c) based on his failure to comply with the show cause and the disgorgement orders.

RPC 8.1(a)(2) - Duty to respond to disciplinary inquiries

RPC 8.1(a)(2) prohibits lawyers from knowingly failing to respond to an inquiry from a disciplinary authority.

Stedman knowingly failed to respond to several of DCO’s questions. Specifically, he did not provide responsive information about the procedures he took when he closed his practice, whether he completed his representation of Brickey and Gill, and steps he took to notify Brickey and Gill of his withdrawal from their representation, the date he learned from his former legal assistant of the disgorgement order, and why he still has not complied with that order. Stedman violated RPC 8.1(a)(2).

RPC 8.4(a)(4) - Conduct prejudicial to the administration of justice

RPC 8.4(a)(4) prohibits lawyers from engaging in conduct prejudicial to the administration of justice.

Stedman engaged in several acts that prejudiced the court’s ability to conduct business. He failed to pay filing fees, failed to respond to the court clerk’s efforts to contact him (necessitating the intervention of judges), failed to appear at the show cause hearing, and failed to disgorge fees (necessitating the involvement of the court and mediator), and then failed to cooperate with the judge’s efforts to schedule a mediation.
Stedman committed several wrongful acts that caused substantial actual and potential harm to the administration of justice, in violation of RPC 8.4(a)(4).

4. Third Cause of Complaint: The Barreras Matter - Case No. 15-99

RPC 1.3 - Neglect of a legal matter

RPC 1.3 prohibits a lawyer from neglecting a legal matter entrusted to the lawyer. Failure to take constructive action to advance or protect a client’s legal position over an extended period of time constitutes neglect. In re Meyer, 328 Or at 225. Stedman failed to render the agreed-upon legal services for Barreras after he was retained in April 2013, in violation of RPC 1.3. See, e.g., In re Koch, 345 Or 444, 198 P3d 910 (2008) (respondent attorney committed neglect 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.)

RPC 1.4(a) - Failure to communicate with client

RPC 1.4(b) - Failure to explain a matter to permit a client to make informed decisions regarding the representation

RPC 1.4(a) requires a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. RPC 1.4(b) requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

“A lawyer owes to a client the duty of diligence, which requires that the lawyer communicate with and keep the client informed of the status, progress and disposition of a legal matter.” In re Bourcier, 325 Or 429, 434, 939 P2d 604 (1997).

Stedman never communicated with Barreras after their first meeting. Shortly after Stedman received Barreras’s money, he closed his office and disappeared to Mexico, without any warning to Barreras that he intended to stop practicing law and made no refund of his client’s $7,500 retainer. Stedman violated both RPC 1.4(a) and (b).

RPC 1.5(a) - Charging or collecting an excessive fee

RPC 1.5(a) prohibits a lawyer from charging a clearly excessive fee. Where a lawyer charges a flat fee for certain services, the flat fee can become excessive if the agreed-upon services are not performed. In re Balocca, 342 Or at 291. Stedman charged Barreras a flat fee to represent him through trial, but performed no services at all. Stedman violated RPC 1.5(a).

RPC 1.16(d) - Failure to refund client funds on termination of employment

RPC 1.16(d) requires a lawyer, upon termination of employment, to take steps to the extent reasonably practicable to protect a client’s interests, including reasonable notice to a
client and to refund any advance payment of fee or expense that has not been earned or has not been incurred.

Stedman gave Barreras no notice that he had terminated the representation. Pursuant to the terms of his fee agreement, Stedman did not earn $5,500 of the $7,500 Barreras had paid him in advance because the case was settled without a trial. Stedman terminated his representation of Barreras by unilaterally transferring the case to Pedemonte and has never refunded any unearned fees. This violated RPC 1.16(d). See In re Castanza, 350 Or 293, 253 P3d 1057 (2011) (attorney violated rule when he withdrew from representing clients in a civil action, but failed to allow the clients sufficient time to employ other counsel, attempt to postpone the trial date, file a notice of withdrawal, respond to a pending motion to dismiss filed by the opposing party, respond to opposing counsel’s proposed general judgment and cost bill, or communicate with the clients about the judgment and cost bill).

**RPC 8.1(a)(2) - Failure to respond to DCO**

RPC 8.1(a)(2) requires a lawyer to respond to lawful demands for information from DCO. By letter dated July 24, 2015, DCO required Stedman’s response to Barreras’ complaint. The letter was addressed to Stedman at the address then on record with the Bar (132 West Main Street, Suite 102, Medford, OR 97501), as well as to an address found by the DCO investigator (142 Theo Drive, Talent, OR., 97540). Both letters were sent by first class mail. The letter sent to the Medford address was returned as “not deliverable as addressed/unable to forward.” The letter sent to the Talent address was not returned, and Stedman did not respond to it. The Talent address belongs to Stedman’s father, who presumably received and notified Stedman of the correspondence.

By letter dated August 27, 2015, DCO again requested Stedman’s response to Barreras’ complaint. The letter was addressed to Stedman at 142 Theo Drive, Talent, OR., 97540. This letter was sent by both first class and by certified mail, return receipt requested. The letter sent by certified mail, return receipt requested was returned on September 28, 2015 as “unclaimed/unable to forward.” The first class letter has not been returned. To date, Stedman had not responded to DOS’s inquiries.

On October 1, 2015, a petition for suspension pursuant to BR 7.1 was filed and mailed to Stedman’s Talent address. He was suspended on October 12, 2015. The reasonable inference is that his father at least alerted Stedman of the DCO correspondence he received at the Talent address. Stedman’s knowing conduct violated RPC 8.1(a)(2).

**RPC 8.4(a)(3) - Conduct involving dishonest or misrepresentation (Barreras’ $7,500 retainer)**

RPC 8.4(a)(3) provides that it is a professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the
lawyer’s fitness to practice law. Knowing conversion of client funds is dishonesty under this rule. *In re Eakin*, 334 Or 238, 249, 48 P3d 147 (2002).

Stedman closed his office and disappeared after failing to earn Barreras’ $7,500 retainer. The reasonable inference from his timeline (and from the fact that Barreras has received no requested refund) is that Stedman intentionally and dishonestly converted Barreras’ money for his own use. Stedman violated RPC 8.4(a)(3). See *In re Biggs*, 318 Or 281, 294, 864 P2d 1310 (1994) (an attorney engages in prohibited conduct involving dishonesty, fraud, deceit or misrepresentation when he converts client funds by paying himself unearned fees from client funds).

Lastly, Stedman lied to attorney Pedemonte when he affirmatively and knowingly represented to Pedemonte that he had obtained Barreras’ consent to have Pedemonte substitute into the case. Stedman knew that this representation was false and material to Barreras and Pedemonte, and Stedman knew that it was false and material when he made it. Stedman violated RPC 8.4(a)(3).

**SANCTION**

The Oregon Supreme Court refers to the ABA *Standards for Imposing Lawyer Sanctions* (“*Standards*”) and case law from the Oregon Supreme Court in determining an appropriate sanction.

A. **ABA Standards.** The *Standards* establish an analytical framework for determining the appropriate sanction in discipline cases using four (4) factors: the general duty violated, the lawyer’s mental state, the actual or potential injury caused, and the existence of aggravating and mitigating circumstances. Once these factors are analyzed, the sanction may be adjusted based on the existence of aggravating or mitigating circumstances.

B. **General Duties Violated.** The *Standards* provide that the most important ethical duties are those which lawyers owe their clients. Standard at 5. Stedman violated his duties to his clients to appropriately safeguard their funds and to act with reasonable diligence, promptness (including adequate communication), and candor. *Standards* §§ 4.1, 4.4, 4.6. Stedman’s misrepresentations to the court violated his duty of candor to the legal system. *Standards* § 6.1. His systematic failure to cooperate in the Bar’s investigations was conduct prejudicial to the administration of justice that abused the legal process. *Standards* § 6.2. In knowingly and dishonestly converting his clients’ funds and in collecting excessive fees, Stedman violated his duties to his clients, the public, and his duties as a professional. *Standards* §§ 5.1, 7.0.

Stedman violated his duty to the profession in failing to properly withdraw from representation and to cooperate in the investigation of professional misconduct by the Bar. *Standards* § 7.0.
C. Mental State. “Intent” is the conscious awareness of the nature or attendant circumstances of the conduct with the intent to cause a particular result. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. Standards at 9. Stedman is an attorney with substantial experience. Stedman is presumed to know the law and the disciplinary rules. In re Devers, 328 Or 230, 241, 974 P2d 191 (1999) (so stating). The facts deemed to be true in this matter demonstrate that Stedman acted knowingly and intentionally in all respects. See In re Phelps, 306 Or 508, 513, 760 P2d 1331 (1988) (lawyer’s mental state can be inferred from the facts).

Stedman’s neglect and failures to communicate with clients, the court, and the Bar were all intentional or at least knowing. Stedman was repeatedly prompted by his clients and the bench about the need to attend to his clients’ legal matters and to communicate with them about the status of their cases. He knew that he was not doing so. Stedman therefore acted intentionally when he ignored his clients’ requests for an accounting and refund, and he acted intentionally to convert, rather than preserve and refund, Husel’s and Barreras’s funds. See In re Sousa, 323 Or 137, 144, 915 P2d 408 (1996) (“A failure to act can be characterized as intentional, rather than attributed to mere neglect or procrastination, if the lawyer fails to act over a significant period of time, despite the urging of the client and the lawyer’s knowledge of the professional duty to act”). See also In re Loew, 292 Or 806, 810–11, 642 P2d 1171 (1982). Stedman also acted intentionally when he lied to attorney Pedemonte to induce him to take over Barreras’ languishing defense.

D. Extent of Actual or Potential Injury. For the purposes of determining an appropriate sanction, both actual and potential injury may be taken into account. Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). “Injury” is defined as “harm to a client, the public, the legal system or the profession which results from the lawyer’s misconduct.” Standards at 9. Because the purpose of attorney discipline is to protect the public, the Bar need not prove actual injury. Potential injury is sufficient.

Standards § 3.0. Potential injury is harm that is reasonably foreseeable at the time of the lawyer’s conduct. Standards at 9.

Stedman caused serious injury to his clients because they paid for services not performed. This is particularly true for clients Husel and Barreras because Stedman knowingly and dishonestly converted their payments to him.

Stedman caused potential injuries to his clients by failing to account for any of the fees that he took directly from his clients. See In re Peterson, 348 Or 325, 342–43, 232 P3d 940 (2010) (attorney caused potential economic injury to his clients because his poor accounting methods jeopardized the security of trust account deposits). By failing to comply with the written fee agreement and trust account rules, Stedman “caused actual harm to the legal profession.” See In re Obert, 352 Or 231, 260, 282 P3d 825 (2012).
Stedman’s lack of diligence and lack of communication with his clients caused actual injury in the form of client anxiety and frustration. See In re Knappenberger I, 337 Or 15, 31–33, 90 P3d 614 (2004); In re Obert, 336 Or 640, 652, 89 P3d 1173 (2004); In re Cohen II, 330 Or 489, 496, 8 P3d 953 (2000) (Client anxiety and frustration as a result of the attorney neglect can constitute actual injury under the Standards); In re Schaffner II, 325 Or 421, 426–27, 939 P2d 39 (1997); In re Arbuckle, 308 Or 135, 140, 775 P2d 832 (1989).

Stedman’s knowing refusal to cooperate during the Bar’s investigation of his conduct caused actual injury to both the legal profession and to the public by wasting the Bar’s time and resources, delaying and preventing the bar from fulfilling its responsibility to protect the public. In re Schaffner II, 325 Or at 426–27; In re Miles, 324 Or 218, 222–23, 923 P2d 1219 (1996); In re Haws, 310 Or at 753–54; see also In re Gastineau, 317 Or 545, 558, 857 P2d 136 (1993) (court concluded that, when a lawyer persists in his failure to respond to the Bar’s inquiries, the Bar was prejudiced, because the Bar had to investigate in a more time-consuming way, and the public respect for the Bar was diminished, because the Bar could not provide timely and informed responses to complaints).

E. Preliminary Sanction. Absent aggravating or mitigating circumstances, the following Standards apply:

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

4.41 Disbarment is generally appropriate when a lawyer:

(a) a lawyer abandons the practice and causes serious or potential serious injury to a client; or

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

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and cause serious or potentially serious injury to a client.

5.11 Disbarment is generally appropriate when a lawyer engages in

(a) any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the layer’s fitness to practice.

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes significant or potentially significant adverse effect on the legal proceeding.
6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a party or causes significant or potentially significant adverse effect on the legal proceeding.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to a professional with the intent to obtain a benefit for the lawyer or another, and causes serious injury to a client, the public, or the legal system.

F. Aggravating and Mitigating Circumstances. The following factors recognized as aggravating under the Standards exist in this case:

1. Selfish and dishonest motives. Standards § 9.22(b). All of Stedman’s conduct in these matters is self-serving, and much of it is dishonest. Stedman took unearned money from his clients and did not subsequently earn it or gain an entitlement to it. Yet, he has refused to preserve, account for, or return unearned client funds.

2. A pattern of misconduct. Standards § 9.22(c). Stedman’s dishonest scheme was consistent: He promised to complete legal services for clients in exchange for payment, but, once paid, Stedman disappeared with the money (to Mexico) and without completing or advancing his clients’ objectives.


4. Bad-faith obstruction of the disciplinary proceeding. Standards § 9.22(e). Stedman knowingly failed to provide any information or documentation in response to disciplinary inquiries and this formal proceeding.

5. Refusal to acknowledge wrongful nature of conduct. Standards § 9.22(g). Stedman has failed to respond to his clients’ refund demands and he has failed to explain or account for his conduct.

6. Vulnerable victims. Standards § 9.22(h). Stedman’s clients came to him for help with their urgent and serious legal issues, and he promised to help them in exchange for payment.

7. Substantial experience in the practice of law. Standards § 9.22(i). Stedman has been admitted in Oregon since 2002.

8. Indifference to making restitution. Standards § 9.22(j). Stedman’s failure to put his clients’ money into a client trust account supports an inference that he intended to convert their money for his own use. Stedman made no or wholly inadequate efforts to account for or return his clients’ money.

The sole factor in mitigation is Stedman’s lack of a prior disciplinary record. Standards § 9.32(a).
In the aggregate, those factors in aggravation outweigh the only factor in mitigation in both number and severity, and therefore should adjust the sanction accordingly. The presumption sanction of disbarment is well-supported.


1. Knowing & dishonest conversion of client funds: Like the Standards, Oregon case law holds that Stedman’s knowing and dishonest conversion of his clients’ funds is dispositive of the sanction: disbarment is required to protect the public. The Oregon Supreme Court has long held that “a single conversion by a lawyer to his own use of his client’s funds will result in permanent disbarment.” In re Pierson, 280 Or at 518; see also In re Martin, 328 Or at 192 (court disbarred an attorney for spending client money on personal expenses knowing the money was not yet earned, reiterating that, “A single act of intentional misappropriation of client funds to the lawyer’s own use: warrants disbarment.)

The court has recently reinforced its adherence to the presumptive sanction of disbarment for conversion in a case involving conversion of funds from the lawyer’s firm. See In re Renshaw, 353 Or 411, 427, 298 P3d 1216 (2013). See also In re Whipple, 320 Or at 488; In re Biggs, 318 Or at 297; In re Benjamin, 312 Or 515, 823 P2d 413 (1991); In re Phelps, 306 Or 508 at 520; In re Laury, 300 Or 65, 76, 706 P2d 935 (1985). Disbarment has resulted even when the lawyer claimed not to know he was not entitled to the funds, or the conduct was only negligent because of poor record keeping practices. Severe financial straits, poor accounting practices, failure to explain adequately what happened to the funds, and other evidence may prove knowing or intentional misappropriation-conversion. In re Phelps, 306 Or at 516.

Stedman dishonestly converted some or all of Husel’s retainer ($6,500) and his payment ($5,000) for the supposed civil compromise. Stedman dishonestly converted some or all of client Barreras’ retainer ($7,500). Stedman’s knowing and dishonest conduct warrants disbarment.

2. False Statements to Tribunal: RPC 3.3(a); Misrepresentation & Dishonesty: RPC 8.4(a)(3) Stedman’s false “implied consent” hearing requests in the Goss matter were intended to mislead both the Office of Administrative Hearings and those individuals who Stedman falsely claimed to represent – all because of Stedman’s profit-motive. Worse still, Stedman refused to correct the false record or explain his dishonest conduct to the presiding administrative law judge. Stedman lied to client Husel to induce him to pay $5,000 for the supposed civil compromise. Stedman lied to induce attorney Pedemonte to take over the Barreras matter.

The court has found the “misappropriation of clients’ funds and testifying falsely under oath are among the most serious charges that can be made against a member of the legal
profession.” In re Sundstrom, 250 Or 404, 409, 442 P2d 604 (1968), receded from in In re Laury, 300 Or 65, 706 P2d 935 (1985).

Disbarment or a lengthy suspension is justified for such conduct. See In re Paulson IV, 346 Or 676, 722, 216 P3d 859 (2009), adh’d to as modified on recons, 347 Or 529, 225 P3d 41 (2010) (attorney’s collective misconduct warranted disbarment for his “persistent disregard for the rules of professional conduct and the duties that the accused owes to his clients, the public, the legal profession, and the legal system”); In re Staar, 324 Or 283, 292–93, 924 P2d 308 (1996); In re Hutchinson, 215 Or 36, 332 P2d 637 (1958).

3. Wholesale Client Abandonment: RPC 1.3; RPC 1.4(a) & (b); RPC 1.15-1(a); RPC 1.16(d) Stedman’s conduct demonstrates the common theme of client abandonment for profit. This course of conduct further supports disbarment. In In re Bourcier II, 325 Or at 436–37, the court disbarred a lawyer for neglecting a legal matter and failing to cooperate in a Bar investigation. Language in Bourcier provides that where a lawyer has been unable to conform his or her conduct to professional norms over an extended period of time, disbarment may be the only way to protect the public. See also In re Spies, 316 Or 530, 533, 852 P2d 831 (1993) (lawyer disbarred for a variety of violations demonstrating a steady disintegration of integrity and competence as well as escalation of poor judgment.

In In re Bridges, 302 Or 250, 728 P2d 863 (1986), the lawyer was found to have engaged in multiple disciplinary rule violations in multiple matters. In determining that disbarment was the appropriate sanction, the court considered the big picture and stated:

“No one of the present complaints against the accused would alone require his disbarment. The question in disciplinary proceedings, however, is not how heavy a penalty a lawyer’s professional misconduct deserves (except to demonstrate the gravity of a violation for purposes of deterrence) but what is needed to protect the public against further unprofessional conduct of a member of the Bar.

The record of the accused’s conduct shows that he cannot be entrusted with the liberty, property, or other legal interests of people who rely on what his license to practice law represents.” Id. at 254–55.

4. Failure to Cooperate with disciplinary authority: RPC 8.1(a)(2) Lastly, a lawyer who cannot or will not respond to disciplinary inquiries undermines the regulatory system of the court and public confidence in the Bar, alone warranting – at minimum – a suspension from practice. the Court has adopted a no-tolerance approach in cases where a lawyer fails to respond to Bar inquiries. See, e.g., In re Miles, 324 Or at 222–24 (lawyer was suspended for 120 days solely for two failures to fully cooperate with the Bar); In re Hereford, 306 Or 69, 756 P2d 30 (1988).

In all matters, Stedman failed to cooperate and caused the Bar to incur substantial expense and effort.
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 unlikely to properly discharge their professional duties. Standards § 1.1. See In re Huffman, 328 Or 567, 587, 983 P2d 534 (1999).

Stedman breached his duties to promptly reply to his clients’ requests for information, action, their files, and a refund in their matters. Stedman breached his duties to his clients to preserve their property and act with candor. Stedman’s conduct seriously injured his clients, the profession and the Bar. Stedman breached his core duty to cooperate in the Bar’s investigation of his conduct.

In light of the foregoing, Stedman lacks the attributes of honesty and trustworthiness necessary to practice law. Stedman has not and will not conform his conduct to the required ethical standards. The Accused, Michael Reuben Stedman, is hereby disbarred from the practice of law in the State of Oregon.

Dated this 6th day of June, 2017.

/s/ John E. Davis
John E. [Jack] Davis, OSB # 750912
Trial Panel Chairperson

/s/ April L. Sevcik
April L. Sevcik
Trial Panel Member

/s/ Anthony J. Rosilez
Dr. Anthony J. Rosilez
Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of ) Case No. 15-129
)
STEPHEN R. RASMUSSEN, )
)
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: David J. Elkanich
Disciplinary Board: None
Disposition: Violation of RPC 8.4(a)(4). Stipulation for Discipline. 6-month suspension, all but 60 days stayed, 2-year probation.
Effective Date of Order: September 5, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and that Stephen R. Rasmussen is suspended for 6 months, all but 60 days of the suspension stayed pending successful completion of a 2-year term of probation, for violation of RPC 8.4(a)(4), effective: September 5, 2017.

DATED this 5 day of September, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Ronald W. Atwood
Ronald W. Atwood, Region 5
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Stephen R. Rasmussen, attorney at law (“Rasmussen”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

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

2. Rasmussen was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1987, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3. Rasmussen 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 17, 2016, a Formal Complaint was filed against Rasmussen pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of a RPC 1.7(a)(2) [lawyer’s self-interest conflict]; RPC 3.3(a)(1) [knowing false statement of law or fact to a tribunal]; RPC 3.4(d) [knowing failure to make reasonably diligent efforts to comply with a proper discovery request]; 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 2006, after her child was born with birth asphyxia, Jennifer Penney (“Penney”) retained attorney Richard Rogers (“Rogers”) to pursue a $35 million medical malpractice claim against the hospital and her obstetrician, Dr. Michael Rulon (“Dr. Rulon”).

6. In May 2006, Rogers sent a request for all Penney medical records directly to Dr. Rulon. Dr. Rulon, without assistance of counsel, responded to the request by producing his medical chart, but not some of the other records in his possession which were not a part of the medical chart. Judy Smith (“Smith”), Dr. Rulon’s office manager, signed a certificate stating...
that she was providing “the complete, cover-to-cover chart, including but not limited to all
notes, records, reports and correspondence for the above listed patient at your office(s).”

7.

Beginning in August 2007, Dr. Rulon’s malpractice insurer, MedPro, retained Michael
D. Hoffman (“Hoffman”) and his firm, Hoffman Hart & Wagner (“HHW”), to represent Dr.
Rulon.

8.

On August 16, 2007, Smith faxed Hoffman certain typewritten notes (“typewritten
notes”) taken by Dr. Rulon. These typewritten notes were eventually placed in more than one
of the sub-files within Dr. Rulon’s client file.

9.

Rasmussen later learned that Hoffman had prepared a “Summary of Conference with
Defendant Michael Rulon, M.D.” memorandum. The memorandum referenced and attached
the typewritten notes.

10.

On October 10, 2007, Rogers served Dr. Rulon through HHW with a request for
production in the Penney malpractice matter (“Rogers’s Request for Production”), which
sought, among other things, “all records of any kind, [including] documents which contain
details of Penney’s or her newborn’s care and all statements made by [Penney] regarding the
subject matter of [the] complaint.”

11.

On October 12, 2007, another HHW associate had the Rogers Request for Production
forwarded to Dr. Rulon and instructed Dr. Rulon to provide all responsive documentation
without additional explanation or clarification as to his rights or obligations under the
discovery rules.

12.

After the associate tasked with assisting on this matter left HHW, Rasmussen, a senior
associate with HHW, became responsible for responding to the Rogers Request for Production.

13.

On November 9, 2007, Rasmussen prepared a response to the Rogers Request for
Production, producing a complete copy of Penney’s medical chart. Rasmussen, however, was
not aware that Dr. Rulon had previously provided the typewritten notes to HHW and thus, did
not disclose the existence of or produce Dr. Rulon’s typewritten notes or raise any objection
or claim of privilege to its production. At that time, Rasmussen believed that all responsive,
non-privileged documents were produced.
By February 2008, Dr. Rulon’s typewritten notes came to Rasmussen’s attention and he and Hoffman discussed whether they should be produced in response to Rogers’ Request for Production.

On February 18, 2008, Rasmussen reminded Hoffman that they had not produced Dr. Rulon’s typewritten notes and suggested that they inform Rogers of their existence and, while they could object to their production, they could agree to submit them to the court for *in camera* inspection.

Rasmussen understands that at some point in or around June 25, 2008, Hoffman informed Rogers that typewritten notes from Dr. Rulon existed and a determination would be made regarding whether the notes were discoverable.

Between July 28 and August 8, 2008, Rogers sent four letters to HHW, demanding production of the typewritten notes. Then being in trial, Hoffman did not produce the notes until August 8, 2008, one business day in advance of the first deposition related to Penney case. In doing so, Hoffman sent a copy of the typewritten notes to Rogers electing to omit the fax transmission report at the top of each page identifying Dr. Rulon as the sender and the time and date of its transmission on August 16, 2007.

When Dr. Rulon was deposed on September 3, 2008, he was extensively questioned by Rogers’s co-counsel regarding why he had failed to produce the notes until August 2008. Dr. Rulon did not recall when he had given the notes to HHW, and Hoffman did not assist him in remembering. Rasmussen was not present at the deposition.

When Dr. Rulon’s deposition resumed on March 12, 2009, he was accused of not only failing to turn over the typewritten notes until August 2008, but also of lying at the September 2008 deposition. Hoffman would not allow Dr. Rulon to answer as to when he had given the typewritten notes to Hoffman. Rasmussen was not present at the deposition.

On April 2, 2009, Rogers filed a Motion for Sanctions for Discovery Violations against Dr. Rulon, alleging that Dr. Rulon had intentionally withheld the typewritten notes until June of 2008 and that he had lied about having other notes. Rogers sought to strike Dr. Rulon’s Answer so that a default judgment would be entered against him in the pending lawsuit.
21.

Rasmussen participated in drafting and signed the response to Rogers’ Motion for Sanctions for Discovery Violations. Prior to filing the response, Rasmussen did not review the file to determine when the typewritten notes had been received. For that reason, Rasmussen did not disclose that HHW had possessed the typewritten notes since August 16, 2007 (even before the lawsuit was filed). Rasmussen was not present and did not participate in the hearing on Rogers’ Motion for Sanctions for Discovery Violations.

22.

As a result of Rogers’ Motion for Sanctions for Discovery Violations which alleged that Dr. Rulon had willfully obstructed discovery, served false discovery responses, and testified perjuriously during his deposition, MedPro advised Dr. Rulon that it reserved the right to deny insurance coverage. MedPro also advised Dr. Rulon to retain his own attorney at his own cost. In spring 2009, Dr. Rulon hired attorney, Kelly Andersen (“Andersen”).

23.

On or about May 18, 2009, Rasmussen reviewed the file and was reminded that HHW had received the typewritten notes in August 2007. HHW then prepared a Supplemental Affidavit of Michael D. Hoffman in Support of the Rulon Defendants’ Response to Plaintiff’s Motion for Sanctions that stated: “the delay which occurred prior to the June 25, 2008 notification to plaintiffs’ counsel of the existence of the four pages of Dr. Rulon’s personal notes, which were produced on August 8, 2008, is the sole responsibility of Dr. Rulon’s attorneys, Hoffman, Hart & Wagner, and not of Dr. Rulon.” However, HHW did not notify Rogers when they had received the documents from Dr. Rulon. After Andersen conveyed to Rogers that HHW had received the documents from Dr. Rulon in August 2007, Rogers subsequently dismissed his Motion for Sanctions.

Violations

24.

Rasmussen admits that, not addressing Dr. Rulon’s typewritten notes in the response to the Rogers Request for Production, as well as in the response to Rogers’s Motion for Sanctions, which failed to reveal Dr. Rulon’s earlier delivery of the typewritten notes, constitutes conduct prejudicial to the administration of justice, in violation of RPC 8.4(a)(4).

25.

Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 1.7(a)(2); RPC 3.3(a)(1); RPC 3.4(d); and RPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.
Sanction

26.

Rasmussen 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 (“Standards”). The Standards require that Rasmussen’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.** Rasmussen violated his duty to the legal system to avoid abuse of the legal process. Standards § 6.2.

b. **Mental State.** Negligence is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Id. Rasmussen acted both negligently and knowingly.

c. **Injury.** An injury need not be actual, but only potential, to support the imposition of a sanction. Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). In this matter, there was actual injury to Dr. Rulon in terms of fear, anxiety, and unnecessary damage to his reputation. There was also some actual injury in that the court was not provided with complete information. There was also significant potential injury to the extent that sanctions may have been imposed against Dr. Rulon and/or he would have lost coverage from MedPro if the source of the delay in producing the typewritten notes had not been disclosed or if HHW’s response to Rogers’ Motion for Sanctions for Discovery Violations had been left unchallenged.

d. **Aggravating Circumstances.** Aggravating circumstances include:

   1. In this circumstance and given his dependency on his lawyers to be aware and forthright with what he had provided to them, Dr. Rulon was a vulnerable victim. Standards § 9.22(h).

   2. Rasmussen has substantial experience in the practice of law, having been admitted in Oregon in 1987. Standards § 9.22(i).

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


   2. Full and free disclosure and cooperation in the disciplinary proceedings. Standards § 9.32(e).
3. Character and reputation. Standards § 9.32(g). Rasmussen provided multiple letters of support from attorneys in the legal community attesting to his good character and fitness as a lawyer.


27.

Under the ABA Standards, a suspension is generally appropriate when a lawyer knows, as contemplated by the Standards, that he is violating a rule of the court and causes interference or potential interference with a legal proceeding. Standards § 6.22. Taking into account all of the considerations under the Standards, a suspension is appropriate for Rasmussen’s misconduct in this matter.

28.

Oregon cases have likewise imposed some period of suspension where lawyers have engaged in a pattern of conduct that has adversely impacted the procedural functioning of the court or a matter. See, e.g., In re Krueger, 29 DB Rptr 273 (2015) (Respondent was suspended for 6 months, partially stayed, when he prematurely removed a portion of his client’s settlement funds from trust for his anticipated attorney fees prior to obtaining the statutorily required court approval. Respondent’s handling of the settlement funds, as well as his subsequent misstatements and omissions to the court and the Bar about his handling of the funds, were acts that potentially harmed the administration of justice.); In re Kinney, 28 DB Rptr 59 (2014) (Respondent was suspended for one year, partially stayed, when he allowed his personal bankruptcy petition to be filed containing incomplete and inaccurate information and thereafter affirmed the accuracy of the information under oath, without having thoroughly reviewed the documents and without having verified that the information was correct.); In re Tank, 28 DB Rptr 35 (2014) (Respondent suspended for 90 days where she represented a corporation on matters related to its corporate records. Because the corporation did not have complete records, some were drafted by an associate in respondent’s firm and purported to memorialize corporate records, events and actions dating back 20 years. In litigation a few months later, where an issue was ownership and control of the corporation, respondent stated or implied in open court that the corporate records were prepared well before the litigation began, and failed to explain or clarify that representation); In re Hudson, 27 DB Rptr 226 (2013) (In connection with a bar investigation, fee arbitration, and civil proceedings brought by his former client, respondent separately submitted documents and made statements that materially misrepresented the true facts regarding the client’s claims and their timing with respect to the attorney-client relationship, intending that these false statements and documentation be relied upon by the bar, the arbitrator, and the court in their respective evaluations of his former client’s claims. Respondent was suspended for two years, partially stayed.); In re Hall, 27 DB Rptr 93 (2013) (Respondent was suspended for 150 days where he failed to file accountings, notwithstanding court notices, or respond to a citation for removal. When he failed to appear for the show cause
hearing, his personal representative client was removed from her husband’s estate. Respondent thereafter failed to respond to numerous attempts to contact him by the replacement personal representative. Respondent’s actions burdened the court to issue unnecessary orders and hold unnecessary hearings.); In re Daum, 24 DB Rptr 199 (2010) (Respondent suspended for 120 days where he failed to file a client’s bankruptcy petition timely, failed to correct errors in the petition and schedules called to his attention by the client, and incorrectly dealt with a student stipend and debt reaffirmation. He also instructed the client to sign the signature page of the petition for herself and her husband, under penalty of perjury, without reviewing the petition or its schedules, and inflated the amount of monthly expenses claimed in the petition to ensure the clients would qualify for a Chapter 7 discharge.); In re Trunnell, 22 DB Rptr 150 (2008) (While representing a bankruptcy trustee, attorney failed to pursue or pursue timely, numerous claims against debtors in contested bankruptcy matters, resulting in diminished value to the estates. Attorney’s delays required the court to issue various notices and schedule hearings that would not have otherwise been necessary, and resulted in 4-month suspension.); In re Sunderland, 21 DB Rptr 257 (2007) (Respondent was suspended for one year for his representation of a client in a dissolution while the client’s bankruptcy proceeding was simultaneously pending. Attorney obtained an ex parte judgment in the dissolution case awarding to attorney’s client funds that attorney knew had not been disclosed in the bankruptcy petition. Thereafter, attorney attempted to collect the funds without disclosing to the state court the circumstances of the bankruptcy. Nor did attorney disclose the existence of these funds to the bankruptcy court or trustee. In another matter, attorney learned after filing a bankruptcy petition for his clients that they would be receiving tax refunds that had not been disclosed in the petition. Through an associate, attorney advised his clients not to appear for the first meeting of creditors, which attorney surmised would lead to the dismissal of the bankruptcy and permit his clients to spend the refunds without disclosure to the court.).

29.

BR 6.2 recognizes that probation can be appropriate and permits a suspension to be stayed pending the successful completion of a probation. See also Standards § 2.7 (probation can be imposed alone or with a suspension and is an appropriate sanction for conduct which may be corrected). In addition to a period of suspension, a period of probation designed to ensure the adoption and continuation of better practices will best serve the purpose of protecting clients, the public, and the legal system.

30.

Consistent with the Standards and Oregon case law, the parties agree that Rasmussen shall be suspended for six (6) months for his violation of RPC 8.4(a)(4), with all but sixty (60) days of the suspension stayed, pending Rasmussen’s successful completion of a two (2)-year term of probation. The sanction shall be effective September 1, 2017, or as otherwise directed by the Disciplinary Board.
31.

Rasmussen’s license to practice law shall be suspended for a period of sixty (60) days beginning September 1, 2017, or as otherwise directed by the Disciplinary Board (“actual suspension”), assuming all conditions have been met. Rasmussen understands that reinstatement is not automatic and that he cannot resume the practice of law until he has taken all steps necessary to reattain active membership status with the Bar. During the period of actual suspension, and continuing through the date upon which Rasmussen reattains his active membership status with the Bar, Rasmussen shall not practice law or represent that he is qualified to practice law; shall not hold himself out as a lawyer; and shall not charge or collect fees for the delivery of legal services as an attorney other than for work performed and completed prior to the period of active suspension.

32.

Probation shall commence upon the date Rasmussen is reinstated to active membership status and shall continue for a period of two (2) years, ending on the day prior to the second (2nd) year anniversary of the commencement date (the “period of probation”). During the period of probation, Rasmussen shall abide by the following conditions:

(a) Rasmussen shall comply with all provisions of this Stipulation for Discipline, the Rules of Professional Conduct applicable to Oregon lawyers, and ORS Chapter 9.

(b) Within seven (7) days of his reinstatement date, Rasmussen shall contact the Professional Liability Fund (PLF) and schedule an appointment on the soonest date available to consult with PLF practice management advisors in order to obtain practice management advice and notify the Bar of the time and date of the appointment.

(c) Rasmussen shall attend the appointment with a PLF practice management advisor and seek advice and assistance regarding procedures for diligently pursuing client matters, communicating with clients, effectively managing a client caseload and taking reasonable steps to protect clients upon the termination of his employment. No later than thirty (30) days after recommendations are made by the PLF, Rasmussen shall adopt and implement those recommendations.

(d) No later than sixty (60) days after recommendations are made by the PLF, Rasmussen shall provide a copy of the Office Practice Assessment from the PLF and file a report with Disciplinary Counsel’s Office stating the date of his consultation(s) with the PLF; identifying the recommendations that he has adopted and implemented; and identifying the specific recommendations he has not implemented and explaining why he has not adopted and implemented those recommendations.
(e) At least six (6) months and no later than nine (9) months after Rasmussen’s appointment with a PLF practice management advisor, Rasmussen shall arrange for and attend a follow-up appointment with a PLF practice management advisor to review the Office Practice Assessment and modify the assessment as necessary to reflect additional or different recommendations regarding procedures for diligently pursuing client matters, communicating with clients, effectively managing a client caseload and taking reasonable steps to protect clients upon the termination of his employment. No later than thirty (30) days after the follow-up recommendations are made by the PLF, Rasmussen shall adopt and implement those recommendations.

(f) No later than sixty (60) days after any follow-up recommendations are made by the PLF, Rasmussen shall provide a copy of the revised Office Practice Assessment from the PLF and file a report with Disciplinary Counsel’s Office stating the date of his follow-up consultation(s) with the PLF; identifying the recommendations that he has adopted and implemented; and identifying the specific recommendations he has not implemented and explaining why he has not adopted and implemented those recommendations.

(g) Matthew George Ukishima shall serve as Rasmussen’s probation supervisor (“Supervisor”). Rasmussen shall cooperate and comply with all reasonable requests made by Supervisor that Supervisor, in his or her sole discretion, determines are designed to achieve the purpose of the probation and the protection of Rasmussen’s clients, the profession, the legal system, and the public. Beginning with the first month of the period of probation, Rasmussen shall meet with Supervisor in person at least once a month for the purpose of reviewing the status of Rasmussen’s law practice and his performance of legal services on the behalf of clients. Each month during the period of probation, Supervisor shall conduct a random audit of ten (10) files or ten percent (10%) of his active files, whichever is greater, to determine whether Rasmussen is timely, competently, diligently, and ethically attending to matters, properly identifying and addressing conflicts of interest, adequately communicating with clients, and taking reasonably practicable steps to protect his clients’ interests upon the termination of employment.

(h) During the period of probation, Rasmussen shall attend not less than eight (8) MCLE accredited programs, for a total of twenty-four (24) hours, which shall emphasize law practice management, time management, conflicts of interest, discovery and trial skills, and client communications. These credit hours shall be in addition to those MCLE credit hours required of Rasmussen for his normal MCLE reporting period. The Ethics School requirement does not count towards the twenty-four (24) hours needed.
(i) Upon completion of the MCLE programs described in paragraph 34(h), and no later than ten (10) days before the end of the period of probation, Rasmussen shall submit an Affidavit of Compliance to Disciplinary Counsel’s Office.

(j) On a quarterly basis, on dates to be established by Disciplinary Counsel beginning no later than ninety (90) days after his reinstatement to active membership status, Rasmussen shall submit to Disciplinary Counsel’s Office a written “Compliance Report,” approved as to substance by Supervisor, advising whether Rasmussen is in compliance with the terms of this agreement. In the event that Rasmussen has not complied with any term of the agreement, the Compliance Report shall describe the non-compliance and the reason for it.

(k) Rasmussen authorizes Supervisor to communicate with Disciplinary Counsel regarding his compliance or non-compliance with the terms of this agreement, and to release to Disciplinary Counsel any information necessary to permit Disciplinary Counsel to assess Rasmussen’s compliance.

(l) Rasmussen is responsible for any costs required under the terms of this stipulation and the terms of probation.

(m) Rasmussen’s failure to comply with any term of this agreement, including conditions of timely and truthfully reporting to Disciplinary Counsel’s Office, or with any reasonable request of Supervisor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.

(n) A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to Disciplinary Counsel on or before its due date.

(o) The SPRB’s decision to bring a formal complaint against Rasmussen for unethical conduct not addressed in this stipulation shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.

33.

Rasmussen 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, Rasmussen has arranged for Matthew Ukishima, Bruce Gilbert, Ryan McLellan and Cliff Wilson, active members of the Bar, to either take possession of or have ongoing access to Rasmussen’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Rasmussen represents that these individuals have agreed to accept this responsibility.
34.

Rasmussen 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. Rasmussen 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.

35.

Rasmussen 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. This requirement is in addition to any other provision of this agreement that requires Rasmussen to attend or obtain continuing legal education (CLE) credit hours.

36.

Rasmussen 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 Rasmussen is admitted: Washington, California.

37.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 10th day of August, 2017.

/s/ Stephen R. Rasmussen
Stephen R. Rasmussen
OSB No. 871480

AS TO FORM AND CONTENT:

/s/ David J. Elkanich
David J. Elkanich
OSB No. 992558
Counsel for the Accused
EXECUTED this 15th day of August, 2017.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott
OSB No. 990280
Chief Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:  

Complaint as to the Conduct of  

LAWRENCE A. CASTLE,  

Accused.  

Counsel for the Bar:  Theodore W. Reuter  
Counsel for the Accused:  None.  
Disciplinary Board:  None.  
Disposition:  Violation of RPC 1.3; RPC 1.4(a), and RPC 1.4(b).  
Stipulation for discipline. Public Reprimand.  
Effective Date of Order:  September 5, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Lawrence A. Castle is publicly reprimanded for violation of RPC 1.3, RPC 1.4(a), and RPC 1.4(b) in Case No. 17-03 and RPC 1.3 in Case No. 17-04.

DATED this 5th day of September, 2017.

/s/ William G. Blair  
William G. Blair  
State Disciplinary Board Chairperson

/s/ Andrew M. Cole  
Andrew M. Cole, Region 7  
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Lawrence A. Castle, attorney at law (“Castle”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

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

2. Castle was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1985, and has been a member of the Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3. Castle 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 February 25, 2017, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Castle for alleged violations of the Oregon Rules of Professional Conduct (“RPC”) 1.3 [neglect of a legal matter], RPC 1.4(a) [failure to keep a client reasonably informed about the status of a matter] and RPC 1.4(b) [failure to explain a matter to permit a client to make informed decisions regarding the representation] in Case No. 17-03 and RPC 1.3 [neglect of a legal matter] in Case No. 17-04. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Case No. 17-03

Nizer Matter

Facts

5. In 2011, a client hired Castle to help him assert a guardianship and conservatorship over his mother. Although client’s father objected to his appointment, the court appointed the client guardian and conservator for his mother in January 2012, and entered an order requiring the filing of annual reports regarding the management of the conservatorship property. The judgment also required funds belonging to the protected person to be deposited and maintained in an account in her name. Castle remained attorney of record in the court’s file. When client failed to timely file the 2013 annual report, the court contacted Castle. Castle, in turn, contacted
client, whom he helped to file the annual report. In 2014, Castle assisted client in selling his mother’s home, which led to a significant influx of cash into the conservatorship. Castle again reminded Nizer that he would have to file annual reports, which he could do on his own (to save money), unless he wanted attorney assistance.

6.

In March 2015, the court notified Castle that the current annual report was due. Although he took no action to file the report, he did call client and also left a message after receiving a second notice from the court in April.

7.

In May, the court noticed Castle for a July hearing scheduled in response to the failure to file an annual report. Castle took no action and did not appear at the hearing. The Court then sent Castle two additional letters, one in August and one in September, notifying him that he would be reported to the Oregon State Bar if he did not take action. The August letter was copied to the client. Shortly thereafter, the client left a message for Castle that he was hiring another attorney and then, without Castle’s assistance, filed a guardianship report and hired a new attorney to act as his legal counsel in relation to his mother’s guardianship.

Violations

8.

Castle admits that, by failing to inform his client of the court notices he received and failing to take any action to address the Court’s concerns, he violated RPC 1.3, RPC 1.4(a), and RPC 1.4(b).

Case No. 17-04
Richkind Matter
Facts

9.

Steven Richkind (“Richkind”) was representing the husband in a divorce matter in which Castle was representing the wife. The parties and their attorneys met in late July 2015 for a settlement conference, which successfully settled all of the issues. Castle offered to draft the stipulated judgment. When the matter was reported as settled the following day, the court set a 30-day deadline for submission of the stipulated judgment.

10.

Castle did not draft the judgment by the deadline set by the court. Approximately 30 days after the initial deadline had passed, Richkind reached out to Castle and reminded him of his obligation to draft the judgment. Although Castle affirmed that he would take prompt action, he did not do so. Castle sought assistance from Richkind in completing the judgment,
but Richkind declined, reportedly because he had not made sufficient notes, had not been paid, and had lost contact with his client. A little more than a week later, the court dismissed the case.

**Violations**

11.

Castle admits that, by failing to timely complete the judgment and submit it to the court, he violated RPC 1.3.

**Sanction**

12.

Castle 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* (“Standards”). The Standards require that Castle’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.** Castle violated his duty of diligence in the above cases.

b. **Mental State.** Castle’s conduct in the above matters was knowing. The Standards define “knowledge” 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.” Castle knew of the circumstances that made his conduct wrongful, but did not intend to harm his client’s interests.

c. **Injury.** Castle’s conduct as to both clients required them to hire other counsel to remedy what Castle had failed to do, resulting in emotional and financial costs to both clients.

d. **Aggravating Circumstances.** Aggravating circumstances include:
   1. Multiple Offenses. Standards § 9.22(d).
   2. Substantial experience in the practice of law. Standards § 9.22(i).

e. **Mitigating Circumstances.** Mitigating circumstances include:
   2. Absence of a dishonest or selfish motive. Standards § 9.32(b).
   3. Full and free disclosure to disciplinary counsel. Standards § 9.32(e).
13.

Under the ABA Standards, reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. Standards § 4.43. 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. Absent mitigation, Castle’s conduct would warrant a suspension. However, the parties agree that, in this case, the mitigating factors outweigh aggravating factors, making a reprimand appropriate.

14.

The Disciplinary Board has approved stipulated reprimands for similar conduct in the past. See In re Koenig, 28 DB Rptr 301 (2014) (Attorney stipulated to a reprimand where he failed for several months to take action on client’s criminal appeal or to communicate important events, including the dismissal of the appeal); In re Kleen, 27 DB Rptr 213 (2013) (Attorney stipulated to reprimand after failing to communicate to client that he would not take further action on client’s case given that he had determined it would be difficult to prove); In re May, 27 DB Rptr 200 (2013). (Attorney stipulated to reprimand after she and her partner undertook to represent petitioner in a divorce proceeding, but failed to take any substantive action to advance the matter for nearly a year.); In re Bryant, 25 DB Rptr 167 (2011). (Attorney stipulated to reprimand where, in a child support modification matter, attorney failed to file timely a request for a hearing disputing a proposed administrative order; failed to communicate a settlement proposal to his client or respond to the proposal; failed to appeal the order; and failed to respond to the client’s requests for information.)

15.

Consistent with the Standards and Oregon case law, the parties agree that Castle shall be publicly reprimanded for violation of RPC 1.3, RPC 1.4(a), and RPC 1.4(b) in Case No. 17-03, and for violation of RPC 1.3 in Case No. 17-04, the sanction to be effective immediately.

16.

Castle acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension. This requirement is in addition to any other provision of this agreement that requires Castle to attend or obtain continuing legal education (CLE) credit hours.

17.

Castle 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 Castle is admitted: None.
18.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 July, 2017.

/s/ Lawrence A. Castle
Lawrence A. Castle
OSB No. 851680

EXECUTED this 26th day of July, 2017.

OREGON STATE BAR

By: /s/ Theodore W. Reuter
Theodore W. Reuter, OSB No. 084529
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) )
Complaint as to the Conduct of ) Case Nos. 15-108, 16-96, 16-97 &
) 16-98 )
TOMAS FINNEGAN RYAN, )
) )
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: David J. Elkanich
Disciplinary Board: None.
Disposition: Violation of RPC 1.15-1(a), RPC 1.15-1(b), and RPC 1.15-1(c). Stipulation for Discipline. 60-day suspension.
Effective Date of Order: September 7, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Tomas Finnegan Ryan is suspended for 60 days, effective two days after 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 5th day of September, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Ronald W. Atwood
Ronald W. Atwood, Region 5
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Tomas Finnegan Ryan, attorney at law (“Ryan”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Ryan was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 21, 1976, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On December 20, 2016, a Formal Complaint was filed against Ryan pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of RPC 1.15-1(a) [failure to hold client funds separate from a lawyer’s own funds in a lawyer trust account and maintain complete records regarding such client funds]; RPC 1.15-1(b) [the deposit of lawyer funds into a lawyer trust account for reasons other than bank service charge or minimum balance requirements]; and RPC 1.15-1(c) [failure to deposit and maintain client funds in trust until earned]. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

General Facts

5.

At all relevant times herein, Ryan was the managing shareholder of his law office and had control and custody over the firm’s IOLTA lawyer trust accounts maintained at Wells Fargo Bank (“Ryan IOLTA Account”) and Albina Bank.
Case No. 15-108

May 2015 Overdraft

Facts

6. On May 5, 2015, Ryan sent a check to an investigator on behalf of a client in the amount of $144.41. Ryan miscalculated the funds the client had available in the Ryan IOLTA Account. The check was negotiated on May 15, 2015, and overdrew the Ryan IOLTA Account by $1.72.

7. On June 16, 2015, and at Ryan’s direction, a former client of Ryan’s deposited $2,000 into the Ryan IOLTA Account as payment towards an owed bill. At the time of this deposit, Ryan was unaware of the May overdraft and that his account had a negative balance. The bank made $200 of the deposit available immediately, but placed a hold on the remaining $1,800.

8. On the same day that the former client deposited funds into the Ryan IOLTA Account, Ryan wrote a check to himself for the full $2,000 amount. At the time, he only had $198.28 present and available in the Ryan IOLTA Account. This withdrawal caused the Ryan IOLTA Account to be overdrawn a second time.

9. On June 17, 2015, Ryan deposited $3 of his own money into the Ryan IOLTA Account to correct the May overdraft imbalance and bring the trust account to a positive balance.

Violations

10. Ryan admits that his conduct of twice depositing his own funds into a lawyer trust account for reasons other than bank service charge or minimum balance requirements violated RPC 1.15-1(b).

Case No. 16-96

March 2016 Overdraft

Facts

12.

On March 28, 2016, Ryan wrote a check for $3,500 to Client R from the Ryan IOLTA Account—the amount which Ryan’s client ledger indicated should have been on hand for Client R. At the time that Client R negotiated the check, there were insufficient funds in the Ryan IOLTA Account to cover the check. The check was honored by the bank, which drew on the remaining Client R funds and any Client W funds, and overdrew the Ryan IOLTA Account by $103.61. Wells Fargo charged a $35 overdraft fee to the Ryan IOLTA Account.

Violations

13.

Ryan admits that his failure to safeguard and hold both Client R’s and Client W’s funds separate from his own funds in a lawyer trust account, to maintain complete records regarding such client funds; and to maintain them in trust until earned, violated RPC 1.15-1(a) and RPC 1.15-1(c).

Case No. 16-97

April 1, 2016 Overdraft

Facts

14.

On April 1, 2016, a check for $2,000 payable to Ryan was presented for payment from the Ryan IOLTA Account against a negative balance. The check represented fees Ryan believed he earned in his representation of Client R but Client R’s funds were no longer in the Ryan IOLTA Account. The bank did not honor the check, and charged an additional $35 overdraft fee to the Ryan IOLTA account.

Violations

15.

Ryan admits that his failure to safeguard and hold Client R’s funds separate from his own funds in a lawyer trust account, to maintain complete records regarding such client funds; and to maintain them in trust until earned, violated RPC 1.15-1(a) and RPC 1.15-1(c).

Case No. 16-97

April 6, 2016 Overdraft

Facts

16.

On April 6, 2016, a second attempt was made to negotiate the $2,000 check payable to Ryan for Client R’s fees from the Ryan IOLTA Account against a negative balance. Wells Fargo again did not honor the check, and charged a third $35 overdraft fee to the account.
17.

On April 19, 2016, Ryan deposited $210 of his own funds into the Ryan IOLTA Account to cover the overdraft and $105 in overdraft fees.

Violations

18.

Ryan admits that the deposit of his own funds into a lawyer trust account for reasons other than bank service charge or minimum balance requirements violated RPC 1.15-1(b).

Sanction

19.

Ryan 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 (“Standards”). The Standards require that Ryan’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.** Ryan violated his duty to his clients to safeguard client property. Standards § 4.1. The Standards provide that the most important ethical duties are those which lawyers owe to clients. Standards at 5.

b. **Mental State.** Negligence is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Standards at 9. Knowledge is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Id. Although Ryan’s initial overdraft was negligent, he was alerted to deficiencies in his practices such that he at least should have known by the time of his subsequent overdrafts that he was not properly handling client funds.

c. **Injury.** Injury can be actual or potential. Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). Ryan’s clients were potentially injured to the extent that their funds may not have been available when needed.

d. **Aggravating Circumstances.** Aggravating circumstances include:

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

1. Absence of a prior disciplinary record. *Standards § 9.32(a).*
2. Cooperation with the Bar in its investigation of Ryan’s conduct and in the disciplinary proceeding. *Standards § 9.32(e).*
3. Remorse. *Standards § 9.32(l).*

20.

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.* Ryan’s aggravating and mitigating factors are in equipoise and therefore have no impact on the presumptive sanction.

21.

Oregon cases similarly provide that a short suspension is appropriate for an experienced lawyer who mishandles his trust account. See *In re Eakin*, 334 Or 238, 258–59, 48 P3d 147 (2002) (so stating and imposing 60-day suspension); see also, e.g., *In re Lafky*, 25 DB Rptr 134 (2011) (four-month suspension where attorney’s practice of depositing settlement checks in his trust account and drawing on the proceeds the same day without ascertaining whether the funds had cleared the banking process and were available resulted in the funds of others clients being withdrawn from the account; attorney also failed to deposit all client funds in trust, withdrew funds from trust before they were earned, failed to maintain complete trust records and left more of his own funds in trust than was necessary to pay bank charges); *In re Vanagas*, 23 DB Rptr 165 (2009) (60-day suspension for lawyer who, in two unrelated matters, failed to deposit fees in trust that were not designated in his fee agreements as earned on receipt and nonrefundable); *In re Eckrem*, 23 DB Rptr 84 (2009) (attorney suspended 60 days where he collected a flat fee in payment for an adoption and a retainer in another client matter, and did not deposit either client’s funds in a trust account); *In re Boehmer*, 23 DB Rptr 19 (2009) (attorney suspended for 60 days where she failed to maintain adequate or accurate trust account records resulting in attorney issuing checks on insufficient funds).

22.

Consistent with the *Standards* and Oregon case law, the parties agree that Ryan shall be suspended for 60 days for his violations of RPC 1.15-1(a); RPC 1.15-1(b); and RPC 1.15-1(c), the sanction to be effective August 14, 2017 or two (2) days after approval by the Disciplinary Board, whichever is later.

23.

Ryan 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, Ryan has arranged for
Robert E. Martin, of Portland, Oregon (OSB No. 711132), an active pro bono member of the Bar, to either take possession of or have ongoing access to Ryan’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Ryan represents that Robert E. Martin has agreed to accept this responsibility.

24.

Ryan 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. Ryan 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.

25.

Ryan 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.

26.

Ryan 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 Ryan is admitted: none.

27.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 16th day of August, 2017.

/s/ Tomas Finnegan Ryan
Tomas Finnegan Ryan
OSB No. 760274

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich
David J. Elkanich
OSB No. 992558
EXECUTED this 17th day of August, 2017.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott
OSB No. 990280
Chief Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

IN re:
)
)
Complaint as to the Conduct of ) Case No. 17-53
)
ERIC J. FJELSTAD, )
)
Accused. )

Counsel for the Bar: Dawn M. Evans
Counsel for the Accused: None.
Disciplinary Board: None.
Disposition: Violation of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.16(a)(2), and RPC 1.16(d). Stipulation for Discipline. 60-day suspension.
Effective Date of Order: October 20, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Eric J. Fjelstad is suspended for 60 days, effective seven (7) days following Disciplinary Board approval, for violation of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.16(a)(2), and RPC 1.16(d).

DATED this 13th day of October, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Ronald W. Atwood
Ronald W. Atwood, Region 5
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Eric J. Fjelstad, attorney at law (“Fjelstad”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.
The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2.
Fjelstad was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1989, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.
Fjelstad 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 15, 2017, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Fjelstad for alleged violations of RPC 1.1 [lack of competent representation]; RPC 1.3 [neglect of a legal matter]; RPC 1.4(a) [failure to keep a client reasonably informed about the status of a matter]; RPC 1.16(a)(2) [failure to withdraw from representation when required by physical or mental condition]; and RPC 1.16(d) [failure to take steps to protect client interests upon withdrawal, including return of client property] of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.
In November 2015, Kryn Carlstrom (“Carstrom”) hired Fjelstad to represent her in an unpaid wage claim against her former employer, paying him a $75 consultation fee.

6.
Fjelstad sent two demand letters to Carstrom’s former employer and filed suit on her behalf, seeking past wages based upon the employer’s failure to pay Carlstrom the statutory minimum wage and seeking both penalty wages and attorney’s fees. The defendant defaulted after service.
7. Fjelstad did not understand how to electronically submit a proposed judgment and admitted as much to Carlstrom.

8. At a point in the representation, Fjelstad became unresponsive to Carlstrom’s requests for status updates. Fjelstad also disregarded several communications from the court, seeking his submission of a proposed judgment and the filing of a service members civil relief act status form. Ultimately, Fjelstad failed to take the steps necessary to obtain a judgment, as a result of which Carlstrom’s lawsuit was dismissed without prejudice for want of prosecution.

9. Fjelstad transferred to inactive status in January 2017 due to an unspecified medical condition that had been impacting his ability to practice law. However, he did not withdraw from his representation of Carlstrom.

10. Fjelstad did not provide, upon request, a copy of Carlstrom's file.

Violations

11. Fjelstad admits that, his inability to take the steps necessary to secure entry of a judgment against a defaulting defendant, notwithstanding having placing his client in the position of being able to secure the judgment, demonstrates that he lacked the requisite skill, thoroughness and preparation reasonably necessary to represent his client, in violation of RPC 1.1.

12. Fjelstad also admits that his inaction, resulting in his failure to complete the matter for Carlstrom, and his failures to respond to her inquiries, violated both RPC 1.3 and RPC 1.4(a).

13. Fjelstad further admits that his failure to withdraw from Carlstrom’s matter in the face of the medical condition affecting his practice violated RPC 1.16(a)(2), and that his failure to provide Carlstrom with her file, upon request, violated RPC 1.16(d).

Sanction

14. Fjelstad 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 (“Standards”). The Standards require that Fjelstad’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.** Fjelstad violated his duties to a client (Standards at 5) by failing to act with competence and diligence, and failing to communicate. He violated his duty owed as a professional (Standards at 7) by failing to withdraw appropriately in the face of a self-identified medical condition that impaired his ability to discharge the duties owed to his client.

b. **Mental State.** The most culpable mental state is that of “intent,” when the lawyer acts with the conscious objective or purpose to accomplish a particular result. Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Id. “Negligence” is the failure to be aware of a substantial risk that circumstances exist or that a result will follow and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. Id.

Fjelstad acted with knowledge of his failure to successfully file the proposed judgment and of his declining health in failing to appropriately withdraw. To the extent that Fjelstad lacked actual knowledge of the deficiencies of his email and phone systems and the impact their malfunctioning had on his ability to communicate appropriately with his client, he was negligent in not assuring that such systems were working appropriately. To the extent that Fjelstad was aware of his declining medical condition, he was at least negligent if not knowing in failing to take steps to withdraw from representation of Carlstrom in order to avoid putting her legal interests at risk due to his diminished capacity.

c. **Injury.** Injury can be either actual or potential under the Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992).

Fjelstad’s failure to pursue and protect his client’s interests in obtaining a judgment, to notify her of his failure to do so, or to withdraw from representation when he recognized or should have known that his declining health was impacting his ability to discharge responsibilities to his client resulted in both potential and actual injury to Carlstrom, who incurred $288 in a filing fee and court costs in pursuit of the lawsuit that was dismissed due to Fjelstad’s failure to complete the matter and was made to hire another attorney to rectify dismissal of her lawsuit.
d. **Aggravating Circumstances.** Aggravating circumstances include:

1. **A prior history of discipline.** *Standards* § 9.22(a). Fjelstad was reprimanded in 2015, for violation of RPC 7.1 [misleading advertising]. *In re Fjelstad*, 29 DB Rptr 122 (2015). He was also previously suspended for 30 days for violations of RPC 1.4(a); RPC 1.15-1(a) [failure to safeguard and keep separate client property]; RPC 1.15-1(d) [failure to account for and return client property]; RPC 3.5(b) [improper ex parte communication]; RPC 5.3(a) [failure to supervise non-lawyer staff]; and RPC 8.4(a)(4) [conduct prejudicial to the administration of justice]. Some of the same rules and types of conduct are at issue in this case as which previously subjected Fjelstad to discipline.

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

3. **Vulnerability of victim.** *Standards* § 9.22(h).

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

Fjelstad was admitted to practice in Oregon in 1989, and in Washington in 1990.

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

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

2. **Full and free disclosure or cooperative attitude toward proceedings.** *Standards* § 9.32(e).

15.

Under the ABA *Standards*, suspension is generally appropriate when (a) a lawyer knowingly fails to perform service for a client and causes injury or potential injury to a client; or (b) the lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* § 4.42. A 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. A 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* §§ 4.53, 7.3. Given Fjelstad’s aggravating factors, and particularly, his substantial experience and history of prior discipline, a suspension is the applicable outcome under the *Standards*.

16.

Oregon case law reaches a similar conclusion. *See, e.g.*, *In re LaBahn*, 335 Or 357, 365–67, 67 P3d 381 (2003) (court imposed a 60-day suspension where the lawyer filed a lawsuit on the last day before the statute of limitations ran, failed to effect timely service, as a
result of which the court dismissed the case for want of prosecution, and failed to inform his client of the dismissal for over a year, noting that aggravating and mitigating factors similar to those of Fjelstad were equipoise); and In re Castanza, 350 Or 293, 253 P3d 1057 (2011) (court affirmed a trial panel’s imposition of a 60-day suspension for respondent’s failure to take reasonable steps to protect his clients’ interests after terminating his representation).

17. Consistent with the Standards and Oregon case law, the parties agree that Fjelstad shall be suspended for 60 days for his violation of RPC 1.1; RPC 1.3; RPC 1.4(a); RPC 1.16(a)(2); and RPC 1.16(d), the sanction to be effective seven (7) days following approval by the Disciplinary Board.

18. Fjelstad 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. Fjelstad transferred to inactive status on January 31, 2017, and represents that he has wound down his practice and no longer has any active client files.

19. Fjelstad 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. Fjelstad 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.

20. Fjelstad 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. This requirement is in addition to any other provision of this agreement that requires Fjelstad to attend or obtain continuing legal education (CLE) credit hours.

21. Fjelstad 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 Fjelstad is admitted: Washington.
22.

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

EXECUTED this 5th day of September, 2017.

/s/ Eric J. Fjelstad

Eric J. Fjelstad
OSB No. 892383

EXECUTED this 8th day of September, 2017.

OREGON STATE BAR

By: /s/ Dawn Miller Evans

Dawn Miller Evans
OSB No. 141821
Disciplinary Counsel
ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Russell Lipetzky is suspended for six (6) months, effective November 15, 2017 for violations of RPC 1.3 and RPC 8.1(a)(2) in Case No. 14-79; RPC 1.3, RPC 1.15-1(d), and RPC 8.4(a)(4) in Case No. 16-93; and RPC 5.5(a) and ORS 9.160 in Case No. 16-145.

IT IS FURTHER ORDERED that Russell Lipetzky will be subject to the formal reinstatement requirements under BR 8.1.
STIPULATION FOR DISCIPLINE

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

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

2. Lipetzky was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1987, and has been a member of the Bar continuously since that time, having his office and place of business in Marion County, Oregon.

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

4. On December 19, 2014, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Lipetzky for alleged violations of RPC 1.3 and RPC 8.1(a)(2) of the Oregon Rules of Professional Conduct (“RPC”) in Case No. 14-79. On July 9, 2016, the SPRB authorized formal disciplinary proceedings against Lipetzky for alleged violations of RPC 1.3, RPC 1.15-1(d), and RPC 8.4(a)(4) in Case No. 16-93. On October 22, 2016, the SPRB authorized formal disciplinary proceedings against Lipetzky for alleged violations of RPC 5.5(a) and ORS 9.160 in Case No. 16-145. On May 10, 2017, an Amended Formal Complaint was filed against Lipetzky pursuant to the authorization of the SPRB, alleging violations of RPC 1.3 and RPC 8.1(a)(2) in Case No. 14-79; RPC 1.3, RPC 1.15-1(d), and RPC 8.4(a)(4) in Case No. 16-93; and RPC 5.5(a) and ORS 9.160 in Case No. 16-145. The parties intend that this Stipulation for Discipline set forth all relevant facts,
violations and the agreed-upon sanction as a final disposition of these consolidated proceedings.

Facts

Case No. 14-79 (Richard Patston)

5. Lipetzky represented Michelle Patston (“Wife”) in a domestic relations modification matter. On November 1, 2013, Lipetzky agreed to prepare a form of supplemental judgment that incorporated terms requested by Richard Patston (“Husband”) and Husband’s attorney.

6. Lipetzky did not prepare the supplemental judgment. After several months passed without receiving the judgment from Lipetzky, Husband’s attorney prepared the supplemental judgment and sent it to Lipetzky for his review and Wife’s signature on January 30, 2014.

7. Over the next several months, Lipetzky did not return the judgment, even after Husband’s attorney called him multiple times to inquire about the status. Lipetzky did not return the executed judgment to Husband’s attorney until August 19, 2014.

8. On March 31, 2014, Husband complained to the Bar that Lipetzky had neglected to prepare the judgment and was continuing his neglectful conduct by not returning an executed judgment to Husband’s attorney.


10. On June 28, 2014, Lipetzky sent Disciplinary Counsel’s Office a letter acknowledging his receipt of the prior inquiries and his failure to respond to them. Lipetzky replied that he would respond more fully and completely after July 7, 2014. Despite that, in the weeks following July 7, 2014, Lipetzky did not respond to Disciplinary Counsel’s inquiries.

11. Lipetzky did not respond to Disciplinary Counsel regarding the Patston matter until August 14, 2014, after Disciplinary Counsel filed a petition pursuant to BR 7.1 to immediately suspend Lipetzky for failing to respond to Disciplinary Counsel’s requests for information.
Violations

12.

Lipetzky admits that, by not preparing the supplemental judgment and by delaying for several months before returning the supplemental judgment to Husband’s attorney, he violated RPC 1.3. Lipetzky further admits that, by not responding to Disciplinary Counsel’s inquiries regarding the Patston matter, he violated RPC 8.1(a)(2).

Case No. 16-93 (Shannon Hall)

13.

On January 5, 2015, the Marion County Circuit Court appointed Lipetzky to serve as the court-appointed arbitrator in a marital dissolution case (the “Herman case”).

14.

After Lipetzky was appointed as the arbitrator, he received a total of $750 for pre-arbitration fees on behalf of the parties.

15.

Lipetzky initially scheduled the arbitration hearing for March 4, 2015. On February 18, 2015, one of the parties requested postponing the March hearing, which request Lipetzky granted.

16.

Between late March and mid-May 2015, Shannon Hall (“Hall”), counsel for Lawana Herman, made multiple attempts to contact Lipetzky by mail, email, and telephone to reschedule the arbitration. Lynda Olson (“Olson”), counsel for Vincent Herman, also contacted Lipetzky during the same time period. Lipetzky did not respond to either Hall or Olson and did not reschedule the arbitration hearing.

17.

On April 21, 2015, the Marion County Circuit Court issued a notice of intent to dismiss within thirty days if no actions were taken in the Herman matter. On May 15, 2015, Hall and Olsen moved for an extension of time to complete the arbitration. The court granted the motion and ordered that the arbitration be held on or before August 2015.

18.

Hall and Olson made multiple attempts between mid-May and mid-September 2015 to contact Lipetzky by email, mail, and telephone to again schedule the arbitration. Lipetzky did not respond and did not schedule the arbitration in advance of the court’s August 2015 deadline.
19.
   In September of 2015, the court removed Lipetzky as the arbitrator in the Herman case due to his lack of communication and action in scheduling the arbitration and appointed a new arbitrator.

20.
   On October 12, 2015, Olson wrote to Lipetzky and requested that he refund any unearned portion of the parties’ advanced arbitration fees. Lipetzky did not respond or refund any portion of the fees at that time.

21.
   On February 12, 2016, Olson again wrote to Lipetzky noting that he had not responded to her October 12th letter, nor had he delivered either a bill or a refund for her client. Olson requested that Lipetzky respond regarding the status of the funds. Still, Lipetzky did not respond or account for the funds he had received.

22.
   On February 17, 2016, Hall complained to the Bar about Lipetzky’s conduct. On March 24, 2016, after the Bar contacted Lipetzky about Hall’s bar complaint, Lipetzky returned the arbitration fees.

Violations

23.
   Lipetzky admits that, by not rescheduling the arbitration hearing and by not responding to any of the parties’ communications regarding the arbitration, he violated RPC 1.3 and RPC 8.4(a)(4). Lipetzky further admits that, by not returning the fees that he did not earn to the parties until March 24, 2016, he violated RPC 1.15-1(d).

Case No. 16-146 (OSB)

24.
   Lipetzky’s Minimum Continuing Legal Education (“MCLE”) compliance report was due to the Bar by January 31, 2016. Lipetzky did not file his MCLE report by the deadline.

25.
   On March 3, 2016, the Bar sent Lipetzky a notice of his MCLE non-compliance by first class mail to Lipetzky’s address on record with the Bar (“record address”). The Bar sent a second notice to Lipetzky by email to Lipetzky’s email address on file with the Bar (“record email address”). Lipetzky received the Bar’s notices, but still did not file his MCLE report.
26.

On March 10, April 19, and April 26, 2016, the Bar sent Lipetzky notices of MCLE non-compliance, all of which notified him that he could be suspended if he failed to cure his noncompliance. Lipetzky still did not file his MCLE report.

27.

On May 4, 2016, the Bar sent a letter to the Oregon Supreme Court recommending that Lipetzky be suspended for his MCLE noncompliance. Lipetzky was copied on the letter, but still did not file his MCLE report.

28.

On May 26, 2016, the Oregon Supreme Court issued an order suspending Lipetzky on June 2, 2016, for failing to comply with his MCLE reporting requirements. Lipetzky received a copy of the order, but did not review it.

29.

From June 2, 2016, to June 7, 2016, Lipetzky continued to practice law and held himself out as authorized to practice law even though he was suspended at the time. Lipetzky should have known, but did not know, that he was suspended at that time. Lipetzky ceased to practice law once he became aware of the order.

Violations

30.

Lipetzky admits that, by practicing law while suspended, he violated RPC 5.5(a) and ORS 9.160.

Sanction

31.

Lipetzky 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 (“Standards”). The Standards require that Lipetzky’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.** Lipetzky violated his duty to his clients to act with reasonable diligence and promptness. Lipetzky violated his duty to the public to refrain from engaging in conduct that is prejudicial to the administration of justice. Lipetzky violated his duty to the profession to refrain the unauthorized practice of law and his duty to cooperate with disciplinary authorities. Standards §§ 4.4, 5.2, 7.0.
b. **Mental State.** The *Standards* recognize three mental states: intentional, knowing, and negligent. *Standards* at 9. Lipetzky acted knowingly in neglecting both the Patston and Herman matters, in failing to promptly return client funds, and in harming the administration of justice. Lipetzky acted intentionally in failing to respond to the Bar’s inquiries on the Patston matter. Lipetzky acted negligently when he practiced law while suspended.

c. **Injury.** Both actual and potential injury are relevant to determining the sanction in a disciplinary case. *Standards* § 3.0; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Lipetzky caused actual and potential harm when he neglected the Patston and Herman matters and when he failed to timely return funds to the Herman parties. *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). Lipetzky’s failure to cooperate with the DCO investigation caused actual harm to both the legal profession and to the public because he delayed the Bar’s investigation and, consequently, the resolution of the complaint against him. *In re Schaffner*, 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. Prior discipline – Lipetzky was admonished on August 6, 2013 for violations of RPC 1.15-1(a), (d); *Standards* § 9.22(a);
2. A pattern of misconduct; *Standards* § 9.22(c);
3. Multiple offenses; *Standards* § 9.22(d);

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

1. Personal or emotional problems; *Standards* § 9.32(c). During the times in question, Lipetzky experienced a series of significant personal events that resulted in a then-undiagnosed depression.
2. Character and Reputation; *Standards* § 9.32(g). Lipetzky has a long history of volunteer service to and for the public and the bar.
3. Remorse; *Standards* § 9.32(l).

32.

Under the ABA *Standards*, absent aggravating and mitigating factors, suspension is the presumptive sanction when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury as a result. *Standards* § 4.42. 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. Standards § 4.12. Suspension is also appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process. Standards § 5.22. Suspension is also appropriate when a lawyer knowingly engages in conduct that violates a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. Standards § 7.2.

Further, where a suspension is appropriate, it should be for a period of time equal to or greater than six months. Standards § 2.3.

Oregon case law suggests that a six to nine month suspension is appropriate for Lipetzky’s violations in these consolidated matters. Neglect, with or without other violations, typically results in a suspension of several months. See, e.g., In re Jackson, 347 Or 426, 223 P3d 387 (2009) (120-day suspension for an attorney who was not prepared for a settlement conference he had requested, failed to send his calendar of available dates to an arbitrator, failed to respond to messages from the arbitrator’s office and failed to take steps to pursue the arbitration after a second referral to arbitration by the court. The attorney was also found to have engaged in conduct prejudicial to the administration of justice and knowingly making false statements to the court.); In re Koch, 345 Or 444, 198 P3d 910 (2008) (120-day suspension for an attorney who 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 the attorney to complete the legal matter. The attorney also failed to promptly return client property and failed to cooperate in the bar investigation.); In re Redden, 342 Or 393, 153 P3d 113 (2007) (60-day suspension for an attorney for failing to complete a child support arrearage matter for a client for nearly two years); In re Coyner, 342 Or 104, 149 P3d 1118 (2006) (Three month suspension plus formal reinstatement under BR 8.1 for an attorney who was appointed to handle a criminal appeal but took no action on the matter for nearly a year and allowed the appeal to be dismissed. In another matter, the attorney failed to respond to a motion to dismiss and did not inform the client when the motion was granted.); In re Worth, 337 Or 167, 92 P3d 721 (2004) (120-day suspension for an attorney who 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. The attorney also made misrepresentations to the court and had previously been disciplined for similar misconduct).

A failure to promptly return funds also results in suspension. In re Obert, 352 Or 231, 282 P3d 825 (2012) (Six-month suspension when the attorney deposited an advance fee directly into his business account without a written agreement allowing him to do so and before the fee was earned. When the client requested that the retainer be returned, attorney refused.).
Lawyers who engage in conduct prejudicial to the administration of justice also serve suspensions of varying length. See, e.g., In re Carini, 354 Or 47, 308 P3d 197 (2013) (30-day suspension for the attorney’s repeated failure to appear at court hearings); In re Paulson, 341 Or 13, 136 P3d 1087 (2006), cert den, 549 US 1116 (2007) (six-month suspension when attorney filed a pleading in a bankruptcy purportedly on behalf of the debtors when he was not attorney of record and knew that the debtors, his clients in a related state court matter, objected to the filing. In addition, attorney’s cumulative actions in the state court matter in which he ignored or violated various procedural rules resulted in the litigation becoming more complicated, protracted and expensive, all serving to prejudice the administration of justice.).

Finally, the Court has repeatedly held that the “failure to cooperate with a disciplinary investigation, standing alone, is a serious ethical violation.” In re Parker, 330 Or 541, 551, 9 P3d 107 (2000). Accordingly, the Court has consistently imposed suspensions of no less than sixty days for a single violation of RPC 8.1(a)(2). See In re Obert, 352 Or at 262–63 (six-month suspension for an attorney who failed to respond to numerous requests from the bar about an ethics complaint until subpoenaed); In re Miles, 324 Or at 218 (120-day suspension of attorney for noncooperation with bar despite no other violations); In re Schaffner, 323 Or at 472 (120-day suspension for an attorney who violated rule by failing to respond to the bar’s inquiries in a timely manner. The Court found that a 60-day suspension was appropriate each for the attorney’s neglect and his failure to cooperate with the bar.).

34.

Consistent with the Standards and Oregon case law, the parties agree that Lipetzky shall be suspended for six (6) months for violations of RPC 1.3 and RPC 8.1(a)(2) in Case No. 14-79; RPC 1.3, RPC 1.15-1(d), and RPC 8.4(a)(4) in Case No. 16-93; and RPC 5.5(a) and ORS 9.160 in Case No. 16-145. Lipetzky’s suspension shall commence on November 15, 2017.

The parties further agree that, should Lipetzky seek to practice law following the expiration of his suspension, Lipetzky shall be required to formally apply for reinstatement pursuant to BR 8.1, which requires action by the Board of Governors and the Supreme Court. Lipetzky understands that he cannot resume the practice of law until he has taken all steps necessary to re-attain active membership status with the Bar. During the period of suspension and continuing through the date upon which Lipetzky re-attains his active membership status with the Bar, Lipetzky shall not practice law or represent that he is qualified to practice law; shall not hold himself out as a lawyer; and shall not charge or collect fees for the delivery of legal services other than for work performed and completed prior to the period of suspension.

35.

In addition, on or before January 1, 2018, Lipetzky shall pay to the Bar its reasonable and necessary costs in the amount of $1,033.50, incurred in these consolidated matters. Should Lipetzky fail to pay $1,033.50 in full by January 1, 2018, the Bar may thereafter, without
further notice to him, obtain a judgment against Lipetzky for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

36.

Lipetzky 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, Lipetzky has arranged for Paul Saucy, 475 Cottage Street NE, Suite 120, Salem, OR 97301, an active member of the Bar, to either take possession of or have ongoing access to Lipetzky’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Lipetzky represents that Paul Saucy has agreed to accept this responsibility.

37.

Lipetzky 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 the denial of his reinstatement. This requirement is in addition to any other provision of this agreement that requires Lipetzky to attend or obtain continuing legal education (CLE) credit hours.

38.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 25th day of October, 2017.

/s/ Russell Lipetzky
Russell Lipetzky
OSB No. 871101

APPROVED AS TO FORM AND CONTENT:

/s/ John Fisher
John Fisher
OSB No. 771750

EXECUTED this 30th day of October, 2017.

OREGON STATE BAR

By: /s/ Courtney C. Dippel
Courtney C. Dippel, OSB No. 022916
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:  )
)  
Complaint as to the Conduct of  ) Case No. 14-145, 14-146, 15-126,
) 15-127, 16-171, 16-172, 16-173,
J. ANDREW KEELER,  ) 16-176, & 16-177
)  
Accused.  ) SC S065331

Counsel for the Bar: Nik T. Chourey
Counsel for the Accused: Clayton H. Morrison
Disciplinary Board: None.
Disposition: Violation of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC
1.4(b), RPC 1.5(a), RPC 1.5(c)(3), RPC 1.15-1(a), RPC
1.15-1(c), RPC 1.15-1(d), RPC 1.16(d), RPC 5.3(a),
RPC 5.4(a), RPC 5.5(a), RPC 8.1(a)(2), and RPC
8.4(a)(4). Stipulation for Discipline. One-year
suspension.

Effective Date of Order: November 9, 2017

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. The accused is suspended from the
practice of law in the State of Oregon for a period of one year, effective as of the date of this
order.

/s/ Thomas A. Balmer 11/09/2017 8:39 AM
Thomas A. Balmer
Chief Justice, Supreme Court

STIPULATION FOR DISCIPLINE

J. Andrew Keeler, attorney at law (“Keeler”), and the Oregon State Bar (“Bar”) hereby
stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).
1. The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2. Keeler was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 28, 2004, and has been a member of the Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

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

4. On December 2, 2015, an Amended Formal Complaint was filed against Keeler pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), regarding Case Nos. 14-145, 15-126 and 15-127, alleging violation of the following Rules of Professional Conduct (RPC):

   Case No. 14-145 (Anne Conole Steiner): RPC 1.1 [competence]; RPC 1.3 [neglect of a legal matter]; RPC 1.5(a) [charging or collecting a clearly excessive fee]; RPC 1.5(c)(3) [charging a nonrefundable fee without required language]; RPC 1.15-1(c) [duty to deposit client funds into trust]; RPC 1.16(d) [duty to return client file after termination and refund unearned fees]; and RPC 8.1(a)(2) [duty to respond to disciplinary inquiries];

   Case No. 15-126 (Eric E. Meyer): RPC 1.3 [neglect of a legal matter]; RPC 1.4(a) [duty to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; RPC 1.16(d) [duty to return client file after termination and refund unearned fees]; RPC 8.1(a)(2) [duty to respond to disciplinary inquiries]; and RPC 8.4(a)(4) [conduct prejudicial to the administration of justice]; and,

   Case No. 15-127 (Robert O’Mea): RPC 1.3 [neglect of a legal matter]; RPC 1.4(a) [duty to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; RPC 1.16(d) [duty to return client file after termination and refund unearned fees]; RPC 8.1(a)(2) [duty to respond to disciplinary inquiries]; and RPC 8.4(a)(4) [conduct prejudicial to the administration of justice].
On December 3, 2016, the SPRB authorized formal disciplinary proceedings against Keeler regarding Case Nos. 16-171, 16-172 and 16-173, alleging violation of the following RPC’s:

Case No. 16-171 (Patricia Stromenger): RPC 1.3 [neglect of a legal matter]; RPC 1.4(a) [duty to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; RPC 1.5(c)(3) [charging or collecting a fee denominated as earned on receipt without written fee agreement with required disclosures]; RPC 1.15-1(a) [duty to hold funds belonging to clients or third persons separate from lawyer’s own property]; and RPC 1.15-1(c) [duty to deposit client funds into trust];

Case No. 16-172 (Hanna R. Stupek): RPC 1.4(a) [duty to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; RPC 1.5(a) [charging or collecting a clearly excessive fee]; RPC 1.5(c)(3) [charging or collecting a fee denominated as earned on receipt without written fee agreement with required disclosures]; RPC 1.15-1(a) [duty to hold funds belonging to clients or third persons separate from lawyer’s own property]; RPC 1.15-1(c) [duty to deposit client funds into trust]; RPC 1.15-1(d) [prompt return of client property on request]; and RPC 1.16(d) [duty to return client file after termination and refund unearned fees]; and,

Case No. 16-173 (Brian Wixom): RPC 1.3 [neglect of a legal matter]; RPC 1.5(a) [charging or collecting a clearly excessive fee]; RPC 1.5(c)(3) [charging or collecting a fee denominated as earned on receipt without written fee agreement with required disclosures]; RPC 1.15-1(a) [duty to hold funds belonging to clients or third persons separate from lawyer’s own property]; RPC 1.15-1(c) [duty to deposit client funds into trust]; and RPC 1.15-1(d) [prompt return of client property on request].

On April 9, 2016, the SPRB authorized formal disciplinary proceedings against Keeler regarding Case No. 14-146 (Robert James Claus) for alleged violations of RPC 1.1 [duty to provide competent representation]; RPC 5.3(a) [duty to supervise non-lawyer personnel]; RPC 5.4(a) [lawyer or law firm shall not share legal fees with a nonlawyer]; RPC 5.5(a) [assisting non-lawyer in the practice of law], and RPC 8.1(a)(2) [duty to respond to disciplinary inquiries].

On July 15, 2017, the SPRB authorized formal disciplinary proceedings against Keeler regarding Case Nos. 16-176 and 16-177, alleging violation of the following RPC’s:
Case No. 16-176 (Jerry A. Voigt): RPC 1.3 [neglect of a legal matter]; RPC 1.4(a) [duty to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; RPC 1.4(b) [duty to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation]; and RPC 1.16(d) [duty to return client file after termination and refund unearned fees]; and

Case No. 16-177 (R. Michael Voigt): RPC 1.3 [neglect of a legal matter]; RPC 1.4(a) [duty to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; RPC 1.4(b) [duty to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation]; and RPC 1.16(d) [duty to return client file after termination and refund unearned fees].

8.

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.

Anne Conole Steiner Matter (Case No. 14-145)

Facts

9.

Beginning in 2011, Keeler represented Jennifer Behn (“Behn”) in connection with matters related to the guardianship of her father, Brant Koller (“Koller”). On January 24, 2013, Koller passed away. Keeler did not notify the guardian, or the court in which the guardianship was pending, of Koller’s death. Keeler did not seek an order terminating the guardianship and discharging the guardian.

10.

In April 2013, Behn hired Keeler to pursue an intestate proceeding to settle Koller’s estate (“Koller Estate”). Keeler had not previously administered an intestate estate but agreed to perform the necessary legal services for $4,000, plus $600 in anticipated court costs. Keeler provided a proposed written fee agreement to Behn but has not produced a signed agreement. Regardless, the proposed agreement did not inform Behn that:

(i) the funds paid for fees would not be deposited into Keeler’s lawyer trust account, and

(ii) that Behn was permitted to discharge Keeler at any time and, in that event, might be entitled to a refund of all or part of the fee if the services for which the fee was paid were not completed.
11. On April 8, 2013, Behn tendered two checks to Keeler, one in the amount of $4,000 for Keeler’s attorney fees ("Behn funds") and one in the amount of $600 for costs. Notwithstanding the absence of a written fee agreement signed by Behn that provided the necessary disclosures, Keeler did not deposit the Behn funds into his lawyer trust account.

12. On June 20, 2013, Keeler filed the petition and proposed limited judgment to initiate the administration of the Koller Estate and to have Behn appointed as personal representative. Keeler also requested that Behn’s bond as personal representative be waived. The probate court returned the proposed limited judgment unexecuted because there was insufficient information to support Keeler’s request that Behn’s bond be waived.

13. Between June 20, 2013, and September 30, 2013, Keeler failed to take action to correct the petition and proposed limited judgment or to seek information from the probate court regarding its disposition or actions he could take, despite multiple inquiries from Behn. On September 23, 2013, the probate court sent a letter to Keeler, inquiring about the status of the proceeding. On September 30, 2013, Keeler filed an amended petition. On October 29, 2013, the limited judgment was resubmitted and signed by the probate court.

14. After October 2013, Keeler failed to take any substantive action on Behn’s behalf, including, filing an inventory, publishing the required notice to would-be heirs and creditors, and submitting information regarding heirs and devisees to the Department of Human Services. In addition, Keeler did not notify the attorney for Koller’s conservator of Behn’s appointment as personal representative of the Koller Estate.

15. In February 2014, Behn terminated Keeler’s representation and retained attorney Anne Conole Steiner (“Steiner”) to complete the Koller Estate. On February 5, 2014, Steiner demanded that Keeler provide Behn’s unused costs and account for and return the unearned portion of the Behn funds. Keeler did not respond or provide the unused costs or any portion of the Behn funds.

16. On June 19, 2014, Steiner complained to the Bar about Keeler’s conduct. On July 21, 2014, Steiner’s complaint was referred to Disciplinary Counsel’s Office (“DCO”) with notice to Keeler.
17. On July 31, 2014, DCO requested Keeler’s response to Steiner’s complaint. The letter was mailed to Keeler by first-class mail to his address on record with the Bar (“record address”) and was not returned as undeliverable. Keeler did not respond.

18. On September 3, 2014, DCO again requested that Keeler respond to Steiner’s complaint. The letter was mailed to Keeler by first-class and certified mail to Keeler’s record address. The first-class letter was not returned as undeliverable and the certified letter was signed for by “A. Hawkins.” On September 12, 2014, Keeler emailed DCO, acknowledged awareness of the Steiner complaint and requested additional time to respond. By responsive email, DCO allowed Keeler until October 1, 2014, to submit his response. Keeler did not respond.

19. On October 13, 2014, DCO again requested Keeler’s response to Steiner’s complaint. The letter was mailed to Keeler by first-class and certified mail to Keeler’s record address. The first-class letter was not returned as undeliverable and the certified letter was signed for by “A. Hawkins.” Keeler did not respond.

20. On January 13, 2015, with notice to Keeler, DCO petitioned the State Disciplinary Board Chair to administratively suspend Keeler pursuant to BR 7.1, due to his failure to respond to DCO’s inquiries. Keeler did not respond and was administratively suspended on January 22, 2015.

Violations

21. Keeler admits that his failure to provide competent representation and his failure to more timely attend to Behn’s legal matter was neglect of a legal matter, in violation of RPC 1.1 and RPC 1.3. Keeler further admits that in charging or collecting a clearly excessive fee he violated RPC 1.5(a). Keeler admits that in entering into a non-refundable fee arrangement without the required disclosures; in failing to deposit and maintain client funds in trust until fees were earned or expenses incurred; and in failing to take reasonable steps upon withdrawing to protect his client’s interests, including the refund of unearned fees, he violated RPC 1.5(c)(3); RPC 1.15-1(c); and RPC 1.16(d). Keeler admits that his failure to respond to lawful demands for information from a disciplinary authority violated RPC 8.1(a)(2).
Robert James Claus Matter (Case No. 14-146)

Facts

22.

Beginning in 2014, Robert James Claus (“Claus”) retained Keeler in a number of civil matters, including defense of a wage claim (“Wage Claim matter”).

23.

In an effort to save Claus costs, Keeler assigned his paralegal, R. Michael Voigt (“Voigt”), a significant amount of the legal work related to Keeler’s representation of Claus. Voigt is not a licensed attorney in any jurisdiction and worked for Keeler as an independent contractor. Keeler was aware that Voigt is not a licensed attorney.

24.

In connection with Keeler’s representation of Claus in his matters, Voigt met with Claus without Keeler being present, met with opposing counsel without Keeler being present, negotiated with opposing parties for Claus, researched statutes of limitations at Claus’s request, prepared extensive memoranda of law with analysis of legal and factual issues in Claus’s matters, and provided Claus with his legal advice and recommendations.

25.

Voigt presented Keeler with an argument that the Wage Claim matter could be dismissed for improper venue because the action was transitory and, as such, the lack of venue took subject matter jurisdiction from the court. Voigt’s position was unsupported by law. Keeler accepted Voigt’s argument and filed a motion to dismiss based on it.

26.

Voigt’s legal advice to Keeler and to Claus failed to meet the level of knowledge, thoroughness and skill required of an attorney. Keeler was aware of Voigt’s legal advice and failed to take adequate steps to intervene in the giving of that advice, or to adequately ensure and supervise the quality and content of that advice.

27.

Claus paid legal fees that were split between Keeler and Voigt for the work performed by them. Claus was billed separately for Voigt’s time and the letters and memos Voigt wrote with his legal analysis.

28.

On December 5, 2014, the Claus complaint was referred to DCO with notice to Keeler.
29.

On December 16, 2014, DCO requested Keeler’s response to Claus’s complaint. The letter was mailed to Keeler by first-class mail to his address on record with the Bar (“record address”) and was not returned as undeliverable. Keeler did not respond.

30.

On January 2, 2015, DCO again requested that Keeler respond to Claus’s complaint. The letter was mailed to Keeler by first-class to Keeler’s record address. The first-class letter was not returned as undeliverable. Keeler did not respond until after the Bar filed a BR 7.1 motion to suspend him from practice.

Violations

31.

Keeler admits that in relying on and endorsing Voigt’s deficient legal work he failed to provide competent representation of Claus in the Wage Claim matter; and in doing so Keeler failed to ensure that Voigt’s conduct was compatible with Keeler’s professional obligations, in violation of RPC 1.1 and RPC 5.3(a). Keeler further admits that he assisted Voigt in the unauthorized practice of law by purporting to adequately supervise him but failing to adequately do so and, in so doing, he violated RPC 5.4(a). Keeler admits that his failure to respond to lawful demands for information from a disciplinary authority, violated RPC 8.1(a)(2).

Eric E. Meyer/O’Mea Matters (Case Nos. 15-126 & 15-127)

Facts

32.

In January of 2014, Keeler assumed the representation of Robert and Linda O’Mea (the “O’Meas”) with respect to claims they were asserting against their former landlord Albert and Melissa Jones (the “Joneses”) on a contingency basis (“Jones litigation”).

33.

The O’Meas provided Keeler with $700 or more for expenses connected with the Jones litigation (“suit money”).

34.

On February 28, 2014, Keeler filed a formal complaint in the Jones litigation. Thereafter, he failed to take any substantive action on their behalf.

35.

The O’Meas’ depositions were scheduled for December 11 and 12, 2014. There is no evidence that Keeler notified the O’Meas of the time for the depositions in sufficient time for
them to attend. After 5:00 p.m., on December 10, 2014, Keeler sent an email to the Joneses’
attorney notifying him that his clients were out-of-state and would not be able to attend the
depositions. Thereafter, Keeler did not respond to repeated requests from the Joneses’
attorney to schedule new dates for the O’Meas’ depositions, nor did he communicate to the O’Meas
that the Joneses were seeking to depose them and that their failure to appear for a deposition
could result in the dismissal of their case.

36.

Trial in the Jones litigation was scheduled for January 20, 2015, with a pretrial
appearance scheduled for January 5, 2015. Keeler did not notify the O’Meas of this appearance.
On January 5, 2015, Keeler failed to appear at the scheduled pretrial conference. The Court
rescheduled the pretrial conference for January 8, 2015, with notice to Keeler. Keeler did not
notify the O’Meas of the rescheduled appearance.

37.

On January 8, 2015, Keeler failed to appear for the rescheduled pretrial conference. At
the January 8, 2015 conference, the Joneses’ attorney moved to dismiss the O’Meas’ complaint
with prejudice. The Court set a hearing on the Joneses’ motion to dismiss for January 14, 2015,
with notice to Keeler. Keeler did not notify the O’Meas of the motion to dismiss or the hearing
scheduled to decide the motion.

38.

On January 14, 2015, Keeler failed to appear for the scheduled hearing on the Joneses’
motion to dismiss. The Court dismissed the O’Meas’ claims with prejudice and dismissed the
Joneses’ counter-claims without prejudice.

39.

Keeler did not communicate with his clients about the dismissal until around March
2015—after the deadline for an appeal had expired.

40.

In March 2015, the O’Meas demanded that Keeler account for their suit money and
return the unused portion of those funds. Keeler did not account for or return any portion of
the suit money he received from the O’Meas.

41.

On January 20, 2015, Eric Meyer, counsel for the Joneses, complained to the Bar about
Keeler’s conduct. On March 2, 2015, Meyer’s complaint was referred to DCO with notice to
Keeler.
42.

On March 17, 2015, DCO requested Keeler’s response to Meyer’s complaint. The letter was mailed to Keeler by first-class mail to his record address and was not returned as undeliverable. Keeler did not respond to requests for information from DCO on the Meyer complaint until after he had been suspended on the Steiner matter.

43.

On March 13, 2015, the O’Meas complained to the Bar about Keeler’s conduct. On March 18, 2015, the O’Meas’ complaint was referred to DCO with notice to Keeler.

44.

On March 20, 2015, DCO requested Keeler’s response to the O’Meas’ complaint. The letter was mailed to Keeler by first-class mail to his record address and was not returned as undeliverable. Keeler did not respond.

Violations

45.

Keeler admits that his failure to more timely attend to the O’Meas’ legal matter was neglect of a legal matter, in violation of RPC 1.3. Keeler further admits that his failure to respond to the O’Meas’ inquiries violated RPC 1.4(a). Keeler admits that, in failing to take reasonable steps upon withdrawal to protect his clients’ interests, including a refund of advance payment of fees or costs that had not been earned, he violated RPC 1.16(d). Keeler admits that his failures to appear in court constituted conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4). Keeler admits that his failure to respond to lawful demands for information from a disciplinary authority violated RPC 8.1(a)(2).

Patricia Stromenger Matter (Case No. 16-171)

Facts

46.

Patricia Stromenger (“Stromenger”) was 83 years old when she hired Keeler in September 2015 to prepare a will. She paid Keeler a “retainer” of $300. Keeler did not deposit this payment in his client trust account. Keeler contends that Stromenger’s payment to him was a flat fee. Keeler believes that he utilized a written fee agreement for the representation, but he has been unable to locate a copy of such an agreement.

47.

After she hired Keeler, Stromenger made several calls to Keeler in November and December 2015 about the status of her matter, but received no response. Stromenger also visited Keeler’s office, but was unable to see him.
48.

Keeler never prepared the will, did not speak with Stromenger after the initial consultation, did not provide any updates regarding her matter, and did not return her retainer until after she complained to the Bar.

Violations

49.

Keeler admits that his failure to more timely attend to Stromenger’s legal matter was neglect of a legal matter in violation of RPC 1.3. Keeler further admits that his failure to respond to the Stromenger’s inquiries violated RPC 1.4(a). Keeler admits that in entering into a non-refundable fee arrangement without the required disclosures; in failing to keep advances for fees in his lawyer trust account and keep complete records; and in failing to deposit and maintain client funds in trust until fees were earned or expenses incurred, he violated RPC 1.5(c)(3); RPC 1.15-1(a); and RPC 1.15-1(c).

Hanna R. Stupek Matter (Case No. 16-172)

Facts

50.

In June 2015, Hanna R. Stupek (“Stupek”) entered into an agreement for Keeler to represent her in a domestic relations matter, and paid him a $7,000 retainer that same month. Keeler took $3,300 of Stupek’s retainer for his own use immediately, and deposited the remaining $3,700 in his trust account.

51.

Keeler contends that Stupek’s payment to him was a flat fee. Keeler believes that he utilized a written fee agreement for the representation, but he has been unable to locate a copy of such an agreement.

52.

Keeler kept in contact with Stupek through July 2015, but stopped responding to her requests for case information in August 2015.

53.

In August 2015, Keeler received $600 from Stupek’s husband’s attorney for child support. Keeler did not notify Stupek of his receipt of this payment. Subsequently, Stupek’s husband’s attorney stopped payment on the check.

54.

In late August 2015, Stupek emailed Keeler to stop all work on the dissolution of marriage and return the unearned portion of her retainer. In addition, Stupek requested an
accounting of the funds in her termination letter at the end of August 2015. Keeler first provided billing at the beginning of November 2015. Keller’s billing did not accurately reflect the amount of money Stupek had paid, or what Keeler had done with that money.

55. When she heard nothing further from Keeler, Stupek filed a Bar complaint against him in mid-September 2015.

56. Keeler’s refund to Stupek occurred seven months following his termination and only after Stupek filed a Bar complaint.

Violations

57. Keeler admits his failure to respond to Stupek’s inquiries violated RPC 1.4(a). Keeler further admits that in charging or collecting a clearly excessive fee he violated RPC 1.5(a). Keeler admits that in entering into a non-refundable fee arrangement without the required disclosures; in failing to keep advances for fees in his lawyer trust account and complete records; in failing to deposit and maintain client funds in trust until fees were earned or expenses incurred; and in failing to account for and return client property, he violated RPC 1.5(c)(3); RPC 1.15-1(a); RPC 1.15-1(c); and RPC 1.15-1(d). Keeler admits that in failing to take reasonable steps upon withdrawal to protect his client’s interests, including a refund of advance payment of fees or costs that have not been earned, he violated RPC 1.16(d).

Brian Wixom Matter (Case No. 16-173)

Facts

58. Brian Wixom (“Wixom”) was served with a copy of a divorce petition and an order to show cause regarding temporary support on July 7, 2015. Wixom’s response was time-sensitive. On July 14, 2015, Wixom signed a fee agreement with Keeler in which Wixom agreed to pay Keeler what was purported to be a flat fee of $5,500 plus expenses to handle his divorce. The agreement did not inform Wixom that:

(i) the funds paid for fees would not be deposited into Keeler’s lawyer trust account, and

(ii) Wixom was permitted to discharge Keeler at any time and, in that event, might be entitled to a refund of all or part of the fee if the services for which the fee was paid were not completed.
59.

Wixom attempted to contact Keeler multiple times about his case throughout August 2015. Keeler did not respond.

60.

On August 21, 2015, the attorney for Wixom’s spouse filed a notice of intent to take default. On August 28, 2015, Keeler filed Wixom’s response to the divorce petition but did not file a response to the order to show cause regarding temporary relief. As a result of the default on temporary relief, the court imposed a $1,000 per month spousal support obligation on Wixom dating back to July 1, 2015.

61.

Keeler did not take action to set aside the default once it was entered for two months.

62.

Keeler collected a fee from his client to complete the representation, but did not complete it. Keeler did not promptly refund any of the fee that Wixom had paid him. While Keller did refund a portion of that fee, it was not until after a Bar complaint had been filed against him.

Violations

63.

Keeler admits that his failure to more timely attend to Wixom’s legal matter was neglect of a legal matter in violation of RPC 1.3. Keeler further admits that his failure to respond to the Wixom’s inquiries violated RPC 1.4(a). Keeler admits that in charging or collecting a clearly excessive fee he violated RPC 1.5(a). Keeler admits that in entering into a non-refundable fee arrangement without the required disclosures; in failing to keep advances for fees in his lawyer trust account and complete records; in failing to deposit and maintain client funds in trust until fees were earned or expenses incurred; and in failing to account for and return client property he violated RPC 1.5(c)(3); RPC 1.15-1(a); RPC 1.15-1(c); and RPC 1.15-1(d).

Jerry A. Voigt Matter (Case No. 16-176)

Facts

64.

On March 25, 2014, Jerry A. Voigt (“JAV”) signed a fee agreement with Keeler in which Keeler agreed to handle JAV’s construction defect case.
65.

Keeler did not act to advance JAV’s objectives, including contacting insurance companies regarding JAV’s claims or potential claims.

66.

In late April 2015 Keeler ceased communication with the opposing party and JAV for approximately six months in spite of repeated requests for additional information from the opposing party and case updates.

67.

Keeler stopped taking action on behalf of JAV, but did not communicate with her or her agent regarding that decision, leaving her in limbo regarding whether she should seek new counsel or take other action to protect her rights.

Violations

68.

Keeler admits that his failure to more timely attend to JAV’s legal matter was neglect of a legal matter in violation of RPC 1.3. Keeler further admits that his failure to respond to his client’s inquiries or provide his plan for moving the case forward, violated RPC 1.4(a) and RPC 1.4(b). Keeler further admits that, in failing to take reasonable steps upon withdrawing to protect his client’s interests, he violated RPC 1.16(d).

R. Michael Voigt Matter (Case No. 16-177)

Facts

69.

In March of 2015 Keeler undertook to represent his paralegal, Voigt, in relation to a dispute that Voigt had with Walmart.

70.

Keeler agreed to draft a letter to Walmart on Voigt’s behalf regarding his dispute with Walmart. Keeler drafted the letter and had a conversation with a legal representative of Walmart, but took no further action on behalf of Voigt.

71.

Voigt sent multiple messages to Keeler asking for updates on his matter. Keeler did not respond to those messages.
72. Keeler decided to take no further action on behalf of Voigt, but did not communicate with him regarding this decision, leaving him in limbo regarding whether he should seek new counsel or take other action to protect his rights.

Violations

73. Keeler admits that his failure to more timely attend to Voigt’s legal matter was neglect of a legal matter in violation of RPC 1.3. Keeler further admits that his failure to respond to his client’s inquiries or provide his plan for moving the case forward violated RPC 1.4(a) and RPC 1.4(b). Keeler admits that, in failing to take reasonable steps upon withdrawing to protect his client’s interests, he violated RPC 1.16(d).

Sanction

74. Keeler 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 Keeler’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. Keeler violated his duties to his clients to appropriately handle unearned fees upon receipt or return client property, and to act with competency, reasonable diligence and promptness in representing them, including the duty to adequately communicate with them. Standards §§ 4.1, 4.4 & 4.5. The Standards provide that the most important duties a lawyer owes are those owed to clients. Standards at 5. By engaging in conduct prejudicial to the administration of justice, Keeler violated his duty to the legal system. Standards § 6.2. Keeler’s failures to cooperate with the Bar’s investigations in these matters, in sharing fees with a nonlawyer and assisting a nonlawyer in the practice of law, violated his duties as a professional. Standards §§ 7.0, 7.2.

b. Mental State. Of the mental states recognized under the Standards, Keeler’s conduct was primarily knowing. That is, he had the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Standards at 9. Keeler knew his clients hired him and paid him to meet certain objectives; he knew that his clients requested updates and some action on their behalf; and yet he did not respond to their inquiries. Similarly, Keeler knew that the Bar was investigating his conduct in these matters; he knew that the Bar was requesting information from him; and yet he did little to substantively cooperate.
In re Keeler, 31 DB Rptr 285 (2017)

c. **Injury.** An injury need not be actual, but only potential, to support the imposition of a sanction. *Standards* at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Injury can either be actual or potential under the *Standards*. See *Williams*, 314 Or at 547. Keeler’s clients were actually injured to the extent that they paid for services that were not thereafter performed and to the extent that their matters were delayed. See, e.g., *In re Parker*, 330 Or 541, 547, 9 P3d 107 (2000).


Both the legal profession and the public are actually injured where attorney conduct delays Bar investigations and, consequently, the resolution of Bar complaints. *In re Schaffner*, 325 Or at 426–27; *In re Miles*, 324 Or 218, 923 P2d 1219 (1996); *In re Haws*, 310 Or 741, 753–54, 801 P2d 818 (1990). See also *In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993) (court concluded that the Bar was prejudiced, because the Bar had to investigate in a more time-consuming way, and the public respect for the Bar was diminished, because the Bar could not provide a timely and informed response to complaints).

d. **Aggravating Circumstances.** Aggravating circumstances include:


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

3. Personal or emotional problems. *Standards* § 9.32(c). Keeler reports that he was experiencing personal problems at the time of the events in these matters.
4. Remorse. *Standards* § 9.32 (l). Keeler has expressed remorse for his conduct in these matters.
75.

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. Suspension is also generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or engages in a pattern of neglect and causes injury or potential injury to a client. Standards § 4.42. Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client. Standards § 4.52. Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or the party, or interference or potential interference with a legal proceeding. Standards § 6.22. Finally, 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.

76.

Oregon cases similarly find that a suspension is appropriate for misconduct that involves a lack of competence, neglect of a legal matter, failing to communicate with clients, failing to account for and promptly provide client property, and failing to respond to the Bar. See, e.g., In re Obert, 352 Or 231, 282 P3d 825 (2012) (Despite instructions from a trial judge in a civil case that the judge would grant a motion for JNOV in favor of attorney’s client if one was filed and a caution about when such a motion was due, attorney failed to timely file the motion and instead filed a notice of appeal which deprived the trial court of jurisdiction. The notice of appeal was defective, the appeal ultimately was dismissed, and attorney failed to refile his post-trial motions timely. He also filed a second, untimely notice of appeal, intending to argue that a criminal statute that permitted the late filing of a notice of appeal should apply to his client’s civil case. Attorney was found to have engaged in a pattern of incompetence and was suspended for 6 months.); In re Ifversen, 27 DB Rptr 150 (2013) (The attorney was suspended for one year for failing to explain client’s options in pursuing her insurer or accepting a settlement of her personal injury claims. Attorney also failed to inform client that the statute of limitations would run on her claims, and, after they did, that he had not filed a lawsuit or obtained a settlement.); In re Schaffner, 323 Or 472, 918 P2d 803 (1996) (The Court suspended the attorney for 120 days—60 days each for failing to cooperate with the Bar and knowingly neglecting clients’ cases for several months by failing to communicate with clients and opposing counsel); In re Snyder, 348 Or 307, 232 P3d 952 (2010) (The court suspended attorney for 30 days when he failed to return a personal injury client’s file materials, including medical records, despite numerous requests from the client.).

Lastly, the sanction imposed is greater where an attorney is found to have violated multiple rules. See, e.g., In re Schaffner II, 325 Or at 428 (imposing a two-year suspension for neglect of client matters and failure to respond); and In re Recker, 309 Or 633, 789 P2d 663
(1990) (imposing a two-year suspension on a lawyer who neglected multiple client matters, failed to respond to clients and the disciplinary authority, and engaged in conduct involving misrepresentations).

77. Consistent with the Standards and Oregon case law, the parties agree that Keeler shall be suspended for one year for violations of RPC 1.1 [two counts]; RPC 1.3 [seven counts]; RPC 1.4(a) [six counts]; RPC 1.4(b) [two counts]; RPC 1.5(a) [three counts]; RPC 1.5(c)(3) [four counts]; RPC 1.15-1(a) [three counts]; RPC 1.15-1(b) [four counts]; RPC 1.15-1(d) [two counts]; RPC 1.16(d) [six counts]; RPC 5.3(a) [one count]; RPC 5.4(a) [one count]; RPC 5.5(a) [one count]; RPC 8.1(a)(2) [four counts]; RPC 8.4(a)(4) [two counts]. The sanction shall be effective November 1, 2017, or 60 days after this Stipulation is approved by the Supreme Court, whichever is later.

78. Keeler’s license to practice law shall be suspended for a period of one year beginning November 1, 2017, or as otherwise directed by the Supreme Court (“actual suspension”), assuming all conditions have been met. Keeler understands that reinstatement is not automatic and that he cannot resume the practice of law until he has taken all steps necessary to re-attain active membership status with the Bar. During the period of actual suspension, and continuing through the date upon which Keeler re-attains his active membership status with the Bar, Keeler shall not practice law or represent that he is qualified to practice law; shall not hold him out as a lawyer; and shall not charge or collect fees for the delivery of legal services other than for work performed and completed prior to the period of active suspension.

79. Keeler 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. Keeler represents, however, that he closed his practice, he has no clients and he has no active client files.

80. Keeler acknowledges that BR 8.1 formal 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. Keeler 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.

81. Keeler 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. This requirement is in addition to any other provision of this agreement that requires Keeler to attend or obtain continuing legal education (CLE) credit hours.

82.

Keeler 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 Keeler is admitted: none.

83.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 3rd day of October, 2017.

/s/ J. Andrew Keeler
J. Andrew Keeler
OSB No. 043270

APPROVED AS TO FORM AND CONTENT:

/s/ Clayton H. Morrison
Clayton H. Morrison
OSB No. 742250

EXECUTED this 11th day of October, 2017.

OREGON STATE BAR
By: /s/ Nik T. Chourey
Nik T. Chourey
OSB No. 060478
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
)
Complaint as to the Conduct of ) Case Nos. 16-101, 16-125, 16-127, &
) 16-128
DALE MAXIMILIANO ROLLER, )
) SC S065235
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: None.
Disciplinary Board: James C. Edmonds, Chairperson
Lorena M. Reynolds
Fadd E. Beyrouty, Public Member
Disposition: Violation of RPC 1.2(a), RPC 1.3, RPC 1.4(a), RPC
1.4(b), RPC 1.5(a), RPC 1.5(c)(3), RPC 1.15-1(c), RPC
1.16(d), RPC 8.1(a)(2). Trial Panel Opinion.
Disbarment.
Effective Date of Opinion: August 30, 2017

ORDER OF DISMISSAL
On October 11, 2017, appellant was advised that his Request for Review would be
dismissed pursuant to ORAP 1.20(4) unless within 14 days he showed good cause why his
request for review should not be dismissed. As of this date, accused has not responded nor
shown good cause why the cause should not be dismissed. The request for review is dismissed.
Rives Kistler
Presiding Justice, Supreme Court

TRIAL PANEL OPINION
This matter came before the trial panel on April 10 and 11, 2017. The trial panel con-
sisted of James C. Edmonds, Chair (attorney), Lorena Reynolds (attorney), and Fadd Beyrouty
(public member).
The Oregon State Bar (hereinafter the “Bar”) presented several matters for consideration by the trial panel. The following is the opinion of the trial panel regarding these matters.

**FINDINGS OF THE TRIAL PANEL**

The disciplinary proceedings brought against Dale Roller involve four different clients: Madera, Torrance, Pointer and Madden. For purposes of this opinion and evaluation of the disciplinary rules, this opinion is broken into four sub-parts corresponding with the client and the relevant, alleged rule violations relating to that client. This opinion is based on the evidence and argument submitted at the hearing noted above and the submissions of the parties.

**MADERA**

In the spring of 2013, Benjamin and Irene Madera (hereinafter the “Maderas), needed a lawyer to help renew their work “permits.” TR 105, 152. The Maderas wanted a Spanish speaking lawyer. TR 151. They hired Roller.

At the first appointment in May of 2013, Roller filled out a “new client information sheet.” TR 107–108; see Exhibit 1. The form is in English. Mr. Madera does not recall receiving the form in Spanish. TR 108. Benjamin Madera filled in the information on the top of the form. TR 107–108. Roller filled out the remainder. TR 108.

At the first meeting, the Maderas asked Roller to renew their work permits to allow them to continue working in the United States. TR 109, 152. Mr. Madera did not know what type of form was necessary. TR 109. Roller explained that it would be better for the Maderas to pursue a U Visa. TR 152. According to the Bar, a U Visa can be pursued by victims of crimes who are working with law enforcement in the investigation or prosecution of criminal activity. *See OSB Trial Memorandum* at 4, fn 2. A U Visa application requires verification by a law enforcement official to “vouch” for the applicant’s assistance. The Maderas did not understand the difference between a U Visa and any other document necessary for them to retain work status. TR 152–153, 112.

At the first meeting, the Maderas paid Roller $1,500. TR 153. Roller cashed the check and immediately considered it to be “his” money. TR 306.

Roller asked the Maderas to provide information regarding law enforcement contacts who could verify Mr. Madera’s participation and possible qualification for a U Visa. TR 112–113. Roller had never handled a U Visa application. TR 305.

Over the next several months, Roller filled out several versions of the paperwork for a U Visa. He indicated that he would let the Maderas know when to file it. TR 308, 309.

The first set of forms came to the Maderas on January 21, 2014. TR 114; see Exhibit 3. Mr. Madera made some corrections on the forms. TR 114. The forms were apparently corrected and resubmitted to Roller.
A new set of what appeared to be the same forms came to the Maderas in late May, 2014. Mr. Madera signed the forms on May 31, 2014. TR 117; see Exhibit 4.

On June 24, 2014, the forms were again filled out and Madera was again asked to sign. Mr. Madera complied. See Exhibit 5.

Irene Madera called Roller at least ten or eleven times over the course of his representation. TR 154. Roller sent papers to the Maderas at least three times. TR 154. Irene Madera asked Roller why they were receiving the same papers over and over. TR 154. Roller claimed that the papers were not the same and needed to be corrected. TR 156.

Eventually, Irene Madera called Roller and told him she and her husband were going to a different lawyer. TR 156. Roller was upset. TR 156. She tried to call Roller again and he would not return her calls. TR 156.

Maderas eventually wrote to the Bar requesting reimbursement of the $1,500 paid to Roller. This document was received in September, 2014. Exhibit 6. A formal complaint was signed by Irene Madera on September 22, 2014. Exhibit 9.

Roller claims that he was unable to file the U Visa application because he could not acquire the appropriate verification from law enforcement. Roller Closing Argument at 4. At the hearing, Roller entered into evidence a report prepared by an investigator for the Client Security Fund of the Oregon State Bar. See Exhibit A. The CSF apparently investigated the Maderas’ request for reimbursement of the $1,500 fee paid to Roller. A letter from Executive Director Sylvia Stevens dated May 18, 2015, states that the CSF Committee “concluded that the work was performed . . . (and) . . . failure to obtain a desired result was outside lawyer’s control.” As a result, no money was paid by the CSF. The CSF investigator’s report concludes that “it appears that legal services were provided by Roller but after a reasonably diligent effort, a law enforcement officer willing to vouch for Madera could not be secured.” Exhibit A.

Mr. Madera testified that he later contacted law-enforcement officials, who stated that Roller did not make contact with them. TR 113.

Maderas eventually went to another lawyer. Irene Madera testified that the lawyer explained the deadline had passed and there was nothing he could do. TR 158. The date of this contact may have been August 18, 2014. Exhibit A, Page 2 submitted by Roller is a copy of the Client Security Fund (CSF) investigation of this matter. The “Investigative Report” identifies contact with a lawyer, Jonathon Timez, who spoke to Maderas on August 18, 2014. According to the investigator, Timez told them it appeared that Roller had done everything necessary other than obtain a police officer’s declaration. Exhibit A, page 2.

The Maderas never received a U Visa or a renewal of their work permits. TR 157. Their employment cards expired. TR 157–158.

Roller did not return any money to Maderas. TR 157. Despite repeated efforts to contact Roller, he did not respond to the Maderas. See Exhibit 9.
Roller testified that he was hired to obtain a U Visa and nothing more. TR 375. Roller points to his handwritten notation to this effect on the “new client information sheet.” See Exhibit 1.

RPC 1.3 - A lawyer shall not neglect a legal matter entrusted to the lawyer.

Neglect of a legal matter is evaluated by the context of the act to be performed. An urgent matter may require immediate attention. See In re Meyer, 328 Or 220, 970 P2d 647 (1999). Neglect may also occur over an extended period of time if there was a repeated pattern of negligence. See, e.g., In re Purvis, 306 Or 522, 760 P2d 254 (1988).

There is some confusion as to whether Roller was to get a U Visa or a work permit. However, there is no question that neither of these documents were obtained, or even applied for, during the time Roller represented Maderas. Roller’s “work” for Maderas encompassed a time period longer than one year. Maderas first contacted Roller in May of 2013. The last set of papers produced by Roller was signed by Mr. Madera in June, 2014. Maderas contacted a new lawyer sometime in the summer of 2014 possibly in August. The Bar was contacted in September of 2014.

The testimony of both Mr. and Mrs. Madera was consistent: They wanted Roller to renew their ability to continue working in the United States. They did not understand what forms needed to be filled out to accomplish this request. Roller promoted the idea that a U Visa could be pursued. This testimony was consistent and was more plausible than the Accused’s testimony. Roller claims that he was hired for the sole purpose of acquiring a U Visa. TR 374–375. He supports this conclusion by pointing to the “New Client Intake Form.” Exhibit 1. However, he has no memory of the Maderas in his office nor does he recall what was discussed. TR 375–376. Moreover, the Accused testified that he does not keep notes from client meetings.

It seems unlikely that the Maderas would come to Roller and ask for nothing more than a U Visa. The Maderas wanted to retain their right to work in the United States. They paid Roller a significant sum of money for his expertise and relied upon his judgment to identify what was needed to continue working, whether a U Visa or a work permit. It is clear that a U Visa does not appear to be a well-known or well used avenue to pursue work status. Roller had never applied for a U Visa on behalf of a client. For the Maderas to direct Roller to pursue a U Visa and nothing else seems out of character with the personality and sophistication of the individuals who testified at the hearing.

The Panel questioned Roller’s credibility based upon his hostile attitude toward Maderas. During Mr. Medera’s testimony, the Accused was muttering inaudible comments under his breath. He mouthed words to one of the Panel members. At times, he spoke to the witnesses in Spanish while interrupting the interpreter. He aggressively argued with the witnesses. At one point during Mr. Medera’s testimony, the Accused walked in front of counsel table towards Mr. Madera in an aggressive and angry manner. Roller was moving towards the
witness with his finger pointed at him, asking “You want to go?” The Panel Chair was concerned enough for the safety of the people in the room that he stood up, raised his voice, and directed Roller to move away from the witness. TR 131. Others in the room were visibly shaken by this encounter and a recess had to be called.

Based upon the testimony presented at the hearing, the Panel believes Maderas were asking Roller for help in renewing their work permits and did not limit Roller’s work to the U Visa alone. Mr. Madera testified that he was not exactly sure what was needed to continue his right to work in the United States. This was confirmed by Mrs. Madera. Neither understood the requirements for a U Visa.

Roller points to a determination by the Client Security Fund denying Maderas claim for reimbursement. See Exhibit A. He argues that this exonerates him from any neglect. Enclosed within that letter, the Oregon State Bar states “the committee concluded that work was performed; failure to obtain desired result was outside lawyer’s control.” The investigative report attached to that statement concludes that services were performed by Roller, but he was unable to get the U Visa based upon the inability to obtain a signature from a law enforcement officer willing to vouch for Mr. Madera.

The conclusion of the Client Security Fund is based upon two factors: 1) Any loss being claimed by the Madera’s must result from “an established lawyer-client relationship” and 2) a “failure to account for money or property entrusted to the lawyer in connection with the lawyer’s practice of law or while acting as a fiduciary in a matter related to the lawyer’s practice of law.” It is clear that the determination of the CSF was framed primarily around accounting for the money paid to Mr. Roller. Although the bar notes that some work was performed by Mr. Roller, this was a minor determination within the greater context of the CSF decision. It is clear that the CSF was not evaluating Mr. Roller’s ethical responsibilities with regard to the adequacy of the services performed. Instead, the CSF was examining the lawyers accounting for the money provided by the client in the context of work being performed.

There is no question that work was performed by Mr. Roller and money was paid to perform that work. However, in evaluating whether or not there has been neglect of a legal matter entrusted to Mr. Roller, we find that there was such neglect. Roller failed to accomplish any task entrusted to him by the client. On three separate occasions, he sent paperwork to the Maderas without achieving any advancement of their cause. The “work” took over a year to accomplish. At some point, the Maderas are owed an explanation as to why the work is taking so long to perform. Based upon Roller’s testimony, the work was delayed due to his inability to obtain a declaration from a law enforcement official. Certainly, reasonable delays may prevent this from happening immediately. However, it is expected that efforts to speak with an officer could be made within a few months of the initial client contact. If there was no positive response from an officer, the lawyer’s duty is to let the client know about the difficulty so that the client can either assist in making contact or seek a suitable alternative remedy.
The Maderas came to Roller to extend their opportunity to continue working legally in the United States. It is clear that Roller was unable to obtain the U Visa. Once that avenue was foreclosed, he had a responsibility to clearly inform the Maderas that this was not possible. At that point, the client can ask the lawyer to continue his efforts, or end the relationship. If he could no longer help the Maderas, he should have given them the opportunity to employ someone who could help. This should have taken place before the opportunity to renew their work permits had expired rather than a continuing failure to obtain a result lasting for over one year. Roller neglected the legal matter by failing to complete the work or to inform the Maderas of his inability to continue to work for them.

RPC 1.4(a) - A lawyer should keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

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.

To keep a client reasonably informed requires the lawyer to adequately communicate regarding the steps necessary to pursue the desired result. At a minimum, there was confusion in the communication between Roller and the Maderas. Roller claimed that a U Visa was necessary. The Maderas clearly did not understand what was necessary but wanted to retain their work status. A lawyer cannot be faulted for attempting to explain a complicated matter when a client may not have the capacity to understand the issues involved. Nevertheless, the Maderas left it to the lawyer to identify and design a method to achieve the desired result.

Whether Roller was employed merely to obtain a U Visa, or for the broader purpose of renewing the Maderas’ work permits, Roller did not keep the Maderas informed of his progress. There are contradictions between Roller’s testimony and the Maderas’ testimony regarding whether law enforcement officials had been contacted. Even if there is an actual dispute over whether the officials were contacted, it is clear that Maderas did not know what efforts were made by Roller to contact law enforcement. Roller had a responsibility to inform the Maderas regarding the status of their case and, specifically, whether he was in contact with law enforcement officials. He had an obligation to inform them of this barrier and offer them alternatives for obtaining what was needed. Instead, the Maderas did not understand the complications experienced by Roller until it was too late to renew their work permits because he failed to inform them of the situation.

In addition, the Maderas came to Roller because they needed to do something to continue their ability to work. Even if Roller thought he was only pursuing a U Visa, he had an obligation to keep them apprised of his efforts when it was clear that he failed to complete that assignment. At a minimum, he should have told the Maderas that he was unsuccessful in obtaining a U Visa in order for the Maderas to make decisions regarding what else could be pursued to renew their work permits. This may have resulted in Roller discontinuing his
representation of the Maderas, or it may have notified the Maderas that they needed to aggressively pursue law enforcement officials to obtain approval. Instead, he failed to inform the Maderas of his lack of progress and the Maderas were required to go to another lawyer for help. By that time, the Maderas learned that nothing more could be accomplished. The consequence of this cannot be overstated. The harm is irreparable.

RPC 1.5(c)(3) - A lawyer shall not enter into an arrangement for, charge or collect a fee a flat fee agreement denominated as “earned on receipt” “nonrefundable” or in similar terms unless it is pursuant to a written agreement signed by the client which explains that: (i) The funds will not be deposited into the lawyer trust account, and (ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.

The form used by Roller did not comport with RPC 1.5. The form did not identify that if the lawyer failed to perform work, the client may be allowed a refund of all or part of the fee.

Roller testified that he was using the Bar’s form at the time of his meeting with the Maderas.

We do not find there is adequate information to show that Roller intentionally or willfully violated RPC 1.5(c)(3). If in fact the Bar provided these forms, Roller may have been negligent in not confirming that the forms were adequate. However, there is no showing that his conduct was willful. The Bar did not put on any evidence to show what forms were in use at the time and whether those forms complied with the applicable rules. As a result, there was not sufficient evidence for the Panel to conclude that this was a violation.

RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as … refunding any advance payment of fee or expense that he has not then earned or incurred.

As noted above, there is no question the Maderas did not receive a renewed work permit or U Visa. As noted by the Bar, the Maderas hired Roller to “obtain” an outcome. This required more than merely filling out forms that were never filed.

Roller claims that a flat fee was paid for this work and since he did perform work in response to their request, no refund is necessary. For his work, Roller was paid $1,500. When it was clear that he could not obtain the U Visa, he had a responsibility to identify that fact for the Maderas and suggest an alternative option or to withdraw from representation. At that point, some portion of the flat fee should have been refundable since the work was not completed.

Roller refused to refund any of the fee. This is a violation of RPC 1.16(d).
TORRANCE

Glen Torrance is retired and lives in Lincoln County, Oregon. TR 167–168. His retirement income is based off a pension, social security, and rental income from 20 rental units he owns with his wife. TR 168.

In January of 2014, Torrance was named as a Defendant in a Summons and Complaint filed in Lincoln County Circuit Court. Plaintiff was the Oregon Department of Transportation (ODOT). TR 169; see Exhibit 23. Torrance was named as a defendant along with several other local property owners in a condemnation action for work to be performed by ODOT on Highway 101 in Lincoln City. Exhibit 23. Torrance owned property abutting the back portion of a larger parcel of land owned by “Seida Land and Livestock” (hereinafter Seida). See Exhibit 41; TR 48–49. Seida’s property runs along the western edge of Highway 101 and is shown as Lot 13602 on Exhibit 41. TR 95. The Torrance property is 13403 and 13406. TR 95. It does not touch Highway 101. ODOT planned to expand Highway 101 along the front or east side of the Seida property which would also affect the side street along the south side of the Seida property. Torrance’s property touches the west side of the Seida property with an easement along that property line allowing access to the side street. TR 95–96. The side street easement ran parallel to Highway 101, appurtenant to the back portion of Torrance’s properties.

Torrance hired Roller to handle this matter on Torrance’s behalf. TR 171. Roller was a tenant in one of Torrance’s buildings in Lincoln City. TR 225. Torrance wanted to “give Dale a chance” even though he did not know if Roller had handled condemnation actions in the past. TR 171.

Torrance initially asked Roller if he would agree to split the proceeds of any recovery as Roller’s fee. TR 177. Roller declined the offer and instead wanted to bill at an hourly rate of $250 per hour. TR 175. Roller assured Torrance that the hourly fee would not ultimately impact Torrance as the State would ultimately pay Roller’s legal fees. TR 173.

Torrance believed that Roller’s fees would not exceed $2,500. In any event, he was not concerned because Roller had assured him the State would be responsible for all the fees. TR 175. No fee agreement was signed. TR 174. Torrance gave Roller a $2,000 retainer. TR 173, 225.

Torrance had very little communication with Roller over the next several months while the case was pending. TR 178, 180.

Roller filed a Notice of Appearance on behalf of Torrance. See Exhibit 24.

Nichole DeFever testified at the hearing. She is the Department of Justice lawyer who handled the condemnation matter for the State. TR 47–48. Upon receiving the Notice of Appearance, Nicole DeFever sent an e-mail to Roller indicating that mediation with retired Judge Sid Brockley was scheduled for April 22, 2014. See Exhibit 24A. She invited Roller to attend on behalf of the Torrances. Roller came to the mediation and spoke briefly with DeFever.
and Judge Brockley. Mediation was terminated without any substantive discussions regarding Torrance. TR 56.

On or about April 30, 2015, the State filed an offer of compromise in the amount of $450,000. TR 60; see Exhibit 26. The offer was a joint offer to all defendants who appeared in the proceeding. Only Seida and Torrance had filed appearances. TR 60–61.

The offer was accepted by Seida and Torrance on May 7, 2014. See Exhibit 26. Mr. Roller confirmed that Torrance would receive $5,000 of the $450,000 amount. See Exhibit 26A. The offer of compromise, if not accepted by the defendants, cuts off any attorney fee claim by the property owners if the property owners if the case is settled or the property owners do not get a better result at trial. TR 44–46.

Roller communicated the $5,000 offer to Torrance on May 7, 2014. TR 182–183. Torrance told Roller to accept the money and close the file. TR 182–183. Despite this direction, Roller wanted to continue with the case in some capacity. TR 227.

On May 9, 2014, the State sent a proposed form of judgment to the parties plus a request for each party to provide confirmation and support for their attorney fees. See Exhibit 26A.

The attorneys for the parties conferred, but could not agree on the form of judgment. The State notified the Court of this dispute on June 5, 2014, and provided a copy of the State’s proposed form of judgment. See Exhibit 26B. Pursuant to the letter to the Court, Defendants were to provide their own proposed version of the Judgment to the Court. Id.

On June 5, 2014, the attorney representing Seida filed an answer with counterclaims. See Lincoln County Circuit Court docket index, Exhibit 21 at 5 of 10. Seida was asking for additional nonmonetary accommodations from the state in the form of access to and from his property from Highway 101. TR 72. These requests did not directly involve the property owned by Torrance. TR 72. The state did not accept Seida’s requested relief. TR 71.

On June 10, 2015, the attorneys appeared for a status conference, at which DeFever clarified that Torrance would accept $5,000 to settle the case. TR 64. The only continuing dispute involved Seida’s counterclaims. TR 64. On June 10, 2014, DeFever offered Roller an opportunity to enter a limited judgment for Torrance in order to settle that portion of the case and receive the $5,000 payment. TR 63–64. Despite these discussions, Roller did not agree to the filing of a limited judgment.

DeFever prepared motions to strike or dismiss the counterclaims filed by Seida. TR 64–65. On or about June 24, 2014, she requested an extension from Seida and Torrance for additional time to file the motions. See Exhibit 27. Presumably Seida agreed to the extension. Id. Roller, on behalf of Torrance, would agree but only on the condition that his clients “may be awarded reasonable attorney fees and costs beyond the date of acceptance of the offer of compromise.” Id. DeFever refused and again offered to send a limited judgment for Torrance. Id.
Torrance had no further communication with Roller from May 8 until September 3, 2014. TR 185–186. Roller continued to review documents and to perform work on behalf of Torrance during this time. Roller did not provide a bill for his services to Torrance during this time, even though his website states that he provides monthly billing statements to clients.

On September 3, 2014, Torrance received an email from Roller regarding a “settlement document.” See Exhibit 27A; TR 185–187. Roller asked Torrance to sign an “Additional Settlement Agreement” that included the State and Seida. See Exhibit 28; TR 187–188. Roller met with the Torrances. Both Mr. and Mrs. Torrance were not happy upon learning that Roller had continued working on the file after they instructed him to accept the settlement amount. TR 187–188; see Exhibit 28. During this meeting, Roller explained that the Torrances “could get more” from the State. TR 228. Roller wanted another $2,000 and an agreement that Torrances would pay his fees “if ODOT didn’t.” TR 228. The Torrances threw the papers on Roller’s desk and walked out. TR 228–229.

A Stipulated General Judgment was eventually negotiated and signed by Seida on September 11, 2014. See Exhibit 29. Roller signed the judgment on behalf of the Torrances on September 12, 2014. See Exhibit 29.

On September 29, 2014, Roller filed an attorney fee petition as part of his claim for fees and costs. See Exhibit 30. He claimed $19,350 in fees. See Exhibit 30. The state objected. See Exhibit 31. The State argued that $7,950 of the fee amount came after service of the offer of compromise. See Exhibit 30.

On January 29, 2015, the Court heard argument on the attorney fee claim. See Exhibit 31B. The court awarded $11,000 in attorney fees to Torrance based on Roller’s submission. See Exhibit 31B. Due to illness of the judge and some administrative difficulties, the supplemental judgment awarding attorneys fees did not get filed until July, 2015, but was entered nunc pro tunc on January 29, 2015. See Exhibit 31B.

Roller’s next communication with Torrance was an email on August 1, 2015. TR 191. See Exhibit 32. Roller told Torrance the Court awarded $11,000 in fees. Roller went on to tell Torrance that as of the offer of compromise he had accrued $13,686 in fees. See Exhibit 32. Torrance again was upset and demanded an itemized statement of fees. TR 191–192. See Exhibit 32. In that communication, Roller claims that Torrance had agreed to additional fees through an “additional contract.” See Exhibit 32. Torrance expressly denies signing an additional contract. TR 192–193.


Torrance was given a bill from Roller asking Torrance to pay over $19,000 in billed fees. See Exhibit 34. This is the first time Torrance received a billing statement from Roller. TR 193.
Torrance never received the $11,000 payment from the State. TR 191–192. On or about July 9, 2015, the check was deposited into Roller’s account and used by Roller. TR 325–332; see Exhibit 90.

The billing statement from Roller shows a number of large time entries. For example, during the initial stage of representation, Roller billed for over 21 hours of research time. TR 311; see Exhibit 34. Roller admits that he knew nothing about condemnation when he agreed to handle this case. TR 309.

The bill also shows travel time from Salem to Lincoln County, despite the fact that Roller had a Lincoln City office. TR 329–332.

The billing statement does not account for the $2,000 retainer. TR 201.

No signed fee agreement was produced at the hearing. TR 332. The Bar produced Roller’s unsigned agreement. See Exhibit 35. Roller testified that he gave the original to the Bar when it was performing its investigation. TR 332–334. The fee agreement applies a 20% per month interest charge for amounts past due over 30 days. TR 333.

Roller billed 4.1 hours for appearance at a hearing on June 10, 2014, in Newport. TR 342; see Exhibit 34, at 3. He testified that he “probably” appeared for the hearing. TR 343. However, the Court docket shows that this hearing was by telephone. TR 344; see Exhibit 21. Roller could not explain the discrepancy. TR 345.

Roller admitted that he did not keep detailed time records. TR 376–378. Instead, to create Exhibits 30 and 34, he recreated the events from memory and review of the court’s docket sheet. TR 376–378.

RPC 1.2(a) - A lawyer shall abide by a client’s decisions concerning the objectives of representation and as required by Rule 1.4 shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter.

Glen Torrance hired Roller despite knowing that Roller had no experience with condemnation actions. Both Glen Torrance and his wife testified that they initially hired Roller to see if there was some payment due from the condemnation action. Glen Torrance believed that the action would net him around $5,000. Torrance believed the matter could be resolved with expenditure of approximately $2,500 in attorney’s fees.

Within a few weeks of being retained, the State made an offer of compromise allocating $5,000 to Torrance. Torrance told Roller to take the money and end the case. Despite this direction, Roller continued to handle matters related to the case.

There may be some justification for Roller to continue to work on the case since the Seida portion of the case had not yet settled. Seida continued to make demands and file papers
that could conceivably impact Torrance. Seida’s lawyer had not worked out a complete resolution with the State. Roller cannot be completely faulted for continuing to review the filings made by the Seida in order to ensure that there is no further impact on Torrance’s property.

Nevertheless, Roller’s conduct was contrary to his client’s instructions to stop working on the matter. Roller’s failure to consult with Torrance to determine if additional work should be performed amounts to a violation of the rule. In May of 2014, Torrance told Roller to take the $5,000 and end his work. The State offered a limited judgment with the express purpose of dismissing Torrance from the lawsuit. This would have allowed the State to continue its dispute with Seida while relieving Torrance from any ongoing involvement with the case. At that time, Roller was aware that it was the State’s position he was not entitled to additional attorney fees for his involvement. Torrance had already provided clear direction to Roller that he was at the end of his authority to act on behalf of the client. If Roller felt it necessary to continue his involvement in the battle between Seida and the State, Roller should have informed Torrance of the risk and cost of accepting the limited judgment versus remaining active in the case. Instead, Torrance heard nothing from Roller through most of the summer of 2014.

In September of 2014, Roller asked Torrance to come to his office to review some additional documents that needed approval. An “additional settlement agreement” had been prepared to resolve the matter with both Seida and the Torrance since they were still active parties in the case. When Torrance went to Roller’s office in September, he and his wife refused to sign the additional settlement agreement. They also refused to sign an additional legal services contract allowing Roller to continue work.

Roller violated RPC 1.2(a) by failing to consult with Torrance after the matter was settled for $5,000. He unilaterally chose to continue representation presumably to bill additional hours that hopefully would be paid by the State. Roller had an obligation to discontinue representing Torrance after he was directed to take the settlement. He should have stopped work or advised his client regarding the need for continued representation with a request for permission to continue. If the client refused to consent to additional work, Roller must stop or withdraw.

RPC 1.5(a) - A lawyer shall not charge or collect an illegal or clearly excessive fee.

Roller charged $19,350.00 in legal fees. This amount included a number of items that were clearly excessive.

Roller charged 21.7 hours for legal research ($5,425) to provide a base of knowledge to handle a condemnation action. It is clear that Roller had no prior experience. A lawyer may represent a client in an area of the law in which the lawyer has no prior experience. To do so, the lawyer must make a reasonable effort to apprise himself of the relevant law in order to competently handle the matter. This preparation should not be charged to the client unless the client expressly agrees to pay for such training. In this case, charging Torrance a fee of
$250 an hour for over 20 hours of work, to learn the basics of a condemnation defense, especially in light of a recovery of $5,000, is excessive.

Roller also claimed excessive fees for travel time. Roller has an office in Lincoln City Oregon. Round trip travel from Lincoln City to Newport is approximately two hours. On at least two occasions, Roller charged Torrance over four hours for trips to Newport. Roller testified that these trips were from his Salem office. This is an excessive fee given that Roller has an office in Lincoln City and the attorney client relationship was arranged through that office.

The total amount of fees charged by Roller is also clearly excessive. Roller claimed over $19,000 when he filed his claim for attorney’s fees with the Court. RPC 1.5(a) provides several factors to consider when evaluating the reasonableness of a fee. Two of these factors are particularly important when reviewing Roller’s fees:

(4) the amount involved and the result obtained; and
(5) the time limitations imposed by the client or by the circumstances.

Roller argues that the additional work was necessary to represent Torrance. The Panel does not find this to be credible. Torrance went into this condemnation proceeding with a limited interest in determining if he was entitled to some immediate payment. The party primarily affected by the condemnation action was Seida. Initially, Torrance asked Roller to take this case on a contingent fee basis; i.e. Torrance and Roller would split any recovery. Torrance clearly understood and conveyed to Roller that this matter was not going to produce a significant return for Torrance. Despite this intention, Roller demanded that the case be billed by the hour telling Torrance the State would pay the fee.

It is clear that at some point, Roller lost touch with the “amount involved and the result obtained.” The fee charged to his client became disengaged from the reality of what he could obtain for the client. At some point, Roller’s charges were generated not for the client’s interest, but instead as a method to “churn” the file to obtain a greater return for himself. Roller did not see this as unreasonable since he always saw the State as the party ultimately responsible for his fees. When the State objected to the fees and refused to pay the full $19,000, Roller turned the fee claim back against Torrance. By this time, he clearly had exceeded a reasonable fee. Torrance had “imposed” a time limitation that Roller earlier disregarded. Torrance wanted the matter done. Roller continued representation despite his client’s limitation. The fee charged was no longer reasonable under these circumstances.

One final note. In discussing his billing statement, Roller admits that he created the statement after the fact. He did not keep time records nor identify exactly what work was performed and when that work was performed. There were questions as to whether Roller attended a hearing on June 10, 2014. Roller charged 4.1 hours to “attend” this hearing. See Exhibit 34. The court docket sheet indicates that this was a telephone hearing scheduled to last no more
than 30 minutes. See Exhibit 21. When questioned at the hearing, Roller could not explain the discrepancy. TR 345. Based on the record, the panel finds that Roller charged the client for personal attendance, including travel time, for a matter that was handled on the phone.

Finally, when Roller sent his billing statement, he did not offset the total amount by the $2,000.00 retainer paid by Torrance. In addition, the fee amount paid by the state, $11,000.00, went directly to Roller. Torrance did not receive the offset for that amount. Demanding payment from the client for $19,000 when the client had already paid $2,000 and the state had paid $11,000 was clearly inappropriate and excessive.

These items amount to a clear disregard and violation of RPC 1.5(a).

POINTER

In February of 2012, Kelly Pointer was looking for a bankruptcy attorney. She eventually found Mr. Roller. Roller said he was willing to do the bankruptcy and cover all fees and costs for $1,000.00. TR 232-233.

Pointer had previously filed bankruptcy. Roller was made aware of this fact in the initial phone call. TR 233. Pointer met with Roller on February 14, 2012. TR 233. No fee agreement was signed. TR 234. Roller merely had Pointer fill out a client intake form. See Exhibit 51. Roller never told her he would do the work on a “flat fee” basis. TR 235. Roller cashed the check February 25, 2012. See Exhibit 51.

Pointer gave Roller many documents at the first meeting or shortly thereafter. TR 236. Over the course of the next several months, Pointer continued to correspond with Roller regarding her bankruptcy. See Exhibit 52. On April 5, 2012, Roller indicated that he would be scanning all the original documents and returning them to her by the end of the week. TR 237–238; see Exhibit 52. She needed the documents to apply for food stamps. TR 237. She did not receive the documents.

On May 1, 2012, Roller asked Pointer when she last received a discharge of bankruptcy. See Exhibit 52. Pointer responded that Roller had all of her bankruptcy documents. See Exhibit 52.

On May 28, 2012, Roller indicated that Pointer would need to wait 8 years after the last discharge from bankruptcy. See Exhibit 52. Pointer responded that she wished she had known this before she paid for his service. See Exhibit 52. Roller indicated that he would need to do more research to determine the exact date when she could file. TR 241; see Exhibit 52.

By July 9, 2012, Pointer still had not heard anything from Roller. See Exhibit 52. She noted collection calls were “overwhelming” and she would need to disconnect her phone if this could not be resolved in bankruptcy. See Exhibit 52. Roller responded August 17, 2012, stating that he could meet her next week. See Exhibit 52. There was confusion about the time and the ability to meet. See Exhibit 52.
They finally met in September of 2012. TR 243. Roller told Pointer that she would need to wait until 2013 to file again. TR 245. He did not offer to give her money back. TR 245.

Pointer waited almost a year and emailed Roller on June 14, 2013, asking for help to file in September. See Exhibit 54. Roller responded on September 12, 2013, asking Pointer to schedule an appointment. See Exhibit 54. Roller sent an e-mail September 24, 2013, asking Pointer to bring certain information, including a check for $306 for the bankruptcy court “filing fee.” See Exhibit 54. Pointer responded that when Roller was originally hired she paid $1,000, which covered the filing fee. See Exhibit 54. An appointment was scheduled for October 16, 2013. See Exhibit 54. The result of the meeting was a request by Roller for more information from Pointer. TR 250–251.

At some point, Pointer explained that she could not pay the $306 filing fee. TR 252. Roller indicated that she could avoid paying the filing fee if she agreed to represent herself. TR 252. He eventually provided her with forms to do the same. See Exhibit 59.

Pointer last communicated with Roller in November of 2014. See Exhibit 56. In June of 2014, Pointer attempted to contact Roller to get a refund for her unfiled bankruptcy fee of $306. See Exhibit 60. She indicated that she no longer needed his services.

Pointer went to another attorney and paid $1,275.00 in fees and $306.00 in court costs to receive a bankruptcy discharge in a short amount of time. TR 256.

Roller never returned any money. TR 257.

RPC 1.4(a) - A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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.

Roller was hired by Pointer in February of 2012. At that time, she paid $1000 for work to be done by Roller. The initial question posed to Roller was when Pointer could file bankruptcy given that she had previously filed a bankruptcy. Pointer gave Roller sufficient information to answer this question at their first meeting. By that time, Pointer had paid the $1,000 fee.

Pointer followed up on this question and the status of her matter in February, March, April, and May. Roller again asked her when she had last filed bankruptcy. Pointer replied that she could not recall, but that Roller had all of her paperwork.

Based on testimony and exhibits, Roller did not respond to this question until approximately May 29, 2012. He explained that it would be September of 2013 before she could file again.

Roller’s inability to answer this preliminary and seemingly basic question violates both RPC 1.4(a) and RPC 1.4(b). Roller failed to “promptly comply” with Pointer’s reasonable
requests for information regarding her bankruptcy including the fundamental question of when she could next file. Furthermore, his inability to answer this question during their first meeting made it impossible for Pointer to determine if she wanted to hire Roller and pay him a $1,000.

Roller notes that in late 2013 and through much of 2014 he was ill and taking heavy medication. During this time, Roller did not inform Pointer that he was unable to proceed with the work he was hired to do and he did not provide for anyone (another attorney or support staff) to follow up with his clients.

Generally, when a lawyer is unable to perform work, there is a duty to make an arrangement for someone else to respond to client inquiries. See In re Snider, 348 Or 307, 232 P3d 952 (2010); In re Koch, 345 Or 444, 198 P3d 910 (2008).

Roller’s conduct violates RPC 1.4(a) and RPC 1.4(b).

RPC 1.5(c)(3) - A lawyer shall not enter into an arrangement for, charge, or collect a fee denominated as “earned on receipt” “non refundable” or in similar terms unless it is pursuant to a written agreement signed by the client which explains that (i) the funds will not be deposited into the lawyer trust account as (ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.

RPC 1.15-1(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 or earned or expenses incurred, unless the fee is denominated as “earned on receipt” “non-refundable” or similar terms in compliance with rule 1.5(c)(3).

There is no evidence that Roller entered into a written flat fee agreement with Pointer. There was testimony that Roller quoted a flat fee. However, no written agreement was produced. This is a clear violation of the rule.

Roller’s response is that even if he had entered into a written agreement at the time, he would have been using the Bar’s form which was apparently non-compliant. Roller claims that this amounts to a waiver of any right to prosecute him for this deficiency.

This argument is without merit. Roller admits that he did not have a flat fee agreement with Pointer. The Bar does not waive its right to prosecute based upon speculation regarding an event that did not take place.

Roller also asserts that the bottom half of his client-intake form is an “abbreviated written fee agreement.” See Exhibit 51. This is spurious. The lower half of the form specifically states that it is “For Office Use Only.” There is no indication that this form was given to Pointer as a fee agreement. Furthermore, the writing in this section of the form merely acknowledges the receipt of $1,000 and “pay in full.” This is not a fee agreement.
Roller’s conduct violates RPC 1.5(c)(3). This also leads to a violation of RPC 1.15-1(c). There was no written fee agreement. Roller had a responsibility to deposit the money into his trust account to be withdrawn only as fees were earned. An oral agreement regarding a retainer and whether it is non-refundable does not provide a basis for an attorney to treat the client’s funds as his own. See In re Fadeley, 342 Or 403, 153 P3d 682 (2007).

RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interest, such as . . . refunding any advance payment of fee or expense that he has not earned or has been incurred.

Upon termination of the attorney-client relationship, Roller had an obligation to return any “advance payment of fee or expense that has not been earned . . .” Pointer requested return of the $306 filing fee. Roller did not return this amount. This is a violation of RPC 1.16(d).

RPC 8.1(a)(2) - A lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

The bar gave significant notice to Roller regarding Pointer’s complaint. Two letters [Exhibit 67 (March 3, 2016) and Exhibit 68 (March 25, 2016)], a phone message [Exhibit 71 reference in e-mail], and an e-mail follow-up [Exhibit 71] culminated in Roller claiming that he did not see “either” of the letters. Roller responded on April 21, 2016, by email and a voicemail message to the Bar. Roller claims a lack of memory.

RPC 8.1(a)(2) does not provide a time for response. As a result, Roller’s response cannot be considered blatantly untimely given that he did respond within 50 days of the first letter. However, Roller’s e-mail to the Bar on April 21, 2016, indicates an effort to avoid a substantive response. Roller claims that he did not see either letter because he was working in his “home office.” The letters were mailed to Roller’s office address at 161 High Street #243, Salem, Oregon. This is the same address noted on Roller’s letterhead that was supplied to the Bar in his response of April 22, 2016. See Exhibit 72. It is highly unlikely that Roller failed to see letters addressed to his office over a one-month period merely because he was “working from home.”

This is a violation of RPC 8.1(a)(2).

MADDEN

Kimberly Madden was looking for a bankruptcy lawyer in 2012. She found Roller through a Craigslist ad. Roller advertised that he would “barter” for services. TR 261.

Madden agreed to give Roller a four-wheeler “quad” in exchange for Roller’s assistance in filing her bankruptcy. TR 261 The agreed upon value of the quad was $1,100.00. TR 262. She drove it to Roller’s parents’ house in Independence. TR 262. She claims that a receipt was given, but she cannot find it. TR 262. Based on her recollection, the receipt merely stated “bankruptcy paid in full per quad.” TR 262.
There is no written fee agreement. TR 262.

A few months after hiring Roller to complete her bankruptcy, Madden had a change of heart. She asked Roller to “put the matter on hold.” TR 263. She did not ask for return of the quad. Instead, Madden indicated she would return to Roller’s office sometime later to go forward with bankruptcy. TR 263.

In March of 2015, Madden contacted Roller to pursue the bankruptcy. TR 264; see Exhibit 81. She completed the necessary forms and collected her papers for a visit with Roller. See Exhibit 81. She met him on March 26, 2015. TR 267. She paid Roller $320.00 as a filing fee to initiate the bankruptcy. TR 266.

On April 10, 2015, Madden asked Roller if the bankruptcy filing was ready for her signature. TR 269; see Exhibit 81. Roller responded on April 22, 2015, indicating a “paralegal” was working on the paperwork. See Exhibit 81.

Madden next contacted Roller on June 17, 2015. TR 270. She was concerned that her bank account may be garnished. She emphatically asked Roller “... can we get this bankruptcy filed ASAP PLEASE?!?” TR 270; see Exhibit 81.

On July 13, 2015, Madden e-mailed Roller regarding her job change and details regarding her bankruptcy. See Exhibit 81. On July 22, 2015, Madden’s truck was repossessed. TR 271; see Exhibit 81. She reviewed a bankruptcy petition prepared by Roller, signed it, and sent a picture of the signed document back to Roller. TR 272. She assumed that everything was a “go” to file the petition. TR 272.

By August 11, 2015, the petition had still not been filed. She emailed Roller. He responded asking her for “new” pay stubs. TR 272; see Exhibit 81. She sent him the pay stubs. TR 273; see Exhibit 81.

As of September 1, 2015, the bankruptcy was not filed.

Madden began looking for a new lawyer to file the bankruptcy. TR 274–275. At some point (presumably in the fall of 2015) she sent Roller an e-mail “firing” him. TR 275. She requested a return of her money. TR 275. Roller did not return or refund any of her money. TR 276.

Madden found another lawyer to file the bankruptcy. TR 275–276. It was completed and filed within a few months for a cost of $1,400. Id.

Roller testified that he tried to return $320 to Madden. TR 358–360. He purchased a money order from the US Post Office. Id. Roller claims he used the exact cash Madden had given him to purchase the money order. TR 362. According to Roller, he gave $320 to the post-office clerk but “mistakenly” received a $3.20 money order. See Exhibit 99. Roller did not send the $3.20 money order to Madden, nor did he make a claim with the Post Office for $316.80. TR 363-364.
RPC 1.3 - A Lawyer shall not neglect a legal matter entrusted to the lawyer.

Madden’s bankruptcy was a simple and straightforward matter. Roller did not get the matter completed. Madden renewed her interest in filing bankruptcy in March of 2015. By the fall of 2015, nothing had been filed. Roller’s only response was that his office was “very busy” and it was difficult to communicate through Facebook.

The “justifications” by Roller are not credible. The delay and eventual failure to complete the bankruptcy show a clear violation of the rule.

RPC 1.15-1(c) - A lawyer shall not deposit into a lawyer trust account legal fees and expenses that have not 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 fee on receipt,” “nonrefundable” or “similar terms and complies with Rule 1.5 (c)(3).

Madden paid Roller with a “quad.” She testified that a receipt was given when she presented the vehicle to Roller. The receipt merely stated, “bankruptcy paid in full per quad.” Madden cannot find a copy of the receipt.

Roller claims that a fee agreement was signed. He cannot find the agreement.

We find Madden’s testimony to be more credible.

Roller took the quad and did not return it for commensurate value to Madden. Even more egregious, he took Madden’s $320 filing fee and held it in a safe rather than in a trust account. TR 362-363. These acts clearly violate RPC 1.15-1(c). Roller took those funds, which had been entrusted to him for the filing fee, to exchange them for a money order. He did not confirm the amount of the money order prior to leaving the post office. When he did notice the amount was incorrect, he did not take steps to address the problem. He did not inform Madden of the situation. He did not return any of the funds to Madden. He did not produce the money order he alleged he received from the USPS. Roller’s version of these events is not credible.

He violated RPC 1.15-1(c).

RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as . . . refunding any advance payment of fee or expense that has not been earned or incurred.

Roller failed to complete the bankruptcy filing. Even if he was working under a flat fee arrangement (which the panel does not believe is accurate), he was obligated to return any portion of the fee that was unearned. More importantly, Roller was clearly obligated to return the $320.00 filing fee. Roller’s explanation regarding he $3.20 money order is not credible and does not justify his failure to return the funds.

This is a violation of RPC 1.16(d).
GENERAL OBSERVATIONS REGARDING ROLLER’S PRESENTATION AND CREDIBILITY

Roller appeared on the first day of the hearing wearing a baseball cap and an outdoor fleece-type pull-over jacket. His behavior during the hearing was at times disruptive and not appropriate for the serious nature of the charges leveled against him. At various times, Roller wore a cap down over his eyes. He did not seem to be aware of the typical decorum for such a proceeding. During the testimony of many witnesses, Roller would lean back in his chair with his hands clasped behind his head. Sitting in this manner exposed his bare midriff. The panel found this to be unprofessional and distracting. Roller’s body language and demeanor were hostile. At times during the testimony of the Bar’s witnesses, Roller would cross his arms defiantly in a manner suggesting that he was non-verbally commenting on the credibility of the witness.

At the outset of the hearing, Roller stated he was “not a lawyer” and that the Bar did not have authority to proceed with the case. TR 14. However, he admitted that the Bar had sent him a notice of suspension and that his attorney website was still up and running. TR 300-301.

On the morning of the second day of trial, the panel and bar counsel received an e-mail from the Accused stating, “I am running about 15 minutes late. Sent from my iPhone. www.daleroller.com.” The text specifically referenced his attorney website and when ‘clicked,’ the website was still active. There was no explanation or apology for being late. When he arrived for trial at 9:19 a.m., nineteen minutes late, he looked disheveled. His hair was sticking out from underneath his cap, upon which “Guiness” was prominently displayed. He was unshaven.

At various times throughout the hearing, Mr. Roller indicated that he was unable to read material documents or exhibits because he did not have his glasses. See, e.g., TR 15. He repeatedly commented that he could not see documents because he had “poor eyesight,” “my eyes hurt,” or because he “forgot” his glasses. See, e.g., TR 322. These comments were manytimes made at a time when the content of the document contradicted his position; e.g., “I don’t have my glasses.” TR 323, 324, 325; “I’m not looking at the writing anymore. My eyes hurt, and there’s [sic] a lot of words here.” TR 342. In contrast, he was, at other times, capable of reading and commenting on documents with similar sized font. See, e.g., TR 311-312.

During the Accused’s testimony, it became apparent that he had not reviewed the details of his representation regarding the matters brought forward by the Bar. See, e.g., TR 376. Mr. Roller did not have an accurate memory of many of these matters and he was unprepared to answer questions. See, e.g., TR 323–324, 326–327. Even more concerning was his testimony that he does not consistently keep notes on cases and therefore it would be impossible for him to reconstruct details of these matters with any accuracy. TR 376-377. He further testified that any information about how to proceed with a case would be “in my head.” TR 311. Because he does not keep notes for cases, he was unable to recall when a hearing was held, what occurred at the hearing, who was present, or which judge presided. He apparently
did very little to prepare for the hearing in terms of reviewing the court files to determine what
had occurred.

When faced with difficult questions, his tone of voice was sometimes sarcastic, particularly when stating that he “did not recall” the details of an event. He would sometimes say things like, “I believe I told him I had no experience in condemnation cases,” but then pause a moment before adding, “but I don’t recall.” TR 310. For example, when bar counsel asked him if he wanted to look at his billing records to determine if he really spent 21.7 hours researching condemnation prior to filing his response, he replied, “[n]ot really.” TR 311.

**SANCTION**

In fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanction* (“Standards”). The *Standards* require that Roller’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 duties owed to clients warrant significant consideration in evaluating lawyer misconduct. In this case, Roller was entrusted with matters that were extremely important to the Maderas (maintaining their ability to work), Madden (a bankruptcy to keep her truck from being repossessed), and Pointer (timely advice regarding bankruptcy). Roller also failed to follow client instructions and return client property in a timely manner. These acts caused injury to the clients through loss of work opportunities and material possessions.

b. **Mental State.**

Throughout the representation of these clients, Roller was aware that he had not accomplished their objectives (the Maderas, Pointer, and Madden) or that he was not following the client’s directives (Torrance). He clearly failed to return client property or account for the amount owed to clients by failing to return the filing fees to Pointer and Madden and by failing to offset the amounts paid in retainer and the State’s payment from the amount billed to Torrance. The Panel finds that these were knowing or intentional acts.

c. **Injury.**

The injury to the Maderas was significant. Both Mr. and Mrs. Madera had successfully worked in this country under a work permit. According to the testimony at hearing, the Maderas lost their opportunity to renew their work permits. Both Pointer and Madden gave Roller money for filing fees that was not returned.
d. Preliminary Sanction.

The Panel finds that an appropriate preliminary sanction is suspension for a period of at least four years. This is based on the knowing failure of Roller to perform services for the clients and the very real injury caused to these clients.

e. Aggravating or Mitigating Circumstances.

Aggravating circumstances include 1 through 7 listed below:

1. Prior Discipline: Standards § 9.22(a). The Panel notes that Roller is subject to prior discipline. A previous trial panel heard evidence and issued an opinion dated July 11, 2016. See Exhibit B in Bar’s exhibits. The panel recommended a four-year suspension which was affirmed by the Supreme Court on March 9, 2017. This prior discipline represents a significant pattern of misconduct that suggests Roller is not fit for the practice of law.

   The fact that this prior discipline is very recent is more troubling. In the case considered by the current trial Panel (April, 2017), Roller represented himself in a manner that did not comport with respect for or an understanding of the importance of the proceeding. Given that he had been recently sanctioned (March 2017), one would expect a greater sensibility to the serious nature of the charges in the current proceeding and restraint in the aggressive denial of his failures. Instead, the Panel observed defiance and a lack of recognition that his actions caused any harm.

2. A pattern of misconduct. Standards § 9.22(c). This is shown by the prior record of discipline. The matters identified in the earlier disciplinary proceeding show failures to keep clients informed, conversion of client money, and collection of excessive fees. These are all matters considered in the current disciplinary proceeding.

3. Dishonest or selfish motive. Standards § 9.22(b). At times Roller’s conduct was selfish. He took money from clients and immediately converted it to his own use without posting the same in a trust account to keep track of the payment in the event some or a portion should be returned to the client. These acts show that Roller was more interested in collecting and using the money for his own purposes than respecting the payment as client property until such time as it could be used for the client’s interests.

4. Multiple offenses. Standards § 9.22(d). There are several offenses alleged for each of the clients noted.
5. **Bad faith obstruction of disciplinary proceeding.** *Standards § 9.22(e).* There is one instance of failure by Roller to respond to the Bar. Roller claimed that he did not see the Bar’s letter, as he was working at home. The letters span a one-month time period. The Panel does not find Roller’s explanation to be credible and, as a result, finds a bad-faith failure to timely respond to the Bar’s inquiries.

6. **Refusal to acknowledge wrongful nature of conduct.** *Standards § 9.22(g).* Throughout these proceedings, Roller did not make any effort to acknowledge any failure, even if nothing more than negligence, on his part.

7. **Vulnerability of victims.** *Standards § 9.22(h).* The Maderas, Pointer, and Madden are particularly vulnerable, given their lack of sophistication and limited financial capacity.

8. **Substantial experience in the practice of law.** *Standards § 9.22(i).* The Panel does not find that Roller has substantial experience in practicing law. This is not an aggravating circumstance.

9. **Indifference to making restitution.** *Standards § 9.22(j).* There was no significant discussion regarding restitution in these proceedings.

e. **Mitigating Circumstances.**

Mitigating circumstances include:

1. **Personal or emotional problems.** *Standards § 9.32(c).* Roller suggested that he was suffering from the effects of diabetes. However, there was no proof of the same introduced at the hearing, other than anecdotal information from Roller.

2. **Physical disability.** *Standards § 9.32(h).* There was no medical evidence regarding physical disability.

3. **Character and reputation.** *Standards § 9.32(g).* There was no evidence to make any finding under this mitigating circumstance.

4. **Remorse.** *Standards § 9.32(l).* As noted above, there was no evidence of remorse.

**CONCLUSION**

Based on the findings of this Panel in conjunction with the aggravating factors noted above, the Panel finds that Roller should be disbarred.
DATED this ______ day of June, 2017.

/s/ James C. Edmonds
James C. Edmonds, OSB #861842
Trial Panel Chairperson

/s/ Lorena Reynolds
Lorena Reynolds, OSB #981319
Trial Panel Member

/s/ Fadd Beyrouty
Fadd Beyrouty
Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 17-93
Complaint as to the Conduct of )
) M. CHRISTIAN BOTTOMS,
) Accused.

Counsel for the Bar: Courtney C. Dippel
Counsel for the Accused: Wayne Macksen
Disciplinary Board: None
Disposition: Violation of RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c). Stipulation for Discipline. 30-day suspension.
Effective Date of Order: December 31, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and M. Christian Bottoms is suspended for thirty (30) days, effective ten days after the stipulation is approved by the Disciplinary Board for violation of RPC 1.5(c)(3), RPC 1.15-1(a) and RPC 1.15-1(c).

DATED this 21st day of December, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Ronald W. Atwood
Ronald W. Atwood, Region 5
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

M. Christian Bottoms, attorney at law (“Bottoms”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Bottoms was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1996, and has been a member of the Bar continuously since that time, having had his office and place of business in Multnomah County, Oregon, until his license was suspended on December 1, 2015, pursuant to an Order Accepting Stipulation for Discipline entered by the Oregon Supreme Court on October 8, 2015.

3.

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

4.

On October 14, 2017, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Bottoms for alleged violations of RPC 1.5(c)(3), RPC 1.15-1(a), and RPC 1.15-1(c) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In March 2015, Misael Garcia (“Garcia”) was charged with Assault in the Fourth Degree and the Unlawful Possession of Methamphetamine in Multnomah County Circuit Court Case No. 15CR08630. Garcia’s family retained Bottoms to defend Garcia for a flat fee of $1,800. Garcia’s father paid Bottoms $1,000 initially with the remaining $800 to be paid by April 15, 2015. The parties did not enter into a written, signed fee agreement.

6.

Bottoms deposited the $1,000 that he received into his business account, not his lawyer trust account.
Violations

7. Bottoms admits that, by failing to execute a signed, written fee agreement to establish a nonrefundable, earned on receipt retainer, he violated RPC 1.5(c)(3). Bottoms further admits that, in the absence of a fee agreement that complied with RPC 1.5(c)(3), the funds paid to Bottoms remained client property until earned and Bottoms’s deposit of those funds into his business account and not his trust account violated RPC 1.15-1(a) and RPC 1.15-1(c).

Sanction

6. Bottoms 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 (“Standards”). The Standards require that Bottoms’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.** Bottoms violated the duties he owed as a professional to prepare and enter into the appropriate fee agreement. *Standards* 7.0. Bottoms violated the duties he owed to a client in preserving the property of the client by not depositing the unearned fees into his trust account. *Standards* 4.0.

b. **Mental State.** The Standards recognize three possible mental states: intentional, knowing, and negligent. *Standards* at 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. Knowledge is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Intent is the conscious objective or purpose to accomplish a particular result. *Id.*

   Bottoms acted knowingly when he entered into his nonconforming fee agreement with Garcia.

c. **Injury.** For the purpose of determining an appropriate disciplinary sanction, both actual and potential injury are taken into account. *Standards* at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). “Potential injury” is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. “Injury” is harm to a client, the public, the legal system or the profession which results from a lawyer’s misconduct. *Standards* at 9.
There was potential injury to Garcia in Bottoms’s failure to advise Garcia or his father of their right to a refund of fees paid in advance and his failure to place unearned fees in his escrow account.

d. **Aggravating Circumstances.** Aggravating circumstances include:


2. Substantial experience in the practice of law – Bottoms was admitted to practice in 1996. *Standards* § 9.22(i).

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


2. Full and free disclosure and cooperative attitude towards the investigation. *Standards* § 9.32(e).

7.

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. *Standards* § 7.2. 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. *Standards* § 4.12.

8.

Oregon case law also supports the imposition of a short suspension. See, e.g., *In re Coran*, 27 DB Rptr 170 (2013) (stipulated 30-day suspension for violation of RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.15-1(d), where lawyer’s flat-fee agreement failed to explain that the client could discharge lawyer at any time and in that event might be entitled to a refund of all or part of the fee if the services for which the fee was paid were not complete); *In re Ireland*, 26 DB Rptr 47 (2012) (30-day suspension for violations of RPC 1.15-1(a) and RPC 1.15-1(c) in failing to deposit client funds in trust upon receipt).

9.

Consistent with the *Standards* and Oregon case law, the parties agree that Bottoms shall be suspended for 30 days for violation of RPC 1.5(c)(3), RPC 1.15-1(a) and RPC 1.15-1(c), the sanction to be effective ten days after this stipulation is approved.
10.

Bottoms 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, Bottoms does not have any current client files.

11.

Bottoms 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. Bottoms 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.

12.

Bottoms 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. This requirement is in addition to any other provision of this agreement that requires Bottoms to attend or obtain continuing legal education (CLE) credit hours.

EXECUTED this 13th day of December, 2017.

/c/ M. Christian Bottoms
M. Christian Bottoms, OSB No. 962270

APPROVED AS TO FORM AND CONTENT:

/s/ Wayne Mackeson
Wayne Mackeson, OSB No. 823269

EXECUTED this 15th day of December, 2017.

OREGON STATE BAR

By: /s/ Courtney C. Dippel
Courtney C. Dippel, OSB No. 022916
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) )
Complaint as to the Conduct of ) Case Nos. 15-74, 15-75, 15-92,
) 16-160 & 17-65
JACULIN L. SMITH, )
) )
Accused. )

Counsel for the Bar: Nik T. Chourey
Counsel for the Accused: Richard G. Helzer
Disciplinary Board: None
Disposition: Violation of RPC 1.3; RPC 1.4(a); RPC 1.4(b); RPC 1.15-1(a); RPC 1.15-1(c); RPC 1.15-1(d) and RPC 1.16(d). Stipulation for Discipline. 6-month suspension with formal reinstatement.

Effective Date of Order: January 6, 2018

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Jaculin L. Smith is suspended for six months with the condition of BR 8.1 formal reinstatement, effective January 1, 2018, or 10 days after approval by the Disciplinary Board, whichever is later, for violation of RPC 1.3; RPC 1.4(a); RPC 1.4(b); RPC 1.15-1(a); RPC 1.15-1(c); RPC 1.15-1(d) and RPC 1.16(d).

DATED this 27th day of December, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Ronald Atwood
Ronald Atwood, Region 5
Disciplinary Board Chairperson
STIPULATION FOR DISCIPLINE

Jaculin L. Smith, attorney at law (“Smith”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Smith was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 2000, and has been a member of the Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

Smith 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 4, 2017, an Amended Formal Complaint was filed against Smith pursuant to the authorization of the State Professional Responsibility Board (“SPRB”) regarding Case Nos. 15-74, 15-75, 15-92, and 16-160, alleging violation of the following Rules of Professional Conduct (RPC):

Case No. 15-74 (Julie Canady): RPC 1.15-1(d) [duty to provide accounting promptly upon request] and RPC 1.16(d) [duty to protect a client’s interests on termination of representation];

Case No. 15-75 (Danielle K. Stone and Samantha J. Lucero): RPC 1.4(a) [duty to respond to client’s reasonable requests for information];

Case No. 15-92 (Susan A. Hargrave): RPC 1.4(a) [duty to respond to client’s reasonable requests for information] and RPC 1.15-1(d) [duty to provide accounting promptly upon request]; and

Case No. 16-160 (Stephanie Dobler): RPC 1.3 [neglect of a legal matter]; RPC 1.4(a) [duty to respond to client’s reasonable requests for information]; RPC 1.4(b) [duty to provide sufficient information for a client to make decisions regarding the representation]; RPC 1.15-1(a) [duty to segregate, safeguard, and maintain records of client funds] and RPC 1.15-1(c) [duty to deposit and maintain client funds in trust until earned].
5. On August 26, 2017, the SPRB authorized formal disciplinary proceedings against Smith regarding Case No. 17-65 (Aliz M. Smith-Dabah) for alleged violations of RPC 1.3 [neglect of a legal matter], RPC 1.4(a) [duty to respond to client’s reasonable requests for information] and RPC 1.4(b) [duty to provide sufficient information for a client to make decisions regarding the representation].

6. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Julie Canady Matter (Case No. 15-74)

Facts

7. On January 31, 2014, Julie Canady (“Canady”) hired Smith to represent her in a dissolution proceeding. Canady paid Smith a $2,500 retainer. Canady became dissatisfied with the pace of the representation and, on or about April 28, 2014, sent Smith a letter terminating Smith’s representation, requesting an accounting of her retainer and requesting that Smith return any unearned funds.

8. When, by mid-May 2014, Smith did not provide the requested accounting, Canady filed a complaint with the Bar. Thereafter, Smith provided an accounting of Canady’s funds in her possession by the end of August 2014, and refunded $807 at that time.

Violations

9. Smith admits that her failure to promptly provide a full accounting of client funds in her possession upon the request of her client and her failure to take steps reasonably practicable to protect her client’s interests, including refunding any advance payment of a fee that has not been earned, violated RPC 1.15-1(d) and RPC 1.16(d).

Danielle K. Stone and Samantha J. Lucero Matter (Case No. 15-75)

Facts

11.

In early 2014, Smith did not respond to Stone’s or Lucero’s request for new information, because Smith believed that she had no information to communicate.

12.

In April 2014, Smith had a telephone conference with both clients. At that time, Smith reports that she declined further representation of Stone and referred her to the Bar’s Lawyer Referral Program. Smith also reports that she stated that she would continue to represent Lucero, and explained to Lucero that it was necessary for her to provide Smith with the medical records as agreed upon in her attorney fee agreement.

13.

From April 2014 until September 2014, Lucero made numerous attempts to contact Smith by telephone, text, and email. Smith was aware of Lucero’s attempts to reach her, and also aware that Stone had made attempts to reach her, but did not respond to Lucero or Stone, and has not since communicated with Lucero or Stone relating to their legal matters.

Violations

14.

Smith admits that her failure to keep her clients reasonably informed about the status of their matter and to promptly comply with reasonable requests for information violated RPC 1.4(a).

Susan A. Hargrave Matter (Case No. 15-92)

Facts

15.

In March 2014, Susan Hargrave (“Hargrave”) hired Smith to collect debts related to child support and unreimbursed medical expenses. Hargrave paid Smith a $5,000 retainer.

16.

At a hearing on or about September 2, 2014, the child support debt was settled, and Smith discussed with Hargrave the objective of pursuing reimbursement for medical expenses.

17.

In the three weeks following the September 2, 2014 hearing, Hargrave attempted to contact Smith numerous times by phone and email to set up a meeting on the medical expenses. Smith was aware that Hargrave was attempting to reach her but did not respond.
18.

On September 27, 2014, Hargrave mailed Smith a letter terminating Smith’s representation and requesting a refund of the entire retainer. Smith did not respond to this request or provide the requested refund of Hargrave’s funds until March 2015.

Violations

19.

Smith admits that her failure to keep her client reasonably informed about the status of her matter and promptly comply with reasonable requests for information violated RPC 1.4(a). Smith further admits that her failure to promptly provide a full accounting of client funds in her possession upon request of her client violated RPC 1.15-1(d).

Stephanie Dobler Matter (Case No. 16-160)

Facts

20.

In February 2014, Stephanie Dobler (“Dobler”) hired Smith to update her child support obligation and recoup her overpayment to the support agency. Dobler gave Smith a $2,500 retainer to be billed against on an hourly basis (“Dobler retainer”).

21.

Smith deposited the Dobler retainer into her lawyer trust account, however Smith did not maintain adequate records and she did not send billings to Dobler reflecting earned fees in a timely manner.

22.

Between February 2014 and September 2015, Smith attempted to negotiate with the father of Dobler’s child with the intention to resolve the parties’ issues through settlement or an alternative dispute resolution. Smith’s attempts to negotiate with the father were unsuccessful. Smith failed to take other action to advance Dobler’s objectives, and she did not file an action to recalculate support or seek any court relief.

23.

At the outset of the representation, Smith’s professional opinion was that Dobler would be best served through an administrative hearing or alternative dispute resolution, rather than by going through the courts. However, Smith did not adequately explain to or advise Dobler that, in her professional opinion, Dobler’s legal interests would not be best served by going through the courts.
24.

Between February 2014 and September 2015, Smith did not provide Dobler with invoices in connection with her legal matter or promptly respond to Dobler’s messages requesting an update on her legal matter.

25.

On April 2, 2015, and on May 27, 2015, after waiting at her office on a number of occasions, Dobler was able to catch Smith at her office and request updates on her matter. On both occasions, Smith expressed to Dobler that she “felt terrible” she had not filed the child support order and promised to devote “next week” to getting the matter done. However, Smith did not complete the matter.

26.

In or around mid-September 2015, when Smith had not filed anything or resolved her matter, Dobler terminated her services.

**Violations**

27.

Smith admits that her failure to take action on behalf of her client was neglect of a legal matter entrusted to her in violation of RPC 1.3. Smith further admits that her failure to keep her client reasonably informed about the status of her matter and promptly comply with reasonable requests for information and her failure to explain a matter to the extent reasonably necessary to allow her client to make informed decisions regarding the representation violated RPC 1.4(a); RPC 1.4(b). Smith admits that her failure to segregate, safeguard, and maintain records of client funds and her failure to deposit and maintain client funds in trust violated RPC 1.15-1(a) and RPC 1.15-1(c).

**Aliz M. Smith-Dabah Matter (Case No. 17-65)**

**Facts**

28.

In July 2013 Aliz M. Smith-Dabah (“Dabah”) hired Smith to represent her in a custody matter with her former husband (“dad”), who had filed several motions, including a modification, to prevent Dabah from moving from Oregon to Florida. Smith understood Dabah’s primary objective was to obtain court permission to move to Florida with the parties’ only child. Pursuant to a written hourly fee agreement, Dabah paid Smith a $10,000 retainer in two installments on August 5, 2013, and February 6, 2014.
29.

Between July 2013 and August 2014, Smith failed to timely and adequately communicate her candid and complete legal evaluation of the merits of Dabah’s objectives, Dabah’s discovery obligations, litigation scheduling, and the parties’ written settlement offers. Smith acknowledged that she understood Dabah’s frustrations.

30.

Dabah became dissatisfied with Smith’s representation. In August 2014, Dabah terminated Smith’s services.

Violations

31.

Smith admits that her failure to keep her client reasonably informed about the status of her matter and promptly comply with reasonable requests for information and her failure to explain the matter to the extent reasonably necessary to allow her client to make informed decisions regarding the representation violated RPC 1.4(a) and RPC 1.4(b).

32.

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 1.3 [neglect of a legal matter] should be and, upon the approval of this stipulation, is dismissed.

Sanction

33.

Smith 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 (“Standards”). The Standards require that Smith’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.** Smith violated her duties to her clients to appropriately handle unearned fees upon receipt or return client property, and to act with reasonable diligence and promptness in representing them, including the duty to adequately communicate with them. Standards §§ 4.1 & 4.4. The Standards provide that the most important duties a lawyer owes are those owed to clients. Standards at 5.

b. **Mental State.** There are three recognized mental states under the Standards. “Intent” is the conscious objective or purpose to accomplish a particular result. Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or
purpose to accomplish a particular result. *Id.* “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.*

Smith did not act intentionally; rather, Smith’s conduct in this matter was primarily negligent. That is, she failed 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. At times, however, Smith’s conduct was also knowing. That is, she had the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards* at 9. Smith knew her clients hired her and paid her to meet certain objectives; she knew that her clients requested updates and some action on their behalf and yet she did not respond to some of their inquiries and did not act on their behalf.

c. **Injury.** An injury need not be actual, but only potential, to support the imposition of a sanction. *Standards* at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Injury can either be actual or potential under the *Standards*. See *In re Williams*, 314 Or at 547. Smith’s clients were actually injured to the extent that they paid for services that were not thereafter performed and to the extent that their matters were delayed. *See, e.g.*, *In re Parker*, 330 Or 541, 547, 9 P3d 107 (2000).


d. **Aggravating Circumstances.** Aggravating circumstances include:


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

3. Personal or emotional problems. *Standards* § 9.32(c). Smith reports that she was experiencing personal problems at the time of the events in these matters.


6. Remorse. *Standards* § 9.32(l). Smith has expressed remorse for her conduct in these matters.

34.

Under the ABA *Standards*, suspension is generally appropriate when a lawyer knows or should know that she is dealing improperly with client property and causes injury or potential injury to a client. *Standards* § 4.12. Suspension is also generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* § 4.42.

35.

Oregon cases similarly find that a suspension is appropriate for similar misconduct. *See, e.g.*, *In re Koch*, 345 Or 444, 198 P3d 910 (2008) (120-day suspension where attorney 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 Redden*, 342 Or 393, 153 P3d 113 (2007) (court suspended a lawyer with no prior discipline for 60 days for his failure to complete one client’s legal matter); *In re Balocca*, 342 Or 279, 151 P3d 154 (2007) (court imposed 90-day suspension, in part for attorney’s failure to return unearned client funds after closing his file); *In re LaBahn*, 335 Or 357, 365–67, 67 P3d 381 (2003) (attorney was suspended for 60 days for knowing neglect of his client’s tort claim that resulted in its dismissal, and for not informing his client of the dismissal and avoiding client’s calls).

Attorneys are also suspended by the court for failing to account for and promptly provide client property. *See In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (court suspended attorney for 30 days when he failed to return a personal injury client’s file materials, including medical records, despite numerous requests from the client).

Lastly, where an attorney is found to have violated multiple rules, the sanction imposed is greater. *See, e.g.*, *In re Schaffner II*, 325 Or at 428 (imposing a two-year suspension for neglect of client matters and failure to respond); *In re Recker*, 309 Or 633, 789 P2d 663 (1990) (imposing a two-year suspension on a lawyer who neglected multiple client matters, failed to
respond to clients and the disciplinary authority, and engaged in conduct involving misrepresentations).

36.

Consistent with the Standards and Oregon case law, the parties agree that Smith shall be suspended for six months with the condition of BR 8.1 formal reinstatement for violations of RPC 1.3; RPC 1.4(a); RPC 1.4(b); RPC 1.15-1(a); RPC 1.15-1(e); RPC 1.15-1(d) and RPC 1.16(d), the sanction to be effective January 1, 2018, or 10 days after approval by the Disciplinary Board, whichever is later.

37.

Smith 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, Smith has arranged for Hafez Daraee, an active member of the Bar, to either take possession of or have ongoing access to Smith’s client files and serve as the contact person for clients in need of the files during the term of her suspension. Smith represents that Hafez Daraee has agreed to accept this responsibility.

38.

Smith acknowledges that BR 8.1 formal 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. Smith 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 formally reinstated.

39.

Smith 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 the denial of her reinstatement. This requirement is in addition to any other provision of this agreement that requires Smith to attend or obtain continuing legal education (CLE) credit hours.

40.

Smith 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 Smith is admitted: none.
This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 December, 2017.

/s/ Jaculin L. Smith
Jaculin L. Smith, OSB No. 001070

APPROVED AS TO FORM AND CONTENT:

/s/ Richard G. Helzer
Richard G. Helzer, OSB No. 690735

EXECUTED this 27th day of December, 2017.

OREGON STATE BAR
By: /s/ Nik T. Chourey
Nik T. Chourey, OSB No. 060478
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:  )
) Case No. 17-82
Complaint as to the Conduct of )
) RICHARD G. COHN-LEE,
) Accused.

Counsel for the Bar: Nik T. Chourey
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of RPC 5.5(a) and ORS 9.160. Stipulation for Discipline. Public Reprimand.
Effective Date of Order: December 28, 2017

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Richard G. Cohn-Lee and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Richard G. Cohn-Lee is publicly reprimanded, for violation of RPC 5.5(a) and ORS 9.160.

DATED this 28th day of December, 2017.

/s/ William G. Blair
William G. Blair
State Disciplinary Board Chairperson

/s/ Andrew Cole
Andrew Cole, Region 7
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Richard G. Cohn-Lee, attorney at law (“Cohn-Lee”), and the Oregon State Bar (“Bar”) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).
1.

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

2.

Cohn-Lee 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 Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3.

Cohn-Lee 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 14, 2017, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Cohn-Lee for alleged violations of Oregon Rule of Professional Conduct (RPC) 5.5(a) [practicing law in violation of the regulations of the practice] and Oregon Revised Statute (ORS) 9.160 [practicing law while not an active member of the Bar]. 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.

May 1, 2017, was the deadline for Oregon State Bar members to submit IOLTA compliance reports. Cohn-Lee acknowledged that, on that date, Bar staff contacted him via telephone to remind him that his compliance report was due. Cohn-Lee reports that he attempted to log in to the Bar system in order to complete the form, but that technical issues prevented him from logging in on that day.

6.

Cohn-Lee reported that on May 2, 2017, he was able to log in to the Bar’s system to complete his IOLTA form. On that date, Cohn-Lee left a message for Bar staff asking if any other steps needed to be taken. Also on May 2, 2017, Helen Hierschbiel (Hierschbiel) sent a letter to the State Court Administrator’s Office listing the Bar members administratively suspended as of May 2, 2017, including Cohn-Lee. A copy of Hierschbiel’s letter was sent to Cohn-Lee via U.S. Mail using the address that he had previously provided to the Bar as his address of record.
7. Bar staff returned Cohn-Lee’s call with an email sent on May 3, 2017 to the email address that Cohn-Lee had provided to the Bar as his address of record. In that email message, Bar staff confirmed that Cohn-Lee was administratively suspended for failing to timely submit his IOLTA compliance report. Bar staff confirmed the receipt of his IOLTA compliance report and informed him that his final steps to reinstatement included completing the Statement in Support of BR 8.4 Reinstatement and paying a fee.

8. Cohn-Lee reported that, as of July 27, 2017, he had not received any communication from the Bar following his call on May 2, 2017. He stated that his email address was out of date as of May 3, 2017, when Bar staff emailed him on that date. He also stated that his U.S. Mail address on record with the Bar was out of date as of May 2, 2017, when Hierschbiel’s letter was sent.

9. At all material times herein, Bar Rule 1.11(d) provided that: “It is the duty of all attorneys promptly to notify the Oregon State Bar in writing of any change in his or her contact information. A new designation shall not become effective until actually received by the Oregon State Bar.” Cohn-Lee acknowledges that he was obligated to keep the Bar apprised of his contact information.

10. On July 27, 2017, Cohn-Lee attempted unsuccessfully to log in to the Bar’s website. He called and learned that he was still administratively suspended. Bar staff informed Cohn-Lee that he needed to submit the Statement in Support of BR 8.4 Reinstatement and the fee. Cohn-Lee completed the reinstatement form and mailed it to the Bar on July 28, 2017. The Bar received his form and fee on August 8, 2017, and he was reinstated as of August 10, 2017.

11. On his reinstatement form and in response to the Bar’s inquiry, Cohn-Lee admitted that he had practiced law while he was suspended from May 2, 2017, until August 10, 2017. During that three month period, Cohn-Lee engaged in mediation, discussions with clients and opposing counsel, legal research, writing, analysis, and related activities.

Violations

12. Cohn-Lee admits that, by practicing law while suspended, he violated RPC 5.5(a) and ORS 9.160.
Sanction

13.

Cohn-Lee 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 (“Standards”). The Standards require that Cohn-Lee’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.** Cohn-Lee violated his duty to the profession to refrain from the unauthorized practice of law. Standards § 7.0.

b. **Mental State.** The most culpable mental state is that of “intent,” when the lawyer acts with the conscious objective or purpose to accomplish a particular result. Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Id. “Negligence” is the failure to be aware of a substantial risk that circumstances exist or that a result will follow and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. Id. Cohn-Lee acted negligently by failing to confirm that he had fully complied with the requirements for reinstatement after his administrative suspension. He also was negligent in failing to keep the Bar apprised of his address of record.

c. **Injury.** Injury can be either actual or potential under the Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992).

There is no evidence that Cohn-Lee’s conduct caused actual injury to any clients during his three-month period of administrative suspension. During that time, however, his clients had the potential to suffer injury as the result of his unauthorized practice of law.

d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Substantial experience in the practice of law. Standards § 9.22(i).

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


3. Timely good faith effort to make restitution or to rectify consequences of misconduct. Standards § 9.32(d). Once Cohn-Lee realized that he was still suspended, he promptly submitted the required reinstatement form and fee.
4. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. *Standards* § 9.32(e). On his reinstatement form and in his response to the Bar’s inquiry, Cohn-Lee admitted that he had practiced law while he was administratively suspended.

14.

Under the ABA *Standards*, public reprimand is generally appropriate when a lawyer negligently engaged 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 also supports a public reprimand in this matter. See *In re Dixon (I)*, 17 DB Rptr 102 (2003) (attorney with prior discipline practiced for eight days while suspended and received public reprimand); *In re Bassett*, 16 DB Rptr 190 (2002) (attorney received public reprimand after practicing for fifteen days while suspended for failing to timely pay his PLF assessment due to an NSF check); *In re Schmidt*, 2 DB Rptr 97 (1988) (attorney reprimanded for engaging in settlement negotiations during his one-month period of suspension).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that Cohn-Lee shall be publicly reprimand for violation of RPC 5.5(a) and ORS 9.160.

17.

Cohn-Lee acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension. This requirement is in addition to any other provision of this agreement that requires Cohn-Lee to attend or obtain continuing legal education (CLE) credit hours.

18.

Cohn-Lee 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 Cohn-Lee is admitted: None.

19.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Bar and to approval by the SPRB. If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.
EXECUTED this 21st day of December, 2017.

/s/ Richard G. Cohn-Lee
Richard G. Cohn-Lee, OSB No. 952331

EXECUTED this 27th day of December, 2017.

OREGON STATE BAR

By: /s/ Nik T. Chourey
Nik T. Chourey, OSB No. 060478
Assistant Disciplinary Counsel