DISCIPLINARY BOARD REPORTER

Report of Lawyer Discipline Cases Decided by the Disciplinary Board and by the Oregon Supreme Court for 2019

VOLUME 33

January 1, 2019, to December 31, 2019
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 2019 decisions of the Oregon Supreme Court involving the discipline of lawyers, and related matters. Cases in this DB Reporter should be cited as 33 DB Rptr ___ (2019).

In 2019, a decision of the Disciplinary Board was final if neither the Bar nor the Accused sought review of the decision by the Oregon Supreme Court. See Title 10 of the Bar Rules of Procedure (www.osbar.org, click on Rules Regulations and Policies) and ORS 9.536.

The decisions printed in this DB Reporter have been reformatted and corrected for typographical errors, spelling errors, obvious grammatical or word usage errors, and citation errors, but no substantive changes have been made to them. Because of space restrictions, exhibits are not included but may be obtained by calling the Oregon State Bar. Those interested in a verbatim copy of an opinion should submit a public records request to the Public Records Coordinator at <https://tinyurl.com/osbar-publicrecords>. Final decisions of the Disciplinary Board issued on or after January 1, 2016, are also available at the Oregon State Bar Web site, www.osbar.org. Please note that the statutes, disciplinary rules, and rules of procedure cited in the opinions are those in existence when the opinions were issued. Care should be taken to locate the current language of a statute or rule sought to be relied on concerning a new matter.

General questions concerning the Bar’s disciplinary process may be directed to me at extension 318.

COURTNEY DIPPEL
Disciplinary Counsel
Oregon State Bar
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IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) )
Complaint as to the Conduct of ) Case No. 18-181
) )
SAMUEL A. RAMIREZ, ) )
Respondent. ) )

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.5(c)(3). Stipulation for Discipline. Public Reprimand.
Effective Date of Order: January 11, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Samuel A. Ramirez is publicly reprimanded for violation of RPC 1.5(c)(3).

DATED this 11th day of January, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Samuel A. Ramirez, attorney at law (“Ramirez”), 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.

Ramirez was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 1991, and has been a member of the Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

Ramirez 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 November 3, 2018, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Ramirez for alleged violation of RPC 1.5(c)(3) (charging or collecting a fee denominated as earned on receipt without required written disclosures) 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 October 2017, a client hired Ramirez to defend him in a criminal matter pursuant to a flat fee agreement. Although the agreement did state that the fees would not be deposited into trust, it did not state that the client could discharge Ramirez at any time (only that Ramirez could withdraw at any time). In addition, the agreement did not include the required language that the client may be entitled to a refund of any unearned fees should the representation end prior to the completion of the client’s legal matter.

Violation

6.

Ramirez admits that, by failing to utilize a written fee agreement denoming the fee as earned upon receipt without explanation that 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, Ramirez violated RPC 1.5(c)(3).
Sanction

7.

Ramirez 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 Ramirez’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. Ramirez violated his duty to the profession to refrain from charging improper fees. Standards § 7.0.

b. Mental State. Ramirez acted negligently, that is, he failed to be aware of a substantial risk that circumstances existed or that a result would follow, and this failure deviated from the standard of care that a reasonable lawyer would exercise in the situation. Standards at 9. Ramirez opined, incorrectly, that his fee agreement with his client complied with the requirements of RPC 1.5(c)(3) and believed that he had sufficiently explained to his client the information required by the rule.

c. Injury. Injury can be either actual or potential under the Standards. In re Williams, 314 Or 530, 547 (1992). It does not appear that Ramirez caused any actual injury to his client that arose from the defects in the language of the fee agreement. However, there was potential injury to the extent that his client was unaware of his rights and remedies and may have been actually injured had Ramirez not refunded a portion of the fee during the pendency of the client’s Bar complaint.

d. Aggravating Circumstances. Aggravating circumstances include:

1. A history of prior discipline. Standards § 9.22(a). In 1998, Ramirez was reprimanded for violations related to his handling of client funds (current RPC 1.15-1(a) & (c)) and his failure to adequately account for them (current RPC 1.15-1(d)). In re Ramirez, 12 DB Rptr 213 (1998) (“Ramirez I”).

Recently, Ramirez was suspended by the Court for one year for violations of RPC 1.1 (failure to provide competent representation); RPC 1.3 (neglect of a legal matter); RPC 1.7(a)(2) (accepting representation of a current client materially limited by responsibilities to a past client); RPC 1.7(b) (current client conflict of interest); and RPC 1.8(h) (limitation of liability conflict of interest). In re Ramirez, 362 Or 370 (2018) (“Ramirez II”).

Taken together, Ramirez I and Ramirez II demonstrate that Ramirez had both warning and knowledge of the disciplinary process when he
engaged in the misconduct in this case. *In re Hereford*, 306 Or 69, 75 (1988).

2. **Substantial experience in the practice of law. Standards § 9.22 (i).** Ramirez has been a lawyer in Oregon since 1991.

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

1. **Cooperative attitude toward the disciplinary investigation and proceedings. Standards § 9.32(e).**

Under the ABA *Standards*, a reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards* § 7.3. Notwithstanding Ramirez’s aggravating factors, including his prior discipline, a reprimand is sufficient for his conduct in this instance.

9.

Oregon case law also finds that a reprimand is appropriate. See, e.g., *In re Baldwin*, 30 DB Rptr 328 (2016) (respondent was retained to represent a client in three different criminal matters pursuant to a written fee agreement wherein the retainer was designated as a “minimum non-refundable fee;” respondent was reprimanded, in part because fee agreement failed to explain that the nonrefundable fee would not be deposited in a lawyer trust account, nor did it explain that the client could discharge respondent at any time and if she did so she might be entitled to a full or partial refund if the services had not been completed); *In re Fowler*, 30 DB Rptr 190 (2016) (respondent reprimanded where he believed client’s payment was a nonrefundable retainer, but failed to have the client sign a written fee agreement and did not provide the client with the required disclosures); *In re Bowman*, 30 DB Rptr 157 (2016) (respondent reprimanded where he undertook representation of a client pursuant to a written fee agreement that provided for a flat fee, earned on receipt, but that failed to include language advising the client that her funds would not be deposited into a lawyer trust account, that she could terminate the representation at any time, and that if she did terminate the representation she could be entitled to a full or partial refund of the fee if respondent did not complete the services for which the fee was paid).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that Ramirez shall be publicly reprimanded for violation of RPC 1.5(c)(3), the sanction to be effective upon approval by the Disciplinary Board.
11.

Ramirez 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.

Ramirez 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 Ramirez is admitted: none.

12.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on November 3, 2018. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 9th day of January, 2019

/s/ Samuel A. Ramirez
Samuel A. Ramirez, OSB No. 910883

EXECUTED this 9th day of January, 2019

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott, OSB No. 990280
Chief Assistant Disciplinary Counsel
TRIAL PANEL OPINION

In this formal disciplinary proceeding we consider six consolidated cases charging respondent Dana C. Heinzelman with twenty-two violations of the Rules of Professional Conduct (“RPC”). Respondent is charged with violating RPC 1.1 [competence]; RPC 1.3 [neglect]; RPC 1.4 [communication]; RPC 1.5(a) [charging or collecting an excessive fee]; RPC 1.6 [disclosing confidential client information]; RPC 1.15-1(d) [failing to provide client property to client]; RCP 1.16(d) [failing to protect client interests upon termination of representation ]; RPC 5.5 [unauthorized practice of law]; RPC 8.1(a)(1) [making a false statement of material fact to a disciplinary authority]; RPC 8.1(a)(2) [failing to respond to a disciplinary authority]; and RPC 8.4(a)(3) [dishonest conduct].

Respondent is currently subject to a five-year suspension for similar disciplinary violations. The Bar contends that the intentional nature of the misconduct here, and the significant injuries respondent caused her clients, the legal profession, and the Bar, merit the sanction of disbarment.
Respondent was declared in default for failure to file an answer to the formal complaint. The trial panel thus must assume that all of the allegations in the formal complaint are true. We have concluded that the allegations in the formal complaint properly allege violations of the specified rules. For the reasons set forth below, the trial panel agrees with the Bar’s recommendation and respondent is disbarred.

We consider the causes of complaint separately below.

**Forrest Frost Matter (Case No. 17-14) – First Cause of Complaint**

The Bar alleges that respondent collected an excessive fee in violation of RPC 1.5(a) and failed to refund an advance payment of fees that had not been earned upon termination of representation in violation of RPC 1.16(d).

**General Alleged Facts**

On or about August 20, 2016, respondent and Forrest Frost (“Frost”) entered into a fee agreement pursuant to which respondent agreed to represent Frost in a criminal proceeding. They agreed to a flat fee of $7,500 which Frost’s mother paid. *Complaint*, ¶3. The fee agreement stated that the client could terminate respondent’s services at any time, but if client did so, respondent would be entitled to attorney’s fees calculated at $250 per hour for the time spent on the case. *Complaint*, ¶4.

Frost fired respondent in October 2016 before respondent completed the engagement. At the time of termination, respondent had spent 17 hours on the case. *Complaint*, ¶5. Per the terms of the agreement, respondent was entitled to $4,250 from the $7,500 retainer. Respondent has not refunded the unearned fee ($3,250) to Frost or his mother. *Complaint*, ¶6.

**Analysis Regarding Collecting an Excessive Fee**

“A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses”. RPC 1.5(a). A fee is considered clearly excessive if it exceeds what the client agreed to pay. *In re Sassor*, 299 Or 720, 725, 705 P2d 736 (1985). When a client pays a flat fee for a specific legal task, that fee will be deemed clearly excessive if the lawyer fails to complete the task but still retains the entire fee. The Bar cites multiple cases supporting this proposition: *In re Fadeley*, 342 Or 403, 411, 153 P3d 682 (2007) (lawyer suspended for 30 days for failing to refund any portion of a flat fee when client fired him before he completed the work.); *In re Balocca*, 342 Or 279, 292, 151 P3d 154 (2007) (lawyer suspended for 90 days due, in part, to lawyer’s failure to refund any portion of a flat fee where lawyer did not complete the work.); *In re Thomas*, 294 Or 505, 526, 659 P2d 960 (1983) (the court stated, “[i]t would appear that any fee that is collected for services that is not earned is clearly excessive regardless of the amount.”)

Respondent did not complete the agreed-upon work. Per the agreement, respondent earned a fee of $4,250. Respondent’s refusal to refund the remainder of the fee, $3,250, was an instance of collecting a clearly excessive fee in violation of RPC 1.5(a).
Analysis Regarding Failure to Protect Client Interests Upon Termination

RPC 1.16(d) states:

“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 fees or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law.”

This rule requires that, when a lawyer’s representation ends, the lawyer must take reasonably practical steps to protect a client’s interest. The rule specifically demands that a lawyer return client property and refund any unearned fees. Respondent did not refund the unearned fees in Frost’s case, and thus violated RPC 1.16(d).

Tammy Lee Matter (Case No. 17-16) – Second Cause of Complaint

In this case the Bar alleges that respondent engaged in five separate rule violations. These include neglect in violation of RPC 1.3; failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of RPC 1.4(a); failure to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of RPC 1.4(b); failure to promptly deliver property that the client was entitled to receive in violation of RPC 1.15-1(d); and engaging in the unauthorized practice of law in violation of RPC 5.5 and ORS 9.160(1). ¹

Alleged Facts Regarding Neglect

Beginning on or about August 31, 2015, Tammy Lee (“Lee”) retained respondent to represent her in two criminal cases. The client’s primary objective was the dismissal of both cases. Respondent agreed to file motions to suppress evidence in both cases and began working on the motions in December 2015. Complaint, ¶9.

From December 2015 through March 2016, Lee repeatedly asked respondent about the status of the motions to suppress. Complaint, ¶10. On or about March 30, 2016, Lee threatened to terminate respondent if she did not file the motions. Id. On April 16, 2016, respondent told Lee that she had made progress on the motions and that she would file the motions the following Monday. Respondent filed nothing. On or about May 4, 2016, respondent told her client that she was still working on the motions. Complaint, ¶11.

¹ The Bar concedes that although it charged respondent with violating both RPC 5.5 and ORS 9.160(1) based on respondent’s unauthorized practice of law, the conduct constitutes only one violation.
Despite repeated assurances to the client, respondent did not file the motions to suppress until July 8, 2016. *Complaint*, ¶12.

**Alleged Facts Regarding Failure to Communicate**

From approximately December 12, 2015, through March 30, 2016, Lee made repeated requests for information and status updates from respondent. *Complaint*, ¶13. Despite these multiple requests, respondent did not meaningfully respond to Lee’s requests for information. *Id.*

Throughout the time that respondent represented Lee she failed to advise Lee regarding the consequences of denial of the motions to suppress. This included the possibility that Lee could face jail time. Respondent never told her client that an outright dismissal of her two cases was unlikely. *Complaint*, ¶14.

**Alleged Facts Regarding Failure to Provide Client Property**

Beginning in December 2015, Lee began asking respondent for copies of the discovery in her cases. Despite repeated requests for that discovery, respondent did not provide the discovery to Lee until mid-September 2016, approximately nine months after the client first requested it. *Complaint*, ¶15.

**Alleged Facts Regarding Unauthorized Practice of Law**


**Analysis Regarding Neglect of a Legal Matter**

RPC 1.3 succinctly provides: “A lawyer shall not neglect a legal matter entrusted to the lawyer.”

Neglect is the failure to act or the failure to act diligently over a period of time when action is required. For the Bar to demonstrate a violation of the rule, the allegations must show a course of neglectful conduct, not an isolated instance of negligence. *In re Jackson*, 347 Or 426, 435, 223 P3d 387 (2009); *In re Magar*, 335 Or 306, 321, 66 P3d 1014 (2003) (discussing former DR 6-101(B)). Neglect has been found, however, after the passage of only two months. *In re Meyer*, 328 Or 220, 225, 970 P2d 647 (1999) (attorney’s failure to do anything for two months on client’s domestic relations matter constituted neglect because the lawyer took no constructive action to advance or protect client’s legal position); *In re Purvis*, 306 Or 522, 524–25, 760 P2d 254 (1988) (attorney guilty of neglect for failing to pursue child support matter for several months).

In considering possible neglect, our focus is on the lawyer’s conduct, not whether the client sustained any resulting harm. *In re Knappenberger*, 340 Or 573, 580, 135 P3d 297 (2006).
Lee began asking respondent in December 2015 what she was doing to advance Lee’s case. Respondent told Lee on at least three occasions (starting in March 2016) that she would file something. She did not file a motion to suppress in either one of the two cases until July 2016, four months after her first assurance that the task was being performed. Afterward, she admitted to her client that she had procrastinated. The Bar urges us to find that respondent violated RPC 1.3 by taking seven months to file the motions to suppress.

We can find no justification for the delay in filing. We believe that the delay alleged constituted neglect of a legal matter and thus conclude that respondent did violate the rule.

### Analysis Regarding Duty to Communicate

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

The factors we are to consider in deciding whether a lawyer has violated this duty to communicate include, among other things, the length of time a lawyer failed to communicate; whether the lawyer failed to respond promptly to reasonable requests for information from the client; and whether the lawyer knew or a reasonable lawyer would have foreseen that a delay in communication would prejudice the client. *In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011).

The Bar cites multiple cases where the courts have identified events during the course of litigation about which an attorney has an obligation to keep a client informed. These include determining that a case lacks merit, *In re Snyder*, 348 Or 307, 316, 232 P3d 952 (2010); that an attorney is not available for court appearances, *In re Jordan*, 26 DB Rptr 191 (2012); and information about dispositive events during a case, *In re Hudson*, 27 DB Rptr 226 (2013). An attorney must share both good news and bad, and failure to do so in a timely fashion constitutes a rule violation. *In re Coyner*, 342 Or 104, 108, 149 P3d 1118 (2006).

The allegations establish that, between December 12, 2015, and March 30, 2016, respondent provided no meaningful communication about the cases, despite the client’s repeated requests for information and updates. Respondent apparently told Lee each time she tried to talk with respondent that she was busy, and that she would get back to her. Respondent did not do so until Lee threatened to fire her on March 30, 2016. Respondent failed to keep her client informed of the status of her case for four-and-a-half months. The Bar argues that this constitutes a failure to promptly respond to a client’s requests for information in violation of RPC 1.4(a). We agree that the necessary elements of such a violation have been pleaded here.

The rules also require that “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” RPC 1.4(b). The Bar contends that respondent failed to explain Lee’s matters sufficiently to allow Lee to make informed decisions about the representation. Although respondent told Lee that the motions to suppress would dispose of her cases if they were granted, respondent never told Lee that losing those motions would likely result in jail time. Lee lacked the basic information necessary to understand what would happen if the motions were denied.
Respondent also failed to tell Lee that dismissal of the two criminal cases was unlikely. This prevented Lee from making truly informed decisions regarding her cases, including whether and when to enter into plea negotiations or prepare for trial and how to prepare for an adverse result in her cases. We agree that this failure to communicate was a violation of RPC 1.4(b).

**Analysis Regarding Duty to Promptly Return Client Property**

“Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property”. RPC 1.15-1(d).

A lawyer’s file is client property and must be given to a client promptly upon request. *In re Snyder*, 348 Or at 318; *In re Worth*, 336 Or 256, 270, 82 P3d 605 (2003); *In re Devers*, 317 Or 261, 265, 855 P2d 617 (1993)

Lee requested copies of discovery materials beginning in December 2015, but respondent did not comply with the request until mid-September 2016. The Bar contends that this failure to provide the file materials for nine months constitutes a violation of RPC 1.15-1(d). We agree.

**Analysis Regarding Unauthorized Practice of Law**

RPC 5.5(a) states: “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.” Similarly, ORS 9.160(1) states: “Except as provided in this section, a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar.”

The rule and the statute prohibit attorneys from practicing law in violation of the regulations of the profession and when they are not active members of the Bar. Neither of them requires knowledge on the part of the lawyer. An attorney need not act knowingly in order to violate the rule or statute.

Respondent was administratively suspended from May 3, 2016, until May 10, 2016. In *Oregon State Bar v. Taub*, the Oregon Court of Appeals defined the practice of law as including both the “exercise of professional judgment,” and the “application of legal principles to individual cases.” 190 Or App 280, 284, 78 P3d 114 (2003). In *Oregon State Bar v. Gilchrist*, 272 Or 552, 563–64, 538 P2d 913 (1975), the Oregon Supreme Court explained that the exercise of independent legal judgment can include consultation, explanation and recommendations or other advice to a client, such as the selection and completion of particular forms in divorce kits. *Gilchrist*, 272 Or at 563.
During the period between May 4, 2016, and May 6, 2016, respondent provided Lee with her professional judgment applying legal principles to the issues affecting Lee. Text messages confirm that. The Bar contends that respondent’s texts to her client constituted the practice of law in violation of RPC 5.5(a) and ORS 9.160(1). We must agree as well.

**Jenny Herrera Matter (Case No. 17-33) – Third Cause of Complaint**

In this case the Bar charged respondent with failing to respond to a lawful demand for information from a disciplinary authority in violation of RPC 8.1(a)(2).

**Alleged Facts Regarding Failure to Respond**

On or about April 13, 2017, Disciplinary Counsel’s Office (“DCO”) received a complaint from Jenny Herrera (“Herrera”) regarding respondent’s conduct. In a letter dated May 4, 2017, DCO requested respondent’s response to the complaint. DCO sent the letter to respondent’s address on record with the Bar (“record address”) by first class mail. DCO also emailed the letter to respondent’s email address on record with the Bar (“record email address”). Neither the email nor the letter were returned to sender. Respondent did not reply. *Complaint*, ¶20.

Then, in a letter dated May 30, 2017, DCO again asked for respondent’s reply to Herrera’s complaint. The letter was sent to respondent’s record address by first class mail and certified mail, return receipt requested. The letter was also sent by email to respondent’s record email address. The letter sent by first class mail and email were not returned undelivered. Respondent did nothing. *Complaint*, ¶21.

On or about June 7, 2017, DCO filed and served a petition to suspend respondent pursuant to BR 7.1. Respondent did not answer the petition. Respondent was suspended on or about June 20, 2017. Respondent still has not responded regarding this complaint. *Complaint*, ¶22.

**Analysis Regarding Failure to Respond**

A lawyer’s duty to respond to such an inquiry is found in RPC 8.1(a)(2). It states:

“An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not … 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, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.”

DCO is a disciplinary authority. RPC 8.1(a)(2) requires Oregon lawyers to cooperate with that office when it investigates disciplinary matters. That includes an obligation to respond to DCO’s inquiries.
DCO twice wrote, asking respondent for information in response to Herrera’s complaint. Respondent received both of the requests. Respondent failed to respond. The Bar contends that respondent knowingly failed to respond to lawful demands for information from DCO and that this was a violation of RPC 8.1(a)(2). The Bar cites a number of cases in support of their position: In re Miles, 324 Or 218, 221, 923 P2d 1219 (1996); In re Obert, 352 Or 231, 248–49, 282 P3d 825 (2012) (attorney failed to respond to numerous requests from the Bar about an ethics complaint until subpoenaed to do so); In re Paulson, 346 Or 676, 216 P3d 859, 687 (2009), adhered to on recon., 347 Or 529 (2010) (in response to Bar inquiries, attorney failed to respond or responded incompletely and insubstantially, asserting that the underlying complaint was without merit). On the allegations before us the charge is substantiated.

Veldon Green Matter (Case No. 17-34) – Fourth and Fifth Causes of Complaint

In this case, the Bar charged respondent with multiple rule violations: Charging an excessive fee in violation of RPC 1.5(a); revealing confidential information relating to a client in violation of RPC 1.6(a); failing to promptly deliver to the client property that the client was entitled to receive in violation of RPC 1.15-1(d); failing to refund an advance payment of fees that had not been earned upon termination of representation in violation of RPC 1.16(d); failing to respond to requests for information from a disciplinary authority in violation of RPC 8.1(a)(2); and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on respondent’s fitness to practice law in violation of RPC 8.4(a)(3).

Alleged Facts Regarding Excessive Fee

Veldon Green (“Green”) was charged in a criminal proceeding on or about August 21, 2015. Thereafter, Green’s fiancée looked for a lawyer to represent Green. Complaint, ¶25.

Green’s fiancée learned of respondent through an internet site called Thumbtack.com (“Thumbtack”). The site allows people to obtain professional services by identifying the service they need. They are then linked to several professionals who then bid for the work. Complaint, ¶26.

Green met with respondent in October 2015. Green decided to hire respondent and the parties entered into a fee agreement on or about October 21, 2015. The fee agreement provided that Green would pay respondent $1,500 for representing Green up to trial. If the case went to trial, Green would pay an additional $1,000 (“trial fee”). Complaint, ¶27.

In January 2016, respondent asked for the trial fee in advance of trial. Green agreed and his fiancée paid respondent $1,000. Complaint, ¶28. After this payment, the case was resolved by a plea bargain. Green was sentenced on or about March 24, 2016. There was no longer going to be a trial. Complaint, ¶29.

In March 2016, Green’s fiancée asked respondent to refund the trial fee. Two months later, in May 2016, Green himself asked respondent to refund the trial fee. Despite these requests, respondent kept the $1,000. Complaint, ¶30.
Alleged Facts Regarding Disclosure of Client Confidences and Dishonest Conduct

In the winter of 2016, the relationship between Green and respondent deteriorated. Three negative reviews of respondent were posted on Thumbtack regarding her representation of Green. Complaint, ¶31.

After learning of the reviews, respondent wanted Thumbtack to remove them. Respondent told Thumbtack that she had never worked with Green. This statement was false and material. The Bar alleges that respondent made it knowing it was false and material. Complaint, ¶32.

Thumbtack, relying on the misrepresentations, removed the three negative reviews. It notified Green that it had done so. Thumbtack told Green that it would reinstate the reviews if he could provide proof that respondent had represented him. Green gave Thumbtack a copy of his fee agreement. Complaint, ¶33.

Thumbtack then republished the negative reviews and notified respondent that it had done so. In response, respondent admitted that she had represented Green, but told Thumbtack that Green and his fiancée had lied to her. She wrote, “[a]fter flunking three (3) polygraphs and changing his story (and [his fiancee’s] story) constantly, I got Veldon 5 years, with time off for good behavior.” Complaint, ¶34.

Alleged Facts Regarding Duty to Return Client Property and Responsibilities Upon Termination

In addition to requesting a refund of the $1,000 trial fee, in May 2016, Green also requested that respondent send him his file and provide an accounting. Respondent did not comply with Green’s request. Complaint, ¶35.

Green then filed a Bar complaint on or about June 6, 2016. On or about June 22, 2016, the Bar’s Client Assistance Office (“CAO”) notified respondent of the complaint. Respondent waited until September 2016 to provide Green with a copy of his file. Complaint, ¶36. After Green got the file, he complained that it was incomplete. Thereafter, respondent ignored the Bar’s inquiry as to whether she provided the complete file. Complaint, ¶37.

 Allegations Regarding Duty to Respond to DCO

Green’s complaint was referred to DCO on or about July 20, 2016. DCO made requests for information. Respondent responded to the requests until approximately April 2017. Complaint, ¶40.

By letter of April 21, 2017, to respondent’s counsel, DCO requested that respondent respond to additional materials submitted by Green. DCO addressed the letter to respondent’s counsel’s address then on record with the Bar (“counsel’s record address”) and sent the letter by first class mail. DCO also sent a copy of the letter by first class mail to respondent’s record
address. To date, the April 21, 2017 letter has not been returned from respondent or her counsel.\(^2\) *Complaint*, ¶41.

By letter of July 19, 2017, DCO again requested that respondent respond to the additional materials submitted by Green. DCO addressed the letter to respondent’s counsel at counsel’s record address and sent the letter by both first class and by certified mail, return receipt requested. DCO also sent a copy of the letter to respondent at her record address by the same methods. Respondent’s counsel signed the certified mail receipt. *Complaint*, ¶42.

To date, the July 19, 2017 letter has not been returned from either address as undeliverable. To date, neither respondent nor her lawyer have responded to DCO’s inquiries. *Complaint*, ¶43.

**Analysis Regarding Excessive Fee**

As discussed above, when a lawyer enters into a flat fee agreement, the lawyer must complete the agreed upon services in order to earn the agreed upon fee. If the representation terminates for any reason before the work is completed, the lawyer must make a refund proportionate to the uncompleted work. Where the client pays a flat fee for a specific legal task, that fee will be clearly excessive if the lawyer fails to complete the task but retains the entire fee. *In re Balocca*, 342 Or at 292. The Bar also cited us to multiple cases on this issue in support of earlier charges.

The fee agreement here entitled respondent to the additional $1,000 only if the case went to trial. Respondent collected an excessive fee because she collected the $1,000 trial fee, but the trial never happened, and she refused to refund the excess. The Bar argues that this constituted a violation of RPC 1.5(a). We agree.

**Analysis Regarding Duty to Maintain Client Information**

RPC 1.6(a) states: “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).” RPC 1.0(f) defines “information relating to the representation of a client” as: “[b]oth information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.”

The exception referenced in RPC 1.6(a) is found in subparagraph (b). It allows disclosure of information relating to the representation of a client, “to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and client,” and permits lawyers who become involved in a dispute with their clients to divulge such information as is reasonably necessary to defend themselves or the value of their services. *In re Robeson*, 293

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\(^2\) Respondent at times was represented by counsel. Counsel gave DCO permission to contact respondent directly in this matter. Declaration of Courtney Dippel, ¶ 4 (“Dippel Dec.”).
Or 610, 624–26, 652 P2d 336 (1982) (attorney may reveal client confidences or secrets when accused of misconduct by someone other than the client and the client does not consent to disclosure of confidential information).

When trying to persuade Thumbtack to remove Green’s negative reviews, in addition to stating that Green and his fiancée lied to her, she further said that Green had failed three polygraph tests. This was information relating to respondent’s representation of Green, the disclosure of which was likely embarrassing or detrimental.

The exception in RPC 1.6(b) does not apply in this case. In communicating with Thumbtack, respondent was not seeking to establish a claim or defense to a malpractice claim, Bar complaint or fee dispute. The negative reviews posted on Thumbtack did not create a controversy between the lawyer and client contemplated by the rule. Respondent was just trying to discredit her former client. She used information she gained while representing him. The Bar argues this was a violation of RPC 1.6(a). We must reach the same conclusion.

Analysis of Duty to Promptly Account for and Return Client Property

As discussed earlier, RPC 1.15-1(d) requires lawyers to promptly deliver any funds or other property that the client is entitled to receive. This includes client files. The rule also explicitly obligates lawyers to provide a complete accounting if asked to do so. There is no specific time given to tell us what constitutes being sufficiently “prompt” under the rule. We must answer that question as is appropriate in the context of the case. But the rule does not require a client to make multiple requests or file a Bar complaint to make an attorney act.

In March 2016, after Green’s sentencing, his fiancée asked for a refund of the trial fee because there had been no trial. Respondent refused. In early May 2016, Green sent respondent a letter requesting his file, an accounting, and a refund of the trial fee. Respondent did nothing. Green then called the CAO. Respondent ignored CAO’s requests for a response or a copy of the file. Respondent finally provided an accounting and the copy of Green’s file in late September 2016. This was more than four months after his request. Respondent has also failed to refund the $1,000 trial fee. We find that this conduct violated RPC 1.15-1(d).

Analysis of Duties Upon Termination of Representation

We have previously discussed the requirements of RPC 1.16(d). These include returning client property and refunding unearned advanced fee payments. Respondent did not promptly return Green’s client file, nor did she refund the unearned trial fee. We find this to be a violation of RPC 1.16(d).

Analysis Regarding Dishonest Conduct and Misrepresentation

RPC 8.4(a)(3) states: “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.”

In order for us to find a misrepresentation, the allegations must establish that an attorney’s misrepresentations were knowing, false, and material. In re Eadie, 333 Or 42, 52,

Misrepresentations may be an affirmative representation. They may also be found where an attorney has omitted material information. In re Obert, 336 Or 640, 649, 89 P3d 1173 (2004) (lawyer who failed to disclose to client that case had been dismissed was guilty of misrepresentation by omission).

Attorneys violate this rule when they make misrepresentations to third parties for their own purposes. See, e.g., In re Carpenter, 337 Or 226, 95 P3d 203 (2004) (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); In re De Muniz, 28 DB Rptr 113 (2014) (attorney altered her parking receipt and presented the altered receipt in defense of a parking ticket, misrepresenting the time she entered the parking facility both in the altered receipt and in her written dispute of the ticket that accompanied the altered receipt).

There is no doubt that respondent’s contacts with Thumbtack were intended to persuade it to remove the negative reviews. There is no doubt that respondent falsely told Thumbtack she had not worked with Green. The fact that Thumbtack actually removed the reviews in reliance upon respondent’s lies compel us to infer that the statements were material. We find that the elements of a violation of RPC 8.4(a)(3) are supported by the allegations, and thus find that respondent violated the rule.

Analysis Regarding Failure to Respond to DCO inquiries

We have previously discussed the obligations imposed by RPC 8.1(a)(2). In this matter, respondent did respond to some of DCO’s requests. However, she made no answer to additional inquiries beginning in April 2017. Even respondent’s counsel failed to answer the April 21, 2017 letter or any further correspondence in this matter.

Respondent partially fulfilled her responsibilities here, but partial cooperation with a disciplinary investigation is still a violation of RPC 8.1(a)(2). In re Schaffner, 325 Or 421, 425, 939 P2d 39 (1997); In re Vaile, 300 Or 91, 103, 707 P2d 52 (1985). The Bar notes that the court has adopted a no-tolerance approach in cases where a lawyer fails to respond to Bar inquiries, again citing In re Miles, 324 Or at 224.

Accordingly, we find that respondent’s failure to respond to DCO’s inquiries after April 2017 violated RPC 8.1(a)(2).

Derek Sigman Matter (Case No. 17-35) – Sixth and Seventh Causes of Complaint.

The Bar alleges that respondent violated seven rules in this matter. These include failure to provide competent representation in violation of RPC 1.1; failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests
for information in violation of RPC 1.4(a); failure to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of RPC 1.4(b); charging or collecting a clearly excessive fee in violation of RPC 1.5(a); failure to promptly deliver to the client property that the client was entitled to receive in violation of RPC 1.15-1(d); failure to promptly surrender papers and property to which the client was entitled and to refund an advance payment of fees that had not been earned upon termination of representation in violation of RPC 1.16(d); and making false statements of material fact in connection with a disciplinary matter in violation of RPC 8.1(a)(1).

General Alleged Facts

On or about April 25, 2016, Derek Sigman (“Sigman”) hired respondent to represent him in a pending criminal proceeding in which Sigman was charged with driving under the influence of intoxicants (“DUII”) and reckless driving. In a practice we have seen before, respondent entered into a flat fee agreement in which Sigman paid respondent $1,500. Sigman believed that he was paying respondent to represent him through completion of his criminal case. Complaint, ¶46.

Sigman and respondent next met in person on or about May 11, 2016. During that meeting, they agreed that respondent would contact the responsible prosecutor and would tell Sigman what she learned. At the time, Sigman’s next court date was June 10, 2016. Complaint, ¶47. Between May 11 and June 7, 2016, Sigman called, emailed, and texted respondent numerous times, but got no reply. On or about June 7, 2016, three days before his next court appearance, Sigman used a friend’s telephone to call respondent. Respondent answered that call, which we infer was because the caller ID led her to believe it was not her client. During that call respondent read to Sigman a plea offer she had received from the prosecuting attorney on June 5, 2016. Complaint, ¶48.

The prosecutor offered to dismiss the reckless driving charge if Sigman pleaded guilty to the DUII charge. Sigman had to agree to fifteen days in jail, serve two years’ probation, receive a one-year driver’s license suspension, and accept the imposition of standard fines and conditions. Time was of the essence because the prosecutor said that if Sigman accepted the deal within two weeks, the prosecutor would reduce the jail time and allow Sigman to serve his jail time on weekends. Complaint, ¶49.

Respondent appeared in court on June 10, 2016 with Sigman. Sigman told respondent that he did not want to accept the plea offer because he did not want to do any jail time. Respondent told her client that she had a “good feeling about the judge,” and advised him to enter a “blind plea” to the DUII charge alone, having forgotten about the reckless driving charge. A blind plea is when a defendant pleads guilty without an agreement from the prosecutor regarding the recommended sentence. After the court pointed out that respondent had neglected to include both pending charges in the plea, the court set a trial date to enable the parties to negotiate any potential plea by Sigman. Complaint, ¶50.

Sigman fired respondent on or about August 4, 2016. At the time of termination, Sigman’s criminal case was ongoing. Complaint, ¶51.
Alleged Facts Regarding Competent Representation

It appears that throughout this engagement, respondent conducted no investigation, talked to no witnesses, nor did she take other action to pursue the client’s defense. Respondent told her client to enter a guilty plea based on only one of two charges against him and told him to enter a blind plea based on her “good feeling about the judge.” She apparently did this without determining the potential consequences of that action or explaining any possible consequences to her client. Complaint, ¶52.

Alleged Facts Regarding Communication

Despite numerous telephone messages, emails and texts from Sigman, respondent failed to communicate with him between May 11, 2016, and June 7, 2016, even though his upcoming court appearance was scheduled for June 10, 2016. Respondent only spoke with Sigman on June 7, 2016, when Sigman called respondent from his friend’s phone. During the June 7, 2016 telephone call, respondent told her client that she would email him the plea offer and speak with him the next day. Respondent did neither. Respondent ended the June 7, 2016, call without fully explaining the prosecutor’s plea offer or advising her client regarding the next steps in his criminal case. Complaint, ¶53.

Respondent represented Sigman from April 25, 2016, until August 4, 2016. During that time she never telephoned her client, despite his repeated calls, text messages, and emails. Complaint, ¶54.

The Bar alleges that respondent never explained Sigman’s options in his criminal case to the extent necessary to permit him to make informed decisions, including the time-sensitive nature of the plea offer. She did not advise him of the offer with sufficient time to avoid the deadline imposed by the prosecutor. And she did not discuss the pros or cons of accepting or declining the offer. Nor did she explain the risks of entering a blind plea before recommending to the client that he do so. Complaint, ¶55.

Alleged Facts Regarding Excessive Fee, Failure to Return Client Property and Surrender Client File

Respondent took a flat fee of $1,500 to represent Sigman. Complaint, ¶56. On or about August 4, 2016, Sigman terminated respondent before she completed the work for which her client had paid, i.e., the completion of the case. When Sigman fired respondent, he asked that she provide him with his file, a summary of her services, and a refund of the remainder of the balance. In early September, Sigman again asked respondent to refund $1,000 of the $1,500 he had paid. He again requested his file and an accounting. Complaint, ¶57. Respondent did not complete the agreed-upon work for which she had been paid the flat fee. She has refused to refund any of the fee. Complaint, ¶58.

Several months after he first asked respondent to provide him with his file and a refund, Sigman filed a Bar complaint. It was only after this official complaint was made that respondent provided her client with a copy of his file, in late 2016. Complaint, ¶59.
Alleged Facts Regarding False Statements to DCO

On or about November 2, 2016, respondent wrote to the Bar in response to Sigman’s complaint: “I remember our first meeting well, because Mr. Sigman had been in a horrible motorcycle accident (during the DUII), and he was in a neck brace, and his face had been recently sewn up. He had been in a coma for several days. His whole head was extremely bruised. He did not remember the accident or the events preceding it at all. He said he was taking pain meds for the many injuries he had sustained.” Complaint, ¶62.

On March 28, 2017, respondent again wrote to DCO, stating: “Anyway, I kept Mr. Sigman informed about his case at all times. If he felt like there was something he didn’t understand, it wasn’t for lack of my explaining it to him. He is a college educated, intelligent person. I explain things thoroughly and clearly. I do think maybe the head injury he suffered during the underlying accident that put him in a coma for 4 days, caused him to tend to be overly anxious.” Complaint, ¶63.

The statements that Sigman had been in a coma, his face had recently been sewn up, and he had brain damage, were false and material to the Bar’s inquiry, and respondent knew at the time she made the statements that they were false and material. Complaint, ¶64.

Analysis Regarding Duty to Provide Competent Representation

RPC 1.1 states that, “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation”

In analyzing whether a lawyer has met that standard, our focus is supposed to be on the reasonableness of the lawyer's conduct in the broader context of the representation, rather than looking only at discreet, specific aspects of the representation. In re Magar, 335 Or 306, 320, 66 P3d 1014 (2003), citing In re Gastineau, 317 Or 545, 553–54, 857 P2d 136 (1993) (incompetence often found when "there is a lack of basic knowledge or preparation."). A few mistakes during an engagement may not violate the rule, but “a pattern of ignorance of the most basic of applicable rules and a failure to heed [court] instructions” will. In re Obert, 352 Or 231, 252, 282 P3d 825 (2012).

Lawyers fail to provide competent representation if they have failed to conduct a sufficient investigation of the facts or law of a matter. See, e.g., In re Bettis, 342 Or 232, 239, 149 P3d 1194 (2006) (attorney found incompetent for obtaining his client’s waiver of a jury trial without reviewing discovery or conducting any factual or legal investigation). The Bar cites us to further examples of incompetent representation: 1) being inadequately prepared to defend a criminal client, See In re Chambers, 292 Or 670, 642 P2d 286 (1982); 2) failing to discover estate assets in a probate matter See In re Greene, 276 Or 1117 (1976); and 3) failing to obtain sufficient information to determine whether student loans were dischargeable in bankruptcy. See In re Magar, 296 Or 799, 681 P2d 93 (1984).

Here, respondent did no investigation, never talked to witnesses, and took no other action to attain the client’s objective. Moreover, respondent told her client to enter a blind plea that disposed of only one of the two charges against him, and based her advice on her subjective
“good feeling” about the judge. Respondent gave this advice without ever identifying or explaining the consequences of a blind plea. We believe respondent failed to provide competent representation for her client. This constituted a violation of RPC 1.1.

Analysis Regarding Duty to Communicate

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.”

In the same vein, RPC 1.4(b) states that “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

The rules do not require lawyers to respond to every email or telephone call from a client, but they do impose a duty to respond to reasonable requests for information and to keep the client reasonably informed about the status of a matter. Some of the considerations that come into play in our analysis of compliance with RPC 1.4(a) include the length of time between when a lawyer makes a decision and when the lawyer tells the client about it; the promptness of the lawyer’s response to a client’s reasonable requests for information; and whether the lawyer knew (or reasonably should have foreseen) that a delay in communication would prejudice the client. In re Groom, 350 Or at 124.

Here, respondent did not communicate with her client between May 11 and June 7, even though his court date was on June 10. This silence occurred in spite of her client’s many text messages, telephone calls, and emails. Respondent only spoke with her client on June 7 when he called her from a friend’s number. Respondent did not fully discuss the plea offer or what would follow in that call.

Respondent also promised the client that she would email him a copy of the plea offer and speak with him about it the next day, but she broke that promise and never called. If Sigman had not called respondent from the friend’s phone, we can infer that respondent would not have told the client the terms of the plea offer until he saw her at the time of the June 10 court appearance. Between the date she was hired, April 25, and the date she was fired, August 4, respondent never called her client. The client always had to call her. It is easy to conclude that she was avoiding her client and dodging his calls. We find that respondent violated RPC 1.4(a).

We also conclude that she violated RPC 1.4(b). This rule requires a lawyer to explain matters to the extent reasonably necessary to permit the client to make informed decisions. Here, when the plea offer was time-sensitive, respondent should have told the client its terms much earlier than she did. Respondent also should have discussed the pros and cons of declining the offer. Respondent never told her client about the risks of a “blind plea” before she advised him to enter one. We do not believe any other conclusion could be reached and thus find a violation of RPC 1.4(b) on these facts.

Analysis Regarding Collecting an Excessive Fee

As discussed previously, when a flat fee for a specific legal task is involved, that fee is clearly excessive if the lawyer fails to complete the work but keeps the entire fee.
The client paid a flat fee to represent him through trial. Sigman terminated the engagement before his case concluded. Respondent refused to give him any refund.

Because respondent did not complete the work she was paid to do, she has no valid reason to retain the full flat fee. Respondent collected a clearly excessive fee in violation of RPC 1.5(a).

**Analysis Regarding Duty to Account for and Return Client Property**

We have previously discussed the terms of RPC 1.15-1(d). Here, the client fired respondent in early August 2016. He asked for a refund and his file. He asked again in early September 2016. Respondent still failed to comply with the request. Only after Sigman contacted the Bar did respondent finally send him his file in late 2016.

The Bar contends that, given that the client had an ongoing criminal matter, respondent’s delay in sending the file means the delivery was not sufficiently prompt. It took a Bar complaint before respondent complied with this reasonable request. Moreover, respondent has never given the client a refund of the unearned portion of the flat fee. We agree that this course of conduct violated RPC 1.15-1(d). It also violated RPC 1.16(d).

**Analysis Regarding False Statements to DCO**

We have previously discussed the requirements of RPC 8.1(a)(1). Respondent’s statements to the Bar that her client had been in a coma, his face had recently been sewn up, and he had brain damage, were false. Respondent’s statements were designed to damage the client’s credibility with the Bar and cast doubt on his ability to recall events. These false statements were material to the investigation. Respondent violated RPC 8.1(a)(1).

**Graham Gould Matter (Case No. 17-104) – Eighth Cause of Complaint**

In the final matter, the Bar has charged respondent again with failing to respond to DCO in violation of RPC 8.1(a)(2).

**Alleged Facts Regarding Failure to Respond**

On or about October 5, 2017, DCO received a complaint from Graham D. Gould (Gould) about respondent’s conduct. By letter of October 10, 2017, DCO requested a response to this complaint. DCO addressed the letter to respondent at her record address and sent the letter by first class mail. DCO also sent the letter to respondent’s record email address. The email and letter were not returned undelivered, and respondent did not answer them. *Complaint,* ¶67.

In a November 1, 2017 letter, DCO again requested a response to Gould’s complaint. DCO addressed the letter to respondent at her record address and sent the letter by first class and certified mail, return receipt requested, and emailed the letter to respondent’s record email address. Respondent signed the certified mail receipt on November 3, 2017. *Complaint,* ¶68.
On November 13, 2017, DCO submitted a Petition for Suspension Pursuant to BR 7.1. Respondent offered no defense. The Order of Suspension was signed on November 30, 2017. To date, respondent has still not responded to any of DCO’s inquiries pertaining to Gould’s Complaint, ¶69.3

Analysis Regarding Failure to Respond

As we have noted before, RPC 8.1(a)(1) requires attorneys to respond fully and truthfully to lawful requests for information in connection with a disciplinary investigation. Respondent did not do so here. Her conduct violated RPC 8.1(a)(2).

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.

1. ABA Standards.

The Standards establish an analytical framework for determining the appropriate sanction in discipline cases using three factors: the duty violated; the lawyer’s mental state; and the actual or potential injury caused by the conduct. Once these factors are analyzed, we make a preliminary determination of sanctions, after which we are to adjust the sanction, if appropriate, based on the existence of aggravating or mitigating circumstances.

2. Duty Violated.

The most important ethical duties a lawyer owes are to her clients. Standards at 449.4 In the Frost, Lee, Green, and Sigman matters, respondent violated the duty she owed to her clients to promptly return client property, including unearned fees and client files. Standards, § 4.1. In the Lee and Sigman matters, respondent violated the duty to act with reasonable diligence and promptness. This includes the obligation to timely and effectively communicate. Standards, § 4.4.

In the Green matter, respondent violated her duty to refrain from revealing information relating to her representation of the client. Standards, § 4.2. In the Sigman matter, respondent violated her duty to provide competent representation. Standards, § 4.5. In the Green matter, respondent also breached the duty she owed to the public to act with candor when she made material misrepresentations to Thumbtack. Standards, § 5.1.

Respondent also violated the duties she owed as a professional. In the Frost, Green, and Sigman matters, respondent violated her duty to refrain from charging and collecting

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3 The Bar notes that the reference in this paragraph to the date of November 30, 2018 is obviously an error. The correct year is 2017.
4 Page citations are to the 2017 Edition of the ABA Compendium of Professional Responsibility Rules and Standards.
excessive fees in each case. *Standards § 7.0.* In the *Lee* matter, respondent violated the duty she owed to refrain from engaging in the unauthorized practice of law. *Standards § 7.0.* In the *Herrera, Green, Gould,* and *Sigman* matters, respondent violated her duty to cooperate with disciplinary authorities, including, in *Sigman,* her duty of candor to be truthful with DCO.

3. **Mental State.**

The *Standards* recognize three mental states. 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 450. “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.*

In each case here, respondent acted intentionally or, at least, knowingly. In the *Frost, Lee, Green,* and *Sigman* matters, respondent acted intentionally when she collected a flat fees, was fired before completing the work, and refused to refund the unearned portion of the fee. She intentionally delayed for months before providing her clients with discovery (*Lee*) and client files (*Green, Sigman*). Respondent’s delay and inaction forced Green and Sigman to file Bar complaints before respondent provided them with their files and, even then, Green’s file was incomplete.

In *Lee,* respondent intentionally neglected to prepare and file the motions to suppress and intentionally refused to communicate with her client. Respondent ignored Lee between December 2015 and March 2016 and refused to substantively answer any of his questions until he threatened to fire respondent on March 30, 2016. Respondent delayed seven months before filing the motions to suppress (in July 2016) despite repeatedly assuring Lee that she would file the motions in March, April and May.

Similarly, in *Sigman,* respondent refused to respond to any of Sigman’s telephone calls, emails or texts. She only spoke to him when he called her from the friend’s telephone number three days before his court appearance. Respondent intentionally failed to communicate with her client despite multiple attempts to contact her. She also deliberately advised Sigman to enter a “blind plea” without identifying and explaining the consequences doing so. We agree with the Bar that these were intentional acts of incompetence and inadequate communication.

In the *Green* matter, respondent acted intentionally when she misrepresented her relationship with Green to Thumbtack, denying that she had represented Green. After Green provided the fee agreement to Thumbtack as proof of the relationship, respondent then intentionally disclosed confidential information regarding Green’s polygraph results in an attempt to discredit him and undermine the negative reviews.

Respondent practiced law when she knew she was suspended. Despite repeated letters from DCO and the BR 7.1 suspension, respondent has refused to cooperate with DCO in *Herrera, Green,* and *Gould,* and intentionally made false statements of material fact regarding Sigman.
We find that respondent acted with an intentional mental state in committing each of the charged violations.

4. **Extent of Actual or Potential Injury.**

For purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. *Standards* at 450–51; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Respondent’s clients, the public, the legal profession, and the Bar have all sustained actual injury as a result of respondent’s misconduct. A client sustains actual injury when an attorney fails to actively pursue her client’s case. *See e.g. In re Parker*, 330 Or 541, 546–47, 9 P3d 107 (2000). Respondent’s lack of communication and neglect caused her clients to experience stress, frustration, and anxiety. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426–27, 939 P2d 39 (1997). “Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules.” *In re Snyder*, 348 Or at 321.

Additionally Frost, Green, and Sigman sustained injury because they did not have the use of their funds withheld by respondent after she was fired, and were frustrated by respondent’s failure to respond. *In re Balocca*, 342 Or at 297. Those three clients, along with Lee, were also injured when their cases were ongoing and respondent refused to promptly provide them with their requested files. Further, in Lee’s case, respondent failed to produce the requested discovery materials for nine months.

Respondent’s failure to cooperate with DCO’s investigations in three separate matters also caused actual injury to the legal profession, the public, and the Bar. *In re Schaffner*, *supra*; *In re Miles*, 324 Or at 221–22; *In re Gastineau*, 317 Or at 558 (when a lawyer persisted in his failure to respond to the Bar’s inquiries, the Bar was prejudiced because it had to investigate in a more time-consuming way, and public respect for the Bar was diminished because it could not provide a timely and informed response to complaints). When respondent lied to Thumtack in the *Green* matter, and lied to DCO in the *Sigman* matter, the legal profession was injured because a lawyer's dishonesty undermines public trust in the profession. *In re Worth*, 336 Or at 277.

Her unauthorized practice of law also inherently carried the potential to injure the legal system. *In re Devers* 328 Or at 242. And, by intentionally and repeatedly disregarding the disciplinary rules in six separate matters, respondent harmed the legal profession. *Id.*

5. **Preliminary Sanction.**

Absent aggravating or mitigating circumstances, the following *Standards* apply:

Disbarment is generally appropriate when a lawyer, with the intent to benefit the lawyer or another, knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client. *Standards* § 4.21. Disbarment is generally appropriate when a lawyer’s course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer’s conduct causes injury or potential injury to a client. *Standards* § 4.51. Disbarment is also generally appropriate when a lawyer engages in
intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that adversely reflects on the lawyer’s fitness to practice. *Standards* § 5.11(b). Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer and causes serious or potentially serious injury to a client, the public or the legal system. *Standards* § 7.1.

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

6. **Aggravating and Mitigating Circumstances.**

We find that the following aggravating factors under the *Standards* exist in this case:

**A dishonest or selfish motive.** *Standards* § 9.22(b). Most, if not all, of respondent’s misconduct was selfishly motivated. Respondent refused to refund unearned client fees because she presumably wanted to keep the money for her own use. Respondent made material misrepresentations to Thumbtack regarding Green to induce the site to remove her negative reviews. Respondent provided false statements to DCO regarding Sigman to discredit him and undermine his Bar complaint. Similarly, respondent’s failure to attend to her client’s matters, adequately communicate with her clients, respond to DCO, or provide her clients with their files in a prompt manner arose out of respondent placing her own interests above those of her clients.

**A pattern of misconduct.** *Standards* § 9.22(c). On July 20, 2017, the Supreme Court accepted a Stipulation for Discipline which suspended respondent for five years for misconduct in two separate client matters. *In re Dana C. Heinzelman*, OSB Case Nos. 15-147, 16-40, S. Ct. Case No. 064971 (Jul. 20, 2017).5

In the first matter recited in the stipulation, respondent admitted that, in 2015, she neglected her client’s matter, failed to adequately communicate with her client, failed to protect and preserve client funds in her trust account, and failed to withdraw when she was unable to continue with the representation in violation of RPC 1.3, 1.4(a), 1.15-1(c), and 1.16(a)(2).

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5 Ex. 2 to the Dippel Dec. We do not consider this prior stipulation to constitute a prior disciplinary offense. The Bar agrees that we should take this position because the acts that give rise to this disciplinary proceeding generally occurred before the imposition of the 2017 sanction and it cites *In re Bertoni*, S. Ct. Case No. S064820, pp. 38-40 (Sep. 13, 2018) (discussing the differences between prior disciplinary offenses and a pattern of misconduct) in support. The Bar also notes that respondent’s failure to respond to DCO in the *Herrera, Green,* and *Gould* matters all occurred after she executed her Stipulation for Discipline.
In the second matter, respondent admitted that, in 2014 and 2015, she failed to provide competent representation, neglected the client’s matter, failed to communicate with her client, failed to safeguard client funds, failed to deposit and maintain client funds in trust until earned, and failed to provide an accounting or refund unearned fees despite client requests in violation of RPC 1.1, 1.3, 1.4(a), 1.15-1(c), and 1.15-1(d).

Respondent was previously suspended for nine separate violations, many of which are also present here. “[A] pattern of misconduct does not necessarily require proof of a prior sanction. Rather, that aggravating factor bears on whether the violation is a one-time mistake, which may call for a lesser sanction, or part of a larger pattern, which may reflect a more serious ethical problem.” *In re Bertoni*, at 38.

The rule violations before us are very similar to respondent’s prior violations. We agree that they establish a pattern of misconduct that warrants an enhanced sanction. The violations reflect a larger pattern of disregard for the interests of respondent’s clients and her obligations to regulatory authority.

**Multiple offenses. Standards § 9.22(d).** Respondent committed twenty-two rule violations here.

**Deceptive practices during the disciplinary process. Standards § 9.22(f).** Respondent made false statements of material fact to DCO in an attempt to undermine a client’s complaints.

**Refusal to acknowledge wrongful nature of conduct. Standards § 9.22(g).** Respondent did not cooperate with DCO. She did not answer this complaint. Respondent has refused to engage and acknowledge her violations of the rules.

**Substantial experience in the practice of law. Standards § 9.22(i).** Respondent has been licensed in Oregon since September 2, 2005, and previously practiced in Utah.

**Indifference to making restitution. Standards § 9.22(j).** Despite repeated pleas from respondent’s clients and multiple Bar complaints, respondent has refused to refund any unearned fees to her clients.

Respondent has not answered here, and thus has offered no explanation or evidence of any mitigating factors. On the record before us, we are not able to identify any either.

7. **Oregon Case Law**

The Bar argues that Oregon cases confirm that disbarment is warranted for respondent’s conduct. We agree. A lawyer who engages in multiple instances of misconduct and fails to cooperate with disciplinary authorities is recognized as a threat to the profession and the public. *In re Bourcier* (II), 325 Or 429, 436, 939 P2d 604 (1997).

The fact that respondent is currently suspended is no deterrent to disbarment. “We first note that this Court has the power to sanction a lawyer even though the lawyer is on suspension.” *Id.* at 433 (citing *In re Chandler*, 306 Or 422, 430 n.2, 760 P2d 243 (1988)).
The court has disbarred lawyers where the lawyers’ collective misconduct demonstrates an intentional disregard for their clients, their professional obligations, and the disciplinary rules. While “[c]ase-matching in the context of disciplinary proceedings is an inexact science,” the court has held that, “We have ordered disbarment for conduct that otherwise would justify a long suspension when the accused has a history of misconduct that has resulted in prior disciplinary sanctions.” In re Paulson, 346 Or at 721–22 (citing In re Miller, 310 Or 731 (1990) in which a lawyer kept an estate open for six years, misrepresented the status of the estate to the court and collected an excessive fee; conduct warranted disbarment given accused’s history of serious misconduct in two prior cases).

In ordering disbarment in Paulson, the court stated, “This case distinguishes itself from those in which we have ordered long suspensions because of the multiple different matters in which the accused committed the violations.” Id. (finding the lawyer had committed 11 violations in six separate matters).

Similarly in In re Sousa, 323 Or 137, 915 P2d 408 (1996), disbarment was the appropriate sanction because the court found the attorney guilty of 16 violations in four separate cases. “The accused engaged in a continuous pattern of misrepresentations, neglect, failure to act in behalf of his clients, and failure to acknowledge his ethical obligations, and respond to the Bar’s investigation, thereby causing injury to his clients. That course of conduct mandates that the accused be disbarred from the practice of law.” 323 Or at 147; see also In re Spies, 316 Or 530, 541, 852 P2d 831 (1993) (court ordered disbarment where the lawyer committed 17 violations in seven separate matters). “In this case, we disbar the accused based on the aggregate conduct described herein. She violated duties to her clients, to the public, to the legal system, and to the legal profession.” 316 Or at 541.

The Oregon Supreme Court has disbarred lawyers who refused to cooperate with DCO after having already been disciplined. In re Bourcier II, 325 Or at 436. In Bourcier II, the court found that the attorney’s failure to cooperate with the Bar’s investigation occurred after he had received the maximum sanction short of disbarment for similar misconduct. The continuation of that misconduct in the face of the lawyer’s own disciplinary experience, was “particularly serious.” Id. at 436. “[T]he accused repeatedly failed to respond to inquiries from the Bar after this Court already had disciplined him, with a three year suspension, for the same misconduct.” Id. The court concluded that while the attorney had committed only two violations, neglect and failure to cooperate in a disciplinary investigation, disbarment was warranted given the chronology of his misconduct. Id. at 435–36.

In like kind, respondent executed her prior Stipulation for Discipline on May 22, 2017, and thereafter refused to respond to DCO in the Herrera, Green, and Gould matters. In Herrera, DCO sent respondent the two letters requesting information on May 4 and May 30, 2017. In Green, DCO sent its requests for information in April and July 2017. In Gould, DCO sent its requests for information in October and November 2017.
CONCLUSION

Respondent’s conduct here demonstrates a persistent disregard for the Rules of Professional Conduct. It demonstrates a consistent disregard for the duties she owed to her clients, the profession, and the public. Disbarment is the only appropriate sanction.

Respondent is disbarred effective immediately. Respondent is ordered to comply with the provisions of BR 6.3(a), (b) and (c). Disciplinary Counsel may seek a contempt proceeding and appropriate sanctions before the Supreme Court for failure to comply. BR 6.3(d).

Dated this 20th day of December, 2018.

/s/ Mark A. Turner
Mark A. Turner, Adjudicator

/s/ Gina Anne Johnnie
Gina Anne Johnnie, Trial Panel Member

/s. Paul Mark Gehlar
Paul Mark Gehlar, Trial Panel Public Member
ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Kit Donnelly is suspended for 90 days, including BR 8.1 Formal Reinstatement upon his eligibility to seek reinstatement, effective the date of this order, for violations of RPC 1.4(a), RPC 1.4(b), and RPC 16.16(a)(2).

DATED this 30th day of January, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Kit Donnelly, attorney at law (“Donnelly”), 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.

Donnelly was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 10, 2012, and has been a member of the Bar continuously since that time, currently having his office and place of business in Multnomah County, Oregon.

3.

Donnelly 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 22, 2018, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Donnelly for alleged violations of RPC 1.4(a) (duty to keep a client reasonably informed about the status of a matter); RPC 1.4(b) (duty to explain a matter to permit a client to make informed decisions regarding the representation); and RPC 1.16(a)(2) (duty to withdraw from representation when required by physical or mental condition) 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 or around September 2013, Donnelly formed a law firm (“firm”) with three other attorneys, including Ian Jeffrey Slavin (“Slavin”). By 2017, only Donnelly and Slavin remained in the firm.

6.

In or around November 2015, Donnelly experienced an emotional loss and related family issues, and began becoming overwhelmed by stress and depression. Donnelly attempted to cope with cannabis and through significantly increased alcohol consumption—behavior that exacerbated, rather than ameliorated his stress and depression, and led to a downward spiral in Donnelly’s ability to manage client matters.
7.

Between November 2015 and September 2017, notwithstanding that his mental health and substance abuse issues materially impaired his ability to represent clients, Donnelly did not withdraw from client matters or otherwise notify clients of his condition.

8.

In early 2017, Donnelly failed to appear at the firm for days or more at a time. During those times, he did not check his emails, communicate with clients, or respond to Slavin’s attempts to contact him by phone.

9.

In or around July 2017, Donnelly stopped going into the office; although he occasionally texted Slavin that he planned to be there, he did not thereafter show. Donnelly never returned to the firm. Donnelly did not communicate to his handful of clients that he would not be returning to the firm or take any steps to withdraw from their legal matters.

Violations

10.

Donnelly admits that, by failing to communicate with clients and notify them of his condition, and the fact that he would not be returning to the firm, he failed to keep his clients reasonably informed and explain matters sufficient to allow them to make informed decisions, in violation of RPC 1.4(a) and RPC 1.4(b).

11.

Donnelly further admits that his failure to withdraw from representation when required by his physical or mental condition violated RPC 1.16(a)(2).

Sanction

12.

Donnelly 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 Donnelly’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.** Donnelly violated his duty to his clients to diligently attend to their matters, including the duty to adequately and fully communicate with them. Standards § 4.4. Donnelly also violated his duty as a professional to
properly withdrawal from client matters, given his physical and mental condition. Standards § 7.0.

b. **Mental State.** Donnelly acted knowingly in failing to inform his clients that he would not be continuing with their cases. Similarly, Donnelly acted knowingly when he failed to withdraw from those representations after identifying that he was suffering from mental health problems that were interfering with his ability to practice. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Standards at 9. The Bar does not contend that Donnelly acted intentionally.

c. **Injury.** Injury can be either actual or potential under the Standards. In re Williams, 314 Or 530, 547 (1992). While there is no evidence of actual injury to Donnelly’s clients, Donnelly’s failure to notify them that he would not be continuing with their cases and to properly withdraw from representation when he recognized his mental health concerns were impacting his ability to represent them caused them potential injury, to the extent that their legal matters may have been impacted by his failures to communicate his status or take timely action on their behalf. Fortunately, Slavin was able to take over Donnelly’s active cases. Donnelly’s conduct also caused potential injury to the profession in that his actions could have eroded the trust the public places in lawyers.

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


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

3. Personal or emotional problems. Standards § 9.32(c). Donnelly was experiencing some mental health issues, including depression exacerbated by alcohol use, at the time of some of the conduct in this matter. He has since sought counseling and treatment for these issues.
4. Cooperative attitude toward the disciplinary investigation and proceedings. Standards § 9.32(e).

Under the ABA Standards, suspension is generally appropriate when a lawyer knowingly fails to perform services for (including communicating with) a client and causes injury or potential injury to a client; or the lawyer engages in a pattern of neglect and causes
injury or potential injury to a client. 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* § 4.42; § 7.2. Although the presumptive sanction under the *Standards* is for six months or more (*Standards* § 2.3), Donnelly’s mitigating factors overcome his aggravating factors both in number and in weight and suggest that a downward departure is appropriate. However, the potential for his mental health issues to impact his ability to resume the practice of law makes it also appropriate for Donnelly to demonstrate his rehabilitation, as well as present good character and fitness prior to being readmitted to the active practice of law in Oregon.

14. Oregon cases likewise hold that a short suspension is appropriate, with a formal reinstatement component under similar circumstances. *See, e.g., In re Allen*, 30 DB Rptr 362 (2016) (attorney with depression issues was suspended for 60 days by a trial panel, and subject to formal reinstatement, where she repeatedly failed to communicate with her client, failed to respond to her client’s efforts to communicate with her, and refused to provide information to the client when requested to do so); *In re Houston*, 29 DB Rptr 238 (2015) (trial panel imposed 150-day suspension on attorney, plus formal reinstatement, where respondent failed to communicate with his client after sending initial demand letter to her former employer on her behalf, including failing to notify her of subsequent communications respondent had with the employer); *In re Gonzalez*, 25 DB Rptr 88 (2011) (attorney experiencing significant stressors received a 4-month suspension, and was made to comply with formal reinstatement where he told a workers compensation client that he did not need to attend a noticed hearing but then failed to communicate with the client or respond to the client’s inquiries about what had occurred for several months after the hearing); *In re Abendroth*, 21 DB Rptr 205 (2007) (respondent, suffering from severe depression, was suspended for 120 days and required to seek formal reinstatement where he stopped working on his client’s claims for professional negligence and breach of contract after a few months, and, for nearly a year, failed to communicate with the client despite the client’s repeated efforts to contact him).

15. Consistent with the *Standards* and Oregon case law, the parties agree that Donnelly shall be suspended for 90 days for violations of RPC 1.4(a), RPC 1.4(b), and RPC 1.16(a)(2), the sanction to be effective on the day that this stipulation is approved by the Disciplinary Board. The parties further agree that Donnelly shall be required to seek formal reinstatement pursuant to BR 8.1, at such time as he is eligible to seek reinstatement.

16. Donnelly 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 any term of his suspension. However, Donnelly has not been engaged in the active practice of law for many months preceding this stipulation and has no current clients or current client files. All of Donnelly’s closed files are currently in the possession of Ian Slavin, OSB No. 091500, an active member of the Bar, who maintains
possession and access to Donnelly’s closed client files and is able to serve as the contact person for clients in need of the files during the term of Donnelly’s suspension. Ian Slavin has agreed to accept this responsibly.

17.

Donnelly acknowledges that reinstatement is not automatic on expiration of any period of suspension, if any stayed period of suspension is actually imposed. If a period of suspension is necessitated by his non-compliance with the terms of his probation, he will be required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Donnelly also acknowledges that, should a suspension occur, 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.

18.

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

19.

Donnelly 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 Donnelly is admitted: Minnesota.

20.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 22, 2018. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 23rd day of January, 2019.

/s/ Kit Donnelly
Kit Donnelly
OSB No. 120800

EXECUTED this 23rd day of January, 2019.

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 Nos. 18-187, 18-188, 18-189, and 18-190
Complaint as to the Conduct of )
) MARIANNE G. DUGAN, )
) Respondent.
) Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: None
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. 30-day suspension, all stayed, 1-year probation.
Effective Date of Order: January 30, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Marianne G. Dugan is suspended for 30 days, all stayed, pending successful completion of a 1-year term of probation, effective upon approval the date of this order for violations of RPC 1.15-1(a), RPC 1.15-1(b), and RPC 1.15-1(c).

DATED this 30th day of January, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Marianne G. Dugan, attorney at law (“Dugan”), 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.

Dugan was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1993, and has been a member of the Bar continuously since that time, having her office and place of business in Lane County, Oregon.

3.

Dugan 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 November 3, 2018, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Dugan for alleged violations of RPC 1.15-1(a) (duty to safeguard client property and hold client funds separate from the lawyer’s own property); RPC 1.15-1(b) (prohibition against depositing a lawyer’s own funds into trust beyond bank fees); and RPC 1.15-1(c) (duty to maintain client funds in trust until earned or expenses incurred) 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.

At all times relevant herein, Dugan had her lawyer trust account at Key Bank (“trust account”), and utilized LawPay online payment portals for the convenience of her clients in paying retainers and bills.

6.

Prior to May 2018, a recurring client, C.R., made periodic payments to Dugan by credit card for ongoing legal assistance, both through Dugan’s LawPay business checking portal and her LawPay trust account portal. In this instance, Dugan instructed C.R. to make a payment for $810 into the trust account portal, but C.R. mistakenly used the LawPay portal link from an old email and the payment was actually deposited into Dugan’s business account on May 14, 2018. Dugan was not aware that C.R. did not follow her instructions because she did not have online access to her trust account.
7.

On May 16, 2018, Dugan wrote a check for $810 from her lawyer trust account, intending to transfer C.R.’s payment to her business account.\(^1\) The check was returned by the bank as the account held a balance of $683.37 at the time, which included a total of at least $53 on behalf of three separate clients. The bank charged a $32 return item fee to the trust account.

8.

On May 18, 2018, the bank again attempted to present the $810 check for payment and it was again returned NSF against an available balance of $651.37. The bank charged a second $32 return item fee.

9.

On May 23, 2018, without verifying her trust account balance, Dugan wrote another check to herself for $630, which represented the transfer of earned fees pertaining to another client from trust to her business account. This check triggered a third returned check fee.

10.

On May 25, 2018, Dugan received notice of the three trust account overdrafts. She immediately deposited a check from her business account for the negative balance at the time, which she believed, based on the Key Bank notifications, was -$64 for overdraft fees. This deposit allowed the bank’s second attempt at removing the $630 check to process that same day.

11.

On June 1, 2018, Dugan wrote a check for $64 from her lawyer trust account. The check was honored by the bank and left a negative balance of -$47.63 in the trust account.

12.

On June 11, 2018, Dugan received notice from the bank that her trust account was still overdrawn, this time by -$65. In an abundance of caution, Dugan placed $100 of her own funds into the trust account to correct the -$65 negative balance and any other pending fees the bank might charge. The $100 deposit corrected the negative balance and brought the account to $1,035 (along with another client’s $1,000 deposit the day before).

\(^1\) As the payment from C.R. represented payment for services already rendered, it was actually correct that the payment was made directly into Dugan’s business account. See RPC 1.15-1(b).
Violations

13.

Dugan admits that, by failing to safeguard the client funds in her trust account and allowing them to be drawn upon with authorization, she violated RPC 1.15-1(a) and RPC 1.15-1(c). Dugan further admits that the deposit of her own funds into trust in an amount that exceeded the fees charged in connection with her overdrafts violated RPC 1.15-1(b).

Sanction

14.

Dugan 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 Dugan’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.** Dugan violated her duty to preserve her client’s property. Standards § 4.1.

b. **Mental State.** Dugan acted knowingly, 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. Dugan was aware that she was unable to accurately verify the balance of her trust account, yet she still elected to write two checks to pay herself from client funds she assumed were present and available in the trust account. She also knew she had more than one client’s funds in her IOLTA, and that any bookkeeping error could draw on another client’s unearned trust funds. Dugan’s conduct was more than simply negligent because she took no steps to verify her account balance(s) prior to paying herself.

c. **Injury.** Injury can be either actual or potential under the Standards. In re Williams, 314 Or 530, 547 (1992). Dugan’s clients who had funds in trust experienced both actual and potential injury. There was potential injury to the three clients with funds in trust at the time of the overdrafts, and actual injury to any of the clients with unearned funds that should be held in the trust account but that have not been replaced since the overdrafts and subsequent fees.

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

1. **Prior disciplinary offenses.** Standards § 9.22(a). Dugan was reprimanded in 2012 for conduct prejudicial to the administration of justice (RPC 8.4(a)(4)) when, after she was named as a defendant in a lawsuit, to take advantage of a statutory defense, Dugan filed a declaration in which she asserted facts that were not true. The
misstatements were negligently made in that she was careless in reviewing her records prior to drafting and filing the declaration. *In re Dugan*, 26 DB 277 (2012).

Dugan was again reprimanded in 2016 for violations of RPC 1.3 (neglect of a legal matter) and RPC 1.4(a) (duty to keep a client reasonably informed about the status of matter and respond to reasonable requests for information) where, after she was retained to develop a claim for the wrongful death of his client’s daughter, although she initially drafted a demand letter and sent tort claims notices to the appropriate agencies, Dugan then waited nearly two years before taking any further action on the case. During that two-year period, the client made multiple inquiries regarding the status of her case and urging Dugan to take action. Dugan failed to reply to the client’s inquiries, apart from a few promises to act within the next few days. *In re Dugan*, 30 DB Rptr 277 (2016).

2. **Selfish motive.** *Standards* § 9.22(b). Each of the four overdraft notifications stemmed from Dugan’s desire to pay herself without taking necessary steps to verify the earned money she was taking was available in the trust account.

3. **Multiple offenses.** *Standards* § 9.22(d). The Bar received a total of four notifications from Key Bank concerning Dugan’s trust account between May 21 and June 11, which represent multiple violations of the identified rules.

4. **Substantial experience in the practice of law.** *Standards* § 9.22(i). Dugan has been a lawyer in Oregon since 1993.

5. **Indifference to making restitution.** *Standards* § 9.22(j). As of September 2018, Dugan’s communications with the Bar demonstrated that she had not taken the time to fully reconcile her accounts (and therefore did not recognize that there were still client funds missing from the trust account), or taken any steps to make her client(s) whole.

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

1. **Personal or emotional problems.** *Standards* § 9.32(c). Dugan was reportedly coping with her mother’s initial cancer diagnosis, which distracted her from her practice during the time that some of the incidents at issue occurred.

2. **Remorse.** *Standards* § 9.32(l). Dugan acknowledged that she should have paid better attention and has expressed an intent to be more careful in the future when withdrawing trust funds.
15.

Under the ABA Standards, a 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.

16.

Oregon case law is in accord that a short suspension is appropriate. See, e.g., In re Merkel, 31 DB Rptr 87 (2017) (attorney who received a settlement for his client and deposited the entire settlement amount into his business account, and wrote a check to his client from the business account for the client’s portion of the settlement funds, was suspended for 30 days, all stayed, pending a one-year probation); In re Hellewell, 30 DB Rptr 204 (2016). (attorney was suspended for 30 days, all stayed, pending an 18-month probation, where attorney failed to deposit client’s retainer into his lawyer trust account; but refunded the retainer from trust); In re Cottle, 29 DB Rptr 79 (2015) (attorney received 60-day suspension, all stayed, pending a 2-year term of probation where, after his staff failed to deposit a client’s substantial settlement check into his lawyer trust account as he had directed, attorney did not verify that the deposit had been completed before writing a check for his fees; when the bank returned the check for insufficient funds, the attorney transferred approximately thousands of dollars of his own funds into the firm’s trust account to correct the depositing error); In re Eckrem, 26 DB Rptr 104 (2012) (attorney was suspended for 90 days, all stayed, pending a 180-day probation where client’s retainer received via credit-card were deposited directly into an office account rather than a trust account).

17.

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.

18.

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

19.

Probation shall commence upon the effective date and shall continue for a period of one (1) year, ending on the day prior to the 1st year anniversary of the effective date (the
“period of probation”). During the period of probation, Dugan shall abide by the following conditions:

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

(b) Dugan 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, Dugan shall attend not less than four (4) MCLE accredited programs, for a total of twelve (12) hours, which shall emphasize law practice management, time management, proper handling of client property, and proper trust accounting practices. These credit hours shall be in addition to those MCLE credit hours required of Dugan for her normal MCLE reporting period. (The Ethics School and Trust Accounting School requirements do not count towards the programs or hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of her period of probation, Dugan shall submit an Affidavit of Compliance to DCO.

(d) Prior to the end of the period of probation, Dugan shall attend Trust Accounting School, offered by the Oregon State Bar twice a year in the spring and fall. Upon completion of Trust Accounting School, and prior to the end of her period of probation, Dugan shall submit an Affidavit of Compliance to DCO.

(e) Throughout the period of probation, Dugan shall diligently attend to client matters and adequately communicate with clients regarding their cases. Attorney shall also ensure that she is properly tracking and accounting for each client’s funds.

(f) Each month during the period of probation, Dugan shall review all client files to ensure that she is timely attending to the clients’ matters and that she is maintaining adequate communication with clients, the court, and opposing counsel.

(g) Each month during the period of probation, Dugan shall:

(1) maintain complete records, including individual client ledgers, of the receipt and disbursement of client funds and payments on outstanding bills;

(2) review her monthly trust account records and client ledgers and reconcile those records with her monthly lawyer trust account bank statements; and
sufficiently monitor her trust account to ensure that she does not draw upon client funds that are not earned or otherwise owing for a particular purpose related to that client’s representation.

For the period of probation, Dugan will employ a bookkeeper approved by DCO, to assist in the monthly reconciliation of her lawyer trust account records and client ledger cards.

Brian Michaels, OSB No. 925607, shall serve as Dugan’s probation supervisor (“Supervisor”). Dugan shall cooperate and comply with all reasonable requests made by her Supervisor that Supervisor, in his or her sole discretion, determines are designed to achieve the purpose of the probation and the protection of Dugan’s clients, the profession, the legal system, and the public. Dugan agrees that, if Supervisor ceases to be her Supervisor for any reason, Dugan will immediately notify DCO and engage a new Supervisor, approved by DCO, within one month.

Beginning with the first month of the period of probation, Dugan shall meet with Supervisor in person at least once a month for the purpose of:

1. Allowing her Supervisor to review the status of Dugan’s law practice and her 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) client files or ten percent (10%) of Dugan’s active caseload, whichever is greater, to determine whether Dugan is timely, competently, diligently, and ethically attending to matters, and taking reasonably practicable steps to protect her clients’ interests upon the termination of employment.

2. Permitting her Supervisor to inspect and review Dugan’s accounting and record keeping systems to confirm that she is reviewing and reconciling her lawyer trust account records and maintaining complete records of the receipt and disbursement of client funds. Dugan agrees that her Supervisor may contact all employees and independent contractors who assist Dugan in the review and reconciliation of her lawyer trust account records.

Dugan authorizes her Supervisor to communicate with DCO regarding her compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Dugan’s compliance.

Within seven (7) days of the effective date, Dugan shall contact the Professional Liability Fund (“PLF”) and schedule an appointment on the soonest date available to consult with PLF’s Practice Management Advisors in order to obtain practice management advice. Dugan shall notify DCO of the time and date of the appointment.
(m) Dugan shall attend the appointment with the PLF’s Practice Management Advisors 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 her employment. No later than thirty (30) days after recommendations are made by the PLF’s Practice Management Advisors, Dugan shall adopt and implement those recommendations.

(n) No later than sixty (60) days after recommendations are made by the PLF’s Practice Management Advisors, Dugan shall provide a copy of the Office Practice Assessment from the PLF’s Practice Management Advisors and file a report with DCO stating the date of her consultation(s) with the PLF’s Practice Management Advisors; identifying the recommendations that she has adopted and implemented; and identifying the specific recommendations she has not implemented and explaining why she has not adopted and implemented those recommendations.

(o) Dugan shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with PLF Practice Management Advisors on or before June 30, 2019.

(p) On a monthly basis, on dates to be established by DCO beginning no later than thirty (30) days after the effective date, Dugan shall submit to DCO a written “Compliance Report,” approved as to substance by her Supervisor, advising whether Dugan is in compliance with the terms of this Stipulation for Discipline, including:

1. The dates and purpose of Dugan’s meetings with her Supervisor.
2. The number of Dugan’s active cases and percentage reviewed in the monthly audit with Supervisor and the results thereof.
3. Whether Dugan has completed the other provisions recommended by her Supervisor, if applicable.
4. In the event that Dugan has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.

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

(r) Dugan’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 her 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 DCO on or before its due date.

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

20.

Dugan 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 any term of her suspension, if any stayed period of suspension is actually imposed. In this regard, if any stayed period of suspension is actually imposed Dugan has arranged for Brian Michaels, OSB No. 925607, 259 E 5th Ave., Suite 300D, Eugene, Oregon 97401, an active member of the Bar, to either take possession of or have ongoing access to Dugan’s client files and serve as the contact person for clients in need of the files during the term of her actual suspension. Dugan represents that Brian Michaels has agreed to accept this responsibility.

21.

Dugan acknowledges that reinstatement is not automatic on expiration of any period of suspension, if any stayed period of suspension is actually imposed. If a period of suspension is necessitated by her non-compliance with the terms of her probation, she will be required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Dugan also acknowledges that, should a suspension occur, 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.

22.

Dugan 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, if a suspension is imposed. This requirement is in addition to any other provision of this agreement that requires Dugan to attend continuing legal education (CLE) courses.

23.

Dugan 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 Dugan is admitted: Oregon US District Court; US Supreme Court, Federal Circuit, Fed. Court of Claims, DC Circuit, 3rd, 6th, 8th and 9th Circuits, and Eastern and Western Districts of Michigan (federal).
24.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on November 3, 2018. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 22nd day of January, 2019.

/s/ Marianne G. Dugan
Marianne G. Dugan
OSB No. 932563

EXECUTED this 23rd day of January, 2019.

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: WALTER J. LEDESMA, Respondent.

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: None
Disciplinary Board: Mark A. Turner, Adjudicator
Frank J. Weiss
M. Charles Van Rossen, Public Member
Disposition: Violation of RPC 1.4(a), RPC 1.15-1(a), and RPC 1.15-1(c). Trial Panel Opinion. 3-month suspension with formal reinstatement.
Effective Date of Opinion: February 7, 2019

TRIAL PANEL OPINION

In this disciplinary proceeding, the Oregon State Bar (“Bar”) alleged that respondent, Walter Ledesma, violated several Rules of Professional Conduct (“RPC”). These include failing to keep his client reasonably informed of the status of a matter or to promptly comply with reasonable requests for information, failing to segregate and safeguard client property, and failing to maintain client funds in trust.¹ The Bar seeks a three-month suspension, plus formal reinstatement should respondent seek to practice again following his suspension.

On September 14, 2018, respondent was declared in default for failure to answer the complaint. As a result, we are to accept the allegations in the complaint as true. BR 5.8(a). Our task is to determine whether these allegations establish the disciplinary rule violations alleged and, if so, the appropriate sanction. For the reasons discussed below, we find that respondent has violated the specified rules. We find that the appropriate sanction is a three-month suspension, with the requirement that respondent seek formal reinstatement if he chooses to practice again.

¹ The complaint also contains a charge of neglect of a legal matter in violation of RPC 1.3, but the Bar has chosen not to pursue that alleged violation.
STATEMENT OF FACTS

Respondent entered into a diversion agreement with the Bar on or about May 1, 2017, pursuant to BR 2.10(d). Complaint, ¶3. In that agreement, respondent stipulated to specific facts in the event that he failed to comply with his diversion agreement. Id. Respondent did not comply with the agreement. Id.

On or about May 18, 2015, Alfonso Arroyo Munoz (“Munoz”) was served with a petition for support, custody and parenting time from his child’s mother (the “Petition”). A response to the Petition was required within 30 days, or by June 18, 2015. Complaint, ¶6. On or before May 29, 2015, Munoz hired respondent to answer the Petition. Munoz paid a $2,000 retainer. Respondent deposited it into his trust account on May 29, 2015. On June 4, 2015, respondent withdrew $200 of the retainer as earned fees. Complaint, ¶7.

Munoz and a friend acting on his behalf tried to contact respondent on multiple occasions between May 29, 2015, and June 18, 2015, seeking status updates and urging respondent to answer the Petition. Respondent did not reply to any of those communications. Complaint, ¶8. Respondent filed no response to the Petition by the June 18, 2015 deadline. Consequently, the court entered a default judgment against Munoz on June 26, 2015. Complaint, ¶9. The court imposed an increased support obligation on Munoz and he continued to lack parenting time with his child. Complaint, ¶10.

When they finally spoke, respondent told Munoz that he had calendared the deadline incorrectly and had filed no response. Complaint, ¶11. Munoz’s primary objective when he retained respondent was to avoid such a default. Shortly after learning of this failure, Munoz sought new counsel to seek relief from the default. Complaint, ¶¶9, 11. In August 2015, the court denied Munoz’s motion to set aside the default. Complaint, ¶12.

Sometime between July 8 and August 8, 2015, respondent transferred $1,800—the balance of the unearned retainer—from his trust account to his business account. On or about August 6, 2015, respondent wrote a $2,000 check to Munoz from his business account to refund the retainer. Complaint, ¶13.

ANALYSIS OF THE CHARGED VIOLATIONS

A. Respondent Failed to Communicate with His Client in Violation of RPC 1.4(a).

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.”

To determine whether a lawyer has violated this rule, we are to consider, among other things, the length of time a lawyer failed to communicate; whether the lawyer failed to respond promptly to reasonable requests for information from the client; and whether the lawyer knew or a reasonable lawyer would have foreseen that a delay in communication would prejudice the client. In re Groom, 350 Or 113, 124, 249 P3d 976 (2011).
Respondent knew that Munoz’s matter was urgent. The deadline to respond to the Petition was less than 30 days from the date respondent was hired. From May 29 to June 18, 2015, Munoz and his friend tried to contact respondent on multiple occasions to request updates and to ensure that respondent acted on the Petition. Respondent ignored those communications and only spoke with his client after he had missed the filing deadline. We find that this course of conduct violated RPC 1.4(a).

B. Respondent Failed to Safeguard Munoz’s Property and Maintain Munoz’s Retainer in Respondent’s Trust Account in Violation of RPC 1.15-1(a) & (c).

Two sections of RPC 1.15-1 are at issue here. RPC 1.15-1(a) provides:

“A lawyer shall hold property of clients or third persons that is in a lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate “Lawyer Trust Account” maintained in the jurisdiction where the lawyer's office is situated. … Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.”

RPC 1.15-1(c) further states:

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

Without a written agreement stating that a client’s payment is a nonrefundable retainer, and that it is earned on receipt, retainers are client property. They must be held in trust until earned, and must be accounted for. In re Obert, 352 Or 231, 246-47, 282 P3d 825 (2012) (attorney violated RPC 1.15-1(a) and RPC 1.15(c) for accepting credit card payments deposited directly into his business account without a written fee agreement allowing him to do so and before the fee was earned).

Since no such written agreement is present here, Munoz’s $2,000 retainer had to remain in respondent’s trust account until it was earned. Although respondent correctly deposited the retainer into his trust account at the outset, and later withdrew $200 on June 4, 2015 as earned fees, he still violated RPC 1.15-1(a) & (c) by transferring the remaining $1,800 from his trust account to his business account between July 8 to August 8, 2015. Those fees were never earned. They should have stayed in the trust account until they were refunded to the client.

Respondent did refund the retainer to his client. But the Bar correctly points out that the fact that respondent did refund the retainer from his business account does not cure the trust account violation. Accordingly, we are compelled to find that respondent’s conduct violated RPC 1.15-1(a) and (c).
SANCTION

The Oregon Supreme Court refers to both the ABA Standards for Imposing Lawyer Sanctions (“Standards”), and its own case law for guidance in determining the appropriate sanctions for lawyer misconduct.

A. ABA Standards.

The Standards establish an analytical framework for determining the appropriate sanction in discipline cases using three factors: the duty violated, the lawyer’s mental state, and the actual or potential injury caused by the conduct. Once these factors are analyzed, we are to make a preliminary determination of the proper sanction. If appropriate, after that we are to adjust the sanction based on any aggravating or mitigating circumstances.

B. Duty Violated.

The most important ethical duties a lawyer owes are to his clients. Standards, ABA Compendium of Professional Responsibility Rules and Standards, (2017 Ed.) at 449. Respondent violated the duty he owed to his client to preserve his property in his trust account. Standards, § 4.1. Respondent also violated the duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. Standards, § 4.4.

C. Mental State.

The Standards recognize three mental states: intent, knowledge, and negligence. “Intent” is the most culpable mental state, and is defined as acting with the conscious objective or purpose to accomplish a particular result. Id at 450. “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 that deviates from the standard of care that a reasonable lawyer would exercise in the situation. Id.

On the facts before us we find that respondent acted knowingly when he failed to respond to his client’s queries between May 29 and June 18, 2015, and he did so while knowing that a response to the Petition was due on June 18, 2015.

We also find that respondent acted knowingly when he transferred the balance of Munoz’s retainer into his business account when respondent had not earned those fees.

D. Extent of Actual or Potential Injury.

For purposes of determining an appropriate sanction, we may take into account both actual and potential injury. Standards at 450; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992).

Respondent’s conduct caused actual injury to his client. The Oregon Supreme Court holds that a lack of communication from the lawyer causes a client stress, frustration, and
anxiety. See *In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426–27, 939 P2d 39 (1997). “Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules.” *In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010). Munoz’s frustration and anxiety were exacerbated by the entry of the default judgment against him, and the ultimate decision by the trial court to let the default stand. A timely response to the Petition was the immediate objective of the client and respondent failed to act while keeping his client in the dark about the status of the matter.

E. Preliminary Sanction.

Absent aggravating or mitigating circumstances, the following *Standards* apply:

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, such as responding to communications, and causes injury or potential injury to a client. *Standards*, § 4.42(a).

F. Aggravating and Mitigating Circumstances.

We find the following aggravating factors under the *Standards* to be present here:

1. **Multiple offenses.** *Standards* § 9.22(d). Respondent violated several different rules while representing Munoz.

2. **Refusal to acknowledge wrongful nature of conduct.** *Standards* § 9.22(g). By virtue of his default, respondent has refused to engage with the Bar and acknowledge his violations of the rules. We also find that his breach of the terms of his diversion agreement show a refusal to acknowledge his wrongdoing.

3. **Substantial Experience in the Practice of Law.** *Standards* § 9.22(i). Respondent has been a licensed Oregon lawyer for twenty-six years since 1992.

We recognize the following mitigating factors under the *Standards* are also present here:

1. **Absence of a Prior Disciplinary Record.** *Standards* § 9.32(a).

2. **Absence of a Dishonest or Selfish Motive.** *Standards* § 9.32(b).

3. **Timely Good Faith Effort to Make Restitution or Rectify Consequences of Misconduct.** *Standards* § 9.32(d). Following the entry of the default judgment, respondent told his client that he could terminate respondent and seek to recover damages from the Professional Liability Fund. *Complaint*, ¶11. Respondent also refunded the entire retainer.
The Bar states that the aggravating and mitigating factors are equal here in its view. We see no reason to dispute this conclusion and, thus, we make no adjustment to the presumptive sanction of suspension.

G. Oregon Case Law.


Respondent’s failure to communicate with Munoz warrants a suspension under Oregon case law. In re Koch, 345 Or at 458 (attorney suspended for 120 days when she failed to advise her client that another lawyer would prepare a qualified domestic relations order for the client and thereafter failed to communicate with the client and that second lawyer when they needed information and assistance from attorney to complete the legal matter); In re Coyner, 342 Or 104, 115, 149 P3d 1118 (2006) (90-day suspension for neglect of two separate client matters and neglect of a client’s appeal which resulted in the case being dismissed, and failure to inform the client when the motion to dismiss was granted).

Similarly, Oregon case law supports a term of suspension for respondent’s trust account violations. See In re Obert, 352 Or 231, 262, 282 P3d 825 (2012) (court held that the usual sanction for violation of RPC 1.15-1 is a suspension between 30 and 60 days); In re Eakin, 334 Or 238, 253–54, 48 P3d 147 (2002) (experienced attorney’s single, unintentional mishandling of client trust account warranted 60-day suspension).

The Bar contends that respondent’s collective misconduct warrants a suspension of at least three months, premised on 30 days for his failure to communicate and 60 days for his trust account violations. We agree with that conclusion.

H. Formal Reinstatement

The Bar has asked us to require that respondent be subject to formal reinstatement under BR 8.1 if he elects to return to active status following any suspension. We are empowered to impose such a condition by the terms of BR 8.3(a).

The Bar argues that the burden should be on respondent to demonstrate that he is fit to again practice law in this state. See In re Loew, 296 Or 328 (1984) (formal reinstatement was appropriate for attorney suffering from burnout, conditioned upon presenting satisfactory evidence of being sufficiently free of emotional difficulties to practice law competently). We give particular weight in this regard to respondent’s failure to comply with his diversion agreement. Having voluntarily agreed to such an arrangement, respondent’s decision not to follow through is disturbing. Moreover, his failure to participate in this proceeding suggests the need for a substantial demonstration of fitness to practice if he chooses to do so. We believe the interests of the public require that this responsibility be assigned to respondent.
CONCLUSION

We suspend respondent for three months, effective upon the date this decision becomes final, and we order that respondent must comply with the requirements of BR 8.1 if he seeks to practice law again in this state. Respondent is ordered to comply with the provisions of BR 6.3(a), (b) and (c). Disciplinary Counsel may seek a contempt proceeding and appropriate sanctions before the Supreme Court for failure to comply. BR 6.3(d).

Dated this 7th day of January, 2019.

/s/ Mark A. Turner
Mark A. Turner, Adjudicator

/s/ Frank J. Weiss
Frank J. Weiss, Trial Panel Member

/s/ M. Charles Van Rossen,
M. Charles Van Rossen, Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
Complaint as to the Conduct of ) Case No. 18-37
TONY F. DE ALICANTE, )
Respondent. )

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: Nathan Gabriel Steele
Disciplinary Board: None
Effective Date of Order: February 22, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Tony F. De Alicante and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Tony F. De Alicante is publically reprimanded for violation of 1.8(h)(1).

DATED this 22nd day of February, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Tony F. De Alicante, attorney at law (De Alicante), 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.

De Alicante 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 Deschutes County, Oregon.

3.

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

4.

On April 26, 2018, a Formal Complaint was filed against De Alicante pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 1.8(h)(1) and RPC 1.8(h)(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.

In 2014, De Alicante represented Sharon Knotek (“Knotek”) on an underinsured motorist claim pursuant to a contingency fee agreement. After Knotek’s UIM claim was settled, a dispute arose between Knotek and De Alicante regarding De Alicante’s fee. De Alicante and Knotek eventually settled their fee dispute and entered into a settlement agreement which contained broad mutual release language purporting to release De Alicante from any type of claim or liability brought by Knotek. The release language used was arguably broad enough to encompass Bar grievances and legal malpractice claims. De Alicante did not advise Knotek to seek independent counsel before entering into the agreement.

Violations

6.

De Alicante admits that, by drafting such broad release language and failing to advise Knotek to seek independent legal counsel before executing the settlement agreement, he made an agreement prospectively limiting his liability to a client for malpractice in violation of RPC
1.8(h)(1). Upon further factual inquiry, the parties agree that the charge(s) of alleged violation(s) of RPC 1.8(h)(4) should be and, upon the approval of this stipulation, is dismissed.

Sanction

7.

De Alicante 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 De Alicante’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. De Alicante violated the duty he owed to his client to avoid conflicts of interest. Standards § 4.3.

b. Mental State. The Standards recognize three mental states. 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.

De Alicanteacted negligently when he prepared and entered into the settlement agreement with Knotek that did not comply with RPC 1.8. De Alicante asserts that his sole intent was to resolve the fee dispute and not limit Knotek’s right to pursue any malpractice claims, but acknowledges that the general release language is arguably broad enough to cover such complaints.

c. Injury. For the purposes of determining an appropriate disciplinary sanction, both actual and potential injury are taken into account. Standards at 6; In re Williams, 314 Or 530 (1992).

De Alicante caused potential injury to Knotek when they entered into the settlement agreement that arguably deprived Knotek of the protections afforded by RPC 1.8 and for which Knotek did not seek independent counsel. However, while there was some potential for injury to Knotek, no actual injury occurred.

d. Aggravating Circumstances. Aggravating circumstances include:

1. Substantial experience in the practice of law. Standards § 9.22(i). De Alicante has been practicing law since 1989.

e. Mitigating Circumstances. Mitigating circumstances include:

2. Full and Free Disclosure and Cooperative Attitude Towards Proceedings. Standards § 9.32(e). De Alicante was cooperative during the Bar investigation.

3. Remorse. Standards § 9.32(l). De Alicante has expressed remorse for his conduct.

4. A reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer’s own interests and causes injury or potential injury to a client. Standards, § 4.33.

5. The court and the SPRB have found conflicts of interest to warrant public reprimands.1 See e.g. In re Harrington, 301 Or 18, 718 P2d 725 (1986) (lawyer borrowed money from his elderly client and arranged for others to also borrow money from the client, but the lawyer was found to have acted without guile and in good faith); In re Campbell, 345 Or 670, 202 P3d 871 (2009) (lawyer represented majority shareholders of a corporate client against corporate client and its minority shareholder and continued the representation even after it was clear the lawyer was going to be called as a witness); In re Scott, 294 Or 606, 660 P2d 157 (1983) (lawyer advised domestic relations client in lending funds to lawyer’s home construction business); In re Montgomery, 292 Or 796, 643 P2d 338 (1982) (lawyer borrowed money from clients without full disclosure); In re Bailey, 21 DB Rptr 64 (2007) (stipulated reprimand for lawyer who prepared stock purchase agreements for corporate client under which stock of exiting shareholder was transferred to the lawyer and the lawyer loaned funds to the corporate client and his disclosures were inadequate); In re McLaughlin, 17 DB Rptr 247 (2003) (stipulated reprimand for lawyer who entered into joint business venture with his client, formed corporation and drafted shareholder’s agreement to pursue the venture and his disclosures were inadequate to obtain consent after full disclosure); In re Ambrose, 26 DB Rptr 16 (2012) (stipulated public reprimand for lawyer after lawyer utilized various business entities to enter into business transactions with a current client without sufficient disclosures); In re Ghiorso, 27 DB Rptr 110 (2013) (stipulated public reprimand for attorney who participated as a co-borrower with his client on one loan and separately loaned money for advanced assistance to the same client on at least two other occasions failed to obtain written, informed consent).

1 While the court has found that “patent” conflicts of interest should result in 30-day suspensions, it has generally done so only when the aggravating factors outweigh the mitigating factors. In re Hockett, 303 Or 150, 164, 734 P2d 877 (1987) (lawyer simultaneously represented two husbands with respect to their business interests and represented their wives in dissolution proceedings against them); In re Knappenberger (II), 337 Or 15, 32-33, 90 P3d 614 (2004) (citing Hockett in discussing the court’s sanctions in prior conflict of interest cases).
In each of these cases, mitigating factors outweighed (or balanced) the aggravating factors. Considering the Standards, prior Oregon cases, and De Alicante’s mitigating factors, a public reprimand is an appropriate sanction for De Alicante’s conduct in this matter.

10.

Consistent with the Standards and Oregon case law, the parties agree that De Alicante shall be reprimanded for violations of RPC 1.8(h)(1), the sanction to be effective upon approval by the Disciplinary Board.

11.

De Alicante 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.

12.

De Alicante 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 De Alicante is admitted: Washington.

13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 26, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 18th day of February, 2019.

/s/ Tony F. De Alicante
Tony F. De Alicante, OSB No. 890188

APPROVED AS TO FORM AND CONTENT:

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

EXECUTED this 19th day of February, 2019.

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: )
) Case No. 19-01
Complaint as to the Conduct of )
) KRISTA L. WHITE, )
) Respondent. )

Counsel for the Bar: Susan R. Cournoyer
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violations of RPC 1.15-1(a) and RPC 1.15-1(d).
Stipulation to Reciprocal Discipline.
30-day suspension, all stayed, 1-year probation.

Effective Date of Order: February 22, 2019

ORDER IMPOSING RECIPROCAL DISCIPLINE

This matter having been presented upon the Oregon State Bar’s Petition for Reciprocal Discipline (BR 3.5), Krista L. White’s (Respondent’s) Stipulation to Reciprocal Discipline, and for good cause appearing,

IT IS HEREBY ORDERED that, pursuant to BR 3.5, Respondent is hereby suspended for thirty (30) days, all stayed, pending a one-year probation, the sole term of which requires Respondent to fully comply with and successfully complete the remaining term of the probation currently imposed in Washington, would not result in grave injustice or offend public policy.

DATED this 22nd day of February, 2019.

/s/Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board
STIPULATION TO RECIPROCAL DISCIPLINE

Krista L. White, Respondent, hereby stipulates to the following pursuant to Oregon State Bar Rule of Procedure 3.5:

1. The proceeding In re Krista L. White, Washington State Bar Association Discipline Proceeding No. 17#00012, did not lack in notice or opportunity to be heard;

2. The conduct for which Respondent was disciplined in Washington is conduct that should subject Respondent to discipline in Oregon; and

3. The imposition of a 30-day suspension, all stayed pending a one-year probation, the sole term of which requires Respondent to fully comply with and successfully complete the remaining term of the probation currently imposed in Washington, would not result in grave injustice or offend public policy.

EXECUTED this 14th day of February, 2019.

/s/Krista L. White
Krista L. White, OSB No. 941575
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 18-38
Complaint as to the Conduct of )
) WILL DENNIS,
) Respondent.

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: Nathan Gabriel Steele
Disciplinary Board: None
Disposition: Violation of RPC 1.6(a). Stipulation for Discipline. Public Reprimand.
Effective Date of Order: March 1, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

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

DATED this 1st day of March, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Will Dennis, attorney at law (Dennis), 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.

Dennis was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 8, 2006, and has been a member of the Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

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

4.

On April 26, 2018, a Formal Complaint was filed against Dennis pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging a violation of 1.6(a) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In 2015 and the early part of 2016, Dennis represented Guinevere Johnson (Johnson), the successor personal representative of the Estate of Doris Jean Scott (estate) filed in Deschutes County Circuit Court. Johnson was a professional fiduciary. In the course of representing Johnson, Dennis discovered that Johnson had paid herself a $4,000 professional fiduciary fee from estate funds without court approval. After the court approved the estate’s final accounting which included a personal representative fee for Johnson, Dennis advised Johnson that she needed to deduct the $4,000 that she had previously paid herself from the personal representative fee the court had approved. Johnson disputed Dennis’s calculations, but did not explain her rationale.

Thereafter, Dennis filed a motion to withdraw and supporting declaration in which he disclosed that Johnson had paid herself fees without court approval and without his knowledge or consent. At the time, Dennis believed that he was permitted to disclose this information to the court pursuant to RPC 1.6(b)(1), which allows disclosure to “disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime.” Dennis believed at the time that Johnson had committed theft and/or fraud with the estate’s funds and
intended to do so in the future which could, in Dennis’s view, result in significant financial injury to the estate’s heirs. Dennis also believed his disclosures were necessary to rectify his prior statements to the court in the estate’s final accounting.

**Violations**

6.

Dennis admits that, by making his statements described above in his motion to withdraw and declaration, he violated RPC 1.6(a).

**Sanction**

7.

Dennis 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 Dennis’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.** Dennis violated his duty to protect information related to the representation of a client. *Standards* § 4.2.

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. Dennis acted negligently in failing to be aware of a substantial risk that his conduct would deviate from the standard of care exercised in such situations.

c. **Injury.** Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 547 (1992). In response to Dennis’s declaration, Johnson felt that she needed to request a hearing and hire an attorney in order to submit objections to his statements.

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

1. Substantial experience in the practice of law. *Standards* § 9.22(i). Dennis is also licensed in California and has been practicing law since 1989.

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


3. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Standards § 9.32(e).

Under the ABA Standards, a public reprimand is generally appropriate when a lawyer negligently reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client. Standards § 4.23.

A public reprimand is consistent with other cases involving the revelation of information relating to the representation of a client. In re Vandergaw, 31 DB Rptr 9 (2017) (stipulated reprimand for an attorney who negligently revealed information related to the representation of a client—his inability to maintain contact with his client—at a court status hearing); In re Langford, 19 DB 211 (2005) (stipulated reprimand for an attorney who filed a motion to withdraw in which attorney revealed her own judgments as to the client’s honesty and the merits of the case, as well as client confidential communications); In re Schroeder (I), 15, DB Rptr 1 (2001) (although an attorney knowingly revealed client confidences and her advice to client, the trial panel imposed a reprimand, rather than a suspension); In re Scannell, 8 DB Rptr 99 (1994) (trial panel imposed a reprimand for an attorney who negligently revealed to opposing counsel and the court a letter including legal analysis and strategy).

Consistent with the Standards and Oregon case law, the parties agree that Dennis shall be publically reprimanded for violation of RPC 1.6(a), effective on the date the Order is signed.

Dennis 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.

Dennis 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 Dennis is admitted: California.
13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 10, 2018. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 27th day of February, 2019.

/s/Will Dennis
Will Dennis, OSB No. 061785

APPROVED AS TO FORM AND CONTENT:

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

EXECUTED this 27th day of February, 2019.

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. 19-03

M. CHRISTIAN BOTTOMS, )

Respondent. )

Counsel for the Bar: Courtney C. Dippel

Counsel for the Respondent: A. Alexander Hamalian

Disciplinary Board: None

Disposition: Violation of RPC 1.5(c)(3). Stipulation for Discipline. 30-day suspension.

Effective Date of Order: March 10, 2019

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 30 days, effective 10 days after the date of this order, for violation of RPC 1.5(c)(3).

DATED this 1st day of March, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

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 his office and place of business in Multnomah County, Oregon.

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 January 26, 2019, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Bottoms for an alleged violation of RPC 1.5(c)(3) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In the summer of 2014, Allan Ralph Evans (Evans) retained Bottoms to represent him in a criminal proceeding. On or about June 27, 2014, Evans and Bottoms entered into a Flat Fee Agreement (For Representation in a criminal Case) (Fee Agreement) that provided that Bottoms would represent Evans for a flat fee. The Fee Agreement included some, but not all, of the provisions required by RPC 1.5(c)(3). Specifically, the Fee Agreement did not state that, if Evans discharged Bottoms, Evans may have been entitled to a refund of all or part of the fee if the services for which the fee was paid were not completed.

Violations

6.

Bottoms admits that, by preparing and entering into the Fee Agreement described above without all of the required language, he violated RPC 1.5(c)(3).
Sanction

7.

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 his duty owed as a professional through his improper attorney fee agreement. *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.* Bottoms acted negligently by failing to include all of the required language in his flat fee agreements with Evans.

c. **Injury.** Injury can be either actual or potential under the *Standards.* *In re Williams,* 314 Or 530, 547 (1992). Evans asserts that he would have terminated Bottoms earlier, if Bottoms had informed him of the possibility for a refund. However, Bottoms completed the work that Evans paid him to do.

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

1. **Prior disciplinary offenses.** *Standards* § 9.22(a). Bottoms received a reprimand in 2009 for dissimilar conduct, but the remoteness of that offense mitigates its impact.

Bottoms entered into stipulations for discipline in 2015 and 2017 for similarly improper flat fee agreements in violation of RPC 1.5(c)(3). However, because Bottoms was not sanctioned for those offenses before engaging in this offense, neither of those matters should be given much weight in aggravation as prior offenses. *In re Jones,* 326 Or 195, 200 (1997).

2. **Pattern of misconduct.** *Standards* § 9.22(c). The Oregon Supreme Court recently decided that, even if prior disciplinary proceedings involving similar misconduct do not qualify as prior discipline because a respondent has not been sanctioned in the prior matters, the other matters may be sufficiently similar to establish a pattern of misconduct by the respondent. *In re Bertoni,* 363 Or 614, 645 (2018) (noting that respondent’s rule violations were not isolated instances, but showed “a
larger pattern of disregard for the interests of his clients” warranting enhancing the sanction).

3. **Refusal to acknowledge wrongful nature of conduct.** *Standards § 9.22(g).* During this Bar investigation, Bottoms did not acknowledge that his fee agreement failed to conform to RPC 1.5(c)(3), despite having been sanctioned for the same issue in two earlier cases.

4. **Vulnerability of victim.** *Standards § 9.22(h).* Bottoms’s former client is incarcerated in the Eastern Oregon Correctional Institution.

5. **Substantial experience in the practice of law.** *Standards § 9.22(i).* Bottoms was licensed to practice in 1996.

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

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

2. **Remoteness of prior offenses.** *Standards § 9.32(m).* Bottoms’s 2009 reprimand is too remote in time to count in aggravation.

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

9. Oregon case law suggests that a period of suspension is warranted. Applying *In re Bertoni* suggests that Bottoms’s earlier stipulations, which included the same conduct, reveal a pattern of misconduct by Bottoms, rather than an isolated instance. The 2017 stipulation recognized that Bottoms had already been sanctioned for similar misconduct, so called for a 30-day suspension consistent with similar cases. *See, e.g., In re Theodore C. Coran,* 27 DB Rptr 170 (2013) (attorney with recent prior discipline for similar misconduct stipulated to 30-day suspension, all stayed, pending completion of 24-month probation for violation of RPC 1.5(c)(3) and RPC 1.15-1 (a), (c), and (d), where his flat fee agreement failed to explain that all or part of the fee could be refunded if services for which the fee was paid were not complete); *In re Ireland,* 26 DB Rptr 47 (2012) (30-day suspension appropriate where attorney violated RPC 1.15-1(a) and RPC 1.15-1(c) in failing to deposit clients funds in trust).

10. 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), the sanction to be effective 10 days after the stipulation is approved.
11.

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 represents that he does not have any current client files.

12.

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.

13.

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.

14.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 29, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 25th day of February, 2019.

/s/ M. Christian Bottoms
M. Christian Bottoms, OSB No. 962270

APPROVED AS TO FORM AND CONTENT:

/s/ A. Alexander Hamalian
A. Alexander Hamalian, OSB No. 960684

EXECUTED this 26th day of February, 2019.

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. 19-07
) )
KEVIN W. LUBY, )
) )
Respondent. )

Counsel for the Bar: Nik T. Chourey
Counsel for the Respondent: None
Disciplinary Board: None
Effective Date of Order: March 1, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Kevin W. Luby is publicly reprimanded for violation of RPC 4.2.

DATED this 1st day of March, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Kevin W. Luby, attorney at law (Luby), 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. Luby was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1984, and has been a member of the Bar continuously since that time, having his office and place of business in Washington County, Oregon.

3. Luby 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 January 26, 2019, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Luby for alleged violation of Oregon Rule of Professional Conduct (RPC) 4.2. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

**Facts**

5. Luby represented a landlord who had a dispute with his tenant, Tyler J. Miller (Miller). Miller was represented in the dispute by Geoffrey B. Silverman (Silverman).

6. On September 4, 2016, Miller emailed Luby directly, copying Silverman. In the email, Miller complained that Luby’s client had not been responsive to Miller’s communications. Luby responded directly to Miller, copying Silverman, noting that he was prohibited from discussing the particulars because Miller was represented by legal counsel and commenting about the subject of Silverman’s representation. Miller responded to Luby, and Luby replied directly to Miller, copying Silverman, again about the subject of Silverman’s representation. On September 7, 2016, Silverman emailed Luby, reminding him that Silverman represented Miller and that Luby’s email communications with Miller were inappropriate and directing any further communicates be made to Silverman.
7.

Subsequently and on behalf of his client, Luby demanded that Miller vacate the premises by June 30, 2017. On July 3, 2017, Luby went to the property to determine if Miller had vacated the premises. At that time, he came in contact with Miller, who was driving away from the property, and asked him if he had vacated the property, which was an issue in dispute and a subject of Silverman’s representation of Miller.

Violations

8.

Luby admits that, by communicating with Miller about the subject of the representation, knowing that individual was represented, he violated RPC 4.2.

Sanction

9.

Luby 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 Luby’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. Luby violated his duty to avoid improper communications with individuals in the legal system. Standards § 6.3.

b. Mental State. A lawyer’s mental state may be viewed as negligent, knowing, or intentional. A lawyer is negligent when the lawyer fails to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise 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. "Intent" is the conscious objective or purpose to accomplish a particular result. Luby communicated with Miller knowing he was represented, but negligently and erroneously determined that his communications were not a violation of RPC 4.2.

c. Injury. Injury can either be actual or potential under the Standards. In re Williams, 314 Or 530 (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 7. Luby’s communications with Miller caused potential injury to Miller for
possible overreaching in the matter, potential interference with the client-lawyer relationship, and the potential for uncounseled disclosure of information relating to the representation.

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

1. Prior disciplinary offense. *Standard § 9.22(a).* Admonitions constitute prior discipline when it involves the same or similar misconduct to the conduct at issue. *See In re Hostetter*, 348 Or 574, 602 (2010). Luby was previously admonished for violating a prior version of this rule in 2006. *In re Luby*, OSB Case No. 05-193, Letter of Adm. (Jan. 10, 2006).

2. Multiple offenses. *Standard 9.22(d).* Three separate communications from Luby violated this rule.

3. Substantial experience in the practice of law. *Standard 9.22(i).* Luby has been an attorney in Oregon for over 30 years.

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

1. Full and free disclosure. *Standard 9.23(e).* Luby has been forthright regarding his communications and the content of those communications.

2. Remoteness of prior offenses. *Standard 9.23(m).* Luby’s previous violation of this rule was over 10 years ago.

10.

Under the ABA *Standards*, public reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding. *Standard § 6.33.*

11.

Oregon Case law is in accord. *See In re Newell*, 348 Or 396 (2010) (reprimanding an attorney for summoning a witness to a deposition without giving him time to consult with his attorney).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that Luby shall be publicly reprimanded for violation of RPC 4.2, the sanction to be effective upon approval of the Adjudicator.
13.

Luby 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 Luby to attend continuing legal education (CLE) courses.

14.

Luby 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 Luby is admitted: none.

15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 26, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 28th day of February, 2019.

/s/ Kevin W. Luby
Kevin W. Luby, OSB No. 844050

EXECUTED this 28th day of February, 2019.

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 No. 17-38 and 17-106 )
JENNIFER BARRETT, )
) )
Respondent. )

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violations of RPC 8.1(a)(2). Stipulation for Discipline. 5-month suspension.
Effective Date of Order: March 21, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Barrett is suspended for 5 months, effective 10 days after the date this order is signed, for violations of RPC 8.1(a)(2).

DATED this 11th day of March, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Jennifer Barrett, attorney at law (Barrett), 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.

Barrett was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 30, 2004, and has been a member of the Bar continuously since that time, having her office and place of business in Douglas County, Oregon.

3.

Barrett 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 14, 2018, a Formal Complaint was filed against Barrett pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 8.1(a)(2) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In Case No. 17-38, on or about March 20, 2017, Disciplinary Counsel’s Office (“DCO”) received a complaint made by Govinda Strong (“Strong”) regarding Barrett’s conduct. By letters dated March 30, 2017, and April 26, 2017, DCO requested Barrett’s response to that complaint. The letters were delivered to Barrett at her address then on record with the Bar and to Barrett’s email address on record with the Bar. Barrett did not respond.

In Case No. 17-106, on or about October 25, 2017, DCO received a complaint from Jerry Calton (“Calton”) about Barrett’s conduct. By letters dated December 7, 2017, and January 2, 2018, DCO requested Barrett’s response to Calton’s complaint. The letters were delivered to Barrett at her address then on record with the Bar, Barrett’s home address, and to Barrett’s email address. Barrett did not respond.
Violations

6.

Barrett admits that, by not responding to DCO’s letters regarding the two client complaints, she violated RPC 8.1(a)(2).

Sanction

7.

Barrett 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 Barrett’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.** Barrett violated the duties she owed as a professional to cooperate with her regulatory authorities. Standards § 7.0.

   b. **Mental State.** The Standards recognize three mental states. 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.

      Barrett acted knowingly in not responding to DCO’s inquiries.

   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 (1992).

      Barrett’s failure to cooperate with DCO’s investigation of her conduct caused actual injury to both the legal profession and to the public. In re Schaffner, supra; In re Miles, 324 Or 218, 221–22 (1996); In re Haws, 310 Or 741 (1990); see also, In re Gastineau, 317 Or 545, 558 (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 public respect for the Bar was diminished because the Bar could not provide a timely and informed response to grievances).
d. **Aggravating Circumstances.** Aggravating circumstances include:

1. A prior record of discipline. Standards § 9.22(a). On or about January 26, 2018, the Disciplinary Board accepted a Stipulation for Discipline suspending Barrett for 90 days for violations of RPC 1.3 (neglect) and RPC 1.4(a)&(b) (communication) in two separate matters.

2. **Multiple offenses.** Standards § 9.22(d). Barrett failed to respond to DCO in two separate matters at two different times.

3. Substantial experience in the practice of law. Standards § 9.22(i). Barrett has been practicing law since 2004.

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

1. Personal or emotional problems. Standards § 9.32(c). At the time of the underlying conduct, Barrett was experiencing difficulties in her personal life.

2. **Remorse.** Standards § 9.32(l). Barrett expressed remorse for not responding to DCO and has indicated a willingness to accept responsibility by stipulating to discipline.

Checking for aggravating or mitigating circumstances, suspension is 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.

9.

Oregon cases confirm that a period of suspension is warranted for Barrett’s conduct.

The Oregon Supreme 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 (2000). The court has also emphasized that it has no tolerance for violations of this rule. In re Miles, 324 Or 218, 222–23 (1996) (although no substantive charges were brought, the court imposed a 120-day suspension and required formal reinstatement for non-cooperation with the Bar). See also, In re Arbuckle, 308 Or 135 (1989) (two-year suspension where attorney with no prior discipline failed to return client property and respond to the Bar).

10.

Consistent with the Standards and Oregon case law, the parties agree that Barrett shall be suspended for 5 months for violations of RPC 8.1(a)(2), the sanction to be effective ten days after this stipulation is approved.
11.

Barrett 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, Barrett has represented that she does not have any current clients and is not currently practicing law.

12.

Barrett 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. Barrett 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.

13.

Barrett 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 Barrett to attend continuing legal education (CLE) courses.

14.

Barrett 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 Barrett is admitted: None.

15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 26, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 8th day of March, 2019.

/s/ Jennifer Barrett
Jennifer Barrett, OSB No. 044667
EXECUTED this 8th day of March, 2019.

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: )
) Case No. 18-180
Complaint as to the Conduct of )
) KATHLEEN MERCER,
) Respondent.

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: Christopher R. Hardman
Disciplinary Board: None
Disposition: Violation of RPC 3.3(a)(1). Stipulation for Discipline. 30-day suspension.
Effective Date of Order: April 11, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Mercer is suspended for 30 days, effective April 11, 2019 or 10 days after this order is signed, whichever is later, for violation of RPC 3.3(a)(1).

DATED this 13th day of March, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Kathleen Mercer, attorney at law (“Mercer”), 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.

Mercer was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 4, 2001, and has been a member of the Bar continuously since that time, having her office and place of business in Lane County, Oregon.

3.

Mercer 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 12, 2018, a Formal Complaint was filed against Mercer pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of Oregon RPC 3.3(a)(1) (failing to correct a false statement of law or fact previously made to a tribunal). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

On December 9, 2016, Mercer filed a petition (“Petition”) initiating a case in Lane County Circuit Court that purported to seek the dissolution of the parties’ domestic partnership, with a determination of custody, parenting time, child support, and distribution of real property (“the Proceeding”). Attorney Andrew McLain (“McLain”) represented the respondent.

6.

On March 8, 2017, McLain filed a response to the Petition, and counterclaims. In response, Mercer asked McLain to explain why his filing had not fully addressed the claim in the Petition for the dissolution of the parties’ domestic partnership, with a determination of custody, parenting time, child support, and distribution of real property.

7.

On March 14, 2017, McLain sent a letter to Mercer providing that her Petition had failed to state a claim for the dissolution of a domestic partnership, and that the prayer for relief seeking to equitably distribute real property was inconsistent with the law. Subsequently,
McLain objected to Mercer’s discovery requests regarding the dissolution of a domestic partnership and real property, as outside the scope of the Petition’s pleading.

8.

On May 3, 2017, Mercer filed a motion to amend the Petition ("Motion to Amend"), and supporting declaration. On May 12, 2017, McLain filed an objection ("McLain’s Objection") to the Motion to Amend, and supporting declaration.

9.

On May 12, 2017, the parties were deposed. While at the depositions, Mercer and McLain discussed the possibility of postponing the trial to allow the inspection of the real property, on the condition that the Motion to Amend was granted over McLain’s Objection. No other agreement was reached.

10.

On May 15, 2017, McLain sent a letter to Mercer, again arguing that the Motion to Amend was unsupported and should be withdrawn. McLain’s letter also provided that, if the Motion to Amend were granted over McLain’s Objection, he would not oppose a trial reset and he proposed a process for real property inspection.

11.

On May 17, 2017, Mercer filed a supplemental declaration in support of her Motion to Amend ("Supplemental Declaration") representing to the court, in relevant part, that:

Depositions of both parties were taken on Friday, May 12, 2017. Questions were asked of both parties and answered by both parties relating to, among other issues, the dissolution of a domestic partnership.

Counsel for the parties agreed to perform additional discovery, such as the inspection of the real property in question, and property located in Cave Junction, owned by neither party.

Counsel for the parties also agreed to stipulate to postpone the trial date in order to allow for sufficient time to conduct this extended discovery, and for Respondent to produce discovery already requested but not yet produced relating to the issue of a domestic partnership.

When she submitted her Supplemental Declaration, Mercer knew that there were no such agreements with McLain; instead any such agreements were expressly conditioned upon the Motion to Amend being granted over McLain’s Objection. Mercer’s Supplemental Declaration failed to explain that condition.
12. On Friday, May 19, 2017, McLain sent Mercer an email, asking her to retract her Supplemental Declaration. He indicated it was misleading insofar as the parties had not made any agreements, apart from those expressly conditioned upon the Motion to Amend being granted over McLain’s Objection. Mercer refused to retract her Supplemental Declaration, stating, in part, that: “I stand by my pleadings and have proof of our discussions regarding postponing the trial date and conducting further discovery.”

13. Mercer did not retract her Supplemental Declaration, or take any steps to correct or clarify its contents. On May 22, 2017, Mercer’s Motion to Amend was granted by the court.

Violation

14. Mercer admits that her Supplemental Declaration was not carefully prepared, and was incomplete and inaccurate because she failed to further explain that some of the agreements that she referenced were subject to conditions. Mercer also admits that she subsequently failed to correct the record and such failure violated RPC 3.3(a)(1).

Sanction

15. Mercer 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 Mercer’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. Mercer violated duties to the legal system to avoid false statements and misrepresentation. Standards §§ 6.1, 6.2.

b. Mental State. Mercer’s initial representations to the court were negligent, in that she failed to heed a substantial risk that circumstances existed or that a result would follow, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Standards at 9. However, once opposing counsel pointed out the inaccuracies or incompleteness of her statements, her failure to correct the record became knowing, as she had the conscious awareness of the nature or attendant circumstances of her conduct but without the conscious objective or purpose to accomplish a particular result. Id.
c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, both actual and potential injury are considered. *Standards* at 6; *In re Williams*, 314 Or 530 (1992). Although it is not clear that the inaccurate statements in Mercer’s Supplemental Declaration had any actual impact on the court’s decision to allow the Motion to Amend, they clearly had the possibility of doing so. In addition, Mercer’s submission of false statements and her failure to correct the record caused both actual and potential injury to the profession, as the conduct reflects poorly on lawyers.

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

1. **Substantial experience in the practice of law.** *Standard* § 9.22(i). Mercer was admitted to practice in Oregon in 2001.

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

1. **Absence of prior discipline.** *Standards* § 9.32(a).

2. **Absence of a dishonest or selfish motive.** *Standard* §9.32(b). Mercer’s supplemental declaration was submitted in support of her efforts to further her client’s interests in expanding the client’s claims to property and related discovery production.

3. **Remorse.** *Standards* § 9.32(l). Mercer has expressed regret for her failure to be more careful in preparing and submitting her Supplemental Declaration, and in failing to take corrective measures in a timely fashion when the issues were brought to her attention by opposing counsel.

16.

Under the ABA *Standards*, a suspension is generally appropriate when a lawyer knows that false statements are being submitted to the court, takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes adverse or potentially adverse effect on the legal proceeding. *Standards* § 6.12.

17.

Oregon case law similarly holds that short suspensions are appropriate where knowing misrepresentations are made or uncorrected to a tribunal, but which result in little or no actual injury. See, e.g., *In re Gifford*, 29 DB Rptr 299 (2015) (attorney was suspended for 60 days when, after preparing probate court documents reflecting the six heirs of a decedent, attorney learned that one of the heirs might be in jail, and another might be transient; attorney then revised portions of the documents previously signed by his client to represent that there were only four heirs, rather than six, and filed the altered—now false and inaccurate—documents with the probate court); *In re Billman*, 27 DB Rptr 126 (2013) (attorney was suspended for 30 days when he agreed to settle a domestic relations matter and recited terms into the record without having confirmed with his client whether she was agreeable to the terms and
conditions, and allowed a judgment to be entered to that effect; In re Myles, 18 DB Rptr 77 (2004) (attorney was suspended for 60 days where he signed and submitted an affidavit to an administrative law judge supporting his client’s claim for unemployment benefits, in which he falsely stated that a potential witness had a reputation for untruthfulness in the community); In re Carroll, 15 DB Rptr 48 (2001) (attorney suspended for 30 days when, in support of a motion to compel discovery, she misrepresented to the court that she had spoken to opposing counsel about a request for production and that no documents had been produced in response).

18.

Consistent with the Standards and Oregon case law, the parties agree that Mercer shall be suspended for 30 days for violation of RPC 3.3(a)(1), the sanction to be effective April 11, 2019, or ten (10) days after approval by the Disciplinary Board, whichever is later.

19.

Mercer 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, Mercer has arranged for all current clients affected by her suspension to be notified of her status per BR 6.3(c).

20.

Mercer 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. Mercer 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.

21.

Mercer 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.

22.

Mercer 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 Mercer is admitted: none.

23.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on February 21, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The
parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 9th day of March, 2019.

/s/ Kathleen Mercer
Kathleen Mercer, OSB No. 013460

APPROVED AS TO FORM AND CONTENT:

/s/ Christopher R. Hardman
Christopher R. Hardman, OSB No. 792567

EXECUTED this 11th day of March, 2019.

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. 18-193 )
) )
SANDRA P. NARANJO, ) )
) )
Respondent. )

Counsel for the Bar: Dawn Miller Evans
Counsel for the Respondent: Calon Nye Russell
Disciplinary Board: None
Disposition: Violation of RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 5.3(a). Stipulation for Discipline. Public Reprimand.
Effective Date of Order: March 13, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Sandra P. Naranjo is publically reprimanded for violation of RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 5.3(a).

DATED this 13th day of March, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Sandra P. Naranjo, attorney at law (“Naranjo”), 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.

Naranjo 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 her office and place of business in Washington County, Oregon.

3.

Naranjo 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 15, 2018, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Naranjo for alleged violations of RPC 1.5(c)(3) (using an earned-upon-receipt fee agreement without required disclosures), RPC 1.15-1(a) (failure to deposit unearned fees in trust), RPC 1.15-1(c) (failure to maintain client funds in trust), and RPC 5.3(a) (failure to ensure supervised non-lawyer personnel’s conduct is compatible with lawyer’s professional obligations) 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.

Naranjo used two fee agreements that did not contain specific disclosures required under RPC 1.5 for fees earned upon receipt. In both instances, Naranjo did not deposit the client funds into a trust account because of her mistaken belief that the fees were earned upon receipt and, therefore, should not be deposited into a trust account. Specifically, on April 11, 2013, Eneyda Olvera (Olvera) retained Naranjo pursuant to a flat fee agreement. That agreement failed to explain – as required by RPC 1.5(c)(3) – that the $5,000 flat fee would not be deposited into a lawyer trust account, that Olvera could discharge Naranjo at any time, and that Olvera might be entitled to a refund of all or part of her fees if services were not completed at the time she terminated Naranjo. Naranjo did not deposit the $5,000 flat fee paid by Olvera into her lawyer trust account.

On February 22, 2017, Olvera retained Naranjo pursuant to a second, partial, flat fee agreement for $1,000 that similarly did not contain specific disclosures required under RPC
1.5 for fees earned on receipt. Naranjo delegated the drafting of the fee agreement to a non-lawyer staff person whom she supervised. Naranjo did not fully review the terms of that agreement before signing it and therefore did not notice that the required language was not in the agreement. Naranjo did not deposit the $1,000 flat fee into her lawyer trust account.

Violations

6.

Naranjo admits that both fee agreements pertaining to the representation of Olvera did not contain the requisite disclosures that pertain to an earned-upon-receipt fee agreement as required by RPC 1.5(c)(3).

7.

Naranjo further admits that, by not having a fee agreement that comported with the requirements of RPC 1.5(c)(3) in each instance, she should have deposited both fees into her trust account until they were earned and that her failure to do so violated RPC 1.15-1(a) and RPC 1.15-1(c).

8.

Finally, Naranjo admits that by not adequately reviewing the second agreement after delegating its drafting to a non-lawyer staff person whom she supervised she failed to make reasonable efforts to ensure that the non-lawyer staff person’s conduct was compatible with Naranjo’s professional obligations as a lawyer, thereby violating RPC 5.3(a).

Sanction

9.

Naranjo 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 Naranjo’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 comply with the requirements of RPC 1.5(c)(3), RPC 1.15-1(a) and RPC 1.15-1(c), Naranjo violated her duty to her client to properly handle client property. Standard § 4.1. By failing to adequately review the second agreement, she negligently relied upon a staff person to draft the fee agreement without adequate supervision, which violated a duty owed to the profession. Standard § 7.1.

b. Mental State. Naranjo’s conduct was negligent in failing to adequately review her staff’s work, and in failing to deposit her client’s funds, as required, into her lawyer trust account. Standards at 9.
c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, both actual and potential injury can be considered. *Standards* at 6; *In re Williams*, 314 Or 530 (1992). While there was no actual injury, Naranjo’s use of non-compliant flat-fee agreements caused potential injury to her client when she failed to properly deposit and safeguard her client’s funds in her trust account.

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

2. Substantial experience in the practice of law. *Standard* § 9.22(i). Naranjo has been a lawyer in Oregon since 2005.

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

3. Timely good faith effort to make restitution or to rectify consequences of misconduct. *Standards* § 9.32(d). After she was terminated, Naranjo promptly sent Olvera a copy of her file and a refund of her full $1,000 payment.
5. Remorse. *Standard* § 9.32(l). Ultimately, Naranjo has expressed regret for her misplaced reliance on her staff to draft proper fee agreements. Naranjo acknowledges that she failed to employ the care necessary to comply with her ethical obligations.

Under the *ABA Standards*, a public reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards* § 4.13. Similarly, 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. Here, the failures to deposit client funds into a trust account were a function of having two fee agreements that failed to contain the appropriate disclosures and Naranjo’s mistaken belief that she should not deposit the fees into trust because they were earned upon receipt. In light of the absence of actual injury, as well as the fact that Naranjo’s mitigating factors outweigh her aggravating factors in both number and weight, a reprimand appears appropriate.
11.

Oregon case law is in accord that a reprimand is sufficient where lawyers have negligently failed to adequately supervise non-lawyers for whom they were responsible and which resulted in other misconduct but not significant actual or potential injury. See, e.g., In re Eckley, SC S065537 (2018) (reciprocal discipline matter in which attorney was reprimanded and subjected to conditions of probation imposed in Arizona for failure to properly supervise employees charged with handling his trust account; failure to properly safeguard client funds by depositing them into an operating account, which caused an overdraft in the trust account when funds were mistakenly drawn on the belief that they had been properly deposited in the trust account; and improperly depositing funds from the operating account into the trust account to rectify the overdraft); In re Taylor, 23 DB Rptr 151 (2009) (attorney who signed blank trial subpoenas and instructed his investigator to arrange for service on witnesses in a criminal rape case was reprimanded when, without the attorney’s knowledge, the investigator used one of the subpoenas to obtain prior to trial the victim’s high school records which the school disclosed contrary to statutes governing such records; upon receipt of the records, attorney did not return them or notify the school, but provided them to his client for use in preparing cross-examination of the victim); In re Nishioka, 23 DB Rptr 44 (2009) (attorney was reprimanded where he utilized the services of a non-lawyer assistant in a probate matter, allowing the assistant to use attorney letterhead and pleading forms without adequate supervision, failing to review or approve of the assistant’s work before it was filed in court and failing to ensure that the assistant was not engaged in the unauthorized practice of law); In re Idiart, 19 DB Rptr 316 (2005) (attorney who delegated to non-lawyer staff the task of sending direct mail solicitations to injury victims was reprimanded for not making reasonable efforts to ensure that the staff’s conduct was compatible with the disciplinary rules).

12.

Consistent with the Standards and Oregon case law, the parties agree that Naranjo shall be publicly reprimanded for violations of RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c), and RPC 5.3(a), the sanction to be effective upon approval by the Disciplinary Board.

13.

Naranjo 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.

14.

Naranjo represents that, in addition to Oregon, she 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 Naranjo is admitted: Pennsylvania.
15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on February 21, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 11th day of March, 2019.

/s/ Sandra P. Naranjo
Sandra P. Naranjo, OSB No. 053314

APPROVED AS TO FORM AND CONTENT:

/s/ Calon Nye Russell
Calon Nye Russell, OSB No. 094910

EXECUTED this 12th day of March, 2019.

OREGON STATE BAR

By: /s/ Dawn Miller Evans
Dawn Miller Evans, OSB No. 141821
Disciplinary Counsel
IN THE SUPREME COURT  
OF THE STATE OF OREGON  

In re:  

Complaint as to the Conduct of  

PAUL F. SHERMAN,  
Respondent.  

Counsel for the Bar:  Courtney C. Dippel  
Counsel for the Respondent: Xin Xu  
Disciplinary Board:  None  
Effective Date of Order:  March 18, 2019  

ORDER APPROVING STIPULATION FOR DISCIPLINE  

This matter having been heard upon the Stipulation for Discipline entered into by Paul F. Sherman, II, and the Oregon State Bar, and good cause appearing,  

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Paul F. Sherman, II is publically reprimanded for violation of RPC 8.4(a)(4).  

DATED this 18th day of March, 2019.  

/s/ Mark A. Turner  
Mark A. Turner  
Adjudicator, Disciplinary Board  

STIPULATION FOR DISCIPLINE  

Paul F. Sherman, II, attorney at law (“Sherman”), 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. Sherman was admitted by the Oregon Supreme Court to the practice of law in Oregon on January 31, 1995, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

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

4. On June 16, 2018, a Formal Complaint was filed against Sherman pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of 3.3(a)(1) and 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. In 2016, Sherman represented the petitioner in a domestic relations proceeding captioned, Jessica Lewis v. Jenner Bisenius, Multnomah County Circuit Court Case No. 121070699. On January 19, 2016, the parties appeared for trial in the proceeding, reported the case as settled, and recited the settlement terms on the record. The court directed the parties to submit a proposed supplemental judgment that reflected the parties’ settlement.

On May 24, 2016, Sherman emailed respondent’s counsel a proposed supplemental judgment. Respondent’s counsel responded on that date and raised an issue as to when the new support award would be effective and indicated to Sherman that he had passed the proposed judgment on to his client. On May 31, 2016, Sherman e-filed the proposed supplemental judgment which included a certificate of readiness signed and dated May 24, 2016, which represented that the parties stipulated to the judgment. Sherman did not realize at the time that the May 24, 2016 certificate of readiness was attached to the supplemental proposed judgment as he had prepared a new one dated May 31, 2016. On June 13, 2016, the court signed the judgment.
Shortly thereafter, respondent’s counsel contacted Sherman, pointing out two sets of objections he had made that had not been identified by Sherman in his certificate of readiness, stating that he would request a hearing to lodge his concerns, and offering to waive a hearing if Sherman would agree to set aside the judgment. Sherman believed that this was part of respondent’s attempts to delay paying the judgment and didn’t realize the certificate of readiness he had filed was erroneous. Therefore, Sherman would not agree to vacate the judgment, to correct the certificate of readiness, or to notify the court of respondent’s objections. Thereafter, respondent’s counsel notified the judge that he had objections of which he had notified Sherman.

On July 12, 2016, the court held a telephone conference in which Sherman asserted that he had emailed the supplemental judgment to respondent’s counsel who had responded with an email indicating he approved of the form of judgment. When the judge instructed Sherman to submit the email, the actual email said that respondent’s counsel would forward the judgment to his client and that respondent’s counsel had concerns about the timing of the entry of the new support award in light of the existing arrearage. The judge entered an order finding that Sherman had misrepresented the readiness of the supplemental judgment and vacated it.

**Violations**

6.

Sherman admits that, by submitting the proposed supplemental judgment with an inaccurate certificate of readiness and thereafter refusing to vacate judgment upon being notified of respondent’s objections, thereby necessitating further hearings and actions by the court, he engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 3.3(a)(1) should be and, upon the approval of this stipulation, is dismissed.

**Sanction**

7.

Sherman 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 Sherman’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.** Sherman violated the duty he owed to the legal system to refrain from engaging in conduct prejudicial to the administration of justice. *Standards*, § 6.1.
b. **Mental State.** The *Standards* recognize three mental states. 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.*

Sherman acted negligently when he prepared and submitted the supplemental judgment with an inaccurate certificate of readiness.

c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, both actual and potential injury are taken into account. *Standards* at 6; *In re Williams*, 314 Or 530 (1992).

Sherman caused actual injury to the procedural functioning of the court by submitting an incorrect certificate of readiness and then by refusing to vacate the judgment.

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

1. **Substantial experience in the practice of law.** *Standards* § 9.22(i). Sherman has been practicing law since 1995.

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

1. **Absence of Prior Disciplinary Record.** *Standards* § 9.32(a).

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

3. **Full and Free Disclosure and Cooperative Attitude Towards Proceedings.** *Standards* § 9.32(e). Sherman was cooperative during the Bar investigation.

4. **Remorse.** *Standards* § 9.32(l). Sherman has expressed remorse for his conduct.

8.

Under the ABA *Standards*, a reprimand is generally appropriate when a lawyer is negligent in determining whether statements in documents are false and causes injury or potential injury to a party to the legal proceeding or causes an adverse or potentially adverse effect on the legal proceeding. *Standards* § 6.13.
A reprimand is consistent with Oregon case law. *In re Sean L. Hartfield*, 349 Or 108, 239 P3d 992 (2010) (in a conservatorship, attorney reprimanded for repeatedly failing to appear in court for scheduled hearings and failing to file an inventory or an accounting, resulting in the court removing the conservator and attorney from the case); *In re Sydney E. Brewster*, 30 DB Rptr 181 (2016) (attorney reprimanded for representing a number of clients in domestic-relations cases in which she used incorrect forms that allowed her to obtain *ex parte* orders granting her clients temporary relief, including child support and custody, that were prohibited by statute in domestic-relations cases. By requesting relief that her clients were not entitled to and failing to recognize the errors in the forms, the attorney engaged in conduct prejudicial to the administration of justice); *In re James Baker*, 29 DB Rptr 204 (2015) (attorney reprimanded for asserting that he was not defendants’ attorney of record and therefore not obligated to appear at trial after attorney’s motion for continuance of the trial date was denied. The court disagreed and notified respondent that he should appear. Thereafter, respondent did not file a motion to withdraw but failed to appear at the scheduled trial. Because defendants were unrepresented, trial could not proceed. The judge ordered respondent to appear the following day, at which time respondent reiterated that he was not defendants’ attorney of record. The court continued the trial to allow the defendants to retain new counsel); *In re Garrett Maass*, 29 DB Rptr 116 (2015) (attorney reprimand for filing unwarranted restraining orders and ill-advised actions against his brothers, without providing full and complete information to the court); *In re Brett Corey Jaspers*, 28 DB Rptr 211 (2014) (attorney reprimanded for filing an *ex parte* emergency custody order that did not meet the statutory requirements and thus was not “authorized by law” for purposes of allowing *ex parte* presentation to the court and also 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 Marianne G. Dugan*, 26 DB Rptr 271 (2012) (attorney was reprimanded after filing a declaration in which she asserted facts that were not true. The misstatements were negligently made in that attorney was careless in reviewing her records prior to drafting and filing the declaration); *In re Michael Nesheiwat*, 26 DB Rptr 253 (2012) (attorney reprimand after submitting purported emails with attorney’s client to an administrative agency and to the Bar. In fact, some of the emails had never been sent and attorney was negligent in retrieving these drafts from his computer and submitting them without confirming their accuracy).

Consistent with the *Standards* and Oregon case law, the parties agree that Sherman shall be publically reprimanded for violation of RPC 8.4(a)(4), the sanction to be effective the date the order is signed.

Sherman 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.
12.

Sherman 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 Sherman is admitted: California and Washington.

13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on February 21, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 8th day of March, 2019.

/s/ Paul F. Sherman
Paul F. Sherman, II, OSB No. 950215

APPROVED AS TO FORM AND CONTENT:

/s/ Xin Xu
Xin Xu, OSB No. 004282

EXECUTED this 13th day of March, 2019.

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: )
) Case No. 17-123 and 18-155
Complaint as to the Conduct of )
) RANKIN JOHNSON,
) Respondent.

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.4(a), RPC 1.15-1(a), RPC 1.15-1(b), and RPC 8.1(a)(2). Stipulation for Discipline. 6-month suspension.
Effective Date of Order: May 13, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Rankin Johnson IV (Johnson) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Johnson is suspended for 6 months, effective May 13, 2019, for violations of RPC 1.4(a), RPC 1.15-1(a), RPC 1.15-1(b), and RPC 8.1(a)(2).

DATED this 29th day of March, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Rankin Johnson IV, attorney at law (Johnson or Respondent), 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. Johnson was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 25, 1996, and has been a member of the Bar since that time, having his office and place of business in Multnomah County, Oregon. Johnson’s membership with the Bar has been suspended since November 13, 2016.

3. Johnson 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 18, 2018, an Amended Formal Complaint was filed against Johnson pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 1.4(a), RPC 1.15-1(a), RPC 1.15-1(b), 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.

**OSB Trust Account Matter – Case No. 17-123**

**Facts**

5. On November 1, 2017, Pacific Continental Bank notified Disciplinary Counsel’s Office (DCO) that a check in the amount of $2,470 payable to the Oregon Department of Revenue had been presented for payment against insufficient funds of $1,113 in Johnson’s trust account (NSF Notice). On December 8, 2017, Johnson transferred $2,376 of his own funds from his business account to his trust account.

During DCO’s investigation, DCO inquired why Johnson’s trust account held any funds at various points throughout 2017, including in June and November, as Johnson had been suspended from the practice of law since November 13, 2016. Johnson admitted that his check to the Oregon Department of Revenue should have been written on his business account and that the funds in his trust account at the time of the NSF Notice belonged to a client that he had been unable to reach. Johnson admitted that the funds held in his trust account as of June 1, 2017, represented both client funds and earned fees that Johnson had failed to transfer from his trust account. Johnson also represented that he had written a total of three checks for taxes on
his trust account that should have been written on his business account and that he had transferred $2,376 of his own funds in December 2017 to cover those three checks.

By letter dated November 2, 2017, DCO requested that Johnson provide DCO with his explanation of the NSF Notice; (1) complete bank statements for the month in which the overdraft occurred and for the previous two months; (2) Johnson’s trust account ledger or journal showing entries that related to the overdraft; and (3) the individual client ledger for any client with money held in trust at the time of the overdraft. DCO’s letter was sent by first class mail to Respondent’s address then on record with the Bar (“record address”) and was not returned.

Johnson did not respond to DCO’s November 2, 2017 letter. By letter dated December 1, 2017, DCO again requested that Johnson provide his explanation for the NSF Notice and supporting documentation and sent the letter to Johnson’s record address and to his email address.

By email dated December 1, 2017, DCO again requested three months of Johnson’s trust account bank statements and client ledgers for any client funds held in trust at the time of the NSF Notice.

None of DCO’s letters or emails to Johnson were returned. At points in time, Johnson answered DCO’s questions, but did not provide DCO with any of his trust account bank records, client ledgers, bookkeeping or accounting records that DCO requested.

**Violations**

6.

Johnson admits that he failed to hold property of clients separate from his own funds in his lawyer trust account and deposited his own funds into his lawyer trust account for reasons other than bank service charges or minimum balance requirements and therefore violated RPC 1.15-1(a) and RPC 1.15-1(b). Johnson also admits that he knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of RPC 8.1(a)(2) of the Oregon Rules of Professional Conduct.

**Martin Johnson Matter – Case No. 18-155**

**Facts**

7.

In 2014, Respondent began representing Martin Johnson in a lawsuit regarding the state facility where Martin Johnson was incarcerated. The lawsuit included a *habeas corpus* claim.

On February 18, 2016, the Oregon Court of Appeals affirmed the trial court’s decision, making the defendants the prevailing party on appeal and allowing them their costs, payable by Martin Johnson. That day, the defendants filed their Statement of Costs and Disbursements
(cost bill) and served Respondent with the pleading. The defendants sought to recover their appearance fee. However, because the lawsuit involved a habeas corpus claim, the defendants were not entitled to recover that fee pursuant to ORS 20.010(2).

Respondent did not notify his client that the defendants had filed their cost bill, provide him with a copy of that pleading, or ever communicate that Respondent did not intend to object to any of defendants’ requested costs. While Respondent filed a Petition for Review with the Oregon Supreme Court, Respondent did not file any objections to the defendants’ cost bill.

On June 16, 2016, the Oregon Supreme Court denied the Petition for Review. On July 19, 2016, the Oregon Court of Appeals issued an appellate judgment awarding the defendants the full amount of their costs, payable by Martin Johnson. On July 23, 2016, Respondent sent the appellate judgment to his client. That was the first time Martin Johnson knew that the defendants had sought and been awarded their costs and disbursements, including a $373 appearance fee that the defendants were not entitled to recover.

**Violations**

8.

Respondent admits that by not notifying his client of the defendants’ cost bill and Respondent’s intention not to object to any of the costs until after the appellate judgment was issued, he failed to keep a client reasonably informed about the status of a matter in violation of RPC 1.4(a) of the Oregon Rules of Professional Conduct.

**Sanction**

9.

Johnson 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 Respondent’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.** Johnson violated his duty to his clients to safeguard and protect client property. *Standards*, § 4.1. Johnson also violated the duty he owed to his client to act with reasonable diligence and promptness, including the obligation to timely and effectively communicate. *Standards*, § 4.4. Johnson violated the duty he owed as a professional to cooperate with his regulatory authorities. *Standards* § 7.0.

b. **Mental State.** The *Standards* recognize three mental states. 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.*

Johnson acted knowingly in not communicating with his client regarding the cost bill, in improperly handling his trust account, and in not responding to DCO’s inquiries.

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 (1992).

Johnson’s conduct caused actual injury to his clients. His clients were deprived of the right to a prompt refund of their funds while Johnson held their money in his trust account and were deprived of the opportunity to use those funds. Additionally, Johnson’s lack of communication caused his client to experience stress, frustration, and anxiety. *See In re Cohen*, 330 Or 489, 496 (2000); *In re Schaffner*, 325 Or 421, 426–27 (1997). Johnson’s client was also financially injured because his client was assessed a $373 appearance fee that was not allowed by statute and would have likely been disallowed had Johnson communicated with his client and objected in a timely manner.

Furthermore, Johnson’s failure to cooperate with DCO’s investigation of his conduct caused actual injury to both the legal profession and to the public. *In re Schaffner*, *supra*; *In re Miles*, 324 Or 218, 221–22 (1996); *In re Haws*, 310 Or 741 (1990); *see also, In re Gastineau*, 317 Or 545, 558 (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 grievances).

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

1. A prior record of discipline. *Standards § 9.22(a).* Johnson has been disciplined three previous times. In 2003, Johnson was publicly reprimanded for negligently making false statements to the court about having lost contact with his client and then withdrawing from the matter, in violation of DR 1-102(A)(4)—current RPC 8.4(a)(4)—(conduct prejudicial to the administration of justice) and DR 2-110(A)(2)—current RPC 1.16(d)—(improper withdrawal). *In re Johnson*, 17 DB Rptr 185 (2003).

    In 2010, Johnson was suspended for 6 months for violations of RPC 1.3 (neglect), RPC 1.4(a) (inadequate client communication) and RPC 8.4(a)(3) (misrepresentations) in connection with his handling of a post-
conviction appeal. In re Johnson, 24 DB Rptr 127 (2010). The RPC 1.4(a) charge is also among those alleged in this proceeding.

Finally, effective November 2016, Johnson was suspended for 4 years, 30 months stayed, pending successful completion of a 3-year probation, for multiple violations of RPC 1.1 (competence), RPC 1.2(a) (failure to abide by client’s directives), RPC 1.3 (neglect), RPC 1.4(a) (inadequate client communication), RPC 1.16(d) (improper withdrawal), and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice). In re Johnson, 30 DB Rptr 300 (2016).


4. Vulnerability of victim. Standards § 9.22(h). With regards to the second case, Johnson’s client was incarcerated and entirely reliant on Johnson to keep him informed regarding appellate events. The client’s incarceration also made it more difficult for the client to contact Johnson, find other counsel, or act on his own behalf.

5. Substantial experience in the practice of law. Standards § 9.22(i). Johnson has been practicing law since 1996.

e. Mitigating Circumstances. Mitigating circumstances include:

1. Remorse. Standards § 9.32(l). Johnson has admitted the underlying facts, expressed remorse for his conduct, and indicated a willingness to accept responsibility by stipulating to discipline.

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 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 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.

11. Oregon cases confirm that some period of suspension is warranted for Johnson’s collective conduct.
Oregon case law supports a term of suspension for Johnson’s trust account violations. *In re Obert*, 352 Or 231, 262, 282 P3d 825 (2012) (court held that the usual sanction for violation of RPC 1.15-1 is a suspension between 30 and 60 days); *In re Eakin*, 334 Or 238, 253–54, 48 P3d 147 (2002) (experienced attorney’s single, unintentional mishandling of client trust account warranted 60-day suspension).

Johnson’s failure to communicate also warrants a suspension under Oregon case law, particularly since Johnson’s 2016 stipulation for discipline included multiple violations of RPC 1.4(a) & (b). See e.g. *In re Jackson*, 347 Or 426 (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 arbitration after a second referral to arbitration by the court); and *In re Koch*, 345 Or 444 (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).

Finally, a lawyer’s failure to cooperate with DCO also results in a term of suspension. *In re Miles*, 324 Or 218, 222–23 (1996) (although no substantive charges were brought, the court imposed a 120-day suspension and required formal reinstatement for non-cooperation with the Bar); See also, *In re Arbuckle*, 308 Or 135 (1989) (two-year suspension where attorney with no prior discipline failed to return client property and respond to the Bar).

12. Consistent with the Standards and Oregon case law, the parties agree that Johnson shall be suspended for 6 months for violation of RPC 1.4(a), RPC 1.15-1(a), RPC 1.15-1(b), and RPC 8.1(a)(2), the sanction to be effective May 13, 2019.

13. Johnson 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, Johnson represents that he has been suspended from the practice of law since November 13, 2016, and does not have any current client files.

14. Johnson 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. Johnson 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.
15. Johnson 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 Johnson to attend continuing legal education (CLE) courses.

16. Johnson 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 Johnson is admitted: District of Oregon, Ninth Circuit and the United States Supreme Court.

17. Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 26, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 19th day of March, 2019.

/s/ Rankin Johnson, IV
Rankin Johnson, IV
OSB No. 964903

EXECUTED this 25th day of March, 2019.

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. 18-131

ROBERT D. OLSEN, Bar No. 053385, )

Respondent. )

Counsel for the Bar: Dawn Miller Evans

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.1, RPC 1.5(c)(3), RPC 1.15-1(c) and RPC 1.16(d). Stipulation for discipline. 30-day suspension.

Effective Date of Order: April 13, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Robert D. Olsen is suspended for 30 days, effective 10 days after the date of this order for violation of RPC 1.1, RPC 1.5(c)(3), RPC 1.15-1(c) and RPC 1.16(d).

DATED this 3rd day of April, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

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

Olsen 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 transferred to inactive status on January 1, 2017. At all times relevant herein, Olsen had his office and place of business in Washington County, Oregon.

3.

Olsen 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 28, 2018, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Olsen for alleged violations of RPC 1.1 (duty of competence); RPC 1.5(c)(3) (use of a non-compliant flat-fee agreement); RPC 1.15-1(c) (duty to deposit and maintain client funds in trust until earned); and RPC 1.16(d) (duty to take reasonable steps to protect a client’s interests upon withdrawal) 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 2016, Laurie A. Sutton (“Sutton”) signed a fee agreement with Olsen calling for a $2,250 non-refundable flat fee (“flat fee agreement”) to assist Sutton establishing legal custody of her minor grandson (“the child”) and to prepare her for a custody hearing. The parents of the child did not object. The flat fee agreement failed to explain that the funds would not be deposited into Olsen’s trust account or that Sutton could discharge Olsen at any time and, in that event, she may be entitled to a refund of all or part of the fee if the services were not completed. Olsen did not deposit the $2,250 flat fee into his lawyer trust account.

6.

On April 5, 2016, Olsen filed the adoption proceeding on behalf of Sutton, in which Olsen was identified as the attorney of record. On May 30, 2016, Olsen e-filed a proposed judgment and supporting documents. The court rejected the pleadings because Olsen failed to attach a required UTCR 5.100 declaration. Olsen provided a copy of the adoption pleadings to
Sutton, who noticed and notified Olsen of another error. Olsen agreed to correct the filing and pleadings errors, and to provide the completed adoption pleadings to Sutton for her to file with the court. Sutton filed the adoption pleadings, which identified Olsen as attorney of record for Sutton.

7. On June 29, 2016, Olsen closed his law practice and e-filed a Motion to Withdraw, without also submitting a proposed order. As a result, the court did not allow Olsen to withdraw and he remained the attorney of record in the adoption proceeding.

8. On July 15, 2016, Olsen forwarded to Sutton, without any substantive comment, an email he had received from a Washington County Circuit Court judicial assistant asking for a status update. The email stated that the judgment had not been signed because it was submitted without a child support calculation; the case was ready for dismissal; a motion to withdraw had been submitted without an order; and inquired whether the case should just be dismissed.

9. When Sutton responded to Olsen by email, stating that she had repeatedly called him without any response because the court required the submission of a child support calculation sheet for the filing of the adoption pleadings, Olsen did not reply. Olsen took no steps to respond to the judicial assistant’s email.

10. On July 26, 2016, the court sent Olsen a Rule 7 notice of intent to dismiss the adoption proceeding for Olsen’s failure to prosecute. Olsen did nothing in response.

11. In late August 2016, Sutton called Olsen and again explained the adoption pleadings were rejected by the court because of the omission of child support worksheets. Olsen agreed with Sutton that he would file the child support worksheets with the court but failed to do so before the court dismissed the adoption proceeding on August 29, 2016. On September 2, 2016, the court entered the judgment of dismissal and closed the adoption proceeding.

12. On September 4, 2016, Sutton e-filed the child support worksheets and proposed judgment in the adoption proceeding, however, the court rejected the filing because the adoption proceeding had already been dismissed.
13. Olsen admits that, by employing a flat fee agreement that failed to contain required provisions, he violated RPC 1.5(c)(3). Olsen further admits that, without those required provisions, he was not entitled to treat the $2,250 he received from Sutton as earned upon receipt. Accordingly, his failure to deposit those funds into his lawyer trust account until earned violated RPC 1.15-1(c).

14. Olsen further admits that he failed to provide competent representation to Sutton and failed to take reasonable and adequate steps to protect her interests upon withdrawal, in violation of RPC 1.1 and RPC 1.16(d).

Sanction

15. Olsen 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 Olsen’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.** Olsen violated his duties to his client to preserve and properly handle client property and to provide competent representation. Standards §§ 4.1; 4.5. The Standards provide that the most important ethical duties are those obligations which lawyers owe to their clients. Standards at 5. Olsen also violated his duty to the profession to properly withdraw from representation. Standards § 7.0.

b. **Mental State.** “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective 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.

Olsen acted negligently in using a flat fee agreement that did not contain the required disclosures and failing, as a result, to appropriately safeguard client funds in a trust account until earned. Olsen knew or should have known of the need to comply with UTCR 5.100 in submitting a proposed judgment, of the requirement to provide a child support calculation as a part of the proposed judgment, and of the requirement to submit a proposed order when filing a motion to withdraw. While each of these individual failures to act competently
may have been negligent, once he was notified by the court that the judgment had not been entered and that he had not been permitted to withdraw, his failure to competently rectify those matters was knowing.

c. **Injury.** Olsen caused both actual and potential injury. Olsen’s lack of competence resulted in delay that caused actual injury to Sutton in the form of anxiety and frustration. See *In re Cohen*, 330 Or 489, 496 (2000) (client anxiety and frustration as a result of attorney inaction can constitute actual injury under the *Standards*). The client was harmed when her matter was dismissed due to Olsen’s failure to submit a proposed judgment in the appropriate form or to respond in any way to the motion to dismiss.

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


2. Substantial experience in the practice of law. *Standards* § 9.22(i). Olsen was admitted to practice in Oregon in 2005.

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

1. Absence of a prior history of discipline. *Standards* § 9.32(a)


3. A cooperative attitude toward the disciplinary investigation and proceedings. *Standards* § 9.32(e)

4. Remorse. *Standards* § 9.32(l). Olsen has expressed regret for his lack of thoroughness in drafting his fee agreement and in failing to effectively work with the e-filing system. He acknowledges that his failure to confirm his withdrawal caused harm to his client.

16. 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, while 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* §§ 4.12; 4.13. A 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 to a client, and a reprimand is generally appropriate when a lawyer either demonstrates a failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client. *Standards* §§ 4.52; 4.53. 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, and a reprimand is appropriate where he negligently does so. *Standards* §§ 7.2; 7.3.
Because the mitigating factors far outweigh those in aggravation, both in number and severity, even though a suspension is presumptive under the Standards, a short suspension appears sufficient.

17.

Oregon case law is in accord, especially where a lawyer’s lack of competence has led to actual injury to the client or the judicial process. See, e.g., In re Hernandez, 32 DB Rptr 72 (2018) (attorney was suspended for 60 days, partially stayed, where, in representing a personal representative in a probate matter, respondent failed to follow statutory requirements); In re Fjelstad, 31 DB Rptr 268 (2017) (after obtaining a default in a wage claim action for his client, respondent did not understand how to electronically submit a proposed judgment, and was suspended for 60 days where he failed to take the steps necessary to otherwise secure a judgment); In re Gifford, 29 DB Rptr 299 (2015) (after preparing the court documents reflecting six heirs to an estate, attorney learned that one of the heirs might be in jail, and another might be transient; attorney was suspended for 60 days when, without reviewing statutes related to missing heirs and filing appropriate pleadings and documentation in accord with those statutes, attorney revised portions of the documents previously signed by his client to represent that there were only four heirs, rather than six, and filed the altered documents with the probate court); In re Jagger, 357 Or 295 (2015) (court suspended attorney for 90 days where he arranged for a phone call between his client and the client’s girlfriend—who was the victim of his client’s assault and had a restraining order against attorney’s client, failing to understand statutes related to the restraining order or his client’s obligations, and instead inviting victim to speak with his client and advising his client that he could speak with the victim, in violation of the restraining order); In re Hammond, 24 DB Rptr 97 (2010) (responded was suspended for 30 days where, during the course of representing the plaintiffs in a property dispute, she lacked the knowledge, skill and experience in land use, litigation and appellate matters that was reasonably necessary for the representation and thereafter engaged in protracted procedural actions that led the court to assess attorney fees against her clients, and was also unprepared to try the lawsuit after the trial judge denied her motion to postpone trial); In re DeBlasio, 22 DB Rptr 133 (2008) (attorney who, on behalf of his firm, accepted a portfolio of collection claims without the experience necessary to pursue them competently was suspended for 30 days; attorney mistakenly believed his partner, who had expertise with collection practice, would tend to the claims; however, after the partner died, the attorney continued to handle the claims, resulting in the filing of suits not authorized by the client, suits filed in the wrong plaintiff’s name, suits dismissed for lack of service or prosecution and other errors).

18.

Consistent with the Standards and Oregon case law, the parties agree that Olsen shall be suspended for thirty (30) days for his violations of RPC 1.1; RPC 1.5(c)(3); RPC 1.15-1(c); and RPC 1.16(d), the sanction to be effective April 1, 2019, or ten (10) days after approval by the Disciplinary Board, whichever is later.
19.

Olsen 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, Olsen represents that he has no active client files or client records, having retired from practicing law in January 2017.

20.

Olsen 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. Olsen 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.

Olsen 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.

22.

Olsen 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 Olsen is admitted: none.

23.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on February 21, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.
EXECUTED this 26th day of March, 2019.

/s/ Robert D. Olsen
Robert D. Olsen
OSB No. 053385

EXECUTED this 1st day of April, 2019.

OREGON STATE BAR

By: /s/ Dawn Miller Evans
Dawn Miller Evans, OSB No. 141821
Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 17-56
Complaint as to the Conduct of )
) IOAN TERRI MYZAK,
) Respondent.

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: Peter R. Jarvis, Nellie Q. Barnard
Disciplinary Board: Mark A. Turner, Adjudicator
James Edmonds

Effective Date of Opinion: April 6, 2019

TRIAL PANEL OPINION

In this disciplinary proceeding, the Oregon State Bar ("Bar") alleged that respondent, Ioan Terri Myzak, violated two Rules of Professional Conduct ("RPC"). The first claim is that changes that she made over a multi-year period to various forms she was required to sign at work regarding workplace policies represented "conduct involving dishonesty * * * that reflects adversely on the lawyer’s fitness to practice law” in violation of RPC 8.4(a)(3).

Respondent is a former Workers’ Compensation Board ("WCB") Administrative Law Judge ("ALJ"). Between 2004 and 2009 she altered 10 policy acknowledgement forms that she signed and returned to her supervisor, Presiding ALJ John McCullough or his successor Holly Somers. All but two of these forms were also counter-signed after she returned them by her supervisor (one was countersigned by the chair of the WCB). The forms were then placed in respondent’s personnel file. No claim of misconduct is made, however, as to 17 similar changes she made to forms between 2000 to 2006.

The second claim is that respondent’s explanation of her conduct to the Bar violated RPC 8.1(a)(1), which prohibits a lawyer from “knowingly mak[ing] a false statement of material fact” to the Bar in a disciplinary matter.
At trial the Bar appeared by and through counsel, Courtney Dippel. Respondent was present and was represented by Peter Jarvis and Nellie Barnard. The trial took place on December 6, 7 and 20, 2018.

Due to the unforeseen absence of the Public Member of the trial panel, the parties stipulated at the time of the hearing that the trial could proceed before the remaining two members, the Adjudicator, Mark Turner, and the Attorney Panel Member, James Edmonds. The two members of the panel join in the decision announced herein. For the reasons stated below, we find that the Bar failed to prove the alleged violations by clear and convincing evidence and the charges are hereby dismissed.

There is no disagreement between the parties as to the fact of the changes or as to the manner in which the changes were made. The dispute regarding the first charge primarily involves respondent’s intent. We conclude that the Bar did not prove by clear and convincing evidence that respondent acted with knowledge or intent to deceive when she altered the forms.

The second charge involves competing claims as to whether and how respondent discussed these changes over the years with McCullough. McCullough’s testimony failed to support the Bar’s claims in this regard under the applicable clear and convincing evidence standard. Moreover, respondent also presented critical testimony from Marion County Circuit Court Judge J. Channing Bennett, who had represented respondent at times relevant to this case when he was in private practice. Bennett testified to conversations he had with respondent about the changed forms and her dealings with McCullough on the issue which buttress her version of events such that we cannot conclude that she lied to the Bar.

FACTS

Respondent joined the Oregon State Bar in 1982. From 1987 to 2010, she was employed by the WCB as a full-time ALJ. Respondent testified that, beginning in the late 1990s, she became concerned about her judicial independence, her free speech rights and what she thought were possibly unenforceable workplace policies. She testified that she is a very precise person and would not sign something that misstated what she had agreed to. This facet of her character was also described by Bennett.

The WCB is part of Oregon’s Department of Consumer and Business Services (“DCBS”). DCBS had standard policies and acknowledgment forms that it required its employees to sign each year.

These forms generally indicated that an employee had reviewed the policies, acknowledged that the employee agreed to comply with the policies, and acknowledged that a failure to comply with the policies could result in discipline. After signing the forms each year, respondent returned them, almost always to McCullough, who would counter-sign on most, but not all, of the acknowledgement forms. They would then be placed in her personnel file. Somers succeeded McCullough as Presiding ALJ in 2007 and counter-signed the forms requiring her signature from that point onward. As noted before, one form was countersigned by Abigail Herman, WCB chair.
Respondent was first presented with such forms in the year 2000. She declined to sign them because of problems she had with some of the policies. She testified that she told McCullough that she was willing to initial the forms to indicate her receipt of them, but not to sign indicating that she understood or agreed to the policies. McCullough responded by giving her another set of blank forms for her signature.

The 2000 forms stated that, by signing, respondent was acknowledging, “that I have received, read, and discussed with my supervisor” the pertinent policies. Respondent wrote a note on the second set of forms explaining that she had not actually read the policies. In response, McCullough sent respondent a memorandum dated June 22, 2000 stating that “OPS [Office of Personnel Services] is concerned about the qualifying language you placed above your signature, which indicates you received, but did not read the policies. OPS needs to know that you [1] have read the policies and [2] have had an opportunity to ask your supervisor any questions you have about the policies.” McCullough then asked respondent to read the policies and execute the acknowledgment forms.

This time respondent did so, but again wrote on the forms to qualify her signature: “My signature indicates only that I quickly read the document provided, i.e. without substantive attachments or referenced incorporations.”

McCullough accepted and signed off on these revised forms, which then went in respondent’s personnel file in their altered state. According to respondent, McCullough subsequently told her that he thought that her handwriting on the forms looked unprofessional. She testified that she thought McCullough was complaining about the way the changes looked rather than the fact that she changed them in the first place.

Respondent testified that, in 2001, she sought to make her changes consistent with McCullough’s feedback. She printed the qualifier that she wished to include and scotch-taped a strip of paper with it on each of the 2001 forms. McCullough signed off on those altered forms as well. Respondent testified that she used typed changes on the taped insertions to satisfy McCullough’s concern about the appearance of the documents.

After the 2001 forms were accepted, however, respondent testified that McCullough told her that the format was still objectionable because the font size and type were not consistent with the rest of the form, the margins were inconsistent, and he thought the taped paper was unprofessional.

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1 These forms, and the first set of forms that she initialed, were not in respondent’s personnel file and are not exhibits in the case. The altered forms that are not challenged here were admitted as Exhibit 6. The forms at issue were admitted as exhibits 1, 2, and 3. The copies of the forms were adequate for us to see the alterations when they were made in different colors, as many of the early changes were. Respondent made the originals available to the panel at the hearing but we did not need to review the originals in order to reach our decision.
2 Exhibit 27.
3 Respondent also offered in evidence another example of McCullough raising the issue of the professional appearance of documents, a 1999 memo from him to all ALJs re “Microsoft Word Migration and Professional Document Appearance.” Exhibit 111.
In 2002, respondent added an additional, typed line of text directly to the form. The text read “Signature indicates only that materials have been quickly read; not a contract term.” The qualifying text was the last line on the form above the space for signatures. The type was in a larger and bolder font than the rest of the document. McCullough again signed off on the 2002 revised form. Respondent testified that McCullough again told her he did not like the placement of the additional text, but he did not reject the changed text itself.

In 2002 respondent changed what was denominated a Drug Free Workplace Policy acknowledgment by adding the text, “signature indicates only that I have read the foregoing; that policy is not a contractual agreement” to the last paragraph above the signature. Respondent says she received no feedback on that change. Soon thereafter McCullough gave her a second acknowledgment form regarding additional policies. He instructed respondent to sign and return it that same day. Respondent added the word “don’t” to the last sentence of the form so that it read “I don’t agree”. Respondent says McCullough did not comment on that change.

In 2003, respondent changed her added language to state “Signature indicates only that viewed, not a contractual agreement or performance standard,” similar to the change to the 2002 Drug Free Workplace Policy form. McCullough again signed off. She testified that McCullough later told her that these her changes cramped the signature space and that the different font size and boldness were not acceptable.

In 2004, respondent changed her alteration method again, and it is here that the Bar argues that her conduct became deceitful. She testified that she changed her approach based on her ongoing conversations with McCullough regarding the appearance of the documents. This time she changed the font size, type and boldness of her additions and maintained the original margins and length of the form. These changes are not obvious to a reader as the earlier changes were. They do not stand out in contrast to the overall appearance of the documents.

This time respondent changed the statement that she would “comply” with the policy to a statement that she would “contend” with it. She did this consistently from 2004 to 2009. McCullough accepted these changed forms. Respondent testified that she thought had she had now satisfied McCullough’s concerns about how the document appeared. The 2009 forms were the last she received prior to being terminated.

She also made other changes over time. Starting in 2006, where respondent was asked to acknowledge that violation of a policy “may” constitute cause for disciplinary action, she changed it to state that violation of the policies “can’t” constitute cause for disciplinary action. She intentionally omitted the apostrophe. In 2007, when she was asked to acknowledge that violation of a policy “will” constitute cause for disciplinary action, she substituted the word “wont.”

In 2006 and 2008 she also changed the Conflict of Interest Policy Acknowledgment form to put the word “abate” the policies in place of “abide” by them. The resulting statement is nonsensical. When also required to acknowledge that violation of the policies “may”

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4 Unaltered blank forms were offered as Exhibit. 4.
constitute cause for disciplinary action, she changed the forms to state that it “wont” constitute cause for disciplinary action.\textsuperscript{5}

In 2007 and 2008, respondent altered the Confidentiality Statement of Understanding forms to replace the word “may” with “wont” in the sentence, “I understand that as an employee, I [wont] be subject to disciplinary action up to and including dismissal for unauthorized release of confidential information.”\textsuperscript{6}

All the omissions of apostrophes were intentional. Respondent testified that the apostrophes had to be deleted to make the altered words fit the existing space in the text.

Respondent’s method of making these changes was somewhat complicated. She first used white-out on the words she wanted to omit. She then made copies of the forms with the white-out, leaving her with forms that were missing words. She then took those copies and placed them in her printer. She then opened a blank page in the word processing program she used and scrolled down and across to the approximate place on the page where the missing word would be on the form in the printer. She then typed the word she intended to insert in the same font as the original so that the altered words would appear in the correct spot on the standard forms.

In 2006, a new Conflict of Interest Policy Acknowledgment form was distributed. Respondent testified that she asked McCullough whether she should make changes to the new form like she had previously done. She says she understood from McCullough’s response that he understood that she was going to change this form like she did the prior versions. She said he did not tell her not to do so. He did not comment on it after she returned the altered form, nor did he make any comments after he had signed it.

In 2009, Somers became the Presiding ALJ. She and Herman testified that they did not notice any changes on the forms they signed. Respondent testified that she never discussed the changes with either of them at the time she returned the forms.

Somers testified that she first noticed the changes to the forms in November of 2009 when she was reviewing respondent’s personnel file before providing it to respondent and her counsel at their request. Respondent had initiated a sexual harassment complaint against a former ALJ. The employer’s investigation of that complaint resulted in respondent ultimately being terminated. The Bar argues that the changes to the forms were material to the decision to terminate respondent. Respondent claims that the decision to terminate her had already been made when Somers noticed the documents in the file. This issue does not affect our decision here and we do not make any findings as to which version is more likely.

Respondent did sue the WCB and several individuals for wrongful termination. The case was tried in Marion County and the jury returned a defense verdict.

\textsuperscript{5} Exhibit 2.
\textsuperscript{6} Exhibit 3.
In December 2015, two members of the WCB Board, who had no prior involvement with the forms or the WCB investigation of them, complained of respondent’s actions to the Bar. The Bar investigated the matter between December 2015 and approximately October 2017, when it issued its formal complaint. The Bar amended its complaint twice, once on July 6, 2018 and once on November 9, 2018.

Respondent had various opportunities to answer the charges of deceit made by the WCB before the Bar complaint was filed. The Bar argues that she failed on these occasions to claim that she had discussed the changes with McCullough and that we should infer that such conversations never happened.

On December 15, 2009, DCBS interviewed respondent regarding various matters. She was represented by an attorney from Bennett’s office during the interview, not by Bennett himself, and was questioned about the alterations. During the interview respondent did not say that she had discussed the changes with McCullough at the time they were being made. Respondent apparently claimed that her superiors should have noticed the changes when they were submitted.

On February 11, 2010, DCBS and the WCB commenced a Pre-Dismissal Process to terminate respondent. The employer wrote her a letter outlining a chronology of relevant events and mentioned the alterations of the forms as a basis for dismissal. DCBS and the Board scheduled a meeting with respondent to provide her with an opportunity “to refute the charges and/or present mitigating circumstances.” They also offered her the option of submitting a written response in lieu of a meeting.

Respondent submitted a written response to refute the charges against her. It was dated February 24, 2010, and prepared with the assistance of her attorney. She did not make any statements about discussions with McCullough. Respondent was fired two days later, on February 26, 2010.

In response to a Request for Admission in the employment litigation respondent admitted she “[d]id not disclose to any member of the Board or its staff that [she] had made the changes,” to the standard forms.

Similarly, when deposed, respondent did not mention discussions with McCullough or anyone else regarding her alterations. Respondent’s primary argument at the time was that she placed responsibility on her supervisors for not noticing the changes. The parties agreed that respondent’s counsel did raise the issue during opening statements in the employment litigation.

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7 Exhibit 18.
8 Exhibit 18, pp. 6-35
9 Exhibit 19, pp. 10-12.
10 Exhibit 20.
11 Exhibit 24.
12 The transcript was admitted as Exhibit 25.
13 Id.
During the Bar’s investigation of these charges respondent, in a letter from her counsel, stated that, “[f]or a period of many years” she and McCullough, “had many discussions about Ms. Myzak’s unwillingness to agree in all respects to the policies referenced by Complainants.” 14 The letter went on: “McCullough understood Ms. Myzak’s position. The two of them also discussed what [Myzak] could do instead of agreeing in full to abide by the policies. The result was the various forms of the document over the years which you have seen.”

Respondent’s counsel further stated that she, “[a]lso had no reason to believe that Mr. McCullough would keep their discussions secret from anyone that he thought needed to know this. Indeed, Ms. Myzak assumed – whether correctly or incorrectly – that Mr. McCullough would have discussed this issue with board chair Abigail Herman.”

During the investigation McCullough denied that he had discussed or approved alterations to the forms.

ANALYSIS OF THE CHARGED VIOLATIONS

A. Did Respondent Act Dishonestly in Altering her Standard Employment Forms in Violation of RPC 8.4(a)(3)?

The Bar contends that the later alterations respondent made between 2004 and 2010 were intentional acts of dishonest conduct directed towards her employer in violation of the specified rule. The Bar does not challenge her on any of the 17 earlier altered forms.

RPC 8.4(a)(3) states: “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.” Dishonest conduct is that, “evidencing a disposition to lie, cheat or defraud as well as a lack of trustworthiness or integrity.” In re Kluge, 335 Or 326, 340, 66 P3d 492 (2003); In re Claussen, 331 Or 252, 260, 14 P3d 586 (2000) (interpreting the predecessor to RPC 8.4(a)(3)). “This court has noted that fraud, deceit, dishonesty, and misrepresentations overlap, but are not identical concepts.” Claussen, supra at 260.

Further, the Bar must prove that respondent “acted with a mental state of knowledge or intent.” In re Klemp, 363 Or 60, 99–100, 418 P3d 733 (2018). It also must prove that the alleged deception reflects adversely on respondent’s fitness to practice law. In re Carpenter, 337 Or 226, 235, 237 (2004) (fitness to practice law is implicated if the lawyer’s conduct “causes [one] to question whether the accused possesses the requisite trustworthiness and integrity to handle important matters involving legal rights…”).

The Bar has the burden of proving each and every element of its claims by “clear and convincing evidence;” which means that the Bar must establish that “the truth of the facts asserted is highly probable.” In re Ellis, 356 Or 691, 693 (2015) (citing In re Phinney, 354 Or 329, 330 (2013)).
We find that the evidence at trial did not clearly and convincingly support the Bar’s allegations of misconduct. The Bar’s arguments and characterization of respondent’s conduct may very well be true. But respondent offers a plausible alternative explanation for her conduct. Since a plausible alternative explanation exists, the Bar has not proved its case by clear and convincing evidence.

Any attempt to prove an intent to deceive here first suffers from a fatal logical flaw. Respondent began making her changes in an open and obvious way. The Bar admits she altered 17 forms and does not suggest she did so by deceit or dishonesty. Other than what she describes as criticism of the appearance of the altered documents, respondent suffered no repercussions at work. These 17 altered documents were accepted and placed in her personnel file. If these documents made it into her personnel file without substantive objection, there is no logical reason why respondent would subsequently wish to deceive her employer. She did not need to deceive anyone to make her point (whatever that may have been).

Moreover, critical evidence undercuts the Bar’s version of the facts. The strength of the testimony from Bennett, and the weakness of the testimony from McCullough, make it impossible for the Bar to meet the clear and convincing standard. Bennett’s testimony supports respondent’s assertion that she discussed the changes to the forms with McCullough during the time that the changes were being made. McCullough’s testimony on the issue is fatal to the Bar’s case because the most he testified to at trial was that he “may or may not” have noticed some of the challenged alterations or discussed matters with respondent. At best his testimony was that it was “more probable than not” that he never discussed the issues with respondent. These qualifications by the witness himself prevent his testimony from rising to the level of clear and convincing evidence.

Bennett was a credible witness. His demeanor was open and honest and his testimony was straightforward. He answered the questions directly, without any attempt to spin the facts in a particular way. He also had no reputational stake (or any other, for that matter) in the outcome of this case.

Bennett’s testimony was not always flattering toward respondent. He acknowledged that she “can be an annoying employee and I’m sure he [McCullough] was sick of dealing with her. That was a constant fight that they had and continued for years, even after my advice in 2004 [that she would be better off not changing the forms]…” Tr. at 223, ll 17–21.

Bennett unambiguously recalled that respondent discussed her changes to the forms with him in 2004. He told her that he thought making the changes was “dumb.” Tr. at 195, l. 3. He testified: “…my initial presentation to her and kind of my advice in all this is, why don’t you sign the stupid acknowledgment as it is. It doesn’t matter. And the converse also being true, he [McCullough] put it in [her personnel file], he knows about it, it doesn’t matter. It doesn’t change your rights and responsibilities under the policies.” Tr. at 166, l. 24–167, l. 5. His characterization of the behavior is quite plausible: “…it’s a passive/aggressive response to something she doesn’t agree with.” Tr at 188, ll. 23–24. Bennett’s testimony strongly reinforces respondent’s contention that she discussed the changes with McCullough at the time they were being made.
McCullough, in turn, testified that, until this matter arose, he had forgotten about even the earlier, obvious, hand-written alterations. Tr. at 110, ll. 16–17. He acknowledged that there was “no way to miss them,” and “…yes, I would have seen them at the time.” Tr. at 108, ll. 13–15. As to these changes, McCullough testified that “it wasn’t worth pursuing” because, among other things, “she’s still bound to follow the policy.” Tr. at 134, ll. 15–17. The same held true for the changes at issue here.

As to these later alterations, the Bar’s position is that McCullough never discussed them with respondent and he never noticed them. But when discussing the change of “comply” to “contend,” he testified, “Maybe I saw it. Maybe I didn’t.” Tr. at 131, ll. 10–11. He recalled no concern in his mind about it. Tr. at 131, l. 12. And he also stated, as to the changes at issue here, “I might have missed them or I might have seen them.” Tr. at 120, ll. 6–7. As to the possibility that he discussed the changes with the board chair or a senior personnel officer, he said it was “more probable than not” that he had no such discussions, but he could not rule the possibility out. Tr. at 133, ll. 14–15. Consistent with Bennett’s view, McCullough acknowledged that respondent’s annual performance reviews were “difficult times.” It is plausible that McCullough knew of the changes but took no action because respondent was always bound by the policies and the disputed language just was not worth pursuing at the time.

Respondent testified that she was concerned that she not sign anything that was inaccurate, that might be seen as conceding the enforceability or interpretation of policies with which she did not agree, or that might be seen as limiting her judicial independence or her free speech rights. Respondent testified that that is all that she ever intended and all that she ever did.

Again, we find this explanation at least plausible based in large part on the fact that none of the alterations made by respondent could or did change the actual effect and applicability of the policies at issue. They were a condition of her employment, regardless of whether she acknowledged reading, understanding or complying with them. Her alterations had no legal effect on her workplace obligations. She testified that she understood that to be the case. Bennett testified that he told her that was the case. And the Bar admits that the changes in the forms did nothing to change the workplace rules. If she recognized that reality, we cannot find that her alterations to the forms were dishonest. They may have been pointless. They may have been juvenile. They may have been a principled protest. But they did not have any legal significance in the workplace. And they were not intended to deceive anyone.

The Bar asks us to infer a dishonest motive from the improving consistency of the changes she later made with the forms’ original look. It is at least equally likely that respondent’s improved technique was in response to McCullough’s concern about the appearance of the documents. Further, if McCullough was willing to sign and forward to her personnel file the documents with the earlier, obvious changes, how can we infer that suddenly he was being hoodwinked into doing something he would not have otherwise done when the less obvious changes arrived on his desk? We conclude from the evidence presented that it is, in fact, more probable than not that he accepted the changes over the years because he knew as well that they had no legal significance.
The Bar also argued that there is additional proof that respondent’s statements were false beyond McCullough’s weak denials. Respondent was questioned more than once between 2009 and 2012 regarding the forms but never claimed that she discussed the changes with McCullough and had at least his tacit blessing. The Bar argues that if such conversations occurred they would have obviously been raised during the termination process or the employment lawsuit. The argument is plausible, but it is not clear and convincing evidence to prove respondent a liar. There are multiple reasons why respondent might have omitted such information, including Bennett’s testimony that he did not raise these facts because he believed litigation was inevitable and he did not want to give the employer free discovery. Tr., p 180, l. 10–p. 181, l. 22.

The Bar also argued that respondent failed to memorialize any conversations with McCullough even though she memorialized other employment-related matters. The Bar says respondent did not do so because no such conversations occurred. There are myriad other reasons why respondent made no contemporaneous notes. One plausible explanation is that the changes to the documents and McCullough’s acceptance of them spoke for themselves. A lack of contemporaneous notes is not clear and convincing evidence that the conversations were fabricated.

The Bar finally argues the respondent’s statements are inherently unbelievable to such an extent that this alone is sufficient to warrant a finding that she is not being truthful, citing In re Wyllie, 327 Or 175, 181, 957 P2d 1222 (1998). There the Supreme Court found that an attorney had lied about completing MCLEs, based, in part, on the inherent lack of credibility of the accused attorney’s explanation. We do not find that respondent’s explanation is inherently lacking credibility. In fact, as we have noted, respondent’s explanation provides a plausible alternative theory to explain her conduct. And a plausible alternative explanation can be fatal when one’s burden of proof is clear and convincing evidence. See, e.g., Klemp, supra at 89. We find that it is fatal in this case as well.

The Bar also argues that respondent violated a general duty of honesty she owed to her employer. See In re Herman, 357 Or 273, 287, 348 P3d 1125 (2015) (“Although no rule explicitly requires lawyers to be candid and fair with their business associates or employers, such an obligation is implicit in the prohibitions set out in RPC 8.4(a)(3).”) But since we have concluded that the Bar did not meet its burden of proving that the specific acts were deceitful or dishonest, we can find no breach of a general duty of honesty.

B. Did Respondent Knowingly Make False Statements of Material Fact In Response to the Bar’s Investigation in Violation of RPC 8.1(a)(1).

The Bar also charges respondent with a violation of RPC 8.1(a)(1) in her responses to its inquiries. That rule provides: “An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter shall not knowingly make a false statement of material fact.” The rule requires a lawyer to respond truthfully to inquiries from Bar disciplinary authorities, including DCO. We recognize 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).
The Bar charges that respondent made false and material statements to DCO when she or her counsel claimed she discussed the changes to the forms with McCullough. But, as discussed above, the Bar has failed to prove the falsity of the statements by clear and convincing evidence.

CONCLUSION

For the foregoing reasons we find that the Bar has failed to prove the charges against respondent Ioan Terry Myzak by clear and convincing evidence. The charges are dismissed.

Dated this 5th day of March, 2019.

/s/ Mark A. Turner
Mark A. Turner, Adjudicator

/s/ James Edmonds
James Edmonds, Trial Panel Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 19-04
Complaint as to the Conduct of )
) MICHAEL J. KAVANAUGH, )
) Respondent. )

Counsel for the Bar: Theodore W. Reuter
Counsel for the Respondent: Christopher R. Hardman
Disciplinary Board: None
Effective Date of Order: April 12, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Michael J. Kavanaugh is publicly reprimanded for violation of RPC 1.1 and RPC 8.4(a)(4).

DATED this 12th day of April, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Michael J. Kavanaugh, attorney at law (Kavanaugh), 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. Kavanaugh was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 19, 1975, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

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

4. On January 26, 2019, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Kavanaugh for alleged violations of the Oregon Rules of Professional Conduct (RPC) 1.1 and RPC 8.4(a)(4). The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5. In 2008, Kavanaugh filed a collections action on behalf of a client against two natural persons and a corporation. The natural persons wrote a letter to the court, which they called an answer. The corporation did not respond.

6. On or about December 18, 2009, Kavanaugh filed for a default judgment against one natural person (Grievant) and the corporation. The court entered the default order and judgment.

7. After Kavanaugh had attempted to enforce the judgment against Grievant, Grievant hired an attorney. After a hearing that Kavanaugh sought to reset and sought to attend by telephone, Grievant’s attorney successfully had the judgment vacated. Kavanaugh asserts that he has no record of receiving notice of the hearing being reset or of the decision, but this is in variance with the court records which show that he attended by phone. After the default against
Grievant was vacated Kavanaugh did not take any further action to pursue his client’s claim against Grievant. The case was ultimately dismissed for want of prosecution in 2010.

8.

In 2011, Kavanaugh sent a demand letter to Grievant based on the judgment that had been set aside.

9.

In 2013, Kavanaugh sent a writ of garnishment to a bank, listing Grievant as a judgment debtor. He did not collect any amount with this attempt.

10.

In 2017, Kavanaugh sent two more writs of garnishment seeking the property of the Grievant. In response, Grievant hired an attorney who sought a restraining order to prevent Kavanaugh from taking further enforcement action against him. In November, 2017, Grievant filed claims against Kavanaugh arising out of the wrongful enforcement action. The Grievant’s claims were settled for $2,500.00.

Violations

11.

Kavanaugh admits that, by issuing writs of garnishment against a person without checking to see whether he had a valid judgment, he violated RPC 1.1 [competence] and RPC 8.4(a)(4) [conduct prejudicial to the administration of justice].

Sanction

12.

Kavanaugh 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 Kavanaugh’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.** Kavanaugh violated his duty to provide competent representation (Standard 4.5) and abused the legal process (Standard 6.2).

b. **Mental State.** Kavanaugh violated these duties negligently.

c. **Injury.** Kavanaugh’s violation of these duties harmed Person 1, because it required him to hire an attorney, and harmed the court system because it required the court to expend resources rectifying his wrongful conduct.
d. **Aggravating Circumstances.** Aggravating circumstances include:

1. **Multiple Offenses.** *Standards* § 9.22(d). Here, Kavanaugh neglected the underlying case, and then failed to confirm his authority for filing multiple writs of garnishment on at least two separate occasions. He continued this conduct over multiple years, forcing the party into court on two occasions before he finally desisted.

2. **Substantial Experience in the Practice of Law.** *Standards* § 9.22(i). Kavanaugh has been practicing law in Oregon since 1975.

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

1. **Absence of a Prior Disciplinary Record.** Standard § 9.32(a),

2. **Absence of a dishonest or selfish motive.** Standard § 9.32(b),

3. **Full and free disclosure to the disciplinary authority.** Standard § 9.32(e).

Under the ABA *Standards*, reprimand is generally appropriate when a lawyer demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client. *Standards* § 4.53. Reprimand is also generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards* § 6.23.

The parties have not been able to identify a case directly on point. In two cases involving, on the one hand, numerous complaints containing inaccurate information and, on the other hand, a single representation through which the client suffered a significant harm, the Court imposed a 90-day suspension and a 30-day suspension, respectively. *In re Kleinsmith*, S061057, OSB Case No. 12-169 (2013), *In re Bettis*, 342 Or 232 (2006).

In *In re Kleinsmith*, S061057, OSB Case No. 12-169 (2013), an attorney who stipulated to a reprimand in Arizona for filing 12 different complaints in collection matters that included various types of inaccurate information was suspended for 90 days in an Oregon reciprocal discipline proceeding. A stipulation for discipline in Utah regarding the same conduct noted that he had charged an excessive fee by charging to correct his mistakes in these matters.

In *In re Bettis*, 342 Or 232 (2006), the court suspended an attorney for 30 days for a knowing violation of former DR 6-101(A) (the predecessor rule to RPC 1.1), when he advised
a client to elect to waive his right to a jury trial without first requesting or reviewing the
discovery in the case. The attorney’s conduct was aggravated by a prior reprimand and his
substantial experience in the practice of law.

17.

*Kleinsmith* is factually distinguishable, given the quantity of lawsuits in which the
respondent filed inaccurate pleadings, demonstrating a lack of competence. *Bettis* is
distinguishable because his conduct was knowing and because of the substantial harm his client
sustained.

18.

Consistent with the *Standards* and Oregon case law, the parties agree that Kavanaugh
shall be publicly reprimanded for violation of RPC 1.1 and RPC 8.4(a)(4), the sanction to be
effective ten days after the stipulation is approved.

19.

Kavanaugh 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 Kavanaugh to attend continuing legal education
(CLE) courses.

20.

Kavanaugh 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 Kavanaugh is admitted: None.

21.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on
January 26, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties
agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board
for consideration pursuant to the terms of BR 3.6.
EXECUTED this 29th day of March, 2019.

/s/ Michael J. Kavanaugh
Michael J. Kavanaugh, OSB No. 752057

APPROVED AS TO FORM AND CONTENT:

/s/ Christopher R. Hardman
Christopher R. Hardman, OSB No. 792567

EXECUTED this 9th day of April, 2019.

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 )  
)  
SCOTT P. BOWMAN, )  
)  
Respondent. )  

Counsel for the Bar:  Courtney C. Dippel  
Counsel for the Respondent: None.  
Disciplinary Board:  None.  
Disposition:  Violation of RPC 8.1(c)(3), RPC 8.1(c)(4), and RPC 8.4(a)(2). Stipulation for Discipline. 1-year suspension.  
Effective Date of Order:  April 18, 2019  

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 respondent is suspended from the practice of law in the State of Oregon for a period of one year. Pursuant to the stipulation, the Oregon State Bar is awarded costs against respondent in the amount of $45.00, payable within 30 days of the date of this order.  

/s/ Martha L. Walters  
Martha L. Walters  
Chief Justice, Supreme Court 4/18/2019 8:25  
AM  

STIPULATION FOR DISCIPLINE  

Scott P. Bowman, attorney at law (Bowman), 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.

Bowman was admitted by the Oregon Supreme Court to the practice of law in Oregon on June 9, 2003, and has been a member of the Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3.

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

4.

On October 19, 2018, a Formal Complaint was filed against Bowman pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 8.1(c)(3), RPC 8.1(c)(4), and RPC 8.4(a)(2) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

**Facts**

5.

In May 2017, Bowman rear-ended another vehicle while driving and was arrested. In August 2018, Bowman was convicted of Felony Driving Under the Influence of Intoxicants (a Class C felony) in violation of ORS 813.010. In September 2018, Bowman pled guilty to two Class A misdemeanors of recklessly endangering another person and criminal mischief in the second degree in violation of ORS 164.354 and ORS 163.195.

After Bowman’s May 2017 arrest and criminal charges, he was referred to the State Lawyers Assistance Committee (“SLAC”) in June 2017. Bowman signed a Monitoring Agreement with SLAC, but failed to cooperate with SLAC and abide by his Monitoring Agreement in various ways, such as failing to contact his Monitor and failing to enroll in an outpatient program for alcohol abuse.
Violations

6.

Bowman admits that, based on upon his conduct and subsequent criminal convictions, Bowman committed criminal acts in violation of ORS 813.010, ORS 164.354, and ORS 163.195 that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of RPC 8.4(a)(2). Bowman further admits that he failed to participate in interviews with SLAC or SLAC’s designee and failed to participate in and comply with a remedial program established by SLAC or its designee in violation of RPC 8.1(c)(3) and (4).

Sanction

7.

Bowman 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 Bowman’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. Bowman violated his duty to the public to maintain his personal integrity. Standards § 5.1. Bowman also violated the duty he owed to the profession to comply with SLAC’s remedial program. Standards, § 7.0.

b. Mental State. “Intent” is the conscious objective or purpose to accomplish a particular result. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. “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.

Bowman acted intentionally. When Bowman chose to drive while under the influence of intoxicants, he knew that his conduct was illegal as he had been convicted of the same crime twice in the past. In re McDonough, 336 Or 36, 41–42 (2003).

Bowman also acted intentionally when he didn’t comply with his SLAC Monitoring Agreement. Bowman signed the agreement which specified his obligations in detail. Bowman was unable to physically comply with his SLAC obligations because he is disabled and unable to drive. Bowman’s SLAC Monitor gave him multiple opportunities to abide by the agreement before referring Bowman’s conduct to Disciplinary Counsel’s Office.

c. Injury. For the purposes of determining an appropriate disciplinary sanction, actual and potential injury are analyzed. Standards at 6; In re Williams, 314 Or
Bowman’s acts of driving while under the influence of intoxicants involved actual and potential harm. Bowman rear-ended another vehicle and caused physical damage to the other car, and risked serious bodily to himself and others. In re McDonough, 336 Or at 42. Bowman’s repeated criminal conduct caused actual injury to the legal system by demonstrating an indifference to the law and caused actual injury to the integrity of the profession by damaging the public’s confidence in lawyers. Id.

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

The following factors which are recognized as aggravating are present:

1. **Prior disciplinary offenses.** Standards § 9.22(a). Bowman has been disciplined three times.

   In May 2016, Bowman was reprimanded for violating RPC 1.5(c)(3) (charging or collecting a fee as earned on receipt without written fee agreement with required disclosures) and RPC 8.1(a)(2) (failing to respond to DCO inquiries). In re Bowman, 30 DB Rptr 157 (2016).

   In December 2014, Bowman was suspended for 180 days, 150 days stayed, subject to two years of probation for RPC 8.4(a)(2) (criminal conduct reflecting adversely on lawyer’s honesty, trustworthiness or fitness). In re Bowman, 28 DB Rptr 308 (2014). That suspension arose from Bowman’s November 2013 convictions for two DUII misdemeanors. While Bowman did eventually successfully complete probation on February 21, 2017, DCO had to extend Bowman’s probation in order for him to complete it.

   In July 2010, Bowman was suspended for 1 year with 8 months stayed, subject to a 2-year probation for violations of RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter); RPC 1.8(f) (compensation other than from client); RPC 1.8 (h)(1) (conflict of interest, current clients, limiting liability); RPC 1.8(h)(3) (conflict of interest current clients; limiting liability regarding arbitration of malpractice claims); RPC 1.15-1(a) (duty to keep advances for costs in lawyer trust account and maintain complete trust account records); RPC 1.15-1(c) (duty to deposit client funds into trust); RPC 5.4(a) (sharing legal fees with a non-lawyer); RPC 5.5(a) (practicing law in violation of the regulations of the profession); RPC 8.1(a)(2) (failing to respond to DCO inquiries); ORS 9.160 (practicing law while not an active member of the Bar); and former DR 1-102(A)(2) (violating the rules through the acts of another). In re Bowman, 24 DB Rptr 144 (2010).

Bowman’s prior disciplinary suspension in 2014 for criminal conduct for his two November 2013 DUII convictions constitutes significant aggravation. Bowman had just completed his probation for that
disciplinary suspension at the end of February 2017 when he was arrested three months later for the same offense.

2. **A pattern of misconduct.** *Standards* § 9.22(c). Since 1990, Bowman has engaged in repeated criminal conduct resulting in multiple DUIIs, multiple charges of driving while suspended, failure to file income tax returns, recklessly endangering another, and criminal mischief.

3. **Substantial experience in the practice of law.** *Standards* § 9.22(i). Bowman was admitted to practice in 2003.

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

1. **Full and free disclosure and cooperative attitude toward proceedings.** *Standards* § 9.32(e). Bowman was cooperative in the Bar’s investigation of his conduct and has expressed a desire to accept responsibility for his conduct.

2. **Imposition of other penalties or sanctions.** *Standards* § 9.32(k). Bowman served 150 days’ incarceration total for his three recent convictions, assessed fines and costs, has lost his drivers’ license for ten years, and will be on probation for two years.

3. **Remorse.** *Standards* § 9.32(l). Bowman has acknowledged he needs treatment for his alcohol abuse and intends to enter a treatment facility following his release from Clackamas County Jail. Bowman has expressed remorse for his conduct.

8.

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

9.

Oregon case law also supports the imposition of a suspension in this matter. Lawyers who have engaged in repeated criminal conduct of this nature have typically been suspended. *See, e.g., In re McDonough,* 336 Or 36 (2003) (18-month suspension for attorney who had four DUII offenses, five convictions of driving while suspended, three acts of reckless driving, one act of fourth-degree assault, and one act of recklessly endangering another person. By the time of the adjudication, McDonough admitted he needed treatment for his alcoholism, but had not established any meaningful and sustained recovery from his alcohol dependency).

In *McDonough*, the court noted that it had imposed six and twelve-month suspensions for isolated acts of criminal conduct where the conduct was so serious as to warrant a significant suspension. *In re McDonough,* 336 Or at 42. The court cited *In re Allen,* 326 Or 107 (1997) where it imposed a 1-year suspension for an attorney who committed the criminal
acts of attempted possession of a controlled substance and aiding and abetting another in the commission of a crime, and In re Kimmell, 332 Or 480 (2001) where it imposed a 6-month suspension for a single act of second degree theft.

Suspensions for similar driving-related offenses or substance abuse convictions and SLAC noncompliance have also been imposed by a trial panel and by stipulation. See e.g., In re M. Christian Bottoms, 29 DB Rptr 210 (2015) (2-year stipulated suspension with 1-year stayed subject to 2-years of probation for attorney with a misdemeanor conviction for cocaine possession and failure to cooperate with SLAC along with two other violations); In re Ettinger, 27 DB Rptr 76 (2013) (2-year suspension imposed by trial panel where, in a one-year period, attorney was arrested for numerous crimes including two instances of DUII, reckless driving, failing to perform the duties of a driver, failure to appear, providing false information to a police officer, criminal trespass, initiating a false police report, and resisting arrest); and In re Chancellor, 22 DB Rptr 27 (2008) (1-year stipulated suspension for attorney who committed a series of alcohol-related offenses, and thereafter failed to comply with diversion and probation orders in three counties).

10.

Consistent with the Standards and Oregon case law, the parties agree that Bowman shall be suspended for 12 months for violations of RPC 8.1(c)(3) and (4) and RPC 8.4(a)(2), the sanction to be effective upon approval by the Oregon Supreme Court.

11.

In addition, on or before December 31, 2019, Bowman shall pay to the Bar its reasonable and necessary costs in the amount of $45, incurred for service fees. Should Bowman fail to pay $45 in full by May 1, 2019, the Bar may thereafter, without further notice to him, obtain a judgment against Bowman for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

12.

Bowman 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, Bowman has represented to the Bar that he has no current clients.

13.

Bowman 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. Bowman 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.

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

15.

Bowman 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 Bowman is admitted: Florida.

16.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 26, 2019. Approval as to form by Disciplinary Counsel is evidenced below.

The parties agree the stipulation is to be submitted to the Oregon Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 21st day of March, 2019.

/s/ Scott P. Bowman
Scott P. Bowman, OSB No. 032174

EXECUTED this 21st day of March, 2019.

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: Theresa M. Wade

Complaint as to the Conduct of Respondent.

Case No. 18-191

THERESA M. WADE, Respondent.

Counsel for the Bar: Dawn M. Evans
Counsel for the Respondent: David J. Elkanich
Disciplinary Board: None
Disposition: Violation of RPC 1.7(a)(1), RPC 1.7(a)(2), and RPC 8.4(a)(4). Stipulation for Discipline. 60-day suspension, all but 30 days stayed, 1-year probation.

Effective Date of Order: May 1, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Theresa M. Wade is suspended for 60 days with all but 30 days stayed pending successful completion of a one-year term of probation, effective May 1, 2019, for violation of RPC 1.7(a)(1), RPC 1.7(a)(2), and RPC 8.4(a)(4).

DATED this 1st day of May, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Theresa M. Wade, attorney at law (“Wade”), 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. Wade was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 30, 1999, and has been a member of the Bar continuously since that time, having her office and place of business in Marion County, Oregon.

3. Wade 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 11, 2019, a Formal Complaint was filed against Wade pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 1.7(a)(1) (direct adversity current client conflict of interest); RPC 1.7(a)(2) (representation of one client materially limited by responsibilities owed to another client); RPC 3.3(a)(4) (knowing failure to disclose to a tribunal that which the lawyer is required by law to reveal); RPC 8.4(a)(3) (misrepresentation by omission); 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. Thomas Annen (“Thomas”) was a protected person under a conservatorship, and also a shareholder in Annen Bros., Inc. (“ABI”), a closely-held family corporation. All of the ABI shareholders were members of the Annen family. Elaine Annen (“Elaine”) was Thomas’s sister.

6. On September 6, 1996, on behalf of Elaine, Garrett Hemann Robertson, PC (“GHR”) filed a petition to establish Elaine as Thomas’s guardian and conservator (“Thomas matter”). On October 28, 1996, the court in the Thomas matter appointed Elaine as Thomas’s guardian and conservator.
7.

As an attorney at GHR, Wade represented Elaine in her role as Thomas’s conservator and guardian between November 2001 and 2013. In April 2003, Wade also began representing Elaine individually with respect to her estate plan, charitable activities and a foundation. Wade also acted as general counsel for ABI between 2007 and 2016.

8.

On February 29, 2008, on behalf of Elaine, Wade filed a Petition for Authorization to Establish an Irrevocable Trust for Thomas in the Thomas matter, attaching as an exhibit the proposed irrevocable trust agreement. On March 28, 2008, the court approved creation of this proposed irrevocable trust agreement (“March Trust”) “in the form presented to this court.”

9.

On April 25, 2008, the ABI shareholders executed a Restated Stock Buy-Sell Agreement (“Buy-Sell Agreement”) with ABI, drafted by Wade on behalf of ABI. Elaine executed the Buy-Sell Agreement both in her individual capacity as a seller/ABI shareholder, and in her capacity as guardian and conservator for Thomas, also a seller/ABI shareholder. At the time, Wade continued to represent Elaine in the Thomas matter.

10.

On June 25, 2008, Elaine executed an irrevocable trust that Wade had drafted for her, in her capacity as Thomas’s conservator and guardian (“June Trust”), that differed from the March Trust in mandating that, upon Thomas’s death, the trustee would distribute to the Board of Directors of ABI any note held as an asset of the trust estate and that the balance of any note would be forgiven by the trustee in favor of ABI. The June Trust was never approved by the court in the Thomas matter.

11.

On behalf of Elaine in her capacity as guardian and conservator for Thomas, Wade drafted a promissory note (“Note”) so that ABI could purchase Thomas’s ABI Stock, for the full purchase price with minimum monthly payments to be paid to Thomas’s conservatorship. On May 11, 2010, on behalf of Elaine in her capacity as guardian and conservator for Thomas, Wade prepared a motion for authority to sell stock and a supporting affidavit to secure court approval of the sale of ABI stock held by the June Trust. The supporting affidavit asserted that the June Trust had been established with the approval of the court under order dated March 27, 2008. Wade filed both executed documents with the court in the Thomas matter.

12.

On June 3, 2010, the court, in reliance on the motion and supporting affidavit, entered an order granting the motion. The executed Note was made payable to Elaine, as trustee of the June Trust.
13.

On May 1, 2013, when Elaine was replaced as conservator and trustee of Thomas, by John and Laura Annen (“John and Laura”), Wade began to represent them in their capacity as successor co-guardians and co-conservators for Thomas. John and Laura were also shareholders in ABI and signatories to the Buy-Sell Agreement.

14.

Between December 2011 and January 2016, Wade filed the annual accountings in the Thomas matter. During that period of time, ABI did not make full payments to Thomas’s conservatorship as required under the Note. Wade was aware that the required payments were not being made. Although exhibits were attached to the annual accountings that reflected the amount of payments from ABI, the narrative portion of numerous accountings prepared, reviewed, and filed by Wade between 2011 and 2015 did not highlight the deficiency of payments being made on the Note.

15.

Wade drafted on behalf of John and Laura, in their capacities as co-conservators of Thomas, the Nineteenth Annual Account of Co-Conservators (“19th Accounting”), which was filed in the Thomas matter on January 29, 2016. The 19th Accounting disclosed in the narrative portion for the first time that payments had not been made on the Note.

16.

Following the court’s review of the 19th Accounting, on April 18, 2016, upon her own motion, Circuit Court Judge Claudia M. Burton (“Judge Burton”), who then presided in the Thomas matter, appointed Matthew Whitman (“Whitman”) as counsel for Thomas, to defend Thomas’s financial interests, to ensure that assets held for the benefit of Thomas would “actually be available for his forward-looking care,” and specifically “to investigate the conservatorship’s finances, including irregular payments made on a note owed to the protected person, and determine how to correct those irregularities.” Whitman’s investigation required multiple court appearances and additional attorney fees charged to Thomas’s conservatorship.

17.

On June 6, 2016, Wade withdrew from her representation of John and Laura in their capacities as co-conservators and co-guardians of Thomas, and Catherine Wright (“Wright”) appeared as substitute counsel.

18.

Prior to any resolution of the court’s concerns about the irregular payments on the Note, Thomas died on December 1, 2016.
19.

On December 9, 2016, Judge Burton first became aware of the terms of the unapproved June Trust when she was provided a copy by Wright, on behalf of John and Laura.

20.

On January 26, 2017, Judge Burton communicated to Wright that she could not approve the 19th Accounting or close the conservatorship. In so doing, Judge Burton found that notice of the Note arrearages had not been clearly disclosed until the 19th Accounting and that the court had never approved the June Trust.

Violations

21.

Wade admits that she had a conflict of interest violative of RPC 1.7(a)(1) in drafting the Buy-Sell Agreement on behalf of ABI, the buyer and payor, respectively, while continuing to represent Elaine in her capacity as conservator and guardian of Thomas, who was later a seller and the payee, respectively. Wade admits that, once ABI defaulted on the Note, she had a conflict of interest violative of RPC 1.7(a)(2), in continuing to represent both ABI and Elaine, in her capacity as conservator and trustee and, later, both ABI and John and Laura, in their capacities as co-conservators and co-trustees.

22.

Wade admits that, by asserting that the June Trust had been approved by the court in the motion and supporting affidavit seeking authority to sell the ABI stock held by the June Trust; by filing a series of annual accountings that did not disclose in the narrative portion of each the deficiencies in payments on the Note; and by failing to disclose that the June Trust had not been approved by the court prior to filing the 19th Accounting, she engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4), insofar as she caused the court to expend time and resources to review documents, filings, and representations to determine what had really happened in the Thomas matter, and decide what corrective actions to take.

23.

Upon further factual injury, the parties agree that the charges of alleged violations of RPC 3.3(a)(4) and RPC 8.4(a)(3) should be and, upon approval of this stipulation, are dismissed.
Sanction

24.

Wade 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 Wade’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.** Wade violated her duties to her clients to avoid conflicts of interest. Standard §4.3. The Standards provide that the most important ethical duties are those obligations which a lawyer owes to clients. Standards at 5. Wade also violated her duty owed to the legal system by engaging in conduct that negatively affected the administration of justice. Standard § 6.0

b. **Mental State.** Wade acted negligently in engaging in conflicts of interest, and in engaging in conduct prejudicial to the administration of justice. 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.

c. **Injury.** Injury can be potential or actual. Standards § 3.0; Standards at 9; In re Williams, 314 Or 530 (1992). Wade’s failure to recognize and appropriately address conflicts of interest had the potential of harming her client, Elaine, in her capacity as trustee and conservator to the extent that Elaine might not have been appropriately discharging her fiduciary obligations based upon Wade’s work. The court experienced actual harm to its functioning by reason of having to expend time and resources upon learning that the June Trust had never been approved by the court and the Narrative Portions of numerous annual accountings had not highlighted the deficiencies in payments on the Note.

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

1. Multiple offenses. Standard § 9.22(d).

2. Substantial experience in the practice of law. Standard § 9.22(i). Wade has been admitted in Oregon since 1999.

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


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 the client. Standard § 4.32. A reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or interference with a legal proceeding. Standard § 6.23. Given that the aggravating and mitigating factors are in equipoise, a suspension is the presumptive sanction under the Standards.

Recent cases involving conflicts of interest or conduct prejudicial to the administration of justice, each coupled with other rules, have similarly resulted in suspensions. See, e.g., In re Gatti, 356 Or 32 (2014) (Respondent was suspended for 90 days for violation of RPC 1.4(a), 1.7(a)(1), and RPC 1.8(g). Respondent initially obtained client consent to joint representation of multiple plaintiffs, negotiated each client’s claims individually, conferred with clients individually, and helped each decide on an acceptable individual settlement offer. However, when the defendant later offered to settle for a figure that was nearly twice the cumulative total of all claims, a conflict arose. Each plaintiff had an interest in obtaining as great a portion of the surplus settlement as he could. Attorney was ethically prohibited from deciding how to allocate the sum offered. Court stated that “when multiple plaintiffs make any agreement to divide an offer that exceeds the total of their minimum offers, the plaintiffs have competing interests in that surplus.”); In re Cauble, 27 DB Rptr 288 (2013) (Respondent received a 45-day suspension for violation of RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.7(a)(2). While defending an unlicensed mortgage broker in litigation by investors for losses, Respondent undertook to represent several investors who had lost funds invested by the unlicensed mortgage broker against the title company without securing the informed consent of all of his clients.); In re Hall, 27 DB Rptr 93 (2013) (Respondent received 150-day suspension for violation of RPC 1.3, RPC 1.4, RPC 8.4(a)(3), and RPC 8.4(a)(4). Respondent failed to file accountings, notwithstanding court notices, or to 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. Trial panel found respondent’s actions burdened the court to issue unnecessary orders and hold unnecessary hearings.); In re Hernandez, 32 DB Rptr 72 (2018) (Respondent was suspended for 60 days, with all but 30 days stayed, pending a 1-year term of probation for violation of RPC 1.1, RPC 1.5(a), RPC 1.7(a)(2), RPC 1.15-1(a), and RPC 1.16(a)(1), when, in a probate matter, he filed an incorrect inventory, took payments without court approval, and failed to withdraw at a point in time when he asserted that he believed his client had committed fraud and that he could not trust her, instead continuing to represent her without explaining the conflict and withdrawing.); and In re Coran, 30 DB Rptr 350 (2016) (Respondent was suspended for 120 days, all but 30 days stayed, pending a 3-year term of probation, for violating RPC 1.7(a)(2) and RPC 1.8(e) for simultaneously representing two criminal clients on their criminal matters and also representing both of them in a loan transaction where one borrowed money from the other to pay bail).
26.

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.

27.

Consistent with the Standards and comparable cases, the parties agree that Wade shall be suspended for sixty (60) days for her violations of RPC 1.7(a)(1), RPC 1.7(a)(2), and RPC 8.4(a)(4), with all but thirty (30) days of the suspension stayed, pending Wade’s successful completion of a one-year term of probation. The sanction shall be effective May 1, 2019, or ten (10) days after approval by the Disciplinary Board, whichever is later (“effective date”).

28.

Wade’s license to practice law shall be suspended for a period of thirty (30) days beginning May 1, 2019, or ten (10) days after approval by the Disciplinary Board, whichever is later (“actual suspension”), assuming all conditions have been met. Wade understands that reinstatement is not automatic and that she cannot resume the practice of law until she 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 Wade re-attains her active membership status with the Bar, Wade shall not practice law or represent that she is qualified to practice law; shall not hold herself 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.

29.

Probation shall commence upon the date Wade is reinstated to active membership status (“commencement date”) and shall continue for a period of one (1) year, ending on the day prior to the first (1st) year anniversary of the commencement date (the “period of probation”). During the period of probation, Wade shall abide by the following conditions:

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

(b) Wade 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, Wade shall attend not less than four (4) MCLE accredited programs, for a total of twelve (12) hours, which shall emphasize
ethics, law practice management, probate and estate planning, trust law, and conservatorship and guardianship proceedings. These credit hours shall be in addition to those MCLE credit hours required of Wade for her normal MCLE reporting period. The Ethics School requirement does not count towards the twelve (12) hour requirement. Upon completion of the MCLE accredited programs, and prior to the end of her period of probation, Wade shall submit an Affidavit of Compliance to DCO.

(d) J. Michael Keane (OSB #135959) shall serve as Wade’s probation supervisor (“Supervisor”). Wade 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 Wade’s clients, the profession, the legal system, and the public.

(e) Beginning with the first month of the period of probation, Wade shall meet with Supervisor in person at least once per quarter for the purpose of allowing her Supervisor to review the status of Wade’s probate, estate planning, trust, conservatorship, and guardianship law practice (“Wade’s caseload”) to assure that there are no conflicts of interest between and among Wade’s various clients, or Wade’s own interests. Once during each quarter of the period of probation, Supervisor shall conduct a random audit of ten (10) files or twenty percent (20%) of Wade’s caseload, whichever is greater, to determine whether Wade has assured that there are no conflicts of interest between and among her clients and/or herself.

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

(g) Within seven (7) days of the commencement date, Wade shall contact the Professional Liability Fund (PLF) and schedule an appointment on the soonest date available to consult with a PLF practice management advisor in order to obtain practice management advice. Wade shall schedule the first available appointment with the PLF and notify the Bar of the time and date of the appointment.

(h) Wade 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, utilizing and documenting appropriate fee agreements, and engaging in effective trust account accounting and management. No later than 30 days after recommendations are made by the PLF, Wade shall adopt and implement those recommendations.

(i) No later than sixty (60) days after recommendations are made by the PLF, Wade shall provide DCO a copy of the Office Practice Assessment from the PLF and
file a report with DCO stating the date of her consultation(s) with the PLF; identifying the recommendations that she has adopted and implemented; and identifying any specific recommendations she has not implemented and explaining why she has not adopted and implemented those recommendations.

(j) On a quarterly basis, on dates to be established by Disciplinary Counsel beginning no later than ninety (90) days after the commencement date, Wade shall submit to DCO a written “Compliance Report,” approved as to substance by her Supervisor, advising whether Wade is in compliance with the terms of this Stipulation for Discipline, including:

(1) The dates and purpose of Wade’s meetings with Supervisor.

(2) The number of Wade’s files reviewed with the Supervisor during that quarter and the results thereof.

(3) Whether Wade has completed the other provisions recommended by Supervisor, if applicable.

(4) Whether Wade has not complied with any term of probation in this Stipulation for Discipline and, in that event, reason for the non-compliance, and the steps taken to correct the non-compliance.

(k) Wade is responsible for any costs incurred by her in complying with the requirements under the terms of this Stipulation for Discipline and the terms of probation.

(l) Wade’s failure to comply with any term of this Stipulation for Discipline, 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 Wade for unethical conduct that occurred or continued during the period of her probation shall constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.

30.

Wade 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, Wade has arranged for J. Kevin Shuba (OSB #914263), an active member of the Bar, to either take possession of or have ongoing access to Wade’s client files and serve as the contact person for clients in need
of the files during the term of her suspension. Wade represents that J. Kevin Shuba has agreed to accept this responsibility.

31.

Wade 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. Wade 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.

32.

Wade 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 Wade to attend or obtain continuing legal education (CLE) credit hours.

33.

Wade 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 Wade is admitted: Washington.

34.

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 22nd day of April, 2019.

/s/ Theresa M. Wade
Theresa M. Wade
OSB No. 993880

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich
David J. Elkanich
OSB No. 992558

EXECUTED this 22nd day of April, 2019.

OREGON STATE BAR

By: /s/ Dawn Miller Evans
Dawn Miller Evans
OSB No. 141821
Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 18-46, 18-50, 18-51,
) and 18-52
Complaint as to the Conduct of )
) SEAN MICHAEL HANDLERY,
) Respondent.
)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: None
Disciplinary Board: Mark A. Turner, Adjudicator
Faith Morse
April L. Seveik, Public Member

Disposition: Violation of RPC 1.1, RPC 1.3, RPC 3.3(a)(1), RPC
3.4(b), RPC 8.1(a)(2), and RPC 8.4(a)(2). Trial Panel

Effective Date of Opinion: May 2, 2019

TRIAL PANEL OPINION

In this disciplinary proceeding, the Oregon State Bar (“Bar”) alleges that respondent, Sean Michael Handlery, committed multiple violations of the Oregon Rules of Professional Conduct (“RPC”). These violations occurred in connection with four different matters, and also resulted from his subsequent failures to respond to the Bar’s investigation of that conduct.

In October 2018, the Adjudicator entered an order of default against respondent for failure to answer the amended formal complaint then pending. Accordingly, the factual allegations in the amended formal complaint are deemed true. BR 5.8(a). We first must determine whether those allegations constitute the violations asserted by the Bar. We are to look only within the four corners of the complaint in making this determination.

If we conclude the facts alleged support one or more of the charges, we must then decide the appropriate sanction to be imposed. We are able to consider additional evidence on this question, and we have reviewed the memorandum submitted by the Bar and the supporting evidence cited therein in reaching our decision.
As discussed in detail below, in light of the nature and severity of the violations, the fact that respondent acted intentionally, and the substantial potential and actual injury that resulted, we conclude that respondent is disbarred.

PROCEDURAL POSTURE

Respondent was admitted to practice in Illinois in December 2010. He was admitted in Oregon on January 16, 2014.

In January of 2018, the Disciplinary Counsel’s Office (“DCO”) received grievances raised by three different parties about respondent’s conduct. Respondent responded to these complaints while they were under review by the Client Assistance Office (“CAO”) of the Bar. He failed to respond, however, once the matters were turned over to the DCO. On March 26, 2018, respondent was suspended under BR 7.1 for failing to respond to DCO.

The Bar filed a formal complaint against respondent on August 18, 2018, containing allegations involving three of the matters at issue. Respondent was served with the complaint and notice to answer by publication on September 1, 2018. Respondent failed to answer the complaint. The Bar served respondent with a ten-day notice of intent to seek an order of default. Again, respondent failed to file an answer.

The Bar then filed a motion for order of default. The motion was granted by the Adjudicator and an order of default was entered on September 19, 2018.

On October 1, 2018, the Bar filed an amended formal complaint, which added the fourth matter that had been under investigation. The order of default was set aside in light of the filing of the amended pleading and respondent was served by mail and email with the amended complaint. He filed no answer.

Respondent was given another ten-day notice of intent to take a default, and after the expiration of the deadline the Bar filed another motion for order of default. This motion was granted on October 31, 2018.

ALLEGATIONS AND CHARGES

1. Howe/Burge Matter

The first matter in the amended complaint is identified as the “Howe/Burge Complaint.” (First Cause of Complaint.) It alleges, and we take as true, that on multiple occasions between June 2015 and March 2016, respondent knowingly and intentionally engaged in conduct constituting rape in the third degree, sexual abuse in the second degree, sodomy in the third degree, and/or luring a minor. Amended Complaint (“Am. Comp.”), ¶ 7. Respondent knew the young victim, and he knew she was a minor. She was a student at Roseburg High School. Id.

1The Adjudicator allowed service by publication after the Bar made the necessary showing.
Respondent was indicted by a grand jury on 12 counts of rape in the third degree, 12 counts of sexual abuse in the second degree, 12 counts of sodomy in the third degree, and one count of luring a minor. Id at ¶8.

The Bar alleges that this conduct violated RPC 8.4(a)(2) (criminal conduct reflecting adversely on fitness to practice law).

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

To establish a violation of this rule, the Bar must prove (or, in this case, allege) only that the lawyer violated a criminal statute. In re Strickland, 339 Or 595 (2005). A conviction is not required to establish a violation. In re Kimmel, 332 Or 480 (2001). Despite this, not every criminal act reflects adversely on a lawyer’s fitness to practice. The “fitness to practice” element of RPC 8.4(a)(2) requires that there be some rational connection between the criminal conduct and the lawyer’s fitness to practice. In re Davenport, 334 Or 298, 318 (2002). The amended complaint contains allegations establishing all necessary elements.

The Oregon Supreme Court identified a number of considerations in deciding whether a rational connection exists between the criminal conduct and fitness to practice in In re White, 311 Or 573, 589 (1991). These include the lawyer’s mental state, the extent that the act demonstrates disrespect for law or law enforcement, the presence or absence of a victim, the extent of actual or potential injury, and the presence or absence of a pattern of criminal conduct. The court has previously found that when an attorney engaged in criminal sexual conduct with a minor client it reflected adversely on his fitness to practice law. In re Wolf, 312 Or 655, 660 (1992) (violation of predecessor rule, DR-102(A)(2)); see also, In re Hassenstab, 325 Or 166, 177 (1997) (sexual acts with vulnerable persons constitute violations of the rule under the White analysis).

While there is no allegation that the minor involved here in the sexual misconduct was respondent’s client, the Bar argues that the conduct occurred repeatedly, involving someone respondent knew to be a minor, and thus a vulnerable victim. The Bar claims that this demonstrates a disrespect for the law. The Bar further contends that respondent was consciously aware that he was engaged in illegal conduct, which is also incompatible with his obligations as an attorney.

Under the circumstances, we must agree. The misconduct was intentional. It demonstrated disrespect for the law. It involved a vulnerable victim who has presumably suffered harm beyond our ability to measure. It occurred on multiple occasions. Respondent’s actions violated RPC 8.4(a)(2).

2. Kane Matter.

The second matter is denoted the “Kane Complaint.” (Third Cause of Complaint.) Respondent represented an individual with a trial scheduled for August 18, 2017 on a restraining order violation. Am. Comp. at ¶18. Over the two-month period leading to the hearing respondent failed to investigate the allegations and did not prepare for the hearing. Id
at ¶19. Respondent was unprepared when he appeared in court. Id at ¶20. When presented with evidence he was not prepared to refute, respondent told his client to lie about the timing of the alleged assault involved. Id at ¶21. The Bar alleges that this conduct violated RPC 1.3 (neglect of a legal matter) and RPC 3.4(b) (counseling and assisting a witness to testify falsely).

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

The Oregon Supreme Court has found unethical neglect in two situations: when a lawyer ignores a matter over an extended time or when the lawyer engages in a repeated pattern of negligence. See, In re Purvis, 306 Or 522 (1988); In re Bourcier, 322 Or 561 (1996). “An extended period of time” for purposes of applying the neglect rule depends on the circumstances of the case. If the matter is urgent, neglect may be found if the lawyer fails to act over a relatively short period. See In re Meyer, 328 Or 220 (1999) (attorney violated disciplinary rule by failing to act over a two-month period, where the case required immediate action).

Respondent’s client faced an imminent hearing. Respondent did nothing to prepare. His strategy at the hearing was to tell his client to lie. Respondent’s neglect was fatal to his client’s position. We find that he violated RPC 1.3.

RPC 3.4(b) states: “A lawyer shall not counsel or assist a witness to testify falsely.”

Respondent instructed his client to lie. This is an obvious violation of RPC 3.4(b). See In re Kirchoff, 361 Or 712 (2017) (rule violated when respondent created a fake email that was presented to the court as though it had actually been sent).


The third matter is identified as the “Woodard Complaint.” (Fifth Cause of Complaint.) Respondent represented a client in a commercial landlord/tenant case, which was resolved on January 19, 2017, by a stipulated settlement order. The order required respondent’s client to pay the opposing party’s attorney fees in an unspecified amount, not to exceed $750, by March 1, 2017. Am. Comp., ¶30. The day after the settlement order was signed the opposing party’s attorney emailed respondent a copy of his bill. The amount exceeded $750, so it was reduced to that figure per the terms of the settlement order. Id at ¶31.

Respondent’s client asked for the amount he owed multiple times before the March 1 deadline, but respondent told him that he had not heard from opposing counsel regarding the sum due. Respondent did nothing to follow up with opposing counsel on the issue either. Id at ¶32. As a result, the client failed to make the payment. Opposing counsel filed an affidavit of noncompliance, which included a judgment that required respondent’s client to vacate the commercial property. Id at ¶33.

Although he had not checked to see if he had received the email regarding the fees, respondent objected to the affidavit of noncompliance and moved to set aside the judgment. He accused opposing counsel of committing fraud by swearing that he had provided respondent with the fee amount. Id at ¶34. A hearing was set on the motion to set aside the judgment.
On the eve of hearing respondent discovered the January 20, 2017 email with the fee amount. *Id* at ¶36. Respondent did not do anything to correct the false statements he had made to the court when moving to set aside the judgment. Instead, he told his client that he would not open the email with the fee amount so no one would know he had received it. He told his client that they should tell the court that respondent had never received the information from plaintiff’s counsel. *Id* at ¶37. The Bar alleges this conduct violated RPC 1.3 (neglect of a legal matter), RPC 3.3(a)(1) (failure to correct a false statement of material fact made to a tribunal), and RPC 3.4(b) (counseling and assisting a witness to testify falsely).

We have previously discussed the elements of a charge of neglect of a legal matter. Respondent neglected Woodard’s matter in multiple respects. Consistent with our earlier analysis, we find he violated RPC 1.3.

RPC 3.3(a)(1) says that, “A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer…” Taking the allegations as true, respondent knowingly failed to correct a false statement to a tribunal. He also told this client to lie to the court. We find that respondent violated RPC 3.3(a)(1) and RPC 3.4(b) in this matter.

4. **Moulton Matter.**

The fourth matter is named the “Moulton Complaint,” (Seventh Cause of Complaint). Respondent agreed to represent an individual on an employment claim. Respondent did not know how to competently represent the client on the matter. Respondent failed to educate himself on what was needed to handle the case, and he took no proper action on the client’s behalf before the statute of limitations expired. *Id* at ¶¶47-50. The Bar alleges this conduct violated RPC 1.1 (failure to provide competent representation) and RPC 1.3 (neglect of a legal matter).

RPC 1.1 provides: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” We have previously discussed the elements of RPC 1.3.

Respondent agreed to represent this client without any apparent understanding of what was needed to file a complaint with the Bureau of Labor and Industries. He made no effort to educate himself on this process before the time for filing expired. We agree that this conduct violated RPC 1.1 and RPC 1.3.

5. **Failure to Cooperate with the DCO.**

For each of the named matters there are corresponding causes of complaint alleging respondent’s failure to respond to the DCO investigations. (Second, Fourth and Sixth Causes of Complaint.) Each instance is alleged to violate RPC 8.1(a)(2) (failure to respond to lawful demands for information from a disciplinary authority).

RPC 8.1(a)(2) states: “A lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority,
except that this rule does not require disclosure of information otherwise protected by Rule 1.6 [client confidences].” This rule requires a lawyer to cooperate and respond fully and truthfully to inquiries from and comply with the reasonable requests of disciplinary authorities, unless an applicable right or privilege justifies refusal. The Oregon Supreme Court takes a no-tolerance approach to violations of this rule. See, e.g., In re Miles, 324 Or 218 (1996), (lawyer suspended for 120 days for failing to respond fully on two occasions). “The failure to cooperate with a disciplinary investigation, standing alone, is a serious ethical violation.” In re Parker, 330 Or 541, 551 (2000); In re Bourcier, 325 Or 429, 434 (1997).

DCO staff attempted to contact respondent multiple times at his physical and email addresses on record with the Bar. It also tried at an additional address that was located through investigation. Respondent has ignored the investigation. Respondent has never asserted any objection to responding.

Respondent has chosen not to participate in this proceeding. Respondent’s earlier communications with the CAO show that he was aware of the pending complaints. The Bar cites numerous cases finding violations of the rule at issue: In re Obert, 352 Or 231 (2012) (violation when lawyer did not respond to numerous requests for information until subpoenaed to do so); In re Paulson, 346 Or 676 (2009), adhered to on recon., 347 Or 529 (2010) (violation when attorney failed to respond or responded insufficiently).

We agree that respondent violated RPC 8.1(a)(2) with regard to the specified matters.

SANCTION

In deciding on an appropriate sanction we are to consider the ABA Standards for Imposing Lawyer Sanctions (“Standards”) and Oregon case law. In re Biggs, 318 Or 281, 295 (1994); In re Spies, 316 Or 530, 541 (1993). The Standards establish the framework to analyze the Accused’s conduct, including (1) the ethical duty violated; (2) the attorney’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. Standards § 3.0.

1. **Duty Violated.**

   Respondent violated his duties to clients to diligently and competently represent their interests. Standards §§ 4.4; 4.5. The Standards provide that the most important ethical duties are those which lawyers owe to their clients. Standards at 5.

   He also violated his duty to the public to maintain his personal integrity by refraining from serious criminal conduct. Standards § 5.1.

   He also violated his duty to the legal system to avoid false statements and misrepresentation to the court. Standards § 6.1.

   Finally, respondent violated his duty to the profession to cooperate with disciplinary investigations. Standards § 7.0.

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2. **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.

We may rely on the facts alleged to decide the mental state of an accused lawyer. *In re Kluge*, 332 Or 251, 262 (2001). The facts alleged in this case compel us to conclude that respondent acted knowingly and intentionally when he engaged in criminal conduct, neglected legal matters, and told his clients to lie.

Respondent’s lack of competence with respect to the Moulton matter could have begun as mere negligence. The Bar argues that it must have become knowing by the time respondent was aware that the statute of limitations was to expire, but then failed to act. That may be true, but we cannot say that this conclusion is established by clear and convincing evidence on the alleged facts. Whether respondent’s mental state in this particular matter morphed over time is not material to our conclusion here though. Even assuming respondent’s conduct with regard to Moulton was merely negligent, we reach the same conclusion discussed below.

The allegations do show that respondent acted knowingly in failing to respond to Bar inquiries. There are sufficient facts alleged for us to conclude that respondent did receive at least some of the inquiries but chose not to answer them.

3. **Extent of Actual or Potential Injury.**

We are to consider both actual and potential injury. *Standards* at 6; *In re Williams*, 314 Or 530 (1992).

We conclude that respondent’s minor victim was actually injured as a result of repeated criminal conduct. We conclude that the clients whose matters were delayed, or whose claims were lost, suffered actual injury. Case law compels us to infer as well that respondent’s failures to act caused further actual injury in terms of anxiety and frustration. *See In re Cohen*, 330 Or 489, 496 (2000) (client anxiety and frustration as a result of the attorney neglect can constitute actual injury); *In re Schaffner*, 325 Or 421, 426–27 (1997).

Respondent’s failure to cooperate with DCO’s investigation caused actual injury to the legal profession and the public. *In re Schaffner*, *supra*; *In re Miles*, 324 Or 218 (1996); *In re Haws*, 310 Or 741, 753 (1990); *see also In re Gastineau*, 317 Or 545, 558 (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).
4. **Preliminary Sanction.**

Absent aggravating or mitigating circumstances, the following *Standards* appear to apply:

4.42 Suspension is generally appropriate when:

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

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.52 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.

5.11 Disbarment is generally appropriate when:

(a) a 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 the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard* 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

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 a significant or potentially significant adverse effect on the legal proceeding.

6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

After consideration of the violations taken as a whole we conclude that the presumptive sanction at this point is disbarment.

5. **Aggravating and Mitigating Factors.**

We find the following aggravating factors are present in this case:

1. **A dishonest or selfish motive.** *Standards* § 9.22(b). Respondent engaged in inappropriate sexual conduct for his personal gratification. His instructions to clients that they lie in court was motivated, at least in part, to hide his own inattention or lack of preparation.

2. **A pattern of misconduct.** *Standards* § 9.22(c). Respondent’s criminal conduct included dozens of criminal acts and spanned nearly a year, per the indictment. We find that this constitutes a pattern of misconduct. *See In re Bourcier*, 325 Or 429, 436 (1997); *In re Schaffner*, 325 Or 421, 427 (1997).

3. **Multiple offenses.** *Standards* § 9.22(d). This factor is self-evident.

4. **Vulnerability of victim.** *Standards* § 9.22(h). We agree with the Bar that the significance of this factor cannot be overstated here. Respondent, 35 at the time, initiated sexual contact with a girl under the age of 16.² Such a victim is inherently vulnerable, and respondent knew that and took advantage of it.

5. **Indifference to making restitution.** *Standards* § 9.22(j). Respondent has not accepted responsibility for his criminal conduct. The evidence is that he has absconded, after having posted bail to be released. His bail has been forfeited and a warrant has been issued for his arrest.³ There is no evidence that respondent has tried to remedy his prior inaction in client matters.

The sole mitigating factor present is that respondent has no prior record of discipline. *Standards* § 9.32(a).

We agree with the Bar’s position that the aggravating factors here significantly outweigh the single mitigating factor. This would normally merit an increase in the degree of presumptive discipline to be imposed. *Standards* § 9.21. However, since the presumptive sanction is disbarment, our analysis here only reinforces the appropriateness of that result.

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² Ex 2: *Declaration in Support of BR 7.1 Suspension*, submitted as Exhibit A with the Bar’s sanctions memorandum.

³ Exhibit 4: *Affidavit in Support of Order Allowing Service by Publication* and Exhibit 5: *Declaration of CADC Bevacqua-Lynott*, submitted with the Bar’s sanctions memorandum.
6. Oregon Case Law.

Oregon cases reach a similar conclusion.

The court frowns upon attorneys’ sexual behavior with clients, minors, or both. See, e.g., In re Hassenstab, supra, (attorney disbarred due to criminal proceedings involving sexual relationships with several clients); In re Wolf, supra, (18 month suspension for contributing to the sexual delinquency of a minor and giving alcohol to a minor client in single encounter despite dismissal of charges following diversion).

Respondent’s recurrent sexual abuse of a minor over the course of nearly a year is much like In re Hassenstab’s “four-year pattern of engaging in varying degrees of sexual contact with many of his female clients… rang[ing] from touching his clients inappropriately and attempting to kiss them to acts of masturbation and sexual intercourse.” 325 Or at 168. None of the misconduct in that case was with a minor victim. The Bar argues that respondent’s criminal conduct with a minor alone warrants disbarment, particularly when combined with respondent’s decision to abscond. We agree.

As to neglect of a legal matter, the court has held that knowing neglect warrants a suspension. The Bar cites us to: In re Redden, 342 Or 393 (2007) (60-day suspension for single serious neglect where no prior discipline); In re LaBahn, 335 Or 357 (2003) (60-day suspension for knowing neglect of tort claim and subsequent failure to notify client where aggravating and mitigating factors were equal); In re Butler, 324 Or 69 (1996) (1-year suspension where lawyer continued to assure his client that he was moving forward on a case he knew was dismissed as a result of his neglect); In re Morrow, 297 Or 808 (1984) (60-day suspension where lawyer neglected to file a legal action, but told his client otherwise). None of these cases also involved an intentional failure to cooperate, which we have here. If the three instances of neglect of a legal matter were the only sustained violations, we agree with the Bar that a suspension for six months would be warranted.

As to false statements to the court, in In re Kirchoff, 361 Or 712 (2017), a two year suspension was the approved sanction for a lawyer who submitted false information to a court. The fabrication in that case was intended, at least in part, to benefit the client. In an earlier case the court held that a false swearing by a lawyer also warranted a two-year suspension. In re Davenport, 334 Or 298, 49 P3d 91, recon., 335 Or 67 (2002). The Bar argues that a suspension of at least 2 years would be warranted if these charges stood alone here. We agree.

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 (2000); In re Bourcier, 325 Or 429, 434 (1997). The court has suspended lawyers for failing to cooperate in disciplinary proceedings independent of any other violations. See, e.g., In re Miles, 324 Or 218 (1996) (120-day suspension for failure to cooperate and no other substantive violations were alleged or proven); In re Schaffner, 323 Or 472 (1996) (60 days of a 120-day suspension attributable to failure to cooperate). We recognize that respondent’s conduct here was not simply a failure to respond, but an ongoing and intentional refusal to respond to cooperate with disciplinary authority.
The Bar points out the sanctions have generally been substantial for failure to cooperate combined with other violations. It cites: *In re Obert*, 352 Or 231 (2012) (six month suspension for failure to respond to numerous requests for information from the Bar until subpoenaed to do so); *In re Goff*, 352 Or 104 (2012) (18-month suspension where failure to respond was included with other violations); *In re Skagen*, 342 Or 183 (2006) (though an accused attorney may object to discovery requests and seek a ruling thereon from the trial panel, attorney here was suspended for one year because he repeatedly refused to cooperate even after he was ordered to do so); *In re Crist*, 327 Or 609 (1998) (attorney suspended for five years for neglect of an arbitration matter with a knowing failure to respond to Bar).

Again, if these charges stood alone, we agree that a substantial suspension would be appropriate. However here we have a litany of charges beginning with criminal conduct that we find merits disbarment standing alone. When the proven violations are combined, we believe that no sanction other than disbarment would be appropriate.

**CONCLUSION**

For the foregoing reasons we order that respondent is disbarred effective on the date this decision becomes final.

Dated this 25th day of March, 2019.

/s/ Mark A. Turner
Mark A. Turner, Adjudicator

/s/ Faith Morse
Faith Morse, Trial Panel Member

/s/ April L. Sevcik
April L. Sevcik, Trial Panel Public Member
ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Elizabeth Farrell is publically reprimanded for violation of RPC 1.16(d).

DATED this 17th day of May, 2019.

/a/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Elizabeth Farrell, attorney at law (Farrell), 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.

Farrell was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 27, 2001, and has been a member of the Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

Farrell 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 15, 2018, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Farrell for alleged violations of 1.3 and 1.16(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.

Farrell represented Anna Garrison (Garrison) in a dispute with her employer regarding an ADA issue that resolved in 2015 by an agreement, at which point Farrell believed the representation had concluded. In March of 2016, Garrison filed an administrative claim relating to her employment. When Garrison contacted Farrell about whether she would represent her in the administrative claim, she declined; however, Farrell continued to communicate back and forth with Garrison, and agreed to talk to the lawyer for Garrison’s employer, Castner.

In August, Castner wrote to Farrell, outlining some of the accommodations the employer was offering to get Garrison back to work and requesting that Garrison provide a date to return to work by September 2, 2016. Farrell sent that letter to Garrison and asked what Garrison wanted to do and whether she wanted Farrell to remain involved. Castner wrote two subsequent letters to Farrell, but Farrell did not receive those two letters. Consequently, no response to the latter two letters was provided on Garrison’s behalf.

After Garrison’s employment was terminated on September 27, 2016, Farrell wrote Castner, explaining that Garrison was not able to work but had not abandoned her job. Farrell
expressed an interest in discussing the employer’s failure to accommodate Garrison’s disabilities.

Garrison subsequently retained a new lawyer and six months later contacted Farrell about having her file sent to her new lawyer. Farrell responded that she was out of the country, would not return for four weeks, and would retrieve the file from storage upon her return. Nearly two months later, the new lawyer emailed Farrell, requesting Garrison’s file, and did not receive a response.

Violations

6.

Farrell admits that, by engaging in the conduct described above, she failed to take necessary steps to protect her client’s interests upon the termination of representation and therefore violated RPC 1.16(d).

Upon further factual inquiry, the parties agree that the charge of alleged violation(s) of RPC 1.3 should be and, upon the approval of this stipulation, is dismissed.

Sanction

7.

Farrell 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 Farrell’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. Farrell violated the duties she owed as a professional to protect Garrison’s interests upon termination of her representation and promptly return her file to Garrison. Standards, § 7.0.

b. Mental State. The Standards recognize three mental states. 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. Farrell’s conduct was negligent.
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).

Garrison was potentially harmed by Farrell’s failure to communicate clearly to either Garrison or Castner that she was not representing Garrison and by Farrell’s delay in delivering Garrison’s file to her new lawyer.

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

1. Vulnerability of victim. *Standards § 9.22(h).* Garrison was a disabled client.

2. Substantial experience in the practice of law. *Standards § 9.22(i).* Farrell has been practicing in Oregon since 2001.

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

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

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

3. Personal or emotional problems. *Standards § 9.32(c).* At the time of the underlying events, Farrell’s father was experiencing significant health problems that affected Farrell and her practice.

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

Under the ABA *Standards*, 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.*

9.

A reprimand for this conduct is consistent with other cases. *In re Bruce*, 32 DB Rptr 290 (2018) (reprimand for attorney who was hired by a grandparent to file a guardianship proceeding over two grandchildren, but only filed the proceeding as to one grandchild; attorney also failed to serve one of the parents and failed, after being notified by court to do so, to file proof of service); *In re O’Rourke*, 32 DB Rptr 36 (2018) (reprimand for attorney who was hired on a criminal case who took a nonrefundable fee, but was terminated before completing the services for which the attorney was paid and then failed to refund any portion of the fee until the disciplinary proceeding was filed); *In re Daraee*, 32 DB Rptr 252 (2018) (reprimand for attorney who was hired to defend a case and paid a $15,000 retainer. After the client notified the lawyer that he no longer required the lawyer’s services and directed where a refund be sent, the lawyer did not respond to five letters from the client and one contact from the client’s criminal lawyer and failed to refund the fee until after being notified of the Bar complaint).
10.

Consistent with the Standards and Oregon case law, the parties agree that Farrell shall be publically reprimanded for violation of RPC 1.16(d), the sanction to be effective when the stipulation is approved.

11.

Farrell 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.

12.

Farrell 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 Farrell is admitted: Wisconsin.

13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 13, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 9th day of May, 2019.

/s/ Elizabeth Farrell
Elizabeth Farrell, OSB No. 011107

APPROVED AS TO FORM AND CONTENT:

/s/ Jason E. Thompson
Jason E. Thompson, OSB No. 014301

EXECUTED this 14th day of May, 2019.

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: )
) Case No. 19-44
Complaint as to the Conduct of )
ALEXANDER GREGORY, )
Respondent. )

Counsel for the Bar: Angela W. Bennett
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.4(b), RPC 5.3(a), and RPC 8.4(a)(4). Stipulation for Discipline. Public Reprimand.
Effective Date of Order: May 17, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Alexander Gregory is publicly reprimanded for violation of RPC 1.4(b), RPC 5.3(a) and RPC 8.4(a)(4).

DATED this 17th day of May, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Alexander Gregory, attorney at law (Gregory), 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. Gregory was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1994, and has been a member of the Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3. Gregory 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 April 13, 2019, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Gregory for alleged violations of RPC 1.4(b), RPC 5.3(a) 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. In August 2008, Gregory’s client (“Husband”) engaged Gregory to file a petition for marital dissolution. Husband and his estranged wife (“Wife”) had lived separately for five years at the time, and the dissolution was uncontested. Gregory prepared the documents and obtained notarized signatures from both parties.

Gregory instructed his staff to file the final, signed documents, but did not ensure that the tasks were completed. His staff inadvertently closed the file before the judgment and supporting documents were submitted to the court for filing, and the judgment was never filed.

In 2011, after three years had passed with no action in the case, the court sent a dismissal notice. Gregory does not recall receiving or reviewing it. Six months later, in March of 2012, the court dismissed the case and sent notice of same to Gregory.

Unaware that his dissolution was incomplete, Husband remarried in 2012. While attempting to refinance her home in 2017, Wife learned that the divorce had not been completed and that she was still married to Husband. She informed Husband, who then
contacted Gregory and the Bar. After learning about the situation, Gregory apologized and acted to engage repair counsel to remedy the situation.

Violations

6.

Gregory admits that, by failing to keep Husband informed of developments in his dissolution proceeding, including that he had not filed the judgment and the proceeding had been dismissed, Gregory failed to provide sufficient information to Husband to make informed decisions regarding the representation, in violation of RPC 1.4(b). Gregory further admits that in failing to ensure that his staff member filed the dissolution paperwork, he did not make reasonable efforts to ensure that the staff member’s conduct complied with Gregory’s professional obligations, in violation of RPC 5.3(a). Gregory also admits that he engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4) by failing to file the divorce or remedy the situation at the time the court sent notices, which caused harm to the court and his client.

Sanction

7.

Gregory 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 Gregory’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. Gregory violated his duties to his client by failing to adequately communicate with him. Standards § 4.1. The most important duties a lawyer owes are those owed to clients. Standards at 5. Gregory violated his duty to the legal system by engaging in conduct prejudicial to the administration of justice. Standards § 6.2. Gregory’s failure to adequately supervise his staff violated his duties as a professional. Standards § 7.0.

b. Mental State. The Standards recognize three mental states. 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.
Gregory did not realize the case had been prematurely closed or that the stipulated judgment had not been filed, nor did he see the court’s dismissal notices. There is no evidence (such as communications from Husband or Wife) that Gregory learned about the situation prior to 2017. As such, his actions were negligent in all respects.

c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, both actual and potential injury are taken into account. *Standards* at 6; *In re Williams*, 314 Or 530 (1992).

Gregory’s failure to communicate with his clients and complete the dissolution proceeding caused substantial actual or potential harm to his client as discussed above. The repair counsel and the court were able to remedy the situation, and the potential harm did not come to fruition; however, this does not diminish the very serious potential consequences if such a remedy could not have been achieved. The failure to communicate also caused actual injury in the form of client anxiety and frustration which occurred after Husband learned of the situation. See, *In re Knappenberger*, 337 Or 15, 23 (2004) (client anxiety and frustration resulting from attorney’s misconduct can constitute actual injury). Gregory’s conduct caused potential injury to the profession in that his actions could have eroded the trust the public places in lawyers.

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


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

1. Absence of a dishonest or selfish motive. *Standards* § 9.32(b).
2. Timely good faith effort to rectify consequences of misconduct. *Standards* § 9.32(d). Upon learning of the mistake, Gregory took action to remedy the situation.

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 actual
or potential injury as a result. *Standards* § 4.43. A reprimand is also generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards* § 6.23. 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, a reprimand is generally appropriate. *Standards* § 7.3.

8.

A reprimand is consistent with prior Oregon cases involving a failure to adequately communicate with clients. *In re Bruce*, 32 DB Rptr 290 (2018) (after representing a proposed fiduciary in two related guardianship proceedings, attorney stipulated to a public reprimand for failing to inform her client about the progress of the guardianships, the problems she had with service of both parents, and that the one of the cases had been dismissed for the attorney’s failure to prosecute the case); *In re Castle*, 31 DB Rptr 254 (2017) (attorney of record in protective proceedings in which annual reports were required received two notices that the third annual report was late and, although he left a message for his client, attorney did not otherwise follow up with his client. The court subsequently sent the attorney notice of a hearing regarding the failure to file an annual report but attorney failed to inform his client of the hearing. Attorney stipulated to a public reprimand for violations of RPC 1.3, RPC 1.4(a) and RPC 1.4(b)).

A reprimand is also consistent with prior Oregon cases involving a failure to adequately supervise non-lawyer staff. *In re Nishioka*, 23 DB Rptr 44 (2009) (attorney stipulated to a public reprimand after he utilized the services of a non-lawyer assistant in a probate matter, allowing the assistant to use attorney letterhead and pleading forms without adequate supervision, failing to review or approve of the assistant’s work before it was filed in court and failing to ensure that the assistant was not engaged in the unauthorized practice of law).

Prior Oregon case law supports a reprimand under similar circumstances for conduct prejudicial to the administration of justice. *In re Hartfield*, 349 Or 108, 239 P3d 992 (2010) (attorney reprimanded for repeatedly failing to appear in court for scheduled hearings related to a conservatorship, and failing to file an inventory or an accounting, resulting in the court removing the conservator and attorney from the case and the estate incurring unexpected attorney fees); *In re Nesheiwat*, 26 DB Rptr 253 (2012) (to support his position in a fee dispute with a client, attorney submitted to an administrative agency and to the Bar purported email communications between attorney and the client. In fact, some of these emails had never been sent and attorney was negligent in retrieving these drafts from his computer and submitting them without confirming their accuracy. Attorney stipulated to a public reprimand).

9.

Consistent with the *Standards* and Oregon cases, the parties agree that Gregory shall be publicly reprimanded for violation of RPC 1.4(b), RPC 5.3(a) and RPC 8.4(a)(4), the sanction to be effective upon approval of this stipulation.
10.

Gregory 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 Gregory to attend continuing legal education (CLE) courses.

11.

Gregory 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 Gregory is admitted: none.

12.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 13, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 15th day of May, 2019.

/s/ Alexander Gregory
Alexander Gregory, OSB No. 943240

EXECUTED this 15th day of May, 2019.

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 Gregory Mark Abel and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Gregory Mark Abel is publically reprimanded for violation of RPC 1.7(a) and RPC 1.9(a).

DATED this 24th day of May, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Gregory Mark Abel, attorney at law (“Abel”), 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.

Abel was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 5, 2003, and has been a member of the Bar continuously since that time, having his office and place of business in Jackson County, Oregon.

3.

Abel 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 20, 2018, a Formal Complaint was filed against Abel pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of RPC 1.7(a) (current-client conflict of interest); and RPC 1.9(a) (former-client conflict of interest) 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.

Husband retained Abel to defend him against criminal charges related to his eldest daughter (“Daughter 1”), who lived with her mother. At the time, Husband was married to Wife, and the couple had one child, a daughter (“Daughter 2”). Abel was successful at getting Husband released pending trial. However, DHS was concerned for Daughter 2’s welfare when the court permitted Husband to return home and brought a dependency proceeding against both Husband and Wife. The dependency proceeding sought to have Daughter 2 removed from the home so long as Husband was living there or had unsupervised access to Daughter 2.

6.

Abel was concerned that leaving Wife unrepresented might injure her rights or leave her subject to possible harassment by DHS. Accordingly, Abel filed a notice of appearance in the dependency proceeding on behalf of both Husband and Wife, and represented them both at the initial shelter hearing. At the time, Husband’s interest in defending against Daughter 1’s allegations was objectively and fundamentally different from Wife’s interest in keeping Daughter 2 safe and in the home. To the extent that a waiver of these conflicting interests was
possible, Abel did not seek or obtain informed consent, confirmed in writing, to his representation from either Husband or Wife, although he did advised Wife that she needed to seek replacement counsel.

7. Abel continued to be attorney of record for both Husband and Wife for approximately a month, at which time Wife hired an independent lawyer who assumed her representation in the dependency matter.

8. After Wife obtained new counsel, Abel continued to represent Husband in the dependency matter (i.e., the same matter in which he had previously represented Wife). Abel did not seek or obtain informed consent, confirmed in writing, to his continued representation of Husband from either Husband or Wife.

Violations

9. Abel admits that, by simultaneously representing both Husband and Wife in the dependency proceeding, he engaged in a current-client conflict of interest that violated RPC 1.7(a).

10. Abel further admits that, after Wife obtained new counsel, his failure to obtain Husband’s and Wife’s informed consent, confirmed in writing, to his continued representation of Husband, amounted to a former-client conflict of interest, in violation of RPC 1.9(a).

Sanction

11. Abel 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 Abel’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.** Abel violated his duty to his clients to avoid conflicts of interest. Standards § 4.3. The Standards presume that the most important ethical duties are those which lawyers owe to their clients. Standards at 5.

b. **Mental State.** The Standards recognize three mental states: intent, knowledge, and negligence. 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. Abel acted both negligently and knowingly here. Although he knew that it was not appropriate to represent both Husband and Wife for the duration of the dependency proceeding, he failed to recognize that his limited appearance and purpose still established such representation.

c. **Injury.** Injury can be either actual or potential. *Standards* § 3.0; *In re Williams*, 314 Or 530 (1992). Although there is no evidence of any actual injury to either Husband or Wife, there was the potential that Abel may have acted contrary to one of their interests in defending or advocating for the other. This is particularly true with respect to Wife, in light of Abel’s parallel representation of Husband in the criminal case that preceded the dependency action.

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

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

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

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

2. **Absence of a dishonest or selfish motive.** *Standards* § 9.32(b). To the contrary, Abel was attempting to protect both Husband and Wife in undertaking to represent them both in the dependency proceeding.

3. **Full and free disclosure and cooperation in the disciplinary process.** *Standards* § 9.3(e).

12.

Under the ABA *Standards*, a 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. 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* §§ 4.32; 4.33.

13.

The court has held that a single violation of a conflicts rule justifies a 30-day suspension. *See, e.g., In re Knappenberger*, 337 Or 15, 32 (2004); *In re Hockett*, 303 Or 150, 163–64 (1987). However, it has also imposed reprimands where the application of the *Standards*, including the appropriate aggravating and mitigating factors, supports a downward departure. That is the case here. *See, e.g., In re Leuenberger*, 337 Or 183 (2004) (attorney
reprimanded for a self-interest conflict when, after one judgment was entered against his clients and a separate judgment for sanctions was entered against the clients and the lawyer, accruing interest at a lower rate, attorney argued to the court on behalf of the clients that the sanctions judgment should be satisfied first from sale proceeds; *In re Howser*, 329 Or 404 (1999) (court reprimanded attorney who should not have continued to represent a client in litigation after he learned that his lawyer partner previously drafted wills for the opposing party and that the wills contained information that supported the current client’s claim; however, reprimand was sufficient because of the lawyer’s lack of a prior disciplinary record, and after concluding that the mitigating factors outweighed the aggravating ones, including the attorney’s concern over the current client’s financial inability to obtain new counsel if he withdrew); *In re Cohen*, 316 Or 657 (1993) (attorney engaged in a current-client conflict of interest when he represented husband in criminal proceedings and both husband and wife in related dependency proceedings because “Wife's ‘objective personal …interests,’ as mother and guardian of her children, were adverse to Husband’s objective personal interest” from the outset; however, the court issued a reprimand after concluding that the mitigating factors outweighed the aggravating factors and that the respondent lawyer's clients were not actually injured); *In re Harrington*, 301 Or 18 (1986) (although respondent engaged in a personal-interest conflict when he arranged for his client to lend money to his secretary without proper disclosures, the court reprimanded him, noting that the respondent acted in the utmost good faith, was motivated by kindness and consideration for the less fortunate, and did not cause injury to his clients).

14.

Consistent with the Standards and Oregon case law, the parties agree that Abel shall be publicly reprimanded for violations of RPC 1.7(a) and RPC 1.9(a), the sanction to be effective upon approval by the Disciplinary Board.

15.

Abel 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.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 30, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties
agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 22nd day of May, 2019.

/s/ Gregory Mark Abel
Gregory Mark Abel, OSB No. 031784

EXECUTED this 23rd day of May, 2019.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott, OSB No. 990280
Chief Assistant Disciplinary Counsel
ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Kirkland T. Roberts is publicly reprimanded for violation of RPC 1.16(d) and RPC 4.2.

DATED this 5th day of June, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Kirkland T. Roberts, attorney at law (Roberts), 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. Roberts was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1981, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3. Roberts 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 April 13, 2019, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Roberts for alleged violations of RPC 1.16(d) and RPC 4.2 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. On October 21, 2016, Roberts accepted representation of a client (“Client”) who had been involved in a motor vehicle accident on October 1, 2016. The agreement was a contingency fee agreement, but included a conversion clause that purported to permit Roberts to seek a reasonable fee for his services in the event that Client discharged him from the case.

6. On December 11, 2017, Roberts received a communication from an attorney, (“Attorney”) purporting to be the attorney for Client. On December 22, 2017, Roberts wrote to Attorney seeking to confirm that he was actually the attorney for Client, as Roberts understood client to have a common name and Attorney had incorrectly identified the date of the accident as October 1, 2017. Roberts further asserted that, if Client were terminating the representation, Roberts would need to calculate his fees and expenses as he had a lien on the file and the action.
7.

On January 10, 2018, Client sent a letter to Roberts, directing Roberts turn over his file to Attorney, and threatening to file a bar complaint if this was not done.

8.

On January 17, 2018, Roberts wrote to Client stating that, in order to release the file, he would need to be reimbursed “a reasonable amount” for his fees and out-of-pocket expenses. Attorney was not copied on this letter.

9.

On January 30, 2018, Roberts wrote a letter to Attorney, confirming a conversation they had on January 26, 2018. Roberts asserted a claim for $2,800 in fees and expenses and further demanded that Client waive any claim against Roberts as a condition of turning over his file. While Roberts may have had adequate reason to initially contact Client and assert a lien on the Client’s file, the parties agree that attempting to condition release of the file on a waiver of any claims the Client might have against Roberts was inappropriate.

10.

On February 5, 2018, Attorney wrote to Roberts again demanding Client’s file, but not addressing Roberts’s demand for payment. Attorney set a deadline of February 20, 2018 to turn over the file. When Roberts did not do so, Client filed a grievance with the Bar.

11.

Roberts promptly responded to inquiries from the Bar setting out his reasons for withholding Client’s file. Client responded stating that Roberts’s demands were unreasonable.

12.

On August 8, 2018, with the statute of limitations approaching on October 1, 2018, Roberts wrote to Attorney, offering to produce Client’s file for a payment of approximately $125.70 and a letter signed by Client, discharging him as attorney. On August 10, 2018, Attorney responded, stating that his office had reconstructed the file at considerable expense.

13.

On August 13, 2018, Roberts wrote directly to Client, notifying him of the coming statute of limitations and offering to represent Client in relation to the October 1, 2016 accident (either with or without the assistance of Attorney), if Client would withdraw the ethics complaint against him. Roberts copied Attorney on these communications. However, Roberts acknowledges that he did not have Attorney’s permission to contact Client. While Robert’s intent in contacting Client was to protect the Client's claim, the letter should have only been addressed to Attorney, absent Attorney's permission to contact Client.
Violations

14.

Roberts admits that, by the actions listed above, he violated RPC 1.16(d) and RPC 4.2.

Sanction

15.

Roberts 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 Roberts’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.** Roberts’s violations of RPC 1.16(d) implicate Standard 4.1 [failure to preserve client property]. Roberts’s violation of RPC 4.2 implicates Standard 6.3 [improper communications with individuals in the legal system].

b. **Mental State.** Roberts was negligent in assessing the appropriateness of the conditions that he placed on the release of his former client’s file. At a minimum, he should have known it was not appropriate to condition release of the file on a waiver of liability against him. Initially, Roberts’s attempt to contact his client directly were understandable. However, by August 2018, Roberts knew that Client was represented. Accordingly, this violation was knowing.

c. **Injury.** Client incurred inconvenience in reconstructing his file.

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

1. Multiple Offenses, Standard 9.22(d); and,
2. Substantial experience in the practice of law, Standard 9.22(i).

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

1. Absence of a disciplinary record, Standard 9.23(a); and,
2. A cooperative attitude towards the proceedings, Standard 9.23(e).

16.

Under the ABA Standards, a reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client and 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 injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding. Standards § 4.13; § 6.32. In this case, Roberts’s conduct would ordinarily warrant a suspension. However, the parties recognize that his long career, without discipline, constitutes substantial mitigation, outweighing the aggravation in this instance.

17.

The Disciplinary Board has approved stipulations to reprimands for violations of RPC 4.2 in the past. See In re Trigsted, 32 DB 208, (2018) (attorney stipulated to reprimand where on two occasions, he copied represented parties on emails to opposing counsel); In re Buroker, 29 DB Rptr 321 (2015) (attorney stipulated to reprimand where he continued to contact a former client about a small claims action in which the lawyer was attempting to collect his fee). Both Buroker and Trigsted had previous admonitions for violations of RPC 4.2. While this is not true of Roberts, he does have concurrent violations for improperly holding his client file, making the severity of the conduct roughly equivalent.

18.

Consistent with the Standards and Oregon case law, the parties agree that Roberts shall be reprimanded for violation of RPC 1.16(d) and RPC 4.2, the sanction to be effective upon approval of this stipulation.

19.

Roberts 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 Roberts to attend continuing legal education (CLE) courses.

20.

Roberts 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 Roberts is admitted: None.

21.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 13, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties
agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 29th day of May, 2019.

/s/ Kirkland T. Roberts
Kirkland T. Roberts, OSB No. 814415

EXECUTED this 4th day of June, 2019.

OREGON STATE BAR

By: /s/ Theodore W. Reuter
Theodore W. Reuter, OSB No. 084529
Assistant Disciplinary Counsel
ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and William John Edgar is publicly reprimanded for violation of RPC 1.7(a)(2).

DATED this 10th day of June, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

William John Edgar, attorney at law (Edgar), 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. Edgar was admitted by the Oregon Supreme Court to the practice of law in Oregon on January 2, 2012, and has been a member of the Bar continuously since that time. Edgar’s office and place of business is in Multnomah County, Oregon.

3. Edgar 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 April 13, 2019, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Edgar for an alleged violation of RPC 1.7(a)(2) (current client conflict of interest) 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. Edgar represented two co-defendants in a lawsuit in which the plaintiffs sought the same relief from both defendants. After Edgar’s defendant clients and plaintiff reached a settlement agreement, one of Edgar’s defendant clients argued to Edgar that the other defendant should make a larger contribution toward settlement. Edgar continued to represent both defendants, despite the fact that the clients had conflicting interests, which precluded Edgar from obtaining the clients’ informed consent.

Violations

6. Edgar admits that, by continuing to represent both clients after the dispute arose about the funding of settlement, he violated RPC 1.7(a)(2).
Sanction

7.

Edgar 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 Edgar’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.** Edgar violated his duty of loyalty to a current client. *Standards* § 4.3.

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.*

Edgar was negligent in failing to be aware of the significant risk that his representation of one client was materially limited by his responsibilities to the other client.

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

At a minimum, one of Edgar’s clients suffered actual injury in the form of anxiety and frustration when Edgar failed to zealously advocate for her interests as he tried to balance her interests against the interests of his other client. *See In re Cohen*, 330 Or 489, 496 (2000) (client anxiety and frustration as the result of attorney neglect can constitute actual injury under the *Standards*); *In re Schaffner*, 325 Or 421, 426–27 (1997).

There was also potential for injury to one of his clients. It is unknown how much an attorney, without a current client conflict, could have obtained in contribution from the other defendant. Perhaps the other defendant would have contributed more than it actually did.

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

1. **Substantial experience in the practice of law.** *Standards* § 9.22(j). Edgar was licensed to practice in California in 2006 and also holds a law license in Washington. He was admitted to practice in Oregon in 2012.

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


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

Prior Oregon cases suggest that a reprimand is appropriate. In *In re Cohen*, 316 Or 657 (1993), an attorney engaged in a current client conflict by representing husband and wife in a juvenile matter while also defending husband against criminal charges involving the affected child. When faced with a likely conflict of interest, the attorney failed to make full disclosure and obtain consent. When an actual conflict became apparent, the attorney continued to represent both clients. In *In re Trukositz*, 312 Or 621 (1992), an attorney had represented wife to prepare paternity affidavit naming husband the father. When wife later filed dissolution proceedings against husband, accused represented husband and failed to recognize the conflict, despite the issues of child support and custody in the dissolution proceeding. In the matter of *In re Carey*, 307 Or 315 (1989), an attorney represented the estates of three legally incompetent clients and became concerned that the money in the estates would not cover necessary costs. The accused made seven loans from the assets of the estates to various friends, some of whom were current clients. The accused failed to recognize actual and likely conflicts of interests.

Consistent with the *Standards* and Oregon case law, the parties agree that Edgar shall be publicly reprimanded for a violation of RPC 1.7(a)(2).

Edgar 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.

Edgar 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 Edgar is admitted: California and Washington.
13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 13, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 4th day of June, 2019.

/s/ William John Edgar
William John Edgar, OSB No. 120136

EXECUTED this 7th day of June, 2019.

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. 18-55 and 18-74

ELIZABETH D. LOGSDON, ) Respondent.

Counsel for the Bar: Amber Bevacqua-Lynott

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator
James Underwood
Bryan Penn, 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(c), RPC 1.15-1(d), RPC 1.16(a)(2), RPC 8.1(a)(2), and RPC 8.4(a)(3). Trial Panel Opinion. 1-year suspension.

Effective Date of Opinion: June 15, 2019

TRIAL PANEL OPINION

In this disciplinary proceeding, the Oregon State Bar (“Bar”) alleges that respondent, Elizabeth D. Logsdon, committed multiple violations of the Oregon Rules of Professional Conduct (“RPC”) in connection with two client matters. She is also charged due to her subsequent failure to respond to the Bar’s investigation of that conduct.

On January 11, 2019, the Adjudicator entered an order of default against respondent for failure to answer the complaint then pending. Accordingly, the factual allegations in the complaint are deemed true. BR 5.8(a). Our task as the trial panel is first to determine whether those allegations constitute the violations asserted by the Bar. We are to look only within the four corners of the complaint in making this determination.

If we conclude the facts alleged support one or more of the charges, we must then decide the appropriate sanction to impose. We are able to consider additional evidence on this question, and we have reviewed the memorandum submitted by the Bar and the supporting evidence cited therein in reaching our decision.
As discussed in detail below, we conclude that the Bar has alleged facts to support all but one of the claimed rule violations. We suspend respondent from the practice of law for one year.

BACKGROUND

Respondent was admitted to the Oregon Bar in 2007. On August 21, 2017, the Bar’s Disciplinary Counsel’s Office (“DCO”) received a complaint from a client, Havana Smith (“Smith”), raising concerns about respondent’s neglect of her matter and lack of communication. Respondent provided information to the Bar’s Client Assistance Office (“CAO”) in response to the complaint. Once the complaint was forwarded to the DCO respondent failed to respond to further inquiries. On April 4, 2018, respondent was suspended pursuant to BR 7.1 for this failure.

On September 25, 2018, the Bar filed a formal complaint regarding the Smith matter (Case No. 18-55). It was personally served on respondent on October 14, 2018.

On October 16, 2017, DCO received a complaint from another client, Michael Woods (“Woods”). He raised concerns about how respondent was handling his funds. Respondent again failed to substantively respond to any of DCO inquiries. On May 15, 2018, another BR 7.1 suspension was ordered. On November 6, 2018, the Bar filed its first amended formal complaint (“Complaint”), consolidating the Woods and Smith matters.

The Adjudicator set an answer date. Respondent asked for an extension of time to answer the Complaint and it was granted. Respondent never filed an answer. The Bar sent respondent a ten-day notice of intent to seek an order of default. When that was ignored, the Bar filed a motion for order of default which was granted in January of 2019.

FACTS AND VIOLATIONS

Respondent was hired by both Smith and Woods in 2016 to assist them with domestic relations matters: Smith wanted respondent to file a filiation case to change the father’s name on a birth certificate; Woods needed representation in a child custody case. Complaint, ¶¶3, 37.

Neglect of a Legal Matter.

RPC 1.3 provides: “A lawyer shall not neglect a legal matter entrusted to the lawyer.” Respondent is charged with violation of this rule in the Smith case in the First Cause of Complaint.

Neglect under the rule can be a failure to act at all, or a failure to act diligently. A lawyer’s conduct is considered on a continuum, rather than as discrete, isolated events. In re Magar, 335 Or 306 (2003); In re Eadie, 333 Or 42 (2001).
Respondent was hired by Smith in February 2016. Despite regular inquiries from Smith, she did not file the petition in the paternity matter until September 2016. *Id* at ¶¶4-5. The petition was a seven page document largely drafted by the client. *Id* at ¶5. Thereafter, respondent failed to take any substantive action. *Id* at ¶6. The court notified respondent of its intent to dismiss the action for failure to file proof of service. *Id* at ¶7. She failed to advise her client of this. *Id*.

Respondent did serve the defendant after this warning, but then failed to file proof of service, so the court dismissed the case in January of 2017. *Id* at ¶¶8, 10. Respondent did nothing to reinstate the case.

The Bar argues that these lengthy periods of inaction on the case, and respondent’s failure to prevent and then cure the dismissal, constitute neglect, in violation of RPC 1.3. The Bar cites us to *In re Coyner*, 342 Or 104, 149 P3d 1118 (2006) (attorney committed neglect when he took no action on an appeal 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) and *In re Knappenberger*, 337 Or 15, 90 P3d 614 (2004) (attorney who appealed a spousal support determination neglected the matter when he 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).

We must agree with the Bar’s position. Respondent violated RPC 1.3.

**Inadequate Communication.**

RPC 1.4(a) states: “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) adds: “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

RPC 8.4(a)(3) provides: “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.”

The Bar alleges violations of these rules in the First Cause of Complaint as well.

To establish a charge of misrepresentation, the Bar must allege clear and convincing evidence that respondent’s misrepresentations were knowing, false, and material. *In re Eadie*, 333 Or 42, 36 P3d 468 (2001); *In re Kluge*, 332 Or 251, 255, 27 P3d 102 (2001). The Bar does not need to allege actual reliance. *In re Brandt/Griffin*, 331 Or 113, 10 P3d 906 (2000).


Here respondent generally ignored her client’s requests for updates on her case. For the most part she did not respond at all. When she did, she provided no information of substance.
Most importantly, respondent never told her client that her case was dismissed in January 2017. The client sent a number of emails and text messages after the dismissal asking for updates and expressing concern. See id at ¶¶9, 11-17. The dismissal of the case is precisely the kind of information that a lawyer is required to provide to a client.

As alleged, when the client asked whether respondent was still working on the case in early May 2017, respondent lied and said she was even though it had been dismissed for over four months. Smith heard nothing more from respondent before the Professional Liability Fund (“PLF”) told her in late May that respondent could no longer represent her. Id at ¶17.

The Bar cites an abundance of cases in which similar behavior was found to violate these rules. We agree that this course of conduct violated both RPC 1.4(a) and (b). We also find that respondent’s statement that she was still working on the case even though it was dismissed was an affirmative misrepresentation. Her failure to advise her client of the dismissal of the case was a misrepresentation by omission. Both instances violated RPC 8.4(a)(3).

Mishandling of Smith Funds.

RPC 1.15-1(a) provides that: “A lawyer shall hold property of clients in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the lawyer's office is situated.” RPC 1.15-1(c) goes on: “A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the fee is denominated as ‘earned on receipt,’ ‘nonrefundable’ or similar terms and complies with Rule 1.5(c)(3).” The Bar alleges violations of these rules in the Third Cause of Complaint.

Smith paid respondent a $1,500 retainer for services on an hourly basis which respondent properly deposited into her trust account. Complaint, ¶3. The client later asked for a refund of the retainer, in response to which respondent sent her an invoice showing that she earned all but $45.50 of the retainer. That amount was returned. Id at ¶17. The Bar then alleges that, even if respondent had earned all but the $45.50 she refunded, she knowingly removed some or all of the unearned funds without client authorization and used them for other purposes. Id at ¶¶24, 25. The Complaint states that respondent’s trust account balance went as low as $9.07 during this period, and that respondent deposited and used other funds to make up the refund check. Id at ¶26.

We must agree that on the facts alleged respondent withdrew a small amount of funds from trust before the fees were earned or expenses were incurred. We further must agree that this violated RPC 1.15-1(a) & (c). See In re Skagen, 342 Or 183, 140 P3d 1171 (2006) (lawyer’s failure to maintain balance in trust sufficient to cover outstanding client funds violated former rule).

The Bar also asks us to infer from the allegations that respondent’s improper removal of Smith’s funds from trust was knowing and intentional, rather than inadvertent, negligent, or the result of poor bookkeeping. The results of this determination are serious. Taking a client’s
money before it is earned is the tort of conversion. *Rizo v U-Lane-O Credit Union*, 178 Or App 498, 502-03, 37 P3d 220 (2001). In Oregon, if an attorney intends to convert property or knows that her conduct is culpable in some respect, the conversion is dishonest conduct that violates RPC 8.4(a)(3). *See In re Peterson*, 348 Or 325, 335, 232 P3d 948 (2010). The penalty is almost always disbarment.

The Bar argues that, while respondent reported to the CAO early in the investigation that she had experienced several deaths in her family and was suffering from health issues of her own, there is no evidence to suggest that respondent was so impaired as to lack the capacity to understand what she was doing when she took and spent her client’s funds. *See In re Webb*, 363 Or 42, 418 P3d 2 (2018) (respondent failed to establish that her claimed mental disability caused her taking of client funds). Thus, the Bar concludes, respondent knowingly converted client funds.

We must find that respondent’s mishandling of the funds was intentional or knowing to find a violation of RPC 8.4(a)(3). The Bar’s argument summarized above, however, cannot be considered because the question of liability can only be answered based on the allegations in the complaint, not the additional information discussed. The statements regarding respondent’s circumstances and health can only be considered in assessing an appropriate sanction.

Here, the allegations are that respondent’s trust account balance dropped to a low of $9.07, while during that time she owed her client at least $45.50. We agree that this shows mishandling of the account. We cannot agree, however, that these allegations create an inference that respondent acted knowingly or intentionally when committing the violations. In fact, it is difficult to conclude that respondent knowingly misappropriated $36.43 of her client’s funds. The de minimis amount suggests negligence or inadvertence more than it does intent or knowledge. Accordingly, we find that the Bar’s allegations do not demonstrate clearly and convincingly that respondent violated RPC 8.4(a)(3).

**Failure to Account to Woods**

RPC 1.15-1(d) states: “A lawyer shall promptly deliver to a client any funds or other property that the client is entitled to receive and, upon request by the client, shall promptly render a full accounting regarding such property.” The Bar charges a violation of this rule in the Fifth Cause of Complaint.

Woods paid respondent a total of $3,000. Complaint, ¶38. He asked for an accounting multiple times but respondent failed to provide the requested information. *Id* at ¶39. This failure violated RPC 1.15-1(d). *See In re Fadeley*, 342 Or 403, 153 P3d 682 (2007) (attorney violated former rule when he failed to provide the client with an accounting of the funds as she requested and refund the unused portion of her fees).
Failure to Withdraw when Impaired

RPC 1.16(a)(2) provides: “A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.” The Bar charges violations of this rule as to both clients in the Second and Sixth Causes of Complaint.

Beginning in late 2016, respondent began suffering or was suffering from one or more physical and/or mental conditions that materially impaired her ability to represent clients. Id at ¶¶20, 42. Despite awareness of her impairment, respondent continued to represent both clients. Id at ¶43. We agree that these allegations state a violation of RPC 1.16(a)(2).

Failure to Respond to Disciplinary Counsel’s Office

RPC 8.1(a)(2) provides: “A lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6 [client confidences].” The Bar charges violations of this rule as to both client complaints in the Fourth and Seventh Causes of Complaint.

The rule requires lawyers to cooperate and respond fully and truthfully to inquiries from and comply with lawful demands of disciplinary authorities, subject to the exercise of any applicable right or privilege. DCO is such a disciplinary authority. The Supreme Court has taken a no-tolerance approach to violations of this rule. See, e.g., In re Miles, 324 Or 218, 923 P2d 1219 (1996) (lawyer was suspended for 120 days solely for failing to fully respond to the Bar on two occasions). “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, 325 P2d 604 (1997).

In both client matters involved here, DCO staff made multiple attempts to contact respondent. She responded to some of these communications, thereby acknowledging receipt. However, she did not address the concerns raised by either Smith or Woods, nor did she respond to the specific questions put forth by DCO. Complaint, ¶¶29-34, 46-51. Respondent has not participated in the investigatory process, nor has she participated in the resolution of this case. We agree that respondent’s failure to substantively respond to DCO’s specific inquiries violated RPC 8.1(a)(2). See, e.g., In re Obert, supra, (attorney violated rule when he failed to respond to numerous requests from the bar about an ethics complaint until subpoenaed to do so); In re Paulson, 346 Or 676, 216 P3d 859 (2009), adhered to on recons., 347 Or 529, 225 P3d 41 (2010) (in response to bar inquiries, attorney violated rule by failing to respond or responding incompletely and insubstantially).

SANCTION

The Oregon Supreme Court refers to the ABA Standards for Imposing Lawyer Sanctions (Standards), in addition to its own case law for guidance in determining the appropriate sanctions for lawyer misconduct.
The Standards establish an analytical framework for determining the appropriate sanction in discipline cases. Three factors are involved: the duty violated; the lawyer’s mental state; and the actual or potential injury caused by the conduct. Once these factors are analyzed, we make a preliminary determination of sanctions, after which we may adjust the sanction, if appropriate, based on the existence of aggravating or mitigating circumstances.

1. Duty Violated

Respondent violated duties to clients to properly safeguard and preserve client property, and to diligently pursue client matters, which duty includes the duty to adequately communicate with clients. Standards §§ 4.1; 4.4. Respondent also violated her duty to the profession to cooperate with disciplinary investigations. Standards § 7.0.

2. 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.

We rely on the facts alleged in the Complaint to establish respondent’s mental state. In re Kluge, supra. The Bar urges us to find that respondent knowingly failed to act in Smith’s matter, and intentionally failed to take action to reinstate the case when it was dismissed. She also intentionally withheld the fact of the dismissal from her client. On the facts alleged we can so conclude.

The Bar argues that respondent knowingly and intentionally mishandled client funds and property, including properly accounting for such property. We have outlined our view of this issue in our discussion of whether the claimed rule violations occurred. We find that respondent’s actions in this regard were negligent.

The Bar asks us to find that respondent knew that she was impaired and knowingly failed to withdraw from her client matters, in spite of that impairment. The allegations allow us to so conclude.¹

¹ For more context, the Bar tells us in its sanctions memorandum that respondent advised at some point that, during the last part of 2016 and the first part of 2017, she experienced several deaths of close family members and had a health issue that caused her to miss days in the office (Ex 7: Declaration of Amber Bevacqua-Lynott (“B-L Dec.”)). The Bar heard nothing further from respondent so we have no more details directly from her as to the specific issues that affected her practice.

However, in withdrawal paperwork filed in June of 2017 on behalf of respondent in the Woods case, the court was told that “Ms. Logsdon has experienced medical circumstances precluding her from continuing to represent Mr. Woods,” and that Logsdon could not continue
Finally, the Bar argues that respondent acted knowingly in failing to respond to Bar inquiries. The allegations and evidence establish that respondent was aware of the client complaints and aware of the pending investigation yet failed to respond to the Bar.

3. Extent of Actual or Potential Injury

In assessing an appropriate sanction we may take into account both actual and potential injury. *Standards* at 6; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). Here both clients suffered actual injury in the form of anxiety and frustration. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426–27, 939 P2d 39 (1997). Respondent’s failure to account for Woods’s funds was an actual ongoing injury to the client and to the integrity of the profession.

Respondent’s failure to cooperate with the Bar’s investigations caused actual injury to both the legal profession and to the public. *In re Schaffner*, supra; *In re Miles*, supra; *In re Haws*, 310 Or 741, 801 P2d 819 (1990); see also, *In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993) (when lawyer persisted in failure to respond to the Bar’s inquiries, the Bar was prejudiced because the Bar had to spend more time than necessary to investigate the case, and public respect for the Bar was diminished because the Bar could not provide a timely and informed response to complaints).

4. Preliminary Sanction

The following *Standards* could apply here before consideration of aggravating and mitigating circumstances:

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

4.41(b) Disbarment is generally appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

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

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

in the representation “due to her medical circumstances,” and “medical reasons” (Ex 7: B-L Dec.).
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.

Our preliminary assessment is that a suspension of some substantial length is appropriate given the multiple violations established.

5. **Aggravating and Mitigating Circumstances**

The following aggravating factors under the *Standards* are present here:

1. **A dishonest or selfish motive.** *Standards* § 9.22(b). Respondent was motivated by her personal interests in paying herself and utilizing funds that did not belong to her. She also allowed personal issues to override her professional obligations to clients.

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

3. **Bad faith obstruction of the disciplinary proceeding.** *Standards* § 9.22(e). Respondent failed to cooperate with or respond to the Bar and the Disciplinary Board, notwithstanding that she was provided with extensions to respond to both, and led both DCO and the Adjudicator to believe that she would be providing responses and/or filing documents in these proceedings (Ex 2; Ex 5; Ex 7: B-L Dec.).

4. **Substantial experience in the practice of law.** *Standards* § 9.22(i). Respondent had practiced for approximately 10 years when this misconduct occurred. She practiced regularly in the area of family law, and was also a member of the Family Law section of the Bar for at least half of that time (Ex 7: B-L Dec.).

In mitigation, the following circumstances are present:

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

2. **Personal or emotional problems.** *Standards* § 9.32(c).

Considered together, these aggravating factors justify an increase in the degree of presumptive discipline to be imposed. *Standards* § 9.21. In this case that would involve a lengthier suspension. We find that respondent’s appropriate sanction under the *Standards* analysis is a one-year suspension.

6. **Oregon Case Law**

Oregon case law supports our conclusion.
Mishandling of Client Funds and Failure to Account

The period of suspension imposed by the court in cases involving mishandling of client funds varies considerably, from a three month suspension in *In re Coyner*, to six months in *In re Obert*, 60 days of which was attributable to a trust account overdraft resulting from poor recordkeeping, to one year in *In re Skagen*. At least a six month suspension would be appropriate here if these were the only violations.

Neglect & Failure to Communicate

For serious neglect the court has typically imposed a suspension of at least 60 days. *See In re Schaffner, supra*, (60-day suspension appropriate for each of attorney’s neglect and his failure to cooperate with the Bar); *In re Redden*, 342 Or 393, 153 P3d 113 (2007) (60-day suspension for single serious neglect where no prior discipline); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (60-day suspension for knowing neglect of tort claim and subsequent failure to notify client where aggravating and mitigating factors were in equipoise).

The court has not been as consistent regarding lapses in communication, apart from the need to impose some term of suspension. *See, e.g., In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (attorney’s 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, resulted in 30-day suspension); *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, and then failed to communicate with the client and second lawyer when they needed information and assistance to complete the matter); *In re Coyner, supra*, (three-month suspension, plus formal reinstatement, when appointed attorney took no action on client’s appeal and failed to disclose dismissal to the client).

Failure to Withdraw

Although there are a wide range of sanctions for failing to withdraw, the severity of sanctions seems to be tied to the lawyer’s mental state and whether or not the failure to withdraw is for the benefit of the client as opposed to the self-interest of the respondent). *See, e.g., In re Paulson, supra*, (attorney who knowingly failed to withdraw from representing a number of clients in legal matters after his disciplinary suspension became effective was disbarred); *In re Worth*, 336 Or 256, 82 P3d 605 (2003) (attorney received a 90-day suspension for negligently failing to withdraw when it was obvious that he could not pursue his court-appointed client’s objectives diligently and thus his continued representation would violate one or more disciplinary rules); *In re Howser*, 329 Or 404, 987 P2d 496 (1999) (although attorney knowingly continued to represent a client in litigation after he learned that his lawyer partner had previously drafted wills for the opposing party and that the wills contained information that supported the current client’s claim, the attorney only received a reprimand because, in addition to having substantial mitigation, attorney was motivated to stay on the case because the current client did not have the financial inability to obtain new counsel).
Failure to Respond

The court has repeatedly held that the “failure to cooperate with a disciplinary investigation, standing alone, is a serious ethical violation.” *In re Parker*, supra at 551; *In re Bourcier*, supra at 434. The court has suspended lawyers for failing to cooperate in disciplinary proceedings independent of any other violations. See, e.g., *In re Miles*, supra, (120-day suspension for failure to cooperate when no other substantive violations were alleged or proven); *In re Schaffner*, supra, (60 days of a 120-day suspension attributable to failure to cooperate). In conjunction with other violations, however, particularly serious violations, suspensions have been significant. See, e.g., *In re Obert*, supra, (attorney was suspended for 6 months, in part for failing to respond to numerous requests from the Bar about an ethics complaint until subpoenaed to do so); *In re Goff*, 352 Or 104, 280 P3d 984 (2012) (respondent who twice failed to respond Bar inquiries, *inter alia*, was suspended for 18 months); *In re Murphy*, 349 Or 366, 245 P3d 100 (2010) (attorney suspended for 120 days after failing to respond to DCO in three separate matters); *In re Paulson*, supra, (attorney was disbarred, in part, for failing to respond or responding incompletely and insubstantially to Bar inquiries); *In re Koch*, supra, (attorney was suspended for 120 days, in part, for failing to fully respond to follow up inquiries from disciplinary authorities); *In re Paulson*, supra, (respondent was suspended for 4 months after he failed to comply with the Bar’s requests for information during its investigation of his actions involving a conflict between a former and a current client).

CONCLUSION

Lawyer discipline exists to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties. *Standards* § 1.1. Respondent here is either unable or unwilling to conform her conduct to the required ethical standards. For those reasons, and in order to protect her clients, the public and the bar, respondent is suspended for a period of one year, effective upon the date this decision becomes final.

Dated this 15th day of May, 2019.

/s/ Mark A. Turner
Mark A. Turner, Adjudicator

/s/ James Underwood
James Underwood, Trial Panel Member

/s/ Bryan Penn
Bryan Penn, Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 18-160
Complaint as to the Conduct of )
ROSS A. DAY, )
Respondent. )

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.1, RPC 1.7(a), RPC 1.16(a)(1), and RPC 8.4(a)(4). Stipulation for Discipline. 30-day suspension, all stayed, 1-year probation.

Effective Date of Order: July 1, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Ross A. Day is suspended for 30 days, all stayed, pending successful completion of a one-year term of probation, effective July 1, 2019 for violations of RPC 1.1, RPC 1.7(a), RPC 1.16(a)(1), and RPC 8.4(a)(4).

DATED this 21st day of June, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Ross A. Day, attorney at law (Day), 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. Day was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 4, 2000, and has been a member of the Bar continuously since that time, having his office and place of business in Washington County, Oregon, during the period of the underlying conduct at issue in this proceeding.

3. Day 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 28, 2019, a Formal Complaint was filed against Day pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 1.1, RPC 1.6(a), RPC 1.7(a), RPC 1.16(a)(1), and RPC 8.4(a)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5. On April 9, 2009, Willa Mae Baker (Baker) died intestate, leaving a number of heirs including children and grandchildren. At the time of her death, Baker owned real property located in Portland, Oregon (Baker Property). The Baker Property remained unoccupied for several years.

6. The Baker Property was eventually sold. Thereafter, members of Baker’s family consulted with Day who advised the family that a probate proceeding would be necessary to distribute the proceeds from the Baker Property sale to Baker’s heirs.

7. On February 2, 2015, on behalf of one of the heirs, Raymond Burrell, Jr. (Raymond), Day filed an intestate probate petition in Multnomah County Circuit Court (the Baker Estate
or Estate). The petition requested that a cousin, Shelly Burrell (Shelly), who was not an heir, be appointed as the estate’s personal representative.

8.

On or about February 3, 2015, the Multnomah County probate court entered a judgment appointing Shelly as the personal representative. Thereafter, Day identified himself in filings as the attorney for Shelly and did not formally withdraw as attorney of record for the petitioner, Raymond.

9.

Approximately three weeks after her appointment, Shelly paid herself $10,000 from the estate’s funds without court approval or other authority to do so (Unauthorized Fee).

10.

Day subsequently learned of Shelly’s Unauthorized Fee, as well as the fact that Shelly had already spent the funds, and that she did not have the resources to repay the Baker Estate. Day also calculated the Unauthorized Fee to be more than twice what Shelly was entitled to claim for her services as personal representative under the statutory formula.

11.

When she took the Unauthorized Fee, Shelly, who was not herself an heir, had differing interests from the Baker Estate heirs, including Raymond, whom Day still represented. Day, as Shelly’s attorney, had a duty to advocate for her and to advise her in how to address the Unauthorized Fee. At the same time, Day had a duty to contend for repayment of the Unauthorized Fee or take other course of action to recoup the Unauthorized Fee for the benefit of the Baker Estate heirs, including Raymond.

12.

Day attempted to rectify Shelly’s taking of the Unauthorized Fee by seeking to have each heir waive or disclaim their pro rata interest in the Unauthorized Fee. The Multnomah County probate court eventually rejected the heirs’ partial disclaimers because heirs cannot disclaim their interests in an estate asset in favor of another person, like Shelly.

13.

On February 24, 2015, the court sent a letter to Shelly (and copied to Day), notifying her of a requirement that she complete a fiduciary class, and that she schedule her attendance for the course within 15 days of her appointment.
14. 

At all times relevant herein, ORS 113.165 required a personal representative, within 60 days after the date of appointment, to file an inventory of all the property of the estate that had come into the personal representative’s possession or knowledge.

15. 

Pursuant to ORS 113.165, Shelly was required to submit an inventory on or before April 3, 2015. On April 13, 2015, the court issued a show cause order, requiring Shelly to appear and show cause on May 13, 2015, why she should not be removed for failing to file an inventory.

16. 

On May 13, 2015, Day appeared for the scheduled show cause hearing, and thereafter filed the Baker Estate’s inventory.

17. 

On May 13, 2015, the court issued another show cause order, requiring Shelly to appear and show cause on June 15, 2015, why she should not be removed for failing to file a certificate of completion for the fiduciary course.

18. 

On June 15, 2015, Day appeared for the scheduled show cause hearing, and thereafter, on June 22, 2015, filed Shelly’s certificate of completion of the fiduciary class.

19. 

At all times relevant herein, ORS 116.083 required a personal representative to make and file in the estate proceeding an account of the personal representative's administration annually within 60 days after the anniversary date of the personal representative’s appointment.

20. 

Pursuant to ORS 116.083, Shelly was required to submit an annual account prior to April 4, 2016. On April 4, 2016, the court issued a show cause order, requiring Shelly to appear and show cause on May 3, 2016, why she should not be removed for failing to file the annual or final account.

21. 

On May 3, 2016, Day appeared for the scheduled show cause hearing but did not thereafter file an annual or final account.
22.

On May 16, 2016, the court issued a show cause order, requiring Shelly to appear and show cause on May 31, 2016 (a Tuesday), why she should not be removed for failing to file the annual or final account. The notice further stated that, unless the deficiency was cured within three judicial days prior to the hearing date, appearance at the show cause hearing was required.

23.

On May 27, 2016, Day filed the annual accounting for the Estate.

24.

On May 31, 2016, Day failed to appear for the scheduled show cause hearing, and failed to notify the court that he would not appear.

25.

On June 1, 2016, the court issued a show cause order, requiring Shelly and Day to appear and show cause on June 7, 2016, why they should not be held in contempt for failing to appear for the May 31, 2016 show cause hearing.

26.

On June 7, 2016, Day appeared for hearing on the possible contempt citation. The court did not issue a contempt citation.

27.

Pursuant to ORS 116.083, Shelly was required to submit an annual account prior to April 4, 2017. On April 4, 2017, the court issued a show cause order, requiring Shelly to appear and show cause on May 5, 2017, why she should not be removed for failing to file the annual or final account.

28.

On May 5, 2017, Day appeared for the scheduled show cause hearing, and on May 30, 2017, filed the final account for the Estate. However, the final account omitted one of the heirs.

29.

On July 20, 2017, the court issued a show cause order, requiring Shelly to appear and show cause on August 21, 2017, why she should not be removed for failing to file the general judgment. Following a motion for a continuance, the show cause hearing was set over to August 28, 2017.
On August 28, 2017, Day appeared for the scheduled show cause hearing, as well as the subsequently scheduled installments of that show cause hearing on October 3, 2017, November 17, 2017, January 31, 2018, and February 14, 2018. Only following the February 14, 2018 hearing did Day submit a Final Accounting and Petition for General Judgment. During the August 28, 2017 show cause hearing, the Honorable Katherine Tennyson advised Day that he needed to consult with a more experienced probate attorney in order to address Shelly’s taking of the $10,000, and close the estate.

Violations

Day admits that, by engaging in the conduct above, he failed to provide competent representation in violation of RPC 1.1, had a conflict of interest in violation of RPC 1.7, failed to withdraw from representing Shelly when he was required to in violation of RPC 1.16(a)(1), and engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 1.6(a) should be and, upon the approval of this stipulation, is dismissed.

Sanction

Day 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 Day’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 Standards presume that the most important duties a lawyer owes are those owed to clients. Standards at 5. Day violated his duties to avoid conflicts of interest, and to provide his clients with competent representation. Standards §§ 4.3; 4.5. Day also violated his duty to the legal system to avoid engaging in conduct prejudicial to the administration of justice. Standards § 6.2. Additionally, Day violated his duty to the profession to timely and properly withdraw from a matter when required to do so. Standards § 7.0.

b. Mental State. The Standards recognize three mental states: “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.

Day’s conduct demonstrates both a negligent and a knowing mental state. Day’s conflict of interest was initially negligent, but arguably became knowing following Shelly’s unauthorized payment to herself when he attempted to have the heirs disclaim their interests in Shelly’s payment. Respondent’s failure to withdraw was also negligent.

Day’s lack of competence and prejudicial conduct may have been negligent at the outset, but became knowing once he received repeated court notices to show cause over a two year period and was advised by the court to work with an experienced probate practitioner in August 2017.

c. **Injury.** Injury can either be actual or potential under the *Standards*. *In re Williams*, 314 Or 530 (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.


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

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

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

1. Absence of a prior disciplinary record; *Standards* § 9.32(a)
2. Absence of a dishonest motive; *Standards* § 9.32(b)
3. Full and free disclosure or cooperative attitude toward proceedings; *Standards* § 9.32(e)

33.

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.
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 knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. *Standards* § 6.22.

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

Oregon cases confirm that a term of suspension and probation is warranted.

- *See e.g. In re Hernandez*, 32 DB Rptr 72 (2018) (*60 day suspension; 30 days stayed subject to 1 year of probation*). Attorney was retained to handle the probate of an intestate estate. The attorney improperly paid himself out of estate funds without court approval. After the client/personal representative complained about the attorney’s conduct to the Bar in January 2015, the attorney accused his client of committing fraud and giving false statements to the Bar. Despite that conflict of interest, the attorney continued to represent the client without explaining his conflict of interest until July 2015 when the attorney withdrew from representing the client due to the conflict. Attorney did not close the estate when ordered to do so by the court and failed to file the estate’s annual accounting when ordered to do so by the court. Attorney and the Bar stipulated to the attorney violating RPC 1.1 (competence); 1.3 (neglect); 1.5(a) (collecting an illegal fee); 1.15-1(a) (trust account violation); 1.7(a)(2) (current-client conflict of interest); and 1.16(a)(1) (failing to withdraw when continued representation would have violated the Oregon Rules of Professional Conduct);

- *In re Hanson*, 32 DB Rptr 159 (2018) (*30-day suspension, all stayed subject to 1 year of probation*). Client retained the attorney to attend her arraignment in a criminal proceeding and enter a not guilty plea on the client’s behalf and in the client’s absence as the misdemeanor charges allowed the client to appear through counsel. Despite appearing, the attorney failed to enter his client’s plea which caused the court to issue a bench warrant for his client’s arrest. Attorney and the Bar stipulated to the attorney violating RPC 1.1 (competence); 1.2 (failing to abide by his client’s decisions regarding the objectives of the representation); 1.5(a) (collecting an excessive fee); and 8.4(a)(4) (engaging in conduct prejudicial to the administration of justice));

- *In re Schlesinger*, 32 DB Rptr 198 (2018) (*30 day suspension, all stayed subject to 1 year of probation*). Attorney sent a settlement demand without his client’s approval to the opposing party that the opponent accepted. After client
objected to the settlement amount, a conflict of interest arose between the attorney, and the client. Despite that conflict, the attorney and the firm continued to represent the client for another five months and advocated that the client accept the attorney’s original settlement amount. Attorney and the Bar stipulated to the attorney violating RPC 1.2(a) (failing to abide by client’s objectives of representation); 1.4(a) (failing to keep client adequately informed as to the status of the matter; 1.4(b) (failed to provide client with sufficient information to make informed decisions about his matter); 1.7(a)(2) (conflict of interest); and 1.16(a)(1) (failing to withdraw when continued representation would have violated the Oregon Rules of Professional Conduct));

- *In re Oliveros*, 30 DB Rptr 145 (2016) (**60 day suspension, all stayed subject to three year term of probation**. A married couple retained attorney to represent them in a home foreclosure matter. While the attorney was able to reinstate the mortgage, the clients told the attorney they wanted to invest $500,000 of an inheritance they had received to generate retirement income. Based on the attorney’s recommendations, the clients made a series of loans to three borrowers, all three of whom were the attorney’s current clients in unrelated matters. The attorney prepared all the loan documents and failed to disclose the conflict of interest or obtain the parties’ informed consent. The attorney and the Bar stipulated that the attorney violated RPC 1.1 (competence) since he had counseled and assisted his elderly clients to make unsecured and/or under-secured loans and RPC 1.7(a)(1) & (2) because the attorney had simultaneously represented clients with adverse interests and under circumstances where his representation was materially limited by his responsibilities to his other clients or his own interests));

- *In re Sheridan*, 29 DB Rptr 179 (2015) (**60 day suspension, all stayed subject to three year term of probation**. Attorney agreed to represent a client in immigration and criminal matters. In the criminal case, the court ordered the attorney to file an affidavit or declaration that she had spoken with her client, he understood his rights under the Speedy Trial Act, and he agreed to waive them. The attorney failed to file the affidavit as ordered and failed to appear before the court as ordered. Instead, the attorney filed a motion to dismiss which included assertions that were without merit. Eventually the court removed the attorney from representing her client and the attorney refused to cooperate with replacement counsel. The attorney and the Bar stipulated that the attorney violated RPC 1.1 (competence); 1.16(a)(2) (failing to withdraw when the attorney’s physical or mental condition materially impairs the lawyer’s ability to represent the client; 1.16(d) (failing to protect client’s interests upon termination of representation); 8.1(c)(3) & (4) (failing to cooperate with SLAC); and 8.4(a)(4) (engaging in conduct prejudicial to the administration of justice)).
34.

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.

35.

Consistent with the Standards and Oregon case law, the parties agree that Day shall be suspended for 30 days for violations of RPC 1.1, RPC 1.7(a), RPC 1.16(a)(1), and RPC 8.4(a)(4), with all of the suspension stayed, pending Day’s successful completion of a one-year term of probation. The sanction shall be effective on July 1, 2019 or as otherwise directed by the Disciplinary Board (effective date).

36.

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

(a) Day 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) Day has been represented in this proceeding by Russell Baldwin (Baldwin). Day and Baldwin hereby authorize direct communication between Day and DCO after the date this Stipulation for Discipline is signed by both parties, for the purposes of administering this agreement and monitoring Day’s compliance with his probationary terms.

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

(d) During the period of probation, Day shall attend not less than 4 MCLE accredited programs, for a total of 12 hours, which shall emphasize estate and probate procedures. These credit hours shall be in addition to those MCLE credit hours required of Day for his normal MCLE reporting period. (The Ethics School requirement does not count towards the 12 hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of his period of probation, Day shall submit an Affidavit of Compliance to DCO.
(e) Throughout the period of probation, Day shall diligently attend to client matters and adequately communicate with clients and courts regarding cases and court deadlines.

(f) Each month during the period of probation, Day shall review all client files to ensure that he is timely attending to the clients’ matters and that he is maintaining adequate communication with clients, the court, and opposing counsel.

(g) John D. Adams shall serve as Day’s probation supervisor (“Supervisor”). Day shall cooperate and comply with all reasonable requests made by his Supervisor that Supervisor, in their sole discretion, determines are designed to achieve the purpose of the probation and the protection of Day’s clients, the profession, the legal system, and the public. Day agrees that, if Supervisor ceases to be his Supervisor for any reason, Day will immediately notify DCO and engage a new Supervisor, approved by DCO, within one month.

(h) Beginning with the first month of the period of probation, Day shall meet with Supervisor in person at least once a month for the purpose of:

(1) Allowing his Supervisor to review the status of Day’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) client files or ten percent (10%) of Day’s active caseload, whichever is greater, to determine whether Day is timely, competently, diligently, and ethically attending to matters.

(i) Day authorizes his Supervisor to communicate with DCO regarding his compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Day’s compliance.

(j) Within seven (7) days of the effective date, Day shall contact the Professional Liability Fund (PLF) and schedule an appointment on the soonest date available to consult with PLF’s Practice Management Advisors in order to obtain practice management advice. Day shall notify DCO of the time and date of the appointment.

(k) Day shall attend the appointment with the PLF’s Practice Management Advisors 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’s Practice Management Advisors, Day shall adopt and implement those recommendations.

(l) No later than sixty (60) days after recommendations are made by the PLF’s Practice Management Advisors, Day shall provide a copy of the Office Practice Assessment from the PLF’s Practice Management Advisors and file a report.
with DCO stating the date of his consultation(s) with the PLF’s Practice Management Advisors; 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.

(m) Day shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with PLF Practice Management Advisors on or before approximately 6 months after the first meeting.

(n) On a quarterly basis, on dates to be established by DCO beginning no later than 30 days after the effective date, Day shall submit to DCO a written “Compliance Report,” approved as to substance by his Supervisor, advising whether Day is in compliance with the terms of this Stipulation for Discipline, including:

(1) The dates and purpose of Day’s meetings with his Supervisor.

(2) The number of Day’s active cases and percentage reviewed in the monthly audit with Supervisor and the results thereof.

(3) Whether Day has completed the other provisions recommended by his Supervisor.

(4) In the event that Day has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.

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

(p) Day’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 his Supervisor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.

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

(r) The SPRB’s decision to bring a formal complaint against Day 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.

Day 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, if a suspension is imposed. This requirement is in addition to any other provision of this agreement that requires Day to attend continuing legal education (CLE) courses.

38.

Day 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 Day is admitted: Washington.

39.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 8, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 20th day of June, 2019.

/s/ Ross A. Day
Ross A. Day
OSB No. 002395

EXECUTED this 20th day of June, 2019.

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: )
) Case No. 19-47
Complaint as to the Conduct of ) M. IAN REINER, )
) Respondent. )

Counsel for the Bar: Angela W. Bennett
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 8.4(a)(2). Stipulation for Discipline. 30-day suspension.
Effective Date of Order: July 1, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and M. Ian Reiner is suspended for 30 days, effective ten days after approval by the Disciplinary Board, for violation of RPC 8.4(a)(2).

DATED this 21st day of June, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

M. Ian Reiner, attorney at law (Reiner), 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. Reiner was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 10, 2013, and has been a member of the Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3. Reiner 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 April 13, 2019, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Reiner for alleged violations of 8.4(a)(2) 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 2016, a Marion County deputy observed Reiner operating his car at an excessive rate of speed and attempted to pull him over. Instead of stopping, Reiner turned and sped down a gravel road. He parked his car in a private driveway, exited the car, and fled the scene. The deputy lost Reiner but ultimately found Reiner’s abandoned car in the private driveway nearby. The car was towed as evidence. Approximately seven hours later, Reiner returned to the scene looking for his car. The property owner notified law enforcement, who arrived and arrested Reiner on charges of fleeing or attempting to elude police in a vehicle and on foot. He pled guilty to and was convicted of Fleeing or Attempting to Elude a Police Officer, and the charge was reduced to a Class A Misdemeanor.

Violations

6. Reiner admits that by engaging in a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects, he violated RPC 8.4(a)(2).
Sanction

7.

Reiner 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 Reiner’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.** Reiner violated his duty to the public to maintain his personal integrity. *Standards* § 5.1.

b. **Mental State.** "Intent" is the conscious objective or purpose to accomplish a particular result. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards* at 9. Reiner acted intentionally when he chose to flee from the deputy to avoid being detained. He was an assistant district attorney at the time, and he knew that his conduct was criminal and illegal. *See, In re Phelps*, 306 Or 508, 513 (1988) (lawyer's mental state can be inferred from the facts).

c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the disciplinary board may take into account both actual and potential injury. *Standards* at 6; *In re Williams*, 314 Or 530 (1992). Reiner’s actions caused potential harm in that he could have caused a crash, or the deputy could have crashed trying to pursue him. He caused actual harm because local law enforcement from more than one jurisdiction spent time and resources trying to track him down after he fled from the scene on foot, which took them away from being available to address other circumstances requiring law enforcement response. His conduct caused injury to the legal system by demonstrating a disrespect for the law, and to the integrity of the profession by damaging the public’s confidence in lawyers. Id.

d. **Aggravating Circumstances.** Aggravating circumstances include: None.

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

1. **Absence of a prior disciplinary record.** *Standards* § 9.32(a). Reiner has no prior discipline.

2. **Timely good faith effort to make restitution or rectify consequences of misconduct.** *Standards* § 9.32(d). Reiner immediately resigned from his position as deputy district attorney, and he waived his right to a grand
jury in order to save resources that otherwise would have been expended in the investigation and prosecution of the crime.

3. **Full and free disclosure and cooperative attitude toward proceedings. Standards** § 9.32(e). Reiner was cooperative in the Bar’s investigation of his conduct, as well as with the underlying criminal investigation.

4. **Imposition of other penalties or sanctions. Standards** § 9.32(k). Reiner immediately resigned from his position as a deputy district attorney without taking any paid administrative leave, he was assessed fines and loss of driving privileges, and he successfully completed a term of probation.


8.

Under the ABA **Standards**, a suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that seriously adversely reflects on the lawyer’s fitness to practice, but the conduct does not involve elements of dishonesty, distribution of controlled substances, or intentional killing of another. **Standards** § 5.12.

9.

Prior Oregon cases support the imposition of a short suspension in this matter. See, e.g., *In re Frederick Smith*, 348 Or 535, 236 P3d 137 (2010) (Attorney suspended for 90 days when he committed criminal trespass with a client during the course of the representation); *In re Lincoln Nehring*, 21 DB Rptr 227 (2007) (Attorney stipulated to 30-day suspension after second degree theft conviction for taking and disposing of personal property of a former girlfriend and a romantic rival); *In re Rand E. Overton*, 25 DB Rptr 184 (2011) (Deputy district attorney stipulated to 60-day suspension after he committed official misconduct when, while representing the state in enforcing child support obligations, he made sexually inappropriate comments to women who were child support obligors).

10.

Consistent with the **Standards** and Oregon case law, the parties agree that Reiner shall be suspended for 30 days for violation of RPC 8.4(a)(2), the sanction to be effective ten days after this stipulation is approved.

11.

Reiner 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, Reiner represents that he has no active or open client files.
12.

Reiner 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. Reiner also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

13.

Reiner 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.

14.

Reiner 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 Reiner is admitted: None.

15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 13, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 13th day of June, 2019.

/s/ M. Ian Reiner
M. Ian Reiner, OSB No. 134666

EXECUTED this 20th day of June, 2019.

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. 18-132 and 19-11
Complaint as to the Conduct of )
) RUSSELL A. SANDOR, )
) Respondent. )

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: Nellie Q. Barnard, Peter R. Jarvis
Disciplinary Board: None
Disposition: Violation of RPC 1.5(a). Stipulation for Discipline. 30-day suspension, all stayed, 1-year probation.
Effective Date of Order: July 8, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Russel A. Sandor is suspended for 30 days, all stayed, pending successful completion of a one-year term of probation, effective ten (10) days after the date of this Order, for violation of RPC 1.5(a).

DATED this 28th day of June, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Russell A. Sandor, attorney at law (Sandor), 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.

Sandor was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1982, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

Sandor 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 5, 2019, a Second Amended Formal Complaint was filed against Sandor pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 1.5(a). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

Case No. 18-132

5.

In 2013, Dorothy Lynch (Lynch) was an 88-year-old resident of Forest Grove Beehive, a retirement and care home located in Forest Grove, Oregon. In August 2013, Lynch contacted Sandor to change the beneficiary of her estate plan. Lynch had been a client of Sandor’s law firm since 1998 and the firm had previously prepared Lynch’s estate plan and documents.

6.

In 2013, Sandor charged Lynch approximately $14,227 to prepare a new will as part of Lynch’s existing estate plan. Sandor’s charges to Lynch included hours and time he and his staff spent in preparing his billing statements, among other charges.

7.

After Lynch’s subsequent conservator raised concerns about his bill, Sandor refunded $12,227 to Lynch in June 2014.
Case No. 19-11

8.
In September 2011, Theresa Lorentz (Lorentz) retained Sandor to modify an existing will and trust. The nature of Lorentz’s requested modifications consisted generally of updating successor fiduciaries and modifying specific cash bequests.

9.
At the outset, Sandor estimated the total cost to be between $2,000 and $3,000. Sandor worked on Lorentz’s modifications to her estate plan from September 2011 until early January 2012.

10.
On January 10, 2012, Lorentz executed the first codicil to her will and second amendment to her trust that Sandor prepared. Approximately three days later, Sandor invoiced Lorentz and charged her $10,500.

11.
After Lorentz expressed concern regarding his bill, Sandor wrote off $750 of the bill.

Violations

12.
Sandor admits that, by engaging in the conduct described above, he charged or collected a clearly excessive fee in both cases in violation of RPC 1.5(a).

Sanction

13.
Sandor 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 Sandor’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.** Sandor violated the duty he owed as a professional to refrain from charging unreasonable or improper fees. *Standards*, § 7.0.

b. **Mental State.** The *Standards* recognize three possible mental states: negligent, knowing, and intentional. *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*.

Respondent Sandor’s mental state was knowing.

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, 840 P2d 1280 (1992).

In both cases, Sandor’s clients sustained actual injury as a result of his
misconduct. They each were charged and paid excessive fees and were thus
deprived of those funds. With regards to Lynch, the injury was mitigated by
Sandor’s subsequent refund of the majority of her fees as described below.

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

1. **A pattern of misconduct.** *Standards* § 9.22(c). At two separate times,
with two separate clients, in two separate matters, Sandor charged and
initially collected an excessive fee.

2. **Vulnerability of victim.** *Standards* § 9.22(h). Lynch and Lorentz were
both vulnerable victims by virtue of their age and, in Lynch’s case,
based on her residency in an assisted living facility.

3. **Substantial experience in the practice of law.** *Standards* § 9.22(i).
Sandor has been practicing law in Oregon since 1982.

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

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

2. **Timely good faith effort to make restitution or to rectify consequences
of misconduct.** *Standards* § 9.32(d). With regards to Lynch, Sandor
refunded $12,227 in June 2014 after communicating with her
conservator’s lawyer. With regards to Lorentz, Sandor wrote off $750
of her bill and has offered to refund her an amount she believes is
appropriate and has met with PLF practice management advisors to
address his billing practices and the format of his bills.

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

4. **Character or reputation.** *Standards* § 9.32(g). Sandor has proffered three
letters from two lawyers and a judge attesting to his good character and
reputation.
5. Remorse. *Standards* § 9.32(l). Sandor has expressed remorse regarding his conduct and the breakdown of his relationships with his former clients. He has written a letter to the State Professional Responsibility Board expressing his regrets.

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

15. Oregon cases suggest that a term of suspension is warranted. When the court has found that a lawyer charged an excessive fee as to a single client, it has imposed a reprimand. *In re Potts et al.*, 301 Or 57, 70, 718 P2d 1363 (1986) (attorneys in probate proceeding each charged excessive fees and received reprimands). Furthermore, the court has consistently held that lawyers who charge clients for tasks that solely benefit the lawyer, such as preparing a client’s billing statements, have charged an excessive fee. *In re Knappenberger*, 344 Or 559, 572, 186 P3d 272 (2008) (attorney charged an excessive fee when he billed his client for responding to her complaint regarding his fee); *In re Paulson*, 335 Or 436, 441, 71 P3d 60 (2003) (same).

16. 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.

17. Consistent with the *Standards* and Oregon case law, the parties agree that Sandor shall be suspended for 30 days for violations of RPC 1.5(a), with all of the suspension stayed, pending Sandor’s successful completion of a 1-year term of probation. The sanction shall be effective ten days after the stipulation is approved or as otherwise directed by the Disciplinary Board (effective date).

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

(a) Sandor 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) Sandor has been represented in this proceeding by Peter Jarvis and Nellie Barnard (Counsel). Sandor and Counsel hereby authorize direct communication between Sandor and DCO after the date this Stipulation for Discipline is signed by both parties, for the purposes of administering this agreement and monitoring Sandor’s compliance with his probationary terms.

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

(d) During the period of probation, Sandor shall attend not less than 4 MCLE accredited programs, for a total of 12 hours, which shall emphasize collection and billing practices. These credit hours shall be in addition to those MCLE credit hours required of Sandor for his normal MCLE reporting period. (The Ethics School requirement does not count towards the 12 hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of his period of probation, Sandor shall submit an Affidavit of Compliance to DCO.

(e) Samuel Justice shall serve as Sandor’s probation supervisor (Supervisor). Sandor shall cooperate and comply with all reasonable requests made by his Supervisor that Supervisor, in his sole discretion, determines are designed to achieve the purpose of the probation and the protection of Sandor’s clients, the profession, the legal system, and the public. Sandor agrees that, if Supervisor ceases to be his Supervisor for any reason, Sandor will immediately notify DCO and engage a new Supervisor, approved by DCO, within one month.

(f) Beginning on or before August 15, 2019, Sandor shall meet with Supervisor to review the billing and collection issues identified during the Bar’s investigation and prosecution of Sandor’s conduct.

(g) On or before the 30th days of August, September, October, and November 2019 and on or before the 30th day of each third month thereafter, Supervisor shall, in his sole discretion, select and review the client files of and the time and billing records for at least 50% of Sandor’s active billing clients. Supervisor’s review shall include the time and billing records of Sandor or anyone else who provided services to the selected clients. Supervisor shall determine whether there have been any errors or irregularities in the billings of the selected clients, whether the fees and expenses charged each client are reasonable, and whether the client has been billed for tasks that solely benefitted Sandor. Should Supervisor discover current or previous billing errors or irregularities, he shall request that Sandor correct these errors or irregularities within ten (10) days. Should Sandor fail to correct the errors or irregularities identified by Supervisor within ten days of his request that he do so, Supervisor shall report the errors or irregularities to Disciplinary Counsel’s Office without disclosing any privileged information he might have obtained during the course of his review. For the purposes of this
Stipulation, the names of the clients in whose records Supervisor detects errors or irregularities are not confidential or privileged.

(h) Sandor shall meet with Supervisor after each review to discuss Supervisor’s findings and any suggestions he might have for the improvement of Sandor’s billing practices.

(i) Sandor authorizes his Supervisor to communicate with DCO regarding his compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Sandor’s compliance.

(j) On a quarterly basis, on dates to be established by DCO beginning no later than 30 days after the effective date, Sandor shall submit to DCO a written “Compliance Report,” approved as to substance by his Supervisor, advising whether Sandor is in compliance with the terms of this Stipulation for Discipline, including:

(1) The dates and purpose of Sandor’s meetings with his Supervisor.

(2) The number of Sandor’s active cases reviewed in the monthly audit with Supervisor and the results thereof.

(3) Whether Sandor has completed the other provisions recommended by his Supervisor, if applicable.

(4) In the event that Sandor has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.

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

(l) Sandor’s failure to comply with any term of this Stipulation, including conditions of timely and truthfully reporting to DCO, or with any reasonable request of his 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 DCO on or before its due date.

(n) The SPRB’s decision to bring a formal complaint against Sandor 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.
19.

Sandor 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, if a suspension is imposed. This requirement is in addition to any other provision of this agreement that requires Sandor to attend continuing legal education (CLE) courses.

20.

Sandor 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 Sandor is admitted: U.S. District Court for the District of Oregon; U.S. Tax Court; U.S. Claims Court/U.S. Court of Federal Claims; U.S. Court of Appeals for the Ninth Circuit; U.S. Supreme Court.

21.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 8, 2019. Approval as to form by Disciplinary Counsel is evidenced below.

The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 26th day of June, 2019.

/s/ Russell A. Sandor
Russell A. Sandor
OSB No. 823878

APPROVED AS TO FORM AND CONTENT:

/s/ Nellie Q. Barnard
Nellie Q. Barnard, OSB No. 122775
Peter R. Jarvis, OSB No. 761868

EXECUTED this 27th day of June, 2019.

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: )
) Case No. 18-120
Complaint as to the Conduct of ) GERALD NOBLE,
) Respondent.

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: Frederic E. Cann
Disciplinary Board: None
Disposition: Violation of RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.6(a), RPC 1.8(a), RPC 5.5(a), and RPC 8.4(a)(3).
Stipulation for Discipline. 120-day suspension.
Effective Date of Order: July 3, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Noble is suspended for 120 days, effective on the date of this order for violation of RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.6(a), RPC 1.8(a), RPC 5.5(a), and RPC 8.4(a)(3).

DATED this 3rd day of July, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Gerald Noble, attorney at law (“Noble”), 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.

Noble was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 7, 2010, and has been a member of the Bar since that time, having his office and place of business in Multnomah County, Oregon.

3.

Noble is currently suspended for unrelated disciplinary violations as of June 6, 2016, in two separate disciplinary matters. In the first, Noble was suspended for 4 years, 2 years stayed, pending successful completion of a 2-year probation. In re Noble (I), 30 DB Rptr 116 (2016) (“Noble I”). In the second matter, Noble was suspended for an additional 60 days, effective June 7, 2018. In re Noble (II), 30 DB Rptr 264 (2016) (“Noble II”).

4.

Noble 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).

5.

On September 20, 2019, a Formal Complaint was filed against Noble pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of 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 and promptly comply with reasonable requests for information); RPC 1.4(b) (failure to explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation); RPC 1.5(a) (charging a clearly excessive fee); RPC 1.6(a) (disclosure of information relating to the representation); RPC 1.8(a) (business transaction with a client without required disclosures); RPC 1.16(d) (failure to take steps upon withdrawal to protect the client’s interests); RPC 5.5(a) (engaging in the unauthorized practice of law); RPC 8.1(a)(1) (knowing false statements in connection with a disciplinary matter); and RPC 8.4(a)(3) (conduct involving dishonesty or misrepresentation) 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

6.

Noble was admitted to practice law in Oregon in October 2010. In April 2011, Noble was suspended for approximately a month for failing to pay his Professional Liability Fund (“PLF”) assessment.

7.

In late October 2013, Noble began representing Mary Elizabeth Harper (“Harper”) in employment discrimination litigation she had filed pro se against Mt. Hood Community College. The representation was pursuant to a contingency fee agreement that provided for its modification to an hourly agreement (at $200/hour) in the event that Noble withdrew or was terminated by Harper.

8.

In the course of representing Harper, Noble was unfamiliar with how to file a motion to compel discovery on Harper’s behalf, and consulted with at least seven different trial lawyers trying to figure it out—consultations for which he subsequently billed Harper more than 2.5 hours of his time.

9.

During the representation, Noble failed to provide Harper with copies of pleadings and filings in the matter and failed to provide her with timely status updates, including the scheduling of depositions and status conferences, or respond to her reasonable requests for information. Noble also agreed to a scheduled trial date without consulting Harper, and did not notify her of the date after it was scheduled. Noble did not provide Harper with any of his settlement communications with opposing counsel (before or after they were sent).

10.

On April 17, 2014, Noble was again suspended for failing to pay his PLF assessment, and was so notified by letter. While Noble believed that Harper understood that he was suspended, he did not specifically inform Harper that he had been suspended or what impact that might have on her representation or legal matter.

11.

Between April 17, 2014, and April 29, 2014, Noble performed various legal services on behalf of Harper as her attorney at a time when he was suspended from the practice of law in Oregon. Noble was under the mistaken belief that these services were administrative only and did not constitute the practice of law.
12.

In late April 2014, Noble asked Harper for a $3,500 loan to pay his PLF premiums. Harper agreed, and provided Noble with a check and cash totaling in excess of $3,300 (“Harper Loan”). There is a dispute about how and when the Harper Loan would be repaid, and there is no writing related to the transaction to assist in the differing recollections. To date, Noble has not repaid Harper any portion of the Harper Loan.

13.

On April 29, 2014, believing that he had only provided Harper with administrative services during the period of his suspension, Noble submitted to the Bar a Statement in Support of BR 8.4 Reinstatement in which he swore, under oath, that he did not engage in the practice of law in Oregon during the period of his suspension.

14.

When Harper subsequently disagreed with Noble’s legal advice, he told her he would withdraw. In mid-August 2014, Noble requested permission from the court to withdraw from the case. In his declaration in support of his motion to withdraw, without notice to or permission from Harper, Noble disclosed that he and Harper were in disagreement about her case; that he believed that her case lacked merit; and that she had filed a PLF claim against him (and attached a non-public letter from the PLF attorney associated with the claim).

15.

Following his withdrawal, pursuant to his fee agreement with Harper, Noble sent Harper a billing statement (“billing statement”) that charged Harper for his services at his $200 hourly rate. However, Noble did not carefully review the billing statement before sending it to Harper. In the billing statement, Noble double-billed Harper for a number of items, and charged Harper for some tasks that were either for Noble’s own interests or of no benefit to Harper. For example, Noble charged three hours for preparing the billing statement. Noble also billed Harper at his full attorney rate for services performed while he was suspended from practice—and, therefore, not permitted to bill as an attorney.

16.

In mid-July 2017, Harper complained to the Bar’s Client Assistance Office (“CAO”) about Noble’s conduct. In response to a CAO inquiry that he engaged in the practice of law while suspended, Noble stated that he did “not recall representing Ms. Harper during the time I was administratively suspended in April, 2014.” However, with that communication, Noble provided a copy the billing statement that memorialized his work on Harper’s behalf, including during the term of his April 2014 suspension.
Violations

17.

Noble admits that his failure to provide documents and communications to Harper during the course of his representation violated RPC 1.4(a). Noble further admits that his failure to sufficiently explain matters to Harper, including the potential effect of his suspension on her legal matter, violated RPC 1.4(b).

18.

Noble acknowledges that, when he sent the billing statement to Harper including double charges and items that were not permissible and/or not permissible at the rate that he billed them, he charged a clearly excessive fee, in violation of RPC 1.5(a).

19.

Noble concedes that, in his declaration in support of his motion to withdraw, he revealed information relating to his client’s representation without her informed consent, in violation of RPC 1.6(a).

20.

Noble admits that the Harper Loan violated RPC 1.8(a), insofar as it was a business transaction with a client and the transaction and terms of the Harper Loan to Noble were not fully disclosed and transmitted in writing in a manner that could reasonably be understood by Harper; Harper was not advised in writing of the desirability of seeking, or given a reasonable opportunity to seek, the advice of independent legal counsel on the Harper Loan transaction; and Noble did not obtain Harper’s informed consent, in a writing signed by Harper, to the essential terms of the Harper Loan transaction and Noble’s role in the transaction, including whether he was representing Harper in the transaction.

21.

Noble acknowledges that he engaged in the practice of law during his April 2014 suspension, in violation of RPC 5.5(a).

22.

Noble concedes that his statement to CAO regarding services to Harper during the time of his administrative suspension was a misrepresentation violative of RPC 8.4(a)(3).

23.

Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 1.1, RPC 1.3, RPC 1.16(d), and RPC 8.1(a)(1) should be and, upon the approval of this stipulation, are dismissed.
Sanction

24.

Noble 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 Noble’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.** Noble violated his duties to his client to preserve her confidences; to avoid conflicts of interests; and to diligently attend to her legal matter (including the duty to timely and fully communicate with her). Standards §§ 4.2; 4.3; 4.4. The Standards presume that the most important ethical duties are those which lawyers owe to their clients. Standards at 5.

Noble also violated his duty to the public to maintain his personal integrity, and his duty to the legal system to avoid abuse to the legal process. Standards §§ 5.1; 6.2. Finally, Noble violated his duty as a professional to avoid the unauthorized practice of law. Standards § 7.0.

b. **Mental State.** The Standards recognize three types of mental states: “intent,” which is the conscious objective or purpose to accomplish a particular result; “knowledge,” which 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; and “negligence,” which 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.

In the light most favorable to Noble, he acted knowingly with respect to client communications, the disclosure of information related to the representation of his client, and his misrepresentations to CAO. He acted negligently in all other respects.

c. **Injury.** Injury is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. Injury can be actual or potential. Standards at 9. Injury can be actual or potential. Standards § 3.0; In re Williams, 314 Or 530 (1992).

Harper was potentially and/or actually injured to the respect that her legal position and case were harmed by Noble’s lack of communication. The Bar was similarly potentially and actually injured by Noble’s misrepresentation during his reinstatement process.
d. **Aggravating Circumstances.** Aggravating circumstances include:

1. **Prior record of discipline.** *Standard § 9.22(a).* This aggravating factor refers to offenses that have been adjudicated prior to imposition of the sanction in the current case. Accordingly, Noble’s four-year suspension in *Noble I* and 60-day suspension in *Noble II*, for some of the very same violations, including improper business transactions with clients, do both count as prior discipline to some extent. *In re Jones*, 326 Or 195, 200 (1997). However, their weight in aggravation is diminished by the fact that Noble’s misconduct in the present matter pre-dated the imposition of either suspension. *See In re Kluge*, 335 Or 326, 351 (2003) (fact that accused lawyer not sanctioned for offenses before committing the offenses at issue in current case diminishes weight of prior offense); *In re Huffman*, 331 Or 209, 227–28 (2000) (relevant timing of current offense in relation to prior offense is pertinent to significance as aggravating factor); *see also In re Starr*, 326 Or 328, 347–48 (1998) (weight of prior discipline somewhat diminished because it occurred at roughly the same time as events giving rise to the present proceeding—*i.e.*, the subsequent misconduct did not reflect a disregard of an earlier adverse ethical determination).

2. **A pattern of misconduct.** *Standard § 9.22(c).* In conjunction with his prior misconduct, Noble engaged in a series of improper loans from clients and other business transactions with clients without documentation or adequate disclosures. *See In re Bourcier*, 325 Or 429, 436 (1997); *In re Schaffner*, 325 Or 421, 427 (1997).

3. **Multiple offenses.** *Standard § 9.22(d).*

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

1. **Cooperative attitude toward proceedings.** *Standard § 9.32(e).*

2. **Inexperience in the practice of law.** *Standards § 9.32(f).* Noble was admitted in 2010 and the conduct at issue in this matter occurred in 2013 and 2014.

3. **Remorse.** *Standard § 9.32(l).* Noble has expressed remorse that he did not more properly handle Harper’s matter.

25.

Under the ABA *Standards*, a suspension is the presumptive sanction for Noble’s overall conduct, as either a reprimand or suspension is generally appropriate for each of his respective instances of misconduct. *Standards §§ 4.22; 4.33; 4.42; 5.13; 6.23; 7.2; 7.3.* As the aggravating and mitigating factors are in equipoise, a suspension appears the appropriate result.
Oregon cases similarly hold that a suspension is warranted for Noble’s collective conduct, particularly in light of his similar prior misconduct.

Negligent unlawful practice of law by a lawyer generally warrants a reprimand, unless it is for an extended period. See, e.g., In re Cohn-Lee, 31 DB Rptr 344 (2017); In re Ghiorso, 30 DB Rptr 10 (2016). Similarly, negligent excessive fee violations generally result in reprimands. See, e.g., In re Smith, 30 DB Rptr 134 (2016); In re May, 27 DB Rptr 200 (2013); In re Nesheiwat, 26 DB Rptr 253 (2012).

Likewise, sanctions for business transactions with clients generally range between a reprimand and a short suspension in the absence of prior discipline, and significant other violations. See, e.g., In re Williamson, 31 DB Rptr 173 (2017) (reprimand); In re Spencer, 355 Or 679, 330 P3d 538 (2014) (30-day suspension); In re Seligson, 27 DB Rptr 314 (2013) (reprimand); In re Ghiorso, 27 DB Rptr 110 (2013) (reprimand); In re Strange, 15 DB Rptr 245 (2001) (30-day suspension). However, where there has been prior discipline, and/or, multiple other charges, suspensions are generally longer. See, e.g., In re Hostetter, 27 DB Rptr 13 (2013) (respondent was suspended for 18 months, part stayed, pending probation, where he purchased parcels of real property on contract from a couple who he then represented in claims made on the parcels without the couple’s informed consent; he thereafter entered into two additional transactions where the couple either loaned the attorney money or transferred rights related to the parcels, without the couple’s informed consent); In re Lafky, 25 DB Rptr 134 (2011) (attorney who engaged in business transactions with a client without obtaining the client’s informed consent was suspended for four months); In re Schenck, 345 Or 350, mod on recon 345 Or 652 (2008) (attorney who borrowed money from an elderly client without informed consent was suspended for one year); In re Gildea, 325 Or 281 (1997) (attorney suspended for 120 days when he failed to make full disclosure to client regarding assignment to attorney of trust deed on client’s property).

Misrepresentations to third persons (i.e., not involving the client, the court, or DCO; here, CAO) also tend to require suspensions of some duration. See, e.g., In re Marshall, 32 DB Rptr 140 (2018) (as the Oregon US Attorney, respondent who engaged in a personal and sexual relationship with a subordinate attorney was suspended for one year, part stayed, pending probation, when she initially denied the nature of the relationship to investigators, and falsely reported that it had ended a year earlier than it had, and sent a message to the subordinate attorney misrepresenting that he was the target of the investigators); In re Sanchez, 29 DB Rptr 21 (2015) (attorney suspended for one year where he affirmatively misrepresented to Bar that he completed 48 hours of CLE courses (toward his 45-hour minimum requirement) in a one-day period (less than 7 hours) via an online CLE provider); In re De Muniz, 28 DB Rptr 113 (2014) (attorney suspended for 30 days after she altered her parking receipt and presented the altered receipt in defense of a parking ticket, misrepresenting the time she entered the parking facility both in the altered receipt and in her written dispute of the ticket that accompanied the altered receipt); In re Segarra, 28 DB Rptr 69 (2014) (in responding to client’s complaint to CAO, attorney falsely represented that his failure to provide discovery in the underlying case was as a result of his client’s failure to timely provide it to him; attorney did not repeat this
misrepresentation to DCO, but was suspended for 90 days, part stayed, pending probation); *In re Kocurek*, 26 DB Rptr 225 (2012) (attorney was suspended for six months where she made false statements, including a misrepresentation to her insurance company regarding damage to her vehicle out of a concern that her premiums would increase or her coverage would be cancelled); *In re Foster*, 25 DB Rptr 201 (2011) (government attorney who took a water sample from a pool near the property of a business then being criminally prosecuted for alleged pollution violations; was suspended for 30 days when he thereafter made misrepresentations to others, including his boss, about his role in the water sampling).

Consistent with the *Standards* and Oregon case law, the parties agree that Noble shall be suspended for 120 days for his violations of RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.6(a), RPC 1.8(a), RPC 5.5(a), and RPC 8.4(a)(3), with the sanction to be effective upon approval by the Disciplinary Board. The parties further agree that the entirety of the 120-day suspension will be completed prior to the commencement of the period of probation in *Noble I*, as defined in that Stipulation for Discipline and incorporated by this reference.

27.

Noble 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, Noble has arranged for Frederic Cann (“Cann”), Cann Lawyers PC, 620 SW Main Street, #205, Portland, OR 97205, an active member of the Bar, to either take possession of or have ongoing access to Noble’s client files and serve as the contact person for clients in need of the files during the term of Noble’s suspension. Noble represents that Cann has agreed to accept this responsibility. The custodian for Noble’s files may be changed from Cann to another active Oregon lawyer during the term of Noble’s actual or imposed stayed suspension with ten (10) days prior written notice to DCO.

28.

Noble 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. Noble 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.

29.

Noble 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 Noble to attend continuing legal education (CLE) courses.
30.

Noble 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 Noble is admitted: US District Court for the District of Oregon and US Court of Appeals for the 9th Circuit.

31.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 8, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 2nd day of July, 2019.

/s/ Gerald Noble
Gerald Noble, OSB No. 104634

APPROVED AS TO FORM AND CONTENT:

/s/ Frederic E. Cann
Frederic E. Cann, OSB No. 104634
Counsel for Respondent

EXECUTED this 2nd day of July, 2019.

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 Nos. 18-105, 18-106, 18-118,
) and 18-168

NICHOLAS A. HEYDENRYCH, )
) Respondent.
)

Counsel for the Bar: Dawn M. Evans

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator
Marcia Buckley
Sandra Frederiksen, 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(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d). Trial Panel Opinion. 7-month suspension.

Effective Date of Opinion: July 27, 2019

TRIAL PANEL OPINION

In this disciplinary proceeding, the Oregon State Bar (“Bar”) alleges that respondent Nicholas A. Heydenrych (“Heydenrych”), has committed thirteen violations of ten Rules of Professional Conduct (“RPC”). These include neglect, failure to communicate, collecting an excessive fee, improper fee agreement, and failure to render an accounting, among others.1 The Bar asks that respondent be suspended for a period of not less than seven months. We agree and suspend respondent for seven months.

1 Respondent is charged with violating RPC 1.2 [abiding by client’s decision]; RPC 1.3 [neglect]; RPC 1.4(a) [inadequate communication] (2 counts); RPC 1.4(b) [duty to inform]; RPC 1.5(a) [charging or collecting an excessive fee]; RPC 1.5(c)(3) [improper fee agreement]; RPC 1.15-1(a) [duty to safekeep property]; RPC 1.15-1(c) [duty to hold property in trust until earned] (2 counts); RPC 1.15-1(d) [failing to provide client property and to account to client] (2 counts); and RPC 1.16(d) [failing to protect client interests upon termination of representation].
BACKGROUND OF PROCEEDING

On October 2, 2018, the Bar filed a complaint against respondent. Respondent was personally served with the complaint and notice to answer on October 24, 2018. Respondent filed an answer on November 19, 2018.

On October 12, 2018, respondent was served with a request for production of documents (“RFP”). He made no response to the RFP.

On December 6, 2018, the Bar filed and served a motion to compel. Respondent filed nothing in opposition.

On December 27, 2018, respondent was served with a notice of deposition, notifying him that the Bar would take his deposition on February 19, 2019.

On January 16, 2019, the Adjudicator granted the motion to compel and entered an order requiring respondent to respond to the RFP without objections and with all responsive documents on or before the close of business January 28, 2019 (“January order”). Respondent did not obey the order, nor did he appear for his deposition on February 19, 2019.

On February 19, 2019, the Bar filed and served a motion for discovery sanctions. Respondent filed no opposition.

On March 11, 2019, the Adjudicator granted the motion for sanctions and ordered that respondent’s answer be stricken and that the allegations in the complaint are deemed true.

We must now decide whether the facts deemed true establish the disciplinary rule violations alleged and, if so, the appropriate sanction.

ALLEGED FACTS AND VIOLATIONS

Clients Lynne and Dennis Clinefelter – Case No. 18-105

On May 31, 2016, Lynne and Dennis Clinefelter (“Clinefelters”) hired respondent to prepare their wills. Respondent failed to answer the Clinefelters’ multiple requests for information. On September 3, 2016, the Clinefelters fired respondent. They asked that he return their client file. Respondent again failed to respond and failed to promptly return the client file. Respondent only gave it to the clients after they made a Bar complaint. Complaint, ¶¶ 3-8.

Duty to Communicate

RPC 1.4(a) states: “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.”

Factors we are to consider in deciding whether respondent violated RPC 1.4(a) include, among other things, the length of time respondent failed to communicate; whether respondent failed to respond promptly to reasonable requests for information from the client; and whether
respondent knew, or a reasonable lawyer would have foreseen, that a delay in communication would prejudice the client. In re Groom, 350 Or 113, 124 (2011).

From May 31, 2016 to the date the Clinefelters fired respondent on September 3, 2016, he ignored multiple requests by the clients pertaining to their case. We believe this lengthy silence was a violation RPC 1.4(a).

**Duties Upon Termination of Representation**

RPC 1.16(d) states: “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 lawyer may retain papers, personal property and money of the client to the extent permitted by other law.”

This rule requires a lawyer to take steps to the extent reasonably practicable to protect the clients’ interests, including returning client property and refunding any advanced payment of fees or expenses that the lawyer has not earned. We find that respondent did not promptly surrender the Clinefelters’ file and failed to do so until after the clients filed a complaint against him. This was a violation of RPC 1.16(d).

**Client Tasha Thompson – Case No. 18-106**

On February 26, 2016, Thompson retained respondent to represent her in a child custody matter. She paid a $4,000 retainer. Beginning in March 2016, respondent failed to respond to multiple client requests for status updates, legal advice, and action in the case. Respondent neglected to tell Thompson about a status check hearing scheduled for June 8, 2016, which caused her to fail to appear. On June 13, 2016, Thompson emailed respondent, telling him to immediately request a reset of the pending trial date; to stop all other work on her behalf; and to provide an accounting and a full refund of her retainer. Respondent did not request a reset. He failed to withdraw. He also failed to promptly give an accounting and to promptly refund any of the retainer. As with the Clinefelters, he did not act until a month after Thompson filed a Bar complaint. As a result, Thompson had to negotiate a settlement of her child custody matter without the benefit of counsel. Complaint, ¶¶ 11-18.

**Duty to Abide by Client’s Decision**

RPC 1.2(a) states: “[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.”

The Bar argues that respondent violated this rule when he failed to seek a reset of the trial after being told to do so by Thompson. It also argues that he violated the rule when he did not advise the client that he did not intend to ask for the reset or tell her after the fact that he had failed to do so. We agree that this conduct violated RPC 1.2(a).
Neglect of a legal matter

RPC 1.3 states simply: “A lawyer shall not neglect a legal matter entrusted to the lawyer.”

Neglect under this rule is the failure to act or the failure to act diligently over a period of time when action is required. In order to establish a violation here the allegations must show a course of neglectful conduct, not merely an isolated instance of negligence. *In re Jackson,* 347 Or 426, 435 (2009); *In re Magar,* 335 Or 306, 321 (2003). Neglect can be found after a short period of time when action by a lawyer is required. See, e.g., *In re Meyer,* 328 Or 220, 225 (1999) (failure to do anything for two months on domestic relations matter was neglect because the lawyer took no action to advance or protect client’s legal position, especially as to client’s primary concern over temporary spousal and child support); *In re Purvis,* 306 Or 522, 524–25 (1988) (neglect where lawyer failed to pursue child support matter for several months). In analyzing neglect, the focus is on the lawyer’s conduct, not whether the client sustained any resulting harm. *In re Knappenberger,* 340 Or 573, 580 (2006).

Respondent failed to tell his client about the status hearing. He failed to seek a reset of the trial date. He failed to withdraw after being fired so the court did not know to direct any notices directly to his former client. He also failed to give an accounting or refund any unearned fee. We agree that respondent here violated RPC 1.3.

Duty to Communicate

We have discussed the requirements of RPC 1.4(a) in connection with the Clinefelter matter, above. RPC 1.4(b) further provides: “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”


Here, for four months, from March to June 2016, respondent failed to respond to multiple requests for information from his client that caused her to fail to appear at a status conference. Respondent also failed to inform his client that he had not withdrawn from her case as she had directed. The client was entitled to know these things. We agree that respondent violated both RPC 1.4(a) and RPC 1.4(b).

Duty to Promptly Return Client Property

RPC 1.15-1(d) provides: “[A] lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.”
A lawyer must deliver client property to a client promptly upon request. *In re Snyder*, 348 Or 307, 318 (2010); *In re Worth*, 336 Or 256, 270 (2003); *In re Devers*, 317 Or 261, 265 (1993).

The Bar argues that respondent knew or should have known that his failure to promptly return any portion of the unearned fee could prevent his client from being able to retain another lawyer. We need not answer that question, however, since once his client requested an accounting and refund, his duty was definite. The fact that respondent ultimately returned the funds after the client complained does not constitute compliance with the rule. We agree that respondent violated RPC 1.15-1(d).

**OSB-TA Matter – Case No. 18-118**

Beginning in November 2017, respondent allowed a third-party merchant service company to access his lawyer trust account (“IOLTA”) to deduct merchant and other bank fees. During that time, respondent had unearned fee monies in his IOLTA for at least one client, which were drawn upon to pay merchant service fees. On January 24, 2018, respondent wrote an NSF check for $800 from the IOLTA for a business expense. The bank also charged the IOLTA a $35 overdraft fee, which was withdrawn from funds that belonged to at least one of respondent’s clients. *Complaint*, ¶¶ 20-21.

**Duty to Keep Property Safe**

RPC 1.15-1(a) states: “A lawyer shall hold property of clients or third persons that is in a lawyer’s possession separate from the lawyer’s own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate ‘Lawyer Trust Account’ maintained in the jurisdiction where the lawyer’s office is situated.” Further, RPC 1.15-1(c) provides: “A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred….”

When respondent allowed unearned client funds in his IOLTA to be used to pay bank fees and to cover a business expense he failed to hold client property separate from his own, in violation of RPC 1.15-1(a), and failed to maintain client property in trust until earned, in violation of RPC 1.15-1(c).

**Mario and Silvia Ruiz Matter – Case No. 18-168**

On May 9, 2017, Mario and Silvia Ruiz retained respondent to represent Mario Ruiz (“Ruiz”) in a criminal matter pursuant to a Flat Fee Agreement (“Flat Fee Agreement”) that required a “non-refundable retainer” of $6,000 (“Ruiz $6,000”), which they paid. The Flat Fee Agreement did not explain that Ruiz’s funds would not be deposited into respondent’s trust account or that Ruiz may be entitled to a refund of all or part of his fees if services were not completed in the event that respondent was discharged. *Complaint*, ¶¶ 24-25.

Respondent did not deposit the Ruiz $6,000 into his IOLTA. On June 19, 2017, the court set the trial in Ruiz’s case for September 19, 2017. On July 6, 2017, Ruiz discharged
respondent for, in part, his failure to comply with requests from experts that Ruiz had retained for $2,000. The same day, Ruiz hired Kenneth Kahn (“Kahn”), who filed a Notice of Substitution, sent respondent a copy, and asked respondent to send Ruiz’s client file. It took eleven days and two interim requests from Kahn before respondent sent the client file on July 17. Complaint, ¶¶ 27-33.

On July 20, July 21, and August 3, 2017, Ruiz asked respondent for an accounting of the Ruiz $6,000. Respondent did not respond or comply. Although the Flat Fee Agreement had provided that respondent and Ruiz would participate in the Bar’s fee arbitration program in the event of a fee dispute, respondent declined to participate when notified by the Bar that Ruiz had requested arbitration. On November 21, 2017, Ruiz submitted a Bar complaint. On January 26, 2018, respondent submitted a response to the complaint and for the first time produced an accounting, in which he claimed an hourly rate higher than was recited in the Flat Fee Agreement and failed to account for any of the $2,000 paid to experts. Complaint, ¶¶ 34-40.

**Collecting an Excessive Fee**

RPC 1.5(a) states: “A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.”

An attorney may violate this rule by failing to refund unearned fees under certain circumstances even though the initial advance payment was not unreasonable. See In re Gastineau, 317 Or 545 (1993). Where the client pays a flat fee for a specific legal task, that fee will be clearly excessive if the lawyer fails to complete the task but retains the entire fee. In re Fadeley, 342 Or 403, 411 (2007) (lawyer violated rule where he failed to refund any portion of a flat fee when client fired him before he completed the work); In re Balocca, 342 Or 279, 292 (2007) (lawyer found in violation of the rule where he failed to refund any portion of a flat fee where lawyer did not complete the work); see also, In re Thomas, 294 Or 505, 526 (1983) (“It would appear that any fee that is collected for services that is not earned is clearly excessive regardless of the amount.”)

Respondent did not complete the work for which he was hired and returned no portion of the flat fee. We agree this was a violation of RPC 1.5(a).

**Improper Fee Agreement**

RPC 1.5(c)(3) provides: “A lawyer shall not enter into an arrangement for, charge or collect a fee denominated as “earned upon 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 or part of the fee if the services for which the fee was paid are not completed.” The allegations establish an unambiguous violation of this rule.
Duty to Keep Property Safe

RPC 1.15-1(c) states: “A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the fee is denominated as “earned on receipt,” “nonrefundable” or similar terms and complies with Rule 1.5(c)(3).”

The flat fee agreement here did not contain the disclosures required by RPC 1.5(c)(3), even though it provided that the fee was earned upon receipt. In the absence of that language, respondent was required to deposit the Ruiz’s $6,000 in his trust account. He did not do. We agree respondent violated both RPC 1.5(c)(3) and RPC 1.15-1(c).

Duty to Account for and Return Client Property

RPC 1.15-1(d) states: “Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.”

The rule requires lawyers to deliver promptly to the client any funds or other property that the client is entitled to receive, including client files, as well as a complete accounting if requested. A lawyer’s file is client property and must be given to a client promptly upon request. In re Snyder, 348 Or 307, 318 (2010); In re Worth, 336 Or 256, 270 (2003); In re Devers, 317 Or 261, 265 (1993).

A lawyer violates the rule when the lawyer fails to forward a client’s file upon request. See, In re Gregory, 19 DB Rptr 150 (2005) (attorney ignored requests for the client’s file until the client filed a Bar complaint). Whether delivery of client property is sufficiently prompt a question of fact for us to decide, but a client is not required to make multiple requests or file a Bar complaint to cause an attorney to act.

At the time respondent was fired there was an impending trial date. The Bar argues that under those circumstances an eleven-day delay in delivering the client file to the client’s new lawyer had the potential to prejudice the client’s ability to prepare for trial. It also contends that respondent’s delay in rendering an accounting until he was responding to a Bar complaint, more than six months after it had first been requested, was not prompt. We agree with the Bar and find that respondent violated RPC 1.15-1(d).

SANCTION

In deciding on an appropriate sanction we are to consider the ABA Standards for Imposing Lawyer Sanctions (“Standards”) and Oregon case law. In re Biggs, 318 Or 281, 295 (1994); In re Spies, 316 Or 530, 541 (1993). The Standards establish the framework to analyze respondent’s conduct, including (1) the ethical duty violated; (2) respondent’s mental state;
(3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. Standards § 3.0.

**Duty Violated**

The most important ethical duties a lawyer owes are to his clients. Standards at 5. In the Clinefelter, Thompson, and Ruiz matters, respondent violated the duty he owed to his clients to return client property promptly, including unearned fees and client files. Standards, § 4.1. In the Clinefelter and Thompson matters, respondent violated the duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. Standards, § 4.4. In the Ruiz matter, respondent violated a duty owed as a professional in failing to take steps to protect the client’s interests upon termination, including surrendering property and any refund of fees. Standards, § 7.0.

**Mental State**

The Standards recognize three mental states. “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.

We may rely on the facts alleged to decide the mental state of a respondent in default. In re Kluge, 332 Or 251, 262 (2001).

In the Clinefelter, Thompson, and Ruiz matters, respondent acted knowingly in not responding to multiple requests from each client and in failing to render an accounting, return any unearned fees, or deliver the client’s file. Respondent’s handling of his trust account in connection with the OSB-TA matter was at least negligent.

**Extent of Actual or Potential Injury.**

For the purposes of determining an appropriate disciplinary sanction, we may take into account both actual and potential injury. Standards at 6; In re Williams, 314 Or 530, 547 (1992).

Ruiz was harmed by respondent’s failure to deposit the Ruiz $6,000 into his trust account in the absence of a flat fee agreement which complied with the disclosure requirements of RPC 1.5(c)(3). Thompson and Ruiz both sustained injury because they did not have the use of their funds after they fired respondent and were frustrated by his failures to respond. In re Balocca, 342 Or 279, 297 (2007). Clinefelter, Thompson and Ruiz were also injured when their matters were ongoing and respondent refused to provide either them or substitute counsel with their requested files despite repeated requests.

**Preliminary Sanction.**

Absent aggravating or mitigating circumstances, 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 generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Standards §§ 4.42(a), (b).

Suspension is 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.

**Aggravating and Mitigating Circumstances.**

The following aggravating factors recognized by the Standards are present here:

1. **A pattern of misconduct.** Standards § 9.22(c). In the three client-filed complaints respondent accepted a fee, failed to respond to his clients, and then refused, when fired, to protect his clients when he would not provide an accounting, deliver the file or refund any unearned fee.

2. **Multiple offenses.** Standards § 9.22(d). We have found that respondent committed thirteen rule violations involving ten Rules of Professional Conduct.

3. **Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.** Standards § 9.22(e). Respondent’s only involvement in this process was to file an answer. Beyond that, he has not participated. He ignored a request for production, refused to appear for a deposition, ignored an order compel, and ignored the Bar’s motion for sanctions. He also was silent in response to the Adjudicator’s inquiry as to whether he sought an evidentiary hearing on the issue of sanctions.

4. **Substantial experience in the practice of law.** Standards § 9.22(i). Respondent has been licensed to practice law in Oregon for thirteen years.
5. **Indifference to making restitution. Standards § 9.22(j).** Respondent has refused return any portion of Ruiz’s fee. He has also declined to participate in the Bar’s fee dispute arbitration program despite agreeing to do so in the Flat Fee Agreement.

Obviously, given his silence, respondent has offered no evidence of any mitigating factors. The Bar acknowledges that the absence of a prior disciplinary record is a mitigating factor present here. *Standards § 9.32(a).* The aggravating factors substantially outweigh this single mitigating one.

We believe that respondent’s conduct without considering mitigation or aggravation warrants suspension. The aggravating factors confirm that a suspension is the appropriate sanction in this case. *Standards § 9.21.*

**Oregon Case Law.**

We find that Oregon cases reach a similar conclusion.

**Neglect and Failure to Communicate**

The Court typically imposes a presumptive sanction of at least 60 days for freestanding neglect. *See In re Schaffner,* 323 Or 472 (1996) (Court found that a 60-day suspension was appropriate for both attorney’s neglect and his failure to cooperate with the Bar); *see also, In re Redden,* 342 Or 393 (2007) (60-day suspension imposed for single serious neglect despite that young, inexperienced lawyer had no prior discipline); *In re Worth,* 337 Or 167 (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 granting the opposing party’s motion to dismiss); *In re LaBahn,* 335 Or 357 (2003) (60-day suspension for neglect of tort claim and subsequent failure to notify client where aggravating and mitigating factors were equal).

The Bar acknowledges that the court has not been as consistent in sanctioning lapses in communication apart from requiring some term of suspension. *See, e.g., In re Snyder,* 348 Or 307 (2010) (attorney’s 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, resulted in 30-day suspension); *In re Koch,* 345 Or 444 (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 (2006) (three-month suspension, plus formal reinstatement, was appropriate for attorney appointed to handle a client’s appeal, who took no action and failed to disclose the ultimate dismissal to the client); *In re Knappenberger,* 337 Or 15 (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).
Failure to Provide Client Property

Knowing failures to provide client property have resulted in substantial suspensions. See, e.g., In re Lopez, 350 Or 192 (2011) (attorney suspended for nine months, where, after settling personal injury matters, he failed to distribute proceeds to his clients and pay medical liens for substantial periods of time); In re Bennett, 331 Or 270 (2000) (attorney suspended for 180 days when he refused to return clients funds). Similarly, failure to return a client’s file after numerous requests has warranted suspension. See In re Snyder, 348 Or 307 (2010) (attorney suspended for 30 days when he failed to return a personal injury client’s file materials, including medical records, despite numerous requests from the client).

Excessive Fee

The cases cited to us show that most excessive fee cases provide for a suspension of between 30 days and six months. See, e.g., In re Fadeley, 342 Or 403, 411 (2007) (lawyer suspended for 30 days where he failed to refund any portion of a flat fee when client fired him before he completed the work); In re Obert, 352 Or 231 (2012) (attorney suspended for six months where he took a flat fee to represent a client, but when, prior to commencing any work on the matter, the client was released from jail at the state’s election the attorney refused to make a refund of the fee despite the fact that he had not taken any substantial steps toward completing work on the matter); In re Balocca, 342 Or 279 (2007) (attorney who agreed to perform specified legal services for a flat fee, failed to complete the work, and then claimed that the fee was earned based on an hourly computation of time spent on the matter was suspended for 90 days for keeping the fee without completing the work).

Collective Conduct

We find that respondent’s pattern of misconduct and refusal to respond to disciplinary authorities demonstrates that he is not presently capable of appropriately discharging his duties to clients.

CONCLUSION

Sanctions in disciplinary matters are not intended to penalize the respondent, but instead are intended to protect the public and the integrity of the profession. In re Stauffer, 327 Or 44, 66 (1998). Appropriate discipline deters unethical conduct. In re Kirkman, 313 Or 181 (1992). In order to protect the public we conclude that respondent is suspended for seven
months effective 30 days from the date this decision becomes final.

Dated this 26th day of June, 2019.

\[\text{/s/ Mark A. Turner} \]
\[\text{Mark A. Turner, Adjudicator}\]

\[\text{/s/ Marcia Buckley} \]
\[\text{Marcia Buckley, Trial Panel Member}\]

\[\text{/s/ Sandra Frederiksen} \]
\[\text{Sandra Frederiksen, Trial Panel Public Member}\]
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
)
Complaint as to the Conduct of ) Case No. 18-111 and 18-114
)
DAVID WINSTON GILES, )
)
Respondent. )

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.4(a) and RPC 8.1(a)(2). Stipulation for Discipline. 120-day suspension, with BR 8.1 formal reinstatement.
Effective Date of Order: July 29, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Giles is suspended for 120 days, effective the date of this order, for violations of RPC 1.4(a) and RPC 8.1(a)(2). Giles shall be required to seek formal reinstatement pursuant to BR 8.1, at such time as he is eligible to seek reinstatement.

IT IS FURTHER ORDERED that Giles will pay the Bar its reasonable and necessary costs in the amount of $967.72 upon reinstatement, or within one year of the date of this Order, whichever is sooner. Should Giles fail to pay $967.72 within one year of the date of this Order, the Bar may thereafter, without further notice to Giles, apply for an entry of judgement against Giles for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgement is signed until paid in full.
STIPULATION FOR DISCIPLINE

David Winston Giles, attorney at law (“Giles”), 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.

Giles was admitted by the Oregon Supreme Court to the practice of law in Oregon on February 16, 2000, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

Giles 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 22, 2018, a Formal Complaint was filed against Giles pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of 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); and RPC 8.1(a)(2) (duty to respond to lawful demands for information from a disciplinary authority) 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.
Engle Matter
(Case No. 18-111)

Facts

5.

Giles and attorney Barry W. Engle (“Engle”) were co-owners of Engle & Giles, PC, a law firm they formed in January 2006. Giles left the firm in February 2015, and a dispute followed regarding the division of fees on the cases Giles took with him.

6.

Engle filed a Bar complaint claiming that Giles removed disputed funds from trust, after he was notified that Engle claimed an interest in those funds and demanded that Giles preserve them in trust.

7.

By letter dated May 31, 2018, Disciplinary Counsel’s Office (“DCO”) requested Giles’s response to Engle’s complaint. The letter was addressed to Giles at the address then on record with the Bar (“Record Address”) and was sent by first class mail. The letter was also sent to Giles at the email address then on record with the Bar (“Record Email”). The email and letter were not returned undelivered, and Giles did not respond to either method of communication.

8.

By letter dated June 22, 2018, DCO again requested Giles’s response to Engle’s complaint. The letter was addressed to Giles at his Record Address and was sent by both first class and by certified mail, return receipt requested. The letter was also sent to Giles at his Record Email. An agent of Giles signed the certified mail receipt. The letter sent by first class mail was not returned as undeliverable. Giles did not respond.

9.

On July 12, 2018, pursuant to BR 7.1, DCO petitioned the Disciplinary Board for Giles’s suspension and notified Giles of this action. Giles did not respond to DCO’s petition and on, on July 26, 2018, Giles was suspended for his failure to respond to DCO.

Violation

10.

Giles admits that, by electing not to respond to the inquiries from DCO in connection with Engle’s complaint, he knowingly failed to respond to lawful demands from a disciplinary authority, in violation of RPC 8.1(a)(2).
Mares Matter  
Case No. 18-114  

Facts  

11. In December 2015, Karen Mares (“Karen”) was injured in a motor vehicle accident. In or prior to September 2016, Karen hired Giles to represent her to recover for her personal injuries from that accident. Karen was referred to Giles by her husband, John Mares (“John”), whom Giles was also representing in a personal injury matter.

12. Throughout Giles’s representation of Karen, most communication regarding Karen’s matter was between Giles and John, primarily through text messaging or by telephone.

13. In mid-November 2017, communication with Giles began to become sporadic. For example, between mid-November 2017, and mid-December 2017, John called and texted Giles multiple times, without response.


15. On January 27, 2018, Giles reported by text to John that they were making efforts to serve the defendants, and that Giles had a new system for communicating with clients, by which he calendared to provide them with a status update every 30 days. Giles indicated that he would provide John with more details later but did not follow through. John did not hear anything further from Giles until after he complained to the Bar in late April 2018.

16. Although both defendants in Karen’s action were served in or around February 2018, Giles did not notify John and Karen of this fact or file a proof of service with the court. Accordingly, on or about April 10, 2018, Karen’s action was dismissed. Giles did not notify John and Karen of this event.

17. On March 29, 2018, John sent Giles a text that included a request for information about what had happened on Karen’s legal matter since Giles’s last communication to him on January 27, 2018. Giles did not respond.
18.

Receiving no response, on or about May 9, 2018, John again contacted Giles, by email and text, asking for a detailed update on Karen’s case. Giles did not reply.

19.

On June 1, 2018, DCO was notified of a Client Security Fund application submitted by John, relating to Giles’s conduct. By letter dated June 5, 2018, DCO requested Giles’s response to this complaint. The letter was addressed to Giles at his Record Address and was sent by first class mail. The letter was also sent to Giles at his Record Email. The email and letter were not returned undelivered, and Giles did not respond to either method of communication.

20.

By letter dated July 12, 2018, DCO again requested Giles’s response to John’s complaint. The letter was addressed to Giles at his Record Address and was sent by both first class and by certified mail return receipt requested. The certified letter was returned undelivered. The letter was also sent to Giles at his Record Email, which was not rejected as undeliverable. The letter sent by first class mail was not returned as undeliverable. Giles did not respond.

21.

On July 20, 2018, pursuant to BR 7.1, DCO petitioned the Disciplinary Board for Giles’s suspension and notified Giles of this action. Giles did not respond to DCO’s petition and, on August 1, 2018, Giles was suspended for his failure to respond to DCO.

Violations

22.

Giles admits that his failures to respond to communications from John and Karen, as well as his failure to keep Karen apprised of events in her case, constituted a failure to keep his clients reasonably informed about the status of a matter, and promptly comply with reasonable requests for information, in violation of RPC 1.4(a).

Giles further admits that, by electing not to respond to the inquiries from DCO in connection with John’s complaint, he knowingly failed to respond to lawful demands from a disciplinary authority, in violation of RPC 8.1(a)(2).
Sanction

23.

Giles 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 Giles’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.** Giles violated his duty to his client to diligently attend to her legal matter (including the duty to timely and fully communicate with her). Standards § 4.4. The Standards presume that the most important ethical duties are those which lawyers owe to their clients. Standards at 5. Giles also violated his duty to respond to inquiries from disciplinary authorities. Standards § 7.0.

b. **Mental State.** Giles acted at least knowingly in all respects. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Standards at 9.

c. **Injury.** Injury is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. Injury can be actual or potential. Standards at 9. Both actual and potential injury can be taken into account. Standards § 3.0; In re Williams, 314 Or 530 (1992).

Karen Mares was potentially and actually injured by the dismissal of her case and Giles’s failure to inform her. Karen and John also suffered actual injury in the form of anxiety and frustration. See In re Cohen, 330 Or 489, 496 (2000); In re Schaffner, 325 Or 421, 426–27 (1997).

Giles’s failure to fully, timely, and truthfully cooperate with the Bar’s investigations of his conduct caused actual injury to both the legal profession and the public. In re Schaffner, supra; In re Miles, 324 Or 218, 221–22 (1996); In re Haws, 310 Or 741 (1990); see also, In re Gastineau, 317 Or 545, 558 (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). This is particularly true in light of the necessary additional efforts by the Bar to accomplish service and solicit Giles’s participation in these formal proceedings.

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

1. Taken together, these two cases show a pattern of misconduct with respect to Giles’s obligation to respond to disciplinary authorities. Standards § 9.22(c).

3. During the formal proceedings, Giles did not initially respond to efforts to communicate with him and serve him with the Bar’s complaint. Once service was accomplished by publication, Giles contacted the Bar and cooperated fully from that point forward. *Standards* § 9.22(e).

4. Giles has substantial experience in the practice of law, having been admitted in Oregon in 2000. *Standards* § 9.22(i).

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


3. Leading up to and during the relevant time period, Giles suffered from personal or emotional problems as a result of serious personal health issues. *Standards* § 9.32(c).

4. When Giles recognized that his physical condition prevented him from providing competent representation to his clients, Giles contacted the Professional Liability Fund (“PLF”) and cooperated in providing them with his client files in an attempt to minimize negative impact to his client matters. *Standards* § 9.32(d).

5. In the decade or more leading up to 2018, Giles suffered from an increasingly debilitating physical health condition that constrained his ability to regularly go to the office, participate in hearings and mediations, and otherwise adversely impacted his capacity to effectively manage client matters. At the end of 2018, after surrendering his practice to the PLF, Giles’s health condition was finally correctly diagnosed and able to be addressed. *Standards* § 9.32(h).

6. Giles has expressed remorse for his failure to more adequately and timely communicate with the Mares, as well as his failure to sooner cooperate with the Bar. *Standards* § 9.32(l).

24. Under the ABA *Standards*, a suspension is the presumptive sanction. *Standards* §§ 4.42; 7.2. Presumptively, the *Standards* provide that suspensions should be for a period of time equal to or greater than six months. *Standards* § 2.3.

25. Oregon cases also provide that a suspension is appropriate. While Giles’s failure to adequately communicate with his clients (even where aggravated by his failure to notify them
of the dismissal) would likely warrant a reprimand, if that had been the only charge, it is fairly well established that each instance of failing to cooperate with the Bar results in at least a 60-day suspension. *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (attorney violated rule by failing to respond to the Bar’s inquiries in a timely manner; court found that a 60-day suspension was appropriate each for the attorney’s neglect and his failure to cooperate with the Bar). *See also, In re Henderson*, 31 DB Rptr 95 (2017) (attorney suspended for four months when, after Respondent’s client complained to the Bar, DCO sent Respondent a certified letter requesting information. Respondent signed the certified mail receipt but did not respond to the request. Respondent also spoke to an attorney in DCO but did not provide the requested information); *In re Inokuchi*, 30 DB Rptr 321 (2016) (respondent’s failure to respond to the Bar on a single matter resulted in 60-day suspension); *In re Wright*, 30 DB Rptr 15 (2016) (although respondent initially responded to communications from the Bar’s Client Assistance Office, respondent was suspended for four months when, after the matter was referred to DCO, respondent ignored attempts to contact him through emails, letters, personal service, and telephone calls); *In re Koch*, 345 Or 444, 198 P3d 910 (2008) (respondent suspended for 120 days where, in one instance, she answered the Bar’s initial inquiry, but when the Bar asked for further information about her original explanation, respondent failed to respond to the follow-up inquiries. The matter was turned over to the LPRC who issued a subpoena to respondent. An LPRC representative met with respondent and respondent brought some files to the meeting but failed to provide additional documentation as requested or respond to the representative’s additional questions. In a second case, respondent offered an explanation to the Bar that differed from the client’s version of the situation and the Bar wrote asking for more information. Respondent failed to reply to DCO and the matter was transferred to the LPRC).

In addition, it is not uncommon for the Bar, the Disciplinary Board, and even the court, to insist on formal reinstatement where there have been such failures to respond, issues about the health of the attorney, or both. *See, e.g., In re Tufts*, 29 DB Rptr 141 (2015) (DCO received a complaint from the State Lawyers Assistance Committee (“SLAC”) about respondent’s noncompliance with their monitoring agreement. In response to inquiries from DCO, respondent requested, and was granted, numerous extensions to respond; however, respondent was suspended for 120 days and required to seek formal reinstatement per BR 8.1 when he did not provide any substantive response until after he was notified that the bar had filed a petition seeking that he be administratively suspended due to his noncooperation); *In re Bennett*, 23 DB Rptr 192 (2009) (attorney failed to comply with the terms of a remedial program agreement he entered into with the SLAC and then failed to respond to bar inquiries regarding his noncooperation for which he was suspended for 120 days and required to seek formal reinstatement per BR 8.1); *In re Abendroth*, 21 DB Rptr 205 (2007) (respondent was suffering from depression, which impaired his ability to represent client in a civil matter, and after respondent failed to act, the client terminated the representation. Respondent then failed to reply to neither DCO’s requests nor the requests of appointed investigators and was suspended for 120 days and required to seek formal reinstatement per BR 8.1); *In re Coyner*, 342 Or 104, 149 P3d 1118 (2006) (respondent’s actions in a support-modification case led to the dismissal  

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1 *See, e.g., In re Bruce*, 32 DB Rptr 290 (2018); *In re Castle*, 31 DB Rptr 254 (2017); *In re Monsebroten*, 31 DB Rptr 198 (2017); *In re Cain*, 31 DB Rptr 105 (2017); *In re Pizzo*, 30 DB Rptr 371 (2016).
of the case. The Bar twice asked respondent to provide information related to the investigation but respondent failed to do so. In a separate matter, respondent was convicted in a criminal matter and failed to respond to the Bar’s requests for information relating to the conviction. The court suspended the attorney for three months and required him to seek formal reinstatement per BR 8.1); In re Shatzen, 18 DB Rptr 213 (2004) (after respondent’s certified public accountant (CPA) certificate and permit lapsed, respondent continued to advertise to the public and members of the Bar that he was a CPA. After the Board of Accountancy revoked his license they notified the Bar. Respondent failed to reply to DCO’s initial request or to any subsequent requests for an explanation and was suspended for 120 days and required to seek formal reinstatement per BR 8.1); In re Clark, 17 DB Rptr 231 (2003) (during its investigation of two separate client complaints against respondent, the Bar sent requests to respondent asking that she respond to the clients’ complaints. Respondent failed to reply to the Bar’s initial requests or to any follow-up requests and was suspended for 120 days and required to seek formal reinstatement per BR 8.1).

26.

Consistent with the Standards and Oregon case law, the parties agree that Giles shall be suspended from the practice of law for 120 days for violations of RPC 1.4(a) and RPC 8.1(a)(2); and that the sanction to be effective upon approval by the Disciplinary Board. The parties further agree that Giles shall be required to seek formal reinstatement pursuant to BR 8.1, at such time as he is eligible to seek reinstatement.

27.

In addition, when Giles applies for reinstatement, he shall pay to the Bar its reasonable and necessary costs in the amount of $967.72, incurred for service attempts and eventual service by publication in The Oregonian. Should Giles fail to pay $967.72 within one year of the date this stipulation is approved, the Bar may thereafter, without further notice to Giles, apply for entry of judgment against Giles for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

28.

Giles 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, Giles has not engaged in the practice of law since June 2018 and does not possess any client files.

29.

Giles 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. Giles 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.
30.

Giles 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 Giles to attend continuing legal education (CLE) courses.

31.

Giles 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 Giles is admitted: none.

32.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 8, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 8th day of July, 2019.

/s/ David Winston Giles
David Winston Giles, OSB No. 000096

EXECUTED this 8th day of July, 2019.

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

ABIGAIL MOLINA,

Respondent.

Case No. 18-156

Counsel for the Bar: Amber Bevacqua-Lynott

Counsel for the Respondent: David J. Elkanich

Disciplinary Board: None

Disposition: Violation of RPC 1.15-1(a) and RPC 1.15-1(c). Stipulation for Discipline. 6-month suspension, all stayed, 3-year probation.

Effective Date of Order: August 1, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Molina is suspended for six (6) months, all stayed, pending Molina’s successful completion of a three- (3) year term of probation, effective the first day of the month following the date of this order for violations of RPC 1.15-1(a) and RPC 1.15-1(c).

DATED this 29th day of July, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board
STIPULATION FOR DISCIPLINE

Abigail Molina, attorney at law (“Molina”), 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. Molina was admitted by the Oregon Supreme Court to the practice of law in Oregon on December 18, 2017, and has been a member of the Bar continuously since that time, having her office and place of business in Lane County, Oregon.

3. Molina 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 7, 2019, a Formal Complaint was filed against Molina pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of RPC 1.15-1(a) (duty to safeguard, segregate and maintain records of client property); and RPC 1.15-1(c) (duty to deposit and maintain client funds in trust until earned or expenses incurred). 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. During 2017, Molina maintained a federal immigration practice, Molina Law Group (“MLG”), in Springfield, Oregon. Molina had also established Valley Immigration Training, Advocacy and Legal Services (“VITALS”), a 501(c)(3) organization, to provide low-cost
immigration legal services in Springfield, Oregon. Molina administered the lawyer trust account for VITALS (“IOLTA”), and was responsible for assuring that unearned fees and cost deposits were appropriately deposited and maintained until earned; that any and all disbursements from the IOLTA were consistent with applicable ethical requirements; and that appropriate recordkeeping was documented and maintained.

6.

During December 2017 and January 2018, Molina transferred more than $5,000 out of the IOLTA to cover rent and payroll, thereby utilizing unearned client funds for purposes unrelated to the legal representations of the clients whose funds were on hand.

7.

On January 24, 2018, Molina notified the board of VITALS that there was a deficit in the IOLTA of $994.22.

8.

On January 27, 2018, Molina informed the board of VITALS that she had advanced $1,500 from the IOLTA to pay rent, assuming, without verifying, that sufficient legal work had been done during December to justify the transfer.

9.

On January 30, 2018, Molina told the board of VITALS that she had periodically made transfers from the IOLTA to cover various expenses related to overhead, in each instance estimating, without verifying, how much legal work had actually been done that would justify the transfers as earned fees.

10.

On January 30, 2018, the board of VITALS terminated Molina’s access to the IOLTA and accepted her resignation as the supervising attorney of VITALS on the condition that she provide accounting documentation and client information so that an audit could be done to reconcile the IOLTA. It took Molina considerable time to provide the requested records given the transition of her practice and the condition of the records.

11.

In March 2019, Molina acknowledged having discarded certain receipts that documented funds received from clients of VITALS and bank deposit records, after she believed that she inputted the pertinent information into the VITALS bookkeeping/time tracking software.
12. Between November 2016 and January 31, 2018, Molina either failed to document or failed to maintain records sufficient to establish the receipt, deposit and disbursement of client funds.

Violations

13. Molina admits that her failure to hold funds belonging to clients separate from her own, MLG, and VITALS property, as well as her failure to adequately document and maintain records of client funds over many months, violated RPC 1.15-1(a). Molina further admits that her premature taking of client funds for purposes unrelated to those specific client matters, under the mistaken belief that those funds had in fact been earned, violated RPC 1.15-1(c).

Sanction

14. Molina 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 Molina’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. Molina’s improper use of the IOLTA violated her duty to her clients to appropriately safeguard and handle their funds. The Standards provide that the most important ethical duties are those which lawyers owe to their clients. Standards at 5.

b. Mental State. There are three types of mental state recognized 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. Standards at 9.

Molina acted both negligently and knowingly with respect to her mishandling of the VITALS IOLTA. She either knew or should have known that sufficient funds had not been earned at the times that she elected to act on her mistaken belief that such funds were available for her use.
c. **Injury.** Injury can be potential or actual. *Standards* § 3.0; *Standards* at 9; *In re Williams*, 314 Or 530 (1992). Molina’s failure to use appropriate accounting procedures caused actual and potential injury to her clients as it created a risk that the clients’ funds would not be timely paid out to the appropriate persons in the correct amounts. Additionally, by failing to comply with the trust account rules, Molina “caused actual harm to the legal profession.” *In re Obert*, 352 Or 231, 260 (2012).

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


3. Substantial experience in the practice of law. *Standard* § 9.22(i). Although Molina has only been admitted in Oregon since 2017, she previously practiced in Oregon utilizing her Texas license (and confined herself to federal practice) and has been a member of the Texas Bar since 2010. Texas imposes ethical obligations similar to Oregon’s regarding the handling of client funds.

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


3. Cooperative attitude toward proceedings. *Standard* § 9.32(e). Molina has been cooperative with the Bar in its investigation and in this formal proceeding.

4. Remorse. *Standard* § 9.32(l). Molina has expressed remorse for her mistakes and regret for her actions in handling the VITALS IOLTA, as well as an interest in learning better methods of managing her trust account going forward.

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. Suspension is reserved for lawyers who engage in misconduct that does not amount to misappropriation or conversion. *Standards* § 4.12. Given that the aggravating and mitigating factors are in equipoise, a suspension is the presumptive sanction under the *Standards.*
16.

Like the Standards, Oregon cases suggest that a suspension is warranted for Molina’s conduct. In re Obert, 352 Or 231, 262 (2012) (Court held that the usual sanction for a violation of RPC 1.15-1 is a suspension of between 30 and 60 days); In re Eakin, 334 Or 238 (2002) (experienced attorney’s single unintentional mishandling of client trust account warranted 60-day suspension). Molina has several such violations. An overall suspension of 6 months appears appropriate here. See e.g., In re Soto, 26 DB Rptr 81 (2012) (attorney whose conduct was mitigated by personal and emotional problems was suspended for 7 months where she failed to deposit client funds in trust. She also repeatedly deposited her own funds into trust, to pay her own bills and those of clients); In re Bertoni, 26 DB Rptr 25 (2012) (attorney suspended for 150 days where he negligently withdrew client funds from his law firm’s trust account before the funds were earned; failed to maintain complete trust account records; periodically deposited his own funds into the firm trust account in amounts that exceeded bank service charges and minimum balance requirements; and was unable to distinguish client money from his own money); In re Oh, 23 DB Rptr 25 (2009) (attorney suspended for 8 months when he failed to deposit client funds into a trust account despite a fee agreement specifying that he would do so; attorney also failed to deposit into trust funds paid by the client in advance for expenses); In re Levie, 22 DB Rptr 66 (2008) (attorney suspended for 6 months for intentionally using his trust account as his own personal account, depositing his own funds and paying personal and business expenses directly from that account in order to shield those funds from creditors); In re Skagen, 342 Or 183 (2006) (attorney was suspended for one year when it was determined that he failed to reconcile 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 Goyak, 19 DB Rptr 179 (2005) (attorney who deposited and maintained personal funds in his trust account and failed to maintain required trust account records was suspended for 6 months); In re Koessler, 18 DB Rptr 105 (2004) (attorney suspended for 6 months where she failed to deposit a retainer into trust, failed to maintain any records of the funds, and failed to render an accounting for them, among neglect and other charges).

Under the foregoing cases, Molina’s misconduct warrants a substantial suspension. However, given the presence of mitigating circumstances, including her expressed desire to learn better practices, the Bar believes a term of probation is appropriate.

17.

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.
18.

Consistent with the *Standards* and Oregon case law, the parties agree that Molina shall be suspended for six (6) months for violations of RPC 1.15-1(a) and RPC 1.15-1(c), with the suspension fully stayed, pending Molina’s successful completion of a three (3)-year term of probation. The sanction shall be effective on the first day of the month following approval by the Disciplinary Board (“effective date”).

19.

Probation shall commence upon the effective date and shall continue for a period of three (3) years, ending on the day prior to the third (3rd) year anniversary of the effective date (the “period of probation”). During the period of probation, Molina shall abide by the following conditions:

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

(b) Molina has been represented in this proceeding by David J. Elkanich (“Elkanich”). Molina and Elkanich hereby authorize direct communication between Molina and DCO after the date that this Stipulation for Discipline is signed by both parties, for the purposes of administering this agreement and monitoring Molina’s compliance with her probationary terms.

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

(d) During the period of probation, Molina shall attend not less than twelve (12) MCLE accredited programs, for a total of thirty-six (36) hours, which shall emphasize law practice management and trust account practices. These credit hours shall be in addition to those MCLE credit hours required of Molina for her normal MCLE reporting period. The Ethics School requirement does not count towards the thirty-six (36) hours needed to comply with this condition but it can be applied to Molina’s regular MCLE reporting requirements. Trust Accounting School may be applied to this requirement. Upon completion of the CLE programs described in this paragraph, and prior to the end of her period of probation, Molina shall submit an Affidavit of Compliance to DCO.

(e) Prior to the end of the period of probation, Molina shall attend Trust Accounting School, offered by the Oregon State Bar twice a year in the spring and fall. Upon completion of Trust Accounting School, and prior to the end of her period of probation, Molina shall submit an Affidavit of Compliance to DCO.
(f) Each month during the period of probation, Molina shall:

(1) maintain complete records, including individual client ledgers, of the receipt and disbursement of client funds and payments on outstanding bills;

(2) ensure the proper handling of both lawyer and client funds, including possession and maintenance of proper documentation; and

(3) review her monthly trust account records and client ledgers and reconcile those records with her monthly lawyer trust account bank statements.

(g) For the period of probation, Molina will employ a bookkeeper approved by DCO (“Bookkeeper”), to assist in the monthly reconciliation of her lawyer trust account records and client ledger cards.

(h) Within thirty (30) days of the effective date, Molina shall arrange for an accountant approved by DCO (“Accountant”) to conduct an audit of her lawyer trust account and to prepare a report of the audit for submission to DCO within ninety (90) days of the effective date. Specifically, that audit will establish:

(1) That Molina is currently utilizing proper procedures for tracking and management of her lawyer trust account.

(2) That there is no discrepancy in trust funds with client funds that should then be on hand.

(i) On or before the day prior to the first (1st) and second (2nd) year anniversary of the commencement date, Molina shall arrange for Accountant to conduct an audit of her lawyer trust account and to prepare a report of the audit for submission to DCO within thirty (30) days thereafter.

(j) Between April 30, 2022, and June 30, 2022, Molina shall arrange for Accountant to conduct a final audit of her lawyer trust account and to prepare a report of the audit for submission to DCO prior to the end of her period of probation.

(k) Kristen Brouhard, OSB No. 136482, shall serve as Molina’s probation supervisor (“Supervisor”). Molina shall cooperate and comply with all reasonable requests made by her Supervisor that Supervisor, in their sole discretion, determines are designed to achieve the purpose of the probation and the protection of Molina’s clients, the profession, the legal system, and the public. Molina agrees that, if Supervisor ceases to be her Supervisor for any reason, Molina will immediately notify DCO and engage a new Supervisor, approved by DCO, within one month.
(l) Beginning with the first month of the period of probation, Molina shall meet with Supervisor in person at least once a month for the first six (6) months, and once per quarter thereafter, for the purpose of permitting her Supervisor to inspect and review Molina’s accounting and record keeping systems to confirm that she is reviewing and reconciling her lawyer trust account records and maintaining complete records of the receipt and disbursement of client funds. Molina agrees that her Supervisor may contact her Bookkeeper, Accountant, and all employees and independent contractors who assist Molina in the review and reconciliation of her lawyer trust account records.

(m) Molina authorizes her Supervisor to communicate with DCO regarding her compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Molina’s compliance.

(n) Within thirty (30) days of the effective date, Molina shall contact the Professional Liability Fund (“PLF”) and schedule an appointment on the soonest date available to consult with PLF’s Practice Management Advisors in order to obtain practice management advice. Molina shall notify DCO of the time and date of the appointment.

(o) Molina shall attend the appointment with the PLF’s Practice Management Advisors 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 her employment. No later than thirty (30) days after recommendations are made by the PLF’s Practice Management Advisors, Molina shall adopt and implement those recommendations.

(p) No later than sixty (60) days after recommendations are made by the PLF’s Practice Management Advisors, Molina shall provide a copy of the Office Practice Assessment from the PLF’s Practice Management Advisors and file a report with DCO stating the date of her consultation(s) with the PLF’s Practice Management Advisors; identifying the recommendations that she has adopted and implemented; and identifying the specific recommendations she has not implemented and explaining why she has not adopted and implemented those recommendations.

(q) Molina shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with PLF Practice Management Advisors within the sixty (60) days following the first (1st) year anniversary of the commencement date.

(r) On a quarterly basis, on dates to be established by DCO beginning no later than thirty (30) days after the effective date, Molina shall submit to DCO a written “Compliance Report,” approved as to substance by her Supervisor (and signed by Bookkeeper, confirming reconciliation of appropriate handling of accounts.
and trust transactions), advising whether Molina is in compliance with the terms of this Stipulation for Discipline, including:

(1) The dates and purpose of Molina’s meetings with her Supervisor.

(2) The results of the monthly reconciliations conducted or verified by Bookkeeper.

(3) Whether Molina has completed the other provisions recommended by her Supervisor, if applicable.

(4) In the event that Molina has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.

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

(t) Molina’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 her Supervisor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.

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

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

20.

Molina 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 any term of her suspension, if any stayed period of suspension is actually imposed. In this regard, if any stayed period of suspension is actually imposed Molina has arranged for Kristen Brouhard, OSB No. 136482, an active member of the Bar, to either take possession of or have ongoing access to Molina’s client files and serve as the contact person for clients in need of the files during the term of her actual suspension. Molina represents that Kristen Brouhard, has agreed to accept this responsibility.

21.

Molina acknowledges that reinstatement is not automatic on expiration of any period of suspension, if any stayed period of suspension is actually imposed. If a period of suspension is necessitated by her non-compliance with the terms of her probation, she will be required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Molina also
acknowledges that, should a suspension occur, 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.

22.

Molina 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, if a suspension is imposed. This requirement is in addition to any other provision of this agreement that requires Molina to attend continuing legal education (CLE) courses.

23.

Molina 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 Molina is admitted: Texas.

24.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 8, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 18th day of July, 2019.

/s/ Abigail Molina
Abigail Molina
OSB No. 176383

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich
David J. Elkanich
OSB No. 992558
Attorney for Respondent

EXECUTED this 23rd day of July, 2019.

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  

MICHAEL SCHOCKET,  
Respondent.  

Counsel for the Bar:  Amber Bevacqua-Lynott  
Counsel for the Respondent:  None  
Disciplinary Board:  None  
Disposition:  Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.16(d), RPC 8.1(a)(1), and RPC 8.4(a)(3).  
Stipulation for Discipline. 6-month suspension with BR 8.1 formal reinstatement.  
Effective Date of Order:  October 14, 2019  

ORDER APPROVING STIPULATION FOR DISCIPLINE  

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Schocket is suspended for six (6) 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 1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.16(d), RPC 8.1(a)(1), and RPC 8.4(a)(3), the sanction to be effective October 14, 2019.  

IT IS FURTHER ORDERED that when Schocket applies for reinstatement, he shall pay to the Bar $737.50, which represents half of its reasonable and necessary costs incurred for Schocket’s two depositions. Should Schocket fail to pay $737.50 within one year of the date of this Order, the Bar may thereafter, without further notice to Schocket, obtain a judgment against Schocket for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.
STIPULATION FOR DISCIPLINE

Michael Schocket, attorney at law (“Schocket”), 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. Schocket was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 11, 2013, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3. Schocket 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 April 26, 2019, an Amended Formal Complaint was filed against Schocket pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 1.3 (duty of diligence); 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 a client to make informed decisions regarding the representation); RPC 1.5(a) (clearly excessive fee); RPC 1.15-1(a) (duty to hold property of clients separate from the lawyer’s own property); RPC 1.15-1(c) (duty to deposit and maintain client funds in trust); RPC 1.15-1(d) (duty to promptly account for and deliver client funds and property that the client is entitled to.
receive); RPC 1.16(d) (duty to take reasonable steps upon termination of representation to protect a client’s interests, including the return of client file and refund of unearned advance fees); RPC 8.1(a)(1) (knowing false statements of material fact in a disciplinary matter); and RPC 8.4(a)(3) (conduct involving misrepresentation) 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.

William Gray Matter  
Case No. 18-133  

Facts

5. On March 20, 2017, William Gray (“Gray”) consulted with Schocket by telephone about whether Schocket could complete court-provided forms Gray had obtained directly from the Yamhill County Court to request a modification of his parenting time. During this consultation, Gray reported that he had partially filled in a small portion of the forms but believed he needed legal assistance with the remaining information. Schocket understood that the completion of the court-provided forms was time-sensitive because Gray was moving out-of-state. Based upon Gray’s representation of the amount of work that needed to be done, Schocket represented that he could complete the documents by the next business day following receipt.

6. On March 21, 2017, Gray hired Schocket to complete the court-provided forms, at the rate of $150 an hour, and paid Schocket a $750 retainer pursuant to a written fee agreement providing that this fee was “a fully refundable retainer deposit” to be placed in a lawyer trust account to be withdrawn only upon being earned. Schocket reported to Gray that he anticipated being able to complete the entire project for less than the $750 retainer. Schocket did not deposit Gray’s retainer in his lawyer trust account or maintain it separately from his own funds.

7. On March 22, 2017, Gray scanned and emailed to Schocket the court-provided forms which Gray had partially completed by hand (“Gray Forms”). Upon his receipt and review of the Gray Forms, Schocket immediately determined that it would take significantly more time to complete the forms than the $750 retainer would cover, in part because Schocket believed it was necessary to draft a new parenting plan, which was not among the Gray Forms. However, Schocket did not notify Gray of these realizations before proceeding with the work or at any time before purportedly consuming the entire $750 retainer at his hourly rate.

8. In addition, Schocket intended to locate and type online fillable versions of the Gray Forms and only handwrite those forms that were unavailable electronically because writing
legibly was difficult for him. Schocket did not notify Gray of the challenges with his writing; of his intention to discard and reconstruct the Gray Forms that he could find online; or that, in the event that certain forms were not available online, any forms he completed by hand might be difficult to decipher.

9.

On April 1, 2017, Schocket requested an additional $625 from Gray to complete the Gray Forms.

10.

On April 3, 2017, Gray terminated the representation, asked for a refund of the unused portion of the $750 retainer, an accounting of his $750 retainer, and any of the completed Gray Forms. Schocket did not respond, and did not provide any of these items to Gray, including, in particular, any of the Gray Forms.

11.

On February 25, 2019, Disciplinary Counsel’s Office (“DCO”) conducted Schocket’s sworn deposition before a certified court reporter related to Gray’s grievance (“Schocket Deposition”).

12.

During the course of the Schocket Deposition, in response to questions about how he informed Gray of specific information (\(e.g.,\) the increased scope of work necessary), Schocket affirmatively represented that he had multiple telephone calls with Gray that are not reflected in his billing, not referenced in the limited email communications between Schocket and Gray, and not referenced in any prior communications with the Bar from either Gray or Schocket.

13.

During the Schocket Deposition, in reviewing the Gray Forms, Schocket also asserted that he filled out the large majority of information contained in both versions of the Gray Forms (\(i.e.,\) those provided by Gray and those provided by Schocket), even when the information was clearly not in Schocket’s handwriting, and instead identical to the few places Schocket acknowledged that Gray had completed.

Violations

14.

Schocket admits that his decision to begin working upon his receipt of the Gray Forms, without consulting Gray about the expanded scope of, and time needed to complete, the representation constituted a failure to keep his client reasonably informed about the status of a matter and a failure to explain a matter to the extent reasonably necessary to permit his client
to make informed decisions regarding the representation, in violation of RPC 1.4(a) and RPC 1.4(b).

15.

Schocket further admits that his failure to deposit and maintain the Gray $750 retainer in his lawyer trust account constituted a violation of his duty to hold property of clients separate from his own property under RPC 1.15-1(a), as well as his duty to deposit and maintain in his lawyer trust account legal fees and expenses that have been paid in advance, as required by RPC 1.15-1(c).

16.

Schocket acknowledges that billing Gray for five hours of legal work without providing him with any of the completed Gray Forms amounted to an excessive fee, in violation of RPC 1.5(a). Similarly, Schocket admits that his failure to return the Gray Forms to Gray along with his failure to account for or return any portion of Gray’s $750 retainer constituted a failure to promptly render an accounting of client funds and promptly deliver to the client funds or other property that the client is entitled to receive in violation of RPC 1.15-1(d), and the failure to take reasonable steps upon termination of representation to protect a client’s interests, including the return of client file and refund of unearned advance fees, in violation of RPC 1.16(d).

17.

Finally, Schocket admits that some of his contentions during the Schocket Deposition regarding the content, number, and timing of his claimed communications with Gray were inaccuracies that violated RPC 8.1(a)(1).

**Philip Ochs Matter**  
**Case No. 19-38**

**Facts**

18.

Pursuant to a 2010 judgment of dissolution (“Judgment”), Philip Ochs (“Ochs”) was entitled to receive spousal support and one-half of the market value of his wife’s stock option interests in CH2M Hill, her then-employer. Under the Judgment, if and when wife became vested in CH2M Hill stock options, Ochs could require her to exercise all or a portion of his share of the options.

19.

On August 2, 2016, Ochs retained Schocket to enforce his former wife’s compliance with the Judgment. Ochs contended that his former wife had not paid spousal support as required and, because he had had no communication with her for many years, he did not know
whether she had become vested in any stock options or, if so, what value they held. Ochs had no contact information for his former wife, and did not know whether she had counsel.

20.

Pursuant to a written fee agreement, Ochs gave Schocket a $1,000 retainer, against which Schocket was to bill $200 per hour. Schocket agreed to communicate with Ochs’s former wife or her attorney, and to seek relief in court.

21.

On or before August 13, 2016, Schocket drafted and filed a document entitled “Former Husband’s Motion for Enforcement” (“Enforcement Motion”), but did not otherwise file a notice of appearance in the case, or make any efforts to serve the Enforcement Motion, instead relying on Ochs to provide him with service information.

22.

Between mid-August 2016 and at least mid-February 2018, Schocket took no substantive action on behalf of Ochs, including any action to communicate with or serve Ochs’s former wife or her counsel with the Enforcement Motion.

23.

In November 2016, Ochs gave Schocket an address at which his former wife could be served. Schocket assured Ochs he would attend to the matter but, in addition to taking no action for the next nine months, Schocket did not notify Ochs that he had not, and would not, be taking any action on his behalf.

24.

In late February 2017, Ochs learned that wife was represented by one or more attorneys at the Zimmer law firm, and promptly conveyed this information to Schocket. Although Schocket acknowledged to Ochs the Zimmer representation, in addition to taking no action for the next eleven months, Schocket did not notify Ochs that he had not, and would not, be taking any action on his behalf.

25.

During January 2018, Schocket and Ochs exchanged text messages and Ochs urged Schocket to act promptly to enforce his rights. Schocket affirmatively represented to Ochs that he had already called and left one or more messages for his former wife’s attorney at the Zimmer firm, Cassandra Snelling (“Snelling”), but had heard nothing in response. However, there is no record that Schocket left any messages for Snelling or otherwise communicated with her in any way that would have alerted her to his desire to speak with her.
26.

On February 13, 2018, Schocket assured Ochs by text that he was mailing a letter to Snelling that day (“February Letter”). Snelling never received the February Letter or any letter from Schocket.

27.

On March 8, 2018, Ochs requested a copy of the February Letter, and Schocket represented that he had already mailed a hard copy to Ochs. Ochs never received the February Letter from Schocket.

28.

At various points throughout the course of the representation, Schocket failed to respond to multiple requests from Ochs for information regarding Schocket’s efforts. After on or about March 8, 2018, Ochs heard nothing further from Schocket despite additional requests for information.

29.

In response to DCO’s request that Schocket provide a copy of February Letter, Schocket provided a plain paper unsigned draft letter, and affirmatively represented to DCO that he had sent the letter to Snelling on February 12, 2018.

Violations

30.

Schocket admits that his failure to take substantive action on Ochs’s legal matter following the drafting of the Enforcement Motion, including efforts to ensure contact with Snelling or the Zimmer firm, constituted neglect of a legal matter, in violation of RPC 1.3.

31.

Schocket further admits that his failure to provide Ochs with a copy of the February Letter; his failure to respond to multiple requests from Ochs for information regarding Schocket’s efforts to obtain stock option information and make demand on wife, either directly or through counsel; and his failure to ensure that Ochs understood that he would be taking no action, absent further instructions from Ochs, amounted to a failure to keep his client reasonably informed about the status of a matter and promptly comply with reasonable requests for information and a failure to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation, in violation of RPC 1.4(a) and RPC 1.4(b).
Schocket further acknowledges that his representations to Ochs and DCO regarding his transmission of the February Letter were inaccurate, and constituted violations of RPC 8.1(a)(1) and RPC 8.4(a)(3).

Sanction

Schocket 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 Schocket’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.** Schocket violated his duties to his clients to preserve client property; to act with reasonable diligence and promptness in representing them, including his duty to adequately communicate with them; and to act with candor. Standards §§ 4.1; 4.4; 4.6. The Standards provide that the most important ethical obligations are those which lawyers owe to their clients. Standards at 5. In addition, Schocket violated his duties to the profession to refrain from charging excessive fees and to candidly respond to disciplinary inquiries. Standards § 7.0.

b. **Mental State.** There are three types of mental state recognized 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. Standards at 9.

Schocket initially acted negligently with respect to delay in communications with his clients. However, his inaction and lack of communication later became knowing when he was reminded by his clients of the need to act and communicate but still did not always do so. Similarly, Schocket’s mishandling of client property appears initially negligent; however, later reminders for the return of client property transitioned the withholding to knowing. Schocket’s misrepresentations to his client and the Bar were knowing.

c. **Injury.** Injury can either be actual or potential under the Standards. In re Williams, 314 Or 530 (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.

There was significant potential and actual injury to Schocket’s clients, in that their property and/or rights may have been at risk due to his failure to accomplish their legal matters. In addition, both Gray and Ochs’s inability to recover their client file or completed paperwork means that they did not receive any legal services of value from their payment of fees to Schocket.

d. Aggravating Circumstances. Aggravating circumstances include:


e. Mitigating Circumstances. Mitigating circumstances include:


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, while 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 §§ 4.12; 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, or engages in a pattern of neglect and causes injury or potential injury to a client, while 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 §§ 4.42; 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.

The Standards further presume that length of any suspension should range from six months to three years. Standards § 2.3.

Overall, a suspension of at least six months is the presumptive sanction. The application of Schocket’s aggravating and mitigating factors support the appropriateness of that result.

Oregon case law is in accord. See, e.g., In re Smith, 31 DB Rptr 333 (2017) (respondent was suspended for 6 months, and required to seek formal reinstatement, where, in four separate matters, she failed to respond to numerous client inquiries about the status of their legal
matters, believing, in some instances, that she had no information to communicate; failed to maintain adequate records, and therefore failed to properly maintain client funds in trust; and, following termination in two separate matters, failed to promptly account for client funds upon request; In re Daily, 31 DB Rptr 155 (2017) (respondent was suspended for 6 months, and required to seek formal reinstatement, where he agreed to draft, file, and serve a civil complaint in exchange for a $1,500 flat fee; notwithstanding that there was no written fee agreement, respondent did not deposit the client’s advance payment into his lawyer trust account, and failed to return any part of the payment following termination; in a second matter, respondent did not notify the client about developments in her case or respond to her multiple requests for updates, and failed to respond to disciplinary inquiries); In re Ferrua, 30 DB Rptr 99 (2016) (respondent was suspended for 181 days and ordered to pay restitution, where respondent received a flat fee for his oral agreement to represent a client incarcerated on drug-related charges. Respondent failed to put the funds into a lawyer trust account, did not track the funds, neglected the client’s legal matter, and when he later withdrew or was removed due to health reasons and the client requested a refund of unearned fees, refused to refund anything); In re Obert, 352 Or 231, 282 P3d 825 (2012) (respondent was suspended for 6 months when he took a credit card payment from a client and deposited it 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, respondent refused, and respondent thereafter failed to respond to DCO).

36.

Consistent with the Standards and Oregon case law, the parties agree that Schocket shall be suspended for six (6) 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 1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.16(d), RPC 8.1(a)(1), and RPC 8.4(a)(3), the sanction to be effective October 14, 2019.

37.

In addition, when Schocket applies for reinstatement, he shall pay to the Bar $737.50, which represents half of its reasonable and necessary costs incurred for Schocket’s two depositions. Should Schocket fail to pay $737.50 in full by within one year of the date this stipulation is approved, the Bar may therefer, without further notice to Schocket, obtain a judgment against Schocket for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

38.

Schocket 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. Schocket 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.
39.

Schocket 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 Schocket to attend continuing legal education (CLE) courses.

40.

Schocket 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 Schocket is admitted: none.

41.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 16, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 24th day of July, 2019.

/s/ Michael Schocket
Michael Schocket, OSB No. 121697

EXECUTED this 24th day of July, 2019.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott, OSB No. 99028
Chief Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
)
Complaint as to the Conduct of ) Case No. 18-173
)
KAREN MW KNAUERHASE, )
)
Respondent. )

Counsel for the Bar: Susan R. Cournoyer
Counsel for the Respondent: David J. Elkanich
Disciplinary Board: None
Effective Date of Order: July 29, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Karen MW Knauerhase is publicly reprimanded, effective immediately, for violation of RPC 1.15-1(d).

DATED this 29th day of July, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Karen MW Knauerhase, attorney at law (Knauerhase), 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.

Knauerhase was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 19, 2002, and has been a member of the Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

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

4.

On April 13, 2019, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Knauerhase for alleged violations of RPC 1.15-1(d) and RPC 8.1(a)(2) 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 mid-January 2018, Knauerhase met with the Larsons, a married couple seeking advice on a trust matter, for a free consultation at a senior center. Knauerhase took their original trust agreement and medical directives to review, suggest changes, and provide a fee estimate for future work. When the Larsons heard nothing further from Knauerhase, they left multiple phone messages with her answering service, sent multiple emails, and drove to her home office. Knauerhase did not respond. Knauerhase did not return their documents until November 2018, after the Larsons reported her conduct to the Bar.

Knauerhase maintains that she copied the Larsons' documents shortly after she received them, and prepared the originals for mailing back to the Larsons. She believed that the envelope containing the documents and her cover letter were mailed to the Larsons on January 19, 2018. When the Larsons contacted Knauerhase for return of the trust documents, she and her assistant believed that the documents had already been sent. However, the envelope addressed to the Larsons was inadvertently misplaced among other materials and was not mailed. When Knauerhase happened upon the envelope in early November 2018, she immediately mailed the documents to the Larsons with an apology.
Violation

6.

Knauerhase admits that, by failing to return the Larsons’ documents from January to November 2018, she violated RPC 1.15-1(d).

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 8.1(a)(2) should be and, upon the approval of this stipulation, is dismissed.

Sanction

7.

Knauerhase 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 Knauerhase’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 return the Larsons’ documents, Knauerhase violated a duty owed to clients.

b. **Mental State.** Knauerhase's delay in locating and returning the file materials after the Larsons’ multiple requests for their return was negligent (defined as a 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.** Knauerhase's actions caused harm, in the form of anxiety and upset, to the Larsons, who waited ten months for her to return their documents, even after seeking help from the Bar.

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

   1. Knauerhase has substantial experience in the practice of law. *Standard 9.22(i).*

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

   1. Absence of prior discipline. *Standard 9.32(a).*
   2. Absence of a dishonest or selfish motive. *Standard 9.32(b).*
   3. Personal medical issues (Knauerhase was diagnosed with cancer in early June 2018, and thereafter was away from her office for substantial periods of time as she underwent surgery and chemotherapy). *Standard 9.32(c).*
4. Knauerhase has expressed remorse for her conduct. *Standard 9.32(l).*

8.

Under the ABA *Standards*, public reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standard 4.13.*

9.

Oregon case law is in accord. The following cases resulted in public reprimand when the attorney violated RPC 1.15-1(d) by failing to return or account for client property or papers:

*In re Collins*, 31 DB Rptr 167 (2017). Attorney did not provide an accounting requested by his client and did not provide a refund due to the client for over four months.

*In re Morgan*, 31 DB Rptr 28 (2017). Upon a client’s termination of the representation, attorney failed to promptly account for or deliver funds that had been advanced for costs but remained unspent.

*In re Burt*, 30 DB Rptr 139 (2016). Criminal defendant made multiple requests for copies of all discovery materials. His court-appointed attorney did not provide all of the discovery material before trial or even after the client complained to the Bar.

10.

Consistent with the *Standards* and Oregon case law, the parties agree that Knauerhase shall be publically reprimanded for violation of RPC 1.15-1(d), the sanction to be effective immediately upon the Disciplinary Board Adjudicator’s approval of this stipulation.

11.

Knauerhase 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.

12.

Knauerhase 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 Knauerhase is admitted: Washington.

13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on May 28, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties
agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 17th day of July, 2019.

/s/ Karen NW Knauerhase
Karen MW Knauerhase, OSB No. 020663

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich
David J. Elkanich, OSB No. 992558

EXECUTED this 22nd day of July, 2019.

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. 18-171

RONALD L. SPERRY, )
)
Respondent. )

Counsel for the Bar: Dawn Miller Evans
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.2(a), RPC 1.4(a), and RPC 1.4(b).
Stipulation for Discipline. Public Reprimand.
Effective Date of Order: August 7, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Ronald L. Sperry, III, is publicly reprimanded for violation of RPC 1.2(a), RPC 1.4(a), and RPC 1.4(b).

DATED this 7th day of August, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Ronald L. Sperry, III
Ronald L. Sperry, III, OSB No. 091525

/s/ Dawn Miller Evans
Dawn Miller Evans, OSB No. 141821
STIPULATION FOR DISCIPLINE

Ronald L. Sperry, III, attorney at law (“Sperry”), 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.

Sperry was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 21, 2009, and has been a member of the Bar continuously since that time, having his office and place of business in Douglas County, Oregon.

3.

Sperry 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 31, 2018, a Formal Complaint was filed against Sperry pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 1.2(a) (duty to abide by a client’s decision whether to settle a 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); and 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) 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 June 2013, Laura Mauer (“Mauer”) entered into a contract with her mother, Margaret Colgan (“Colgan”), which provided that Colgan would pay Mauer a fixed monthly sum in return for room, board, and care (“Long Term Care Agreement”).

6.

On September 30, 2014, the court appointed Mauer as Colgan’s guardian and Gary Gries as Colgan’s conservator (“Conservator”). The Conservator retained Jeffrey L. Pugh (“Pugh”) as his counsel. On January 27, 2015, the court entered an order granting the
Conservator’s motion to reduce the amount of monthly payments being paid by the Conservator to Mauer. On July 10, 2015, Pugh filed a petition seeking to further reduce the payments (“Pugh Petition”). On August 15, 2015, Mauer’s brother filed an objection to the Pugh Petition, asserting that, *inter alia*, Mauer should receive no money at all from the Conservator.

7.

On August 17, 2015, Mauer retained Sperry for assistance in the Colgan Matter, specifically to oppose the Pugh Petition and the reductions in the amount of Mauer’s monthly fees due to her under the Long Term Care Agreement.

8.

On September 16, 2015, Sperry filed a petition seeking payment by the Conservator to Mauer for services rendered under the Long Term Care Agreement and an additional sum for attorney fees (“Sperry Petition”). On September 29, 2015, Pugh filed an objection to the Sperry Petition, seeking attorney fees and arguing, *inter alia*, that the Long Term Care Agreement was invalid because Colgan was incompetent when she entered into it. On February 12, 2016, the court issued an opinion denying the Sperry Petition, finding that Colgan was incompetent at the time she executed the Long Term Care Agreement, and that no funds, including attorney fees, were due to Mauer under the Long Term Care Agreement.

9.

On April 1, 2016, Pugh filed an annual accounting that inaccurately asserted that an order reducing the Conservator’s payments to Mauer had been entered. Pugh also filed a notice that objections to the accounting must be filed by April 19, 2016.

10.

On April 4, 2016, Sperry filed Mauer’s objection to the Pugh Petition, which was set for hearing on July 25, 2016 (“hearing on objection”). On April 19, 2016, Mauer notified Sperry that she did not agree with the accounting, directed that he file an objection, and requested that he update her and explain their legal plan. Sperry agreed to file an objection to the accounting, but failed to do. Sperry did not notify Mauer that he had failed to file an objection to the accounting.

11.

On May 2, 2016, when Mauer received court notice that no objection had been filed to the accounting, she sent an email to Sperry reminding him of her request that he file an objection. Sperry did not respond to Mauer. An order approving the accounting was entered on or about August 1, 2016.
12.

On July 12, 2016, and July 17, 2016, Mauer directed Sperry not to agree to anything with Pugh or submit any pleading until she had a chance to review and approve any settlement beforehand. Thereafter and prior to the hearing on objection Sperry settled the relevant dispute directly with Pugh, without the review, consultation or approval of Mauer and, on July 25, 2016, executed a stipulated order memorializing that settlement, without the review, consultation or approval of Mauer. On July 29, 2016, the court entered an order approving the settlement (“Pugh-Sperry Settlement Order”). Sperry did not explain or otherwise notify Mauer of the entry of the Pugh-Sperry Settlement Order.

13.

On August 20, 2016, Mauer first learned of the Pugh-Sperry Settlement Order through reviewing entries on an invoice for Sperry’s services. She emailed Sperry, inquiring about the matter. Sperry did not respond.

Violations

14.

Sperry admits that, by failing to timely file an objection to the accounting and by settling the dispute with Pugh without Mauer’s review, consultation or approval, he violated RPC 1.2(a). Sperry admits that, by not advising Mauer that he had entered into a settlement agreement and executed a stipulated order memorializing the settlement, he violated RPC 1.4(a) and RPC 1.4(b).

Sanction

15.

Sperry 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 Sperry’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.** Sperry violated his duty of diligence to fully and adequately communicate with his client and to secure authority from her to settle a claim she was asserting. Standards § 4.4. The Standards presume that the most important ethical duties are those which lawyers owe to clients. Standards at 5.

b. **Mental State.** Sperry’s violations appear to have been both negligent and knowing. “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. *Id.* Sperry’s failure to file an objection to the accounting and to tell Mauer about it was negligent. However, not conferring with Mauer before agreeing to settle the dispute and executing a stipulated order documenting the settlement was knowing.

c. **Injury.** Consideration of actual or potential injury is appropriate. *Standards* § 3.0; *In re Williams*, 314 Or 530, 547 (1992). Mauer was caused actual injury by being deprived of the opportunity to actually weigh in on whether to settle for the amount stipulated to and was potentially injured to the extent that a greater settlement was possible.

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


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

3. Personal or emotional problems. *Standards* § 9.32(c). Sperry reported experiencing anxiety and attention deficit problems during this time period that impacted his ability to organize his work and complete tasks.
5. Sperry has expressed remorse for his conduct and its impact on Mauer. *Standards* § 9.32(l).

16.

Under the ABA *Standards*, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client (here, securing client authority for the settlement of a claim) and causes injury to the 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. Although the presumptive sanction is a short suspension, in light of Sperry’s substantial mitigation, which outweighs his aggravating factors in both number and weight, a reprimand appears sufficient.
17. Oregon case law is in accord that a reprimand is appropriate for similar conduct where there is significant mitigation in amount and/or weight. See, e.g., In re Ingram, 26 DB Rptr 65 (2012) (Attorney reprimanded when, after concluding that his client’s lawsuit had no merit and before consulting with his client, he informed opposing counsel that he would not oppose a defense motion for summary judgment; did not convey to his client a defense proposal to stipulate to a dismissal without costs; did not notify his client that the case had been dismissed; and waived any objection to a form of judgment which included costs.); In re Bailey, 25 DB Rptr 19 (2011) (Attorney reprimanded after accepting a settlement offered by an opposing party without consulting with, or obtaining authority from, attorney’s client.); and In re Monsebroten, 31 DB Rptr 198 (2017) (Attorney reprimanded after agreeing to proposed stipulated order drafted by the opposing counsel which included settlement terms his clients had not agreed to, without reviewing it with the clients on the mistaken belief that the additional details were within the scope of his express and implied authority.).

18. Consistent with the Standards and Oregon case law, the parties agree that Sperry shall be publicly reprimanded for violation of RPC 1.2(a); RPC 1.4(a); and RPC 1.4(b); the sanction to be effective upon approval by the Disciplinary Board.

19. Sperry 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.

20. Sperry 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 Sperry is admitted: None.

21. Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 20, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties
agree that the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 26th day of July, 2019.

/s/ Ronald L. Sperry, III
Ronald L. Sperry, III, OSB No. 091525

EXECUTED this 2nd day of August, 2019.

OREGON STATE BAR

By: /s/ Dawn Miller Evans
Dawn Miller Evans, OSB No. 141821
Disciplinary Counsel
TRIAL PANEL OPINION

In this disciplinary proceeding, the Oregon State Bar (“Bar”) alleges that respondent, Elizabeth D. Logsdon, committed multiple violations of the Oregon Rules of Professional Conduct (“RPC”) in connection with two client matters. She is also charged with failure to respond to the Bar’s investigation of that conduct.

In April 2019, the Adjudicator entered an order of default against respondent for failure to answer the complaint then pending. Accordingly, the factual allegations in the complaint are deemed true. BR 5.8(a). Our task as the trial panel is first to determine whether those allegations constitute the violations asserted by the Bar. We are to look only within the four corners of the complaint in making this determination.1

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1 The Bar’s sanctions memorandum cites facts not pleaded in the complaint in some of its arguments asking us to find the specified rule violations. We have ignored such evidence in making those threshold determinations and relied only upon the facts actually pleaded.
If we conclude the facts alleged support one or more of the charges, we must then decide the appropriate sanction to impose. We are able to consider additional evidence on this question, and we have reviewed the memorandum submitted by the Bar and the supporting evidence cited therein in reaching our decision.

As discussed in detail below, we conclude that the Bar has alleged facts to support all of the claimed rule violations. We also conclude that the appropriate sanction is disbarment.

BACKGROUND OF PROCEEDING

On March 22, 2018, the Bar received a grievance from Johnathan M. L. Kelley ("Kelley"), raising concerns about respondent’s neglect of his case, her lack of communication, and her failure to refund any portion of his retainer. Disciplinary Counsel’s Office ("DCO") sought respondent’s reply to these concerns.

On May 15, 2019, DCO received a copy of a Client Security Fund Application from another client, Brenden Tuohy ("Tuohy"), similarly raising concerns about respondent’s neglect of his criminal case, her failure to communicate with him, and her failure to refund any portion of his retainer. DCO requested that respondent explain herself here as well.

Although respondent did respond to at least one of DCO’s communications, she did not substantively respond to inquiries regarding either client. On August 28, 2018, respondent was suspended pursuant to BR 7.1 for this failure to respond.

On January 22, 2019, the Bar filed its formal complaint against respondent. It was served on respondent on February 13, 2019 (Ex 4).

Respondent filed no answer, even after receiving a ten-day notice of intent to seek an order of default. An order of default was entered on April 3, 2019.

ALLEGATIONS AND VIOLATIONS


Respondent performed no legal work for Tuohy. She nonetheless withdrew and spent all of the retainer by the end of July 2017. Complaint, ¶¶30-31.

In early June 2017, the Professional Liability Fund ("PLF") contacted some of respondent’s clients and told them that respondent was closing her practice for health reasons and would be withdrawing from their cases. Complaint, ¶4.

Two months later, in August 2017, respondent accepted a $2,500 cash retainer from Kelly to represent him in a child custody case. Complaint, ¶5. She did not tell Kelley that she had closed her practice or that she had any health issues that might affect her ability to represent him. Complaint, ¶4.
Kelley asked for an accounting multiple times between October 2017 and January 2018. Despite respondent’s promises to do so, she never did. *Complaint*, ¶12.

On January 17, 2018, respondent was administratively suspended for failing to pay her Bar dues. She did not tell Tuohy or Kelley of this suspension. *Complaint*, ¶¶13, 32.


On March 30, 2018, Tuohy sent respondent a letter by certified mail in which he terminated the representation and asked for a refund of his retainer. Respondent did not respond or refund any money to Tuohy. *Complaint*, ¶34.

Based upon her handling of these two client matters the Bar has charged respondent with multiple rule violations. We consider them in the order in which they are presented in the Bar’s sanctions memorandum.

**Second Cause of Complaint: Lack of Competence, Neglect, and Misrepresentation in the Kelley Matter.**

The Bar alleges violations of RPCs 1.1, 1.3, and 8.4(a)(3) in the Second Cause of Complaint.2

RPC 1.1 provides: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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

RPC 8.4(a)(3) provides: “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.”

Lawyers must be competent to perform the engagements they undertake. RPC 1.1 may be violated when a lawyer fails to adequately prepare a client’s case in a host of ways. See, e.g., *In re Magar*, 296 Or 799 (1984); *In re Rudie*, 294 Or 740 (1983); *In re Greene*, 276 Or 1117 (1976).

Although hired by Kelly in August 2017, respondent did nothing of substance on the case before the September 5, 2017 hearing. She did not request discovery or notify the court of her representation. *Complaint*, ¶8. At the hearing she appeared without any necessary documents and was unable to cross-examine witnesses or present evidence in a competent manner. *Complaint*, ¶9.

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2 There are also other rule violations charged in this cause of complaint that we discuss below.
Respondent also did nothing on the case after the hearing and was ultimately replaced by substitute counsel in April of 2018. Complaint, ¶10. She also ignored her client’s requests for information. Complaint, ¶11.

The Bar contends that respondent’s conduct was a failure to competently represent her client in violation of RPC 1.1, citing In re Eadie, 333 Or 421 (2001) (attorney violated rule at trial by seeking to elicit inadmissible evidence, failing to be prepared, making untimely objections, and moving for a new trial after accepting satisfaction of judgment). The allegations support such a conclusion.

The Bar also argues that respondent’s inaction constituted neglect under RPC 1.3. Neglect under the rule is the failure to act or the failure to act diligently. A lawyer’s conduct must be considered as a whole, rather than as discrete, isolated events. In re Magar, 335 Or 306 (2003); In re Eadie, 333 Or 42 (2001).

Along with the previously described failures, respondent also told her client she filed a motion to compel and a motion to postpone the trial when she did not. Complaint, ¶11. Respondent did little to nothing to further her client’s position at any point during the engagement.

The Bar argues that this inaction, coupled with her failure to communicate with her client, is sufficient to find a violation of RPC 1.3, citing In re Murphy, 349 Or 366 (2010) and In re Koch, 345 Or 444 (2008). We agree here that respondent’s failure to act constituted neglect in violation of RPC 1.3.3

Respondent also falsely told her client that she had filed certain motions in the case when she had not. The Bar argues that this statement is a misrepresentation under the rules.

In order to sustain such a charge the Bar must allege that respondent made a knowing, false, and material misrepresentation. In re Eadie, 333 Or 42 (2001); In re Kluge, 332 Or 251, 255 (2001). The allegations contain these elements. These misrepresentations violated RPC 8.4(a)(3). See In re Butler, 324 Or 69 (1996) (attorney violated rule by assuring clients on several occasions that he was working on the clients’ case even though the case had been dismissed for lack of prosecution); In re Sousa, 323 Or 137 (1996) (attorney made misrepresentations to clients regarding the filing and/or status of legal matters). We find that the elements are sufficiently alleged to constitute a violation of the rule.

Second and Fifth Causes of Complaint: Inadequate Communication with Both Clients.

The rules at issue here are RPC 1.4(a) and (b). Rule 1.4(a) states: “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable

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3 The Bar also cites: In re Jackson, 347 Or 426 (2009) (attorney was not prepared for a settlement conference in dissolution proceeding, failed to send his calendar of available dates to arbitrator, failed to respond to messages from arbitrator’s office and failed to take steps to pursue the arbitration after a second referral to arbitration by the court) and In re Redden, 342 Or 393 (2007) (attorney failed to complete client’s child support arrearage matter).
requests for information.” Rule 1.4(b) states: “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

Within weeks after Tuohy hired respondent the PLF began helping her to close her practice due to medical circumstances. Complaint, ¶3. Respondent did not tell Tuohy about this. Complaint, ¶29. In January 2018 respondent was suspended for failure to pay Bar dues. She never told her client about this either. Complaint, ¶32. We agree with the Bar that this is the type of information Tuohy was entitled to know to make informed decisions about the representation, and it was also information relating to the status of the matter that she was required to share with him.

With respect to Kelley, after the September 5, 2017 hearing, respondent had only intermittent contact with Kelley up until approximately January 2018, at which time she completely stopped communicating. Complaint ¶¶11, 13. She provided him with no substantive information, and she failed to respond to reasonable requests for information. She also failed to tell Kelley she had been suspended and could not represent him. Complaint, ¶13.

We agree that these failures to communicate violated both RPC 1.4(a) and (b).4

First and Fifth Causes of Complaint: Mishandling of Client Funds.

The rules involved here are RPC 1.15-1(a) and (c), as well as RPC 8.4(a)(3).

RPC 1.15-1(a) states: “A lawyer shall hold property of clients in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the lawyer's office is situated.”

RPC 1.15-1(c) goes on: “A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the fee is denominated as “earned on receipt”, “nonrefundable” or similar terms and complies with Rule 1.5(c)(3).” We have previously recited the provisions of RPC 8.4(a)(3).

4 The Bar cites the following cases here: In re Gatti, 356 Or 32 (2014) (attorney failed to explain to multiple clients how a lump sum settlement offer would be allocated among them, and failed to provide them with the disclosures required for such an allocation); In re Snyder, 348 Or 307 (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); In re Koch, 345 Or 444 (2008) (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 the second lawyer when they needed information and assistance from attorney to complete the legal matter).
In April 2017, Tuohy gave respondent a $1,500 retainer, which was to be kept in her lawyer trust account per the written fee agreement. Complaint, ¶30. Respondent withdrew all of the retainer funds by July 31, 2017 and knowingly converted them to her own use unrelated to the client’s case. Complaint, ¶30. We agree that this violated RPC 1.15-1(a) & (c). See, e.g., In re Webb, 363 Or 42 (2018) (attorney violated both rules when she mishandled settlement funds of two clients, distributing them to other clients or to cover her own outstanding personal and business obligations when she was not entitled to do so).

Taking a client’s money before it is earned constitutes conversion. Rizo v U-Lane-O Credit Union, 178 Or App 498, 502–03 (2001); In re Martin, 328 Or 177, 188 (1998); In re Whipple, 320 Or 476, 481 (1994). The Bar alleges that the funds were converted knowingly and that she intended to use the money for her own purposes. The Bar argues that when an attorney intends to convert property or knows that her conduct is culpable in some respect, the conversion is dishonest conduct that violates RPC 8.4(a)(3), citing In re Peterson, 348 Or 325, 335 (2010). We agree.5

Respondent also knowingly and intentionally converted the $2,500 retainer given to her by Kelley. She did not deposit the money into her trust account and withdrew it before it was earned. Complaint, ¶5. We agree that this also violated RPC 1.15-1(a) and (c), and RPC 8.4(a)(3).

**Second and Fifth Causes of Complaint: Failure to Account for Client Funds.**

The rule here is RPC 1.15-1(d), which states: “A lawyer shall promptly deliver to a client any funds or other property that the client is entitled to receive and, upon request by the client, shall promptly render a full accounting regarding such property.”

Kelley requested an accounting multiple times between October 2017 and January 2018. Respondent promised to provide an account statement but failed to do so. Complaint, ¶12.

Further, both Kelley and Tuohy asked for a refund when they terminated respondent’s representation in February 2018 and March 2018, respectively. Respondent did not refund any portion of either client’s retainer. Complaint, ¶¶14, 34.

The allegations establish that respondent did not earn all of the $2,500 Kelley gave her as a retainer. When respondent provided no accounting or refund of unearned monies from the

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5 Although we know from the allegations that respondent experienced medical and/or emotional problems at the time, on the allegations and evidence before us we cannot conclude that respondent was so impaired by her medical and emotional circumstances as to lack the capacity to understand what she was doing when she took and spent her clients’ funds. See Webb, supra, 363 Or at 56 (respondent failed to establish that her claimed mental disability caused her taking of client funds); In re Martin, supra, 328 Or at 193 (finding that lawyer’s mental condition did not impair his ability to appreciate the wrongfulness of his conduct, finding that he intentionally misappropriated client funds).
retainer to Kelley she violated RPC 1.15-1(d). Similarly, respondent’s failure to refund any part of Tuohy’s retainer or to justify her use of the funds also violated RPC the rule.

Second Cause of Complaint: Failure to Withdraw from Kelley’s Case when Terminated and Representation Prohibited by RPCs.

The rules at issue here are RPC 1.16(a)(1) and (3). RPC 1.16(a)(1) states: “A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.” RPC 1.16(a)(3) states: “A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.”

Respondent was attorney of record for Kelley when she was suspended in mid-January for failing to pay Bar dues. She should have promptly withdrawn from the representation or gotten herself reinstated immediately. She did neither. Continuing as attorney of record while suspended is itself a violation of the RPCs. Consequently, her failure to either withdraw or reinstate her license violated RPC 1.16(a)(1).

Later, when Kelley fired respondent in February 2018 she was required to withdraw as attorney of record and notify the court. Respondent did not withdraw until substitute counsel appeared in April 2018. We agree that respondent’s failure to promptly withdraw upon discharge violated RPC 1.16(a)(3).

Third and Sixth Causes of Complaint: Failure to Withdraw when Impaired.

RPC 1.16(a)(2) provides: “A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.”

The Bar alleges that respondent represented both clients while impaired. Complaint, ¶¶13, 18. Respondent should not have accepted the engagements for either client at a time when she was impaired by personal and/or medical circumstances. Her choice to do so violated RPC 1.16(a)(2). See In re Biggs, 318 Or 281 (1994) (attorney’s mental condition and excessive use of alcohol rendered it unreasonably difficult for attorney to effectively carry out his representation, violating former rule).6

6 The Bar provides more background information here that we may consider only on the issue of sanctions. During the last part of 2016 and the first part of 2017 respondent experienced several deaths of close family members and had a health issue that caused her to miss days in the office (Ex 5: Decl. of Amber Bevacqua-Lynott ("B-L Dec.")). She nevertheless agreed to represent Tuohy in April 2017. Respondent provided no additional details of her situation thereafter. She stopped responding to inquiries from CAO or DCO. In mid-June 2017, in withdrawal paperwork filed on behalf of respondent by the PLF in another case, the court was told that “Ms. Logsdon has experienced medical circumstances precluding her from continuing to represent” the client, and that respondent could not continue in the representation “due to her medical circumstances,” and “medical reasons” (Ex 5: B-L Dec.).
Fourth and Seventh Causes of Complaint: Failure to Respond to Disciplinary Authorities.

RPC 8.1(a)(2) is the rule that makes cooperation with disciplinary authorities mandatory except for very limited circumstances. It states: “A lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6 [client confidences].”

This rule requires a lawyer to cooperate and respond fully and truthfully to inquiries from and comply with the reasonable requests of Bar disciplinary authorities, subject only to the exercise of any applicable right or privilege. DCO is such a disciplinary authority. The Supreme Court takes a no-tolerance approach to violations of this rule. See, e.g., In re Miles, 324 Or 218 (1996) “The failure to cooperate with a disciplinary investigation, standing alone, is a serious ethical violation.” In re Parker, 330 Or 541, 551 (2000); In re Bourcier, 325 Or 429, 434 (1997).

The complaint sets forth the relevant allegations pertaining to the Kelley case in paragraphs 21-26 and the Tuohy case in paragraphs 41-45. In sum, in both client matters DCO staff made multiple attempts to contact respondent at the physical and email addresses she has on record with the Bar. She responded to some of these communications, but never did address the concerns raised by either Kelley or Tuohy or the specific questions put to her by DCO.

Respondent’s decision not to cooperate with the investigation into her conduct violated RPC 8.1(a)(2). See, e.g., In re Obert, 352 Or 231 (2012) (attorney violated rule by failing to respond to numerous requests from the bar about an ethics complaint until subpoenaed to do so); In re Paulson, 346 Or 676 (2009), adhered to on recons., 347 Or 529 (2010) (attorney violated rule by failing to respond or responding incompletely and insubstantially).

SANCTION

The Oregon Supreme Court refers to the ABA Standards for Imposing Lawyer Sanctions (Standards), in addition to its own case law for guidance in determining the appropriate sanctions for lawyer misconduct.

The Standards establish an analytical framework for determining the appropriate sanction in discipline cases. Three factors are involved: the duty violated; the lawyer’s mental state; and the actual or potential injury caused by the conduct. Once these factors are analyzed, we make a preliminary determination of sanctions, after which we may adjust the sanction, if appropriate, based on the existence of aggravating or mitigating circumstances.

Duty Violated.

Respondent violated her duty to clients to properly safeguard and preserve their property, and to diligently pursue their matters, which includes the duty to adequately communicate. Standards §§ 4.1; 4.4. Respondent also violated her duty to the profession to
properly withdraw from representation and to cooperate with disciplinary investigations. Standards § 7.0.

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.

We may rely on the facts alleged to establish the mental state of an accused lawyer found to be in default. In re Kluge, 332 Or 251, 262 (2001). The Bar asks us to find that respondent knowingly failed to act in the Kelley matter and knowingly failed to communicate with either Kelly or Tuohy. We agree.

Further, we find that respondent intentionally mishandled and converted client funds and property. This conclusion is confirmed by respondent’s decision not to account for or return such property.

We find that respondent knew that she was impaired and knowingly undertook and failed to withdraw from her client matters, in spite of that impairment. Respondent also knew that once she was terminated and suspended she needed to withdraw from Kelley’s case did not to do so.

We are also compelled to find that respondent acted knowingly in failing to respond to Bar inquiries. The letters sent by DCO were duly directed and both mailed and emailed. The allegations establish that the Bar communicated with respondent and that respondent failed to fulfill her responsibilities to meaningfully respond. At the very least respondent acted knowingly when she failed to respond. In re Miles, 324 Or 218, 221–22 (1996).

Extent of Actual or Potential Injury.

When determining an appropriate sanction, we may take into account both actual and potential injury. Standards at 6; In re Williams, 314 Or 530, 840 P2d 1280 (1992).

Here both clients suffered actual injury when they lost their respective retainers. They were both were potentially injured to the extent that they were hampered in their ability to obtain replacement counsel without those funds. The court recognizes actual injury in disciplinary matters in the form of client anxiety and frustration. See In re Cohen, 330 Or 489, 496 (2000); In re Schaffner, 325 Or 421, 426–27 (1997). Respondent’s failure to account for either client’s funds caused actual ongoing injury to her clients and to the integrity of the profession.

Respondent’s failure to cooperate with the Bar’s investigation caused actual injury to both the legal profession and to the public. In re Schaffner, supra; In re Miles, 324 Or 218, 221–22 (1996); In re Haws, 310 Or 741 (1990); see also, In re Gastineau, 317 Or 545, 558
(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).

**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.

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

4.41(b) Disbarment is generally appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

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

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

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

Given the serious violations established here it is our view that the presumptive sanction in this case must be disbarment.

**Aggravating and Mitigating Circumstances.**

All of the following aggravating factors under the *Standards* are present here:

1. A dishonest or selfish motive. *Standards* § 9.22(b). Respondent was motivated by her own personal interests in paying herself and using funds that did not belong to her, rather than safeguarding client money that was unearned. She also allowed personal issues to eclipse her professional obligations to clients.
2. **A pattern of misconduct.** *Standards § 9.22(c).* This matter, along with the violations subject to a prior decision by this panel, show a pattern of theft, neglect, and avoidance. See *In re Bourcier,* 325 Or 429, 436 (1997); *In re Schaffner,* 325 Or 421, 427 (1997).

3. **Multiple offenses.** *Standards § 9.22(d).* There are multiple violations here.

4. **Substantial experience in the practice of law.** *Standards § 9.22(i).* Respondent practiced for approximately 10 years at the time of her misconduct in these cases. During this time, she practiced regularly in the area of family law, and was also a member of the Family Law section of the Bar for at least half of that time (Ex 5: *B-L Dec.*).

5. **Indifference to making restitution.** *Standards § 9.22(j).* Respondent has made no effort to account for or return any money to either client.

These mitigating factors are also here:

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

2. **Personal or emotional problems.** *Standards § 9.32(c).*

The aggravating factors outweigh any argument for mitigation and would justify an increase in the degree of presumptive discipline to be imposed. *Standards § 9.21.* Given that the presumptive sanction here is that she be disbarred we cannot impose any more severe discipline.

**Oregon Case Law.**

Oregon cases support our decision. 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 513, 518 (1977); see also, *In re Martin,* 328 Or 177, 192 (1998) (attorney disbarred for spending client money on personal expenses knowing the money was not yet earned; court reiterated that, “A single act of intentional misappropriation of client funds to the lawyer's own use” generally warrants disbarment); *In re Whipple,* 320 Or 476, 488 (1994); *In re Biggs,* 318 Or 281 (1994); *In re Benjamin,* 312 Or 515 (1991); *In re Phelps,* 306 Or 508 (1988); *In re Laury,* 300 Or 65, 76 (1985).

For cases of serious neglect of client matters the court has typically imposed a suspension of at least 60 days. See *In re Schaffner,* 325 Or 421 (1997) (60-day suspension appropriate for each of attorney's neglect and his failure to cooperate with the Bar); *In re Redden,* 342 Or 393 (2007) (60-day suspension for single serious neglect where no prior discipline); *In re LaBahn,* 335 Or 357 (2003) (60-day suspension for knowing neglect of tort claim and subsequent failure to notify client where aggravating and mitigating factors were in equipoise).

The sanctions regarding failure to communicate with clients usually involve some term of suspension. See, e.g., *In re Snyder,* 348 Or 307 (2010) (failure to respond to client’s status
inquiries, to inform client of communications with opponent, and failure to explain settlement strategy resulted in 30-day suspension); *In re Koch*, 345 Or 444 (2008) (120-day suspension when attorney failed to tell client that another lawyer would prepare a qualified domestic relations order and aided to communicate with the client and second lawyer when they needed information and assistance to complete the matter); *In re Coyner*, 342 Or 104 (2006) (three-month suspension, plus formal reinstatement, when appointed attorney took no action on client’s appeal and failed to disclose dismissal to client).

Although there are a wide range of sanctions for failing to withdraw, the severity of sanctions seems to be tied to the lawyer’s mental state and whether or not the failure to withdraw is for the benefit of the client (versus a self-interest for the respondent). *See, e.g., In re Paulson*, 346 Or 676 (2009), *adhered to on recon.*, 347 Or 529 (2010) (attorney who knowingly failed to withdraw from representing a number of clients after disciplinary suspension was disbarred); *In re Worth*, 336 Or 256 (2003) (attorney received 90-day suspension for negligently failing to withdraw when circumstances required he do so); *In re Biggs*, 318 Or 281 (1994) (attorney disbarred where his mental condition and excessive use of alcohol knowingly impaired his practice and caused him to abruptly leave his practice).

The court has suspended lawyers for failing to cooperate in disciplinary proceedings independent of any other violations. *See, e.g., In re Miles*, 324 Or 218 (1996) (120-day suspension for failure to cooperate when no other substantive violations present); *In re Schaffner*, 323 Or 472 (1996) (60 days of a 120-day suspension attributable to failure to cooperate).

When multiple violations are combined the sanctions have generally been substantial. *See, e.g., In re Obert*, 352 Or 231 (2012) (attorney suspended for six months where he failed to respond to numerous requests from the Bar subpoenaed to do so); *In re Goff*, 352 Or 104 (2012) (18-month suspension for violations including failing to respond to the Bar); *In re Skagen*, 342 Or 183 (2006) (attorney suspended for one year for repeated refusal to produce records or respond to questions in discovery, even after ordered to do so).

Severe sanctions for failing to cooperate are merited when an attorney has previously failed to cooperate, as respondent has done here. *See, e.g., In re Paulson*, 346 Or 676 (2009), *adhered to on recon.*, 347 Or 529 (2010) (attorney disbarred when, in response to bar inquiries, attorney failed to respond or responded incompletely and insubstantially); *In re Schenck*, 345 Or 350, *mod on recon* 345 Or 652 (2008) (attorney who refused to respond to questions posed by the Bar concerning an allegation that attorney obtained a loan from an elderly client, asserting that the bar had no jurisdiction because the woman was a friend, not a client was suspended for one year); *In re Kluge*, 335 Or 326 (2003) (attorney was suspended for two years when he refused to submit to a follow-up interview with bar investigators, challenged their authority to conduct the investigation and then filed groundless ethics complaints against them).
Restitution

The complaint alleges that the clients received nothing of value in exchange for their retainer payments. Pursuant to our authority under BR 6.1 we order respondent to make restitution to Kelley in the amount of $2,500 and to Tuohy in the amount of $1,500.

CONCLUSION

The purpose of lawyer discipline is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties. Standards § 1.1.

In order to protect respondent’s clients, the public and the Bar, we order that respondent be disbarred effective on the date this decision becomes final.

Dated this 10th day of July 2019.

/s/ Mark A. Turner
Mark A. Turner, Adjudicator

/s/ James Underwood
James Underwood, Trial Panel Member

/s/ Bryan Penn
Bryan Penn, Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
)
Complaint as to the Conduct of ) Case No. 19-74
)
CHANNAH ROSE, )
)
Respondent. )

Counsel for the Bar: Susan R. Cournoyer
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 5.5(a) and ORS 9.160(1). Stipulation for Discipline. Public Reprimand.
Effective Date of Order: August 14, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Channah Rose is publicly reprimanded, for violations of RPC 5.5(a) and ORS 9.160(1).

DATED this 14th day of August, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Channah Rose
Channah Rose, OSB No. 150058

/s/ Susan R. Cournoyer
Susan R. Cournoyer, OSB No. 863381
STIPULATION FOR DISCIPLINE

Channah Rose, attorney at law (Rose), 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.

Rose was admitted by the Oregon Supreme Court to the practice of law in Oregon on January 6, 2015, and was a member of the Bar until May 2, 2018, when she was administratively suspended for failures to pay her 2018 Bar membership fees and to comply with the annual IOLTA reporting requirement. At the time of her suspension, Rose worked on contract as a remote associate for a Colorado law firm from her home office in Multnomah County, Oregon.

3.

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

4.

On June 8, 2019, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Rose for alleged violations of RPC 5.5(a) (unauthorized practice of law) of the Oregon Rules of Professional Conduct, and ORS 9.160(1) (holding oneself out as a lawyer in Oregon when 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.

Rose was administratively suspended on May 2, 2018, for failing to pay her 2018 Bar membership fees and to comply with the 2018 IOLTA reporting requirement. Notification of her suspension was delivered to Rose by email at her address on record with the Bar. Rose was unaware of her suspension until December 26, 2018, when she discovered the email notification in a junk folder.

Between May 2 and December 26, 2018, Rose engaged in the practice of law as a remote associate for the Colorado law firm on multiple client matters, for a total of approximately 850 billable hours.
During her suspension, Rose was not an active member of any other state bar.

Immediately upon discovering that she was suspended, Rose ceased practicing law, notified the Colorado law firm, and applied for reinstatement. In her reinstatement application, Rose disclosed that she had practiced law during her suspension. Rose was reinstated to active membership status on June 24, 2019.

**Violations**

6.

Rose admits that, by continuing to practice law between May 2 and December 26, 2018, while suspended, she violated RPC 5.5(a) and ORS 9.160(1).

**Sanction**

7.

Rose 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 Rose’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 practicing law in violation of the regulation of the legal profession, Rose violated a duty owed as a professional. Standard 7.0.

b. **Mental State.** Rose acted with negligence, defined as 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, by failing to timely ascertain that her email account had filtered Bar notifications into a junk mail folder.

c. **Injury.** Rose’s conduct resulted in potential injury, as she handled matters for multiple clients who reasonably believed that their matters were in the hands of a licensed attorney.

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


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


2. Absence or dishonest or selfish motive Standard 9.32(b).
3. Timely good faith effort to rectify consequences of misconduct. *Standard 9.32(d).*

4. Full and free disclosure and cooperative attitude toward disciplinary proceedings. *Standard 9.32(e).*

8.

The Standards provide that 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. *Standard 7.3.*

9.

Oregon cases have resulted in public reprimands for lawyers who acknowledged practicing law during their suspensions. *See, In re Cohn-Lee,* 31 DB Rptr 344 (2017) (attorney administratively suspended for failing to timely submit his IOLTA compliance did not receive the Bar’s notices because he had failed to update his attorney contact information with the Bar as required; on reinstatement application, attorney acknowledged that he had practiced law for three months while suspended); and *In re Bassett,* 16 DB Rptr 190 (2002) (attorney practiced law for 15 days after he was suspended retroactively because he paid his otherwise timely PLF assessment with an NSF check).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that Rose shall be publically reprimanded for violation of RPC 5.5(a) and ORS 9.160(1), effective upon approval of this stipulation by the Disciplinary Board.

11.

Rose 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.

12.

Rose 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 Rose is admitted: none.

13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 8, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties
agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 12th day of August, 2019.

/s/ Channah Rose  
Channah Rose, OSB No. 150058

EXECUTED this 12th day of August, 2019.

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: )
) ) Case No. 17-113
Complaint as to the Conduct of )
) )
LYNN EARL SMITH, )
) )
Respondent. )

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: Kurt F. Hansen
Disciplinary Board: None
Disposition: Violation of RPC 1.1 and RPC 5.5(a). Stipulation for Discipline. 90-day suspension, all stayed, 2-year probation.
Effective Date of Order: September 1, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Smith is suspended for ninety (90) days, all stayed, pending Smith’s successful completion of a two- (2) term of probation, effective the first day of the month following date of this order, for violations of RPC 1.1 and RPC 5.5(a).

DATED this 19th day of August, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Kurt F. Hansen
Kurt F. Hansen, OSB No. 842400

/s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott, OSB No. 990280
STIPULATION FOR DISCIPLINE

Lynn Earl 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 27, 1990, and has been a member of the Bar continuously since that time, having his office and place of business in Clackamas 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 September 19, 2018, a Formal Complaint was filed against Smith pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging multiple violations of RPC 1.1 (competence); and RPC 5.5(a) (assisting a non-lawyer in the unlawful practice of 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.

General Facts

5.

In mid-2015, Smith was introduced by a paralegal friend, Charlie Freeman (“Freeman”), to Kelly Freed (“Freed”), a non-lawyer who operated a business called Home Preservation Strategies, LLC (“HPS”). Freeman’s business, Freeman Paralegals, shared offices with HPS. Smith did not know what services Freed or HPS provided or what either was paid to do. However, he was aware that she was not a lawyer.

6.

Freed told Smith that she had some “clients” that might need his legal assistance. Smith and Freed agreed that HPS would pay Smith $220/hour for his legal services.
7.

In four separate matters, Smith is shown in court records as having entered an appearance on behalf of a party who had been pro se prior to his appearance. In each case, he was asked by Freed to participate and assist the client.

8.

Smith billed HPS for all legal services he provided to HPS clients, and was paid by Freed or HPS, not the individual clients he represented, although Smith assumed that Freed was billing and collecting these amounts from the clients, and using the collected amounts to pay his fees.

Chandler & Newville v. Violette Matter

Facts

9.

On August 18, 2015, a residential eviction proceeding was initiated by Chandler & Newville, Inc. (“C & N”) against Donna Violette (“Violette”), John Kalles (“Kalles”), and all others in Multnomah Circuit Court, Case No. 15LT08485 ("Chandler & Newville v. Violette"). Shortly thereafter, Violette hired HPS to assist her in defending against the claims being asserted against her in Chandler & Newville v. Violette.

10.

On August 25, 2015, on behalf of Violette, Freed requested that Smith represent Violette at a hearing on August 27, 2015, in which Freed asserted that Violette was seeking to secure a temporary restraining order to prevent C & N from continuing with a nonjudicial foreclosure and eviction proceedings. In actuality, no motion for a restraining order had been filed by or on behalf of Violette. An hour prior to a scheduled hearing, Smith agreed to appear on Violette’s behalf, but took no steps to review the court’s file to determine what had been filed prior to appearing.

11.

On August 27, 2015, Smith appeared at hearing for Violette before Judge Jon Ghastin in the Chandler & Newville v. Violette eviction matter, and reported to the court that he was appearing for Violette “today only.” Freed was also present. Following hearing, the court required the defendants (Violette and Kalles) to “file an answer by 5:00 PM today with Room 201.” No answer was filed on August 27, 2015, and the plaintiff sought entry of a default.

12.

On September 1, 2015, with Freed’s assistance, Kalles filed answers for Violette and him. Freed paid the filing fees.
13.

On September 2, 2015, Smith appeared at hearing for Violette before Judge Ghastin. Freed was also present. Following hearing, the court denied plaintiff’s motion for default— noting that an answer had been filed on September 1, 2015, and set the matter for trial on September 11, 2015.

14.

Notwithstanding Smith’s oral report that he was appearing “today only” on August 27, 2015, he remained identified as the attorney of record for Violette through the conclusion of the case, and was identified as such in certificates of service contained on documents filed by C & N’s attorney in *Chandler & Newville v. Violette*. Smith took no steps to withdraw through any filing with the court. On September 11, 2015, Smith did not appeared at trial with Violette.

**Violations**

15.

Smith admits that his failure to provide Violette with the legal knowledge, skill, thoroughness, and preparation necessary for the *Chandler & Newville v. Violette* eviction violated RPC 1.1.

16.

Smith further admits that his assistance to Freed, including relying upon and arguing for relief based upon documents that Freed had drafted, lent legitimacy to her pleadings and thereby assisted a non-lawyer in the provision of legal services, in violation of RPC 5.5(a).

**Violette v. Uffelman Matter**

**Facts**

17.

On April 16, 2015, a document prepared by Freed entitled Complaint – Defamation Per Se, Wrongfull [sic] Foreclosure, Breach of Implide [sic] Good Faith and Fair Dealing, Unfair and Deceptive Businse [sic] Practice, Fraud, Negligence, Unjust Enrichment, Declaratory Relief was filed by or on behalf of Violette to initiate a state civil litigation (“Violette Complaint”) in *Donna Violette v. Richard A. Uffelman*, Multnomah County Case No. 15CV09492 (“*Violette v. Uffelman*”). The first prayer for relief in the Violette Complaint sought to void the foreclosure of Violette’s real property. The remaining seven prayers for relief sought monetary damages.
18.

On or about September 3, 2015, on behalf of Violette, Freed requested that Smith represent Violette at a hearing on a purported motion for a temporary restraining order in Violette v. Uffelman that was to take place on September 4, 2015.

19.

On or about September 3, 2015, Smith was presented with a Motion for Joinder of Parties to be filed in Violette v. Uffelman (“joinder motion”) that had been drafted or prepared by Freed. Smith signed the joinder motion. Freed attempted to file it but it was rejected by the court because, having been signed by an attorney, it was required to be e-filed. In addition, the caption on the motion had the incorrect case number.

20.

In the evening of September 3, 2015, Smith first reviewed the Violette Complaint.

21.

On September 4, 2015, Smith attended the hearing with Violette before Judge Leslie Roberts, which turned out to be a hearing on the Violette Complaint. Freed was also present. Following hearing, Violette’s Complaint was denied because it lacked a certificate of service; the complaint had not requested injunctive relief; the motion sought to enjoin a non-judicial foreclosure sale that had already taken place; the motion attempted to stop an eviction that was not before the court; and the motion attempted to enjoin a party not before the court.

Violations

22.

Smith admits that his failure to provide Violette with the legal knowledge, skill, thoroughness, and preparation necessary for the Violette v. Uffelman civil proceeding violated RPC 1.1.

23.

Smith further admits that his assistance to Freed, including relying upon and arguing for relief based upon documents that Freed had drafted, lent legitimacy to her pleadings and thereby assisted a non-lawyer in the provision of legal services, in violation of RPC 5.5(a).
Skinner & Freed v. Deutsche Bank Matter

Facts

24. On August 10, 2015, Smith was approached by Freed to represent Caleb Skinner ("Skinner") at a hearing being held that day in *Skinner et al v. Deutsche Bank National Trust Company*, Multnomah County Case No. 15CV17868 ("Skinner lawsuit"). Smith agreed to represent Skinner in the hearing. Smith understood that the hearing sought to obtain a temporary restraining order on behalf of Skinner. Smith knew that the motion filed or to be filed on behalf of Skinner had been drafted by Charles Freeman ("Freeman"), a person whom Smith knew was not a lawyer. Smith signed the motion in reliance upon Freeman’s drafting, without doing any research or preparation of his own. Smith did not review documents in the court’s file prior to appearing at the hearing; did not know that Freed was also a named plaintiff in the Skinner lawsuit; and did not know that Freed had no justiciable interest in the property that was the subject of the controversy. Smith appeared at the hearing on behalf of Skinner. The court entered a restraining order. Shortly thereafter, the matter was removed to federal court.

Violations

25. Smith admits that his failure to provide Skinner with the legal knowledge, skill, thoroughness, and preparation necessary for the Skinner lawsuit violated RPC 1.1.

26. Smith further admits that his assistance to Freeman, including relying upon and arguing for relief based upon documents that Freeman had drafted, lent legitimacy to his pleadings and thereby assisted a non-lawyer in the provision of legal services, in violation of RPC 5.5(a).

Tanner v. M&T Matter

Facts

On August 24, 2015, Smith was approached by Freed to represent Joseph Tanner ("Tanner") at a hearing being held that day in *Joseph J. Tanner v. M&T Bank, et al*, Multnomah County Case No. 15CV22510 ("Tanner v. M&T"). Smith agreed to represent Tanner in the hearing. Smith did not review the complaint that had been filed and had no knowledge of who had drafted it; however, he knew that no lawyer had preceded him in representing Tanner in the matter.

27. Smith executed a certification contained within an Ex Parte Motion for Show Cause Hearing and Order which recited that he had complied with SLR 5.025(3) regarding one judicial day’s notice of an *ex parte* appearance to opposing parties, that he shall appear at Call
as required by SLR 7.055(8)(A), and shall comply with UTCR 7.040 and give the court immediate notice of resolution of the matter. Smith had not in fact complied with SLR 5.025(3) prior to signing the certification. The court, in reliance on the motion and certification, granted a temporary restraining order and set the show cause hearing for September 9, 2015.

28.

On September 9, 2015, an “Ex Parte Motion for Order for Temporary Restraining Order Ammended [sic] – ORCP 79, ORCP 82A” (“Ex Parte Motion”) was executed by Tanner, over the name and address of Smith. The Ex Parte Motion was not drafted by Smith or reviewed by Smith before it was filed.

29.

Smith did not appear at the Call that was scheduled for September 9, 2015, in Tanner v. M&T.

Violations

30.

Smith admits that his failure to provide Tanner with the legal knowledge, skill, thoroughness, and preparation necessary for the Tanner v. M&T civil proceeding violated RPC 1.1.

31.

Smith further admits that his assistance to Freed, including relying upon and arguing for relief based upon documents that Freed had drafted, lent legitimacy to her pleadings and thereby assisted a non-lawyer in the provision of legal services, in violation of RPC 5.5(a).

Sanction

32.

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 his duty to his clients to provide competent representation. Standards § 4.5. The Standards presume that the most important ethical duties are those which lawyers owe to their clients. Standards at 5. Smith also violated his duty to the profession to avoid assisting a nonlawyer in the unlawful practice of law. Standards § 7.0.
b. **Mental State.** Smith acted negligently and knowingly. “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 Smith may have initially failed to recognize that Freed was providing legal services, during his ongoing involvement with her over the course of these cases, particularly after she used his name to file pleadings, became knowing. Similarly, Smith knew that he was not properly prepared and lack sufficient knowledge of facts and procedural rules to assist his clients in their hearings and legal proceedings.

c. **Injury.** Both potential and actual injury are considered. *Standards § 3.0.* There was at least potential significant injury to Smith’s clients insofar as Smith abdicated his responsibility to provide his clients with competent representation to a nonlawyer. There was also significant potential injury to the public and profession due to Smith’s endorsement of Freed’s and Freeman’s unauthorized practice. However, there is no evidence of actual injury, beyond the frustration expressed by the court for Smith’s lack of preparation and assistance to Freed in the practice of law.

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

1. **A prior record of discipline.** *Standards § 9.22(a).* This aggravating 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 2016, Smith received a public reprimand for charging an excessive fee in a personal injury matter (RPC 1.5(a)). *In re Smith,* 30 DB Rptr 134 (2016) ("Smith I"). In addition to the fact that the conduct in *Smith I* was dissimilar to that in these proceedings, the conduct that led to Smith’s prior discipline occurred shortly before the cases at issued here. To the extent that the conduct in these cases predates the imposition of the prior discipline in *Smith I*, the prior discipline is given little weight as an aggravating factor. *Jones, supra,* 326 Or at 200.

2. **A pattern of misconduct.** *Standards § 9.22(c).* Smith engaged in a series of poor decisions with respect to his handling of matters referred to him by Freed in August and September 2015, such that his actions demonstrate a pattern of misconduct. *See In re Schaffner,* 323 Or 472, 480, 918 P2d 803 (1996).

3. **Multiple offenses.** *Standards § 9.22(d).* Smith engaged in several distinct acts with respect to his several clients, each of which constituted a separate violation of the disciplinary rules rather than one act charged

4. **Substantial experience in the practice of law. Standards § 9.22(i).** Smith has been admitted in Oregon and Washington since 1990.

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

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

2. **Personal or emotional problems. Standards § 9.32(c).** Smith was suffering from undiagnosed diabetes at the time of his actions in these matters, which his doctor reported adversely impacted Smith’s judgment at the time. He has since received treatment and is reportedly medically stable.

3. **Cooperative attitude toward proceedings. Standards § 9.32(e).** Smith has been cooperative and responsive to the Bar throughout these proceedings.

4. **Remorse. Standards § 9.32(l).** Smith has expressed regret for his actions in these matters, as well as a desire to develop better practices for managing his own practice and interactions with

33.

Under the ABA *Standards*, a suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he is not competent, and causes injury or potential injury to a client. A reprimand is generally appropriate when a lawyer demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client. *Standards §§ 4.52; 4.53. 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.*

When considered in conjunction with the applicable aggravating and mitigating factors, the *Standards* provide that a short suspension is appropriate for Smith’s conduct in these matters.

34.

Oregon cases similarly hold that a period of suspension is warranted where a lawyer fails to provide competent representation in conjunction or connection with the lawyer’s assistance of the unlawful practice of law by a nonlawyer. See, e.g., *In re Keeler*, 31 DB Rptr 285 (2017) (respondent was suspended for one year for conduct including allowing his paralegal, who he knew was not a licensed attorney, to meet alone with respondent’s client and opposing counsel, to conduct independent legal research at the client’s request, to prepare
extensive memoranda with analysis of legal and factual issues, and to provide the client legal advice); In re White, 19 DB Rptr 343 (2005) (attorney was suspended for six months where, knowing that his legal assistant was under unlawful practice restrictions imposed by the bar and the Department of Justice, attorney nevertheless delegated a substantial portion of his immigration practice to the legal assistant, failed to adequately supervise the legal assistant’s activities, and split fees with the assistant); In re Duncan, 17 DB Rptr 202 (2003) (attorney was suspended for 90 days where she failed to adequately supervise the activities of a lawyer in her firm who had not yet been admitted to practice law in Oregon; those activities constituted the practice of law and attorney knew or should have known of them); In re Monson, 17 DB Rptr 191 (2003) (attorney who accepted referrals from a living trust company that utilized unsupervised non-lawyer agents to solicit business, give advice about estate planning options and attempt to sell insurance products to members of the public, was suspended for one year because she should have anticipated improper conduct by the agents, but did not take appropriate steps to prevent it); In re Jones, 308 Or 306, 779 P2d 1016 (1989) (attorney suspended for six months for permitting use of his name on papers filed by a nonlawyer who processed divorces).

35.

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 lieu of a period of actual 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.

36.

Consistent with the Standards and Oregon case law, the parties agree that Smith shall be suspended for ninety (90) days for violations of RPC 1.1 and RPC 5.5(a), with all of the suspension stayed, pending Smith’s successful completion of a two- (2) year term of probation. The sanction shall be effective on the first day of the month following approval by the Disciplinary Board, or as otherwise directed by the Disciplinary Board (“effective date”).

37.

Probation shall commence upon the effective date and shall continue for a period of two (2) years, ending on the day prior to the second (2nd) year anniversary of the effective date (the “period of probation”). During the period of probation, Smith shall abide by the following conditions:

(a) Smith 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) Smith has been represented in this proceeding by Kurt Hansen (“Hansen”). Smith and Hansen hereby authorize direct communication between Smith and DCO after the date this Stipulation for Discipline is signed by both parties, for
the purposes of administering this agreement and monitoring Smith’s compliance with his probationary terms.

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

(d) During the period of probation, Smith 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, supervision of staff and contract employees, proper fee agreements, and techniques for improving communication attendant to his law practice. These credit hours shall be in addition to those MCLE credit hours required of Smith for his normal MCLE reporting period. (The Ethics School requirement does not count towards the twenty-four (24) hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of his period of probation, Smith shall submit an Affidavit of Compliance to DCO.

(e) Throughout the period of probation, Smith shall competently and diligently attend to client matters. Attorney shall also ensure that he has proper fee agreements for all clients and that he is performing in accordance with those fee agreements, and taking reasonably practicable steps to protect his clients’ interests upon the termination of employment.

(f) Each month during the period of probation, Smith shall review all client files to ensure that he is timely and competently attending to the clients’ matters and that he is maintaining adequate communication with clients, the court, and opposing counsel.

(g) Hansen shall serve as Smith’s probation supervisor (“Supervisor”). Smith shall cooperate and comply with all reasonable requests made by his Supervisor that Supervisor, in his sole discretion, determines are designed to achieve the purpose of the probation and the protection of Smith’s clients, the profession, the legal system, and the public. Smith agrees that, if Supervisor ceases to be his Supervisor for any reason, Smith will immediately notify DCO and engage a new Supervisor, approved by DCO, within one month.

(h) Beginning with the first month of the period of probation, Smith shall meet with Supervisor in person at least once a month for the purpose of:

1. Allowing his Supervisor to review the status of Smith’s law practice and his performance of legal services on the behalf of clients.

2. Each month during the period of probation, Supervisor shall conduct a random audit of ten (10) client files or ten percent (10%) of Smith’s active caseload, whichever is greater, to determine whether Smith is timely, competently, diligently, and ethically attending to matters, maintaining adequate communication with clients, opposing counsel,
and the court, and taking reasonably practicable steps to protect his clients’ interests upon the termination of employment.

(i) Smith authorizes his Supervisor to communicate with DCO regarding his compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Smith’s compliance.

(j) Within seven (7) days of the effective date, Smith shall contact the Professional Liability Fund (“PLF”) and schedule an appointment on the soonest date available to consult with a PLF Practice Management Advisor in order to obtain practice management advice. Smith shall notify DCO of the time and date of the appointment.

(k) Smith 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 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’s Practice Management Advisors, Smith shall adopt and implement those recommendations.

(l) No later than sixty (60) days after recommendations are made by the PLF Practice Management Advisor, Smith shall provide a copy of the Office Practice Assessment from the PLF Practice Management Advisor and file a report with DCO stating the date of his consultation(s) with the PLF’s Practice Management Advisors; 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.

(m) Smith shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with PLF Practice Management Advisors on or before March 31, 2020.

(n) On a monthly basis, on dates to be established by DCO beginning no later than thirty (30) days after the effective date, Smith shall submit to DCO a written “Compliance Report,” approved as to substance by his Supervisor, advising whether Smith is in compliance with the terms of this Stipulation for Discipline, including:

(1) The dates and purpose of Smith’s meetings with his Supervisor.

(2) The number of Smith’s active cases and percentage reviewed in the monthly audit with Supervisor and the results thereof.

(3) Whether Smith has completed the other provisions recommended by his Supervisor, if applicable.
(4) In the event that Smith has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.

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

(p) Smith’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 his Supervisor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.

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

(r) The SPRB’s decision to bring a formal complaint against Smith 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.

38.

Smith 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 any term of his suspension, if any stayed period of suspension is actually imposed. In this regard, if any stayed period of suspension is actually imposed Smith has arranged for Kurt F. Hansen, 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 his actual suspension. Smith represents that Kurt F. Hansen has agreed to accept this responsibility.

39.

Smith acknowledges that reinstatement is not automatic on expiration of any period of suspension, if any stayed period of suspension is actually imposed. If a period of suspension is necessitated by his non-compliance with the terms of his probation, he will be required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Smith also acknowledges that, should a suspension occur, 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.

40.

Smith 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, if a suspension is imposed. This requirement is in addition to any other provision of this agreement that requires Smith to attend continuing legal education (CLE) courses.
41.

Smith 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 Smith is admitted: Washington.

42.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 20, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 14th day of August, 2019.

/s/ Lynn Earl Smith
Lynn Earl Smith, OSB No. 901216

APPROVED AS TO FORM AND CONTENT:

/s/ Kurt F. Hansen
Kurt F. Hansen, OSB No. 842400

EXECUTED this 16th day of August, 2019.

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. 19-42
Complaint as to the Conduct of )
) THOMAS K. DOYLE,
) Respondent.
)

Counsel for the Bar: Richard H. Braun
Counsel for the Respondent: Wayne Mackeson
Disciplinary Board: None
Disposition: Violation of RPC 1.4(a) and RPC 1.4(b). Stipulation for Discipline. Public Reprimand.
Effective Date of Order: August 23, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Thomas K. Doyle is publically reprimanded for violation of RPC 1.4(a) and RPC 1.4(b).

DATED this 23rd day of August, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Wayne Mackeson
Wayne Mackeson, OSB No. 823269

/s/ Richard H. Braun
Richard H. Braun, OSB No. 850065
STIPULATION FOR DISCIPLINE

Thomas K. Doyle, attorney at law (Doyle), 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.

Doyle was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1997, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On July 12, 2019, a Formal Complaint was filed against Doyle pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of 1.4(a) and 1.4(b) 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.

Doyle represented Linda Hamilton (Hamilton) as plaintiff in a federal civil rights action against Lane County. Trial of that case occurred in February 2015 and ended with a verdict for the defense.

6.

On or about April 27, 2015, the court issued an order awarding Lane County $1,181.70 in costs against Hamilton.
7.

On or about April 29, 2015, Lane County counsel, Stephen Dingle (Dingle), sent an email to Doyle conveying the county’s offer to accept payment of the cost award in monthly payments of $50-100 per month. Doyle received that email.

8.

Doyle did not communicate Lane County’s offer to Hamilton in any form.

9.

On or about May 29, 2015, Lane County garnished Hamilton’s wages in partial satisfaction of the court award. Lane County rescinded its offer to take monthly payments.

Violations

10.

Doyle admits that, by failing to communicate the county’s monthly payment offer, he violated RPC 1.4(a) and RPC 1.4(b).

Sanction

11.

Doyle 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 Doyle’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.** Doyle violated his duty of diligence to fully and adequately communicate with his client by failing to inform his client of a choice offered to her by the opposing party which was his client’s decision to make and thereby prejudiced his client by allowing the offer to expire. Standards § 4.4. The Standards presume that the most important ethical duties are those which lawyers owe to clients. Standards at 5.

b. **Mental State.** Doyle’s failure to communicate the county’s offer was negligent. “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.** Consideration of actual or potential injury is appropriate. *Standards* § 3.0; *In re Williams*, 314 Or 530, 547 (1992). Doyle’s failure to communicate the county’s offer caused actual injury to Hamilton by depriving her of the opportunity to decide whether to accept the offer of a payment plan, causing her to pay involuntarily in larger increments than necessary, and causing her anxiety and frustration when her wages were garnished because she had failed to pay the costs in a lump sum after not accepting the incremental payment plan of which she was unaware.

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


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

3. Timely good faith effort to make restitution or to rectify consequences of the misconduct. *Standards* § 9.32(d).

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.

Oregon case law is in accord that a reprimand is appropriate for similar conduct where there is significant mitigation in amount and/or weight. See, e.g., *In re Ingram*, 26 DB Rptr 65 (2012) (Attorney reprimanded when, after concluding that his client’s lawsuit had no merit and before consulting with his client, he informed opposing counsel that he would not oppose a defense motion for summary judgment; did not convey to his client a defense proposal to stipulate to a dismissal without costs; did not notify his client that the case had been dismissed; and waived any objection to a form of judgment which included costs.); *In re Bailey*, 25 DB Rptr 19 (2011) (Attorney reprimanded after accepting a settlement offered by an opposing party without consulting with, or obtaining authority from, attorney’s client.); and *In re Monsebroten*, 31 DB Rptr 198 (2017) (Attorney reprimanded after agreeing to proposed stipulated order drafted by the opposing counsel which included settlement terms his clients had not agreed to, without reviewing it with the clients on the mistaken belief that the additional details were within the scope of his express and implied authority.).
14.

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

15.

Doyle 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 Doyle to attend continuing legal education (CLE) courses.

16.

Doyle 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 Doyle is admitted: Washington.

17.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 13, 2019.

Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 12th day of August, 2019.

/s/ Thomas K. Doyle
Thomas K. Doyle, OSB No. 972511

APPROVED AS TO FORM AND CONTENT:

/s/ Wayne Mackeson
Wayne Mackeson, OSB No. 823269

EXECUTED this 20th day of August, 2019.

OREGON STATE BAR

By: /s/ Richard H. Braun
Richard H. Braun, OSB No. 850065
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
 )
Complaint as to the Conduct of ) Case No. 19-78
 )
MARY J. GRIMES, )
 )
Respondent. )

Counsel for the Bar: Stacy R. Owen

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.15-1(d) and RPC 1.16(a)(3).
Stipulation for Discipline. 30-day suspension.

Effective Date of Order: September 1, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Mary J. Grimes (Grimes) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Grimes is suspended for thirty days, effective September 1, 2019, for violation of Oregon Rules of Professional Conduct (RPC) 1.15-1(d) and RPC 1.16(a)(3).

DATED this 23rd day of August, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Mary J. Grimes
Mary J. Grimes, OSB No. 880525

/s/ Stacy R. Owen
Stacy R. Owen, OSB No. 074826
STIPULATION FOR DISCIPLINE

Mary J. Grimes, attorney at law (Grimes), 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.

Grimes was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 15, 1988, and has been a member of the Bar continuously since that time. Grimes’s office and place of business is in Deschutes County, Oregon.

3.

Grimes 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 20, 2019, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Grimes for alleged violations of Oregon Rules of Professional Conduct (RPC) 1.15-1(d) and RPC 1.16(a)(3) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

During Grimes’s representation of a client, she and her client agreed that Grimes would withdraw from the representation and provide an accounting to the client. Nearly six months elapsed before Grimes sent a termination letter and an accounting to her client.

Violations

6.

Grimes admits that, by her delay in withdrawing and accounting to her client, she violated RPC 1.15-1(d) and RPC 1.16(a)(3).
Sanction

7.

Grimes 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 Grimes’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.** Grimes violated her duty to appropriately maintain client property, in the form of the accounting of the fees paid by the client, *Standards* § 4.1, and violated other duties owed as a professional, by failing to withdraw from her client’s representation. *Standards* § 7.0.

b. **Mental State.** Grimes acted knowingly. Grimes offered, and her client agreed, that Grimes would withdraw and account, yet Grimes failed to do so for nearly six months.

c. **Injury.** Grimes’s client suffered actual injury in the form of anxiety and frustration when Grimes failed to withdraw and account for several months after Grimes had offered to do so. *See In re Cohen*, 330 Or 489, 496 (2000) (client anxiety and frustration as the result of attorney neglect can constitute actual injury under the *Standards*); *In re Schaffner*, 325 Or 421, 426–27 (1997). However, the client did not suffer any actual financial injury because, by the time that she and Grimes agreed upon withdrawal, Grimes had already earned the provided retainer.

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

1. **Prior Disciplinary Offenses.** *Standards* § 9.22(a). In 2001, Grimes received a public reprimand for a violation of former DR 9-101(C)(3), which is now RPCs 1.15-1(a) & (d), for failing to maintain adequate accounting records. In 2005, she received a one-year suspension, with ten months stayed and a two-year probation, for violations in numerous criminal defense matters, including a lack of diligence [RPC 1.3], conduct prejudicial to the administration of justice [RPC 8.4(a)(3)], and failing to fulfill duties upon termination [RPC 1.16(d)]. In 2011, Grimes received a public reprimand for representing a client on a flat-fee basis and for failing to maintain client funds in a lawyer trust account, which violated RPC 1.5(a), RPC 1.15-1(a), and RPC 1.15-1(c). In 2013, Grimes received a public reprimand for failing to keep a client apprised of the status of the client’s legal matter, in violation of RPC 1.4(a).

2. **Pattern of Misconduct.** *Standards* § 9.22(c). Grimes has had a pattern of misconduct over a period of years pertaining to her handling of or accounting for client funds. As detailed in the previous section, in 2001, Grimes was disciplined for DR 9-101(C)(3) (currently, RPC 1.15-1(a)
and RPC 1.15-1(d)), and, in 2011, she was found to have violated RPC 1.5-1(a) and RPC 1.15-1(c). In this matter, Grimes admits to having violated RPC 1.15-(d). In re Bertoni, 363 Or 614, 643–44 (2018) (noting that prior rule violations can constitute prior discipline, as well as a pattern of misconduct).

3. **Refusal to acknowledge wrongful nature of conduct.** Standards § 9.22(g). Grimes conceded that she delayed providing her withdrawal and accounting, but has not acknowledged any misconduct, because she believed that she was acting in her client’s best interests.


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

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

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

8.

Under the ABA Standards, a 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. As to duties owed as a professional, including withdrawing promptly, under the Standards, 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.

9.

Oregon cases support resolving this matter with a suspension. In re Snyder, 348 Or 307, 318 (2010) (60-day suspension) (lawyer violated RPC 1.15-1(d) when he failed to promptly deliver property which had been requested by the client and which the client was entitled to receive); In re Koch, 345 Or 444, 450 (2008) (120-day suspension) (attorney held client funds for a protracted period after representation concluded); In re Simms, 29 DB Rptr 133 (2015) (120-day suspension) (attorney suspended for misconduct, including failing to provide an accounting to a client); In re Steves, 26 DB Rptr 283 (2012) (1-year suspension, stipulated) (attorney failed to provide an accounting to a client for five months after the request).

10.

Consistent with the Standards and Oregon case law, the parties agree that Grimes shall be suspended for thirty days for the violation of RPC 1.15-1(d) and RPC 1.16(a)(3), the sanction to be effective September 1, 2019.
11.

Grimes acknowledges that she has certain duties and responsibilities under the professional conduct rules 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, Grimes has arranged for Christopher C. Bocci (Bocci), an active member of the Bar, to either take possession of or have ongoing access to Grimes’s client files and serve as the contact person for clients in need of the files during the term of her suspension. Grimes represents that Bocci has agreed to accept this responsibility.

12.

Grimes 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. Grimes 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.

13.

Grimes 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 Grimes to attend continuing legal education (CLE) courses.

14.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 20, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 15th day of August, 2019.

/s/ Mary J. Grimes
Mary J. Grimes, OSB No. 880525

EXECUTED this 21st day of August, 2019.

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. 19-13
Complaint as to the Conduct of )
) CHRISTIAN V. DAY,
) Respondent.

Counsel for the Bar: Theodore W. Reuter
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.16(a) and RPC 8.1(a)(2). Stipulation for Discipline. 60-day suspension.
Effective Date of Order: September 7, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Christian V. Day is suspended for 60 days, effective ten days after approval by the Disciplinary Board, for violations of RPC 1.16(a) and RPC 8.1(a)(2).

DATED this 28th day of August, 2019.

/s/ Mark A. Turner __________________________
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Christian V. Day, attorney at law (Day), 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. Day was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1993, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3. Day 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 April 13, 2019, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Day for alleged violations of RPC 1.16(a) and RPC 8.1(a)(2) 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. Day represented a criminal defendant (Client) in relation to numerous charges relating primarily to identity theft. Early in the representation Client wrote to both Day and the judge and requested new counsel. Day did not follow up with the court to seek new counsel on Client’s behalf. Although Day believes that any request to withdraw as Client’s counsel at that point was unlikely to succeed, he acknowledges that he had an obligation to follow up with his client regarding the request and withdraw if his client insisted.

6. During the course of the Bar’s investigation of Client’s complaint, Day was often slow to answer the Bar’s requests for information. On January 17, 2019, the Bar wrote to Day and requested his response to two issues by January 31, 2019. Day did not respond.
7.

On February 1, 2019, the Bar wrote a second letter, requesting his response by February 8, 2019. On February 11, 2019, Day sent an email to staff, stating an intention to file a response the next day. Day did not file a response on February 12, 2019.

8.

On February 19, 2019, the Bar filed a petition seeking to suspend Day for his failure to respond. Day did not respond. The Disciplinary Board suspended Day for failing to respond on March 8, 2019.

9.

Day has since made a full response to the Bar’s inquiries. Day had knowledge of the Bar’s requests for information detailed above, he was obligated to answer the Bar’s requests in a timely fashion and did not do so.

Violations

10.

Day admits that, by failing to seek to terminate his representation of Client at Client’s request, he violated RPC 1.16(a) [mandatory withdrawal]. Day further admits that, by failing to timely respond to the Bar’s requests for information, he violated RPC 8.1(a)(2).

Sanction

11.

Day 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 Day’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. Day’s failure to seek to withdraw from representing his client and his failure to timely respond to inquiries from the Bar violated his duty to the profession. (Standards § 7.0)

b. Mental State. Day’s failure to seek to withdraw was negligent in as much as he failed to identify his obligation to seek to withdraw, even if he believed that such a request would be denied. Day’s failure to respond to the Bar was knowing.
In re Day, 33 DB Rptr 337 (2019)

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 (1992). Day’s failure to seek to withdraw from representation of his client caused potential injury, insofar as he could have been mistaken in his belief that the court would not have allowed him to withdraw. Day’s failure to cooperate with the Bar’s investigation of his conduct caused actual injury to both the legal profession and to the public. In re Schaffner, supra; In re Miles, 324 Or 218 (1996); In re Haws, 310 Or 741, 753 (1990); see also In re Gastineau, 317 Or 545, 558 (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).

d. Aggravating Circumstances. Aggravating circumstances include:

1. Prior record of discipline. Standards § 9.22(a). This aggravating 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 (1997). Day was suspended for a period of 36 months on May 26, 2016, for violation of RPC 1.7(a)(2), RPC 1.8(j), RPC 8.4(a)(2), and RPC 8.4(a)(4).


e. Mitigating Circumstances. Mitigating circumstances include:

1. Absence of Dishonest motive. Standards § 9.32(b)

2. Remorse. Standards § 9.32(l)

Under the ABA Standards, 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.” As noted above, Day’s failure to identify his obligation to seek to withdraw was negligent, but his failure to timely respond to the Bar was knowing and caused actual harm to the legal profession and the public. A short suspension is appropriate.

Oregon case law is in accord. There are no cases directly on point with respect to the failure to withdraw. In In re Daraee, 32 DB Rptr 252 (2018) an attorney stipulated to a reprimand, after failing to withdraw from a civil case where he had been discharged by his client because he was concerned that his notice of withdrawal would stimulate activity from the opposing party. The Bar also agreed to a reprimand in In re Haglund, 31 DB Rptr 142
In that case, the attorney failed to withdraw even though he had a clear current client conflict of interest, because he believed the rules for representation of a personal representative in relation to an estate were similar to the rules for representing the officer of a company. Day’s conduct is more serious than these cases in that he has prior discipline and multiple offenses.

Failing to respond to the Bar is generally sufficient to support a suspension on its own. See In re Inokuchi, 30 DB Rptr 321 (2016) (attorney stipulated to a 60-day suspension for failing to respond to his criminal client’s request for information and the Bar); In re Wright, 30 DB Rptr 15 (2016) (attorney stipulated to a 120-day suspension where he had originally responded to the Bar’s requests for information, but then stopped); In re Reali, 27 DB Rptr 120 (2013) (trial panel suspended an attorney for 120 days after attorney failed to respond to inquiries from DCO and the local professional responsibility committee). Day’s conduct is less serious than some of these cases in that the delay in his response was shorter.

Consistent with the Standards and Oregon case law, the parties agree that Day shall be suspended for 60 days for violation of RPC 1.16(a) and RPC 8.1(a)(2), the sanction to be effective immediately upon approval of the suspension by the disciplinary board.

Day acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3. However, because Day is presently suspended, he has no clients or client files which require immediate action.

Day 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. Day 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.

Day 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 Day to attend continuing legal education (CLE) courses.

Day 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 Day is admitted: None.

20.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 8, 2019, at its regularly scheduled meeting. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 15th day of July, 2019.

/s/ Christian V. Day
Christian V. Day, OSB No. 932517

EXECUTED this 21st day of August, 2019.

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 No. 17-85 )
) )
ROBERT T. MAUTZ, ) )
) )
Respondent. )

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: Eric J. Neiman
Disciplinary Board: Mark A. Turner, Adjudicator
S. Michael Rose
Eugene L. Bentley, Public Member
Disposition: Violation of RPC 1.9(a), RPC 3.3(a)(1), and RPC 3.3(a)(4). Trial Panel Opinion. 30-day suspension.
Effective Date of Opinion: August 29, 2019

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged respondent Robert T. Mautz with four violations of the Rules of Professional Conduct (“RPC”). He was charged with making materially false statements of fact to a tribunal and concealing or failing to disclose that which by law he was required to reveal to a tribunal, in violation of RPC 3.3(a)(1) and 3.3(a)(4). These charges arise out of respondent’s failure to disclose the existence of a will made by a former client, Eldon Clapp, during probate proceedings. He is also charged with a former client conflict under RPC 1.9(a) that relates to work allegedly adverse to Eldon’s widow, also a former client, challenging her actions as a co-trustee for a trust Eldon and Norma Clapp had created. He is further charged with violating RPC 8.4(a)(1) for allegedly assisting another lawyer, hired when respondent acknowledged that a conflict with Norma had arisen, in a suit against Norma for these actions. The Bar asked that respondent be suspended for 30 days.

Trial was held before a duly appointed trial panel on April 3 and 4, 2019. The Bar appeared by and through counsel, Courtney Dippel. Respondent appeared personally and was represented by counsel, Eric Neiman. The parties submitted written closing arguments, the last of which, on behalf of the Bar, was filed June 25, 2019.
As discussed below, we find that respondent did violate RPC 3.3(a)(1) and (4), and RPC 1.9. The Bar did not prove by clear and convincing evidence that respondent violated RPC 8.4(a)(1) and that charge is dismissed. We suspend respondent for 30 days commencing on the date this decision becomes final.

FACTS

A. Respondent’s initial representation of Eldon and Norma Clapp.

In November 2005, Eldon and Norma Clapp retained respondent to prepare their estate plan. They were referred by Charles Jenson, whom respondent had known for some time. Respondent prepared wills for each and created the Eldon and Norma A. Clapp Revocable Living Trust (“2005 trust”). The Clapps intended to transfer specific assets to the 2005 trust. Both wills poured over into the 2005 trust all property not previously transferred into it. Exs. 5-8.

The 2005 trust provided that when the first spouse died, the trust would be divided into two trusts. One trust would remain revocable and available to the surviving spouse. The other would be a credit shelter trust. The income from the credit shelter trust would go to the surviving spouse. The corpus of the credit shelter trust was to then pass to Eldon’s family members and to Norma’s daughter, unless the surviving spouse needed the corpus for support. The 2005 trust provided that Mr. Jenson would succeed Eldon as Norma’s co-trustee if Eldon predeceased her. Ex. 7.

On December 30, 2005, respondent sent the Clapps a letter detailing the purpose and benefits of their trust and advised the Clapps regarding what to do upon the death of the first spouse. Respondent told them, “The simple answer is, except for setting up a separate checking account and obtaining a social security number, nothing needs to be done… You simply will continue owning and dealing with your property as you have in the past.” Ex. 9.

B. Eldon’s 2009 will, subsequent death, and respondent’s continued trust work and law firm’s advice.

The critical event around which the charges of misrepresentation and lack of disclosure orbit is the execution of a new will by Eldon on October 7, 2009. Ex. 13. Attorney Milo Pope prepared it. The 2009 will revoked all prior wills, including Eldon’s 2005 will. It named Norma the personal representative of his estate and left Eldon’s property to her instead of to the trust. Eldon died in May 2010. Mr. Jenson then began serving as successor co-trustee with Norma on or about July 2, 2010.

In August of 2010, Mr. Jenson hired respondent and his firm to advise him and Norma on trust issues. In early August 2010 Mr. Jenson asked respondent’s partner, Timothy O’Hanlon, to advise him and Norma on the effect Eldon’s 2009 will on the credit shelter trust and disposition of a house in Baker county. Exs. 21, 24. O’Hanlon sent a letter dated August 10, 2010 telling the trustees that Eldon’s 2009 will had no effect on the Baker property because that asset was previously transferred to the trust. Ex. 16.
On August 12, 2010, Mr. Jenson contacted respondent and told him that Eldon had executed a will in 2009, the will O’Hanlon analyzed. Respondent prepared certifications of trust at Mr. Jenson’s request. Mr. Jenson signed in August of 2010 and Norma in October 2010. Since it appeared at that time that all of Eldon’s property had been transferred to the trust there was nothing to probate, so no probate proceeding was filed.

C. **Respondent’s probate of Eldon’s 2005 will instead of the 2009 will.**

In October 2011, Mr. Jenson discovered that there was an investment account at Morgan Stanley Smith Barney, sole ownership of which had passed to Eldon on the death of his sister. Eldon had not transferred the account to the trust. On October 17, 2011, Mr. Jenson asked respondent if a probate proceeding was now necessary to transfer the investment account to the trust. *Ex. 27.* Respondent told Jenson that it was.

The charges under RPC 3.3(a)(1) and 3.3(a)(4) arise because respondent and Mr. Jenson probated Eldon’s 2005 will instead of Eldon’s 2009. Respondent and Mr. Jenson were both aware of the 2009 will. That will revoked the 2005 will. *Ex. 13.*

The difference in the wills was material. Under the 2009 will, the investment account would have passed directly to Norma. Mr. Jenson would not have served as the estate’s personal representative, because Eldon’s 2009 will named Norma and, in the event of her unavailability, Eldon’s nephew, for that role. However, Mr. Jenson was designated as the alternate personal representative under Eldon’s 2005 will if Norma were unable or unwilling to serve.

During this time respondent never communicated directly with Norma about the probate proceeding. He took directions exclusively from Mr. Jenson. This had apparently been the case throughout the time respondent and his firm represented the co-trustees.

Respondent filed a Petition for Probate of Will and Appointment of Personal Representative in Baker County Circuit Court dated January 26, 2012. *Ex. 35.* It petitioned to admit Eldon’s 2005 will to probate and requested that the court appoint Mr. Jenson as the personal representative. Respondent prepared and signed the petition as Mr. Jenson’s attorney and attached a copy of Eldon’s 2005 will to the petition.

Paragraph 2 of the petition stated that, “A true copy of the will of the decedent is presented to the Court herewith and attached. The original will has been lost. **The original will has not been revoked.**” (Emphasis added.)

Respondent never advised the probate court that a later will existed. It is undisputed that respondent knew of the 2009 will at the time the probate petition was filed. Respondent was told about the 2009 will in August of 2010:

“Q: Did you learn in August of 2010 that Mr. Clapp had executed a will in 2009?
A [by respondent]: Someone told me that. Jenson told me that.” *Tr., p. 185, ll. 11-13.*
Respondent further testified when asked about his notes of this conversation with Jenson:

“Q: Can you please read for us your sentence that begins with – I think it’s ‘Milo signs new will.”

A: Yes.

Q: What does that say?

A: It says,” Milo signs new will without asking who owns.’

Q: Who is the Milo you’re referring to in your notes?

A: Milo Pope.

Q: And are these notes reflecting Mr. Clapp’s 2009 will that Mr. Pope prepared?

A: This is the only information – you asked me earlier if I was aware of the 2009 will. This is the only – that statement there is the only information I had about the 2009 will. I was discussing it with Chuck Jenson and he told me that Mr. Clapp had done a will in 2009, purported to leave everything to Mrs. Clapp without – and that they had told Milo who owned the property.

Q: So do these notes reflect that you knew about Eldon’s 2009 will in August of 2010?

A: I think we just discussed that. Do you want me to say it over again?” Tr. p. 186, ll. 2-24 (emphasis added).

Respondent continued:

“A: Yes, uh-huh. I knew I had a statement to me that a will had been done seven months earlier than this by Milo Pope for Mr. Clapp, conveying all the property to his wife, Mrs. Clapp, when in fact all of the property was in trust, yeah.

Q: And Milo Pope was a lawyer. Correct?

A: Milo Pope, I had known him all my – yes, he was a lawyer and he was a circuit judge for – a very good circuit judge for a while, and then he went back to private practice. And this was when he was in private practice, yes.” Tr., p 187, ll. 2-12.

Later in his testimony respondent attempted to downplay his knowledge of the 2009 will. He said that his information was “hearsay,” and that he did not “know anything –whether it existed or whether it was proper or valid or anything.” Tr. p. 202, ll. 3-11. Confusingly, respondent later stated: “So I did not know it was in existence at that time [filing of the probate petition]. But in a prior time I had learned that it was in existence in a hearsay statement two years earlier.” Tr., p. 206, ll. 22-25.
No one disputes that Mr. Jenson instructed respondent to probate the 2005 will. Respondent said he assumed Norma was in agreement.

The Baker County court admitted the 2005 will to probate and appointed Mr. Jenson as the estate’s personal representative on January 31, 2012. Ex. 102. Again respondent never told the probate court that Eldon had executed a will in 2009 that revoked his 2005 will.

**D. Respondent’s actions regarding Norma’s conduct as trustee.**

When Norma received copies of the probate pleadings, she apparently was confused. She consulted attorney Bruce Birch. On March 14, 2012, Mr. Birch telephoned respondent about the probate. Respondent’s contemporaneous notes from that telephone call state that, “She doesn’t understand what is happening and was concerned. Will nominated her yet she isn’t serving.” Ex.36.

After reviewing the petition to probate Eldon’s 2005 will, Mr. Birch wrote to respondent, “In reviewing the will, I note that Mr. Jenson is to act as personal representative only if Mrs. Clapp is unable or unwilling to do so. Mrs. Clapp has no recollection of requesting that he act as the estate fiduciary.” Ex. 38. Norma was then living in Idaho. Mr. Birch told respondent that Norma wanted to transfer trust management to an Idaho accountant and requested that Mr. Jenson resign as co-trustee.

On March 19, 2012, respondent advised Mr. Jenson, “I have reviewed the Revocable Trust and don’t find any power in Mrs. Clapp to ask you to resign or to make unilateral decisions about moving the assets…Want me to advise [Birch] you will remain trustee and the trust assets will stay the same?” Ex. 39. Mr. Jenson was apparently amenable to resigning, but respondent advised him not to do so. Ex. 40.

Respondent wrote back to Mr. Birch challenging Norma’s conduct as co-trustee and administrator of the trust. In a March 21, 2012 letter respondent stated: “Mrs. Clapp is not permitted to serve by herself as Trustee.” Respondent stated further:

> [I]t will be necessary for Mrs. Clapp to account for her use of Trust funds since the death of Mr. Clapp. In addition, it will be necessary for Mrs. Clapp to execute proper documents transferring the obligation owed on the Baker house to the Eldon Clapp Credit Shelter Trust. Finally, it will be necessary for her to execute the documents previously presented to her putting both Trustees’ names on the Smith Barney accounts. Ex. 44.

Respondent concluded: “Please let me know as soon as possible how long it will take for Mrs. Clapp to account to Mr. Jenson for the Trust funds used since Mr. Clapp’s death. This matter has gone on far too long where she has operated in her own name contrary to the terms of the Trust.”

On April 3, 2012, respondent again wrote to Mr. Birch: “You or your client will have to respond to our request for accounting soon. This matter has gone on too long with [Norma] improperly handling trust assets.” Ex. 45. Mr. Birch responded on April 17, 2012, and stated
that Norma was, “[c]ompletely taken by surprise and has no idea what you mean by improperly handling trust assets or why she has an obligation to account.” Ex. 47.

On April 30, 2012, respondent again wrote to Mr. Birch and accused Norma of misappropriating trust assets: “She was taking money from the Revocable Trust to some extent.” Ex. 52. Respondent stated, “Without that type of action and if further delay is encountered, Mr. Jenson can only assume the worst and will consider seeking court help to protect the property.” (Emphasis added.)

On May 31, 2012, respondent again wrote to Mr. Birch, “In light of [Norma’s] unabating unwillingness to assure cooperation in carrying out the terms of the trust we will be moving toward formal action.” Ex. 53 (emphasis added).

On June 1, 2012, respondent asked Mr. Jenson to provide him with a complete copy of Mr. Jenson’s “Clapp trust file.” Ex. 54. On June 25, 2012, respondent wrote to Jenson, “Looks like we need to sue Mrs. Clapp to remove her and recover the funds and property. I still need your whole file on Clapp Trusts... Call me if you wish, but now that you are back we had better get a move on.” Ex. 58 (emphasis added).

The next day, however, respondent’s legal assistant questioned whether respondent could sue Norma, “[s]ince she was one of our clients in this matter?” Ex. 60. Respondent replied, “She was supposed to be our client, but never was. We will have to change the file to charge ahead. Are there any letters to her as our client? Any record I met with her?” Ex. 61 (emphasis added). On June 27, 2012, respondent’s legal assistant told him that he had written letters to Norma regarding her estate plan and the trust. Ex. 62.

It was only at this point that it appears respondent realized he could not actually sue Norma Clapp. He told this to Mr. Jenson and on behalf of Mr. Jenson hired his former partner, David Baum, to pursue the litigation.

E. Respondent’s involvement in the litigation filed by Mr. Baum.

On July 2, 2012, respondent emailed Mr. Baum and wrote, “[Jenson] needs to have suit filed to remove Mrs. Clapp as trustee and to recover the assets from her.” Ex. 63. Respondent told him, “I can’t sue because I represented both Mr. and Mrs. Clapp when I set up the estate plan.” Mr. Baum agreed to take the case.

On July 5, 2012, respondent told his legal assistant, Susan Doescher, to copy his “[w]hole files (Clapp Credit Shelter Trust and Clapp Probate),” for Mr. Baum. Ms. Doescher did so. Respondent directed her to change “the files to completely remove Norma’s name as a client on...the...files.” Ex. 66; see also Ex. 101(Mautz Depo Tr., p. 68); Ex. 106 (Doescher Depo Tr., p. 35); Ex. 107 (Slatt Depo Tr., pp. 17 and 20). Ms. Doescher testified at deposition that she and Melinda Slatt, another staff member, removed Norma’s name from the physical files before she sent them to Mr. Baum. Ex. 106 (p. 36). Ms. Doescher and Ms. Slatt both stated that they could not recall another occasion where they removed a client’s name from a file other than for Norma Clapp. Ex. 106 (p. 37); Ex. 107 (p. 22).
Mr. Baum filed suit against Norma in December 2012 and alleged that Norma converted $518,000 from the credit shelter trust. The complaint asked for money damages in that amount and that Norma be removed as co-trustee. Ex. 79.

Respondent did not appear as attorney of record at any time in the trust litigation. The Bar contends, though, that he colluded with Mr. Baum on the matter. Respondent apparently reviewed the original complaint and an amended complaint before filing. He had some discussions with Mr. Baum on the claims to bring as well as the language used in drafting the complaints. He reviewed requests for admissions to assist in responding. Finally, he testified as a fact witness.

Mr. Baum directly refuted the Bar’s contention. He testified regarding respondent: “No, he didn’t do anything with the case once I got involved, except answer a handful of issues I had that are in my billings. And for three years I think there is six times that I had contact with him, maybe less.” Tr., p. 440, ll. 4-8.

**ANALYSIS OF THE CHARGES**

**A.** Respondent violated RPC 3.3 (a)(1) and 3.3(a)(4) in the probate filing in Baker County probate court.

RPC 3.3(a)(1) states: “A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”

We find that the facts here clearly and convincingly compel only one conclusion. Respondent violated this rule.

There is no doubt that respondent knew of the 2009 will when he filed the petition to admit the 2005 will to probate. Yet he represented that the 2005 will had not been revoked, when the 2009 will stated the opposite. Respondent agreed that any later will revokes a prior one. Tr., p. 176, l. 15 (“Yes, the later will does revoke a prior will.”) Given respondent’s knowledge of the prior will, we must find that he made this statement knowing it was false.

The statement was also material. By probating the 2005 will respondent made it possible for the lately-discovered investment account which Eldon owned at his death to go into the trust. If the 2009 will had been followed, distribution of that asset would have gone directly to Norma.

A misrepresentation is material if it is likely to affect the decision-making process of the recipient. *In re Brandt/Griffin*, 331 Or 113, 10 P3d 906 (2000). The existence of a later will was certainly material to the probate court. Moreover, while the Bar does not need to prove actual reliance, here the Baker County probate court relied on respondent’s false statement in the petition insofar as it never even considered the validity of the 2009 will. The court admitted the 2005 will to probate and appointed Mr. Jenson as personal representative unaware of the possibility that a later will with different testator intent controlled.
Respondent attempted to justify his statement. He testified that he did not believe the 2009 will was valid and so it was appropriate to probate the 2005 will. That ignores the fact that such a decision is for the probate judge to make, not a party’s attorney. The expert testimony presented by the Bar confirmed this.\footnote{In his written closing argument respondent moved to strike the expert testimony on the grounds that it improperly instructed the panel as to the meaning of the disciplinary rules. Respondent arguably waived the objection at the time, but for purposes of this decision the Adjudicator has considered the motion on its merits and it is denied. The expert testimony concerned the standards of probate practice. The panel has not considered the testimony as urging any particular interpretation of the disciplinary rules.}

The Bar called Judge Rita Batz Cobb as an expert witness. She was a probate commissioner starting in 1984, a permanent pro-tem probate judge in Washington County beginning in 1989, and an elected judge from 2006 until her transfer to plan B status. She has extensive experience in the probate field. Tr. p. 103-104. She testified about the importance of an attorney’s representations to the probate court due to the fact that much of the business conducted occurred ex parte. Tr. p. 105. An attorney representing the personal representative has “an absolute duty of candor to the Court.” Tr. p. 106, l. 8. The probate judge relies on the attorney as an officer of the court to be completely truthful. Tr. p. 109, ll. 19-21. Neither the attorney nor the heirs can decide to admit a different will to probate rather than the most recent will of the decedent. If there are competing wills the probate judge must be told about them so that she can make a determination regarding validity. Tr. p. 112, ll. 9-p. 113, l. 11.

Attorney Anastasia Meisner also testified. Her private practice was focused on estate planning and she serves as a probate pro-tem judge in Washington County. Tr. pp. 137-139. She reiterated the duty of candor an attorney has in probate court and the necessity for disclosure of the 2009 will here so that the court, not the parties or attorneys, can decide which will is valid and controlling.

The testimony of David Baum, respondent’s former partner, also was straightforward and contrary to respondent’s position. Mr. Baum acknowledged that any question as to the validity of a will is for the judge. Tr. p. 453, ll. 13-17. Respondent’s false statement to the court cannot be excused.

Respondent is also charged with violating RPC 3.3(a)(4), which states: “A lawyer shall not knowingly conceal or fail to disclose to a tribunal that which the lawyer is required by law to reveal.” We are convinced by clear and convincing evidence that respondent knowingly failed to disclose the 2009 will to the court. We also find by clear and convincing evidence that respondent was required by law to reveal that fact.

Respondent submits a variety of arguments to justify his silence. He argues that it was appropriate to omit mention of the 2009 will because Norma and Mr. Jenson agreed to probate the 2005 will. The testimony was clear and convincing that this is no excuse for failure to disclose the 2009 will to the court. Lawyers cannot make false statements of fact to tribunals because their client wants them to do so. In the context of the probate court this principle has been noted in a case similar to the one before us. In In re Hedrick (Hedrick II), 312 Or 442,
822 P2d 1187 (1991) the court found a knowing violation of the predecessor rule when the attorney attested in his petition that the proffered will was the decedent’s “last will,” when he knew that a subsequent will existed. The current case is indistinguishable.

We also reject respondent’s argument that he only had an obligation to disclose the 2009 will if he knew that someone (Norma) intended to assert an interest under it. That argument relies upon respondent’s interpretation of a sub-part of ORS 113.035. Judge Cobb and Ms. Meisner both rejected that interpretation. We agree with them that a narrow interpretation of the statutory subsection does not exempt respondent from the overall duty of candor to the probate court.

ORS 113.035 also describes other information that must be included in the petition to appoint a personal representative and to probate a will. Along with the name of any person asserting an interest in the estate based upon the contention that another will exists, the petition must state that if the original of the proffered will cannot be located, as here, that will was not revoked. ORS 113.035(8)(b), (10). The 2009 will revoked the 2005 will on its face. It should have been disclosed to the court and any question as to the validity of the 2009 will was to be decided by the judge.

As discussed above, respondent made much of the fact that his clients instructed him to probate the earlier will. In Hedrick II, the lawyer argued that he had no duty to disclose the existence of a later will because the heirs agreed to probate the prior will. Id. at 444. The court rejected that argument. “The accused … argues that he was under no obligation to disclose to the probate court the existence of the later will. That argument is untenable. This court addressed the need for candor from probate lawyers in In re Greene.” Id. at 447; see also, Reynolds v. Givens, 37 Or App 785, 791, 588 P2d 113 (1978) (cited with approval by the court in Hedrick II) (“Even if an attorney and the proposed personal representative have doubts about the validity of the will there is no justification for failing to disclose to the court the existence of a purported will when it is known to them. The ultimate decision as to the validity of the will, is for the court, not the personal representative or his counsel. The interest of the estate is not served by failing to disclose a known will.”).

Respondent also argued that Mr. Jenson made the representations in the petition so respondent bore no responsibility as to their truth. Even if respondent was not a sworn signatory to the pleading as Mr. Jenson was, ORCP 17 requires that an attorney signing a pleading must have a good faith belief that the factual assertions contained therein are true. Given respondent’s knowledge of the 2009 will, he could not have had a good faith belief that all of the statements contained in the pleading were true.

Respondent violated RPC 3.3(a)(1) and 3.3(a)(4).

B. Respondent had a conflict of interest and violated RPC 1.9(a)(1) when he represented Mr. Jenson adverse to Norma, but he did not violate RPC 8.4(a)(1) in his dealings with Mr. Baum while Mr. Baum was suing Norma.

These charges involve two rules. RPC 1.9(a) provides, “A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a
substantially related matter in which that person's interests are materially adverse to the interests of the former client unless each affected client gives informed consent, confirmed in writing.” The Bar also charges a violation of RPC 8.4(a)(1), which provides, “It is professional misconduct for a lawyer to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.”

It is undisputed that respondent represented both Eldon and Norma when he created the 2005 trust and advised them as to their duties as trustees. Respondent also later represented Mr. Jenson as Norma’s co-trustee. When Mr. Jenson and respondent decided that Norma was operating contrary to the terms of the trust (no later than respondent’s letter of March 21, 2012), Mr. Jenson’s interests as co-trustee became materially adverse to Norma’s interests.2

We agree that the prior representation of Norma was substantially related to respondent’s representation of Mr. Jenson.3 Respondent contends though that their interests were not materially adverse. Respondent argues that if Norma had performed every action respondent demanded of her in the spring of 2012, Mr. Jenson would have resigned per Norma’s request.

Respondent’s conduct, however, belies this assertion. He made direct threats of litigation over Norma’s conduct as Mr. Jenson’s co-trustee, and made repeated accusations that she had improperly handled trust assets, wrongfully taken money from the trust, and acted contrary to the trust’s terms. As described above, respondent made numerous statements to Norma’s lawyer threatening that “we” will take action and he urged Jenson that “we” move forward with a suit.

It was only when respondent’s legal assistant raised a concern about a conflict that respondent appeared to even consider Norma as a former client. He claims that he knew that Norma was a former client all along and acted appropriately. Yet he first told his legal assistant that Norma had not been a client when she raised the conflict issue and acknowledged the fact only when she provided him with proof from the files.

It is also telling that respondent directed his subordinates to remove Norma’s name from the files, something he had never done before. This certainly implies a consciousness on his part that a conflict problem had arisen even before his decision to transfer the matter to Mr. Baum to pursue the litigation.

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2 It is possible that respondent was in a conflict of interest position as early as the decision to probate the 2005 will, an action seemingly adverse to Norma’s interests. This possible violation was not pleaded, however, so we limit our consideration to the violation that the Bar alleges began in the spring of 2012.

3 Matters are substantially related if, “(1) the lawyer’s representation of the current client will injure or damage the former client in connection with the transaction or legal dispute in which the lawyer represented the former client; or (2) there is a substantial risk that confidential factual information as would normally have been obtained in the prior representation of the former client would materially advance the current client’s position in the subsequent matter.” RPC 1.9(d).
Respondent’s advice that Mr. Jenson sue Norma and the steps he took prior to transferring the case clearly injured or damaged his former client in connection with the same transaction on which he had previously represented her, creation of the 2005 trust.

Even if the conflict could have been waived, respondent did not seek Norma’s informed consent to his representation of Mr. Jenson against her and thus violated RPC 1.9(a) in his representation of Mr. Jenson as co-trustee. See also, In re Stauffer, 327 Or 44, 956 P2d 967 (1998) (former client conflict of interest under predecessor rule to RPC 1.9(a) when attorney represented widow as personal representative and effected transfer of an estate asset to her, and then represented successor personal representative against her seeking to declare prior property transfers to her improper).

The Bar then charges that respondent’s limited participation in the trust litigation constituted collaboration with Mr. Baum in furtherance of his impermissible conflict. The Bar wants us to conclude that respondent continued to violate RPC 1.9(a) through Mr. Baum, in violation of RPC 8.4(a)(1).

The Bar failed to prove this charge by clear and convincing evidence. Respondent did not direct or control Mr. Baum. Mr. Baum’s testimony directly contradicted this assertion. We agree that respondent’s interactions with Mr. Baum were intended to ensure factual accuracy. Further, we do not believe that confirming facts (that were not client confidences) constitutes actions adverse to a former client under the rule. The Bar also made much of respondent’s apparent disapproval of Norma’s conduct. We do not believe the Rules of Professional Conduct prevent a lawyer from having or expressing a low opinion of a former client.

C. Respondent was not denied due process.

Respondent raised three due process challenges that he argues justify dismissal of the case. We reject each of them.

First, respondent claims that the investigation of his conduct was delayed, resulting in prejudice to him which denied him due process. The record does not reflect any inordinate delay. More importantly, respondent presented no evidence of any prejudice to him resulting from alleged delay.

Respondent contends that the prosecution against him was tainted because the complainant, attorney Theodore Reuter, began working for the Disciplinary Counsel’s Office within days of filing his complaint. The evidence at trial demonstrated that Mr. Reuter played

4 The Bar cites the ABA Commentary to the Model Rules. “Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent.” ABA Commentary to Model Rule 1.9, Cmt. 1. “When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction is clearly prohibited.” Id., Cmt. 2. “The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.” Id.
no material role in the investigation and prosecution of the case after he began working for the Bar.

Finally, respondent argues that the testimony of Norma Clapp was improperly influenced by disciplinary counsel. Respondent points to changes in Norma’s testimony between her discovery deposition and her perpetuation testimony and claims they resulted from “implanted memory” from Bar counsel. As the Bar has noted, such changes in testimony are more likely the result of refreshed recollection when the witness was able to review relevant documents. In any event, Norma’s testimony did not influence our decision. We have found the violations here based upon admitted facts and contemporaneous documents. Respondent suffered no denial of due process.

SANCTION

In fashioning a sanction in this case, it is appropriate for the trial panel to consider the ABA Standards for Imposing Lawyer Sanctions (“Standards”) and Oregon case law. In re Biggs, 318 Or 281, 295 (1994). The Standards establish the framework to analyze a respondent’s conduct, including (1) the ethical duty violated; (2) the attorney’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. Standards § 3.0. We first determine what the presumptive sanction should be for the misconduct and then adjust it accordingly based on any aggravating or mitigating factors present.

Duty Violated.

The most important ethical duties a lawyer owes are to his clients. Standards at 5. Respondent violated the most important duty he owed to his former client, Norma, his duty of loyalty. Standards, § 4.3. Respondent also violated his duty to maintain the integrity of the legal system, to avoid false statements, and to perform his duties with honesty and integrity. Standards, § 6.1.

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.

Further, “‘Knowingly,’ ‘known,’ or ‘knows’ denotes actual knowledge of the fact in question, except for purposes of determining a lawyer’s knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer.” RPC 1.0(h).
Respondent’s mental state when he made his statements to the Baker County probate court and his conduct during the probate proceeding were intentional. Respondent demonstrated a conscious intent that the probate court remain unaware of the 2009 will and that the 2005 will be probated.

As to the conflict of interest, we agree that respondent acted with a knowing mental state. Respondent knew or should have known that Norma was a former client for trust-related matters. His threats of litigation directed at her and advice to Jenson on the issue were knowingly adverse to her interests.

**Extent of Actual or Potential Injury.**

In deciding on an appropriate disciplinary sanction, we may consider both actual and potential injury. *Standards* at 6; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

Here there was actual injury to the probate court and to respondent’s former client.

Respondent injured the court and legal system by probating a revoked will and failing to disclose the later will to the court. Even if the later will was invalid, that was a judgment to be made by the court, not by respondent. Respondent violated the integrity of the legal process and failed to fulfill his duty of candor to the probate court. *In re Hedrick II*, 312 Or at 450.

Regardless of whether Norma was ultimately liable for breaching her duties as a trustee, respondent’s representation of Jenson and advocacy against her before withdrawal had an actual adverse affect on her interests. See *In re Stauffer*, 327 Or at 67 (describing the injuries incurred by former client due to former attorney’s pursuit of her through litigation despite impermissible conflict).

**Preliminary Sanction.**

Absent aggravating or mitigating circumstances, the following *Standards* apply:

Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards*, § 6.12.

Suspension is also generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to the client the possible effect of that conflict, and causes injury or potential injury to a client. *Standards*, § 4.32.

The presumptive sanction here is a suspension of some length.
Aggravating and Mitigating Circumstances.

The following aggravating factors under the Standards are present here:

4. Multiple offenses. Standards § 9.22(d). Respondent violated multiple rules of professional conduct and the misconduct was repeated multiple times, first toward the probate court, and then toward respondent’s former client. Respondent put other interests and goals over his duties of candor to the court and loyalty to his former client.

5. Refusal to acknowledge wrongful nature of conduct. Standards § 9.22(g). Respondent denied responsibility for his false statements to the probate court by claiming they were Jenson’s statements, not his. He also testified that he did nothing wrong because his clients decided to probate a revoked will and he merely followed their wishes. When asked at his deposition whether he had any remorse about his conduct towards his former client he stated, “not in the least.” Ex. 101 (p. 80).


In mitigation, respondent has demonstrated the following:


4. Full and free disclosure to disciplinary board. Standards § 9.32(e).

Oregon Case Law.

Oregon cases confirm that some period of suspension is warranted. Lawyers have been suspended for making false statements in probate petitions or not informing probate courts of all material facts. In In re Hedrick II, (supra) the attorney was given a two-year suspension when he filed a petition to probate a will even though he knew the decedent had executed a later will. In In re Greene, 290 Or 291, 620 P2d 1379 (1980), the court approved a 60-day suspension when the respondent represented his wife as the guardian/conservator of her two minor children’s estates. He filed a probate petition to permit the purchase of real estate interests without disclosing that the real estate interests to be purchased were for the home in which the guardian/conservator lived with the minor children.

The court has found that “patent” conflicts of interest should result in 30-day suspensions when the aggravating factors outweigh the mitigating factors. In re Hockett, 303 Or 150, 164, 734 P2d 877 (1987) (lawyer simultaneously represented two husbands with respect to their business interests and represented their wives in dissolution proceedings against them); In re Stauffer, supra, (two-year suspension for attorney who engaged in a former client conflict of interest under predecessor to RPC 1.9(a)).
Respondent’s aggravating factors outweigh the mitigating factors here. The Bar asserts that the cases support at least a 60-day suspension. The Bar, however, acknowledges that some of the cited cases involve additional rule violations and different aggravating factors. Based on this premise, combined with respondent’s age, the Bar asks us to impose a 30-day suspension. We agree.

In doing so, however, we must acknowledge that we considered a lengthier suspension due to the serious nature of respondent’s conduct, especially vis-à-vis the court. Respondent chose not to tell the court about the later will. His justifications for this decision are tortured and unpersuasive. He disclaimed any duty of candor to the court. He did not accept responsibility for the representations he certified by his signature. His course of conduct abused the trust the probate court places in practitioners before it.

Sanctions in disciplinary matters, however, are not meant to penalize the accused lawyer. They are instead intended to protect the public and the integrity of the profession. *In re Stauffer*, 327 Or at 66. Appropriate discipline deters unethical conduct. *In re Kirkman*, 313 Or 181, 188, 830 P2d 206 (1992).

With these goals in mind we agree with the Bar that a 30-day suspension is appropriate.

**CONCLUSION**

The purpose of lawyer discipline is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge their professional duties properly. *Standards* § 1.1. Accordingly, we order that respondent be suspended from practice for a period of 30 days, effective on the date this decision becomes final.

Dated this 29th day of July, 2019.

/s/ Mark A. Turner  
Mark A. Turner, Adjudicator

/s/ S. Michael Rose  
S. Michael Rose, Trial Panel Member

/s/ Eugene L. Bentley  
Eugene L. Bentley, Trial Panel Public Member
ORDER DENYING BR 3.5 PETITION

This matter comes before the Disciplinary Board on the Oregon State Bar’s (“Bar”) BR 3.5 Petition seeking to impose reciprocal discipline on respondent based on a disciplinary stipulation she entered into in the State of Arizona in November of 2018. The stipulation resulted in an admonition and an order to pay $1,200 in costs. The discipline resulted from a violation of Arizona Rule of Professional Conduct (RPC) 4.4(a), which prohibits an attorney from using means to obtain evidence that violate the rights of another. The Bar now asks that respondent be subject to a public reprimand as the closest equivalent sanction in Oregon.

Respondent objects to the petition for reciprocal discipline under BR 3.5(c)(2) and (3), arguing that the conduct for which she was disciplined in Arizona would not subject her to discipline in Oregon and that the imposition of the requested sanction would result in a grave injustice or be offensive to public policy. For the reasons discussed below, I agree with respondent and deny the petition for reciprocal discipline.

FINDINGS AND CONCLUSIONS

Pursuant to BR 3.5(d), the Adjudicator may decide the question of whether reciprocal discipline should be imposed on an attorney based upon a review of the petition, answer, and supporting materials filed by the parties. It is a matter of the Adjudicator’s discretion whether
testimony is taken before a trial panel. I find that no testimony is needed to resolve the issues here.

Respondent represented the father in an Arizona family law matter involving an infant child. *Bar Petition for Reciprocal Discipline ("Petition"),* p. 3. On or about June 16, 2017, the mother and child were reported missing by the mother’s parents. *Id.* The grandparents told the public and the police that the father had kidnapped and murdered the mother. *Petition, Exhibit 3,* p. 3.

Respondent believed that the mother had kidnapped the child with the help of the grandparents. *Id.* This proved to be the case. *Petition, Exhibit 2 (Decision Accepting Discipline by Consent),* p. 2. Nearly four months after the mother and child were reported missing, the child was located and reunited with respondent’s client through the efforts of the FBI, police, and respondent. *Petition, Exhibit 3,* p. 5.

Mother and grandparents ultimately pleaded guilty to custodial interference. *Id.* Respondent’s client has retained sole custody of the child.

On June 20, 2017, trying to locate the mother and child, respondent provided personal identifying information of the mother and grandparents to an acquaintance in order to obtain their personal credit information. *Id.* at p. 4. Respondent did not have permission from the mother or grandparents to do so. *Id.* At the time, respondent did not believe she needed such permission to obtain the credit information. *Id.* Respondent’s acquaintance used the personal information to run credit checks on the mother and grandparents and provided the information from the credit checks to respondent. Respondent then used this information to identify financial institutions to subpoena and to request a judge to allow her to issue the subpoenas. *Id.*

In August 2017, grandparents learned that respondent had obtained their credit information. *Id.* at p. 5. In September 2017, grandfather and the mother’s attorney filed a complaint against respondent with the State Bar of Arizona. *Id., Exhibit 2,* p. 1. On July 12, 2018, the State Bar of Arizona initiated a formal complaint against respondent charging her with violations of ARPC 4.4(a) and 8.4(d). Arizona RPC 4.4(a) states: “In representing a client, a lawyer shall not…use methods of obtaining evidence that violate the legal rights of [any other person].” Arizona RPC 8.4(d) states that it is misconduct to, “(d) engage in conduct that is prejudicial to the administration of justice.”

Based on the parties’ stipulation, the Arizona Presiding Disciplinary Judge entered an order on November 15, 2018, imposing an admonition on respondent for her conduct and ordering her to pay costs and expenses in the amount of $1,200.

In deciding whether a lawyer should be disciplined for conduct occurring in another jurisdiction, I must rely on the other jurisdiction’s factual findings. *In re Devers,* 317 Or 261, 264–65, 855 P2d 618 (1993). However, in assessing those findings I must analyze the lawyer’s misconduct under the Oregon disciplinary rules. *Id.* at 265.
The record from Arizona does not contain facts to support a finding that respondent violated either Oregon RPC 4.4(a) or Oregon RPC 8.4(a)(4), the Oregon counterparts to the Arizona rules at issue. Accordingly, the petition is denied pursuant to BR 3.5(c)(2).

The reason that no violation of the Oregon rules is present in this record is that Arizona’s rule 4.4(a) differs from Oregon’s rule 4.4(a) in a critical respect. The Oregon rule imposes a “knowingly” standard, whereas the Arizona rule does not specify any particular mental state. Thus, negligence on the part of an attorney may result in a finding that Arizona RPC 4.4(a) was violated, but the rule here in Oregon requires more than negligence.

As noted, Arizona RPC 4.4(a) states: “In representing a client, a lawyer shall not…use methods of obtaining evidence that violate the legal rights of [any other person].” In contrast, Oregon RPC 4.4(a) states: “In representing a client or the lawyer’s own interests, a lawyer shall not…knowingly use methods of obtaining evidence that violate the legal rights of [a third person].” (Emphasis added).

Respondent’s stipulation in Arizona substantiates only a negligent violation of the Arizona rule. Respondent stipulated to knowing that she did not have express permission to obtain the credit information, but she negligently believed she did not need permission to do so. This conduct does not satisfy Oregon RPC 4.4(a)’s “knowingly” requirement, which means that a lawyer shall not use a method of obtaining evidence that the lawyer knows violates the legal rights of another.

In interpreting a statute in Oregon, the Oregon Supreme Court dictates that our analysis must begin with the “text and context” of the language. State v. Gaines, 346 Or 160, 171, 206 P3d 1042 (2009); PGE v. Bureau of Labor & Industries, 317 Or 606, 859 P2d 1143 (1993). Under the court’s approach, the words of the statute are paramount. “[T]here is no more persuasive evidence of the intent of the legislature than the words by which the legislature undertook to give expression to its wishes.” Gaines, 346 Or at 171 (internal quotation marks omitted); In re Nuss, 335 Or 368, 372, 67 P3d 386 (2003) (“In interpreting a statute, we begin with the text and context of the statute, giving words of common usage their plain, natural, and ordinary meaning” (citing PGE, 317 Or at 610–11)). This approach also applies when interpreting the Rules of Professional Conduct. See In re Newell, 348 Or 396, 234 P3d 967 (2010) (applying statutory construction principles to Oregon RPC 4.2).

Here the Oregon Rules of Professional Conduct themselves contain the definition of the term at issue. Oregon RPC 1.0(h) provides that the term knowingly “denotes actual knowledge of the fact in question.” Here, the fact in question is whether respondent knew she was violating the rights of others when she obtained their credit information without permission. The Arizona record does not demonstrate actual knowledge of this fact. Knowing that one lacks permission to do something does not prove knowledge that one needs permission to do something. Absent knowledge of the fact that she was violating another’s rights, respondent did not violate the Oregon rule.

The Bar argues that negligence is enough under the Oregon rule because the Minutes of the Oregon State Bar Special Legal Ethics Committee that considered the rule (“Minutes”) refer to an “inadvertent” violation of the rights of others not being a violation of the Oregon
rule. The Minutes provide: “Rule 4.4 Respect for the Rights of Third Persons: Several comments were received, including some from prosecutors, suggesting that lawyers should not be held accountable for inadvertent violations of a third person’s legal rights. The committee voted to follow the Kentucky and Maryland approach and include ‘knowingly’ before ‘use methods….’ in the second part of (a).” Petition, Exhibit 4.

Based on this excerpt, the Bar argues that any conduct that is not inadvertent and violates the legal rights of others is “knowing” for purposes of the rule, even if the lawyer does not actually know the conduct violates the legal rights of others. This interpretation is at odds with the unambiguous language of the rule. Regardless of whether the Minutes support the conclusion urged by the Bar, it would be legal error to rely on this extraneous evidence in order to ignore the plain meaning of the rule.

The Bar does not contend that a violation of Oregon RPC 8.4(a)(4) is present even absent a finding that Oregon RPC 4.4(a) was violated, so disposition of the charge under rule 4.4(a) is dispositive. In any event, I find that the negligent conduct that respondent stipulated to did not violate Oregon RPC 8.4(a)(4).

Respondent also asserts a defense under BR 3.5(c)(3). Respondent argues that imposition of a public reprimand, the minimum discipline under the Oregon rules, would be a grave injustice because her admonition in Arizona is a private matter. She argues that public discipline would be detrimental to her professionally and she did not stipulate to public discipline in Arizona.

However, BR 3.5(c)(3) states the defense as whether, “[t]he imposition of a sanction equivalent to the sanction imposed in the other jurisdiction would result in a grave injustice or be offensive to public policy.” (Emphasis added.) Here the Bar requests the imposition of a sanction that is not equivalent to the one imposed in Arizona, so the asserted defense is not applicable. BR 6.1(a) requires the imposition of at least a public reprimand if charges are not dismissed. Thus, respondent’s defense as to the sanction imposed would have to be denied if the violation of Oregon RPC 4.4(a) was supported by the record.

ORDER

Based on the above findings and conclusions, and being otherwise fully advised,

IT IS HEREBY ORDERED that the Bar’s RPC 3.5 Petition is denied.

DATED this 31st day of July 2019.

/s/ Mark A. Turner
Mark A. Turner, Adjudicator
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) )
Complaint as to the Conduct of ) Case No. 19-68
) )
SAMUEL A. RAMIREZ, ) )
) ) Respondent.
Counsel for the Bar: ) Amber Bevacqua-Lynott
Counsel for the Respondent: ) None
Disciplinary Board: ) None
Disposition: ) Violation of RPC 1.3, RPC 1.4(a), 1.4(b), and RPC 1.16(d). Stipulation for Discipline. 60-day suspension.
Effective Date of Order: ) September 11, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Ramirez is suspended for sixty (60) days, effective the date of this order, for violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 1.16(d).

DATED this 11th day of September, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Samuel Ramirez
Samuel Ramirez, OSB No. 910883

/s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott, OSB No. 990280
STIPULATION FOR DISCIPLINE

Samuel A. Ramirez, attorney at law (“Ramirez”), 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.

Ramirez was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 1991, and has been a member of the Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

Ramirez 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 8, 2019, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Ramirez for alleged violations of 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 surrender papers and property upon termination) 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.

On February 4, 2016, an Arizona court appointed Jane Anne Geisler (“Geisler”) to be the guardian and conservator for Bonita Young (“Young”), an Arizona resident. Geisler was the President of Managed Protective Services, Inc. (“MPS”), a licensed private fiduciary in Arizona. On that same date, with the Arizona court’s approval, Geisler/MPS retained Ramirez to pursue a financial elder abuse claim in Oregon against Ryan Jensen (“Jensen”), who allegedly stole money from Young and convinced Young to purchase property in Oregon and place his name on the title.
6.

On March 2, 2016, Ramirez filed a Petition for Protective Order Without Appointment of Fiduciary (“Petition”) in Deschutes County Circuit Court. Among other things, the Petition sought an order to require Jensen to relinquish the Oregon property. Ramirez notified MPS through its Arizona counsel of the filing but did not provide the Petition to Geisler or MPS.

7.

Ramirez did not attempt to serve Jensen for more than four months but, even then, the address Ramirez provided to the sheriff was invalid. Thereafter, Ramirez did not diligently pursue locating Jensen for many months.

8.

In a letter dated April 10, 2017, MPS contacted Ramirez to ask for an update, explaining that the last entry in their file was that Ramirez had filed the Petition. Ramirez did not respond.

9.

On April 17, 2017—more than a year after the Petition was filed—Ramirez accomplished service on Jensen. During the time between filing and serving the Petition, Ramirez did not apprise Geisler or MPS of his problems in locating Jensen or of the delay in service.

10.

On April 25, 2017, MPS sent a second letter to Ramirez, indicating that there was some urgency to have the Oregon property vacated. Ramirez did not respond.

11.

In response to a May 19, 2017 email from MPS, Ramirez shared that Jensen had been served and that the next step was to wait for a hearing. On May 19, 2017, MPS also requested a billing statement. Ramirez did not provide a billing statement.

12.

On June 30, 2017, and again on July 5, 2017, MPS emailed Ramirez asking for an update, and whether a hearing had been scheduled. Although Ramirez had been notified of the hearing on July 5, 2017, Ramirez informed MPS on July 14, 2017, that the hearing was scheduled for July 26, 2017.

13.

On July 17, 2017, MPS emailed Ramirez with questions about Geisler’s participation at the hearing. Ramirez did not respond until, after-hours, on the eve of the July 26, 2017 scheduled hearing.
14. Only on July 24, 2017, did Ramirez provide MPS the Petition (filed March 2, 2016) and Jensen’s Objections (filed June 19, 2017). Ramirez did not provide Geisler or MPS with any other documents related to the case, such as the *lis pendens* or the response and counterclaim filed by Jensen.

15. Ramirez appeared for the July 26, 2017 hearing, at which the court set the matter for an evidentiary hearing on August 25, 2017, and scheduled a trial readiness conference on August 17, 2017. Ramirez failed to appear for the trial readiness conference, and the evidentiary hearing was reset to mid-September. Ramirez did not notify Geisler or MPS of this event. Rather, after attempting to reach Ramirez by email a couple of times without response, an MPS staff person pulled the court docket and learned that the hearing had been reset.

16. In October 2017, Geisler terminated Ramirez. She requested that he forward his complete file to replacement counsel and that he account for the advance retainer that he had been paid. Although Ramirez timely provided a majority of the file to the new attorney, it was not complete, and he did not account for the fee paid until after Bar involvement.

**Violations**

17. Ramirez admits that his failures to more diligently pursue Geisler’s legal matter and communicate with her about the events in the case violated RPC 1.3 and RPC 1.4(a) and (b). Ramirez further admits that his failure to provide the complete file upon termination violated RPC 1.16(d).

**Sanction**

18. Ramirez 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 Ramirez’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.** Ramirez violated his duties to preserve client property, and of diligence to a client. *Standards* §§ 4.1; 4.4. The *Standards* presume that the most-important ethical duties are those which lawyers owe to clients. *Standards* at 5.
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* at 9. “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.*

Ramirez acted both negligently and knowingly. For example, in connection with locating Jensen, Ramirez’s minimal efforts were negligent in that they deviated from the standard of care that a reasonable lawyer would exercise in the situation. Ramirez also provided an email from a client, in which the client requested for an invoice, and Ramirez admitted that he failed to provide one, which suggests a knowing mental state on his part.

Ramirez admitted that he did not communicate with Geisler for a year, but he wrongly, albeit negligently, believed that his communication with Geisler’s local counsel satisfied that obligation. However, Ramirez’s failure to provide an invoice to the client, after the client’s request, was knowing. In addition, after Ramirez learned that the address for Jensen supplied by the client was incorrect, he did not communicate that fact to the client, and knew that he had not.

As to his failure to provide his former client and its counsel with a complete file, Ramirez acknowledged that what he provided was “substantially the complete file,” showing that he had knowledge that he was not providing a fully complete file.

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


Geisler suffered actual injury, as well, by being forced to retain replacement counsel at additional expense, as the result of Ramirez’s neglect and communication failures. Geisler fired Ramirez in October 2017, about a month before trial. Replacement counsel had to quickly get up to speed, take the case to trial, and prepare related judgments, at the expense of Young’s estate.

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 1998, Ramirez was reprimanded for violations related to his handling of client funds (current RPC 1.15-1(a) & (c)) and his failure to adequately account for them (current RPC 1.15-1(d)). *In re Ramirez*, 12 DB Rptr 213 (1998) (“Ramirez I”).

In 2009, Ramirez was admonished for violations of RPC 1.3 and RPC 1.4(a); rules also at issue in this case. *In re Ramirez*, OSB Case No. 09-61 (“Ramirez Admonition”). 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).

In 2018, Ramirez was suspended by the Court for one year for violations of RPC 1.1 (failure to provide competent representation); RPC 1.3 (neglect of a legal matter); RPC 1.7(a)(2) (accepting representation of a current client materially limited by responsibilities to a past client); RPC 1.7(b) (current client conflict of interest); and RPC 1.8(h) (limitation of liability conflict of interest). *In re Ramirez*, 362 Or 370, 408 P3d 1065 (2018) (“Ramirez II”).

In 2019, Ramirez was again reprimanded for violation of RPC 1.5(c)(3) (charging or collecting a fee denominated as earned on receipt without required written disclosures). *In re Ramirez*, 33 DB Rptr __ (2019) (“Ramirez III”). However, Ramirez III carries little, if any, weight in aggravation as, in addition to the fact that the misconduct is dissimilar, the imposition of that discipline did not occur until after the conduct at issue in this matter.

Even so, taken together, Ramirez I, Ramirez II, and the Ramirez Admonition demonstrate that Ramirez had both warning and knowledge of the disciplinary process when he engaged in the misconduct in this case. *In re Hereford*, 306 Or 69, 75 (1988).

2. **Pattern of misconduct.** Standards § 9.22(c). This matter, taken in conjunction with Ramirez’s other prior discipline, demonstrates a collective pattern of failing to act with diligence in client matters. See *In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996); *In re Bertoni*, 363 Or 614, 644–45, 426 P3d 64 (2018) (regardless of whether earlier sanctions are or are not considered as prior discipline aggravation due to timing, they may nonetheless demonstrate a pattern of misconduct).

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

4. **Vulnerability of victim.** Standards § 9.22(h). Although he was retained by Geisler/MPS, Ramirez was retained to advance a financial elder abuse claim for Young, a protected person.
5. **Substantial experience in the practice of law.** *Standards* § 9.22(j). Ramirez was licensed to practice in Oregon in 1991.

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

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

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

19. Under the ABA *Standards*, a suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or engages in a pattern of neglect causing injury or potential injury to a client. *Standards* § 4.42. Likewise, a suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and cause injury or potential injury to a client. *Standards* § 4.12.

20. Oregon case law likewise holds that a short suspension is appropriate under these circumstances. See, e.g., *In re Snyder*, 348 Or 307 (2010) (attorney suspended for 30 days for failing to adequately communicate with a client and where mitigating factors outweighed the aggravating factors); *In re Redden*, 342 Or 393, 153 P3d 113 (2007) (attorney with no prior discipline suspended for 60 days for knowingly failing to pursue a legal matter for over one year); *In re Knappenberger*, 337 Or 15, 90 P3d 614 (2004) (noting that a 60-day suspension is generally appropriate for neglectful conduct, including failing to adequately communicate with clients); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (60-day suspension where attorney filed a lawsuit on the last day before the statute of limitations ran, failed to effect timely service, which caused the court to dismiss the case, and then failed to inform his client of the dismissal for more than one year and with balanced mitigating and aggravating factors); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (suspending attorney for 120 days 60 days each for failing to cooperate with the Bar and knowingly neglecting clients’ cases by failing to communicate with clients and opposing counsel); *In re Fjelstad*, 31 DB Rptr 268 (2017) (attorney suspended for 60 days for failing to provide his client’s file upon request).

21. Consistent with the *Standards* and Oregon case law, the parties agree that Ramirez shall be suspended for 60 days for violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 1.16(d). Because Ramirez is currently suspended from active practice, the sanction is to be effective upon approval by the Disciplinary Board.

22. Ramirez 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. Ramirez 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.

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

24.

Ramirez 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 Ramirez is admitted: none.

25.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 8, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 30th day of August, 2019.

/s/ Samuel A. Ramirez
Samuel A. Ramirez, OSB No. 910883

EXECUTED this 30th day of August, 2019.

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 Nos. 17-45, 18-66, 18-67, 18-68, and 18-161
Complaint as to the Conduct of ) SC S066917
) RONALD M. JOHNSON, Respondent.
) )
Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.5(a), RPC 1.8(a), RPC 1.15-1(d), RPC 1.16(d), and RPC 8.1(a)(2). Stipulation for Discipline. 18-month suspension, all stayed, 3-year probation.

Effective Date of Order: October 1, 2019

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. Effective October 1, 2019, respondent is suspended from the practice of law in the State of Oregon for a period of 18 months, with the entire term of the suspension stayed pending respondent’s successful completion of a three-year period of probation, on the terms and conditions recited in the parties’ Stipulation for Discipline. Pursuant to the stipulation, the Oregon State Bar is awarded costs against the respondent in the amount of $1,076.40, payable on or before January 31, 2020.

/s/ Martha L. Walters
Chief Justice, Supreme Court
9/12/2019 9:03 AM

STIPULATION FOR DISCIPLINE

Ronald M. Johnson, attorney at law (“Johnson”), 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.

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

3.

Johnson 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 23, 2018, an Amended Formal Complaint was filed against Johnson pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of RPC 1.3 (neglect); RPC 1.4(a) (duty to keep a client reasonably informed about the status of a matter and promptly respond to reasonable requests for information); RPC 1.5(a) (excessive fee); RPC 1.8(a) (business transaction with a client); RPC 1.15-1(d) (duty to promptly account for and provide client property, upon request); RPC 1.16(d) (duty to take all reasonable steps upon termination of representation to protect a client’s interest); and RPC 8.1(a)(2) (duty to respond to a lawful demand for information from a disciplinary authority). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

**Todd Kluser Matter**

**Case 17-45**

**Facts**

5.

In or prior to February 2015, Todd Kluser (“Kluser”) retained Johnson to represent him in a divorce proceeding. Kluser’s wife was represented by attorneys Robert Whitnah and Krischele Whitnah (individually and collectively, “Whitnah”).

6.

On September 10, 2015, the parties appeared for a status conference and reported to the court that the case was going to settle; however, Whitnah requested a trial date in the event that the settlement was not effectuated. The court set the trial for December 16, 2015.
7. On December 4, 2015, Whitnah made a third request for production and served it on Johnson. Even though Kluser had provided Johnson with responsive documents, Johnson did not forward the documents or otherwise respond to Whitnah’s request for production.

8. On December 14, 2015, Johnson filed a request for a continuance of the trial for reasons completely unrelated to Kluser or his legal matter. Johnson’s request was granted, and trial was set over to January 21, 2016.

9. On January 19, 2016, Whitnah filed a motion to compel production, along with a motion for a second continuance. On January 21, 2016, the parties appeared and reported that they were not prepared to proceed with trial as scheduled. Rather than grant a continuance, the court dismissed the case.

10. In early March 2016, Kluser obtained new counsel, Kenneth Goodin (“Goodin”), to initiate a new dissolution proceeding. Trial in that matter was scheduled for March 2-3, 2017. On February 23, 2017, Goodin was permitted to withdraw from the matter, at which time Kluser approached Johnson about again representing him. Johnson agreed.

11. Immediately prior to the March trial setting, Johnson conferenced with Whitnah out of Kluser’s presence. After the meeting with Whitnah, Johnson recommended settlement terms to Kluser based upon his conversation with Whitnah. Kluser reluctantly agreed to the terms, which were put on the record. Whitnah was tasked with drafting the judgment.

12. Shortly thereafter, the draft judgment was emailed to Johnson’s office and his staff forwarded the draft to Kluser. Kluser immediately concluded that the judgment did not reflect the terms agreed upon and tried unsuccessfully to reach Johnson during the next several days to ensure that Johnson objected to the form of judgment. Kluser left several messages but Johnson did not respond. Relying upon an assertion by Whitnah that the judgment accurately reflected the substance of the parties’ agreement, Johnson did not take any steps to object to the form of judgment and he did not notify Kluser that he would not take any action to object to Whitnah’s form of judgment.
13.

Kluser confronted Johnson after learning from the court that the decree had been signed without objections, and Johnson assured Kluser that he could and would fix the problems with the judgment but thereafter took no steps to do so. Kluser complained to the Bar.

14.

Between April 2017 and April 2018, Disciplinary Counsel’s Office (“DCO”) made no less than eleven separate and specific requests for information from Johnson related to Kluser’s Bar grievance. These inquiries were transmitted to Johnson by first-class mail to addresses Johnson provided, as well as nearly always also by email to email addresses that Johnson provided. DCO also attempted to reach Johnson by telephone. Johnson acknowledged many of these inquiries and was given a number of extensions to respond, at his request. Nonetheless, Johnson only delivered three substantive responses throughout the course of these inquiries, twice after DCO petitioned for his BR 7.1 suspension, and even so, failed to provide all of the information that was requested.

Violations

15.

Johnson admits that, by failing to object to, or thereafter take steps to address, Kluser’s perceived deficiencies with the judgment, despite assurances, Johnson violated RPC 1.3. Johnson further admits that his failure to respond to Kluser’s messages or inform Kluser of his position as to the propriety of the judgment violated RPC 1.4(a).

16.

Johnson acknowledges that his multiple failures to timely and fully respond to DCO’s inquiries related to Kluser’s grievance violated RPC 8.1(a)(2).

Andrea Burke Matter
Case 18-66

Facts

17.

In late November 2016, Andrea Burke (“Burke”) consulted with Johnson about registering her Washington divorce decree in Oregon and modifying the parenting plan. Burke paid Johnson a $275 consultation fee.
18. In late December 2016, Burke hired Johnson to represent her in registering her Washington divorce decree in Oregon and modifying the parenting plan. Burke paid him his quoted fee of $1,500. Johnson cannot locate any written fee agreement regarding Burke’s representation.

19. Between December 2016 and June 2017, Johnson took no substantive action on Burke’s legal matter. In particular, Johnson did not register the Washington decree, petition for a status quo order, or seek to modify the parenting time provisions.

20. In early February 2017, Johnson asked Burke if she could help him around his law office for an hourly wage. Burke agreed. There was no written agreement regarding Burke’s employment, including documentation of the amount or manner by which Burke would be compensated. Johnson did not advise Burke of the desirability of seeking the advice of independent legal counsel before commencing to work for him.

21. Burke worked for Johnson through approximately mid-June 2017. During the time that she was employed, when paid, Burke was paid in cash. In late May or early June, Burke confronted Johnson about not having filed the paperwork in her legal matter and about the fact that she did not feel comfortable with the work situation. Johnson again assured her he would file the paperwork. After an additional two-week period during which nothing was filed, she asked for a refund of her $1,500 retainer. Burke also asked to be paid her outstanding wages, to be issued a 1099 (so she could report her income), and to be reimbursed for office supplies she had purchased. Johnson did not refund her retainer, repay her for the office supplies, issue a 1099, or pay her for her hours.

22. Throughout the representation, Johnson did not respond to a number of requests from Burke seeking information about the status of her legal matter, and failed to keep one or more in-person appointments for this purpose.

Violations

23. Johnson admits that his failure to more timely attend to Burke’s legal matter constituted a violation of RPC 1.3, and that his failure to respond to her requests for updates and to provide information on the status of the registration of her divorce decree violated RPC 1.4(a). Johnson
further admits that his failure to refund any portion of Burke’s $1,500 retainer following termination violated RPC 1.16(d).

24.

Johnson also admits that his failure to obtain Burke’s informed consent, confirmed in writing, to her employment arrangement amounted to a business transaction with a client that violated RPC 1.8(a).

Edberg/Thompson Matter
Case 18-67

25.

In early September 2016, Eugene Lee Thompson (“Thompson”) hired Johnson to assume his representation in his marital dissolution. Thompson, age 88, believed that the lawyer previously representing him was moving too slowly in resolving the divorce. Thompson also sought Johnson’s assistance in drafting a will and an advance medical directive. Thompson paid Johnson a $275 consultation fee and advanced $500 in filing fees.

26.

Between September 2016 and January 2017, although Johnson performed some work on Thompson’s legal matters, he never entered an appearance on Thompson’s behalf in the marital dissolution.

27.

Between September 2016 and January 2017, Thompson’s two daughters and Thompson’s friend, Tim Harshbarger (“Harshbarger”), attempted on numerous occasions to contact Johnson by telephone or email about the status of Thompson’s legal matters on his behalf. Johnson did not respond to these telephone calls or emails believing that he had no authority from Thompson to do so. Johnson did not, however, reach out Thompson to seek authorization or explain to Thompson, Thompson’s daughters or Harshbarger that he was not authorized to speak with anyone other than Thompson about Thompson’s matters.

28.

On December 7, 2016, Thompson had scheduled an in-person appointment with Johnson for which Johnson failed to appear. The next day, Johnson called Thompson to apologize and represented that he would drive to Thompson to have him sign the necessary paperwork, but then failed to appear.

29.

On January 17, 2017, Thompson sent Johnson a letter discharging him, requesting copies of his complete file, and asking for a refund of the $775 paid. Johnson did not respond, provide the requested file materials, or refund any portion of the funds paid by Thompson.
On July 12, 2017, DCO forwarded a complaint from one of Thompson’s daughters ("Thompson Grievance") to Johnson and requested his response by August 2, 2017. On July 24, 2017, Johnson spoke with DCO staff and acknowledged receipt of DCO’s July 12, 2017 correspondence and the Thompson Grievance. Nevertheless, Johnson did not respond or advise why he could not respond.

In a letter dated August 8, 2017, DCO reminded Johnson of his obligation to respond, and again requested his response to the Thompson Grievance, this time by August 18, 2017. Johnson did not respond or advise why he could not respond.

In response to yet another letter from DCO, Johnson finally responded to the Thompson Grievance on August 30, 2017.

Violations

Johnson acknowledges that his failure to take more timely action in Thompson’s dissolution constituted a violation of RPC 1.3. Johnson also admits that his failure to respond to requests for information or explain the rationale for his nonresponsiveness, combined with his failures to keep promised appointments, violated RPC 1.4(a).

Johnson admits that his failure to provide Thompson with his file materials following termination or refund any portion of the fee paid violated RPC 1.16(d).

Johnson admits that his failure to sooner respond to DCO’s inquiries regarding the Thompson Grievance violated RPC 8.1(a)(2).

Deborah Nielsen Matter
Case 18-68

On January 10, 2017, Deborah Nielsen ("Nielsen") retained Johnson to represent her in her marital dissolution. There was no written fee agreement. Nielsen’s father paid Johnson a $1,000 retainer on Nielsen’s behalf ("Nielsen Retainer").
37. Between January 10, 2017, and mid-February 2017, Johnson did not take any substantive action on behalf of Johnson, including filing anything related to her dissolution.

38. On February 16, 2017, Nielsen notified Johnson by email that she no longer needed his services and asked for an accounting so that she would know what amount of a refund to expect from the Nielsen Retainer. Johnson did not respond, did not provide the requested accounting, and did not return any portion of the Nielsen Retainer.


40. On September 12, 2017, Nielsen complained to the Bar’s Client Assistance Office (“CAO”). When Johnson did not respond to inquiries from CAO seeking an accounting of Nielsen’s retainer, the matter was referred to DCO (“Nielsen Grievance”).

41. In a letter dated November 29, 2017, DCO asked Johnson to respond to the Nielsen Grievance and sought, among other things:

(1) a complete copy of Johnson’s representation file pertaining to Nielsen, including without limitation a copy of any fee agreement; correspondence sent or received; documents drafted on her behalf or received from other parties; records evidencing any payments made by her or on her behalf toward any fees or expenses Johnson asked her to pay; any email or text message communications between Johnson and Nielsen;

(2) an explanation of why Johnson has not responded to her requests for an accounting as to the monies that were paid to Johnson for representing her or, if he has, evidence of that response; and

(3) any timekeeping records that evidence work done for Nielsen and indication of whether Johnson believes that, based upon the time expended, no refund is owed.
42.

On December 20, 2017, in response to DCO, Johnson emailed a brief paragraph and supplied an invoice dated the same date as the email, which he referenced as the invoice Nielsen had been requesting. However, apart from the invoice and copies of a few text messages between himself and Nielsen—Johnson did not provide any of the documentation DCO requested, notwithstanding a December 22, 2017 follow-up letter requesting that he do so. In addition, Johnson did not return any portion of the Nielsen Retainer.

Violations

Johnson admits that his failure to file anything to progress Nielsen’s dissolution violated RPC 1.3. In addition, Johnson admits that his failure to refund any portion of the Nielsen Retainer violated RPC 1.5(a) and RPC 1.15-1(d).

43.

Johnson acknowledges that his failure to timely or fully respond to DCO’s requests for information on the Nielsen Grievance violated RPC 8.1(a)(2).

Avishag Jacob Matter
Case 18-161

44.

On April 21, 2017, Avishag Jacob (“Jacob”) consulted with Johnson about filing a petition to obtain sole custody of her daughter and, due to abuse concerns, secure an injunctive order that would prevent her daughter’s father (“Father”) from visiting until supervised parenting times were established. Jacob paid Johnson a $275 consultation fee.

45.

At the consultation, Johnson advised that Jacob that, because she and Father had never married, the process would be simplified. Jacob made Johnson aware that she did not have a then-current address for service, but knew that Father had an upcoming court date in May pertaining to a recent arrest. Johnson assured Jacob that he could pinpoint when and where Father would be appearing in court and that they could serve him there.

46.

Based on Johnson’s assurances, on April 26, 2017, Jacob met with Johnson and his assistant to review and sign the paperwork for filing. Jacob provided Johnson with information about Father so that Johnson could identify when he would be in court, and also paid a retainer of $1,300. There was no written fee agreement. Johnson told Jacob he would either file the papers later that afternoon or by the end of the week (i.e., April 28, 2017). However, Johnson did not file the petition or ascertain when Father would be in court for effectuation of service.
47.

In response to a number of calls over several days from Jacob regarding the status of Father’s court appearance, Johnson acknowledged to Jacob that he had not determined where and when Father was to appear. Jacob then sought help from a friend who was also an attorney and was able to locate the place and timing of Father’s court appearance. On May 2, 2017, Jacob notified Johnson that Father would be appearing in a particular court on May 10, 2017. Johnson assured her that he would file the paperwork in time to get Father served on May 10; however, Johnson did not thereafter file the petition or notify Jacob that he could not or would not file the petition.

48.

On the morning of May 10, 2017, Johnson texted Jacob that she had exceeded her retainer and that he could no longer work for her. Jacob immediately requested an accounting of her retainer. Johnson told Jacob that she could come by and pick up her petition but Johnson was never available when Jacob attempted on several occasions over the following month to retrieve her file. Johnson did not provide Jacob with an accounting or refund any portion of her retainer.

49.

On June 26, 2017, Jacob made a claim with the Bar’s Client Security Fund (“CSF”) that she had not received anything of value for the monies paid to Johnson.

50.

On April 3, 2018, Jacob’s CSF claim was sent to DCO for investigation (“Jacob Grievance”). In a letter dated May 2, 2018, DCO sought information and documentation from Johnson related to the Jacob Grievance. Despite requesting and obtaining an extension of time to respond, Johnson failed to substantively respond to DCO.

51.

In a letter dated June 15, 2018, DCO again requested Johnson’s response to the Jacob Grievance by June 22, 2018. At 4:03 pm on June 22, 2018, Johnson emailed brief answers to the eight questions posed by DCO in its original inquiry but provided none of the requested documentation.

52.

On June 25, 2018, DCO responded to Johnson’s June 22 email with an additional request for information that contained each question that had been posed originally in DCO’s May 2, 2018 letter; a copy of his response (first emailed on June 22, 2018); and an explanation of why Johnson’s June 22, 2018 response was inadequate or incomplete. The email sought Johnson’s response on or before July 2, 2018.
53.

On July 2, 2018, after learning that Johnson could not access his email, DCO sent a letter again requesting Johnson’s response to the Jacob Grievance and granting Johnson until July 16, 2018, to respond.

54.

On July 16, 2018, Johnson sent three brief emails to DCO. Even read together, they did not substantively respond to the clarification sought in DCO’s June 25, 2018 email, or otherwise correct the inadequacies of Johnson’s prior responses.

Violations

55.

Johnson acknowledges that his failure to file the petition or advise Jacob that he would not file the petition violated RPC 1.3.

56.

Johnson admits that his failure to account for and return any unused portion of Jacob’s $1,300 fee violated RPC 1.15-1(a), and that, along with his failure to provide Jacob with her draft petition, violated RPC 1.16(d).

57.

Johnson further admits that his failure to fully or more timely respond to DCO on the Jacob Grievance violated RPC 8.1(a)(2).

Sanction

58.

Johnson 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 Johnson’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. Johnson violated his duties to his clients to properly handle client property; to avoid conflicts of interest; and to diligently pursue their legal matters (including the duty to adequately communicate with them). Standards §§ 4.1; 4.3; 4.4. The Standards provide that the most important ethical duties are those which lawyers owe to their clients. Standards at 5. Johnson also violated his duties to the profession to refrain from charging or collecting an
excessive fee and to timely and fully respond to disciplinary authorities. Standards § 7.0.

b. **Mental State.** There are three types of mental state recognized 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. Standards at 9.

Johnson’s conduct was a combination of both negligent and knowing. To the extent that his failures to act or respond to clients may have initially been negligent, they later became knowing when he was reminded of his need to act but still failed to do so. Similarly, his conflict with Burke was knowing, as was his failure to account for and/or return client property to Burke, Thompson, Nielson, and Jacob.

Johnson acted knowingly in failing to respond to Bar inquiries. The letters sent by DCO were duly directed and mailed. BR 1.8(d) provides that service of pleadings or documents is complete when deposited in the mail. And, in some instances, Johnson acknowledged the Bar’s correspondence. In re Miles, 324 Or 218, 221–22, 923 P2d 1219 (1996).

c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, both actual and potential injury are taken into account. Standards at 6; In re Williams, 314 Or 530, 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.

Johnson caused actual injury to clients whose matters were delayed by his inaction and/or were denied the financial resources (previously paid to him) to employ other counsel or fully pursue their legal remedies.

Johnson’s failures to act and communicate with his clients caused further actual injury in terms of anxiety and frustration. See In re Cohen, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of the attorney neglect can constitute actual injury); In re Schaffner, 325 Or 421, 426–27, 939 P2d 39 (1997).

Johnson’s failure to cooperate with the Bar’s investigation of his conduct caused actual injury to both the legal profession and to the public. In re Schaffner supra; In re Miles, 324 Or 218, 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).

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


2. **Multiple offenses.** Standards § 9.22(d). In addition to multiple complaints and clients, there are multiple charges associated with each of five clients.

3. **Substantial experience in the practice of law.** Standards § 9.22(i). Johnson has been admitted in Oregon since 1988, and has practiced in the area of domestic relations for a majority of that time.

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

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

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

3. **Personal or emotional problems.** Standards § 9.32(c). Johnson’s wife of 30 years passed away in June 2017. At the time, she had also been acting as his legal assistant. The death of Johnson’s wife caused him to thereafter to be absent from his office while attempting to cope with grieving issues, and contributed to him essentially ignoring his law practice and other professional obligations for a period of time.

4. **Remorse.** Standards § 9.32(l). Johnson has expressed remorse for his inaction in sooner dealing with both his client matters and for his failures to sooner or more fully respond to the Bar.

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. Similarly, a 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. 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 §§ 4.32; 4.33.

A suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Standards § 4.42. A suspension is also generally appropriate when a lawyer 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.

60.

Oregon cases similarly conclude that a substantial suspension is warranted, particularly where there are multiple instances of neglect, inadequate communication, failure to properly handle client property, and/or a failure to respond to the Bar. See, e.g., In re Bertoni, 363 Or 614, 426 P3d 64 (2018) (18-month suspension for violations, including multiple instances of inadequate communication and failure to properly handle client funds, in three separate matters); In re Ramirez, 362 Or 370, 408 P3d 1065 (2018) (1-year suspension for “a course of neglectful conduct” and lack of competence in failing three times to properly foreclose on property, and otherwise failing to act to protect his client’s interests); In re Roller, 361 Or 234, 390 P3d 1045 (2017) (4-year suspension for conduct in four separate matters, including failing to take substantive action on one client’s case for three years; and, on another matter, failing to appear at a bench trial, communicate with the court or the client after a pretrial conference was then set, failing to appear at the conference, failing to communicate with the court or the client after a hearing was set, and failing to appear at the hearing); In re Goff, 352 Or 104, 280 P3d 984 (2012) (court affirmed trial panel’s 18-month suspension of respondent for multiple violations in connection with four separate matters, including neglect, failure to communicate, and failure to respond to the Bar); In re Parker, 330 Or 541, 9 P3d 107 (2000) (attorney who neglected his law practice while absent from his office for days and weeks at a time, was suspended for 4 years where several client matters were left unattended to the prejudice of the clients; attorney also failed to respond to numerous client messages and failed to comply with a court order directing him to execute settlement documents in one matter); In re Bourcier, 322 Or 561, 909 P2d 1234 (1996) (attorney with prior discipline for neglect was suspended for 3 years for neglect and failing to respond to the Bar).

61.

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 lieu of a period of suspension in these matters, 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.
62.

Consistent with the Standards and Oregon case law, the parties agree that Johnson shall be suspended for eighteen (18) months for violations of RPC 1.3; RPC 1.4(a); RPC 1.5(a); RPC 1.8(a); RPC 1.15-1(d); RPC 1.16(d); and RPC 8.1(a)(2), with all of the suspension stayed, pending Johnson’s successful completion of a three (3) year term of probation. The sanction shall be effective September 2, 2019, or the first day of the month following approval, whichever is later, or as otherwise directed by the Supreme Court (“effective date”).

63.

Probation shall commence upon the effective date and shall continue for a period of three (3) years, ending on the day prior to the third (3rd) year anniversary of the effective date (the “period of probation”). During the period of probation, Johnson shall abide by the following conditions:

(a) Johnson 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) Johnson 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, Johnson shall attend not less than twelve (12) MCLE accredited programs, for a total of thirty-six (36) hours, which shall emphasize law practice management, time management, handling client property, client communication, conflicts of interest, fees, and fee agreements. These credit hours shall be in addition to those MCLE credit hours required of Johnson for his normal MCLE reporting period. (The Ethics School requirement does not count towards the thirty-six (36) hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of his period of probation, Johnson shall submit an Affidavit of Compliance to DCO.

(d) Throughout the period of probation, Johnson shall diligently attend to client matters and adequately communicate with clients regarding their cases. Johnson shall also take steps to ensure that he has written fee agreements with all clients, and that he is acting in conformity with those agreements, including the proper handling of client funds and property.

(e) Each month during the period of probation, Johnson shall review all client files to ensure that he is timely attending to the clients’ matters and that he is maintaining adequate communication with clients, the court, and opposing counsel; that there are no outstanding requests for client funds or property; and that he is taking reasonably practicable steps to protect his clients’ interests upon the termination of employment.
Valerie Wright, OSB No. 861075, shall serve as Johnson’s probation supervisor (“Supervisor”). Johnson shall cooperate and comply with all reasonable requests made by Supervisor that Supervisor, in her sole discretion, determines are designed to achieve the purpose of the probation and the protection of Johnson’s clients, the profession, the legal system, and the public. Johnson agrees that, if Supervisor ceases to be his Supervisor for any reason, Johnson will immediately notify DCO and engage a new Supervisor, approved by DCO, within one month.

Beginning with the first month of the period of probation, and continuing for the first year, Johnson shall meet with Supervisor in person at least once a month, and at least once per quarter thereafter, for the purpose of:

1. Allowing his Supervisor to review the status of Johnson’s law practice and his performance of legal services on the behalf of clients.

2. At each regularly scheduled meeting during the period of probation, Supervisor shall conduct a random audit of ten (10) client files or ten percent (10%) of Johnson’s active caseload, whichever is greater, to determine whether Johnson is timely, competently, diligently, and ethically attending to matters; maintaining adequate communication with clients, the court, and opposing counsel; that there are no outstanding requests for client funds or property; and that he is taking reasonably practicable steps to protect his clients’ interests upon the termination of employment.

Johnson authorizes his Supervisor to communicate with DCO regarding his compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Johnson’s compliance.

Within seven (7) days of the effective date, Johnson shall contact the Professional Liability Fund (“PLF”) and schedule an appointment on the soonest date available to consult with a PLF Practice Management Advisor in order to obtain practice management advice. Johnson shall notify DCO of the time and date of the appointment.

Johnson 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 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’s Practice Management Advisor, Johnson shall adopt and implement those recommendations.

No later than sixty (60) days after recommendations are made by the PLF’s Practice Management Advisor, Johnson shall provide a copy of the Office
Practice Assessment from the PLF’s Practice Management Advisor and file a report with DCO stating the date of his consultation(s) with the PLF’s Practice Management Advisors; 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.

(l) Johnson shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with a PLF Practice Management Advisor on or before March 31, 2020.

(m) Johnson is currently is working with Doug Querin (“Querin”) of the Oregon Attorney Assistance Program (“OAAP”) for issues related to grieving and his mental health. Johnson authorizes Querin and OAAP to communicate with DCO regarding Johnson’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 Johnson’s compliance.

(n) Johnson shall continue regular counseling sessions with Querin, or a mental health treatment provider determined by Querin to be appropriate, for the entire term of his probation. Johnson shall not reduce the frequency of his counseling sessions with Querin without first submitting to DCO a written recommendation from Querin or other approved treatment provider that his counseling sessions should be reduced in frequency or terminated and Johnson undergoes an independent evaluation by a second professional acceptable to DCO, which evaluation confirms his fitness.

(o) Johnson consents to the release of information by Querin, other mental health or substance abuse treatment program or providers, OAAP, AA, NA, or any designee, to DCO, regarding his treatment plan, his progress under that plan, and his compliance with the terms of this Stipulation for Discipline; waives any privilege or right of confidentiality to permit such disclosure; and agrees to execute such releases as may be required by such providers upon request by DCO.

(p) No later than sixty (60) days prior to the last day of the period of probation, Johnson shall provide restitution in the amount of at least $750 to Burke, representing 50% of the legal fees paid to Johnson.

(q) No later than sixty (60) days prior to the last day of the period of probation, Johnson shall provide restitution in the amount of at least $375 to Thompson, representing 50% of the legal fees paid to Johnson.

(r) No later than sixty (60) days prior to the last day of the period of probation, Johnson shall provide restitution in the amount of at least $500 to Nielsen, representing 50% of the legal fees paid to Johnson.
(s) No later than sixty (60) days prior to the last day of the period of probation, Johnson shall provide restitution in the amount of at least $675 to Burke, representing 50% of the legal fees paid to Johnson.

(t) On a monthly basis, on dates to be established by DCO beginning no later than thirty (30) days after the effective date, Johnson shall submit to DCO a written “Compliance Report,” approved as to substance by his Supervisor, advising whether Johnson is in compliance with the terms of this Stipulation for Discipline, including:

1. The dates and purpose of Johnson’s meetings with his Supervisor.

2. The dates and duration of Johnson’s meetings with Querin and/or other treatment provider(s).

3. The number of Johnson’s active cases and percentage reviewed in the most-recent audit with Supervisor and the results thereof.

4. The dates and amounts of any restitution payments.

5. Whether Johnson has completed the other provisions recommended by his Supervisor, if applicable.

6. In the event that Johnson has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.

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

(v) Johnson’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 his Supervisor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.

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

(x) The SPRB’s decision to bring a formal complaint against Johnson for unethical conduct that occurred or continued following his execution of this Stipulation for Discipline shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.

In addition, on or before January 31, 2020, Johnson shall pay to the Bar its reasonable and necessary costs in the amount of $1,076.40, incurred for service of the Bar’s complaint and deposition costs. Should Johnson fail to pay $1,076.40 in full by January 31, 2020, the Bar
may thereafter, without further notice to him, obtain a judgment against Johnson for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

65.

Johnson 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, if any stayed period of suspension is actually imposed. In this regard, if any stayed period of suspension is actually imposed, Johnson has arranged for Valerie Wright, an active member of the Bar, to either take possession of or have ongoing access to Johnson’s client files and serve as the contact person for clients in need of the files during the term of his actual suspension. Johnson represents that Valerie Wright has agreed to accept this responsibility.

66.

Johnson 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 Johnson to attend continuing legal education (CLE) courses.

67.

Johnson 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 Johnson is admitted: none.

68.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 22, 2019. Approval as to form by Disciplinary Counsel is evidenced below. 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 5th day of August, 2019.

/s/ Ronald M. Johnson
Ronald M. Johnson
OSB No. 880629

EXECUTED this 5th day of August, 2019.

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. 19-95
Complaint as to the Conduct of )
SUZANNE K. TAYLOR, )
Respondent. )

Counsel for the Bar: Dawn Miller Evans
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.4(a), RPC 1.4(b), and RPC 1.16(d).

Effective Date of Order: September 23, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Suzanne K. Taylor is publically reprimanded for violations of RPC 1.4(a), RPC 1.4(b), and RPC 1.16(d).

DATED this 23rd day of September, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

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

Taylor was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 21, 1990, and has been a member of the Bar continuously since that time, having her office and place of business in Marion County, Oregon.

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

On September 7, 2019, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Taylor for alleged violations of RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter), RPC 1.4(b) (failure to inform a client sufficiently to allow the client to make informed decisions), and RPC 1.16(d) (failure to take steps on termination of representation to protect client interests) 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

Taylor was appointed to represent Claude Joseph (“Joseph”) and represented him through his criminal trial and sentencing. At the conclusion of representation, Taylor agreed to contact the Office of Public Defense Services (“OPDS”) on Joseph’s behalf for an appellate referral but failed to do so. She took no steps to address the appeal despite receiving three letters from Joseph inquiring about the status of his appeal. In response to the bar complaint, Taylor acknowledged her lack of action and response and apologized to Joseph.

Violations

Taylor admits that her failure to contact OPDS to secure an appellate referral for Joseph was a failure to take reasonable steps upon the termination of representation to protect the client’s interests, in violation of RPC 1.16(d). Taylor further admits that failing to respond to
Joseph’s letters and failing to let Joseph know that she had not obtained an appellate referral for him violated RPC 1.4(a) and RPC 1.4(b), respectively.

Sanction

7.

Taylor 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 Taylor’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. Taylor violated her duty to appropriately communicate with her client, Standards § 4.4, and violated other duties owed as professional, by failing to take reasonable steps after termination of her client’s representation. Standards § 7.0.

b. Mental State. Taylor’s failure to contact OPDS to secure a referral of an appellate lawyer for Joseph was negligent. Negligence is defined as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Standards at 9. Her initial failure to respond to Joseph’s first letter was also negligent. Taylor’s failure to respond to the second and third letters was knowing, which means that 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. Id.

c. Injury. For the purposes of determining an appropriate disciplinary sanction, both actual and potential injury can be considered. Standards at 6; In re Williams, 314 Or 530, 840 P2d 1280 (1992). Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules. In re Snyder, 348 Or 307, 321, 232 P3d 952 (2010). In this case, Joseph suffered actual injury when he was denied, through no fault of his own, the opportunity to perfect and pursue appeal of his multiple criminal convictions. In re Obert, 336 Or 640, 89 P3d 1173 (2004) (defendant client sustained actual injury due to failure to file a timely appeal notice in that he lost the opportunity to pursue his claims in an appellate court and effectively eliminated his opportunity to pursue federal habeas corpus relief, because he had failed to exhaust state remedies).

d. Aggravating Circumstances. Aggravating circumstances include:

1. Vulnerability of victim. Standard § 9.22(h). Joseph was incarcerated and indigent, with a very limited ability to take steps on his own to determine whether his appeal was being pursued or learn why Taylor
was not responding to him. See In re Obert, supra, 336 Or at 653 (so holding).

2. Substantial experience in the practice of law. Standard § 9.22(i). Taylor has been licensed since September 21, 1990.

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

3. Personal or emotional problems. Standards § 9.32(c). At the time that Taylor was completing the representation of Joseph, she was dealing with an ongoing situation involving her family’s and her own physical health that required her time and attention and ultimately compelled her to close her practice.
4. A cooperative attitude toward disciplinary proceedings. Standards § 9.32(e). Taylor responded promptly to the Client Assistance Office and to both telephonic and written inquiries from Disciplinary Counsel’s Office.
5. Remorse. Standards § 9.32(l). Taylor has acknowledged forthrightly her failings with Joseph and conveyed her apology to him in her response to Bar inquiries.

8.

As to the duty to communicate with clients, under the Standards a suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. 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. As to duties owed as a professional, including taking reasonable steps to protect the client’s interests upon termination of the relationship, under the Standards, 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. Standards § 7.3.

Taking the rule violations together, the appropriate range of sanctions is from a public reprimand to a short suspension. Given that mitigating factors significantly outweigh aggravating factors, a reprimand is sufficient.

9.

This is in accord with other Oregon cases with similar violations and mitigation. See, e.g., In re Bruce, 32 DB Rptr 290 (2018) (In representing a proposed fiduciary in two related guardianship proceedings, respondent failed to keep her client apprised on the progress of the
guardianships, failed to notify her client regarding the problems she had with service of both parents, and failed to notify her client that the one of the cases had been dismissed for respondent’s failure to prosecute the case.; In re Castle, 31 DB Rptr 254 (2017) (Respondent was attorney of record in protective proceedings in which annual reports were required. The third year, Respondent received two notices that the annual report was late and, although he left a message for his client, Respondent did not otherwise follow up, and failed to notify his client of a hearing regarding the failure to file an annual report.); In re Cain, 31 DB Rptr 105 (2017) (After determining that reconsideration of a small claims court decision was not feasible, Respondent believed but could not establish that she informed the client by phone or left a voicemail message. She thereafter received messages from the client that she did not return.); In re Pizzo, 30 DB Rptr 371 (2016) (Respondent represented a client in responding to show cause order to modify parenting time. As the deadline for response approached, the client left numerous messages regarding the status of the promised draft response but Respondent failed to reply to them. Respondent answered one the client’s phone calls and assured her that he would draft a response and email it to her but failed to do so.); In re Dugan, 30 DB Rptr 277 (2016) (Respondent was retained to develop a claim for the wrongful death of his client’s daughter. Although she initially drafted a demand letter, and sent tort claims notices to the appropriate agencies, Respondent then waited nearly two years before taking any further action on the case. During that two-year period, the client made multiple inquiries regarding the status of her case and urging Respondent to take action. Respondent failed to reply to the client’s inquiries, apart from a few promises to act within the next few days.).

10. Consistent with the Standards and Oregon case law, the parties agree that Taylor shall be publicly reprimanded for violations of RPC 8.4(a)(4), the sanction to be effective upon approval by the Disciplinary Board.

11. Taylor 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.

12. Taylor 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 Taylor is admitted: None.

13. Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 7, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The
parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 16th day of September, 2019.

/s/ Suzanne K. Taylor
Suzanne K. Taylor, OSB No. 903910

EXECUTED this 19th day of September, 2019.

OREGON STATE BAR

By: /s/ Dawn Miller Evans
Dawn Miller Evans, OSB No. 141821
Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 19-98
Complaint as to the Conduct of )
) MARK KRAMER,
) Respondent.

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.6(a). Stipulation for Discipline.
Public Reprimand.
Effective Date of Order: September 27, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

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

DATED this 27th day of September, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Mark Kramer
Mark Kramer, OSB No. 814977

/s/ Courtney C. Dippel
Courtney C. Dippel, OSB No. 022916
STIPULATION FOR DISCIPLINE

Mark Kramer, attorney at law (Kramer), 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. Kramer was admitted by the Oregon Supreme Court to the practice of law in Oregon on December 12, 1981, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3. Kramer 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 7, 2019, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Kramer for his alleged violations of RPC 1.6(a) and RPC 5.3(a) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5. On May 16, 2018, Kramer sent an email to Tabitha Koh (Koh), which was intended for Tabitha Brincat (Brincat). Kramer’s email included letters from his client’s primary care doctor and neurologist. By that time, Kramer had misdirected at least four other email messages to Koh and Brincat in January, February, March, and on May 15, 2018 and had been advised to be more careful in sending case-related emails to ensure that they were sent to the intended recipients.

After learning of his error, Kramer notified his client and his client did not request any corrective measures. Subsequently, the letters from the client’s medical providers were introduced as evidence in court and the medical providers testified as to their contents.
Violations

6.

Kramer admits that, by sending his email on May 16, 2018, that included confidential medical records relating to his client, he revealed information relating to the representation of the client that the client had not consented to and was not impliedly authorized in order to carry out the representation in violation of RPC 1.6(a).

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 5.3(a) should be and, upon the approval of this stipulation, is dismissed.

Sanction

7.

Kramer 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 Kramer’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 that an attorney owes are to his or her clients. Standards at 5. Kramer violated his duty to preserve client confidences. Standards § 4.2.

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.

Initially, Kramer acted negligently by deviating from the standard of care that a reasonable attorney would have exercised by ensuring his emails were sent to the correct recipients. After he was put on notice of his continued mistakes, Kramer’s mental state became knowing.

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 the potential for injury to Kramer’s client. Fortunately for Kramer, the recipients of his misdirected email messages were attorneys who understood the duty to preserve client confidences and who were not representing clients in the matters from which confidences were revealed.
d. **Aggravating Circumstances.** Aggravating circumstances include:


2. Substantial experience in the practice of law. *Standards* § 9.22(i). Kramer was licensed to practice in Oregon in 1981.

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

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

2. Timely good faith effort to make restitution or to rectify consequences of misconduct. *Standards* § 9.32(d). When Kramer learned that he had accidentally sent medical information to the wrong attorney, he disclosed that to his client, and his client did not ask for any remedial measures.

3. Full and free disclosure to disciplinary board and cooperative attitude toward proceedings. *Standards* § 9.32(e). Kramer acknowledged his errors and was cooperative with the Bar’s investigation.


8.

Under the ABA *Standards*, a public reprimand is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client. *Standards* § 4.23. Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client. *Standards* § 4.22.

9.

A public reprimand is consistent with Oregon case law. *In re Burt*, 30 DB Rptr 139 (2016) (attorney provided confidential information to his incarcerated client without identifying it as “legal mail” or other steps to ensure that it would not be disclosed to anyone other than the client); *In re Valverde*, 29 DB Rptr 192 (2015) (attorney employed by the State of Oregon operated a private law practice and stored documents containing client information on state-owned computers, without adequate protections or client consent); *In re Scannell, Jr.*, 8 DB 99 (1994) [trial panel opinion] (attorney’s attachment of co-counsel’s strategy letter to his memorandum in opposition to motion dismiss, without the consent of co-counsel or the client, constituted an improper disclosure of a client confidence).
10. Consistent with the Standards and Oregon case law, the parties agree that Kramer shall be publically reprimanded for violation of RPC 1.6(a).

11. Kramer 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 Kramer to attend continuing legal education (CLE) courses.

12. Kramer 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 Kramer is admitted: US Federal District Court.

13. Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 8, 2019. Approval as to form by Disciplinary Counsel is evidenced below.

The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 24th day of September, 2019.

/s/ Mark Kramer
Mark Kramer, OSB No. 814977

EXECUTED this 26th day of September, 2019.

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: )
) Case No. 18-69
Complaint as to the Conduct of )
) MAREESA M. ELMQUIST,
) Respondent.
)
Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: Frederic E. Cann
Disciplinary Board: None
Disposition: Violation of RPC 5.5(a), RPC 7.1, and ORS 9.160(1).
Stipulation for Discipline. Public Reprimand.
Effective Date of Order: September 27, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Mareesa M. Elmquist is publicly reprimanded for violations of RPC 5.5(a), RPC 7.1, and ORS 9.160(1).

DATED this 27th day of September, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Frederic Cann
Frederic Cann, OSB No. 781604
Counsel for Respondent
STIPULATION FOR DISCIPLINE

Mareesa M. Elmquist, attorney at law (“Elmquist”), 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. Elmquist was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 21, 1999, and has been a member of the Bar continuously since that time, having her office and place of business in Multnomah County, Oregon at the time of the matters which are the subject of this stipulation.

3. Elmquist 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 25, 2018, a Formal Complaint was filed against Elmquist pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 5.5(a) (unauthorized practice of law); and RPC 7.1 (misleading communication about the lawyer or the lawyer’s services) of the Oregon Rules of Professional Conduct, and ORS 9.160(1) (practicing law or representing that the person is qualified to practice 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. On January 10, 2017, Elmquist sought and obtained an exemption from malpractice insurance coverage from the Professional Liability Fund (“PLF”), on the basis that she was a full-time employee of a corporation and therefore not engaged in the private practice of law. At the time, Elmquist did periodic contract work for a business entity, which is distinguishable from serving as an in-house counsel. Unfortunately, it was not clear to Elmquist from her
examination of the PLF website nor prior conversations with PLF representatives that it was only the latter circumstance which the exemption is intended to address. Elmquist maintained her corporate exemption status for all of 2017. Accordingly, she was not permitted to engage in the private practice of law during that year.

6.

During July 2017, Donald Barrett (“Barrett”) sought Elmquist’s advice in connection with his ongoing divorce and problems dealing with his California attorney and California guardian ad litem. Failing to fully consider or confirm the distinction between legal work and non-legal assistance, on July 27, 2017, on behalf of Barrett, Elmquist drafted a letter to the U.S. Railroad Retirement Board (“USRRB”) on stationery that identified Elmquist as an attorney at law, in which she indicated that she was working with Barrett and asked to be contacted regarding the status of Barrett’s benefits. She gave a copy of the letter to Barrett, and left it to him to determine what, if anything, to do with it. Elmquist did not personally send the letter to the USRRB, and the addressee of the letter at the USRRB reportedly has no record of personally receiving the letter.

Violations

7.

Elmquist admits that, by providing a letter to Barrett on stationery identifying herself as an attorney at law and acting in a representative capacity on Barrett’s behalf, and she held herself out as an attorney and engaged in the practice of law at a time when her corporate exempt status with the PLF prohibited her from engaging in the private practice of law, thereby violating RPC 5.5(a), RPC 7.1, and ORS 9.160(1).

Sanction

8.

Elmquist 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 Elmquist’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. The Standards recognize three mental states. 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.* Elmquist was negligent in obtaining a corporate exemption status during a period in which she offered her legal services to business clients through a referral service, as she failed to sufficiently educate herself about what was required to qualify for the exemption. Elmquist’s conduct in drafting a letter on her attorney stationary and giving it to Barrett was knowing; however, she negligently believed that the actions she undertook did not constitute the practice of law.

c. **Injury.** Barrett was potentially injured by Elmquist in that she was not covered by PLF for the letter she wrote to the USRRB for Barrett at the time it was written. There is no evidence of any actual injury, and Elmquist subsequently obtained retroactive PLF coverage for all of 2017.

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

1. Multiple offenses. *Standards* § 9.22(i).
2. Substantial experience in the practice of law. Elmquist has been licensed since 1999. *Standards* § 9.22(i).

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

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

9. The *Standards* provide that 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.

10. Oregon cases have likewise resulted in public reprimands for lawyers who have negligently engaged in the practice of law when not authorized to do so, particularly where of a limited duration and/or where there is limited actual injury. *See e.g.*, *In re Cohn-Lee*, 31 DB Rptr 344 (2017) (attorney administratively suspended for failing to timely submit his IOLTA compliance did not receive the Bar’s notices because he had failed to update his attorney contact information with the Bar as required; on reinstatement application, attorney acknowledged that he had practiced law for three months while suspended); and *In re Bassett*, 16 DB Rptr 190 (2002) (attorney practiced law for 15 days after he was suspended retroactively
because he paid his otherwise timely PLF assessment with an NSF check). Similarly, lawyers who have been careless in their communications regarding their status have received reprimands under similar circumstances. See, e.g., In re Fjelstad, 29 DB Rptr 122 (2015) (attorney reprimanded when, after he was suspended from active practice in Oregon, and Washington, he thereafter continued to hold himself as entitled to practice law for a time on his internet website); In re Kimmel, 10 DB Rptr 175 (1996) (attorney reprimanded for letterhead indicating California license when attorney was inactive bar member not then eligible to practice law in that state). See also, In re Carstens, 22 DB Rptr 97 (2008) (attorney was reprimanded where, while suspended from practice, he continued to use letterhead on which he was identified as an attorney, failed to remove his name from the firm website and office sign, and provided comments to local media as an attorney).

11.

Consistent with the Standards and Oregon case law, the parties agree that Elmquist shall be publically reprimanded for her violations of RPC 5.5(a); RPC 7.1; and ORS 9.160(1), effective upon approval by the Disciplinary Board.

12.

Elmquist 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.

13.

Elmquist 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 Elmquist is admitted: none.

14.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 7, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The
parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 23rd day of September, 2019.

/s/ Mareesa M. Elmquist
Mareesa M. Elmquist, OSB No. 990463

APPROVED AS TO FORM AND CONTENT:

/s/ Frederic Cann
Frederic Cann
OSB No. 781604

EXECUTED this 26th day of September, 2019.

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. 19-80
 )
DOUGLAS V. OSBORNE, )
 )
Respondent. )

Counsel for the Bar: Stacy R. Owen
Counsel for the Respondent: None
Disciplinary Board: None
Effective Date of Order: October 4, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Douglas V. Osborne is publicly reprimanded, for violation of 1.15-1(d).

DATED this 4th day of October, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Douglas V. Osborne
Douglas V. Osborne, OSB No. 721895

/s/ Stacy R. Owen
Stacy R. Owen, OSB No. 074826
STIPULATION FOR DISCIPLINE

Douglas V. Osborne, attorney at law (Osborne), 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.

Osborne was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1972, and has been a member of the Bar continuously since that time. Osborne’s office and place of business is in Klamath County, Oregon.

3.

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

4.

On July 20, 2019, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Osborne for alleged violation of Oregon Rule of Professional Conduct (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.

Osborne represented Wayne L. Stone (Stone) and Stone asked Osborne for an accounting in April 2017. It was not until June 2018 that Osborne provided Stone with the requested accounting.

Violations

6.

Osborne admits that, by delaying providing an accounting to his client for more than a year, he violated RPC 1.15-1(d).
Sanction

7.

Osborne 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 Osborne’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.** Osborne violated his duty to account to his client regarding the client’s property. *Standards* § 4.1.

b. **Mental State.** Osborne acknowledged receipt of his client’s email requesting the accounting, so had a knowing mental state.

c. **Injury.** Stone suffered actual injury in the form of the anxiety and frustration that he experienced as the result of Osborne’s failure to provide information to him regarding this retainer. See *In re Cohen*, 330 Or 489, 496 (2000) (client anxiety and frustration as the result of attorney neglect can constitute actual injury under the *Standards*); *In re Schaffner*, 325 Or 421, 426–27 (1997).

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

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

2. Substantial experience in the practice of law. *Standards* § 9.22(j). Osborne was admitted to practice in Oregon in 1972.

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


8.

As to duties to clients, under the *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.
9.

Despite the presumption for the imposition of a suspension in the event of a knowing mental state, *Standards* § 4.12, the following Oregon cases support the imposition of a public reprimand, in part because the factors in mitigation outweigh those in aggravation. *In re Collins*, 31 DB Rptr 167 (2017) (respondent did not provide the accounting requested by his client and did not provide the refund that was due to the client for over four months); *In re Morgan*, 31 DB Rptr 28 (2017) (upon a client’s termination of the representation, respondent failed to promptly account for or deliver funds that had been advanced for costs but remained unspent); *In re Marsh*, 21 DB Rptr 217 (2007) (after respondent withdrew from representation, clients requested an accounting of their funds but respondent failed to prepare and maintain complete and accurate accounting records and did not provide any such records to the clients); *In re Gregory*, 19 DB Rptr 150 (2005) (respondent ignored requests from his former client and her new counsel for the client’s file and the unearned portion of her retainer, until the client filed a complaint with the Bar).

10.

Consistent with the *Standards* and Oregon cases, the parties agree that Osborne shall be publicly reprimanded for violation of RPC 1.15-1(d), the sanction to be effective upon approval of this stipulation by the Adjudicator.

11.

Osborne 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.

12.

Other jurisdictions in which Osborne is admitted: none.

13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 20, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties
agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 13th day of September, 2019.

/s/ Douglas V. Osborne  
Douglas V. Osborne, OSB No. 721895

EXECUTED this 13th day of September, 2019.

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: )
 )
Complaint as to the Conduct of ) Case No. 18-201
 )
JAMES M. MALDONADO, )
 )
Respondent. )

Counsel for the Bar: Theodore W. Reuter

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violations of RPC 5.5(a); RPC 5.5(b)(2); and ORS 9.160(1). Stipulation for Discipline. 90-day suspension, 60 days stayed, 3-year probation.

Effective Date of Order: December 4, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Maldonado is suspended for 90 days, 60 days stayed, pending successful completion of a 3-year probation, effective 30 days from the date of this order for violation of RPC 5.5(a), RPC 5.5(b)(2), and ORS 9.160(1).

DATED this 4th day of November, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board
STIPULATION FOR DISCIPLINE

James M. Maldonado, attorney at law (“Maldonado”), 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.

Maldonado 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 his office and place of business in Multnomah County, Oregon.

3.

Maldonado 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 January 23, 2019, a Formal Complaint was filed against Maldonado pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 5.5(a), RPC 5.5(b)(2), and ORS 9.160(1). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

At all material times herein, Maldonado served as Corporate Counsel and Chief Compliance Officer (“Corporate Counsel”) for OCHIN, Inc. (“OCHIN”), and worked at company headquarters located in Portland, Oregon.
6. 

On April 18, 2017, Maldonado was suspended from the practice of law for failure to pay his mandatory Professional Liability Fund (“PLF”) malpractice insurance assessment.

7. 

On May 2, 2017, Maldonado was suspended from the practice of law for failure to pay his mandatory Bar dues and to comply with his mandatory lawyer trust account reporting (“IOLTA Report”).

8. 

On May 30, 2017, Maldonado was suspended from the practice of law for failure to complete his mandatory Minimum Continuing Legal Education (“MCLE”) requirements and submit his MCLE certification report.

9. 

On or about July 10, 2018, Maldonado sought reinstatement and was reinstated to practice law in Oregon.

10. 

During the period of time that Maldonado’s license to practice law was suspended, he continued to act as Corporate Counsel and engaged in the practice of law, in one or more of the following particulars:

- Providing OCHIN senior management with legal advice, including legal strategies;
- Supervising and managing the legal functions of OCHIN;
- Reviewing legal issues for OCHIN;
- Negotiating and/or drafting agreements, including contracts and real estate lease extensions for OCHIN; and
- Reviewing and reacting to new regulations that may or may not impact OCHIN.

11. 

Maldonado retained his title of Corporate Counsel and continued to represent himself as Corporate Counsel to his client and company through the period of suspension. Maldonado did not notify anyone at his company during the period of suspension that he was not licensed to practice law.
Violations

12.

Maldonado admits that, by holding himself out as an attorney and practicing law during the period of his administrative suspension, he violated RPC 5.5(a), RPC 5.5(b)(2) and ORS 9.160(1).

Sanction

13.

Maldonado 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 Maldonado’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.** Maldonado violated his duty owed as a professional through his unauthorized practice of law. *Standard § 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.* Here, Maldonado’s unauthorized practice was initially negligent. However, after January 2018, Maldonado continued to hold himself out as an attorney at a time when he knew he was suspended.

c. **Injury.** Injury can be either actual or potential under the *Standards.* *In re Williams,* 314 Or 530, 547 (1992). Here Maldonado acted as corporate counsel during a period of time when his licensed had lapsed. Neither the Bar nor Maldonado has identified a specific harm has a result of his violation of the above rules. However, violation of these rules always creates potential for harm. *See In re Koliha,* 330 Or 402, 409, (2000) ("[T]he unauthorized practice of law inherently carries with it the potential to injure the legal system") citing, *In re Whipple,* 320 Or 476, 488; *see also, In re Jones,* 312 Or 611, 618–19 (while there was no evidence of actual injury, there was a potential for injury to the public and to the legal system due the attorney’s “implicit misrepresentation to lawyers and courts that he was authorized to practice law”).

d. **Aggravating Circumstances.** Aggravating circumstances include:
1. Substantial experience in the practice of law. Standard § 9.22(i). Maldonado was licensed to practice in Oregon in 2000.

e. Mitigating Circumstances. Mitigating circumstances include:

3. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Standard § 9.32(e).

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

15. In a factually similar but less egregious matter, an attorney licensed in Maryland, but not Oregon, was suspended for 30 days when she appeared in Oregon on a single Social Security Administration (SSA) matter while her Maryland license was on inactive status. In re Kenney, 28 DB Rptr 269 (2014). Other Oregon decisions likewise support at least a short suspension. See, e.g., In re Jones, 308 Or 306 (1989) (imposing a six-month suspension for knowingly assisting a non-lawyer in unlawful practice of law); In re Butler, Or S Ct No. S40533 (1993) (suspending the attorney for 90 days for filing an answer to a complaint in Nebraska when he was not authorized to practice law in that state); In re Johnson, 20 DB Rptr 223 (2006) (suspending the lawyer for 30 days where, as a result of “willful ignorance … tantamount to knowing” the reinstatement procedures, lawyer practiced law while suspended); In re McCalie, 26 DB Rptr 207 (2012) (suspending the attorney for 120 days when, during a period when he was suspended from the practice of law, attorney undertook to advise a client in a foreclosure matter and represented to the client, the opposing party and opposing counsel that he was an active bar member); In re Foster, 27 DB Rptr 163 (2013) (suspending lawyer for 30 days where she performed contract legal services for approximately five months while knowing that she was suspended, and made misleading communications about her ability to perform services).

16. In this case, the length of Maldonado’s practice while suspended and failure to inform his employer that he was suspended weigh in favor of a longer suspension. However, the underlying suspension that gave rise to the misconduct herein was initially negligent, and due, in part, to a failure to have adequate safeguards in place to alert Maldonado to the lapse in his licensure. Accordingly, the Bar and Maldonado have agreed to stay the majority of the suspension to permit Maldonado to demonstrate that he has adequately remedied the lapses that led to his previous administrative suspensions and subsequent unlicensed practice.
17.

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, Standard § 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.

18.

Consistent with the Standards and Oregon case law, the parties agree that Maldonado shall be suspended for 90 days for violations of RPC 5.5(a), RPC 5.5(b)(2), and ORS 9.160(1), with 60 days of the suspension stayed, pending Maldonado’s successful completion of a 3-year term of probation. The sanction shall be effective December 1, 2019, or 30 days after this stipulation is approved, whichever is later. (“effective date”).

19.

Maldonado’s license to practice law shall be suspended for a period of 30 days beginning on the effective date, or as otherwise directed by the Disciplinary Board (“actual suspension”), assuming all conditions have been met. Maldonado 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 Maldonado re-attains his active membership status with the Bar, Maldonado 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 actual suspension.

20.

Probation shall commence upon the date Maldonado is reinstated to active membership status and shall continue for a period of three years, ending on the day prior to the third year anniversary of the effective date (the “period of probation”). During the period of probation, Maldonado shall abide by the following conditions:

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

(c) Maldonado will promptly notify the Bar of any change to his employment or address, with a simultaneous copy to DCO.
(d) Maldonado will timely complete all required MCLE requirements in accordance with MCLE Rule 7.1 and timely and submit his MCLE certification report, with a simultaneous copy to DCO.

(e) Maldonado will timely submit his IOLTA reporting form on an annual basis, with a simultaneous copy to DCO, and keep the Bar apprised of the status of his trust account, if any.

(f) Maldonado shall maintain PLF coverage, if required, and simultaneously provide proof of coverage to DCO. If coverage is not required, Maldonado shall timely file for an exemption of PLF coverage, with simultaneous notice to DCO.

(g) Maldonado shall timely pay his Bar dues, with simultaneous notice to DCO.

(h) Maldonado shall otherwise take all actions necessary to avoid being administratively suspended from the practice of law in Oregon.

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

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

(k) The SPRB’s decision to bring a formal complaint against Maldonado 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.

(l) Maldonado and the Bar agree that the probation shall be tolled by the filing of a petition seeking to revoke his probation until such time as the petition is resolved and that the probation may be revoked and a suspension imposed for a violation of the terms of this probation, even if the probationary period would have expired but for the filing of the petition.

21.

In addition, on or before January 1, 2020, Maldonado shall pay to the Bar its reasonable and necessary costs in the amount of $175.50, incurred for court reporting services. Should Maldonado fail to pay $175.50 in full by January 1, 2020, the Bar may thereafter, without further notice to him, obtain a judgment against Maldonado for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.
22.

Maldonado 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.

23.

Maldonado 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. Maldonado 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.

24.

Maldonado 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 Maldonado to attend MCLE courses.

25.

Maldonado 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 Maldonado is admitted: None.

26.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 19, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The
parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 31st day of October, 2019.

/s/ James M. Maldonado
James M. Maldonado
OSB No. 000784

EXECUTED this 31st day of October, 2019.

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: RONALEE M. FACHNER, Respondent.

Complaint as to the Conduct of RONALEE M. FACHNER, Case No. 18-137 and 18-174

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: None
Disciplinary Board: Mark A. Turner, Adjudicator
John L. Barlow
Paul Mark Gehlar, Public Member

Disposition: Violation of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.5(a), RPC 1.15-1(d), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(2), and ORS 9.160(1). Trial Panel Opinion. Disbarment.

Effective Date of Opinion: November 5, 2019

TRIAL PANEL OPINION

In this proceeding, the Oregon State Bar (Bar) has charged respondent Ronalee M. Fachner with violating eight Rules of Professional Conduct (“RPC”) and one statute, arising out of respondent’s representation of two clients. Respondent is charged with mishandling client funds in both cases. In the first case, a court ordered respondent to return the client’s funds, but she refused to do so. Respondent is also charged with failure to respond to Disciplinary Counsel’s Office (DCO) inquiries regarding both client complaints.

Respondent was defaulted for failure to file an answer. Accordingly, we are to assume that all of the allegations in the formal complaint are true. BR 5.8. We have concluded that the allegations properly allege violations of the specified rules. For the reasons set forth below, the trial panel agrees with the Bar’s recommendation and orders that respondent be disbarred.
**PROCEDURAL POSTURE**

Respondent was served with the formal complaint and notice to answer on March 5, 2019. After respondent failed to appear within the time allowed, the Adjudicator entered an order of default on April 10, 2019.

At this point, the factual allegations in the complaint are deemed true. See, BR 5.8(a); *In re Magar*, 337 Or 548, 551–53, 100 P3d 727 (2004); *In re Kluge*, 332 Or 251, 27 P3d 102 (2001). We must determine whether the facts alleged constitute the rule violations charged, and, if so, the appropriate sanction. See, *In re Koch*, 345 Or 444, 198 P3d 910 (2008); see also, *In re Kluge*, 332 Or at 253.

**DISCUSSION**

Shepherd Matter - Case No. 18-137

**Facts**

In October 2016, Karen A. Shepherd hired respondent to handle a probate proceeding for her deceased son. The son died intestate. The client desired that the decedent’s father be excluded from inheriting any part of the estate. She wanted to complete the probate as soon as possible. On October 25, 2016, Shepherd executed the Petition to Admit Intestate Estate to begin the estate proceeding. ¶9.¹

On January 17, 2017, respondent filed the Petition in Marion County Circuit Court. The court appointed Shepherd as personal representative on March 30, 2017. In May 2017, respondent obtained a judgment forfeiting the decedent’s father’s share of the estate. In July 2017, respondent filed the estate’s inventory. The inventory showed approximately $65,000 in assets. ¶10.

In November 2017, Shepherd sent respondent an itemized account of estate funds she had received and disbursed. Respondent was to prepare the accounting and close the estate. Respondent acknowledged receiving that information on the last day of the month. After that date, Shepherd sent three text messages to respondent regarding closing the estate. Respondent did not reply. ¶11.

Shepherd called respondent’s business and personal phone numbers and left messages on December 21 and 22, 2017, and on January 4, 19, and 26, 2018. She wanted an update on the status of the estate. She reminded respondent of her desire to close the matter. Respondent did not respond to these calls.

On January 30, 2018, Shepherd sent an email that respondent finally answered. She apologized for her lack of communication, and also wrote, “I was hoping to have something from the court. … I’ve emailed the court, but no response yet. Hoping to be able to call them soon so we can get this thing closed up.” That statement was false. Respondent had not filed

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¹ All paragraph number citations are to the formal complaint.
anything with the court to which a response was expected. That email was the last communication Shepherd received from respondent. Additional attempts to call respondent on March 14 and April 5, 2018 went unanswered. ¶12.

Respondent’s license to practice was suspended for failing to pay her Professional Liability Fund (PLF) assessment on October 17, 2017. She was reinstated on December 21, 2017. She never told her client of the suspension. ¶13.

Respondent filed the estate’s inventory in July 2017. After that she took no further action to finish the probate. Respondent also failed to publish required notices, failed to file an affidavit of publication and affidavit of compliance, and failed to give notice to the state’s estate administration unit, all of which were required by statute. ¶¶3, 4, 5, 6, 7, 8, 14.

Between October 3, 2016, and November 1, 2017, respondent billed and collected $15,110 in attorney fees from the estate. Respondent’s charges included 18.25 hours for drafting and filing documents, 29 hours for drafting and sending letters, and 34.25 hours for “telephone contacts.” ¶16.

Respondent never sought court approval for the payment of her attorney’s fees, as required by ORS 116.183. ¶17.

The Bar contends that respondent failed to apply the legal skill, knowledge, and thoroughness reasonably necessary to represent Shepherd. The Bar gives a number of examples: a) failing to properly draft and timely file multiple necessary pleadings; (b) failing, over a period of months, to close the estate in a timely manner; and (c) paying herself directly for her attorney’s fees from estate funds without the necessary court approval. ¶15.

On April 12, 2018, Shepherd hired new counsel, Launa Lawrence Helton. On April 13, 2018, respondent signed and emailed a substitution of counsel for Helton to take over the probate. At the time, the estate’s annual accounting was due by the end of May 2018. Despite this looming deadline, respondent failed to deliver Shepherd’s file or any additional information to Helton, even after promising to do so., As a result, Helton was unable to prepare the estate’s annual accounting. ¶¶7, 18.

Helton also learned about respondent collecting her attorney fees from the estate without court approval. Helton sought to have respondent refund those fees to the estate before she prepared the accounting. ¶19.

On May 4, 2018, Helton filed a Motion for an Order to Show Cause that the court granted on May 16, 2018. The court ordered respondent to return the funds to the Estate and provide the case file to Helton. ¶20.

Respondent did not comply with the order and has neither refunded her fees nor delivered the file. ¶21.

Helton reported respondent to the Bar on May 18, 2018. By letter dated June 11, 2018, the Bar’s Client Assistance Office (“CAO”) asked respondent to address Helton’s concerns. Respondent did not answer. By letter dated July 19, 2018, DCO made a similar inquiry to
respondent. The July 19, 2018 letter was sent by first class mail to respondent’s address then on record with the Bar. The letter was also sent by email to respondent’s record email address. Neither the email nor the letter were returned undeliverable. Respondent did not respond. ¶24.

Pursuant to BR 7.1, on August 13, 2018, DCO petitioned for respondent’s suspension based on her failure to respond. She was served with the petition. She had seven days to respond, but did not do so. She was suspended on August 27, 2018. ¶25.

Charges

We find that respondent failed to provide competent representation.

RPC 1.1 provides: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

In analyzing whether a lawyer provided competent representation we must consider the reasonableness of the lawyer's conduct in the context of the representation as a whole, rather than specific aspects of the representation. In re Magar, 335 Or 306, 320, 66 P3d 1014 (2003), citing In re Gastineau, 317 Or 545, 553–54, 857 P2d 136 (1993) (incompetence often found when “there is a lack of basic knowledge or preparation.”). Whether an attorney has failed to provide competent representation is a question of fact. We must determine whether the reasonably necessary legal knowledge, skill, thoroughness, and preparation are reflected in the attorney’s actions during the representation. In re Magar, 335 Or at 319–21. A few mistakes may be excused but “a pattern of ignorance of the most basic of applicable rules and a failure to heed [court] instructions” will be considered a violation of the rule. In re Obert, 352 Or 231, 252, 282 P3d 825 (2012).

The Oregon Supreme Court has found incompetent representation in the handling of an estate when the attorney lacks basic knowledge or preparation, or a combination of those factors, in administering the estate. In re Odman, 297 Or 744, 750, 687 P2d 153 (1984) (attorney was found to be incompetent based on improper and late filings of basic estate documents, including accountings, inventories, and inheritance tax returns).

Here, the allegations establish that respondent did not demonstrate the knowledge, skill, thoroughness or preparation reasonably necessary to administer a probate proceeding. We conclude that respondent violated RPC 1.1.

We find that respondent neglected the estate proceeding.

RPC 1.3 states: “A lawyer shall not neglect a legal matter entrusted to the lawyer.”

Neglect is the failure to act, or the failure to act diligently over a period of time, when action is required. The allegations here must show a course of neglectful conduct, not an isolated instance of negligence. In re Jackson, 347 Or 426, 435, 223 P3d 387 (2009); In re Magar, 335 Or at 321. Failure to take effective action to pursue a client’s objectives, even though some services are rendered, can constitute neglect. In re Meyer II, 328 Or 220, 224–
Neglect has been found over a short period of time, e.g., after two months in *Mayer II*. See also *In re Purvis*, 306 Or 522, 524–25, 760 P2d 254 (1988) (attorney guilty of neglect for failing to pursue child support matter for several months). Our focus is on the lawyer’s conduct, not whether the client sustained any resulting harm. *In re Knappenberger*, 340 Or 573, 580, 135 P3d 297 (2006).

The allegations set forth above establish neglect in violation of RPC 1.3.

**We find that respondent failed to communicate adequately with her client.**

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.”

The factors considered in assessing the adequacy of a lawyer’s communication may include the length of time a lawyer failed to communicate, whether the lawyer failed to respond promptly to reasonable requests for information from the client, and whether the lawyer knew, or a reasonable lawyer would have foreseen, that a delay in communication would prejudice the client. *In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011).

Here Shepherd made multiple phone calls and sent multiple texts to respondent between October 2017 and early April 2018. Respondent’s sole substantive reply to her client was the false email in January 2018. In it she implied that she was waiting to hear from the court, even though she had not filed anything for the court to consider. A reasonable lawyer should have known that her failure to respond for many months could prejudice the client, especially knowing the client wanted to close the estate as soon as possible.

We find that respondent violated RPC 1.4(a).

**We find that respondent charged and collected an illegal fee.**

RPC 1.5(a) states: “A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.”

ORS 116.183(2)(a) requires court approval for payment of attorney fees out of probate estate assets. A fee is illegal if it violates a statute. See, *In re Hockett*, 303 Or 150, 162, 734 P2d 877 (1987). A lawyer who takes fees from a decedent’s estate without first obtaining court approval violates RPC 1.5(a). *In re Alstatt*, 321 Or 324, 333, 897 P2d 1164 (1995). It is expressly alleged in the complaint that respondent committed this rule violation.² We conclude that respondent violated RPC 1.5(a).

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² The Bar also alleged that respondent violated RPC 1.5(a) by charging and collecting a clearly excessive fee, but withdrew that charge in its sanctions memorandum.
We find that respondent failed to protect her client’s interests upon termination of the representation.

RPC 1.16(d) states:

“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 lawyer may retain papers, personal property and money of the client to the extent permitted by other law.”

After agreeing to the substitution of counsel, respondent had an obligation to deliver her file and the other records for Helton to handle the probate. In particular, an accounting was due within a month. She acknowledged her duty to turn over the materials, but did not follow through. Further, she violated the court’s order to show cause in May 2018 to deliver the file and return the fees she had collected without authorization.

The allegations further establish that the failure to return the file greatly complicated new counsel’s efforts to create the accounting and close the estate. This caused actual harm to Shepherd’s interests. We conclude that this conduct violated RPC 1.16(d).

We find that respondent knowingly failed to respond to a disciplinary authority.

RPC 8.1(a)(2) provides:

“An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not … 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, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.”

DCO is a disciplinary authority. The cited rule requires lawyers to cooperate with DCO when DCO investigates disciplinary matters. It includes an obligation to respond to inquiries.

The allegations establish that DCO made a written request to respondent for information regarding Helton’s complaint. Respondent failed to answer. Neither the letter nor the email sent to respondent’s record addresses were returned as undeliverable. A letter duly directed and mailed is presumed to have been received in the regular course. **ORS 40.135(1)(q)**; **OEC 311(q)**. Since respondent is presumed to have received the inquiries, we must conclude that she knowingly failed to respond.

A knowing failure to respond to lawful demands for information from DCO is a violation of RPC 8.1(a)(2). **In re Miles**, 324 Or 218, 221, 923 P2d 1219 (1996); **In re Obert**, 352 Or 231, 248–49, 282 P3d 825 (2012) (attorney failed to respond to numerous requests
from the Bar about an ethics complaint until subpoenaed to do so). We conclude that the Bar has established a violation of RPC 8.1(a)(2) here.

**Smith Matter – Case No. 18-147.**

**Facts**

Melvin Smith was looking for a lawyer through an online referral site to assist him regarding his commercial driver’s license. On October 22, 2017, respondent contacted Smith about the matter, despite knowing that she was suspended. ¶¶13, 28.

On November 3, 2017, while her license was still suspended, she met with Smith, agreed to represent him at a hearing to be scheduled, and charged and collected a $400 retainer. Smith also gave respondent copies of all of his materials and the original Oregon Department of Transportation (ODOT) letter he received regarding the hearing. Respondent told Smith she would send him a contract in a few weeks and would notify ODOT that she was representing him. ¶29.

In late December 2017, Smith got another letter from ODOT, telling him that the ODOT hearing had been set. Smith left multiple messages for respondent in December 2017 about the hearing, but respondent ignored him. Thereafter, Smith requested that respondent return the $400 that he had paid, but received no response or refund. ¶30.

Smith had given respondent his original documents regarding the hearing. Without those documents he was unable to contact the appropriate office to reschedule the hearing in order to hire new counsel. He attended his hearing without a lawyer. ¶31.

Smith filed a grievance with the Bar, which began an investigation. On October 3, 2018, DCO sent a letter to respondent asking about Smith’s matter. The letter was sent by first class mail to respondent’s record address with the Bar and was also sent by email to respondent’s record email address. Neither the email nor the letter were returned undeliverable. Respondent never responded. ¶34.

On October 29, 2018, DCO filed a BR 7.1 petition seeking respondent’s suspension and it was served on respondent. She did not respond to the petition. Respondent was suspended on November 14, 2018. ¶35.

**Charges**

**We find that respondent failed to deliver promptly funds the client was entitled to receive.**

RPC 1.15-1(d) states:

“Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client,
a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.”

Respondent received $400 from Smith on November 3, 2017, while she was suspended from the practice of law. She did not return the funds to him when he asked for them. She was not entitled to keep the money. She violated RPC 1.15-1(d).

We find that respondent practiced law and represented herself as qualified to practice law while not an active member of the Bar in violation of RPC 5.5(a) and ORS 9.160(1).

RPC 5.5(a) provides: “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.”

ORS 9.160(1) states: “Except as provided in this section, a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar.”

The practice of law is the exercise of professional judgment in applying legal principles to address another person’s needs through analysis, advice, or other assistance. Oregon State Bar v. Taub, 190 Or App 280, 78 P3d 114 (2003). Respondent practiced law when she met with Smith, reviewed his documents, discussed his ODOT case, agreed to represent him at his upcoming hearing, and assured him that she would contact ODOT. Respondent knew she was suspended at this time. She violated RPC 5.5(a). Respondent also held herself out to Smith and the public at large as an attorney qualified to practice law in this state, although she was not so qualified at the time. In this respect, she violated ORS 9.160(1).

We find that respondent failed to respond to DCO in this matter as well.

We previously set forth the text of RPC 8.1(a)(2) and the case law regarding failure to obey its commands. Respondent here failed to respond to DCO’s request for information about Smith. The inquiries were properly addressed and sent. They were not returned as undeliverable. Just as with the Shepherd matter, we must find here that respondent knowingly violated RPC 8.1(a)(2).

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.
ABA Standards.

The Standards establish an analytical framework for determining the appropriate sanction in discipline cases using three factors: the duty violated; the lawyer’s mental state; and the actual or potential injury caused by the conduct. Once these factors are analyzed, we make a preliminary determination of the appropriate sanction. We then consider any recognized aggravating or mitigating factors, and may adjust the sanction accordingly. We then must ensure that our chosen sanction is consistent with Oregon case law.

Duty Violated.

The most important ethical duties a lawyer owes are to her clients. Standards at 5. In both matters here, respondent violated the duty she owed to her clients promptly to return client property. Standards, § 4.1. While representing Shepherd, respondent violated her duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate and to keep her client informed regarding the status of her case. Standards, § 4.4. Respondent also violated her duty to provide competent representation to Shepherd. Standards, § 4.5.

Respondent also violated the duties she owed as a professional to refrain from charging and collecting an illegal fee in the Shepherd case. With regard to Smith, she violated her duty to the profession to not engage in the unauthorized practice of law. In both cases she violated her duty to cooperate with disciplinary authorities. Standards § 7.0.

Mental State.

The Standards recognize three mental states. 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.

We may rely upon the facts alleged to determine the mental state of a respondent. In re Kluge, 332 Or at 262. We are allowed to draw reasonable inferences from the facts alleged and any additional evidence submitted on the question of sanctions. In re Phelps, 306 Or at 513.

We find that respondent’s conduct in both cases was intentional or knowing. We find that respondent knowingly neglected Shepherd’s estate proceeding. When Shepherd retained her, respondent knew that Shepherd had two primary goals--to forfeit the father’s share of the estate and to complete the probate as soon as possible. She had achieved the first objective by May 2017. However, after filing the inventory in July 2017, respondent took no further action to complete and close the proceeding. She failed to act in spite of multiple client contacts reminding her of the client’s desires.

Respondent ignored all but one client inquiry after November 2017. She did not tell Shepherd she was suspended from October 17, 2017 to December 21, 2017. In response to
Shepherd’s January 30, 2018 email, respondent lied to her client about the status of the estate. We agree that this inadequate communication had to be intentional.

Respondent’s violation of the rule requiring competence was knowing. Respondent had been practicing law for eight years when she took on Shepherd’s case. The requirements for administering estates, the deadlines for filing the necessary pleadings and publishing the required notices, and the need for court approval before paying attorney fees are all set forth in statutes. See ORS Chapters 113, 114, and 116. Respondent does not appear to have ever learned the basic functions and requirements for administering and closing an estate.

Respondent acknowledged her obligation and willingness to provide Shepherd’s file to Helton after Helton was substituted as counsel. Nevertheless, she failed to do so. Further, respondent intentionally disobeyed the court order requiring her to refund the fees she had received and give the file to Helton.

Respondent also acted intentionally or knowingly in Smith’s case. Respondent had been in practice for nine years at this point, and had to know that her license was conditioned on staying current with her PLF assessments. Five days after she was suspended, October 22, 2017, respondent contacted Smith and held herself out as qualified to practice law at that time. Her interactions with Smith all occurred during her suspension, which was not lifted until December 21, 2017. Her failure to follow through and to communicate with Smith was knowing. Her retention of Smith’s retainer was intentional.

In both matters, respondent knowingly refused to cooperate with DCO.

Extent of Actual or Potential Injury.

In determining an appropriate sanction, we take into account both actual and potential injury. Standards at 6; In re Williams, 314 Or 530, 840 P2d 1280 (1992).

Respondent’s clients, the public, the legal profession, and the Bar have all sustained actual injury as a result of respondent’s misconduct. A client sustains actual injury when an attorney fails to actively pursue the client’s case. See e.g. In re Parker, 330 Or 541, 546–47, 9 P3d 107 (2000). Respondent’s lack of competence actually injured Shepherd. Respondent was unable to properly administer and close the estate. This, in turn, required the substitution of a new lawyer to complete the engagement.

Respondent’s lack of communication and neglect caused her clients to experience stress, frustration, and anxiety. See In re Cohen, 330 Or 489, 496, 8 P3d 953 (2000); In re Schaffner, 325 Or 421, 426–27, 939 P2d 39 (1997). “Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules.” In re Snyder, 348 Or 307, 321, 232 P3d 952 (2010). Further, due to the lack of communication, Smith did not know he needed to hire another lawyer to represent him at the ODOT hearing due to respondent’s suspension. He suffered actual injury when he had to appear unrepresented.

Shepherd and Smith both sustained actual injury because of the mishandling of their funds. See In re Balocca, 342 Or 279, 297, 151 P3d 154 (2007); In re Spies, 316 Or 530, 541,
Both also experienced actual injury when denied access to their files. *In re Spies*, 316 Or at 541. Smith was unable to ask for a continuance of his hearing.

Respondent caused potential injury to Smith by performing legal services without the required malpractice insurance. *In re Jaffee*, 331 Or 398, 409–10, 15 P3d 533 (2000). Respondent also caused potential injury to the legal system by practicing law when she was not authorized to do so. *Id.* at 410.

Respondent’s failure to cooperate with DCO’s investigations in both matters also caused actual injury to the legal profession, the public, and the Bar. *In re Schaffner*, supra; *In re Miles*, 324 Or at 221–22; *In re Gastineau*, 317 Or at 558. Unauthorized practice of law carries the potential to injure the legal system as well. *In re Devers* 328 Or 230, 242, 974 P2d 191 (1999) (citations omitted).

By intentionally and repeatedly disregarding the disciplinary rules in both matters, Respondent caused actual harm to the legal profession. *Id.*

**Preliminary Sanction.**

Absent aggravating or mitigating circumstances, the ABA Standards provide that disbarment is generally appropriate in this case.

Disbarment is generally appropriate when a lawyer knowingly fails to perform services for a client, and causes serious or potentially serious injury to a client. Standards § 4.41(b). Disbarment is generally appropriate when a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client. Standards § 4.41(c).

Disbarment is generally appropriate when a lawyer’s course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer’s conduct causes injury or potential injury to a client. Standards § 4.51. Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer and causes serious or potentially serious injury to a client, the public or the legal system. Standards § 7.1.

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 generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Standards § 4.42(a), (b). Suspension is 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.

We conclude that the presumptive sanction here is disbarment.
Aggravating and Mitigating Circumstances.

The following aggravating factors under the *Standards* exist here:

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

2. A pattern of misconduct. *Standards* § 9.22(c). “[A] pattern of misconduct does not necessarily require proof of a prior sanction. Rather, that aggravating factor bears on whether the violation is a one-time mistake, which may call for a lesser sanction, or part of a larger pattern, which may reflect a more serious ethical problem.” *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018). The Bar has proved a pattern of misconduct.


In mitigation, respondent has no prior record of discipline. *Standards* § 9.32(a).

The Bar argues that the aggravating factors outnumber the sole mitigating factor quantitatively and qualitatively. We agree, and would be inclined to make an upward adjustment in the presumptive sanction if that sanction was anything less than disbarment.

**Oregon Case Law.**

Oregon cases justify our decisions to disbar respondent. A lawyer who engages in multiple instances of misconduct and fails to cooperate with disciplinary authorities is a threat to the profession and the public. *In re Bourcier* (II), 325 Or 429, 436, 939 P2d 604 (1997).

While “[c]ase-matching in the context of disciplinary proceedings is an inexact science,” *In re Paulson*, 346 Or at 721–22, the court has consistently disbarred lawyers where the lawyers’ collective misconduct demonstrates an intentional disregard for their clients, their professional obligations, and the disciplinary rules. In *In re Sousa*, disbarment was the appropriate sanction when the court found the attorney guilty of 16 violations in four separate cases. “The accused engaged in a continuous pattern of misrepresentations, neglect, failure to act in behalf of his clients, and failure to acknowledge his ethical obligations, and respond to the Bar’s investigation, thereby causing injury to his clients. That course of conduct mandates that the accused be disbarred from the practice of law.” 323 Or 137, 147, 915 P2d 408 (1996); see also *In re Spies*, 316 Or at 541 (court ordered disbarment where the lawyer committed 17 violations in seven separate matters). “In this case, we disbar the accused based on the aggregate conduct described herein. She violated duties to her clients, to the public, to the legal system, and to the legal profession.” *In re Spies*, 316 Or at 541.
In *Spies*, the court noted that the actual injury the attorney caused her clients combined with the aggravating factors of a dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of disciplinary proceedings, refusal to acknowledge the wrongful nature of her conduct, and her substantial experience in the practice of law, warranted disbarment despite the attorney’s lack of prior discipline. *Id.* at 541-42. The same elements are present here.

Respondent appears to have abandoned her practice, ignored all of her clients’ communication attempts, solicited Smith as a client while she was suspended, practiced law while suspended, refused to refund her clients their fees, account for their fees, or provide them with their files, refused to comply with a court order, and has refused to cooperate with her regulators. Such acts demonstrate a persistent disregard for the Rules of Professional Conduct and the duties that she owed to her clients, the public, and the legal profession.

“We conclude that a lawyer who neglects clients’ cases and fails to cooperate with the disciplinary authorities is a threat to the profession and the public and that that conduct warrants a significant sanction.” *In re Bourcier*, 325 Or at 437.

The appropriate sanction is disbarment. Even if we had concluded that the presumptive sanction were less than disbarment, a substantial suspension would have been warranted. Given the aggravating factors outlined above, that sanction would have been properly increased to disbarment.

**Restitution**

BR 6.1(a) provides that, in conjunction with a disposition or sanction referred to in this rule, a respondent may be required to make restitution of some or all of the money, property or fees received by the respondent in the representation of a client. The Bar requested that restitution in the complaint. We thus order respondent to make restitution of the fees paid by the Shepherd estate in the amount of $15,110, and the retainer that Smith paid in the amount of $400. We are advised by the Bar and so order that the restitution of the Shepherd estate fee is to be paid to the Oregon State Bar Client Security Fund.

**CONCLUSION**

The purpose of lawyer discipline is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge properly their professional duties. *Standards* § 1.1. Permanent disbarment for violations of the Rules of Professional Conduct is not a punishment. It is designed to protect the public from dishonest and unethical behavior. *In re Sassor*, 299 Or 720, 727–28, 705 P2d 736 (1985).

Respondent has shown that she is unwilling and unable to adhere to her professional duties to her clients, the public and the legal profession. She has demonstrated a lack of understanding and appreciation for the regulation of the profession. Her disrespect for her professional duties to the courts, the public, and the Bar requires a serious response. As discussed above, respondent is hereby disbarred, effective on the date this decision becomes final. Respondent is ordered to comply with the provisions of BR 6.3(a), (b) and (c).
Disciplinary Counsel may seek a contempt proceeding and appropriate sanctions before the Supreme Court for failure to comply. *BR 6.3(d).*

Dated this 4th day of October, 2019.

/s/ Mark A. Turner
Mark A. Turner, Adjudicator

/s/ John L. Barlow
John L. Barlow, Trial Panel Member

/s/ Paul Mark Gehlar
Paul Mark Gehlar, Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:

Complaint as to the Conduct of KELLY GRANT, Respondent.

Counsel for the Bar: Susan R. Cournoyer
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 5.5(a). No Contest Plea. Public Reprimand.
Effective Date of Order: November 18, 2019

ORDER APPROVING NO CONTEST PLEA

This matter having been heard upon the No Contest Plea entered into by Kelly Grant and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the No Contest Plea between the parties is approved and Kelly Grant is publicly reprimanded, for violation of RPC 5.5(a).

DATED this 18th day of November, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Kelly Grant
Kelly Grant, OSB No. 064220

/s/ Susan R. Cournoyer
Susan R. Cournoyer, OSB No. 863381
NO CONTEST PLEA

Kelly Grant, OSB No. 064220, attorney at law ("Grant"), and the Oregon State Bar ("Bar") hereby agree to the following matters pursuant to Bar Rule of Procedure 3.6(b).

RECITALS

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.

Grant was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 27, 2006. Since May 2010, Grant has maintained her office in Houston, Texas, where she is employed as in-house counsel for a corporation.

3.

Grant enters this no contest plea freely, voluntarily, and with the opportunity to seek advice from counsel. This no contest plea is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On June 8, 2019, the State Professional Responsibility Board ("SPRB"), authorized formal proceedings for an alleged violation of RPC 5.5(a) (unauthorized practice of law).

Facts

5.

On May 2, 2018, Grant was administratively suspended for failing to comply with her annual IOLTA reporting requirement. She did not discover the suspension until February 19, 2019. In her reinstatement application materials, Grant disclosed that she had practiced law as legal counsel for her corporate employer during the period of her suspension.

6.

Grant is not a member of the Texas Bar. The Texas Board of Law Examiners allows an out-of-state lawyer to provide legal services to a corporate employer, as long the lawyer is licensed and in good standing in another state. During the period of her administrative suspension, Grant was not licensed in any state, but continued to serve as legal counsel for her corporate employer.
7.
Grant has no prior record of reprimand, suspension, or disbarment.

**No Contest Plea**

8.
Grant does not desire further to defend against the alleged violation of RPC 5.5(a), or further to seek review by a Disciplinary Board trial panel.

9.
Grant agrees to accept a public reprimand in exchange for this no contest plea.

**Sanction**

10.
Consistent with the ABA Standards for Imposing Lawyer Discipline (as amended 1992), reprimand is 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. Standard 7.3. Public reprimand is also supported by recent Oregon cases in which attorneys have negligently continued to practice law while administratively suspended. See, e.g., In re Cohn-Lee, 31 DB Rptr 344 (2017); In re Ghiorso, 30 DB Rptr 10 (2016); In re Hodgess, 24 DB Rptr 253 (2010); and In re Smith, 22 DB Rptr 113 (2008).

11.
Grant and the Bar agree that Grant shall be publicly reprimanded, effective upon the Disciplinary Board Adjudicator's approval of this no contest plea.

12.
Grant 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 upon order of the Disciplinary Board Adjudicator, pursuant to BR 6.4(b).

13.
Grant represents that she is not admitted to practice law in any other jurisdictions, whether her current status is active, inactive, or suspended.
14.

This no contest plea is to be submitted to the Disciplinary Board Adjudicator for consideration pursuant to the terms of BR 3.6(e).

EXECUTED this 14th day of October, 2019.

/s/ Kelly Grant
Kelly Grant, OSB No. 064220

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 

TIMOTHY MPM PIZZO, 

Respondent. 

Counsel for the Bar:  Dawn M. Evans

Counsel for the Respondent:  None

Disciplinary Board:  Mark A. Turner, Adjudicator
James A. Underwood
Sandra Frederiksen, Public Member

Disposition:  Violation of RPC 8.1(a)(2) and RPC 8.4(a)(2). Trial Panel Opinion. 2-year suspension.

Effective Date of Opinion:  November 23, 2019

TRIAL PANEL OPINION

In this disciplinary proceeding respondent, Timothy MPM Pizzo, has been charged by the Oregon State Bar (“Bar”) with violations of the Oregon Rules of Professional Conduct (“RPC”) related to criminal conduct and failure to respond to the Bar’s inquiries regarding that conduct.

On July 31, 2019, the Adjudicator entered an order granting the Bar’s motion for default based upon respondent’s failure to answer. At this point, the trial panel must consider the factual allegations in the formal complaint to be true. BR 5.8(a). We first determine whether those allegations support the charged violations of the RPCs. We may only look at the facts alleged in the complaint in making this decision.

If we determine that the violations are sufficiently alleged, we must decide the appropriate sanction to be imposed. We may consider additional evidence in answering this question. The Bar submitted a memorandum and exhibits supporting its proposed sanction. Respondent submitted a response via email. We have considered these submissions. Despite respondent’s steps toward sobriety, his stated intention to change his behavior, and his remorse, we conclude that the nature and severity of the violations, the substantial potential and actual
injury that resulted, and the fact that respondent acted at least knowingly when engaging in the misconduct, persuade us to suspend respondent for a period of two years.

**PROCEDURAL POSTURE**

Respondent was admitted to the Bar in 1996. On July 11, 2018, the Columbia County District Attorney filed a grievance with the Bar raising concerns about respondent’s conduct. Respondent then failed to respond to multiple requests for information from Disciplinary Counsel’s Office (“DCO”) as it investigated the matter. Pursuant to BR 7.1, on March 29, 2019, respondent was suspended for failing to respond to DCO.

On May 1, 2019, the Bar filed a formal complaint. Respondent was served with the complaint and Notice to Answer on May 21, 2019. Respondent did not file an answer. After giving notice, the Bar filed a Motion for Order of Default. The motion was granted on July 31, 2019. A trial panel was appointed, and we now proceed with disposition of the case.

**FINDINGS AND CONCLUSIONS**

Respondent was arrested in January 2018 for possession of methamphetamine at his residence. He pled guilty in October 2018 to one count of methamphetamine possession, a Class C Felony, and one count of endangering the welfare of a minor, in Case No. 18CR07527, *State v. Pizzo*, in Columbia County Circuit Court (“State v. Pizzo 1”). ¶ 3. Respondent was granted a conditional discharge in the case after his guilty plea, on the condition that he serve an 18-month probation. ¶ 4. Before October was out, respondent failed to call or meet with his probation officer. On October 24, 2018, he tested positive for methamphetamine. This conduct violated two conditions of his probation. ¶¶ 4, 5.

On November 1, 2018, respondent pled guilty to one misdemeanor count of knowingly possessing methamphetamine based upon the positive test on October 24. The new charge was presented in Case No. 18CR73060, *State v. Pizzo*, in Columbia County Circuit Court (“State v. Pizzo 2”). Respondent was again given a conditional discharge on the same terms required by State v. Pizzo 1. ¶ 6.

Respondent failed to meet with his probation officer in November. At a hearing on November 16, 2018, respondent admitted to using intoxicants and failing to report to his probation officer in violation of his probation conditions. ¶¶ 7, 8. In December 2018 and January 2019, respondent was cited multiple times for driving while suspended. ¶ 9.

On July 18, 2018, DCO received a complaint from District Attorney Jeffrey D. Auxier. He alleged that respondent had engaged in illegal activity. ¶ 12. DCO sent letters to respondent regarding the complaint on July 20, 2018, and August 14, 2018. These were sent by first class mail, certified mail, and email. Neither first class letter was returned undelivered. The August 14, 2018, letter sent via certified mail was returned unclaimed. The emails were not returned undeliverable. Respondent did not respond to the letters. ¶¶ 13, 14.

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1 All paragraph references are to the formal complaint.
ANALYSIS OF CHARGES

Criminal Conduct

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

The Bar must prove that a lawyer violated a criminal statute to prove a violation of this rule, In re Strickland, 339 Or 595, 124 P3d 1225 (2005), but a conviction is not required. In re Kimmel, 332 Or 480, 31 P3d 414 (2001). There must also be some rational connection between the criminal conduct and the lawyer’s fitness to practice beyond the mere fact that the lawyer committed a crime. In re Davenport, 334 Or 298, 318, 49 P3d 91, recon., 335 Or 67, 57 P3d 897 (2002). Not every criminal act results in a violation of the rule.

The relevant considerations for our analysis are set forth in In re White, 311 Or 573, 589, 815 P2d 1257 (1991). We must examine the lawyer’s mental state, the extent to which the act demonstrates disrespect for law or law enforcement, the presence or absence of a victim, the extent of actual or potential injury, and the presence or absence of a pattern of criminal conduct.

In this case, the Bar’s allegations establish that respondent engaged in a pattern of criminal behavior and evidenced a disregard for the law and for orders of a court when he violated the conditions of probation for two different guilty pleas. The violations involved failing to meet with his probation officer, engaging in illegal drug use, and citations for driving while suspended. Similar conduct has been found to violate the rule.

For example, the Oregon Supreme Court found a violation of the predecessor rule when an attorney was convicted of misdemeanor attempted possession of heroin. In re Allen, 326 Or 107, 949 P2d 710 (1997). The lawyer provided money for an individual named Lewis to purchase heroin, knowing that possession of heroin would violate the terms of probation imposed on Lewis. Lewis died of an overdose from the drugs he purchased.

Although the court order involved did not apply to the accused lawyer, the lawyer knew that the trial court had ordered Lewis to refrain from illegal drug activity. The court stated: “We recognize that…the court's order here was not addressed to the accused, and did not require action by him in his professional capacity. Nonetheless,…[t]he accused had a responsibility to refrain from undermining Lewis' compliance with the terms of a court order of which the accused had knowledge.” Id at 128. The court imposed a one-year suspension.

The court has also found criminal conduct violating the prior rule based on multiple instances of driving while suspended or while intoxicated. In re McDonough, 336 Or 36, 77 P3d 306 (2003). In determining whether the White standards were met based upon that conduct, the court stated:

“The accused knew that the law prohibited him from driving while he was intoxicated and while his license was suspended; however, despite that knowledge and despite criminal sanctions that he had received for such conduct,
the accused nevertheless repeatedly chose to drive in violation of those laws. Based upon those facts, we conclude that the accused’s repeated criminal offenses were intentional and demonstrated a substantial disrespect for the law.” 77 P3d at 310.

The court imposed an 18-month suspension.2

We conclude that the Bar sufficiently alleged a violation of RPC 8.4(a)(2).

**Failure to Respond to Disciplinary Counsel’s Office**

RPC 8.1(a)(2) states: “A lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6 [client confidences].”

This rule requires a lawyer to cooperate and respond fully and truthfully to inquiries from and comply with the reasonable requests of Bar disciplinary authorities, subject to the exercise of any applicable right or privilege. DCO is a disciplinary authority. At the direction of the Oregon Supreme Court, we take a no-tolerance approach to violations of this rule. See, e.g., *In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (lawyer suspended for 120 days, solely for failing to fully respond to the Bar on two occasions). “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).

DCO sent letters to respondent at the physical and email addresses he had on record with the Bar. Respondent did not respond, nor did he assert an objection to responding. Respondent’s decision not to respond to DCO’s investigation was at least a knowing violation of RPC 8.1(a)(2).

**SANCTION**

On the issue of sanctions we are always guided by the ABA Standards for Imposing Lawyer Sanctions (“Standards”) and Oregon case law. See *In re Biggs*, 318 Or 281, 295, 864 P2d 1310 (1994); *In re Spies*, 316 Or 530, 541, 852 P2d 831 (1993). The Standards establish a framework to analyze a lawyer’s conduct. We consider (1) the ethical duty violated; (2) the lawyer’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. Standards § 3.0. We then must confirm that the sanction is consistent with Oregon precedent.

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2 The Bar also cites us to a trial panel opinion that imposed a 2-year suspension for a lawyer’s failure to comply with court-ordered conditions after being convicted of possession of methamphetamine, *In re Flinders*, 18 DB Rptr 115 (2004). The panel concluded the respondent had shown “an intentional pattern of disrespect for the law and the administration of justice.” Although the conduct did not involve the lawyer’s practice, it did show a disregard for the law that constituted a fitness to practice issue. The same is true here.
Duty Violated.

Respondent violated his duty to the public to maintain his personal integrity when he engaged in serious criminal conduct. Standards § 5.1.

Respondent violated his duty to the profession to cooperate with disciplinary investigations. Standards § 7.0.

Mental State.

“Intent” is the mental state in which the lawyer acting has a conscious objective or purpose to accomplish a particular result. “Knowledge” is the mental state when the lawyer has a 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 mental state when a lawyer fails to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Standards at 9.

We find that respondent acted at least knowingly when he engaged in criminal conduct. See In re Phelps, 306 Or 508, 513, 760 P2d 1331 (1988) (lawyer’s mental state can be inferred from the facts). Respondent pled guilty to three criminal charges that led to probation. He admitted to using intoxicants and failing to report to his probation officer. These acts were all the result of no less than a knowing mental state.

We also find that respondent acted knowingly in failing to respond to Bar inquiries. The letters sent by DCO were sent to the proper addresses. We can presume that respondent received them. ORE 311(1)(q) (presumption that properly mailed material was received in the regular course). We find that respondent acted with knowledge when he failed to respond. In re Miles, 324 Or 218, 221–22, 923 P2d 1219 (1996).

Extent of Actual or Potential Injury.

We may take into account both actual and potential injury in our sanctions analysis. Standards at 6; In re Williams, 314 Or 530, 840 P2d 1280 (1992).

Respondent pleaded guilty to endangering a minor, which caused actual or potential injury to the victim. Respondent’s disregard of his court-ordered conditions of probation caused actual or potential injury to the legal system.

Failure to cooperate with disciplinary authorities is presumed to cause actual injury to the legal profession and the public. In re Schaffner, 325 Or 421, 427, 939 P2d 39 (1997); In re Miles, 324 Or 218, 223, 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).
Preliminary Sanction.

Absent aggravating or mitigating circumstances, the following Standards apply:

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

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.

We conclude that a suspension is required here and preliminarily find that it should be substantial.

Aggravating and Mitigating Circumstances.

All of the following factors recognized by the Standards exist here:


8. A pattern of misconduct. Standards § 9.22(c). Respondent pleaded guilty to three crimes and committed multiple criminal acts that violated his terms of probation. He failed to respond to multiple requests for information from disciplinary authorities.

9. Substantial experience in the practice of law. Standards § 9.22(i) Respondent has been licensed since May 22, 1996.

10. Illegal conduct, including that involving the use of controlled substances. Standards § 9.22(k).

Respondent did submit a written response to the Bar’s sanctions memorandum. In it, he acknowledged the wrongfulness of his conduct, expressed remorse, and detailed steps he has taken to address the emotional and substance abuse issues involved in his criminal conduct. We commend him for his attitude and for his efforts thus far.

To consider his efforts in mitigation, however, the Standards require a more substantial showing:

“[M]ental disability or chemical dependency including alcoholism or drug abuse [may be considered in mitigation] when:

(1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
(2) the chemical dependency or mental disability caused the misconduct;

(3) the respondent’s recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

(4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.” Standards, §9.32(i).

Even assuming that respondent could establish with medical evidence the existence of his chemical dependency and its causal connection to the misconduct, we are prevented from finding that a “meaningful and sustained period of successful rehabilitation” has occurred given the short amount of time of sustained sobriety that respondent can attest to. We urge respondent to follow through on his successes thus far and his promises for the future, but we are unable to give them a mitigating effect on the sanction here.

The aggravating factors here support an increase in the degree of presumptive discipline we should impose. Standards § 9.21. The consideration of these aggravating factors further supports the propriety of a lengthy suspension.

Oregon Case Law.

Oregon cases reach a similar conclusion.

With regard to criminal conduct, we have cited multiple cases earlier in this opinion. In In re Allen, supra, the court imposed a one-year suspension when the lawyer was convicted of attempted possession of heroin.

The Bar contends that the court has consistently imposed substantial suspensions or more for criminal conduct motivated by a lawyer’s own personal interests, and that respondent’s probation violations here were criminal acts for his benefit. The Bar cites us to
numerous cases. The court has also imposed substantial suspensions when a pattern of criminal conduct is involved.

We reiterate that the “failure to cooperate with a disciplinary investigation, standing alone, is a serious ethical violation.” In re Parker, supra. The court has suspended lawyers for failing to cooperate in disciplinary proceedings independent of any other violations. See, e.g., In re Miles, 324 Or 218, 923 P2d 1219 (1996) (120-day suspension for failure to cooperate when no other substantive violations were alleged or proven); In re Schaffner, 323 Or 472, 918 P2d 803 (1996) (60 days of a 120-day suspension attributable to failure to cooperate). In this case, respondent did not just fail to respond, he persisted in a knowing refusal to respond to the Bar’s requests and to engage with the disciplinary process.

We agree with the Bar that respondent’s conduct, taken as a whole, merits a two-year suspension.

CONCLUSION

The purpose of lawyer discipline is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge

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3 In re Strickland, 339 Or 595, 124 P3d 1225 (2005) (respondent, upset about a construction project in his neighborhood, was suspended for one year for false report to police that he had been threatened and assaulted by construction workers); In re Leisure, 338 Or 508, 113 P3d 412 (2005) (respondent who repeatedly issued checks on her business account knowing that the account held insufficient funds committed the crime of negotiating a bad check was suspended for 18 months); In re Jaffee, 331 Or 398, 15 P3d 533 (2000) (respondent disbarred, in part for conduct that resulted in criminal convictions for interfering with, and giving false information to, a police officer); In re Staar, 324 Or 283, 924 P2d 308 (1996) (respondent suspended for two years for false swearing in her own petition for a family abuse prevention restraining order); In re Wolf, 312 Or 655, 826 P2d 628 (1992) (respondent suspended for 18 months for contributing to the sexual delinquency of a minor and giving alcohol to a minor despite criminal dismissals following diversion).

4 In re McDonough, 336 Or 36, 77 P3d 306 (2003) (18-month suspension for lawyer who engaged in multiple instances of driving with a suspended license or while intoxicated); In re Leonhardt, 324 Or 498, 930 P2d 844 (1997) (district attorney disbarred as a result of forgery, tampering with public records, and official misconduct convictions, as well as false statements made during trial, which court found to be a pattern of misconduct); In re Hassenstab, 325 Or 166, 934 P2d 1110 (1997) (respondent disbarred following criminal proceedings relating to sexual relationships with several clients).
properly their professional duties. \textit{Standards} § 1.1. We believe that a two-year suspension accomplishes this goal, and order that respondent be suspended for that period, effective on the date this decision is final.

Respectfully submitted this 23rd day of October, 2019.

/s/ Mark A Turner
Mark A. Turner, Adjudicator

/s/ James A. Underwood
James A. Underwood, Trial Panel Member

/s/ Sandra Frederiksen
Sandra Frederiksen, Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 18-198
Complaint as to the Conduct of )
) ANGELA THERESE LEE-MANDLIN,
) Respondent.

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: Nathan Gabriel Steele
Disciplinary Board: None
Disposition: Violation of RPC 1.1 and RPC 1.16(a)(1). Stipulation for Discipline. 30-day suspension, all stayed, 2-year probation.
Effective Date of Order: December 14, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Lee-Mandlin is suspended for 30 days, all stayed, pending a two-year period of probation, effective ten days after the date of this order for violation of RPC 1.1 and RPC 1.16(a)(1).

DATED this 4th day of December, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board
STIPULATION FOR DISCIPLINE

Angela Therese Lee-Mandlin, attorney at law (Respondent), 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. Respondent 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. Respondent 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 7, 2019, a formal complaint was filed against Lee-Mandlin pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.16(a)(2). On October 19, 2019, the SPRB authorized additional charges alleging violations of RPC 1.1 and RPC 1.16(a)(1), and authorized the dismissal of the RPC 1.16(a)(2) charge. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5. In July 2014, Grace and Vincent Melendez hired Respondent’s law firm to represent them in a products liability action. An associate attorney handled the matter from its inception until he left Respondent’s firm in November 2016.
When the associate left, Respondent and the associate notified the Melendezes and informed them that they could transfer the case to the associate or remain with Respondent. The Melendezes elected to remain with Respondent. At the time, Respondent had no experience handling products liability actions and the matter was set for trial in March 2017.

6.

When Respondent reviewed the Melendezes’ case file, there were terms used throughout the documents that she did not understand, and she realized that the matter was not a case for which she could realistically become sufficiently knowledgeable to take to trial. Consequently, in early February 2017, Respondent notified the Melendezes that she would not be able to try their case, but that she would attempt to find replacement counsel and would seek a continuance of the March 2017 trial date.

In moving to continue the March 2017 trial date, Respondent informed the court and opposing counsel that she would be referring the Melendezes to other counsel due to her health.

7.

Respondent was unable to find any substitute lawyers to take the Melendezes’ case, but nevertheless, continued as their attorney of record. In April 2017, she sent an associate to a pre-trial conference, at which the court and the parties selected an August 8, 2017 trial date.

8.

On June 9, 2017, one of the defendants served Respondent with a motion for summary judgment (MSJ). When Respondent reviewed the MSJ in late June, shortly before the response was due, she did not understand what it was. Respondent attempted to deal with the MSJ by hiring an outside lawyer to advise her how to address it.

9.

Respondent sought an extension of time to late July to respond to the MSJ, but on July 5, 2017, the court granted her an extension only until July 7, 2017. Due to email irregularities, Respondent did not see the court’s ruling at the time. As a result, on July 6, 2017, Respondent advised the Melendezes that her motion to extend the time to respond was still pending, and did not respond to the MSJ by the July 7th deadline. On July 6, 2017, the Melendezes terminated Respondent’s representation.

10.

Because no response to the MSJ was filed by the July 7th deadline, the court considered it unopposed, granted it, and dismissed the case. The Melendezes did not learn about the dismissal until July 19, 2017, the original MSJ hearing date, when they appeared at court and learned the hearing had been cancelled and their case dismissed.
11.

Respondent filed motions to withdraw and to reset the August trial date on July 10, 2017. The court granted the motion to withdraw. The defendants objected to the motion to reset trial on the grounds that Respondent had originally advised all parties and the court in February 2017 that she would refer the clients to other counsel, but thereafter remained the sole attorney of record for the plaintiffs, and sent an associate from her firm to the April 2017 pre-trial conference and agreed to the August 2017 trial date. By that time, the case had been pending for over two and a half years. The court denied the motion to reset the trial date based on defendants’ objections.

Violations

12.

Respondent admits that while representing the Melendezes and engaging in the conduct described above, she failed to apply the legal knowledge, skill, thoroughness, and preparation reasonably necessary, in violation of RPC 1.1, and failed to withdraw from representation when the continued representation resulted in violation of the Rules of Professional Conduct, in violation of RPC 1.16(a)(1).

Sanction

13.

Respondent 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 Respondent’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 Standards presume that the most important duties a lawyer owes are those owed to clients. Standards at 5. Respondent violated her duty to provide her clients with competent representation. Standards § 4.5. Respondent also violated her duty to the profession to timely and properly withdraw from a matter when required to do so. Standards § 7.0.

b. Mental State. The Standards recognize three mental states: “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. Respondent’s conduct reflects both negligent and
knowing mental states. Respondent knew she was not competent to handle the case, but stayed on until her clients terminated her representation. However, her failure to withdraw was negligent as she did not realize that her lack of competence required her to withdraw in a timely manner.

c. Injury. Injury can be either actual or potential under the Standards. In re Williams, 314 Or 530, 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. Respondent caused actual injury to her clients. Respondent’s conduct prohibited her clients from receiving the benefit of competent counsel to advise them in navigating the case and understanding the merits of the case. Ultimately, their case was dismissed due, in part, to Respondent’s lack of competence in timely responding to the MSJ or otherwise advising the clients of the merits of the case.

d. Aggravating Circumstances. Aggravating circumstances include:

1. Prior disciplinary history. Respondent was reprimanded in 2017 for violating RPC 3.5(b) and 8.4(a)(4). (In re Lee-Mandlin, 31 DB Rptr 14 (2017).) Standards § 9.22(a);

2. Multiple offenses. Standards § 9.22(d); and


e. Mitigating Circumstances. Mitigating circumstances include:

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

2. Full and free disclosure or cooperative attitude toward proceedings. Standards § 9.32(e).

While the aggravating factors outnumber the mitigating factors by one, Respondent’s prior discipline should not be afforded significant weight because it involved different rule violations.

Without considering aggravating or mitigating factors, the following Standards apply:

Suspension is generally appropriate when a lawyer engages in an area of practice in which she knows she is not competent, and causes injury or potential injury to a client. Standards § 4.52.
Reprimand is generally appropriate when a lawyer demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client. *Standards § 4.53(a).*

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

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

The significant injury caused by Respondent’s conduct and her knowing mental state regarding her lack of competence suggest that some term of suspension is warranted.

15.

Respondent’s misconduct may be attributed to her lack of competence in handling the Melendezes’ case. In relevant case law, the court has imposed sanctions ranging from a public reprimand to a six-month suspension:

- **In re Odman,** 297 Or 744, 748–49, 687 P2d 153 (1984) [*Reprimand*] Attorney had a conflict of interest, neglected a probate proceeding, and failed to provide competent representation while handling the probate where the Bar demonstrated that the attorney filed late accountings, inventories, and inheritance tax returns that were not only late, but also frequently improperly filed. The attorney did not know the basic steps in administering and closing the decedent’s insolvent estate and made no efforts to become qualified to do estate work.

- **In re Bettis,** 342 Or 232 (2006) [*30-day suspension*] 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.

- **In re Obert,** 352 Or 231 (2012) [*Six-month suspension*] 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 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.

In comparable situations, the Disciplinary Board has approved stipulation imposing suspensions subject to probation. *See, e.g.,*
In re Day, Case No. 18-160 (2019) [stipulated 30-day suspension, all stayed subject to one-year probation] While representing the personal representative of an estate, Day failed to timely file pleadings, including the inventory, annual accounting, final accounting, and final judgment, which caused the probate court to issue repeated show cause notices and orders over a two-year period. Additionally, when the personal representative paid herself a “fee” that was not approved by the court, Day sought to rectify that act by requesting that all of the estate’s heirs disclaim their interest in those funds in favor of the personal representative, who was not herself an heir. Attorney and the Bar stipulated to violations of RPC 1.1, 1.7(a), RPC 1.16(a)(1), and RPC 8.4(a)(4)).

In re Hernandez, 32 DB Rptr 72 (2018) [60-day suspension; 30 days stayed subject to one-year probation] Attorney was retained to handle the probate of an intestate estate. The attorney improperly paid himself out of estate funds without court approval. After the client complained about the attorney’s conduct to the Bar in January 2015, the attorney accused his client of committing fraud and giving false statements to the Bar. Despite that conflict of interest, the attorney continued to represent the PR without explaining his conflict of interest until July 2015, when the attorney withdrew from representing the PR due to the conflict. Attorney did not close the estate when ordered to do so by the court and failed to file the estate’s annual accounting when ordered to do so. Attorney and the Bar stipulated to violations of RPC 1.1 (competence); RPC 1.3 (neglect); RPC 1.5(a) (collecting an illegal fee); RPC 1.15-1(a) (trust account violation); 1.7(a)(2) (current-client conflict of interest); and RPC 1.16(a)(1) (failing to withdraw when continued representation violated the RPCs).

In re Hanson, 32 DB Rptr 159 (2018) [30-day suspension, all stayed subject to one-year probation] Client retained the attorney to attend her arraignment in a criminal proceeding and enter a not guilty plea in the client’s absence (the misdemeanor charges allowed the client to appear through counsel). Despite appearing, the attorney failed to enter his client’s plea, which caused the court to issue a bench warrant for his client’s arrest. Attorney and the Bar stipulated to violations of RPC 1.1 (competence); RPC 1.2 (failing to abide by his client’s decisions regarding the objectives of the representation); RPC 1.5(a) (collecting an excessive fee); and RPC 8.4(a)(4) (engaging in conduct prejudicial to the administration of justice).

In re Schlesinger, 32 DB Rptr 198 (2018) [30-day suspension, all stayed subject to one-year probation] Attorney sent a settlement demand without his client’s approval to the opposing party, who accepted it. After client objected to the settlement terms, a conflict of interest arose between the attorney and client. Despite that conflict, the attorney and the firm continued to represent the client for another five months and advocated that the client accept the original settlement. Attorney and the Bar stipulated to violations of RPC 1.2(a) (failing to abide by client’s objectives of representation); RPC 1.4(a) (failing to keep client adequately informed as to the status of the matter; RPC 1.4(b) (failing to provide client with sufficient information to make informed decisions about his matter); RPC 1.7(a)(2) (conflict of interest); and RPC 1.16(a)(1) (failing to withdraw when continued representation violated the RPCs).
A married couple retained attorney to represent them in a home foreclosure matter. While the attorney was able to reinstate the mortgage, the clients told the attorney they wanted to invest $500,000 of an inheritance they had received to generate retirement income. Based on the attorney’s recommendations, the clients made a series of loans to three borrowers, all three of whom the attorney represented in unrelated matters. The attorney prepared all the loan documents and failed to disclose the conflict of interest or obtain the parties’ informed consent. Attorney and the Bar stipulated to violations of RPC 1.1 (competence) (he had counseled and assisted his elderly clients to make unsecured and/or under-secured loans) and RPC 1.7(a)(1) & (2) (he had represented clients with adverse interests and under circumstances where his representation was materially limited by his responsibilities to his other clients).

Attorney represented a client in immigration and criminal matters. In the criminal case, the court ordered the attorney to file an affidavit or declaration that she had spoken with her client, he understood his rights under the Speedy Trial Act, and he agreed to waive them. The attorney failed to file the affidavit as ordered and failed to appear before the court as ordered. Instead, the attorney filed a motion to dismiss, which included assertions that were without merit. Eventually the court removed the attorney from representing her client and the attorney refused to cooperate with replacement counsel. Attorney and the Bar stipulated to violations of RPC 1.1 (competence); RPC 1.16(a)(2) (failing to withdraw when the attorney’s physical or mental condition materially impairs the lawyer’s ability to represent the client); RPC 1.16(d) (failing to protect client’s interests upon termination of representation); RPC 8.1(c)(3) & (4) (failing to cooperate with SLAC); and RPC 8.4(a)(4) (engaging in conduct prejudicial to the administration of justice).

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.

Consistent with the Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30 days for violations of RPC 1.1 and RPC 1.16(a)(1), with all of the suspension stayed, pending Respondent’s successful completion of a two-year term of probation. The sanction shall be effective ten days after the stipulation is approved (effective date).
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, Respondent shall abide by the following conditions:

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

(b) Respondent has been represented in this proceeding by Nathan Gabriel Steele (Steele). Respondent and Steele hereby authorize direct communication between Respondent and DCO after the date this Stipulation for Discipline is signed by both parties, for the purposes of administering this agreement and monitoring Respondent’s compliance with her probationary terms.

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

(d) During the period of probation, Respondent shall attend not less than 8 MCLE accredited programs, for a total of 24 hours, which emphasize law practice management, time management, and appropriate case and client evaluation. These credit hours shall be in addition to those MCLE credit hours required of Respondent for her normal MCLE reporting period. (The Ethics School requirement does not count towards the 24 hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of her period of probation, Respondent shall submit an Affidavit of Compliance to DCO.

(e) Throughout the period of probation, Respondent shall diligently attend to client matters and adequately communicate with clients regarding their cases. Respondent shall also endeavor to focus her practice in the areas of criminal defense, domestic relations, bankruptcy, and estate planning.

(f) Each month during the period of probation, Respondent shall review all client files to ensure that she is timely attending to the clients’ matters and that she is maintaining adequate communication with clients, the court, and opposing counsel, and not taking on matters that are beyond her expertise.

(g) Kristi Kaufman shall serve as Respondent’s probation supervisor (Supervisor). Respondent shall cooperate and comply with all reasonable requests made by her Supervisor that Supervisor, in their sole discretion, determines are designed to achieve the purpose of the probation and the protection of Respondent’s clients, the profession, the legal system, and the public. Respondent agrees that, if Supervisor ceases to be her supervisor for any reason, Respondent will
immediately notify DCO and engage a new supervisor, approved by DCO, within one month.

(h) Beginning with the first month of the period of probation, Respondent shall meet with Supervisor in person at least once a month for the purpose of:

(1) Allowing Supervisor to review the status of Respondent’s law practice and her 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) client files or ten percent (10%) of Respondent’s active caseload, whichever is greater, to determine whether Respondent is timely, competently, and diligently attending to matters, and taking reasonably practicable steps to protect her clients’ interests including ensuring that she is only taking on matters that are suited to her knowledge, skills and training.

(i) Respondent authorizes Supervisor to communicate with DCO regarding her compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Respondent compliance.

(j) Within seven (7) days of the effective date, Respondent shall contact the Professional Liability Fund (PLF) and schedule an appointment on the earliest date available to consult with PLF’s Practice Management Advisors in order to obtain practice management advice. Respondent shall notify DCO of the time and date of the appointment.

(k) Respondent shall attend the appointment with the PLF’s Practice Management Advisors and seek advice and assistance regarding procedures for diligently pursuing client matters, communicating with clients, evaluating potential client matters and cases, and effectively managing a client caseload. No later than thirty (30) days after recommendations are made by the PLF’s Practice Management Advisors, Respondent shall adopt and implement those recommendations.

(l) No later than sixty (60) days after recommendations are made by the PLF’s Practice Management Advisors, Respondent shall provide a copy of the Office Practice Assessment from the PLF’s Practice Management Advisors and file a report with DCO stating the date of her consultation(s) with the PLF’s Practice Management Advisors; identifying the recommendations that she has adopted and implemented; and identifying the specific recommendations she has not implemented and explaining why she has not adopted and implemented those recommendations.

(m) Respondent shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with PLF Practice Management Advisors on or before June 1, 2020.
On a quarterly basis, on dates to be established by DCO beginning no later than 60 days after the effective date, Respondent shall submit to DCO a written “Compliance Report,” approved as to substance by Supervisor, advising whether Respondent is in compliance with the terms of this Stipulation for Discipline, including:

1. The dates and purpose of Respondent’s meetings with Supervisor.
2. The number of Respondent’s active cases and percentage reviewed in the monthly audit with Supervisor and the results thereof.
3. Whether Respondent has completed the other provisions recommended by Supervisor, if applicable.
4. In the event that Respondent has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.

Respondent is responsible for any costs required under the terms of this stipulation and the terms of probation.

Respondent’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.

A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to DCO on or before its due date.

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

Upon the filing of a petition to revoke Respondent’s probation pursuant to Bar Rule 6.2(d), Respondent’s remaining probationary term shall automatically be tolled and shall remain tolled until the BR 6.2(d) petition is adjudicated by the Adjudicator or, if appointed, the Disciplinary Board.

In addition, on or before December 31, 2019, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of $760, incurred at her deposition for the court reporter’s appearance fee and transcripts. Should Respondent fail to pay $760 in full by December 31, 2019, the Bar may thereafter, without further notice to her, obtain a judgment against Respondent 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.

Respondent acknowledges that reinstatement is not automatic on expiration of any period of suspension, if any stayed period of suspension is actually imposed. If a period of suspension is necessitated by her non-compliance with the terms of her probation, she will be required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Respondent also acknowledges that, should a suspension occur, 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.

21.

Respondent 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, if a suspension is imposed. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

22.

Respondent 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 Respondent is admitted: None

23.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 19, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The
parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 15th day of November, 2019.

/s/ Angela Therese Lee-Mandlin
Angela Therese Lee-Mandlin
OSB No. 974598

APPROVED AS TO FORM AND CONTENT:

/s/ Nathan Gabriel Steele
Nathan Gabriel Steele
OSB No. 004386

EXECUTED this 3rd day of December, 2019.

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: )

) Case No. 19-35 and 19-36

Complaint as to the Conduct of )

) NICOLE E. SCHAEFER,
)

Respondent.
)

Counsel for the Bar: Courtney C. Dippel

Counsel for the Respondent: Lisanne M. Butterfield

Disciplinary Board: None

Disposition: Violation of RPC 1.1, RPC 7.1, RPC 8.1(a)(1), and RPC 8.4(a)(4). Stipulation for Discipline. 90-day suspension, all but 30 days stayed, 3-year probation.

Effective Date of Order: December 9, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Schaefer is suspended for 90 days, all but 30 days stayed pending successful completion of a 3-year term of probation, effective December 9, 2019 for violations of RPC 1.1, RPC 7.1, RPC 8.1(a)(1), and RPC 8.4(a)(4).

DATED this 4th day of December, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board
Nicole E. Schaefer, attorney at law (Schaefer), 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. Schaefer was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 7, 2015, and has been a member of the Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3. Schaefer 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 16, 2019, a formal complaint was filed against Schaefer pursuant to authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 1.1, RPC 7.1, RPC 8.1(a)(1), and RPC 8.4(a)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.
Facts

Case No. 19-35
The Borges v. Arnold Proceeding

In 2018, Schaefer represented the petitioner in Borges v. Arnold, a proceeding pending in Washington County Circuit Court. On May 7, 2018, the parties appeared for a 1:30 p.m. hearing before the Honorable Ramón A. Pagán, but Schaefer failed to appear without notice to the court that she would not attend the hearing. Schaefer’s client informed the court that she had a personal emergency. Schaefer did not provide her client with any guidance on requesting a continuance due to her absence and left her client to represent himself without advising him how to proceed.

At 3:54 p.m. that afternoon, Schaefer sent an email to the OSB Family Law Section listserv (listserv) which suggested that she had been working, despite telling her client that she had an emergency which precluded her attendance at the 1:30 hearing.

That afternoon, when Judge Pagán learned that Schaefer was posting to the listserv, he instructed his judicial assistant to contact Schaefer and instruct her to appear with the parties on May 9, 2018. Approximately thirty-five minutes after Schaefer posted to the listserv, Judge Pagán’s judicial assistant (the JA) sent Schaefer an email notifying her that the court required her and her client to appear on May 9, 2018, at 8:30 a.m. at ex parte.

The following morning, May 8, 2018, the JA sent a follow-up email asking Schaefer to confirm that she had contacted her client and that both would appear at ex parte on May 9, 2018. Schaefer did not respond.

On May 9, 2018, approximately twenty minutes before she had been ordered to appear in court, Schaefer emailed the JA, asserted that she had just discovered the JA’s prior emails were in her spam folder, and stated that she would not attend ex parte that morning despite the court’s instruction that she do so. Neither Schaefer nor her client appeared before the court that morning.

At Judge Pagán’s instruction, the JA sent a reply email to Schaefer stating that Judge Pagán required Schaefer to appear at ex parte on May 10, 2018, and that he expected her to notify the parties. Schaefer did not appear or contact the court on May 10, 2018.
10.

The JA sent all of the emails referenced above to Schaefer’s email address then on record with the Bar, which was the same address the court had previously successfully used to contact Schaefer.

The Rider v. Rider Proceeding

11.

In 2018, Schaefer represented the husband in Rider v. Rider, a dissolution proceeding pending in Washington County Circuit Court. On June 13, 2018, the parties agreed to attend a full-day judicial settlement conference.

12.

The day before the settlement conference, the wife’s attorney submitted a settlement memorandum regarding her client’s positions and included a proposed property division spreadsheet pursuant to UTCR 8.010 (80-10 form).

13.

Later that day, June 12, 2018, Schaefer also submitted a settlement memorandum, which appeared to be a copy of her opposing counsel’s memorandum with minor additions and edits. Schaefer also submitted an 80-10 form which replicated the wife’s 80-10 form, indicating that Schaefer’s client agreed to the $80,000 equalizing judgment that the wife had proposed.

14.

Judge Pagán conducted the judicial settlement conference. Upon reviewing Schaefer’s submissions, Judge Pagán was concerned that Schaefer was unprepared and asked to meet counsel in chambers to discuss how to proceed. During that conference, Judge Pagán asked Schaefer whether the parties were only working on spousal support issues, since Schaefer’s client appeared to agree entirely with the wife’s proposed property division.

In response, Schaefer indicated that she did not understand what she had proposed on her client’s behalf. During the settlement conference, it became clear that Schaefer had not communicated with her client about the property division she had proposed on his behalf, as her client did not agree with her proposal.

15.

Judge Pagán subsequently asked Schaefer, with her opposing counsel present, if she had a settlement offer she wanted to present. In front of the wife’s attorney, Schaefer stated that she had not discussed settlement with her client, but she recalled that he had mentioned a specific amount he was willing to pay, thus divulging her client’s settlement position.
16.

By midafternoon, the parties appeared close enough to settlement that Judge Pagán suggested they speak directly to each other. Judge Pagán had another hearing and instructed counsel to continue speaking with their clients and their clients to speak directly to one another while he handled his hearing.

17.

Shortly thereafter, the wife’s attorney notified Judge Pagán that the parties had a settlement agreement to put on the record. However, Schaefer had left the courthouse without informing Judge Pagán’s staff. Schaefer’s client told Judge Pagán that Schaefer had left for an appointment. Despite repeated attempts, no one could reach Schaefer.

18.

Because Schaefer’s client had flown in from California, resetting the matter to a time when Schaefer could participate would be a significant inconvenience, Schaefer’s client asked to put the settlement on the record without his lawyer present. Judge Pagán agreed and the parties entered a settlement on the record in Schaefer’s absence.

Case No. 19-36
Schaefer’s False or Misleading Communications

19.

In 2018, Schaefer created and maintained three websites to promote herself and her legal services: OnlineRecordExpungement.com; NicholeSchaeferFamilyLaw.com that was subsequently renamed YourLawyersOnline.com; and LetsUntieTheKnot. Schaefer also maintained an active Twitter account in 2018.

20.

On May 25, 2018, Schaefer communicated through her Twitter account, “Break up with your criminal records,” with a link to OnlineRecordExpungement.com. Over the next several months, Schaefer promoted the website through her Twitter account.

21.

Schaefer asserted on the website that she had completed thousands of expungements and indicated that her “team” would advise consumers whether they were eligible for expungement, without informing the public who the attorney or the “team” was. Schaefer’s representation that she had handled and resolved thousands of expungement cases was false or misleading as she had, at the time, resolved no more than five such cases. The site’s reference to a “team” of attorneys was also false or misleading, as Schaefer was the only person who was reviewing potential clients’ eligibility for expungement.
The site also contained Schafer’s story about her client, “Juan,” and how pleased she had been to help him clear his record. Schafer represented no such client on an expungement matter, and thus her statements regarding the fictitious “Juan” were false or misleading.

22.

Schafer’s website address on record with the Bar from May 29 to September 9, 2018 was NicoleSchaferFamilyLaw.com and was renamed to YourLawyersOnline.com. On September 1, 2018, Schafer communicated through her Twitter account, “So excited to announce that YourLawyersOnline.com is up and running!” and, “Yay! LetsUntieTheKnot is up too.”

23.

Schafer’s YourLawyersOnline.com website described “our team of attorneys” ready to assist on legal matters. Schafer’s representation of having a “team of attorneys” was false or misleading, as she was the only lawyer.

24.

Schafer’s LetsUntieTheKnot website promised to prepare 50 pages of divorce paperwork in eight minutes, making divorce easier and cheaper than ever. The website indicated that approximately 19,352 divorces had been filed, 108,932 pages had been generated, and zero complaints had been received. The website also posted “recent reviews” by “our happy customers,” two of which stated:

“I would have gotten divorced so much earlier if I knew it could be this easy! … Thanks, Let’s Untie the Knot, for making divorce a snap!!” Phillip Roames, Portland, Oregon.

“I had actually been through a few different divorce lawyers and none were really working out. Then a friend told me about Lets Untie the Knot and I decided to give it a shot. I'm so glad I did! Everything was so quick and easy and cheap.” Allison Franks, Los Angeles, California.

25.

Schafer’s representations regarding the number of divorces she had handled and the testimonials attributed on that site to Schafer’s alleged clients were false or misleading, as she had not handled over 19,000 divorces and no such clients existed.

26.

NicoleSchaferFamilyLaw.com identified elder law, animal law, crime victims, and divorce as the areas in which Schaeffer was “highly specialized.” The website guaranteed quick results, because Schaefer “has been described as incredibly efficient” and a “powerful advocate.” “Nicole conducts scrupulous research and will stop at nothing to solve your problem.” The site also contained reviews “by actual clients during the past six months,”
including Blake Anderson (Portland) (“God, I was a complete wreck when I first came to see Nicole. She put her foot down early on and talked me out of some bad decisions”); and Lisa Almoretti (Salem) (“She used some really innovative tactics I’ve never even heard of before that completely caught my husband’s attorney off guard”).

27.

All of the testimonials attributed on that site to Schaefer’s “clients” were false or misleading, as no such clients existed.

28.

Schaefer’s websites described above were rife with fabricated testimonials, grossly inflated claims about her experience and background, and inaccurate references to a “team” available to help clients on legal matters. Schaefer tweeted links to the sites and announced that they were “up,” multiple times over a period of weeks, thus communicating the sites’ content to the public.

Schaefer’s False Statements to DCO

29.

On August 31, 2018, Disciplinary Counsel’s Office (DCO) received a complaint regarding Schaefer’s conduct with respect to her OnlineRecordExpungement.com website. During DCO’s investigation, DCO asked Schaefer to identify the developer she had used to create or provide any services in connection with the websites referenced herein. Schaefer identified Andy Earle (Earle) as her website developer.

30.

On November 27, 2018, DCO requested that Schaefer provide the Bar with all of her communications with Earle.

31.

On December 4, 2018, Schaefer provided DCO some of her emails with Earle, including an email dated November 19, 2018, that contained redactions which Schaefer described as “relate[d] to financial information and personal website information, such as passwords.”

32.

Between December 12, 2018, and December 17, 2018, DCO and Schaefer engaged in a series of emails in which DCO sought a less redacted copy of her November 19, 2018 email to Earle. On December 14, 2018, Schaefer represented to DCO, “I blurred out the confidential/private info the best I was able to. The sentence I blurred out said: I told the new developer the password-******-and he said the program would cost ***** but that I would be buying it prematurely.”
Schaefer’s representation regarding the content of that email was false. Schaefer’s original, unredacted email to Earle read, in part, “I told them it was filler text and I was not aware because the website…” Schaefer made that representation to DCO knowing that it was false and material to DCO’s investigation.

Violations

33.

With respect to Case No. 19-35, Schaefer admits that by engaging in the conduct described in paragraphs 5 through 19 herein, she failed to provide competent representation to her clients in violation of RPC 1.1, and engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

With respect to Case No. 19-36, Schaefer admits that by engaging in the conduct described in paragraphs 20 through 29 herein, she made false or misleading communications about her or her services in violation of RPC 7.1. Schaefer further admits that she knowingly made a false statement of fact in connection with a disciplinary matter in violation of RPC 8.1(a)(1).

Sanction

34.

Schaefer 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 Schaefer’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 Standards presume that the most important duties a lawyer owes are those owed to clients. Standards at 5. Schaefer violated her duty to provide her clients with competent representation. Standards § 4.5. Schaefer also violated her duty to the legal system to avoid engaging in conduct prejudicial to the administration of justice. Standards § 6.2. Additionally, Schaefer violated her duty to the profession to refrain from making false or misleading communications regarding her legal services, and her duty to be candid in her communications with her regulatory authority. Standards § 7.0.

b. Mental State. The Standards recognize three mental states: “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.

Schaefer’s conduct demonstrates both a negligent and a knowing mental state.
Schaefer’s failure to provide competent representation and prejudicial conduct
were likely the result of negligence. She missed the first court hearing due to a
personal/family emergency, and missed the court’s follow-up emails because
the messages were quarantined in her spam filter without her knowledge.
Respondent left in the middle of the settlement conference because she had a
medical appointment she could not cancel. These acts reflect a lapse in
judgment that may be attributed to Schaefer’s lack of experience.

With respect to the false or misleading communications, Schaefer promoted
websites that were in development via her Twitter account. At the time, the
websites contained fictitious “filler” or sample language the developer expected
her to replace with accurate information regarding her legal services.
Respondent’s promotion through social media of her websites containing false
and misleading statements reflects a knowing mental state.

Schaefer’s false statement to DCO regarding her email with Earle also
demonstrates a knowing mental state.

c. Injury. Injury can either be actual or potential under the Standards. 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.

Schaefer caused actual injury to her clients and the court system due to her
failure to provide competent representation and her conduct prejudicial to the
The court was required to unnecessarily expend court resources as a result of

There is also injury when lawyers provide false information during a
disciplinary investigation. “The Bar’s work of administering the profession and
protecting the public with a relatively small staff depends to a significant degree
on the honesty and cooperation of the lawyers whom the Bar regulates.
Systematic dishonesty in a lawyer’s dealings with the Bar is destructive to the
Bar’s ability to carry out its vital tasks.” In re Wyllie, 327 Or 175, 182, 957 P2d

Schaefer’s false statement was not systematic, but did require staff to expend
additional resources, conduct additional investigation, and interfered with the
Bar’s regulatory function.
d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Dishonest or selfish motive. *Standards* § 9.22 (b). By abandoning her clients at a hearing and settlement conference with no instructions regarding how to proceed, Schaefer put her own interests over those of her clients’.


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

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

2. Personal or emotional problems. *Standards* § 9.32(c). Schaefer has been diagnosed with several mental health conditions and experienced various personal problems at the time of the conduct.


35. Without considering aggravating or mitigating factors, the following *Standards* apply:

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 knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. *Standards* § 6.22.

Suspension is also 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 number of violations coupled with Respondent’s knowing mental state as to some of the violations suggests that some term of suspension is warranted.

36. While Schaefer has admitted to violating multiple rules, the parties agree that her misconduct may be attributed to a lack of competence in domestic relations matters and a
general lack of experience. In comparable situations, respondents have been suspended with some or all of the suspension stayed, subject to an appropriate term of probation. See, e.g.:

- **In re Hernandez**, 32 DB Rptr 72 (2018) [60-day suspension; 30 days stayed subject to one-year probation] Attorney was retained to handle the probate of an intestate estate. The attorney improperly paid himself out of estate funds without court approval. After the client complained about the attorney’s conduct to the Bar in January 2015, the attorney accused his client of committing fraud and giving false statements to the Bar. Despite that conflict of interest, the attorney continued to represent the PR without explaining his conflict of interest until July 2015, when the attorney withdrew from representing the PR due to the conflict. Attorney did not close the estate when ordered to do so by the court and failed to file the estate’s annual accounting when ordered to do so. Attorney and the Bar stipulated to violations of RPCs 1.1 (competence); 1.3 (neglect); 1.5(a) (collecting an illegal fee); 1.15-1(a) (trust account violation); 1.7(a)(2) (current-client conflict of interest); and 1.16(a)(1) (failing to withdraw when continued representation would have violated the RPCs).

- **In re Hanson**, 32 DB Rptr 159 (2018) [30-day suspension, all stayed subject to one-year probation] Client retained the attorney to attend her arraignment in a criminal proceeding and enter a not guilty plea in the client’s absence (the misdemeanor charges allowed the client to appear through counsel). Despite appearing, the attorney failed to enter his client’s plea, which caused the court to issue a bench warrant for his client’s arrest. Attorney and the Bar stipulated to violations of RPCs 1.1 (competence); 1.2 (failing to abide by his client’s decisions regarding the objectives of the representation); 1.5(a) (collecting an excessive fee); and 8.4(a)(4) (engaging in conduct prejudicial to the administration of justice).

- **In re Schlesinger**, 32 DB Rptr 198 (2018) [30-day suspension, all stayed subject to one-year probation] Attorney sent a settlement demand without his client’s approval to the opposing party, who accepted it. After client objected to the settlement terms, a conflict of interest arose between the attorney and client. Despite that conflict, the attorney and the firm continued to represent the client for another five months and advocated that the client accept the original settlement. Attorney and the Bar stipulated to violations of RPCs 1.2(a) (failing to abide by client’s objectives of representation); 1.4(a) (failing to keep client adequately informed as to the status of the matter; 1.4(b) (failed to provide client with sufficient information to make informed decisions about his matter); 1.7(a)(2) (conflict of interest); and 1.16(a)(1) (failing to withdraw when continued representation would have violated the RPCs).

- **In re Oliveros**, 30 DB Rptr 145 (2016) [60-day suspension, all stayed subject to three-year probation] A married couple retained attorney to represent them in a home foreclosure matter. While the attorney was able to reinstate the mortgage, the clients told the attorney they wanted to invest $500,000 of an inheritance they had received to generate retirement income. Based on the attorney’s recommendations, the clients made a series of loans to three borrowers, all three of whom the attorney represented in unrelated matters. The attorney prepared all the loan documents and failed to disclose the conflict of interest or obtain the parties’ informed consent. Attorney and the Bar
stipulated to violations of RPC 1.1 (competence) (he had counseled and assisted his elderly clients to make unsecured and/or under-secured loans) and RPC 1.7(a)(1) & (2) (he had represented clients with adverse interests and under circumstances where his representation was materially limited by his responsibilities to his other clients).

- In re Sheridan, 29 DB Rptr 179 (2015) [60-day suspension, all stayed subject to three-year probation] Attorney represented a client in immigration and criminal matters. In the criminal case, the court ordered the attorney to file an affidavit or declaration that she had spoken with her client, he understood his rights under the Speedy Trial Act, and he agreed to waive them. The attorney failed to file the affidavit as ordered and failed to appear before the court as ordered. Instead, the attorney filed a motion to dismiss, which included assertions that were without merit. Eventually the court removed the attorney from representing her client and the attorney refused to cooperate with replacement counsel. Attorney and the Bar stipulated to violations of RPCs 1.1 (competence); 1.16(a)(2) (failing to withdraw when the attorney’s physical or mental condition materially impairs the lawyer’s ability to represent the client; 1.16(d) (failing to protect client’s interests upon termination of representation); 8.4(a)(4) (engaging in conduct prejudicial to the administration of justice); 8.1(c)(3) & (4) (failing to cooperate with SLAC)).

37. 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.

38. Consistent with the Standards and Oregon case law, the parties agree that Schaefer shall be suspended for 90 days for violations of RPC 1.1, RPC 7.1, RPC 8.1(a)(1) and RPC 8.4(a)(4), with all but 30 days of the suspension stayed, pending Schaefer’s successful completion of a 3-year term of probation. The suspension shall begin on December 9, 2019, or as otherwise directed by the Disciplinary Board (effective date).

39. Schaefer’s license to practice law shall be suspended for a period of 30 days beginning on the effective date, or as otherwise directed by the Disciplinary Board (actual suspension), assuming all conditions have been met. Schaefer understands that reinstatement is not automatic and that she cannot resume the practice of law until she 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 Schaefer re-attains her active membership status with the Bar, Schaefer shall not practice law or represent that she is qualified to practice law; shall
not hold herself 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 actual suspension.

40.

Probation shall commence upon the date Schaefer is reinstated to active membership status and shall continue for a period of 3 years, ending on the day prior to the 3-year anniversary of the effective date (the period of probation). During the period of probation, Schaefer shall abide by the following conditions:

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

(b) Schaefer has been represented in this proceeding by Lisanne M. Butterfield and Emil J. Ali (Butterfield and Ali). Schaefer, Butterfield, and Ali hereby authorize direct communication between Schaefer and DCO after the date this Stipulation for Discipline is signed by both parties, for the purposes of administering this agreement and monitoring Schaefer’s compliance with her probationary terms.

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

(d) During the period of probation, Schaefer shall attend not less than 12 MCLE accredited programs, for a total of 36 hours emphasizing law practice management, time management, stress management, and client communication. These credit hours shall be in addition to those MCLE credit hours required of Schaefer for her normal MCLE reporting period. (The Ethics School requirement does not count towards the 36 hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of her period of probation, Schaefer shall submit an Affidavit of Compliance to DCO.

(e) Throughout the period of probation, Schaefer shall diligently attend to client matters and adequately communicate with clients, courts, and third parties regarding matters Schaefer is handling.

(f) Each month during the period of probation, Schaefer shall review all client files to ensure that she is timely attending to the clients’ matters and maintaining adequate communication with clients, the court, and opposing counsel.

(g) Cathryn Ruckle shall serve as Schaefer’s probation supervisor (Supervisor). Schaefer shall cooperate and comply with all reasonable requests made by her Supervisor that Supervisor, in her sole discretion, determines are designed to achieve the purpose of the probation and the protection of Schaefer’s clients, the profession, the legal system, and the public. Schaefer agrees that, if Supervisor ceases to be her Supervisor for any reason, Schaefer will...
immediately notify DCO and engage a new Supervisor, approved by DCO, within one month.

(h) Beginning with the first month of the period of probation, Schaefer shall meet with Supervisor in person at least once a month for the purpose of allowing her Supervisor to review the status of Schaefer’s law practice and her 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) client files or ten percent (10%) of Schaefer’s active caseload, whichever is greater, to determine whether Schaefer is timely, competently, diligently, and ethically attending to matters, and taking reasonably practicable steps to protect her clients’ interests.

(i) Schaefer authorizes her Supervisor to communicate with DCO regarding her compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Schaefer’s compliance.

(j) Within seven (7) days of her reinstatement date, Schaefer shall contact the Professional Liability Fund (PLF) and schedule an appointment for the earliest date available with PLF’s Practice Management Advisors in order to obtain practice management advice. Schaefer shall notify DCO of the time and date of the appointment.

(k) Schaefer shall attend the appointment with the PLF’s Practice Management Advisors 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’ interests. No later than thirty (30) days after recommendations are made by the PLF’s Practice Management Advisors, Schaefer shall adopt and implement those recommendations.

(l) No later than sixty (60) days after recommendations are made by the PLF’s Practice Management Advisors, Schaefer shall provide DCO a copy of the Office Practice Assessment from the PLF’s Practice Management Advisors, and file a report with DCO stating the date of her consultation(s) with the PLF’s Practice Management Advisors; identifying the recommendations that she has adopted and implemented; and identifying the specific recommendations she has not implemented and explaining why she has not adopted and implemented those recommendations.

(m) Schaefer shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with PLF Practice Management Advisors on or before June 1, 2020.

(n) Schaefer has represented to DCO that on August 23, 2019, she entered into a written “Monitoring and Cooperation Agreement,” (Monitoring Agreement)
with the State Lawyer’s Assistance Committee (SLAC) and that her SLAC Monitor is Sara Butcher (Monitor).

(o) Schaefer shall comply with her Monitoring Agreement. Schaefer shall cooperate and comply with all reasonable requests of SLAC that will allow SLAC and DCO to evaluate her compliance with the terms of this Stipulation for Discipline.

(p) Schaefer authorizes Monitor to communicate with DCO regarding Schaefer’s compliance or noncompliance with her SLAC Monitoring Agreement and to release to DCO any information DCO deems necessary to permit it to assess Schaefer’s compliance.

(q) Schaefer shall continue regular treatment with Daniel Dick, M.D., and Minal Patel, Psy. D. (Current Treating Professionals), or other mental health treatment providers as deemed appropriate by the Current Treating Professionals or SLAC.

(r) Schaefer shall continue to attend regular counseling/treatment sessions with, and take all medications prescribed by, her Current Treating Professionals for the entire term of her probation.

(s) Schaefer shall not terminate her counseling/treatment, or reduce the frequency of her counseling/treatment sessions, without first submitting to DCO a written recommendation from her Current Treating Professionals or other approved health care professional that her counseling/treatment sessions should be reduced in frequency or terminated, and Schaefer undergoes an independent evaluation by a second professional acceptable to DCO, which evaluation confirms her fitness.

(t) Schaefer consents to the release of information by her Current Treating Professionals, and any other mental health treatment program or provider to SLAC and to DCO, regarding her treatment plan, her progress under that plan, and her compliance with the terms of this Stipulation for Discipline, waives any privilege or right of confidentiality to permit such disclosure, and agrees to execute such releases as may be required by such providers upon request by SLAC or DCO.

(u) On a quarterly basis, on dates to be established by DCO beginning no later than 90 days after her reinstatement to active membership status, Schaefer shall submit to DCO a written Compliance Report, approved as to substance by her Supervisor, advising whether Schaefer is in compliance with the terms of this Stipulation for Discipline, including:

1. The dates and purpose of Schaefer’s meetings with her Supervisor.

2. The number of Schaefer’s active matters and percentage reviewed in the monthly audit with Supervisor and the results thereof.
(3) Whether Schaefer has completed the other provisions recommended by her Supervisor, if applicable.

(4) Whether Schaefer is in compliance with her SLAC Monitoring Agreement.

(5) In the event that Schaefer has not complied with any term of this stipulation for discipline, the Compliance Report shall describe the non-compliance and the reason for it.

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

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

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

(y) The SPRB’s decision to bring a formal complaint against Schaefer for ethical misconduct that occurred or continued during the period of her probation shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.

(z) Upon the filing of a petition to revoke Schaefer’s probation pursuant to Bar Rule 6.2(d), Schaefer’s remaining probationary term shall be automatically tolled and shall remain tolled until the BR 6.2(d) petition is adjudicated by the Adjudicator or, if appointed, the Disciplinary Board.

41.

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

42.

Schaefer 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. Schaefer 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.

43.

Schaefer 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 Schaefer to attend continuing legal education (CLE) courses.

44.

Schaefer 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 Schaefer is admitted: None.

45.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 20, 2019. Approval as to form by Disciplinary Counsel is evidenced below.

The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 2nd day of December, 2019.

/s/ Nicole E. Schaefer
Nicole E. Schaefer, OSB No. 151476

APPROVED AS TO FORM AND CONTENT:

/s/ Lisanne M. Butterfield
Lisanne M. Butterfield, OSB No. 913683

/s/ Emil Ali
Emil Ali, OSB No. 176329

EXECUTED this 3rd day of December, 2019.

OREGON STATE BAR

By: /s/ Courtney C. Dippel
Courtney C. Dippel
OSB No. 022916
Assistant Disciplinary Counsel
In re:  

Complaint as to the Conduct of  

ERIC J. NISLEY,  

Accused.  

(OSB 951049; SC S066100)  

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

Lawrence Matasar, Lawrence Matasar, PC, Portland, argued the cause and filed the briefs for respondent.  

Susan Roedl Cournoyer, Assistant Disciplinary Counsel, Tigard, argued the cause and filed the brief on behalf of the Oregon State Bar.  

PER CURIAM  

In this lawyer disciplinary proceeding, the Oregon State Bar alleged that respondent knowingly made six false and material statements to the Bar during an investigation into possible misconduct, in violation of Rule of Professional Conduct (RPC) 8.1(a)(1). A trial panel determined that respondent had made one such false statement, and it imposed a one-month suspension. Respondent requested review and seeks dismissal; the Bar counters that it proved all its allegations and requests a six-month suspension. On de novo review, we conclude that respondent made four false statements, and we suspend him from the practice of law for 60 days.
IN THE SUPREME COURT 
OF THE STATE OF OREGON 

In re: )
Complaint as to the Conduct of ) Case No. 19-76
CAROL J. FREDRICK, )
Respondent. )

Counsel for the Bar: Susan R. Cournoyer
Counsel for the Respondent: None
Disciplinary Board: None
Effective Date of Order: December 18, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Carol J. Fredrick (Respondent) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is publicly reprimanded for violation of RPC 1.4(a).

DATED this 18th day of December, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Carol J. Fredrick
Carol J. Fredrick, OSB No. 883705

/s/ Susan R. Cournoyer
Susan R. Cournoyer, OSB No. 863381
STIPULATION FOR DISCIPLINE

Carol J. Fredrick, attorney at law (Respondent), 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.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on December 8, 1988, and has been a member of the Bar continuously since that time, having her office and place of business in Yamhill County, Oregon.

3.

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

4.

On October 19, 2019, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for an alleged violation of RPC 1.4(a) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Respondent represented Father in a dispute over a parenting time modification. In July 2017, the court ruled in favor of Mother and, in early October 2017, entered a supplemental judgment modifying the plan. A few weeks later, Mother’s counsel, Engel, filed a motion for an award of attorney fees. Respondent forwarded a copy of the motion to Father, but did not discuss with him how to respond. No objection was filed.

In January 2018, the court granted the motion and entered a supplemental judgment against Father for $15,000. Although Respondent received a notice of entry of judgment, she did not notify Father that judgment had been entered against him. Also, Respondent did not provide Father a copy of the judgment lien abstract Engel sent to her in March 2018. Although Respondent’s established office practice required her staff to forward to the client copies of every communication received on a client’s case and to document the completion of that process on each item, those steps were not taken in this matter, without Respondent’s
knowledge. However, Respondent and Father communicated about other aspects of the parenting time dispute during this period.

Father did not learn of the judgment until October 2018, when Respondent forwarded to him Engel’s notice of demand to pay judgment. Thereafter, Father attempted to contact Respondent about the judgment, but Respondent did not respond to his requests for information. In December 2018, Engel served a writ of garnishment on Father’s employer.

Violation

6.

Respondent admits that, by failing to inform her client that the court had awarded a $15,000 supplemental judgment against him, or to respond to his subsequent requests for information about the judgment, she violated RPC 1.4(a).

Sanction

7.

Respondent 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 Respondent’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 keep Father reasonably informed about the entry of a $15,000 judgment against him, Respondent violated her duty of diligence to her client.

b. Mental State. The Standards recognize three mental states: “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. Here, Respondent’s conduct reflects a negligent mental state. She negligently failed to ensure that her staff complied with established office practices to notify Father of all pleadings and communications upon receipt, even when she continued to communicate with Father on other aspects of his parenting time concerns.

c. Injury. Father was injured by Respondent’s failure to inform him of the judgment, in that he was unwittingly subject to a money judgment, which could affect his credit rating and other financial interests. Until he was aware of the
judgment, Father was denied the opportunity to satisfy it and prevent involuntary collection efforts. (However, Respondent timely sent Father the notice of demand to pay judgment at least one month before Engel commenced collection efforts.)

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

1. Respondent has a record of prior discipline. Standard 9.21(a).

2. Respondent has substantial experience in the practice of law. Standard 9.21(i).

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

1. Respondent did not act with a dishonest or selfish motive. Standard 9.32(b).

Under the 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. Standard 4.43.

9.

Oregon case law supports the imposition of a public reprimand in this matter. *See, e.g.:*

*In re Castle*, 31 DB Rptr 254 (2017) [public reprimand for neglect in two client matters and failure to communicate in one matter]. Castle was attorney of record in protective proceedings in which annual reports were required. The third year, he received two notices that the annual report was late and, although he left a message for his client, he did not otherwise follow up with his client. The court subsequently sent Castle notice of a hearing regarding the failure to file an annual report, but he failed to inform his client of the hearing. Aggravating factors included multiple offenses and substantial experience; mitigating factors included absence of prior discipline, absence of dishonest or selfish motive, full disclosure, and remorse.

*In re Monsebroten*, 31 DB Rptr 198 (2017) [public reprimand for failure to communicate, taking a nonrefundable fee without required disclosures, and failing to deposit and advance fee into trust]. Monsebroten received a proposed stipulated order, drafted by opposing counsel, containing the material terms of a settlement agreement put on the record, as well as other details to which Monsebroten’s clients had not agreed. Monsebroten approved the order without reviewing it with his clients, mistakenly believing the additional details to be within the scope of his express and implied authority. Aggravating circumstances include multiple offenses and substantial experience; mitigating circumstances include absence of prior discipline and full disclosure.

*In re Cain*, 31 DB Rptr 105 (2017) [public reprimand for failure to communicate]. A client hired Cain to review a small-claims court decision and seek reconsideration, if feasible.
Cain claimed that she determined that reconsideration was not feasible, and informed the client by phone but could not recall whether she spoke with the client or left a voicemail message. She thereafter received messages from the client that she did not return. Aggravating circumstances include multiple offenses and substantial experience. The single mitigating factor is delay in discipline proceedings.

10. Consistent with the Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 1.4(a), the sanction to be effective upon the Disciplinary Board’s approval of this stipulation.

11. Respondent 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.

12. Respondent 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 Respondent is admitted: None.

13. Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 19, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 12th day of December, 2019.

/s/ Carol J. Fredrick
Carol J. Fredrick, OSB No. 883705

EXECUTED this 16th day of December, 2019.

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. 19-39
ROGER F. ANDERSON, )
) Respondent.

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: Richard G. Helzer
Disciplinary Board: None
Disposition: Violation of RPC 1.1, RPC 3.3(d), and RPC 8.4(a)(4).
Stipulation for Discipline. Public Reprimand.
Effective Date of Order: December 23, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Roger F. Anderson (Anderson) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Anderson is publicly reprimanded for violation of RPC 1.1, RPC 3.3(d), and RPC 8.4(a)(4).

DATED this 23rd day of December, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Richard G. Helzer
Richard G. Helzer, OSB No. 690735

/s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott, OSB No. 990280
STIPULATION FOR DISCIPLINE

Roger F. Anderson, attorney at law (“Anderson”), 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.

Anderson was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 21, 1973, and has been a member of the Bar continuously since that time, having his office and place of business in Washington County, Oregon.

3.

Anderson 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 17, 2019, a Formal Complaint was filed against Anderson pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 1.1 (failure to provide the legal knowledge, skill, thoroughness and preparation reasonably necessary for a client’s representation); RPC 1.2(c) (assisting a client in conduct known to be illegal); RPC 3.3(a)(1) (making a false statement of law or fact to a tribunal); RPC 3.3(d) (failing to fully inform a tribunal of all relevant facts in an ex parte proceeding); RPC 8.4(a)(1) (violating the Rules of Professional Conduct through the acts of another); and RPC 8.4(a)(3) (conduct involving dishonesty or misrepresentation) of the Oregon Rules of Professional Conduct. (The reference to RPC 1.4(b) in the Formal Complaint was a typographical error and not authorized or intended to be pled.) On December 16, 2019, the SPRB authorized amendment of the Formal Complaint to include alleged violation of RPC 8.4(a)(4) (conduct prejudicial to the administration of justice) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In or prior to 2010, Anderson prepared a will for Norman Henkelman (“Father”), who had three children: Ronald Henkelman (“Henkelman”), Susan McCowan n/k/a Harrington (“Harrington”), and Bradley Knudsen (“Knudsen”).
6.

In March 2017, Anderson prepared, and Father executed, a codicil, as well as a transfer on death deed that left Father’s home in equal shares to Henkelman and Harrington. The codicil recited in relevant part, “My joint bank and investment accounts have been established for my convenience to assist me with managing my assets and paying bills. Any such accounts shall be part of my estate and shall be controlled by this, my Will.” [emphasis in original]. Anderson also prepared a power of attorney naming Henkelman Father’s attorney-in-fact (“POA”), including authority to write checks and withdraw funds from Father’s various bank accounts.

7.

On May 2, 2017, Father passed away. His will made a few specific bequests, and directed that the remainder of his estate be divided between Henkelman and Harrington.

8.

At all relevant times herein, ORS 114.505(3) provided in relevant part that, as used in ORS 114.505 to ORS 114.560, “estate” means decedent’s property subject to administration in Oregon.

9.

At all relevant times herein, ORS 114.515(2) provided that an affidavit under this section may be filed only if:

(a) The fair market value of the estate is $275,000 or less;

(b) Not more than $75,000 of the fair market value of the estate is attributable to personal property; and

(c) Not more than $200,000 of the fair market value of the estate is attributable to real property.

10.

On May 4, 2017, Anderson met with Henkelman and Harrington (“May 4 meeting”), and discussed Father’s assets, including assets not subject to probate. Henkelman disclosed to Anderson that the balances of Father’s bank accounts totaled in excess of $100,000.

11.

At the May 4 meeting, Anderson explained to Henkelman and Harrington that a small estate affidavit could be filed to save attorney fees and costs if the value of the decedent’s personal property at the time of filing of the claiming successor’s affidavit was $75,000 or less. Anderson honestly, but erroneously, believed that the value of the estate as of the date the small estate affidavit was filed with the court, and not the estate value as of the date of death, controlled. Anderson further explained that the claiming successor’s affidavit could not be
filed until 30 days after the decedent’s death. Anderson also told Henkelman that the POA remained in effect as to third parties until such time as the notice of the principal’s death was given to the third parties, and that, as long as Henkelman did not notify the banks of Father’s death, Henkelman could to continue to use the POA with respect to Father’s accounts.

12. At the conclusion of the May 4 meeting, Anderson recommended that Henkelman withdraw and pay funds to himself from Father’s accounts and bring their total balance under $70,000, which would allow the use of a small estate affidavit.

13. In reliance on Anderson’s advice, on or about May 4, 2017, Henkelman wrote a check payable to himself in the amount of $30,000 from Father’s Wells Fargo account (“Henkelman payment”). Unaware of Father’s death, Wells Fargo honored the check.

14. On June 22, 2017, Anderson filed an Affidavit of Claiming Successor of Small Testate Estate, which he had drafted and Henkelman had signed, in Washington County Circuit Court.

15. The filing of the Affidavit operated automatically to give Henkelman certain authority to act after the expiration of 10 days, thus making it an ex parte proceeding. The Affidavit was incomplete in that it did not disclose the Henkelman payment, and represented to the court that the total value of the estate assets was $72,074.93.

16. Anderson did not appreciate, so did not to explain to Henkelman, that:

● That POA became legally void upon Father’s death, and any further use might subject Henkelman to civil liability;

● Anderson’s advice regarding a third party’s ability to rely on the authority of an apparent attorney-in-fact after the principal has died applies only to co-signers on accounts, not to attorneys-in-fact, and operates to protect the third party, not the attorney-in-fact;

● That Father’s estate did not qualify for treatment as a small estate pursuant to ORS 114.505 et. seq because at the date of Father’s death, the value of his estate subject to administration exceeded $75,000; or

● The affidavit Anderson prepared for Henkelman’s signature and filing with the court was inaccurate, and could subject Henkelman to liability for false swearing, perjury, and civil liability.
On October 17, 2017, Harrington, through counsel, petitioned the Washington County Circuit Court for appointment of a personal representative and probate of Father’s will. The petition listed estate assets of $112,104.49. The petition stated in relevant part, “the petitioner has learned that the claiming successor [Henkelman] deliberately hid estate assets for the purpose of qualifying the estate for processing under the small estate statute and further engaged in self-dealing.” The court accepted the petition, appointed Harrington personal representative, consolidated the petition with the small estate case Anderson filed, and probated the estate.

Violations

17. Anderson admits that his reading of the applicable rules caused him and Henkelman to take actions arguably contrary to statute. Anderson’s misguided advice also resulted in material representations to the court and third parties that were not accurate, and amounted to a failure to provide Henkelman with the knowledge, skill, thoroughness, and preparation reasonably necessary for his competent representation, in violation of RPC 1.1.

18. Anderson further admits that, by failing to disclose to the court the Henkelman payment, while simultaneously valuing the estate at less the amount of that payment, Anderson failed to fully inform a tribunal of all relevant facts in an ex parte proceeding, in violation of RPC 3.3(d).

19. Finally, Anderson acknowledges that when he prepared and filed of a small estate affidavit, he set in motion an improper process that required correction through a new proceeding, required additional court attention and involvement, and subjected his client to potential civil and criminal sanctions, in violation of RPC 8.4(a)(4).

20. Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 1.2(c); RPC 3.3(a)(1); RPC 8.4(a)(1); and RPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.
Sanction

Anderson 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 Anderson’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.** Anderson violated his duty to his client to provide him with competent representation. Standards § 4.5. The Standards presume that the most-important ethical duties are those which lawyers owe to their clients. Standards at 5. Anderson also violated his duties to the legal system to ensure the court was provided with complete information and to avoid conduct prejudicial to the administration of justice. Standards § 6.1; 6.2.

b. **Mental State.** Anderson’s conduct was negligent, in that he 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. Standards at 9.

c. **Injury.** Injury under the Standards can be actual or potential. Standards at 6; In re Williams, 314 Or 530, 840 P2d 1280 (1992). Here, there was significant potential injury both to Henkelman and the legal system.

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

   1. 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. Cooperative attitude toward the investigation and these disciplinary proceedings. Standards § 9.32(e).

Under the ABA Standards, a reprimand is generally appropriate when a lawyer demonstrates a failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client. Standards § 4.53(a). A suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding, while a reprimand is generally appropriate when a
lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. Standards §§ 6.12, 6.13. A reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. Standards § 6.23. Collectively, Anderson’s conduct would presumptively warrant a reprimand or short suspension. However, upon application of the aggravating and mitigating factors, a reprimand appears to be the appropriate overall outcome.

23.

Oregon cases are in accord. See, e.g., In re Bruce, 32 DB Rptr 290 (2018) (lawyer was reprimanded when, in representing a proposed fiduciary in two related guardianship proceedings, she failed to timely or properly file documents as instructed by the court, leading to dismissal of one of the proceedings, which was then required to be refiled); In re Lee-Mandlin, 31 DB Rptr 14 (2017) (respondent reprimanded after she failed to serve a proposed order on opposing counsel before submitting it to the court, in violation of UTCR 5.100, filed the order ex parte, and misinformed the court that opposing counsel had not objected to the proposed judgment when he had in fact done so); In re Brewster, 30 DB Rptr 181 (2016) (respondent was reprimanded where she obtained ex parte orders granting her domestic relations clients temporary relief, including child support and custody, and other types of relief that were prohibited by statute in domestic-relations cases); In re Jaspers, 28 DB Rptr 211 (2014) (attorney reprimanded for filing an ex parte emergency custody order in which 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 Fredrick, 26 DB Rptr 129 (2012) (attorney was reprimanded where, in an attempt to protect a client’s financial interests in an impending divorce, she advised the client to sign a promissory note in favor of client’s father as evidence that funds father contributed to the marriage over the years were loans, when they were in fact gifts; attorney also prepared and filed a UCC-1 financing statement to secure the note, incompetently advising the client that this may protect the client’s interest in the couple’s real property); In re Misfeldt, 24 DB Rptr 25 (2010) (attorney was reprimanded when, on behalf of an elderly client, she filed various pleadings in probate court based on what others told attorney about the client, without any direct communication by attorney with the client or sufficient inquiry about the client’s condition and objectives); In re Bean, 20 DB Rptr 157 (2006) (in presenting an ex parte custody order to a judge, attorney was reprimanded for failing to disclose to the court that the pro se opposing party was in the hallway waiting to be heard).

24.

Consistent with the Standards and Oregon case law, the parties agree that Anderson shall be publicly reprimanded for violations of RPC 1.1, RPC 3.3(d), and RPC 8.4(a)(4), the sanction to be effective upon approval by the Disciplinary Board.
25.

Anderson 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.

26.

Anderson 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 his acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Anderson is admitted: none.

27.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on December 16, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 19th day of December, 2019.

/s/ Roger F. Anderson
Roger F. Anderson, OSB No. 730130

APPROVED AS TO FORM AND CONTENT:

/s/ Richard G. Helzer
Richard G. Helzer, OSB No. 690735

EXECUTED this 19th day of December, 2019.

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 KEITH Y. BOYD, Respondent.

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: David J. Elkanich
Disciplinary Board: None

Disposition: Violation of RPC 1.15-1(a), RPC 1.15-1(c), and RPC 5.3(a). Stipulation for Discipline. 6-month suspension, all stayed, 3-year probation.

Effective Date of Order: December 24, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Keith Y. Boyd (Respondent) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for six months, with all of the suspension stayed, pending Respondent’s successful completion of a three-year term of probation, effective on December 24, 2019, for violation of RPC 1.15-1(a), RPC 1.15-1(c), and RPC 5.3(a).

DATED this 23rd day of December, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board
STIPULATION FOR DISCIPLINE

Keith Y. Boyd, attorney at law (Respondent), 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. Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1976, and has been a member of the Bar continuously since that time, having his office and place of business in Jackson County, Oregon.

3. Respondent 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 19, 2019, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.15-1(a), RPC 1.15-1(b), RPC 1.15-1(c), and RPC 5.3(a) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5. On February 15, 2019, Respondent reported to the Bar that he had overdrawn his trust account by $1,059 based on a check Respondent had written to himself. Respondent realized his Quickbooks and Clio data accounts had not been reconciled with his monthly trust account bank statements. Concerned, Respondent hired an accounting firm to audit his accounts.
By April 2019, Respondent had determined that a total of $10,820 in client funds had been prematurely transferred out of trust since 2011. Those funds were the funds of five clients. Respondent then deposited that amount into his trust account in order to make his clients whole.

Since the audit, Respondent has identified between ten and fifteen clients whose advanced funds were prematurely removed from his trust account before they were earned.

The premature transfers and overdraft were caused, in part, by Respondent’s bookkeeper’s and staff’s failure to reconcile his various client accounting documents. Between 2011 and 2019, Respondent made little effort to supervise his staff’s bookkeeping and accounting activities.

**Violations**

6.

Respondent admits that, by engaging in the conduct described above, he failed to safeguard client property, in violation of RPC 1.15-1(a), and removed client funds from trust before they were earned, in violation of RPC 1.15-1(c). Respondent also admits that he failed to make reasonable efforts to ensure that his bookkeeper’s and staff’s conduct was compatible with his professional obligations, in violation of RPC 5.3(a).

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 1.15-1(b) should be and, upon the approval of this stipulation, is dismissed.

**Sanction**

7.

Respondent 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 Respondent’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 Standards presume that the most important duties a lawyer owes are those owed to clients. Standards at 5. Respondent violated his duty to his clients to preserve client property. Standards § 4.1. Respondent also violated the duty he owed as a professional to adequately supervise his staff. Standards § 7.0.

b. **Mental State.** The Standards recognize three mental states. “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 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.

Respondent’s conduct reflects a negligent mental state. Respondent negligently supervised his staff and failed to confirm that disbursements from his trust account were appropriate, which led to premature withdrawals of client funds before they were earned, and the overdraft of his trust account.

c. **Injury.** There was both actual and potential injury to Respondent’s clients when he prematurely disbursed funds before fees were earned from 2011 and 2019.

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

1. Substantial experience in the practice of law. *Standards* § 9.22(i). Respondent has been practicing law in Oregon since 1976.

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


2. Timely good faith effort to rectify consequences of misconduct. *Standards* § 9.32(d).


8. Under the ABA *Standards*, a public reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards* § 4.13. A suspension is 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.

While Respondent’s mental state was negligent, given the financial total of premature transfers of client funds, the number of clients whose funds were affected, and the length of time for which the conduct occurred, the parties agree that a suspension is warranted.

9. In comparable situations, the Disciplinary Board has approved stipulations imposing suspensions subject to probation. See, e.g.,

- *In re Landerholm, 32 DB Rptr 372 (2018)* [stipulated one-year suspension, all stayed/three-year probation] Attorney surrendered management of his trust account to an office manager who, based upon an audit, determined that errors had occurred and then made transfers to and from the trust account to try
to reconcile the entries with information listed in other reporting documents and accounts, resulting in some client funds being removed before they were earned. Even following subsequent professional efforts, the accounting discrepancies could never be resolved. [RPC 1.15-1(a), (b), and (c), RPC 5.3(a)].

- **In re Peters, 32 DB Rptr 213 (2018) [stipulated eight-month suspension, all but 30 days stayed/two-year probation].** To address a substantial trust account deficit uncovered by a returned check, respondent transferred personal funds into his trust account. Further investigation identified five transactions for four separate clients that were either mis-recorded in his ledgers and/or removed from the trust account in error. [RPC 1.15-1(a), (b), and (c)].

- **In re Kmetic, 30 DB Rptr 250 (2016) [stipulated six-month suspension, all but 30 days stayed/two-year probation].** For convenience, Respondent purportedly deposited two clients’ advance cash payments into her personal account. There is no record of the deposit. Later that same day, Respondent deposited funds into her trust account, including a check drawn on her personal account, which allegedly represented her clients’ advance funds, and then drafted a check on her trust account for an expenditure unrelated to either of the clients who had provided the cash payments. Respondent’s personal check was dishonored and the bank reversed that portion of the prior deposit, drawing on the remaining funds in trust and leaving a negative balance. Two more checks were presented for payment on Respondent’s trust account against a near-zero balance. The bank honored the checks and charged overdraft fees, exhausting all remaining client funds in trust. [RPC 1.15-1(a) and (c)].

- **In re Cottle, 29 DB Rptr 79 (2015) [stipulated 60-day suspension, all stayed/two-year probation] Respondent received a $35,000 settlement check on behalf of a client. Respondent directed law firm staff to deposit the client’s check, along with checks from two other clients, into his trust account, for a total deposit of approximately $40,000. Law firm staff did not complete the deposit, and respondent did not verify that the deposit had been completed before writing a check a few weeks later for his fees. After the bank returned the check for insufficient funds, respondent transferred approximately $41,000 of his own funds into the firm’s lawyer trust account to correct the depositing error. [RPC 1.15-1(b) and (c), RPC 5.3(a)].

- **In re Bertoni, 26 DB Rptr 25 (2012) [stipulated 150-day suspension] Over an extended period, attorney negligently withdrew client funds from his law firm’s trust account before the funds were earned. Attorney also failed to maintain complete trust account records for five years, as required by the rule. In addition, attorney periodically deposited his own funds into the firm trust account in amounts that exceeded bank service charges and minimum balance requirements. [RPC 1.15-1(a), (b) and (c)].
10.

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 that 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.

11.

Consistent with the Standards and Oregon case law, the parties agree that Respondent shall be suspended for six months for violations of RPC 1.15-1(a), RPC 1.15-1(c), and RPC 5.3(a), with all of the suspension stayed, pending Respondent’s successful completion of a three-year term of probation. The sanction shall be effective as directed by the Disciplinary Board (effective date).

12.

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

(a) Respondent 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) Respondent has been represented in this proceeding by David J. Elkanich (Elkanich). Respondent and Elkanich hereby authorize direct communication between Respondent and DCO after the date this Stipulation for Discipline is signed by both parties, for the purposes of administering this agreement and monitoring Respondent’s compliance with his probationary terms.

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

(d) During the period of probation, Respondent shall attend not less than 12 MCLE accredited programs, for a total of 36 hours, which shall emphasize law practice management, trust accounting, and supervising staff. These credit hours shall be in addition to those MCLE credit hours required of Respondent for his normal MCLE reporting period. (The Ethics School and Trust Accounting School requirements do not count towards the 36 hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of his period of probation, Respondent shall submit an Affidavit of Compliance to DCO.
(e) Prior to the end of the period of probation, Respondent shall attend Trust Accounting School, offered by the Oregon State Bar twice a year in the spring and fall. Upon completion of Trust Accounting School, and prior to the end of his period of probation, Respondent shall submit an Affidavit of Compliance to DCO.

(f) Throughout the period of probation, Respondent shall diligently review and approve all accounting actions of his firm relating to the disbursement, transfer, or withdrawal of client funds.

(g) Each month during the period of probation, Respondent shall:

(1) maintain complete records, including individual client ledgers, of the receipt and disbursement of client funds and payments on outstanding bills; and

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

(h) For the period of probation, Respondent will employ a bookkeeper approved by DCO, to assist in the monthly reconciliation of his lawyer trust account records and client ledger cards.

(i) On or before December 1, 2020, and on or before December 1, 2021, Respondent shall retain an accountant to audit his lawyer trust account. Respondent’s accountant shall prepare a report of the audit and submit the audit to DCO no later than January 31, 2021, and January 31, 2022, respectively.

(j) Conde Cox shall serve as Respondent’s probation supervisor (Supervisor). Respondent 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 Respondent’s clients, the profession, the legal system, and the public. Respondent agrees that, if Supervisor ceases to be Supervisor for any reason, Respondent will immediately notify DCO and engage a new supervisor, approved by DCO, within one month.

(k) Beginning with the first month of the period of probation, Respondent shall meet with Supervisor in person at least once a month for the purpose of:

(1) Permitting Supervisor to inspect and review Respondent’s accounting and record keeping systems to confirm that he is reviewing and reconciling his lawyer trust account records and maintaining complete records of the receipt and disbursement of client funds. Respondent agrees that Supervisor may contact all employees and independent contractors who assist Respondent in the review and reconciliation of his lawyer trust account records.
(l) Respondent authorizes Supervisor to communicate with DCO regarding his compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Respondent’s compliance.

(m) Within seven days of the effective date, Respondent shall contact the Professional Liability Fund (PLF) and schedule an appointment on the earliest date available with PLF’s Practice Management Advisors in order to obtain practice management advice. Respondent shall notify DCO of the time and date of the appointment.

(n) Respondent shall attend the appointment with the PLF’s Practice Management Advisors and seek advice and assistance regarding procedures for adequately training his staff regarding the handling of client funds. No later than thirty (30) days after recommendations are made by the PLF’s Practice Management Advisors, Respondent shall adopt and implement those recommendations.

(o) No later than 60 days after recommendations are made by the PLF’s Practice Management Advisors, Respondent shall provide a copy of the office practice assessment from the PLF’s Practice Management Advisors and file a report with DCO stating the date of his consultation(s) with the PLF’s Practice Management Advisors; 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.

(p) Respondent shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with PLF Practice Management Advisors on or before June 1, 2020.

(q) On a quarterly basis, on dates to be established by DCO beginning no later than 60 days after the effective date, Respondent shall submit to DCO a written “Compliance Report,” approved as to substance by Supervisor, advising whether Respondent is in compliance with the terms of this Stipulation for Discipline, including:

(1) The dates and purpose of Respondent’s meetings with Supervisor.

(2) A description of the accounting activities that Respondent reviewed and results thereof.

(3) Whether Respondent has completed the other provisions recommended by Supervisor, if applicable.

(4) In the event that Respondent has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.
Respondent is responsible for any costs required under the terms of this stipulation and the terms of probation.

Respondent’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.

A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to DCO on or before its due date.

The SPRB’s decision to bring a formal complaint against Respondent 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.

Upon the filing of a petition to revoke Respondent’s probation pursuant to Bar Rule 6.2(d), Respondent’s remaining probationary term shall be automatically tolled and shall remain tolled until the BR 6.2(d) petition is adjudicated by the Adjudicator or, if appointed, the Disciplinary Board trial panel.

Respondent acknowledges that reinstatement is not automatic on expiration of any period of suspension, if any stayed period of suspension is actually imposed. If a period of suspension is necessitated by his non-compliance with the terms of his probation, he will be required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Respondent also acknowledges that, should a suspension occur, 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.

Respondent 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, if a suspension is imposed. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

Respondent 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 Respondent is admitted: none
16.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 19, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 17th day of December, 2019.

/s/ Keith Y. Boyd
Keith Y. Boyd
OSB No. 760701

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich
David J. Elkanich
OSB No. 992558

EXECUTED this 19th day of December, 2019.

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: )
) Case No. 18-194
Complaint as to the Conduct of )
) THEODORE C. CORAN,
) Respondent.
)
Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.4(b), RPC 1.5(a), RPC 1.7(a)(2), and RPC 1.8(a). Stipulation for Discipline. 30-day suspension.
Effective Date of Order: January 3, 2020

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Theodore C. Coran is suspended for 30 days, effective January 3, 2020, for violation of RPC 1.4(b), RPC 1.5(a), RPC 1.7(a)(2), and RPC 1.8(a).

DATED this 23rd day of December, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board
STIPULATION FOR DISCIPLINE

Theodore Coran, attorney at law (“Coran”), 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.

Coran was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1982, and has been a member of the Bar continuously since that time, having his office and place of business in Yamhill County, Oregon.

3.

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

4.

On December 28, 2018, a Formal Complaint was filed against Coran pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of RPC 1.4(b) (a failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation); RPC 1.5(a) (charging or collecting a clearly excessive fee); RPC 1.7(a)(2) (engaging in a personal-interest conflict of interest); RPC 1.8(a) (entering into a business transaction with a client without the appropriate disclosures and informed consent); and RPC 8.4(a)(3) (conduct involving dishonesty) 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.

During 2015, Coran was employed by Marion County Association of Defenders (“MCAD”), a public defender association. On or about February 4, 2015, through MCAD, Coran was court-appointed to represent Gustavo Vega-Flores (“Vega-Flores”) in Marion County Circuit Court Case No. 15CR04660, State of Oregon vs. Gustavo Vega-Flores (“Vega-Flores case”). Coran was present in court when the court determined that Vega-Flores qualified for court-appointed counsel and when Vega-Flores entered his not guilty plea.

6.

Shortly after his appointment, Coran met with Vega-Flores in jail. Vega-Flores expressed a strong desire to retain a private attorney and asked Coran what his time would be worth. Coran estimated that trial in the matter would require two days, so told him he would likely charge approximately $10,000, if Vega-Floras were to seek to retain him. Thereafter, Vega-Flores communicated with his mother, Lisa Sylvester (“Sylvester”) about putting together $10,000 to pay Coran.

7.

Several months thereafter, several checks from relatives of Vega-Flores, totaling $10,000, were delivered to Coran. Notwithstanding that Coran had already agreed to represent Vega-Flores via a court appointment through MCAD, Coran accepted the $10,000 from Vega-Flores’s relatives, and prepared a flat fee agreement between Coran and Vega-Flores for that amount. In accepting the $10,000 and entering into a private agreement with Vega-Flores, Coran did not provide adequate information and explanation about the material risks of and reasonably available alternatives to privately retaining him or explain his present obligation to represent Vega-Flores as his court-appointed counsel. Specifically, the flat fee agreement did not notify Vega-Flores of the effect, if any, the $10,000 payment would have on his obligation to reimburse the state for Coran’s court-appointed fee, nor did it advise Vega-Flores of the desirability of seeking (and give him a reasonable opportunity to seek) the advice of independent legal counsel regarding the transaction before entering into the new fee arrangement.

8.

Believing it was unnecessary to do so prior to sentencing, Coran took no steps to notify the court or MCAD that he was now the privately retained counsel of Vega-Flores.

9.

When a prosecutor learned through recorded calls between Vega-Flores and Sylvester of the fee arrangement Coran had made with his court-appointed client, the prosecutor confronted Coran about it.
Soon thereafter, Coran and his investigator visited Vega-Flores in jail and confirmed Vega-Flores’ consent to the fee arrangement. The investigator prepared a summary of the meeting. Using this summary and his own notes, Coran prepared and presented Vega-Flores with a “Memorandum of Understanding Gustavo Isabel Vega-Flores – November 17, 2015,” (“Memorandum”), which Coran reviewed with Vega-Flores. The Memorandum stated that it had been Vega-Flores’ idea to retain Coran and that Coran satisfactorily performed all legal services on his behalf. Vega-Flores signed the Memorandum. Coran thereafter completed his representation of Vega-Flores, including representing him at sentencing in the case.

Prior to when Vega-Flores signed the Memorandum, Coran did not explain to him the conflict that had developed between his personal interests and those of Vega-Flores once Coran was questioned about the propriety of their fee agreement. Moreover, to the extent that consent following full disclosure was available to address this conflict, Coran did not provide Vega-Flores with adequate information and explanation about the material risks of and reasonably available alterations to the proposed course of conduct, or recommend that Vega-Flores seek independent legal advice to determine if consent should be given.

Violations

Coran admits that, by entering into a new fee arrangement with a client under these circumstances, he entered into a business transaction with a client without the proper disclosures, in violation of both RPC 1.4(b) and RPC 1.8(a). Coran further admits that to the extent that the new fee arrangement also enabled Coran to collect a fee in excess of what he had previously agreed for the same services, he charged and collected an excessive fee, in violation of RPC 1.5(a).

Coran acknowledges that once the fact of Coran’s acceptance of a $10,000 fee for representing a client he was already court-appointed to represent became known to the prosecutor (as a result of Vega-Flores’s conversation with his mother), Coran had a personal interest conflict as between his interests and his client’s in defending his actions and the retainer agreement. To the extent that informed consent following full disclosure may have been available to address this conflict of interest, Coran did not obtain Vega-Flores’ informed consent, and therefore violated RPC 1.7(a)(2).
14.

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 8.4(a)(3) is not supported by objective evidence. Accordingly, it should be and, upon the approval of this stipulation, is dismissed.

Sanction

15.

Coran 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 Coran’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.** Coran violated his duties to his client to avoid conflicts of interest, and to diligently pursue his client’s matter (including the duty to fully communicate with him). Standards §§ 4.3; 4.4. The Standards presume that the most important ethical duties are those which lawyers owe to their clients. Standards at 5. Coran also violated his duty as a professional to refrain from charging excessive fees. Standards § 7.0.

b. **Mental State.** Coran’s conduct was a combination of negligent and knowing. “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, while “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. Coran did not appreciate the potential conflict with his client, but knew that he was accepting a fee for services that he had already agreed to complete under a different compensation contract.

c. **Injury.** Injury can either be actual or potential under the Standards. In re Williams, 314 Or 530, 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. Although Vega-Flores expressed to Coran that it was his desire to pay for retained counsel, he was potentially injured to the extent that he did not have an opportunity to consult with independent counsel about whether it was in his objective best interests to do so. Similarly, Vega-Flores was potentially injured by signing the Memorandum without being advised or having the opportunity to consult with independent counsel about whether he should do so.
d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Prior disciplinary offenses. *Standards* § 9.22(a). Coran was reprimanded in 2000 when, after he was separately court-appointed to represent a criminal defendant and that individual’s common-law wife as co-defendants in a robbery, he met and discussed the details of the alleged robbery with both of them. Coran then represented both co-defendants for a time, including at arraignment, without consent after full disclosure from either husband or wife, a current-client conflict of interest in violation of former DR 5-105(E) (*current* RPC 1.7(a)). Coran subsequently withdrew from representing husband but did not obtain consent following full disclosure for his continued representation of wife, a former-client conflict of interest in violation of former DR 5-105(C) (*current* RPC 1.9(a)). *In re Coran*, 14 DB Rptr 136 (2000) (“Coran I”).

In 2002, Coran was reprimanded when, in three separate criminal matters, he failed to timely file briefs or petitions on behalf of his clients, resulting in the rejection of subsequent filings and/or the dismissal of their claims. Aware of these clients’ potential legal malpractice claims, Coran continued to represent them in conjunction with their criminal matters without obtaining their informed consent, in violation of former DR 6-101(B) and former DR 5-105(A) (*current* RPC 1.3 and RPC 1.7(a)). *In re Coran*, 16 DB Rptr 234 (2002) (“Coran II”).

In 2010, Coran was again reprimanded when, in undertaking to represent a client on his direct appeal of criminal convictions, Coran agreed to accept a bonus fee for each month that the client’s sentence was reduced on appeal, which was an improper contingent fee in a criminal case, in violation of RPC 1.5(c)(2). In addition, the written fee agreement for the representation failed to provide that funds would not be deposited in trust when Coran subsequently received and deposited funds into an account other than his lawyer trust account, in violation of RPC 1.15-1(a) & (c). *In re Coran*, 24 DB Rptr 269 (2010) (“Coran III”).

In 2013, Coran was suspended for 30 days, all stayed, subject to a two-year probation, when he accepted advance fees which he did not deposit or maintain in trust notwithstanding that his flat-fee agreement failed to explain that the client could discharge him 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 violation of RPC 1.5(c), RPC 1.15-1(a), and RPC 1.15-1 (c). In a separate matter, Coran failed to promptly deliver a copy of his client’s post-conviction file for several months, and only after the client complained to the bar, in violation of RPC 1.15-1(d). *In re Coran*, 27 DB Rptr 170 (2013) (“Coran IV”).
In 2016, Coran was suspended for 120 days, all but 30 days stayed, subject to a three-year probation where Coran assisted two incarcerated clients in a loan transaction, meeting separately with each client to discuss the proposed loan, and making assurances to the lender client regarding the borrower’s ability to repay the loan. Relying in part on Coran’s assurances, the lender agreed to the proposal, which Coran drafted and presented to the clients, without obtaining informed consent from either client, in violation of RPC 1.7(a)(2). In addition, Coran deposited money into an incarcerated client’s jail account on multiple occasions without requiring or ensuring that the funds be used only for court costs or litigation expenses. The client did not use the funds for either purpose, in violation of RPC 1.8(e). In re Coran, 30 DB Rptr 350 (2016) (“Coran V”).

2. A selfish motive. Standards § 9.22(b). Coran justified to himself that he was entitled to the $10,000 fee he received, notwithstanding his court appointment through MCAD.

3. A pattern of misconduct. Standards § 9.22(c). In conjunction with this matter, Coran’s prior discipline (particularly Coran I, Coran II, and Coran V) demonstrates a pattern of failing to recognize or appreciate conflicts of interest with or among his clients.


5. Substantial experience in the practice of law. Standards § 9.22(i). Coran has been a lawyer in Oregon since 1982.

e. Mitigating Circumstances. Mitigating circumstances include:


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

3. Character or reputation. Standards § 9.32(g). On behalf of Coran, attorneys and judges in the community provided support of his good character and reputation as an attorney.

4. Imposition of other penalties or sanctions. Standards § 9.32(k). As a result of Vega-Flores’ complaint, Coran was removed from the MCAD referral list, and no longer receives court appointments in Marion County.

16.

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. A reprimand is also generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client (including fully communicating necessary information), and causes injury or potential injury to a client. A suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. A reprimand is generally appropriate when a lawyer negligently engages in 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 §§ 4.33; 4.43; 7.2; 7.3. A suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. Standards § 8.2. Overall, Coran’s aggravation and mitigation are in equipoise in number and slightly aggravating, in terms of weight, particularly in light of his similar prior discipline. Accordingly, the application of the aggravating and mitigating factors seems to favor a short suspension.

17.

Oregon case law reaches a similar result for inadequate communication and conflicts of interest, particularly where there is prior similar discipline. See, e.g., In re Yunker, 31 DB Rptr 133 (2017) (attorney was suspended for 60 days, stayed subjected to a two-year probation, when he told a client with a civil rights claim that he would file a tort-claim notice after receiving the police report, but failed to do so after his investigation revealed that the claim was questionable; however, attorney did not sufficiently communicate to the client that he was not interested in pursuing the claim and that he had not filed and was not going to file the tort-claim notice; and attorney had previously been reprimanded for similar violations); In re Hudson, 30 DB Rptr 40 (2016) (attorney was suspended for 120 days, 60 days of which were stayed, subject to a one-year probation where, a week before the date his suspension was to start in another disciplinary matter, attorney appeared in court to argue his client’s appeal in a child support matter, without informing his client of his suspension, recommending that she consult with another lawyer, assisting her in finding another lawyer, or providing her with her client file. Attorney also failed to withdraw from the client’s case or inform the court that he could not represent her due to his suspension. When the court issued a judgment mostly favorable to the opposing party, the opposing party sought reconsideration and attorney fees. The client was unable to make an informed decision as to whether to challenge the court’s decision or the petition for attorney fees because respondent was unable to counsel her due to his suspension. Attorney had previously been suspended for some of the same communication and neglect issues); In re Erm, 30 DB Rptr 1 (2016) (respondent, who represented a wife who lived in Utah with her children in a dissolution and custody determination filed by husband in Oregon, was suspended for 30 days when, after he made an initial court appearance and moved to sever the custody matter from the dissolution proceeding, did not file a response to the
husband’s petition for dissolution, or contest Oregon’s jurisdiction; after the court held that Oregon had jurisdiction on all issues except custody, respondent did not notify the court of his intent to withdraw, respond or object to husband’s motion for default, or forward the motion or subsequent order of default and proposed general judgment to wife or to her Utah attorney. When wife learned about the default order, respondent agreed to assist, but then failed to follow through or respond to the wife’s request regarding the status. Respondent had been previously admonished for the same behavior; In re Snell, 29 DB Rptr 5 (2015) (respondent who had previously been reprimanded for a multiple-client conflict, was suspended for 60 days, all but 30 days stayed subject to a two-year probation, where she filed liens against a hotel on behalf of Clients 1 and 2, filed a lawsuit seeking to foreclose Client 1’s lien, and also filed an answer on behalf of Client 2 which cross-claimed against the other lien-holder defendants, including Client 1. Respondent failed to disclose to Client 1 or 2 that she could not ethically represent Client 2 until after she had completed her representation of Client 1; and she failed to disclose to Client 2 that, on Client 1’s behalf, she would immediately foreclose Client 2’s lien. Respondent did not tell Client 2 that she had entered negotiations with hotel on behalf of Client 1. Instead, she asserted various reasons why efforts to recover on Client 2’s claim were delayed); In re Klahn, 26 DB Rptr 246 (2012) (attorney was suspended for 90 days after he was removed from a court-appointed criminal case because he did not maintain contact with his incarcerated client and the court was concerned that the defense was not ready for trial. Attorney had previously been suspended for 60 days for similar misconduct); In re Hilborn, 24 DB Rptr 233 (2010) (attorney was suspended for 30 days where he filed litigation on behalf of several persons without informing some of them that they were included as plaintiffs, that the case had gone to arbitration, and that a judgment for costs and attorney fees had been entered against them. Respondent had previously been suspended for similar violations).

18.

Consistent with the Standards and Oregon case law, the parties agree that Coran shall be suspended for 30 days for his violations of RPC 1.4(b); RPC 1.5(a); RPC 1.7(a)(2); and RPC 1.8(a). The sanction is to be effective January 3, 2020.

19.

In addition, on or before December 31, 2019, Coran shall pay to the Bar its reasonable and necessary costs in the amount of $243, incurred for deposition appearance costs. Should Coran fail to pay $243 in full by December 31, 2019, the Bar may thereafter, without further notice to him, obtain a judgment against Coran 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.

Coran 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, Coran has arranged for John Peter A. Druckenmiller, OSB No. 170958, an active member of the Bar, to either take possession of or have ongoing access to Coran’s client files and serve as the contact person for
clients in need of the files during the term of his suspension. Coran represents that Mr. Druckenmiller has agreed to accept this responsibility.

21.

Coran 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. Coran 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.

22.

Coran 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.

23.

Coran 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 Coran is admitted: none.

24.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 19, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 22nd day of November, 2019.

/s/ Theodore C. Coran
Theodore C. Coran, OSB No. 822260

EXECUTED this 22nd day of November, 2019.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott, OSB No. 990280
Chief Assistant Disciplinary Counsel
ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Holady is suspended for 60 days, effective December 23, 2019, for violation of RPC 1.3 and 1.15-1(d).

DATED this 23rd day of December, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Mark John Holady
Mark John Holady, OSB No. 900682

/s/ Angela W. Bennett
Angela W. Bennett, OSB No. 092818
STIPULATION FOR DISCIPLINE

Mark John Holady (Holady), attorney at law, 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.

Holady was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 27, 1990, and has been a member of the Bar continuously since that time, having his office and place of business in Washington County, Oregon.

3.

Holady 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 19, 2019, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Holady for alleged violations of RPC 1.3 (neglect of a legal matter) and RPC 1.15-1(d) (failure to promptly turn over client funds upon request) 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 2008, Holady undertook to represent an heir search firm, Brandenburger & Davis (Brandenburger), to pursue heirs’ claims to an intestate estate (the estate) that had escheated to the State of Oregon.

Holady commenced work on the file in April 2008, and for the next year Brandenburger gathered the necessary proofs of heirship. In December 2009, Holady filed a petition with the Oregon Department of State Lands (DSL), and the matter was assigned to a claims coordinator. One year later, in late 2010, Holady corresponded with the claims coordinator, who told him that certain documents were missing. Holady did not communicate with DSL again until October 2011, at which point a new DSL claims coordinator requested that Holady provide new signed authorizations because the originals had expired. Holady admits he was responsible for ensuring that the file materials were complete, up to date, and fully developed.
Holady can identify only a few instances where he took action in the matter over the next five years (October 2011 to October 2016). In mid-October 2011, Holady sent mail to 19 heirs asking that they return notarized attorney authorizations. Between October 2011 and October 2016, Holady did very little to move the matter toward completion; he mailed some packets to the heirs in April and May 2012, and he submitted an amended claim in January 2013, to which the claims coordinator responded in late May 2013.

Nothing further happened until April 2016, when the claims coordinator wrote to Holady about an heir who had died without descendants. A year later, in April 2017, the claims coordinator wrote to Holady again to ask about the deceased heir.

While Holady maintains that he had some phone or email contact with DSL that was not documented or kept in the file, he took no further action in the matter from April 2016 until February 2018.

In February 2018, Holady received a warrant from the state representing the funds for the estate, and he deposited it into his trust account. He did not distribute the funds until September 2018.

**Violations**

6.

Holady admits that, by engaging in a course of neglectful conduct and failing to resolve the estate for over nine years, he violated RPC 1.3. Holady further admits that by failing to distribute the estate funds for seven months, he failed to promptly deliver to the McLean heirs the funds which they were entitled to receive, in violation of RPC 1.15-1(d).

**Sanction**

7.

Holady 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 Holady’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.** Holady violated his duties to his client to safeguard and preserve client property and to diligently attend to client matters. Standards 4.1, 4.4.

b. **Mental State.** Holady acted knowingly. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards* at 9.
c. **Injury.** Injury can be actual or potential. Standard 3.0. The delay in resolving the estate and paying out the funds resulted in actual harm to the heirs, as at least one of them died during the pendency of the matter and did not receive the inheritance, while others waited for years longer than necessary.

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


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


8.

Under the *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. Standard 4.12. Similarly, a suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect, and causes injury or potential injury as a result. Standard 4.42. Under the *Standards*, a period of suspension is appropriate in this matter.

9.

Oregon cases reach a similar result with respect to both rule violations. Lawyers have received suspensions for failing to promptly turn over to clients or third parties property they were entitled to receive. *In re Krueger*, 29 DB Rptr 273 (2015) (six-month suspension with 90 days stayed pending a two-year probation; Respondent failed to notify his clients of his receipt of personal-injury settlement proceeds for nearly a year). *In re Fjelstad*, 27 DB Rptr 68 (2013) (30-day suspension; Respondent failed for a period of four years to forward to a client settlement checks or proceeds he had received, even after client demanded them). *In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (30-day suspension; Respondent failed to return a personal-injury client's file materials, including medical records, despite numerous requests from the client). *In re DeBlasio*, 22 DB Rptr 133 (2008) (30-day suspension and restitution; Respondent accepted a portfolio of collection claims from a client, collected some funds, but thereafter failed to notify the client of receipt or to timely remit funds to the client).

Neglect of a legal matter also typically results in a suspension. *In re Redden*, 342 Or 393 (2007) (60-day suspension; Respondent failed to diligently pursue his client's case and
also failed to adequately communicate with his client). *In re Obert*, 335 Or 640 (2004) (30-day suspension; Respondent failed to pursue a client's adoption matter when he could not locate the birth father and did not know how to proceed). *In re Dugger*, 299 Or 21 (1985) (63-day suspension; Respondent neglected a legal matter and misrepresented the status to his client). *In re LeBahn*, 335 Or 357 (2003) (60-day suspension; Respondent knowingly neglected legal matter by failing to serve defendant in client’s case, failing to file proof of service within statute of limitations, and failing to inform client for more than one year that court had dismissed his case).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that Holady shall be suspended for 60 days for violation of RPC 1.3 and RPC 1.15-(d). The sanction shall be effective December 23, 2019.

11.

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

12.

Holady 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. Holady also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

13.

Holady 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 her reinstatement. This requirement is in addition to any other provision of this agreement that requires Holady to attend continuing legal education (CLE) courses.

14.

Holady 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 Holady is admitted: Washington.
15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 19, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 19th day of December, 2019.

/s/ Mark John Holady
Mark John Holady, OSB No. 900682

EXECUTED this 20th day of December, 2019.

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 [REPLACED BY NAME]

Case No. 19-02

SHANNON M. KMETIC, Respondent.

Counsel for the Bar: Amber Bevacqua-Lynott

Counsel for the Respondent: Wayne Mackeson

Disciplinary Board: None

Disposition: Violation of RPC 1.5(a) and 1.16(d). Stipulation for Discipline. Public Reprimand.

Effective Date of Order: December 23, 2019

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Shannon M. Kmetic (Kmetic) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Kmetic is publicly reprimanded for violation of RPC 1.5(a) and RPC 1.16(d).

DATED this 23rd day of December, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Shannon M. Kmetic, attorney at law (“Kmetic”), 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. Kmetic 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 her office and place of business in Clackamas County, Oregon.

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

4. On April 2, 2019, a Formal Complaint was filed against Kmetric pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of RPC 1.5(a) (collecting an excessive fee); RPC 1.5(c)(3) (entering into a flat-fee agreement without required disclosures); RPC 1.15-1(a) (failing to safeguard and segregate client property); RPC 1.15-1(c) (failing to deposit and maintain client funds in trust); and RPC 1.16(d) (failing to protect client interests upon withdrawal, including the return of unearned fees) 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. On May 26, 2016, Christopher Farrar (“Farrar”) hired Kmetric to represent him in connection with a criminal investigation in Lane County arising out of a motor vehicle accident in which he was involved in mid-December 2015. Pursuant to a written fee agreement (“Flat Fee Agreement”), Farrar paid Kmetric $12,500 for her legal services pre-indictment.

6. In mid-August 2016, Farrar was indicted on charges of Manslaughter and Driving Under the Influence of Intoxicants stemming from the December 2015 motor vehicle accident. Kmetric undertook to defend Farrar on the charges, under the terms contemplated by the Flat Fee Agreement, including a fee of $60,000 for the entirety of the representation (inclusive of the pre-indictment fee) (“Farrar Fee”).
7. Between May 2016 and June 2017, pursuant to their fee arrangement, Farrar paid Kmetic an additional $47,500, plus costs, toward the Farrar Fee, through a series of wire transfers.

8. In mid-January 2018, Farrar terminated Kmetic and retained new counsel to represent him in his criminal matter, which was not then resolved. Farrar also requested an accounting of the Farrar Fee, and made a demand for the return of the $47,500 paid subsequent to the indictment. Kmetic responded with an accounting, but disputed that Farrar was due any portion of the Farrar Fee at that time.

9. In or around mid-March 2018, Kmetic retained counsel to represent her in connection with Farrar’s civil claims and a Bar complaint Farrar had filed. Thereafter, counsel for Farrar and Kmetic engaged in negotiations over an appropriate amount Kmetic would refund to Farrar. In August 2019, notwithstanding that no agreement had been reached on the amount, Kmetic unilaterally refunded 25% of the Farrar Fee ($15,000).

Violations

10. Kmetic admits that, by failing to promptly refund any portion of the Farrar Fee after she was terminated notwithstanding that she had not completed the representation for which she was paid the flat fee, she collected an excessive fee, in violation of RPC 1.5(a). Similarly, Kmetic admits that she failed to reasonably protect her client’s interests upon termination by refunding unearned fees upon termination, in violation of RPC 1.16(d).

11. Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 1.5(c)(3); RPC 1.15-1(a); and RPC 1.15-1(c) should be and, upon the approval of this stipulation, are dismissed.

Sanction

12. Kmetic 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 Kmetic’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.** Kmetic violated her duties as a professional to avoid improper fees and take proper steps upon withdrawal to protect her client, including ensuring that his unearned fees were returned to him. *Standards § 7.0.*

b. **Mental State.** Kmetic acted negligently in all respects; that is, she failed to heed a substantial risk that circumstances existed or that a result would follow, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards* at 9.

c. **Injury.** For purposes of sanction, both actual and potential injury are taken into account. *Standards* at 6; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). There was both actual and potential injury to the extent that Farrar was without the funds owed to him when Kmetic’s representation ended prior to completion of the case. Kmetic recently refunded $15,000 to Farrar, which minimized any ongoing potential injury.

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

1. A prior record of discipline. *Standards § 9.22(a).* This aggravating factor refers to offenses that have been adjudicated prior to imposition of the sanction in the current case. In 2016, Kmetic was suspended for six months, all but 30 days stayed, pending a two-year probation. Accordingly, this disposition does count as prior discipline to some extent. *In re Jones*, 326 Or 195, 200 (1997). However, its weight in aggravation is diminished by the fact that the fee agreement in the present matter (and some of the misconduct stemming from reliance on that fee agreement) pre-dated the imposition of that discipline. See *In re Kluge*, 335 Or 326, 351 (2003) (fact that accused lawyer not sanctioned for offenses before committing the offenses at issue in current case diminishes weight of prior offense); *In re Huffman*, 331 Or 209, 227–28 (2000) (relevant timing of current offense in relation to prior offense is pertinent to significance as aggravating factor); see also *In re Starr*, 326 Or 328, 347–48 (1998) (weight of prior discipline somewhat diminished because it occurred at roughly the same time as events giving rise to the present proceeding—i.e., the subsequent misconduct did not reflect a disregard of an earlier adverse ethical determination).

2. Substantial experience in the practice of law. *Standards § 9.22(i).* Kmetic has been a lawyer in Oregon since 1996, and has worked for a majority of that time in the field of criminal law.

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

1. Absence of a dishonest or selfish motive. *Standards § 9.32(b).*
2. Full and free disclosure and cooperative attitude toward these disciplinary proceedings. *Standards* § 9.32(e)

13.

The *Standards* provide that 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. With the aggravating and mitigating factors in equipoise, a reprimand appears the appropriate result.

14.

There is also support in prior cases for a reprimand under these circumstances. See, e.g., *In re O’Rourke*, 32 DB Rptr 36 (2018) (respondent was hired pursuant to a flat fee agreement was terminated before the representation was complete and demanded a refund of the fee paid; respondent attorney was reprimanded when he did not refund any portion of the fee prior to the initiation of the Bar proceeding); *In re Kleen*, 27 DB Rptr 213 (2013) (attorney was reprimanded when he took nearly eight months after the end of the attorney-client relationship to return funds that the client had paid him to obtain an expert opinion that he never sought); *In re Lounsbury*, 24 DB Rptr 53 (2010) (attorney collected a flat fee to defend a client in a criminal case, but then did not complete the legal services contemplated by the fee agreement before being terminated by his client; attorney’s failure to refund part of the fee to the client was a violation warranting a reprimand, even though the fee agreement denominated the fee as non-refundable); *In re Angel*, 22 DB Rptr 351 (2008) (respondent considered the retainer received for fees and costs pursuant to a contingency fee agreement to be a flat fee earned on receipt but was reprimanded when he failed to refund the client’s unearned funds until approximately seven months after withdrawing from the case).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that Kmetic shall be publicly reprimanded for violations of RPC 1.5(a) and RPC 1.16(d), the sanction to be effective upon approval of the Disciplinary Board.

16.

In addition, on or before January 31, 2020, Kmetic shall pay to the Bar its reasonable and necessary costs in the amount of $108 incurred for deposition appearance fees. Should Kmetic fail to pay $108 in full by January 31, 2020, the Bar may thereafter, without further notice to her, obtain a judgment against Kmetic for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

17.

Kmetic 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.
18.

Kmetic 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 Kmetic is admitted: none.

19.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on December 16, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 19th day of December, 2019.

/s/ Shannon M. Kmetic
Shannon M. Kmetic, OSB No. 963302

APPROVED AS TO FORM AND CONTENT:

/s/ Wayne Mackeson
Wayne Mackeson, OSB No. 823269

EXECUTED this 19th day of December, 2019.

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 Nos. 17-12, 17-83, 17-108, 18-97
Complaint as to the Conduct of ) SC S067110
) ERICK HUEBSCHMAN, )
) Respondent. )

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Respondent: Frederic E. Cann and Jill Huebschman Sasser
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), RPC 1.16(a)(1), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(1), RPC 8.1(a)(2), RPC 8.4(a)(3), RPC 8.4(a)(4), and ORS 9.160(1). Stipulation for Discipline. 12-month suspension, 6 months stayed, 3-year probation.

Effective Date of Order: January 5, 2020

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. The respondent is suspended from the practice of law in the State of Oregon for a period of 12 months, effective (10) ten days from the date of this order. Six months of the suspension is stayed, pending respondent’s successful completion of a three-year period of probation, on the terms and conditions recited in the parties’ Stipulation for Discipline.

/s/ Martha L. Walters
Chief Justice, Supreme Court
12/26/2019 8:05 a.m.
STIPULATON FOR DISCIPLINE

Erika Huebschman, attorney at law (“Huebschman”), 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.

Huebschman was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 31, 2013, and has been a member of the Bar continuously since that time, currently having her office and place of business in Jackson County, Oregon.

3.

Huebschman 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 20, 2018, a Second Amended Formal Complaint was filed against Huebschman pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violations of RPC 1.3 (neglect of legal matter); RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information); RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to allow a client to make informed decisions about the representation); RPC 1.5(a) (charging or collecting an excessive fee); RPC 1.15-1(a) (failure to hold client funds separate from a lawyer’s personal property); RPC 1.15-1(c) (failure to deposit and maintain client funds in trust); RPC 1.15-1(d) (failure to promptly deliver to the client funds or other property that the client is entitled to receive); RPC 1.16(a)(1) (failure to withdraw when continued representation will result in a violation of the RPCs); RPC 1.16(d) (failure to protect client interests following termination, including the return of client funds); RPC 5.5(a) (unauthorized practice of law); RPC 8.1(a)(1) (knowing false statement in a Bar disciplinary matter); RPC 8.1(a)(2) (failure to respond to a lawful demand for information from a disciplinary authority); RPC 8.4(a)(3) (conduct involving dishonesty or misrepresentation); and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice) of the Oregon Rules of Professional Conduct, as well as ORS 9.160 (holding oneself out as authorized to practice law in Oregon when not an active member of the Oregon State Bar). 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.
5. On September 1, 2016, Shanako DeVoll (“DeVoll”) hired Huebschman to file a lawsuit to collect a personal debt due to DeVoll. On that date, they signed a fee agreement entitled, “Attorney-Client Agreement (Hourly),” which stated that the retainer that DeVoll gave to Huebschman would be held in trust until earned. However, Huebschman mistakenly deposited the initial installment of the retainer into her business checking account rather than into her lawyer trust account.

6. Huebschman had assured DeVoll that the lawsuit would be easy to prepare and that it could be filed within a few days. However, she subsequently revised her time estimate on at least a couple of occasions, pushing it out a week or so each time, with Huebschman ultimately assuring DeVoll that she would get the lawsuit filed by September 19, 2016.

7. Between September 19, 2016, and October 11, 2016, DeVoll sent multiple messages to Huebschman inquiring about the status. On or about October 11, 2016, when she did not receive any response from Huebschman and the lawsuit had not yet been filed, DeVoll sent an email terminating Huebschman’s representation and demanding a refund of unearned fees. While Huebschman returned DeVoll’s file and sent a confirming letter regarding the termination, she did not refund any portion of DeVoll’s retainer until several months later.

8. On December 6, 2017, the Bar’s Disciplinary Counsel’s Office (“DCO”), a disciplinary authority, received a complaint from DeVoll about Huebschman’s conduct. After receiving additional materials from DeVoll, DCO sent an inquiry letter by first-class mail to Huebschman on January 27, 2017, requesting her response to DeVoll’s complaint on or before February 17, 2017. Huebschman did not respond, and DCO’s letter was not returned as undeliverable.

9. By letter dated February 23, 2017, DCO again requested Huebschman’s response to DeVoll’s complaint, and reminded her that her failure to respond could subject her to discipline under RPC 8.1(a)(2), and/or result in her administrative suspension under BR 7.1. The February 23, 2017 letter was directed to Huebschman by both first-class and certified mail. Huebschman signed for the certified letter. Huebschman did not respond.
On March 6, 2017, DCO filed a petition for suspension pursuant to BR 7.1 and sent notice to Huebschman by first-class and email, seeking her response within seven business days. When Huebschman did not respond, an order of suspension was entered on March 16, 2017.


Violations

Huebschman admits that, by depositing DeVoll’s initial retainer into her trust account contrary to their written fee agreement, she failed to hold client funds separate from her personal property, and failed to deposit and maintain client funds in trust, in violation of RPC 1.15-1(a) and RPC 1.15-1(c).

Huebschman also admits that her failure to sooner return DeVoll’s retainer, following her termination and DeVoll’s demand for the return of unearned fees, violated RPC 1.15-1(d) and RPC 1.16(d).

Huebschman further admits that her knowing failure to respond to DCO’s request for inquiries violated RPC 8.1(a)(2).

Berkey Complaint
Case No. 17-83

Facts

On July 26, 2016, Huebschman undertook to represent Brian Tasker (“Father”) in domestic relations matters against Casey Clarke (“Mother”) in Multnomah County Circuit Court (collectively, “Tasker v Casey”).
16.

On September 26, 2016, attorney Brittany Ann Berkey (“Berkey”) filed a notice of representation of Mother in *Tasker v Casey*.

17.

Between September 26, 2016, and November 15, 2016, Berkey made several attempts to connect with Huebschman, including email, telephone calls, and letters. Huebschman did not respond or otherwise communicate with Berkey during this period.

18.

After failing to reach Huebschman, Berkey asked the court to schedule a status conference to inquire about Huebschman’s involvement. The court granted her request. Using the U.S. Mail address then on record with the Bar, the court sent a letter to Huebschman to schedule a status conference on November 4, 2016. That letter was returned as not deliverable.

19.

Huebschman did not participate in the November 4, 2016 conference, nor did she respond to email or telephone calls from the court prior or at the time of the conference. She reportedly contacted the court later that day.

20.

After Huebschman failed to participate in the November 4, 2016 conference, Berkey asked Judge Stuart to issue an order relieving Huebschman from the case. On November 15, 2016, Berkey also complained to the Bar about Huebschman’s conduct. After receiving notice of Berkey’s Bar complaint, Huebschman began communicating with Berkey regarding the *Tasker v Casey* matter.

21.

Huebschman was administratively suspended from the practice of law in Oregon from March 16, 2017, to April 19, 2017. During this time, Huebschman engaged in email communication with Berkey on behalf of Father regarding possible settlement of *Tasker v Casey*. However, Huebschman did not disclose to Berkey or Father that she was suspended.

22.

On March 30, 2017, Huebschman participated in a court scheduled status conference in *Tasker v Casey* on behalf of Father, and reported that she was ready for trial. Huebschman did not disclose to the court, Berkey, or Father that she was suspended at the time.
23.

Trial in *Tasker v Casey* was scheduled for April 12, 2017. Huebschman did not inform Father that she was suspended and unable to participate in court until April 8, 2017—four days before the scheduled trial date. Huebschman then withdrew from the *Tasker v Casey* case, and trial had to be reset.

**Violations**

24.

Huebschman admits that, by failing to timely respond to Berkey or the court, she neglected a legal matter entrusted to her, in violation of RPC 1.3.

25.

Huebschman also admits that her failure to apprise her client of events in the *Tasker v Casey* matter, including the fact that she was to be and had been suspended from the practice of law for a time, amounted to a failure to explain a matter to the extent reasonably necessary to allow her client to make informed decisions about the representation, in violation of RPC 1.4(b).

26.

Huebschman further admits that her communications with Berkey, albeit limited, during a time when she was suspended, along with her participation in the March 30, 2017 status conference constituted the unauthorized practice of law and holding oneself out as authorized to practice law in Oregon when not an active member of the Oregon State Bar, in violation of the RPC 5.5(a) and ORS 9.160.

27.

Huebschman acknowledges that her collective conduct in failing to communicate with Berkey, her client, or the court, and in participating in a legal matter when not an active member of the Bar, was conduct prejudicial to the administration of justice that violated RPC 8.4(a)(4).

**Hannam Complaint**

**Case No. 17-108**

**Facts**

28.

In December 2015, Sharon M. Hannam (“Hannam”) hired Huebschman to obtain past-due spousal and child support payments from Hannam’s ex-husband, Douglas Beeber (“Beeber”).
29.

In October 2016, without approval of the specific language from Hannam, Huebschman mailed a demand letter to Beeber, attaching a proposed motion, seeking only unpaid spousal support, rather than or in addition to child support.

Violation

30.

Huebschman admits that, by failing to notify Hannam of her intent not to seek child support before she sent her October 2016 demand letter, she failed to explain a matter to the extent reasonably necessary to permit her client to make informed decisions regarding the representation, in violation of RPC 1.4(b).

Ivancie Complaint
Case No. 18-97

Facts

31.

On April 5, 2016, Audrey Ivancie (“Ivancie”) hired Huebschman pursuant to a contingency arrangement to represent her in a landlord/tenant dispute with May Fair LLC and C & R Real Estate. The fee agreement provided that Huebschman could elect either a percentage of the award or, if awarded, her attorney fees.

32.

When the lawsuit was filed approximately three months later, Ivancie complied with Huebschman’s instruction to obtain a deferral of the filing fees because Ivancie could not afford them.

33.

During the representation, Huebschman was difficult to reach at times, and did not timely return Ivancie’s calls. In particular, between September and November 2016, Huebschman did not return a number of increasingly panicked calls from Ivancie, inquiring about the status of her case.

34.

At arbitration in early January 2017, relying on her recollection of her and Ivancie’s prior discussions regarding the need for evidence of code violations, Huebschman dropped Ivancie’s the code violation cause of action at arbitration without specifically obtaining Ivancie’s permission. At the conclusion of the arbitration, Ivancie was awarded $1,315 for her
non-habitability claim, along with attorney fees and costs. The parties reached a settlement while the arbitration award was being finalized.

35.

When Huebschman was administratively suspended on March 16, 2017, Huebschman did not notify Ivancie of her suspension or otherwise withdraw from her matter. Rather, on or about March 22, 2017, Huebschman signed and transmitted a satisfaction of judgment in Ivancie’s matter.

36.

In March 2017, while she was administratively suspended, but before she actually learned of her suspension, Huebschman also met with Ivancie to obtain her endorsement on the award check. On April 7, 2017, Huebschman mailed Ivancie a letter enclosing a check for $1,315, and a copy of the Arbitration Award. Huebschman did not remit to Ivancie or the court the $812 allotted for costs. Huebschman did not provide Ivancie with a breakdown of Huebschman’s fees and costs or court costs until after Ivancie complained to the Bar.

37.

In June 2017, Ivancie was sent to collections by the State of Oregon for the deferred but unpaid court and filing fees and was notified that they were seeking to garnish her wages for these sums. Ivancie phoned, texted, and emailed Huebschman, urging her to pay the debt. Huebschman took no action, did not explain how the court and filing fees had not been paid out of the award that Huebschman had retained, or otherwise respond to Ivancie’s communications. Huebschman has not refunded any additional amounts to Ivancie from the arbitration award, including amounts to cover the filing fees and court costs.

38.

On December 19, 2017, DCO received a complaint from Ivancie about Huebschman’s conduct.

39.

Around the same time as DCO received Ivancie’s complaint, Huebschman requested a conference call to discuss the matter, as well as the three other matters currently in formal proceedings involving Huebschman’s conduct. DCO staff called and spoke with Huebschman on February 16, 2018, who then conferenced in Frederic E. Cann (“Cann”). Cann indicated that he was “advising” Huebschman but not formally representing her in her disciplinary matters. DCO staff explained the substance of the Ivancie complaint to Huebschman and Cann and indicated what information would be needed to investigate the matter. Huebschman and Cann agreed Huebschman would provide that information.
40.

By letter dated February 16, 2018, DCO followed up its verbal request for information and requested Huebschman’s response to Ivancie’s complaint. The letter was addressed to Huebschman at Northwest Law, PO Box 14375 in Portland, Oregon 97293, the address then on record with the Bar (her “record address”) and was sent by first class mail. A copy of the letter was also sent to Cann. The letter was not returned undeliverable; however, Huebschman did not timely respond to it.

41.

By letter dated March 5, 2018, DCO again requested Huebschman’s response to Ivancie’s complaint. The letter was addressed to Huebschman at her record address and was sent by both first class and by certified mail, return receipt requested. A copy of the March 5, 2018 letter was also sent to Cann.

42.

When Huebschman did not respond, on March 13, 2018, DCO filed a petition for her suspension, pursuant to BR 7.1, with notice to her that the Bar was seeking for her to be suspended if no response was received before March 22, 2018. Huebschman sent her initial response to Ivancie’s complaint on March 19, 2018.

Violations

43.

Huebschman admits that her failures to satisfy Ivancie’s inquiries about the unremitted costs and failure to specifically discuss Huebschman’s intention to dismiss the code violation cause of action prior to the arbitration constituted a failure to keep her client reasonably informed about the status of a matter and promptly comply with reasonable requests for information and a failure to explain a matter to the extent reasonably necessary to allow her client to make informed decisions about the representation, in violation of RPC 1.4(a) and RPC 1.4(b).

44.

Huebschman further admits that her retention of the costs amounted to the collection of an excessive fee and a failure to promptly deliver to the client funds or other property that the client is entitled to receive, in violation of RPC 1.5 and RPC 1.15-1(d).

45.

Huebschman’s acknowledges that signing the satisfaction on behalf of Ivancie during the time Huebschman was administratively suspended were the unauthorized practice of law and holding oneself out as authorized to practice law in Oregon when not an active member of the Oregon State Bar, in violation of RPC 5.5(a) and ORS 9.160. Further, Huebschman admits
that her failure to withdraw from Ivancie’s representation during this time violated RPC 1.16(a)(1).

46.

Finally, Huebschman’s knowing failures to respond to DCO’s requests for information in Ivancie’s matter violated RPC 8.1(a)(2).

47.

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 8.4(a)(3) should be and, upon the approval of this stipulation, is dismissed.

Reinstatement Matter

Facts

48.

On April 24, 2017, Huebschman submitted a compliance affidavit seeking reinstatement from her BR 7.1 administrative suspension, and attesting under oath that she did not engage in the practice of law between March 16, 2017, and April 19, 2017. On April 25, 2017, Huebschman was reinstated to active status.

Violations

49.

Huebschman admits that her representation that she did not practice law while suspended was inaccurate, particularly in light of her court appearance and communications with Tasker and Berkey, as well as her communications with Ivancie and her signing of the satisfaction of judgment, and therefore violated RPC 8.1(a)(1) and RPC 8.4(a)(3).

Sanction

50.

Huebschman 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 Huebschman’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. Huebschman violated her duty of diligence to her clients, including the duty to timely and adequately communicate with them. Standards § 4.4. She also violated her duties to clients to appropriately handle and
safeguard their funds. *Standards* § 4.1. The *Standards* presume that the most important ethical duties are those which lawyers owe to their clients. *Standards* at 5. Huebschman also violated her duty to the legal system to avoid abuse of the legal process (*Standards* § 6.2), and her duties as a professional to refrain from the unauthorized practice of law, to take appropriate steps to protect her clients upon termination, and to cooperate timely in disciplinary investigations. *Standards* § 7.0.

b. **Mental State.** There are three types of mental state recognized 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. *Standards* at 9.

Huebschman acted knowingly in most respects. For example, she knew that she had participated in a court appearance and negotiated with opposing counsel in the Berkey matter at the time that she misrepresented (under oath) to the Bar on her reinstatement affidavit that she had not practiced law during the period of her suspension. However, the Bar does not contend that any of Huebschman’s conduct was intentional.

c. **Injury.** Injury can either be actual or potential under the *Standards*. *In re Williams*, 314 Or 530 (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.

DeVoll was both actually and potentially injured to the extent she was without her remaining unearned retainer for several months. In the Berkey matter, Huebschman’s non-communication with Berkey and her failure to appear for a telephone court conference caused actual injury to the judicial functioning of the court. *See In re Kluge*, 335 Or 326, 346 (2003); *In re Gresham*, 318 Or 162, 166 (1993) (unnecessary burden upon court prejudicial to administration of justice). Both Hannam and Ivancie were potentially injured insofar as—absence additional information from Huebschman—they were not able to evaluate or direct Huebschman’s efforts in their legal matters. Ivancie was also actually injured by the garnishment of her wages for costs awarded to her but not timely tendered by Huebschman.

Huebschman’s multiple failures to respond timely to the Bar also caused actual injury to the Bar and the public. *See In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993) (Bar is prejudiced when lawyer fails to cooperate in investigations because Bar must investigate in a more time consuming way, and public respect
for attorneys is diminished because Bar cannot provide timely and informed responses to complaints).

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

1. Huebschman ignored the Bar’s requests for information, and when failed to adequately communicate with her clients as well. She made a misstatement in her reinstatement application. *Standards* § 9.22(b).


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


2. Personal problems. *Standards* § 9.32(c). During some of the relevant time period in these matters, Huebschman was struggling with depression issues that caused her to be absent from her law office for periods of time and interfered with her ability to represent clients and respond to the Bar.

3. Huebschman made timely good faith efforts to rectify the consequences of some of her misconduct. *Standards* § 9.32(d). Specifically, in the Berkey matter, Huebschman involved the Professional Liability Fund who interceded on her behalf and convinced the court to reset the matter to allow Tasker to find a new attorney.

4. Prior to the events at issue, Huebschman was recognized for her work as a pro bono advocate and for her service to multiple local bar organizations. *Standards* § 9.32(g).

5. Huebschman has expressed remorse about some of her misconduct. *Standards* § 9.32(l). For example, Huebschman contacted the court in the Berkey matter following her nonappearance and apologized for her absence. Huebschman reportedly also met with the judge in person to explain and apologize.


51.

Under the ABA *Standards*, absent aggravating and mitigating factors, a 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. Disbarment is generally appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client, or engages in a pattern of neglect with
respect to client matters and causes serious or potentially serious injury to a client. Standards § 4.41. 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 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 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. Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system. Standards § 7.1. 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.

Application of the aggravating and mitigating factors suggests that a suspension would be sufficient and appropriate. Standards § 2.3.

Oregon cases are in accord. See, e.g., In re Bosse, 30 DB Rptr 311 (2016) (attorney was suspended for 24 months when, after initially communicating with Disciplinary Counsel’s Office on one matter, he thereafter failed to respond in that matter or two subsequent investigations, despite having acknowledged the Bar’s communications, and despite repeated promises that he would do so); In re Gerald Noble, 30 DB Rptr 116 (2016) (attorney was suspended for 4 years suspension, 2 years stayed, pending a 2-year probation, in part for misrepresenting under oath in deposition in the disciplinary matter that the distribution of his client’s funds were only used to pay the client’s creditors when the attorney knew he had exhausted the client’s funds and was using other clients’ funds to pay the client’s creditors); In re Wright, 30 DB Rptr 15 (2016) (respondent suspended for 120 days where he initially responded to communications from the Bar’s Client Assistance Office but then stopped, and ignored emails, letters, personal service, and telephone calls from Disciplinary Counsel’s Office); In re Kocurek, 26 DB Rptr 225 (2012) (attorney was suspended for 6 months where she made a material misrepresentation to her insurance company regarding damage to her vehicle out of a concern that her premiums would increase or her coverage would be cancelled, and repeated the false statements when she responded to a bar complaint); In re Smith, 18 DB Rptr 200 (2004) (respondent was suspended for 180 days where he continued to practice law after suspension for nonpayment of bar dues, and then falsely represented in a reinstatement affidavit that he had not done so); In re Ryan, 15 DB Rptr 87 (2001) (following his suspension for non-payment of his PLF assessment, respondent engaged in the practice of law without disclosing his suspension to his clients, opposing counsel, or the court; this and his misrepresentation to the Bar that he was unaware of his suspension at times when he engaged in the practice of law resulted in a 180-day suspension); In re Wyllie, 327 Or 175 (1998) (attorney was suspended for 2 years, in part for submitting false documentation in his response to the Bar); In re Brown, 298 Or 285 (1985) (lawyer was suspended for 2 years where he prepared a false affidavit for his client in effort to fend off investigation by the Bar).
54.

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.

55.

Consistent with the Standards and Oregon case law, the parties agree that Huebschman shall be suspended for one (1) year for violations of RPC 1.3; RPC 1.4(a); RPC 1.4(b); RPC 1.5(a); RPC 1.15-1(a); RPC 1.15-1(c); RPC 1.15-1(d); RPC 1.16(a)(1); RPC 1.16(d); RPC 5.5(a); RPC 8.1(a)(1); RPC 8.1(a)(2); RPC 8.4(a)(3); RPC 8.4(a)(4); and ORS 9.160. However, all but six (6) months of the suspension is to be stayed, subject to the formal reinstatement requirements of BR 8.1, and pending Huebschman’s successful completion of a three- (3) year term of probation. The sanction shall be effective November 1, 2019, or ten (10) days after approval by the Supreme Court, whichever is later, or as otherwise directed by the Supreme Court (“effective date”).

56.

Huebschman’s license to practice law shall be suspended for a period of six (6) months, subject to the formal reinstatement requirements of BR 8.1, beginning on the effective date (“actual suspension”), assuming all conditions have been met. Huebschman understands that reinstatement is not automatic and that she cannot resume the practice of law until she 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 Huebschman re-attains her active membership status with the Bar, Huebschman shall not practice law or represent that she is qualified to practice law; shall not hold herself 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 actual suspension.

57.

Probation shall commence upon the date Huebschman is reinstated to active membership status and shall continue for a period of three (3) years, ending on the day prior to the third (3rd) year anniversary of the effective date (the “period of probation”). During the period of probation, Huebschman shall abide by the following conditions:

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

(b) Huebschman has been represented in this proceeding by Frederic Cann and Jill Huebschman Sasser (collectively, “Counsel”). Huebschman and Counsel
hereby authorize direct communication between Huebschman and DCO after the date this Stipulation for Discipline is signed by both parties, for the purposes of administering this agreement and monitoring Huebschman’s compliance with her probationary terms.

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

(d) During the period of probation, Huebschman shall attend not less than twelve (12) MCLE accredited programs, for a total of thirty-six (36) hours, which shall emphasize law practice management, time management, trust account management, client communications, and attorney wellness. These credit hours shall be in addition to those MCLE credit hours required of Huebschman for her normal MCLE reporting period. (The Ethics School and Trust Accounting School requirements do not count towards the thirty-six (36) hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of her period of probation, Huebschman shall submit an Affidavit of Compliance to DCO.

(e) Prior to the end of the period of probation, Huebschman shall attend Trust Accounting School, offered by the Oregon State Bar twice a year in the spring and fall. Upon completion of Trust Accounting School, and prior to the end of her period of probation, Huebschman shall submit an Affidavit of Compliance to DCO.

(f) Throughout the period of probation, Huebschman shall diligently attend to client matters and adequately communicate with clients regarding their cases.

(g) Each month during the period of probation, Huebschman shall review all client files to ensure that she is timely attending to the clients’ matters and that she is maintaining adequate communication with clients, the court, and opposing counsel.

(h) Each month during the period of probation, Huebschman shall:

1. maintain complete records, including individual client ledgers, of the receipt and disbursement of client funds and payments on outstanding bills; and

2. review her monthly trust account records and client ledgers and reconcile those records with her monthly lawyer trust account bank statements.

(i) Victoria Hines, OSB No. 140925, shall serve as Huebschman’s probation supervisor (“Supervisor”). Huebschman 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 Huebschman’s clients, the profession, the legal system, and the public. Huebschman agrees that, if Supervisor ceases to be her Supervisor for any reason, Huebschman will immediately notify DCO and engage a new Supervisor, approved by DCO, within one (1) month.

(j) Beginning with the first (1st) month of the period of probation, Huebschman shall meet with Supervisor in person at least once a month for the purpose of:

(1) Allowing her Supervisor to review the status of Huebschman’s law practice and her 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) client files or ten percent (10%) of Huebschman’s active caseload, whichever is greater, to determine whether Huebschman is timely, competently, diligently, and ethically attending to matters, and taking reasonably practicable steps to protect her clients’ interests upon the termination of employment.

(2) Permitting her Supervisor to inspect and review Huebschman’s accounting and record keeping systems to confirm that she is reviewing and reconciling her lawyer trust account records and maintaining complete records of the receipt and disbursement of client funds. Huebschman agrees that her Supervisor may contact all employees and independent contractors who assist Huebschman in the review and reconciliation of her lawyer trust account records.

(k) Huebschman authorizes her Supervisor to communicate with DCO regarding her compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Huebschman’s compliance.

(l) Within seven (7) days of her reinstatement date, Huebschman 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. Huebschman shall notify DCO of the time and date of the appointment.

(m) Huebschman shall attend the appointment with the PLF Practice Management Advisors 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 her employment. No later than thirty (30) days after recommendations are made by the PLF’s Practice Management Advisors, Huebschman shall adopt and implement those recommendations.

(n) No later than sixty (60) days after recommendations are made by the PLF’s Practice Management Advisors, Huebschman shall provide a copy of the Office Practice Assessment from the PLF’s Practice Management Advisors and file a
report with DCO stating the date of her consultation(s) with the PLF’s Practice Management Advisors; identifying the recommendations that she has adopted and implemented; and identifying the specific recommendations she has not implemented and explaining why she has not adopted and implemented those recommendations.

(o) Huebschman shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with PLF Practice Management Advisors on or before December 31, 2020.

(p) A member of the State Lawyer’s Assistance Committee (“SLAC”) or such other person approved by DCO in writing shall monitor Huebschman’s probation (“Monitor”), and Huebschman agrees to enter into and comply with the terms of a Monitoring Agreement with SLAC. Huebschman shall notify SLAC within 14 days of the effective date of:

1. the existence and contents of this Stipulation for Discipline;
2. the history and status of any treatment or programs in which Huebschman has/is participating; and
3. discuss with SLAC whether and how to modify her current treatment plan to best accomplish the objectives of Huebschman’s probation.

(q) Prior to the probationary period, Huebschman shall arrange for and meet with a mental health care professional acceptable to DCO and Huebschman’s Monitor, to evaluate Huebschman, and develop and implement a course of treatment, if appropriate.

(r) Huebschman shall meet with Monitor as often as recommended by SLAC, and shall comply with all reasonable requests and recommendations made by SLAC to supplement her treatment and to promote compliance with this Stipulation for Discipline, and as necessary for the purpose of reviewing Huebschman’s compliance with the terms of the probation. Huebschman shall cooperate and shall comply with all reasonable requests of SLAC that will allow SLAC and DCO to evaluate her compliance with the terms of this Stipulation for Discipline.

(s) Huebschman authorizes Monitor to communicate with DCO regarding Huebschman’s compliance or noncompliance with the terms of her probation and to release to DCO any information DCO deems necessary to permit it to assess Huebschman’s compliance.

(t) Huebschman shall continue regular treatment sessions with her current treating professional or another mental health treatment provider determined by SLAC to be appropriate (“Treating Professional”).
Huebschman agrees that, if SLAC is alerted to facts that raise concerns regarding compliance with the terms of this Stipulation for Discipline or the objectives of probation, Huebschman will participate in a further evaluation at the request and direction of SLAC.

Huebschman shall continue to attend regular counseling/treatment sessions with her Treating Professional or other approved health care provider for the entire term of her probation. Huebschman shall obtain and take and/or continue to take, as prescribed, any health-related medications.

Huebschman shall not terminate her counseling/treatment or reduce the frequency of her counseling/treatment sessions without first submitting to DCO a written recommendation from her Treating Professional or other approved health care professional that her counseling/treatment sessions should be reduced in frequency or terminated and Huebschman undergoes an independent evaluation by a second professional acceptable to DCO and Monitor, which evaluation confirms her fitness.

Huebschman consents to the release of information by her Treating Professional, other mental health or substance abuse treatment program or provider, OAAP, AA, NA, or any designee, to SLAC and to DCO, regarding her treatment plan, her progress under that plan, and her compliance with the terms of this Stipulation for Discipline, waives any privilege or right of confidentiality to permit such disclosure, and agrees to execute such releases as may be required by such providers upon request by SLAC or DCO. Huebschman acknowledges and agrees that SLAC shall promptly report to DCO any violation of the terms of this Stipulation for Discipline.

On a quarterly basis, on dates to be established by DCO beginning no later than ninety (90) days after her reinstatement to active membership status, Huebschman shall submit to DCO a written “Compliance Report,” approved as to substance by her Supervisor and Monitor, advising whether Huebschman is in compliance with the terms of this Stipulation for Discipline, including:

1. The dates and purpose of Huebschman’s meetings with her Supervisor.
2. The dates and purpose of Huebschman’s meetings with her Monitor.
3. The number of Huebschman’s active cases and percentage reviewed in the monthly audit with Supervisor and the results thereof.
4. Whether Huebschman has completed the other provisions recommended by her Supervisor and/or Monitor, if applicable.
5. In the event that Huebschman has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.
(z) Huebschman is responsible for any costs required under the terms of this stipulation and the terms of probation.

(aa) Huebschman’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 her Supervisor and/or Monitor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.

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

(cc) The SPRB’s decision to bring a formal complaint against Huebschman for unethical conduct that occurred or continued following her execution of this Stipulation for Discipline shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.

58.

Huebschman 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, Huebschman has arranged for Jill Huebschman Sasser, OSB No. 054574, an active member of the Bar, to either take possession of or have ongoing access to Huebschman’s client files and serve as the contact person for clients in need of the files during the term of her actual suspension. Huebschman represents that Jill Huebschman Sasser has agreed to accept this responsibility.

59.

Huebschman 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. Huebschman 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.

60.

Huebschman 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 Huebschman to attend continuing legal education (CLE) courses.

61.

Huebschman 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 Huebschman is admitted: none.

62.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 7, 2019. Approval as to form by Disciplinary Counsel is evidenced below. 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 2nd day of October, 2019.

/s/ Erika Huebschman
Erika Huebschman
OSB No. 131859

APPROVED AS TO FORM AND CONTENT:

/s/ Frederic E. Cann
Frederic E. Cann
OSB No. 781604

APPROVED AS TO FORM AND CONTENT:

/s/ Jill Huebschman Sasser
Jill Huebschman Sasser
OSB No. 054574

EXECUTED this 22nd day of October, 2019.

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 Nos. 18-128, 19-61, 19-62,
Complaint as to the Conduct of ) and 19-63
) SC S067038
CLAYTON J. LANCE, )
) Respondent.
)
Counsel for the Bar: Theodore W. Reuter
Counsel for the Respondent: Larry R. Roloff and Janie Mogensen
Disciplinary Board: None
Disposition: Violations of RPC 1.3, RPC 1.4(a), 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), and RPC 8.1 (a)(2). Stipulation for Discipline. 28-month suspension, 26 months stayed, 3-year probation.
Effective Date of Order: December 26, 2019

ORDER ACCEPTING AMENDED STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Amended Stipulation for Discipline. Effective as of the date of this order, respondent is suspended from the practice of law in the State of Oregon for a period of 28 months, 26 months of which shall be stayed pending the accused’s successful completion of a three year period of probation, on the terms and conditions recited in the parties’ Amended Stipulation for Discipline.

/s/ Martha L. Walters
Chief Justice, Supreme Court
12/26/2019 8:06 a.m.

AMENDED STIPULATION FOR DISCIPLINE

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

Lance 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 Columbia County, Oregon.

Lance 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).

On July 28, 2018, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against Lance for alleged violations of the Oregon Rules of Professional Conduct. On September 6, 2018, Disciplinary Counsel’s Office (DCO) filed a Formal Complaint against Lance pursuant to the authorization of the SPRB alleging violation of the Oregon Rules of Professional Conduct. DCO filed an amended complaint on April 25, 2019. On July 20, 2019, additional charges were authorized by the SPRB. DCO filed a second amended complaint on August 8, 2019. The second amended complaint added cases 19-61, 19-62 and 19-63. 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
Bradley Matter (18-128)

On or about October 14, 2015, Dalton K. Bradley (“Bradley”) hired Lance to represent him in relation to a criminal case. Subsequently, Bradley hired Lance to represent him in a second criminal case. These cases are collectively referred to herein as the “Jackson County Criminal Cases.” Over the following months, Lance received two payments of $5,000 pursuant to a written flat fee agreement to represent Bradley in the Jackson County Criminal Cases.

On or about August 8, 2016, Lance stipulated to an order removing him as counsel for Bradley in the Jackson County Criminal Cases and substituting a new attorney. On or about August 12, 2016, the court approved the substitution and Lance’s representation of Bradley was formally terminated.
7.

On or about August 11, 2016, Bradley, through his mother and his aunt, requested an accounting and reimbursement of unearned fees. This request was reaffirmed on or about September 21, 2016. Lance did not provide an accounting or refund any portion of the fee that Lance had received for representing Bradley.

8.

Lance had agreed to represent Bradley through the conclusion of the Jackson County Criminal Cases for the amount he had been paid. Lance did not represent Bradley through the conclusion of the Jackson County Cases. Accordingly, a refund of unearned attorney’s fees was due to Bradley or his representative at the time of the termination of Lance’s representation of Bradley.

9.

During the course of the DCO’s investigation, Lance failed to make timely and complete responses to DCO’s requests for information.

10.

The parties agree that the aforesaid conduct of Lance constitutes the collection of a clearly excessive fee; failure to provide an accounting upon the request of a client; the failure to take reasonable steps upon termination of representation to protect a client’s interests, including the refund of unearned advance fees; and a failure to respond to lawful demands for information from a disciplinary authority in violation of the following standards of professional conduct established by law and by the Bar:

A. RPC 1.5(a);

B. RPC 1.15-1(d);

C. RPC 1.16(d); and


Dunaway Matter  
(19-61)

11.

In or around September 2017, Lance entered into an agreement to represent Shawn Dunaway (Dunaway) for a flat fee of $25,000. Lance received payment in full from Cynthia and Nick Dunaway (Parents). Lance treated these funds as if earned upon receipt, notwithstanding that he did not obtain a signed fee agreement regarding the representation which disclosed that the money would not be placed in a trust account, that he could be
discharged at any time and that, in the event he was discharged, some person might be entitled to a refund.

12.

As part of his representation, no later than November 2017, Lance agreed to prepare documents permitting Parents to manage Dunaway’s affairs and take care of his child. Parents promptly complied with Lance’s requests for information. However, despite repeated requests from Parents, Lance did not complete the requested documents until April 2018.

13.

On September 27, 2018, Dunaway requested that Lance terminate his representation of him. Lance and Dunaway filed a joint motion for Lance’s withdrawal on October 19, 2018. At that time, Dunaway had entered into a plea deal, but had not yet been sentenced. The court granted the motion and Lance’s representation of Dunaway was terminated before Dunaway had been sentenced. Lance did not return the unearned portion of the fee he had collected in this matter.

14.

During the course of the DCO’s investigation, Lance failed to make timely and complete responses to DCO’s requests for information.

15.

The parties agree that the aforesaid conduct of Lance constitutes neglect of a legal matter, collecting an excessive fee, collecting a fee denominated as earned on receipt without a written fee agreement, failing to hold funds belonging to the client or third persons separate from the lawyer’s own property, failure to deposit client funds into trust, failure to account for and return client property on request, and failure to return client property at the termination of representation in violation of the following standards of professional conduct established by law and by the Bar:

A. RPC 1.3;
B. RPC 1.5(a);
C. RPC 1.5(c)(3);
D. RPC 1.15-1(a);
E. RPC 1.15-1(c);
F. RPC 1.15-1(d);
G. RPC 1.16(d); and
H. RPC 8.1(a)(2).
Herrera Portillo Matter  
(19-62)  

16. 

On or about June 20, 2017, Lance accepted representation of Rodolfo Herrera Portillo (Portillo), in relation to federal criminal charges for a flat fee of $10,000. Lance received at least $9,000 in payment for his work for Portillo, which he treated as earned upon receipt. Lance did not have a written fee agreement disclosing that the funds would not be put in his trust account, that he could be terminated, and that Portillo would be entitled to a refund as required by RPC 1.5(c)(3).

17. 

During the course of the DCO’s investigation, Lance failed to make timely and complete responses to DCO’s requests for information.

18. 

The parties agree that the aforesaid conduct of Lance constitutes collecting a fee denominated as earned on receipt without a written fee agreement, failing to hold funds belonging to the client or third persons separate from the lawyer’s own property, and failure to deposit client funds into trust in violation of the following standards of professional conduct established by law and by the Bar:

A. RPC 1.5(c)(3);
B. RPC 1.15-1(a);
C. RPC 1.15-1(c); and
D. RPC 8.1(a)(2).

Loeck Matter  
(19-63)  

19. 

On or about August 12, 2012, Lance agreed to represent David Loeck in relation to criminal charges brought against him for a flat fee of $20,000. The agreement contemplated that Lance would seek a new trial and then either represent Loeck at that trial or represent Loeck at a post-conviction relief trial. The agreement purported to be a flat fee earned upon receipt, but did not include the disclosure that the money would not be placed in a trust account, that he could be discharged at any time and that, in the event he was discharged, some person might be entitled to a refund as required by RPC 1.5(c)(3).
20.

Lance sought a new trial for Loeck, which the court denied. Lance then pursued an appeal. The court of appeals affirmed the lower court’s determination, without opinion, on or about June 21, 2016. This set the deadline for seeking post-conviction relief at or about June 21, 2016.

21.

On or about December 3, 2017, Loeck wrote to Lance requesting a copy of his file and an update on the status of his case. Lance did not respond.

22.

On or about February 11, 2018, Loeck again wrote to Lance requesting a copy of his file and an update on the status of his case. Lance did not respond.

23.

In or around March 2018, Loeck complained to the Bar regarding Lance’s conduct. Loeck filed a pro se petition for post-conviction relief in order to preserve his right to move forward with his case and received appointed counsel in April 2018.

24.

Lance did not provide any materials in response to Loeck’s requests for his file prior to June 2018, when Loeck’s new attorney requested them.

25.

During the course of the DCO’s investigation, Lance failed to make timely and complete responses to DCO’s requests for information.

26.

The aforesaid conduct of Lance constituted neglect of a legal matter, failure to keep a client reasonably informed about a legal matter or comply with requests for information, charging an excessive fee, collecting a fee denominated as earned on receipt without a written fee agreement, failing to hold funds belonging to the client or third persons separate from the lawyer’s own property, failure to deposit client funds into trust, failure to account for and return client property on request, and failure to return client property at the termination of representation in violation of the following standards of professional conduct established by law and by the Bar:

A. RPC 1.3;

B. RPC 1.4(a);
27. Lance admits that, by the conduct set forth above, he violated RPC 1.3, RPC 1.4(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), and RPC 8.1(a)(2).

28. Lance 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 Lance’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

a. **Duty Violated.** In Bradley, Dunaway, and Loeck, Lance violated a duty owed to his client to preserve client property by failing to render an accounting upon request and failing to promptly return the unearned portion of it upon the termination of representation, as a result of which he collected an excessive fee. ABA Standard § 4.1. In Dunaway and Loeck, Lance violated his duty to diligently pursue his client’s interests by taking no action to advance his client’s interests for an extended period of time. ABA Standard § 4.4. In every case, Lance violated his duty of candor by failing to disclose his client’s entitlement to a refund and/or failing to actually refund the unearned portion of the fee. ABA Standard § 4.6. In every case, Lance violated his duty owed as a professional through his failure to fully and timely respond to requests for information from a disciplinary authority. ABA Standard § 7.0.

b. **Mental State.** Lance acted knowingly in his failure to refund some amount to Bradley, his failure to timely complete the appropriate documents for the
Dunaways and his failure to timely respond to inquiries from DCO. Otherwise, Lance acted negligently.

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 (1992). Client anguish, uncertainty, anxiety, and aggravation are actual injuries under the disciplinary rules. *In re Snyder*, 348 Or 307, 321 (2010). In this case, Bradley, Dunaway, and Locek were actually deprived of the unearned fees which could have been used to pay a new attorney. The Dunaways and Locek also had added stress from Lance’s promised action on their cases that never materialized. Lance’s failure to respond to the Bar’s inquiries caused actual injury to the legal system. *In re Obert*, 352 Or 231, 260 (2012); *In re Koch*, 345 Or 444, 456 (2008). Lance’s consistent failure to timely meet deadlines or provide complete answers has taken up an inordinate amount of staff time and resources.

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

1. **Prior disciplinary offenses.** ABA *Standard* § 9.22(a). In 2007, Lance was suspended for six months for neglect of one client’s matter and failing to return client property and respond to the office of disciplinary counsel in the other matter.

2. **Pattern of Misconduct.** ABA *Standard* § 9.22(c) “[W]hen a lawyer violates a rule for which he or she previously has been disciplined, the prior violation can establish both a record of prior discipline and a pattern of misconduct.” *In re Bertoni*, 363 Or 614, 643 (2018). For the purposes of this standard, it is notable that Lance’s previous discipline is for precisely the same rules for which he is presently being prosecuted. In addition, in 2005, Lance was admonished for failing to promptly return client property in violation of former DR 9-101(C)(4), which was the predecessor to RPC 1.15-1(d). Finally, there is a large degree of overlap between the violations in the present cases.

3. **Multiple offenses.** ABA *Standard* § 9.22(d). Across the four cases, Lance has multiple violations of seven different rules.

4. **Vulnerability of the Victims.** ABA *Standard* § 9.22(h). While the Bar is not particularly vulnerable, the court has observed that incarcerated clients, like Bradley, Dunaway, Portillo, and Locek, are. See *In re Obert*, 336 Or 640, 653–54 (2004).

5. **Substantial experience in the practice of law.** ABA *Standard* § 9.22(i). Lance has been continuously practicing law since 1985.
e. **Mitigating Circumstances.** Mitigating circumstances include:

1. **Personal or Emotional Problems.** ABA *Standard* § 9.32(c). Lance has provided adequate evidence to conclude that his health had a significant impact on his ability to practice.

2. **Character or Reputation**. ABA *Standard* § 9.32(g). Lance has provided adequate evidence to conclude that he is well regarded in the legal community as a skillful trial lawyer.

3. **Remorse.** ABA *Standard* § 9.32(l). Lance has expressed remorse for his actions and taken steps to prevent such conduct in the future.

29.

The following Standards are relevant to the evaluation of this case:

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

4.42 Suspension is generally appropriate when:

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

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

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

30.

Similar cases have been resolved with lengthy suspensions, substantially stayed during a period of probation sufficient to protect the public. *See In re Johnson,* 30 DB Rptr 300 (2016) (attorney stipulated to a 4-year suspension, 30 months stayed during a 3-year probation for violations of RPC 1.1, RPC 1.2(a), RPC 1.3, RPC 1.4(a), RPC 1.16(d), and RPC 8.4(a)(4) multiple times over four different matters); *In re Grimes,* 18 DB Rptr 300 (2004) (attorney stipulated to a 1-year suspension, 10 months stayed contingent on completion of a 2-year probation for violations of former DR 1-102(A)(4)) (conduct prejudicial to the administration of justice); former DR 2-110(A)(2) (failure to protect client interest on withdrawal from representation); and former DR 6-101(B) (neglect of a legal matter) (in relation to nine clients.
she had been appointed to represent on criminal appeals, post-conviction relief, and habeas corpus matters).

31.

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.

32.

Consistent with the Standards and Oregon case law, the parties agree that Lance shall be suspended for 28 months for violations of RPC 1.3, RPC 1.4(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), and RPC 8.1(a)(2), with 26 months of the suspension stayed, pending Lance’s successful completion of a 3-year term of probation. The suspension shall begin on November 16, 2019, or as otherwise directed by the Disciplinary Board. The probation shall commence on the day that Clayton Lance’s reinstatement is effective (“effective date”).

33.

Lance’s license to practice law shall be suspended for a period of 2 months as set out in paragraph 32, (“actual suspension”), assuming all conditions have been met. Lance 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 Lance re-attains his active membership status with the Bar, Lance 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.

34.

Probation shall commence upon the effective date and shall continue for a period of three years, ending on the day prior to the third (3rd) year anniversary of the effective date (the “period of probation”). During the period of probation, Lance shall abide by the following conditions:

(a) Lance 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) Lance has been represented in this proceeding by Larry R. Roloff and Janie Mogensen (“Counsel”). Lance and Counsel hereby authorize direct communication between Lance and DCO after the date this Stipulation for
Discipline is signed by both parties, for the purposes of administering this agreement and monitoring Lance’s compliance with his probationary terms.

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

(d) During the period of probation, Lance shall attend not less than 4 MCLE accredited programs, for a total of 24 hours, which shall emphasize law practice management and time management. These credit hours shall be in addition to those MCLE credit hours required of Lance for his normal MCLE reporting period. (The Ethics School and Trust Accounting School requirements do not count towards the 24 hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of his period of probation, Lance shall submit an Affidavit of Compliance to DCO.

(e) Prior to the end of the period of probation, Lance shall attend Trust Accounting School, offered by the Oregon State Bar twice a year in the spring and fall. Upon completion of Trust Accounting School, and prior to the end of his period of probation, Lance shall submit an Affidavit of Compliance to DCO.

(f) Throughout the period of probation, Lance shall diligently attend to client matters and adequately communicate with clients regarding their cases.

(g) Each month during the period of probation, Lance shall review all client files to ensure that he is timely attending to the clients’ matters and that he is maintaining adequate communication with clients, the court, and opposing counsel.

(h) Each month during the period of probation, Lance shall:

   (1) maintain complete records, including individual client ledgers, of the receipt and disbursement of client funds and payments on outstanding bills; and

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

(i) John Hamilton and Tracey Howell shall serve as Lance’s probation supervisors (“Supervisor”). Lance shall cooperate and comply with all reasonable requests made by his Supervisor that Supervisor, in his sole discretion, determines are designed to achieve the purpose of the probation and the protection of Lance’s clients, the profession, the legal system, and the public. Lance agrees that, if Supervisor ceases to be his Supervisor for any reason, Lance will immediately notify DCO and engage a new Supervisor, approved by DCO, within one month.
(j) Beginning with the first month of the period of probation, Lance shall meet with Supervisor in person at least once a month for the purpose of:

(1) Allowing his Supervisor to review the status of Lance’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) client files or ten percent (10%) of Lance’s active caseload, whichever is greater, to determine whether Lance is timely, competently, diligently, and ethically attending to matters, and taking reasonably practicable steps to protect his clients’ interests upon the termination of employment; and

(2) Permitting his Supervisor to inspect and review Lance’s accounting and record keeping systems to confirm that he is reviewing and reconciling his lawyer trust account records and maintaining complete records of the receipt and disbursement of client funds. Lance agrees that his Supervisor may contact all employees and independent contractors who assist Lance in the review and reconciliation of his lawyer trust account records.

(k) Lance authorizes his Supervisor to communicate with DCO regarding his compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Lance’s compliance.

(l) Within seven (7) days of the effective date, Lance shall contact the Professional Liability Fund (“PLF”) and schedule an appointment on the soonest date available to consult with the PLF’s Practice Management Advisors in order to obtain practice management advice. Lance shall notify DCO of the time and date of the appointment.

(m) Lance shall attend the appointment with the PLF’s Practice Management Advisors 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’s Practice Management Advisors, Lance shall adopt and implement those recommendations.

(n) No later than sixty (60) days after recommendations are made by the PLF’s Practice Management Advisors, Lance shall provide a copy of the Office Practice Assessment from the PLF’s Practice Management Advisors and file a report with DCO stating the date of his consultation(s) with the PLF’s Practice Management Advisors; 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.
(o) Lance shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with PLF Practice Management Advisors within 180 days of his initial meeting.

(p) A member of the State Lawyer’s Assistance Committee (“SLAC”) or such other person approved by DCO in writing shall monitor Lance’s probation (“Monitor”), and Lance agrees to enter into and comply with the terms of a Monitoring Agreement with SLAC. Lance is currently is working with the Oregon Attorney Assistance Program (“OAAP”) regarding possible treatment. Lance shall notify SLAC within 14 days of the effective date of:

1. the existence and contents of this Stipulation for Discipline;
2. the history and status of any OAAP treatment or programs in which Lance has/is participating; and
3. discuss with SLAC whether and how to modify his current treatment plan to best accomplish the objectives of Lance’s probation.

(q) Lance shall meet with Monitor as often as recommended by SLAC, and shall comply with all reasonable requests and recommendations made by SLAC to supplement his treatment and to promote compliance with this Stipulation for Discipline, and as necessary for the purpose of reviewing Lance’s compliance with the terms of the probation. Lance shall cooperate and shall comply with all reasonable requests of SLAC that will allow SLAC and DCO to evaluate his compliance with the terms of this Stipulation for Discipline.

(r) Lance authorizes Monitor to communicate with DCO regarding Lance’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 Lance’s compliance.

(s) Lance agrees that, if SLAC is alerted to facts that raise concerns regarding compliance with the terms of this Stipulation for Discipline or the objectives of probation, Lance will participate in a further evaluation at the request and direction of SLAC.

(t) Lance shall continue regular treatment sessions with Claudia K. Lake, Psy.D (“Current Treating Professional”) or another mental health treatment provider determined by SLAC to be appropriate.

(u) Lance shall arrange for and meet with his Current Treating Professional or another health care professional acceptable to DCO and Monitor to develop and implement a course of treatment that will address any identifiable concerns.

(v) Lance shall continue to attend regular counseling/treatment sessions with the approved health care professional for the entire term of his probation. Lance
shall obtain and take and/or continue to take, as prescribed, any health-related medications.

(w) Lance shall not terminate his counseling/treatment or reduce the frequency of his counseling/treatment sessions without first submitting to DCO a written recommendation from his Current Treating Professional or other approved health care professional that his counseling/treatment sessions should be reduced in frequency or terminated and Lance undergoes an independent evaluation by a second professional acceptable to DCO and Monitor, which evaluation confirms his fitness.

(x) Lance consents to the release of information by his Current Treating Professional, other mental health or substance abuse treatment program or provider, OAAP, AA, NA, or any designee, to SLAC and to DCO, regarding his treatment plan, his progress under that plan, and his compliance with the terms of this Stipulation for Discipline; waives any privilege or right of confidentiality to permit such disclosure; and agrees to execute such releases as may be required by such providers upon request by SLAC or DCO. Lance acknowledges and agrees that SLAC shall promptly report to DCO any violation of the terms of this Stipulation for Discipline.

(y) On a monthly basis, on dates to be established by DCO beginning no later than 30 days after the effective date, Lance shall submit to DCO a written “Compliance Report,” approved as to substance by his Supervisor and Monitor, advising whether Lance is in compliance with the terms of this Stipulation for Discipline, including:

1. The dates and purpose of Lance’s meetings with his Supervisor.
2. The dates and purpose of Lance’s meetings with his Monitor.
3. The number of Lance’s active cases and percentage reviewed in the monthly audit with Supervisor and the results thereof.
4. Whether Lance has completed the other provisions recommended by his Supervisor and Monitor, if applicable.
5. In the event that Lance has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.

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

(aa) Lance’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 his Supervisor and/or Monitor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.
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(bb) A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to DCO on or before its due date.

(cc) The SPRB’s decision to bring a formal complaint against Lance 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.

35.

Because he accepted a flat fee for his representation of each of Bradley, Dunaway, and Loeck, but did not complete those representations, Lance acknowledges that he owes a refund to each of them for some portion of their fees. Calculated on a percentage of work completed, Lance believes that he owes $2,500 to Bradley, $2,500 to Dunaway, and $3,000 to Loeck. Before he is reinstated from his actual suspension, Lance will remit these amounts to his former clients, without requiring them to agree to compromise any claims they may have against him. If the clients believe that an additional refund is warranted, Lance has agreed to submit the dispute to the Bar’s Fee Dispute Resolution Program, at their request.

36.

In addition, Lance shall pay to the Bar its reasonable and necessary costs in the amount of $798.50, incurred for deposition and witness fees. Should Lance fail to pay $798.50 in full by February 1, 2020, the Bar may thereafter, without further notice to him, obtain a judgment against Lance for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

37.

Lance 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, Lance has arranged for Larry Roloff at 132 East Broadway, Suite 233, Eugene, OR 97401, an active member of the Bar, to either take possession of or have ongoing access to Lance’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Lance represents that Larry Roloff has agreed to accept this responsibility.

38.

Lance acknowledges that reinstatement is not automatic on expiration of any period of suspension, if any stayed period of suspension is actually imposed. If a period of suspension is necessitated by his non-compliance with the terms of his probation, he will be required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Lance also acknowledges that, should a suspension occur, 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.
39.

Lance 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, if a suspension is imposed. This requirement is in addition to any other provision of this agreement that requires Lance to attend continuing legal education (CLE) courses.

40.

Lance 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 Lance is admitted: None.

41.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 20, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 4th day of December, 2019.

/s/ Clayton J. Lance
Clayton J. Lance
OSB No. 852640

APPROVED AS TO FORM AND CONTENT:

/s/ Larry R. Roloff
Larry R. Roloff, OSB No. 722167

/s/ Janie Mogensen
Janie Mogensen, OSB No. 143883

EXECUTED this 4th day of December, 2019.

OREGON STATE BAR

By: /s/ Theodore W. Reuter
Theodore W. Reuter
OSB No. 084529
Assistant Disciplinary Counsel