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 2022 decisions of the Oregon Supreme Court involving the discipline of lawyers, and related matters. Cases in this DB Reporter should be cited as 36 DB Rptr ___ (2022).

In 2022, a decision of the Disciplinary Board was final if neither the Bar nor the Respondent 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, 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 website, 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. 21-101
)
EDWARD P. BERNARDI, )
Bar No. 811686 )
)
Respondent. )

Counsel for the Bar: Susan R. Cournoyer
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.3 and RPC 1.16(a)(2). Stipulation for Discipline. 30-day suspension.
Effective Date of Order: January 14, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Edward P. Bernardi (Respondent) and the Oregon State Bar (Bar), and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 30-days, effective seven days from the date of this order, for violation of RPC 1.3 and RPC 1.16(a)(2).

DATED this 7th day of January, 2022.

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

STIPULATION FOR DISCIPLINE

Edward P. Bernardi, 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 14, 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.

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

4.

On December 11, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.3 [neglect of a legal matter] and RPC 1.16(a)(2) [failure to withdraw when lawyer’s physical condition materially impairs lawyer’s ability to carry out 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 approximately 2008, Respondent represented a minor client (Client), and obtained a settlement in civil litigation on her behalf. The $24,000 net recovery was placed in a conservatorship and was to be disbursed to Client on her 18th birthday, January 15, 2020. Respondent was appointed conservator. Respondent lost contact with Client and her mother.

When she reached age 18, Client contacted Respondent about releasing the funds. Although he intended to close the conservatorship, he was extremely ill, and was hospitalized and then convalescing at home. On April 13, 2020, the court issued a delinquency notice directing Respondent to seek a general judgment terminating the conservatorship due to Client’s reaching the age of majority. Respondent received this notice, but was too ill to act or respond. He acknowledges that, when he eventually recovered to the point of returning to his office, he should have attended to this matter.

In October 2020, Client contacted Respondent again, and he assured her that he would close the conservatorship within 60 days. However, when he started working on that task, he realized that he had lost her contact information and had no way to reach her. Client complained to the Bar in January 2021 that she had not heard from Respondent.

Respondent represents that, in March 2021, he hired an attorney to take over the task of closing the conservatorship.

On April 5, 2021, the court entered a judgment on its own motion releasing the restricted funds and terminating the conservatorship. As of that date, no other counsel had appeared for Respondent, who remained identified as counsel for himself as conservator.
Violations

Respondent admits that, by not taking steps to terminate the conservatorship and release the funds to Client when he knew as of January 2020 that he was required to do so, he neglected a legal matter in violation of RPC 1.3. Respondent further admits that his failure to withdraw from the matter when serious illness impaired his ability to carry out the duties of conservator and counsel for conservator violated RPC 1.16(a)(2).

Sanction

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 (ABA Standards). The ABA 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.** Respondent violated the duty of diligence owed to his client, and his duty as a professional to properly withdraw from representation. ABA Standards 4.4, 7.0

b. **Mental State.** Respondent acted both knowingly and negligently. It appears that, although distracted by his illness, Respondent acted knowingly, in that he was consciously aware of the nature and circumstances attendant to his conduct, but without the conscious objective or purpose to accomplish a particular result, when he failed to close out the conservatorship. However, it appears that he acted negligently when he failed to heed the substantial risk that his illness was impairing his ability to carry out the matter, and that he was required to withdraw.

c. **Injury.** For the purposes of determining an appropriate sanction, both actual and potential injury are taken into account. ABA Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). Client suffered actual injured by Respondent’s failure to act, in that she was denied her $24,000 for over one year after she should have received it.

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

1. **Substantial experience in the practice of law.** ABA Standard 9.2.2(i). Respondent was admitted to practice law in Oregon in 1981.

2. **Vulnerability of victim.** ABA Standard 9.22(h). Although Client was legally an adult as of January 2020, she was a teenager and unfamiliar with the legal system.

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

1. **Absence of a prior record of discipline.** ABA Standard 9.32(a).
2. **Absence of a dishonest or selfish motive.** ABA Standard 9.32(b).

3. **Personal or emotional problems.** ABA Standard 9.32(c). Respondent was hospitalized and then experienced a lengthy convalescence.

4. **Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.** ABA Standard 9.32(e).

8.

Under the ABA Standards, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to the client. ABA Standard 4.42. Reprimand is generally appropriate when a lawyer negligently engages in conduct that violates a duty owed as a professional (such as failing to withdraw when required), and causes injury or potential injury to a client, the public, or the legal system. ABA Standard 7.3.

9.

Recent case law demonstrates that sanctions for similar misconduct have resulted in a range of sanctions, from reprimands to 60-day suspensions.

*In re Lyle Bosket*, 32 DB Rptr 41 (2018) [30-day suspension, all stayed/2-year probation]. Shortly after lawyer was hired to pursue civil claims for his client, he began experiencing personal problems and serious health problems that impacted his ability to perform legal work. He did not respond to his client’s requests for information for over six months, and did not withdraw. The same aggravating and mitigating factors were present as in this matter, except that the stipulation also recited a pattern of misconduct and multiple offenses.

*In re Eric J. Fjelstad*, 31 DB Rptr 268 (2017) [stipulated 60-day suspension]. Lawyer failed to withdraw from his client’s case despite a medical condition that impacted his ability to practice law. Aggravating factors included prior history of discipline and multiple offenses.

*In re Ann B. Witte*, 24 DB Rptr 10 (2010) [stipulated reprimand]. Lawyer failed to withdraw at a time when she recognized that her health was inhibiting her ability to communicate and effectively represent a client. The client’s unemployment claim was dismissed due to failure to appear, and lawyer failed to timely file an appeal. Aggravating factors included a prior reprimand for neglect; mitigating factors are the same as in this matter.

Respondent’s misconduct, alone, is most similar to *Witte* (reprimand) and *Fjelstad* (60-day suspension), but the actual injury caused to a vulnerable client justifies the more serious sanction of suspension. However, the mitigating factors justify the shortest possible suspension: 30 days.

10.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30 days for violation of RPC 1.3 and RPC 1.16(a)(2), effective seven days after the Adjudicator issues an order approving this stipulation.
11. Respondent 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.

12. Respondent 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. Respondent 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. 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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

14. Respondent represents that, in addition to Oregon, he is not admitted to practice law in any other jurisdictions, whether his current status is active, inactive, or suspended.

15. Approval of this Stipulation for Discipline as to substance was given by the SPRB on December 11, 2021. 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 January, 2022.

/s/ Edward P. Bernardi
Edward P. Bernardi, OSB No. 811686

EXECUTED this 6th day of January, 2022.

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 Nos. 21-20 & 21-21
) )
SHANON GRAY, Bar No. 012668 )
) )
Respondent. )

Counsel for the Bar: Rebecca Salwin
Counsel for the Respondent: David J. Elkanich
Disciplinary Board: None
Disposition: Violation of RPC 1.5(c)(3), RPC 1.15-1(c), RPC 1.6(a).
Stipulation for Discipline. 30-day suspension.
Effective Date of Order: January 21, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Shanon Gray (Respondent) and the Oregon State Bar (Bar), and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 30-days, effective January 21, 2022, for violations of RPC 1.5(c)(3), RPC 1.15-1(c), and RPC 1.6(a).

DATED this 19th day of January, 2022.

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

STIPULATION FOR DISCIPLINE

Shanon Gray, 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 October 4, 2001, and has been a member of the Bar continuously since that time, having his office and place of business in Clackamas 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 March 26, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent. On April 29, 2021, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.5(c)(3), RPC 1.15-1(c), and RPC 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

Case No. 21-20

James M. Murphy Matter

5.

In 2017, Respondent provide a client an unsigned fee agreement and then received a $3,000 check, as part of an earned-upon-receipt attorney fee, to represent the client on a criminal matter. Respondent did not maintain the funds in a trust account, but instead deposited them into his operating account. At no point did Respondent or the client sign any agreement for the earned-upon-receipt attorney fee.

Case No. 21-21

John Edward Schlosser Matter

6.

In 2019, Respondent began representing a client on a criminal matter. On May 15, 2020, Respondent filed a motion and memorandum for withdrawal from the representation. In his motion and memorandum, Respondent disclosed that his client had limited to no contact with him. Respondent also revealed that he had advised his client about upcoming court dates and to contact Respondent, which advice his client had ignored. He wrote that the client was “now in warrant status and I am not sure when he will be back in custody.” Respondent also disclosed that his client had been failing to make full payments of attorney fees.
Violations

7.

Respondent admits that in the Murphy matter, he collected a non-refundable fee, which he did not maintain in a lawyer trust account, and did so without a required written fee agreement signed by the client, in violation of RPC 1.5(c)(3) and RPC 1.15-1(c). Respondent admits that in the Schlosser matter, he revealed information relating to the representation of his client without authorization, in violation of RPC 1.6(a).

Sanction

8.

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 (ABA Standards). The ABA 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. ABA Standard 3.0.

a.  **Duty Violated.** Respondent violated his duty to avoid improper disclosure of information relating to his representation of his client in the Schlosser matter. ABA Standard 4.2. Respondent also violated his duty owed as a legal professional related to his handling of legal fees in the Murphy matter. ABA Standard 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. ABA Standards at 9. Respondent negligently charged and collected an earned-upon-receipt fee, and negligently deposited the fee into his operating account, without a signed fee agreement. Respondent knowingly revealed information relating to his representation of his client, when he filed his motion and memorandum for withdrawal.

c.  **Injury.** Injury can be either actual or potential. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Respondent caused actual injury by revealing detrimental and confidential information about his client to the court’s public record.

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

1.  **Prior disciplinary offenses.** In 2014, Respondent was admonished for use of an earned-upon-receipt fee without the required fee agreement. A prior admonition can be considered a prior disciplinary offense when it involves the same or similar conduct. *In re Bertoni*, 363 Or 614, 644–45, 426 P3d 64 (2018). ABA Standard 9.22(a).
2. **Multiple offenses.** ABA Standard 9.22(d).

3. **Substantial experience in the practice of law.** Respondent was admitted to practice law in Oregon in 2001. ABA Standard 9.22(i).

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

1. **Absence of a dishonest or selfish motive.** ABA Standard 9.32(b).

2. **Cooperative attitude toward proceedings.** ABA Standard 9.32(e).

3. **Delay in disciplinary proceedings.** ABA Standards 9.32(j). The conduct in the Murphy matter occurred in 2017 but was not reported to the Bar until 2020.

4. **Remorse.** Respondent has expressed remorse for his conduct. ABA Standard 9.32(l).

9.

Under ABA Standard 4.22, 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 the client. Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system. ABA Standard 7.4

10.

Respondent’s aggravating factors outweigh his mitigation factors. Prior cases demonstrate that a suspension is warranted where a lawyer’s disclosure of client information causes injury to the client or is accompanied by aggravating factors. See, *e.g.*, *In re Quillinan*, 20 DB Rptr 288 (2006) (attorney stipulated to a 90-day suspension for violations of RPC 1.6(a), 1.9(c)(1) and RPC 1.9(c)(2) when she revealed, on a listserv for local attorneys, that her former client was “difficult” and was now “attorney shopping”); *In re Williamson*, 31 DB Rptr 173 (2017) (attorney violated RPC 1.5(c)(3), 1.6(a), and 1.8(a) when he used an improper non-refundable fee agreement, entered an improper business transaction with a client without the required written disclosures, and, upon being terminated by his client, filed a motion to withdraw that disclosed his client’s criminal history and noted that his client had failed to appear at the attorney’s office that morning; a suspension was presumptive, but due to significant mitigating factors, including a lack of prior discipline, attorney stipulated to a public reprimand for the violations).

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30 days for violation of RPC 1.5(c)(3), RPC 1.15-1(c), and RPC 1.6(a), the sanction to be effective January 21, 2022.

11.

In addition, on or before February 21, 2022, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of $592.45, incurred for Respondent’s deposition. Should Respondent fail to pay $592.45 in full by February 21, 2022, the Bar may thereafter, without further notice to him, 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.

12.

Respondent 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, Respondent has arranged for William Chad Stavley (OSB No. 034656), an active member of the Bar, to either take possession of or have ongoing access to Respondent’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Respondent represents that William Stavley has agreed to accept this responsibility.

13.

Respondent 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. Respondent 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.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

15.

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 December 11, 2021. 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 January, 2022.

/s/ Shanon Gray
Shanon Gray, OSB No. 012668

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich
David J. Elkanich, OSB No. 992558

EXECUTED this 14th day of January, 2022.

OREGON STATE BAR
By: /s/ Rebecca Salwin
Rebecca Salwin, OSB No. 201650
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
)
Complaint as to the Conduct of ) Case Nos. 21-86 & 21-106
)
JENNIFER N. TOWNE, Bar No. 120175 )
)
Respondent. )

Counsel for the Bar: Rebecca Salwin
Counsel for the Respondent: Amber Bevacqua-Lynott
Disciplinary Board: None
Disposition: Violation of RPC 1.7(a)(2) and RPC 4.2. Stipulation for discipline. Public reprimand.
Effective Date of Order: January 31, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Jennifer N. Towne (Respondent) and the Oregon State Bar (Bar), and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is publicly reprimanded for violations of RPC 1.7(a)(2) and RPC 4.2.

DATED this 31st day of January, 2022.

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

STIPULATION FOR DISCIPLINE

Jennifer N. Towne, 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 January 11, 2012, and has been a member of the Bar continuously since that time, having her office and place of business in Washington 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 September 11, 2021, and December 11, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.7(a)(2) 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. Arjun Matter – Case No. 21-86

In 2020, Respondent represented mother in a contested post-judgment family law matter. Patricia Asrani Arjun (Arjun) represented father. On or about December 16, 2020, Respondent emailed Arjun and copied both parents regarding the parents’ son, who had recently attempted suicide. At the time Respondent emailed Arjun and copied father, Respondent knew Arjun represented father and communicated on the subject of the representation. Respondent did so without obtaining Arjun’s prior consent to communicate directly with father.

6. Guptill Matter – Case No. 21-106

In 2020, Respondent represented Steven M. Killion (Killion) in a domestic violence criminal matter pertaining to his brother and mother. On October 21, 2020, Killion was released from custody subject to an order prohibiting him from contact with his alleged victims (the “no contact order”). On October 22, 2020, prior to learning of the no contact order, Respondent picked up Killion from jail and drove him to the house he shared with the alleged victims. While at the house with Respondent, Killion was arrested on contempt charges that he violated the no contact order. From the time of the charge through around December 2020, when substitute counsel was retained, Respondent represented Killion in connection with the contempt charges.
7.

There was a significant risk that Respondent’s representation of Killion may have been materially limited by a personal interest of Respondent, because she was a person who negligently enabled Killion’s alleged criminal conduct, and a reasonable attorney in that situation may have had concerns about her own culpability. At no point did Respondent receive Killion’s informed consent, confirmed in writing, to represent him on the contempt charges despite the significant risk that her representation may have been materially limited by a personal interest.

Violations

8.

Respondent admits that she communicated on the subject of the representation with a person she knew was represented by counsel, in violation of RPC 4.2 in the Arjun matter; and that in the Killion matter, she represented a client when the representation involved a current conflict of interest, without obtaining informed written consent, in violation of RPC 1.7(a)(2).

Sanction

9.

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 (ABA Standards). The ABA 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. ABA Standard 3.0.

a. **Duty Violated.** Respondent violated her duties to avoid improper communications with an individual in the legal system, and to avoid conflicts of interest. ABA Standards 4.3, 6.3.

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, while “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. ABA Standards at 9. Respondent was negligent in determining whether her communication with father was proper. Similarly she was negligent in failing to obtain her client’s informed written consent to her continued representation while she had a conflict of interest.

c. **Injury.** Injury may be actual or potential. ABA Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). In the Arjun matter (RPC 4.2), Respondent injured father by causing him worry and potentially injured father to the extent that he maybe have been prompted to respond without the advice of legal counsel. In the Killion matter (RPC 1.7(a)(2)), Respondent potentially injured her client to the extent that Respondent’s representation of him may have been materially impacted by her personal interests without Killion fully understanding the conflict.
d. **Aggravating Circumstances.** Aggravating circumstances include:

1. **Multiple offenses.** ABA Standard 9.22(d). Respondent committed single violations with respect to two unrelated matters.

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

1. **Absence of a prior disciplinary record.** ABA Standard 9.32(a).
2. **Absence of a dishonest or selfish motive.** ABA Standard 9.32(b).
3. **Personal or emotional problems.** ABA Standard 9.32(c). At the time of these events, Respondent had recently purchased the law practice of her retired employer, and began attempting to establish a solo practice. A month later, in September 2020, Respondent discovered that her only employee had been stealing money from the practice and from Respondent personally, forging signatures, and lying about work performed on client matters.
4. **Cooperative attitude toward disciplinary proceedings.** ABA Standard 9.32(e).

10.

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, and causes injury or potential injury to a client. ABA Standard 4.33. Reprimand is also generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding. ABA Standard 6.33.

11.

Similar cases are in accord. *See, e.g.*, *In re Kramer*, 27 DB Rptr 8 (2013) (stipulated reprimand for attorney who violated RPC 4.2(a) when he responded directly to an email from a represented party); *In re Moule*, 26 DB Rptr 271 (2012) (stipulated reprimand for attorney who violated RPC 1.7(a)(1) and RPC 1.7(a)(2) when he undertook to represent a client in a criminal matter stemming from a loan that the attorney had helped facilitate for that client); *In re David R. Ambrose*, 26 DB Rptr 16 (2012) (stipulated reprimand for attorney whose representation of business entities risked being materially limited by his own substantial personal and financial interests in those entities).

12.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be reprimanded for violations of RPC 1.7(a)(2) and RPC 4.2.
13.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

14.

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: Michigan.

15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on December 22, 2021. 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 January, 2022.

/s/ Jennifer N. Towne
Jennifer N. Towne, OSB No. 120175

APPROVED AS TO FORM AND CONTENT:

/s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott, OSB No. 990280

EXECUTED this 26th day of January, 2022.

OREGON STATE BAR
By: /s/ Rebecca Salwin
Rebecca M. Salwin, OSB No. 201650
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
)
Complaint as to the Conduct of ) Case No. 21-17
)
MARK AUSTIN CROSS, Bar No. 791994 )
)
Respondent. )

Counsel for the Bar: Eric J. Collins
Counsel for the Respondent: None
Disciplinary Board: Mark A. Turner, Adjudicator
Thomas Kranovich
Eugene Bentley, Public Member
Disposition: Violation of RPC 1.15-1(d), RPC 1.16(d), and
8.1(a)(2). Trial Panel Opinion. 150-day suspension with
restitution and formal reinstatement.
Effective Date of Opinion: March 12, 2022

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged Respondent Mark Austin Cross with violations of
RPC 1.15-1(d) (failure to promptly deliver funds a client is entitled to receive and render a full
accounting at the client’s request); RPC 1.16(d) (failure to take reasonable steps to protect a
client upon termination of representation), and RPC 8.1(a)(2) (failure to respond to inquiries
from a regulatory authority). The charges arise from Respondent’s representation of a client in
a court case in which the client paid Respondent a $25,000 retainer pursuant to an oral agree-
ment. The agreement required Respondent to refund any unearned portion of the money at the
conclusion of the matter.

When the matter concluded the client asked for an accounting of the fees earned and
the tasks performed. Respondent never provided one despite repeated demands. Instead,
Respondent refunded $10,000 to the client with no explanation for the amount. The client
subsequently sued Respondent for an additional $10,000 for unjust enrichment and breach of
contract. Respondent failed to appear for trial and a money judgment for $10,000 was entered
against him.

Thereafter, the client’s attorney submitted a claim to the Client Security Fund (CSF)
for the amount due from Respondent. This prompted an investigation by Disciplinary Coun-
sel’s Office (DCO), which Respondent ignored, leading to his suspension under BR 7.1. This
action was commenced. Respondent failed to answer and was found in default.
The Bar asks us to suspend Respondent for 150 days, order that he be required to seek formal reinstatement under BR 8.1 if he intends to practice law in the future, and order that he pay restitution to the CSF in the amount of $10,000. As explained below, we find that the Bar has adequately pleaded the elements of the charges and we find that Respondent committed the alleged violations. We order a sanction consistent with the Bar’s request—a suspension for 150 days, formal reinstatement under BR 8.1, and an order requiring Respondent to pay restitution in the amount of $10,000 to the CSF.

**PROCEDURAL POSTURE**

Respondent was personally served with the formal complaint and notice to answer on August 6, 2021. The Bar served a ten-day notice of intent to take default on August 24, 2021 and filed a motion for order of default on September 16, 2021. Respondent filed no opposition. The Adjudicator entered an order of default on September 22, 2021.

When a respondent is in default, the Bar’s factual allegations are deemed to be true. BR 5.8(a); *In re Magar*, 337 Or 548, 551–53, 100 P3d 727 (2004). We first determine whether the facts pleaded establish the rule violations alleged and, if so, what sanction is appropriate. *See In re Koch*, 345 Or 444, 455, 198 P3d 910 (2008). In assessing whether the charges are established we are limited to considering only the facts alleged in the formal complaint. When determining the appropriate sanction, we may consider additional evidence.

**STATEMENT OF FACTS**

Respondent agreed to represent Keith Charles Casper (Casper) in September of 2008. Casper was named as a defendant in a lawsuit filed in Clackamas County Circuit Court, Case No. CV07110571. ¶ 3. Respondent also agreed to review Casper’s rights in an unrelated criminal matter. *Id.* Casper paid Respondent a $25,000 retainer pursuant to an oral agreement. *Id.* The parties agreed that when the representation was concluded, Respondent would deduct a reasonable amount for his services from the retainer, as well as any fees and costs advanced, and would return the remaining funds to Casper. ¶ 4.

When the representation concluded, Casper asked Respondent on April 12, 2013, to provide a bill describing the services performed, the time spent performing those services, and the amount Respondent charged for the work. ¶ 5. Respondent did not provide the requested information at the time, nor did he do so when his client made additional demands for it. ¶ 6. Respondent did refund $10,000 to Casper, however. ¶ 5.

On February 23, 2015, attorney D. Craig Mikkelsen (Mikkelsen) filed a lawsuit on behalf of Casper against Respondent in Clackamas County Circuit Court, Case No. LV15020709. The complaint alleged claims of unjust enrichment and breach of contract and requested $10,000 in damages as well as an order requiring Respondent to provide a full accounting of his work on Casper’s behalf. ¶ 7.

A little over two years later, Respondent failed to appear for trial on March 29, 2017. On July 17, 2017, a general judgment and money award was entered against Respondent in the amount of $10,000. The court found that Respondent had “wrongfully retained the sum of

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1 All paragraph citations are to the formal complaint.
$10,000 in excess of the amounts he actually earned and … refused to refund any portion of said amount.” ¶ 8.

Some years later, Mikkelsen submitted an application for reimbursement on behalf of Casper to the Bar’s Client Security Fund (CSF). ¶ 11. This caused DCO to commence an investigation of Respondent’s conduct on or about April 27, 2020. Id. The CSF reimbursed Casper $10,000 for the loss. It provided notice of its action to DCO on January 14, 2021. Id.

On February 1, 2021, DCO sent a written request for Respondent’s answers to questions regarding its investigation. ¶ 12. The request was sent by letter addressed to Respondent at his address then on record with the Bar (record address) and delivered by first class mail. DCO also sent the letter to Respondent at the email address then on record with the Bar (record email address). The email and letter were not returned undelivered, and Respondent did not respond by the due date. Id.

On or about February 24, 2021, DCO sent a second written request for a response to Respondent at the record address by both first class and certified mail, return receipt requested. The letter was also sent to the record email address. Respondent signed the certified mail receipt, but he did not respond to DCO’s second written request for a response. ¶ 13.

On or about March 4, 2021, DCO filed a petition pursuant to BR 7.1 seeking Respondent’s immediate suspension for failure to respond to DCO’s inquiries. Respondent did not file any response to the petition. ¶ 14. On or about March 30, 2021, the Adjudicator issued an order suspending Respondent pursuant to BR 7.1. ¶ 15. As of June 21, 2021, when the Bar filed its formal complaint, Respondent had still not responded to DCO’s requests for a response regarding his conduct in the Casper matter. ¶16.

**ANALYSIS OF THE CHARGES**

A. **Respondent failed to promptly deliver funds his client was entitled to receive and to render a full accounting per his client’s request in violation of RPC 1.15-1(d).**

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.”

A lawyer violates this rule by failing to provide an accounting of client funds held by the lawyer when a client requests and by failing to promptly return the unearned balance of advanced fees or retainers. See In re Long, 368 Or 452, 459–60, 491 P3d 783 (2021).

Here the client asked for an accounting when Respondent’s representation ceased. Respondent never provided one, despite additional written requests for an accounting and a return of any unearned funds. Responded returned $10,000 of the retainer, without explanation or any accounting. The client then sued Respondent, alleging that he was owed an additional $10,000. The trial court ruled that Respondent had “wrongfully retained the sum of $10,000.00
in excess of the amounts he actually earned and has refused to refund any portion of said amount.”

The alleged facts establish a clear violation of RPC 1.15-1(d).

**B. Respondent failed to take reasonably practicable steps to protect his client’s interests upon termination of the representation in violation of RPC 1.16(d).**

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.”

A lawyer violates this rule by failing to refund an advance payment of a fee that the lawyer has not earned. See *Long*, 368 Or at 460 (finding the lawyer violated the rule by failing to refund $1,000 in unearned fees). The facts stated above establish a clear violation of this rule as well.

**C. Respondent knowingly failed to respond to lawful demands from a disciplinary authority in violation of RPC 8.1(a)(2).**

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.”

This rule requires full cooperation from a lawyer subject to a disciplinary investigation. *In re Schaffner*, 325 Or 421, 425, 939 P2d 39 (1997). The Oregon Supreme Court has little tolerance for violations of this rule. See *In re Miles*, 324 Or 218, 222–25, 923 P2d 1219 (1996) (the court found violations of the rule and imposed a 120-day suspension while requiring formal reinstatement where the attorney failed to respond to inquiries from DCO, failed to respond to the Bar’s formal complaint, did not appear at trial, and was found in default).

Here Respondent did not respond to multiple written requests by DCO. He was subject to immediate suspension pursuant to BR 7.1. Despite the suspension, Respondent still refused to provide any response to the Bar’s inquiries. The evidence shows that Respondent did receive the requests. Respondent knowingly violated RPC 8.1(a)(2).

**SANCTION**

In assessing an appropriate sanction, we refer to the ABA *Standards for Imposing Lawyer Sanctions* (ABA Standards), and Oregon case law, for guidance.

*ABA Standards.*

The ABA 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 sanction, after which we may adjust the sanction, if appropriate, based on the existence of aggravating or mitigating circumstances. ABA Standard 3.0.

**Duty Violated.**

The most important ethical duties are those that lawyers owe to their clients. ABA Standards at 5. Respondent violated his duty to properly handle his client’s property. ABA Standard 4.1. Respondent also violated his duty to the legal profession when he failed to cooperate with DCO’s investigation. ABA Standard 7.0; see *In re Gastineau*, 317 Or 545, 556, 857 P2d 136 (1993) (finding such conduct as a violation of the duty to the legal profession). Respondent also violated his duty to the public because the disciplinary process serves to protect the public. ABA Standard 5.0; see *In re Kluge*, 335 Or 326, 349, 66 P3d 492 (2003) (describing a lawyer’s failure to respond to a Bar investigation as a violation of such a duty).

**Mental State.**

“Intent” is the conscious objective or purpose to accomplish a particular result. ABA 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. “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.

Respondent here acted at least knowingly. He acted knowingly when he failed to provide the accounting his client requested after the conclusion of the representation. Respondent was aware of the request because, in response, he refunded $10,000 of the $25,000 retainer. The client continued to contact Respondent regarding the return of additional unearned fees and the accounting. Respondent ignored him. Respondent was aware of his obligation to provide an accounting and refund unearned funds but chose not to. Respondent also acted knowingly when he failed to respond to DCO’s inquiries. Respondent is presumed to have received the first requests from DCO, which were properly sent to his record addresses with the Bar. Respondent later signed the certified mail receipt for DCO’s second written request for a response regarding the matter but still failed to reply.

**Extent of Actual or Potential Injury.**

For purposes of determining an appropriate sanction, we take into account both actual and potential injury. ABA 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. ABA Standards at 9.

Respondent’s conduct caused his client actual injury. His failure to return unearned portions of the retainer resulted caused the client’s loss of use of money and caused the client to hire new counsel to seek recovery of those funds. Even after a judgment was entered against Respondent in the amount of $10,000, Respondent did not pay, and the client sought and obtained reimbursement through the CSF. It took the client nearly eight years to obtain the $10,000, beginning with his initial demand in April 2013 to reimbursement from the CSF in
January 2021. We also agree with the Bar that it is reasonable to infer that the client suffered anxiety and frustration as a result of Respondent’s failure to provide an accounting and refund the money for so long.\(^2\) See *In re Schaffner*, 325 Or at 426–27 (client anxiety and frustration can constitute actual injury under ABA Standards).

Respondent’s failure to cooperate with DCO’s investigation also caused harm to the legal profession and the public. *In re Miles*, 324 Or at 222. The Bar tells us that Respondent’s failure to cooperate prevented the Bar from determining whether Respondent converted the client’s funds. Such a charge, if proved, is among the most serious of ethical violations and presumptively warrants disbarment. To maintain public confidence in the integrity of the legal profession, the Bar must be able to identify lawyers engaging in theft of client funds, and Respondent’s lack of cooperation thwarted that mission. The Bar’s investigation was also delayed by Respondent’s failure to cooperate. Although the Bar’s investigation was not initiated by a client complaint, the Bar was unable to provide a timely and informed resolution of this matter for any member of the public seeking information about Respondent’s disciplinary record.

*Preliminary Sanction.*

We find that the following ABA Standards apply here:

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. ABA Standard 4.12.

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. ABA Standard 7.2.

We find that a suspension is the presumptive sanction here for the multiple violations pleaded.

*Aggravating and Mitigating Circumstances.*

We find the following aggravating factors recognized by the Standards present here:


\(^2\) The Bar advised us that it was unable to obtain additional information from Casper’s lawyer, Mikkelsen, during DCO’s investigation. The Bar argues, however, that Oregon case law appears to presume client anxiety and frustration under certain circumstances such as exist here. The Bar cites us to *In re Koch*, 345 Or at 456, where the court held that a lawyer’s repeated failure to respond to clients’ reasonable requests caused injury in terms of time, anxiety, and aggravation, even though the court did not refer to evidence or admissions supporting that holding. The Bar also cited us to *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989), where a lawyer’s retention of military-discharge documents injured client “in terms of time, anxiety, and aggravation, in attempting to coax cooperation from the accused”. We agree that an inference of actual frustration and anxiety is appropriate in this case.
2. **Dishonest or selfish motive.** ABA Standard 9.22(b). Respondent’s failure to return his client’s funds directly benefited him.

3. **Multiple offenses.** ABA Standard 9.22(d).

4. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent was admitted to the Oregon State Bar in 1979.

5. **Indifference to making restitution.** ABA Standard 9.22(j). Respondent was aware that his client sought a return of funds from the retainer after the representation concluded. Respondent refunded some of those funds, but he failed to pay the $10,000 judgment stemming from the litigation. That caused his client to expend additional time and resources seeking payment through the CSF.

Due to Respondent’s default and lack of cooperation with DCO’s investigation, we are unable to find any mitigating factors present in this matter.

We agree with the Bar that the aggravating factors here justify a lengthy suspension.

**Oregon Case Law**

Oregon cases also support a significant suspension. The Bar cites us to two analogous cases supporting this conclusion.

The first, *In re Koch*, 345 Or at 449, involved violations of three disciplinary rules, including RPC 1.15-1(d), regarding the lawyer’s failure to provide an accounting for more than a year and a half despite the client’s repeated requests. The court also determined the lawyer violated RPC 1.15-1(d) for holding the unearned balance of the client’s retainer after the lawyer concluded the representation. *Id.* at 450. As well, the court found the lawyer violated RPC 8.1(a)(2) twice for knowingly failing to respond to requests for information about the matter. *Id.* In a separate matter, the court found the lawyer violated RPC 1.3 (neglect), RPC 1.4(a) (failure to communicate), and RPC 8.1(a)(2). *Id.* at 453–56. In its sanction analysis, the court found three aggravating factors, but also found three mitigating factors: absence of a dishonest or selfish motive, remorse, and personal or emotional problems. The court suspended the respondent for 120 days. *Id.* at 456–59.

The second case is *In re Houston*, 29 DB Rptr 238 (2015), where the trial panel found the lawyer violated RPC 1.4(a), RPC 1.15-1(d), RPC 1.16(a)(1) and (d), and RPC 8.1(a)(2) and imposed a 150-day suspension. In that case, the lawyer failed to inform his client that he had been suspended for failing to pay his Professional Liability Fund assessment and failed to withdraw from the representation. *Id.* at 239–40. The client ultimately terminated the lawyer and demanded an accounting and a return of documents. The lawyer did not respond. *Id.* at 240. The lawyer also failed to respond to DCO’s requests for information. *Id.* at 240–42. The trial panel found only one aggravating factor and two mitigating factors: lack of a prior disciplinary record and inexperience in the practice of law. *Id.* at 252–55. Although *Houston* involved more violations than this case, the trial panel in Houston found more mitigating factors than aggravating factors.

In both *Koch* and *Houston* there were more violations than are present here, but there were also significant mitigating factors, none of which are present here. We agree that this case merits a similar sanction. We order that Respondent be suspended for 150 days as the Bar requests.
BR 6.1(a) provides that we may require Respondent to make restitution of some or all of the money, property or fees received by him in the representation of the client. We order that Respondent reimburse the CSF for its $10,000 payment to Respondent’s client.

The Bar also asked us to require that Respondent be subject to formal reinstatement under BR 8.1 at such time as he elects to return to active status following any suspension. A suspension of more than six months automatically triggers the need for formal reinstatement. A suspension short of that is subject to informal reinstatement unless we order otherwise. This case merits requiring formal reinstatement. We find that it should be Respondent’s burden to demonstrate that he is fit to again practice law. See In re Loew, 296 Or 328, 337, 676 P2d 294 (1984). We order that he be subject to the formal reinstatement requirement of BR 8.1.

**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. ABA Standard 1.1. A 150-day suspension is appropriate here, along with the requirement of restitution and formal reinstatement. Respondent’s suspension will be effective 30 days after this decision becomes final.

Respectfully submitted this 10th day of January 2022.

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

/s/ Thomas Kranovich
Thomas Kranovich, Trial Panel Member

/s/ Eugene Bentley
Eugene Bentley, Trial Panel Public Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
Complaint as to the Conduct of ) Case No. 21-50
GARY NELSON, Bar No. 151326 )
Respondent.

Counsel for the Bar: Eric J. Collins
Counsel for the Respondent: None
Disciplinary Board: None
Effective Date of Order: February 18, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Gary Nelson is suspended for 180 days, effective one day from the date of this signed order, for violation of RPC 8.4(a)(3).

DATED this 17th day of February 2022.

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

STIPULATION FOR DISCIPLINE

Gary Nelson, 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 May 7, 2015, and has been a member of the Bar continuously since that time. Respondent’s residence is currently located in Washington County, Oregon.

3.

Respondent 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 5, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent. On June 24, 2021, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging a violation of RPC 8.4(a)(3) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In April 2018, Oregon State Police (OSP) began assisting in an investigation into the conduct of Respondent, who was then employed as a Polk County Deputy District Attorney (DDA). Law enforcement was investigating Respondent’s pursuit of personal relationships with domestic violence victims he had met while prosecuting their abusers.

During an interview of Respondent at his home, Respondent acknowledged pursuing a relationship with one victim through social media but made several false statements regarding his contact with her—including his denial that they had engaged in sexual intercourse. Additionally, Respondent falsely stated that a cell phone he had used to communicate with the woman was broken.

Shortly after that interview concluded, Respondent contacted an investigator to correct some of his prior false statements. Respondent admitted that he had engaged in sexual intercourse on one occasion with the woman he had pursued. Several days later, during subsequent questioning in his office, Respondent admitted the cell phone investigators had previously asked him about was not actually broken. Investigators then seized the phone in question.

The investigation did not produce clear and convincing evidence that Respondent pursued the relationship with the woman while the criminal case was pending. When a new case was filed in which the same woman was the listed victim, Respondent raised concerns about a conflict of interest and was transferred off the case.
Violations

6.

Respondent admits that a number of statements he made to investigators were false and material to their investigation and he knew those statements were false and material at the time he made them. Respondent admits that this conduct involved dishonesty, fraud, deceit or misrepresentation that reflected adversely on his fitness to practice law, in violation of RPC 8.4(a)(3).

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 (ABA Standards). The ABA 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. Respondent violated his duty to the public to maintain personal integrity. ABA Standard 5.0.

b. Mental State. The ABA 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. ABA 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. Respondent acted intentionally or, at least, knowingly, in providing false information to investigators.

c. Injury. Injury can be either actual or potential under the ABA 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. ABA Standards at 9. Respondent’s misrepresentations caused potential injury by misleading investigators and impeding the investigation.

d. Aggravating Circumstances. Aggravating circumstances include:

1. Dishonest or selfish motive. ABA Standard 9.22(b). Respondent provided false information to investigators to avoid culpability, shame and embarrassment.
2. **Pattern of misconduct.** ABA Standard 9.22(c). Respondent lied several times to investigators regarding a number of topics.

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

1. **Absence of prior disciplinary record.** ABA Standard 9.32(a).

2. **Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.** ABA Standard 9.32(c).

3. **Inexperience in the practice of law.** ABA Standard 9.32(f). Respondent was admitted to the Hawaii State Bar Association in January 2012, licensed to practice in Oregon in 2015, and these events occurred in 2017 and 2018.

4. **Imposition of other penalties.** ABA Standard 9.32(k). Respondent resigned his position with the Polk County District Attorney’s Office in May 2018.

5. **Remorse.** ABA Standard 9.32(l). Respondent expressed remorse for his conduct, both as to the underlying relationship and as to not being truthful.

The mitigating factors outweigh the factors in aggravation.

8.

Without considering aggravating or mitigating factors, the following ABA Standards apply:

Disbarment is generally appropriate when “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.” ABA Standard 5.11(b). Suspension is generally appropriate “when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in [ABA] Standard 5.11, and that seriously adversely reflects on the lawyer’s fitness to practice.” ABA Standard 5.12. Reprimand is generally appropriate “when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer’s fitness to practice law.” ABA Standard 5.13.

Although Respondent was not charged criminally regarding his conduct, his false statements to law enforcement investigating whether he engaged in criminal acts related to his employment as a DDA seriously adversely reflects on his fitness to practice law, and thus a suspension is warranted.

9.

Relevant Oregon cases suggest a significant suspension is warranted for engaging in dishonest conduct:
In re Nelson, 36 DB Rptr 25 (2022)

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• In re Strickland, 339 Or 595, 124 P3d 1225 (2005) [1-year suspension] Attorney, upset about a construction project in his neighborhood, falsely reported to police that he had been threatened and assaulted by construction workers. The attorney’s resulting criminal convictions for initiating a false police report, improper use of the emergency reporting system and disorderly conduct adversely reflected on his honesty, trustworthiness, or fitness in violation of the rule. He had no prior discipline.

• In re Sanchez, 29 DB Rptr 21 (2015) [1-year suspension] Attorney falsely represented to a company that sold him CLE courses that he had completed each course and misrepresented the same to the Bar for purposes of meeting his mandatory CLE requirements as a lawyer. He had no prior discipline.


10.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 180 days for violation of RPC 8.4(a)(3), the sanction to be effective one day after the stipulation is approved.

11.

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

12.

Respondent 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. Respondent 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.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

14.

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: Hawaii.

15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 29, 2022. 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 February 2022.

/s/ Gary Nelson
Gary Nelson, OSB No. 151326

EXECUTED this 16th day of February 2022.

OREGON STATE BAR

By: /s/ Eric J. Collins
Eric J. Collins, OSB No. 122997
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 22-08

Complaint as to the Conduct of )
) JESSE MAANAO, Bar No. 045333 )
) Respondent.
)

Counsel for the Bar: Samuel Leineweber
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.3, RPC 1.4(a), and RPC 1.15-1(d).
Stipulation for Discipline. 60-day suspension.
Effective Date of Order: July 1, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Jesse Maanao (Respondent) and the Oregon State Bar (Bar), and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 60-days, effective July 1, 2022, for violation of RPC 1.3, RPC 1.4(a), and RPC 1.15-1(d).

DATED this 28th day of February, 2022.

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

STIPULATION FOR DISCIPLINE

Jesse Maanao, 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.
Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on November 4, 2004, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

Respondent 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).

On January 29, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.3, RPC 1.4(a), and RPC 1.15-1(d) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

Gabriel Salvador Salazar and his wife Ariel Salazar (the Salazars) hired Respondent on or about May 2018 to assist them with several immigration matters, including a removal proceeding and an employment authorization form for Gabriel. The Salazars were satisfied with Respondent’s work until he abruptly stopped communicating with them in December 2020. At that time, Gabriel needed to renew his employment authorization form so that he could continue to legally work in the United States. At the end of November, Respondent sent the Salazars a completed copy of the employment authorization form, with instructions to sign and return the form to him for filing. By the end of December, the Salazars had returned the completed employment authorization form to Respondent and informed Respondent that they had done so. However, Respondent did not respond to the Salazar’s and did not file the employment authorization form.

Between January and April of 2021, the Salazars repeatedly called Respondent on the telephone, and sent him text messages and emails asking for information about their legal matters, but Respondent never replied. On April 1, 2021, the Salazars sent an email to Respondent requesting that he contact them by April 6, 2021. On April 21, 2021, after receiving no reply from Respondent, the Salazars sent him an email terminating his representation and requesting a copy of their client file by May 1, 2021. When Respondent did not reply to this request, the Salazars filed a Bar complaint.

Respondent re-established communication with the Salazars in September 2021 in response to their Bar complaint. Shortly thereafter, Respondent provided the Salazars with a copy of their client file and filed Gabriel Salazar’s employment authorization form.
Violations

8.

Respondent admits that by failing to file Gabriel Salazar’s employment authorization form for over 10 months, he violated RPC 1.3.

Respondent admits that by failing to respond to the Salazars’ reasonable requests for information for over 10 months, he violated RPC 1.4(a).

Respondent admits that by failing to promptly provide his clients’ with their file upon their request, he violated RPC 1.15-1(d).

Sanction

9.

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 (ABA Standards). The ABA 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. Respondent violated his duty to diligently represent his clients when he neglected his clients’ legal matter and failed to timely communicate with his clients. ABA Standard 4.4. Respondent violated his duty to preserve and safeguard his clients’ property when he failed to promptly provide them with a copy of their file. ABA Standard 4.1.

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. ABA 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. Respondent acted with a knowing mental state, because he was aware that Gabriel Salazar needed his employment authorization form renewed but did not timely act upon it; he received his clients’ communications, but did not respond to them; and he received an email from his clients in which they requested their file, but did not promptly deliver their file.

c. Injury. Injury can be either actual or potential under the ABA Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). Actual injury is harm to a client, the public, the legal system, or the profession as a result of misconduct, ranging from “serious” injury to “little or no” injury; and potential injury is harm that is reasonably foreseeable at the time of the misconduct and probably would have resulted if not for some intervening factor or event. ABA Standards at 7. Respondent’s clients both suffered actual injury in the form of frustration,
stress, and anxiety as a result of Respondent’s inaction and failure to communicate. See *In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426–27, 939 P2d 39 (1997). 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). Here, Gabriel Salazar was injured when his employment authorization expired due to Respondent’s failure to timely file the renewal. The Salazars were also injured because they were unable to hire replacement counsel to attend to their legal matters due to Respondent not returning their file.

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

1. **Substantial Experience in the practice of law.** ABA Standard 9.22(i). Respondent has been admitted to practice law since 2004.

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

1. **Absence of prior disciplinary record.** ABA Standard 9.32(a).
2. **Absence of dishonest motive.** ABA Standard 9.32(b).
3. **Personal or emotional problems.** ABA Standard 9.32(c). Respondent was suffering from anxiety, depression, and post-traumatic stress disorder during the events in this matter.
4. **Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.** ABA Standard 9.32(e).
5. **Remorse.** ABA Standard 9.32(l). Respondent stated that disciplinary action is appropriate for his conduct and this experience was a “wakeup call” for him.

10. Notwithstanding aggravating or mitigating factors, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. ABA Standard 4.42. Suspension is also generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. ABA Standard 4.1.

11. Fact matching between cases is a difficult endeavor, especially when multiple violations are at issue; however Oregon case law holds that a 60 day suspension is warranted under these circumstances. The Oregon Supreme Court typically imposes a suspension of at least 60 days for a knowing neglect violation. *In re Redden*, 342 Or 393, 153 P3d 113 (2007). Additionally, in cases where an attorney knowingly fails to communicate with his client and knowingly fails to provide the client with his file, the court will impose a 30 day suspension. *In re Snyder* 348 Or 307, 232 P3d 952 (2010). Taken together, the sanctions imposed in *In re Redden* and *In re Snyder* suggest that a total suspension of 90 days is appropriate. However, in this matter, the mitigating factors outweigh the aggravating factors, and a 60 day suspension is appropriate. A suspension of this length is consistent with recent cases involving similar
violations. See *In re Yunker* 34 DB Rptr 26 (2020)(60 day suspension for violations of 1.3, 1.4(a), 1.4(b)); *In re Sowa* 34 DB Rptr 100 (2020)(60 day suspension for violations of RPC 1.3, 1.4(a), and 1.4(b)); *In re Holady* 33 DB Rptr 512 (2019)(60 day suspension for violations of RPC 1.3 and 1.15-1(d)).

11.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60-days for violation of RPC 1.3, RPC 1.4(a), and RPC 1.15-1(d), the sanction to be effective July 1, 2022.

12.

Respondent 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, Respondent has arranged for Dan Larsson, OSB# 041992, Larsson Immigration Group, P.C., 21210 Dove Lane, Bend, OR 97702 an active member of the Bar, to either take possession of or have ongoing access to Respondent’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Respondent represents that Dan Larsson has agreed to accept this responsibility.

13.

Respondent 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. Respondent 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.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

15.

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: U.S. District Court of Oregon, Ninth Circuit U.S. Court of Appeals, Eleventh Circuit U.S. Court of Appeals.

16.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 29, 2022. 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, 2022.

/s/ Jesse Maanao
Jesse Maanao, OSB No. 045333

EXECUTED this 28th day of February, 2022.

OREGON STATE BAR
By: /s/ Samuel Leineweber
   Samuel Leineweber, OSB No. 123704
   Assistant Disciplinary Counsel
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 Respondent is publicly reprimanded for violation of RPC 1.6(a).

DATED this 8th day of March 2022.

/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.
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.

Respondent 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).

On January 29, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violation of RPC 1.6(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

A client (Mother) retained Respondent for a domestic relations matter. When Mother became concerned that one of her children had been abused by a half-sibling living with Father, Respondent filed a motion to try to prevent the children’s winter visitation with Father, and Mother did not release her children for that visitation. Father’s counsel filed a motion to enforce parenting time, including a request for Mother to pay Father’s expenses in enforcing the parenting time schedule.

Before the subsequent summer visitation, Respondent corresponded with opposing counsel regarding visitation dates. After requesting dates from Mother to no avail, Respondent sent an email to opposing counsel informing him that she had requested dates, to no avail, and that she was losing patience. She also shared that her next communication would either be to provide dates or a motion to withdraw. Unbeknownst to Respondent, when she sent her email to opposing counsel, an email from Mother with dates was in her junk mail folder.

Shortly before the summer visitation was scheduled to begin, Respondent filed another motion in hopes of preventing the visit. In connection with the hearing on that motion, opposing counsel submitted proposed exhibits, which included a copy of above-described email. On the morning of that hearing, Mother’s motion was denied and the hearing was cancelled.

After that, Mother spoke with Respondent and expressed her frustration with Respondent for making her look bad to opposing counsel and Father.
Violations

6.

Respondent admits that, by conveying to opposing counsel that Mother was uncooperative, she violated RPC 1.6(a) by disclosing information that was embarrassing and potentially detrimental to Mother.

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 (ABA Standards). The ABA 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. Respondent violated her duty to preserve client confidences. ABA Standard 4.2. The ABA Standards presume that the most important ethical duties are those to which an attorney owes a client. ABA Standards at 5.

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. ABA 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, Respondent acted negligently in failing to be aware of the risks when she deviated from the standard of care that a reasonable lawyer would exercise to protect information relating to the representation of a client.

c. Injury. Injury can be either actual or potential under the ABA Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). Here, it is unclear if Respondent’s conduct injured Mother in the underlying matter. However, Mother suffered injury in the form of stress and anxiety upon reading Respondent’s email to Father’s counsel, which has been found to constitute actual injury. See In re Cohen, 330 Or 489, 496, 8 P3d 953 (2000); In re Schaffner, 325 Or 421, 426–27, 939 P2d 39 (1997) (both holding that client anxiety and frustration can constitute actual injury under the ABA Standards).

d. Aggravating Circumstances. Aggravating circumstances include:

1. Prior disciplinary offenses. ABA Standard 9.22(a). In analyzing prior offenses, the Oregon Supreme Court considers the following factors: (1) the relative seriousness of the prior offense and the sanction; (2) whether the prior offense is similar to the current case; (3) the number of prior offenses; (4) the recency of a prior offense; and (5) when did the conduct
at issue in the current matter occur relative to the imposition of the sanction in the prior offense. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997). Respondent received a public reprimand in 2017, 31 DB Rptr 14 (2017), and was suspended in 2019. 33 DB Rptr 448 (2019). Both sanctions were relatively serious and recent. The conduct at issue here occurred just a few months after the order imposing her suspension and while she was on probation, which demonstrates that Respondent had “both warning and knowledge of the disciplinary process” when she emailed opposing counsel. *In re Jones*, 326 Or 200 (quoting *In re Hereford*, 306 Or 69, 75, 756 P2d 30 (1988)), but, because both prior matters involved different ethical issues, they should be given less weight in aggravation. *In re Jones*, 326 Or at 201.

2. **Vulnerability of victim.** ABA Standard 9.22(h). Respondent’s client was under substantial stress in connection with the abuse allegations. When Respondent sent her email, an enforcement of parenting time motion was pending. Later, opposing counsel filed a motion for remedial contempt, so Mother was facing the possibility of substantial attorney fees.

3. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent was licensed to practice in Oregon in 1997.

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

1. **Absence of dishonest motive.** ABA Standard 9.32(b).

2. **Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.** ABA Standard 9.32(e).

8.

Under the ABA Standards, 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. ABA Standard 4.23.

9.

Prior decisions support imposition of a public reprimand:

*In re Robert C. Williamson*, 31 DB Rptr 173 (2017) [stipulated reprimand] – Attorney represented a general contractor in a construction dispute. About a week before the case was set for arbitration, the client fired attorney, and attorney moved to withdraw. In his declaration in support of his motion, attorney, who had previously defended the client on charges of DUII, revealed information relating to the former matter without obtaining the client’s consent, including his client’s conviction and the resulting sanctions.

In *Williamson*, despite attorney’s knowing conduct, which presumed a suspension, his long history of practice without any prior discipline and the predominance of mitigating factors resulted in a downward departure to a reprimand.
In re Andrew L. Vandergaw, 31 DB Rptr 9 (2017) [stipulated reprimand] – The attorney’s criminal defendant client failed to maintain contact with attorney, in spite of a release agreement requiring the client to do so. When the client appeared at a status hearing, attorney disclosed to the judge that the client had failed to maintain contact and the client was arrested for violating his release agreement. The client’s failure to maintain contact with attorney was information relating to the representation of a client, such that attorney’s disclosure of this fact violated this rule.

The attorney acted negligently here, but his statement created actual injury to the client, when his client was arrested for violating his release agreement.

In re Lois A. Albright, 29 DB Rptr 147 (2015) [stipulated reprimand] – Several days before the trial date in a divorce proceeding, attorney received a settlement offer from opposing counsel. Client reported to attorney that she was unable to meet to review offer due to a doctor’s appointment arising from certain physical symptoms that made her concerned that a previous health problem had returned, and that she wanted to keep this information private. The next day, attorney wrote a letter to opposing counsel explaining why the settlement could not be finalized, revealed that client had a doctor’s appointment that day; that she expected to undergo further testing; that she was uncertain about the condition of her health; that she had not talked with anyone about her symptoms; and that she did not want anyone to know about them.

Consistent with the ABA Standards and Oregon precedent and in light of the greater number of factors in aggravation, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 1.6(a).

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. 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, 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.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 29, 2022. 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 3rd day of March 2022.

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

EXECUTED this 4th day of March 2022.

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. 21-54
LARA M. GARDNER, Bar No. 033206 )
Respondent. )

Counsel for the Bar: Eric J. Collins
Counsel for the Respondent: Peter R. Jarvis and Trisha Thompson
Disciplinary Board: None
Effective Date of Order: March 9, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Lara M. Gardner is publicly reprimanded for violation of RPC 8.4(a)(3).

DATED this 9th day of March 2022.

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

STIPULATION FOR DISCIPLINE

Lara M. Gardner, 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.
Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 26, 2003, and has been a member of the Bar continuously since that time, having her office and place of business in Benton County, Oregon.

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).

On June 5, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violation of RPC 8.4(a)(3) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

In 2019, Respondent was told that inmates incarcerated at Oregon State Prison (OSP) carry papers on their persons to show other inmates what crimes they had been convicted of. She was also told that convictions for certain crimes would result in the inmate being targeted by other inmates and frequently subjected to substantial harm or even killed.

Between September 2019 and November 2019, Respondent was asked by her brother, who was then incarcerated at the Marion County Jail (MCJ), to create documents for other inmates whom he believed would be targeted for substantial harm or killed in OSP. In response, Respondent created two documents for inmates incarcerated at MCJ (the Recipients) to carry on their persons once they were transferred to OSP. The documents purported to show that the Recipients were charged or convicted of crimes that were different than the crimes that the Recipients were actually charged or convicted with. The first document purported to be an official order from the State of Oregon Board of Parole and Post-Prison Supervision (PPS order); the second document purported to be an indictment in a then-pending Marion County criminal court case. Respondent did not forge any signatures on the documents. She sent both documents to her brother through the mail.

Respondent did not intend for the documents to be used for any official purpose. Respondent believed that the documents would only be used by the Recipients to show other inmates for the purpose of avoiding substantial bodily harm or death.
Respondent’s brother told Respondent that he provided the PPS order she created to the inmate named on that document prior to that inmate’s transfer to prison. The other document created by Respondent was intercepted by MCJ staff in the mail and turned over to the Marion County District Attorney’s Office for investigation. Prosecutors considered using the intercepted document in its case against the intended recipient, but ultimately did not do so. Respondent did not know that that recipient’s case was still pending when she created the document for him.

Violations

9.

Respondent admits that her conduct in paragraphs 5, 6, 7, and 8 above involved dishonesty, fraud, deceit, or misrepresentation that reflects adversely on her fitness to practice law, in violation of RPC 8.4(a)(3).

Sanction

10.

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 (ABA Standards). The ABA 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. Respondent violated her duty to maintain her personal integrity. ABA Standard 5.1.

b. Mental State. The ABA 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. ABA 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. Respondent acted intentionally in creating documents that she anticipated would be used by the Recipients to deceive other inmates.

c. Injury. Injury can be either actual or potential under the ABA Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). Injury is defined as harm to a client, the public, the legal system, or the profession that results from a lawyer’s misconduct. Potential injury is the harm that is reasonably foreseeable at the time of the misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. ABA Standards at 9.
Here, Respondent’s conduct caused actual harm. The Marion County jail and district attorney’s office had to expend time and resources investigating the matter. *In re Carpenter*, 337 Or 226, 238, 95 P3d 203 (2004). Respondent’s conduct also created a risk of potential injury to one of the intended recipients when prosecutors considered using the false indictment as evidence against the inmate named on that document, whose criminal case was still pending.

d. **Aggravating Circumstances.** Aggravating circumstances include:
   
   1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been licensed to practice law in Oregon since September 26, 2003.

e. **Mitigating Circumstances.** Mitigating circumstances include:
   
   2. Character or reputation. ABA Standard 9.32(g).

Under ABA Standard 5.13, reprimand is generally appropriate when a lawyer knowingly engages in non-criminal conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer’s fitness to practice law.

Oregon lawyers found to have engaged in conduct involving misrepresentation and dishonesty in matters outside of their law practice have received public reprimands. See, e.g., *In re Carpenter*, 337 Or 226, 95 P3d 203 (2004) (lawyer engaged in dishonesty when he created an Internet account in the name of a high school teacher in his community and posted a message to an online bulletin board purportedly written by the teacher that suggested the teacher had engaged in sexual relations with his students); *In re Kumley*, 335 Or 639, 75 P3d 432 (2003) (lawyer gave false impression he was presently qualified to practice law when the lawyer, who was an inactive member of the bar, filed forms in connection with his candidacy for public office that listed his present occupation as attorney while omitting mention of his former occupation as practicing attorney).

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 8.4(a)(3), the sanction to be effective the day the stipulation is approved.

In addition, on or before May 1, 2022, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of $825.50, incurred for Respondent’s deposition. Should Respondent fail to pay $825.50 in full by May 1, 2022, 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.
15. 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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

16. 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: Washington.

17. Approval of this Stipulation for Discipline as to substance was given by the SPRB on February 17, 2022. 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 2022.

/s/ Lara M. Gardner
Lara M. Gardner, OSB No. 033206

APPROVED AS TO FORM AND CONTENT:

/s/ Trisha Thompson
Trisha Thompson, OSB No. 164929

EXECUTED this 9th day of March 2022.

OREGON STATE BAR
By: /s/ Eric J. Collins
Eric J. Collins, OSB No. 122997
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )

Complaint as to the Conduct of ) Case No. 19-125

D. RAHN HOSTETTER, Bar No. 782477 )

Respondent. )

Counsel for the Bar: Eric J. Collins
Counsel for the Respondent: Peter R. Jarvis and Trisha Thompson
Disciplinary Board: Mark A. Turner, Adjudicator
Elizabeth A. Dickson
Burl A. Baker, Public Member
Disposition: No violation of RPC 1.1, RPC 1.7(a)(2), and RPC 8.4(a)(4). Trial Panel Opinion. Dismissal.
Effective Date of Opinion: March 12, 2022

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged respondent D. Rahn Hostetter with violation of three Oregon Rules of Professional Conduct: RPC 1.1 (failure to provide competent representation), RPC 1.7(a)(2) (current client conflict of interest), and RPC 8.4(a)(4) (engaging in conduct prejudicial to the administration of justice).

The charges arise from Respondent’s representation of an individual, Gari Price (Price), (or “Gari” in Bar documents), now deceased. Price was elderly and estranged from his children. His wife had divorced him after 62 years of marriage and was deceased at the time of relevant events. Price wanted to ensure that his 46-acre ranch property near La Grande would not be further developed and would be preserved for wildlife after his death. Price wanted to give the property and improvements to Clint Troyer (Troyer), a man who had recently befriended Price and was caring for him. Price’s children lived elsewhere, and were not providing consistent support for their father. Troyer refused to accept the land as a gift, but was willing to buy it and preserve it the way Price wanted. He also was willing to provide care to the 88-year-old so he could live out the remainder of his life on the ranch.

Price hired Respondent to handle the land sale. Respondent worked on the transaction, but anticipated resistance from Price’s children. He ultimately advised his client to follow a strategy that required the appointment of a guardian (Troyer) and a conservator, with the conservator’s approval a necessary precondition of any land sale. Price’s children objected to the guardian and the conservator nominated by Respondent and proposed that Price’s oldest daughter, Suzi Kelley (Kelley) be appointed to both positions. A court battle ensued and Kelly
was ultimately appointed both guardian and conservator, over her father’s objection. Price died not long thereafter. Subsequently, the property was not sold to Troyer. Instead the evidence at trial was that the children sold the property, and the purchaser was subdividing and selling the property for development, directly contrary to Price’s wishes.

The Bar alleged that Respondent’s work on behalf of Price was incompetent, that Respondent had a conflict of interest when he personally petitioned the court to appoint a guardian and conservator for Price, and that his handling of the ensuing proceedings involved conduct prejudicial to the administration of justice. The Bar asked for a nine-month suspension as the appropriate sanction.

The case was tried by videoconference over a five-day period, October 25–29, 2021, before a trial panel consisting of the Adjudicator, Mark A. Turner, attorney member Elizabeth A. Dickson, and public member Burl A. Baker. The Bar appeared through counsel, Eric Collins and Rebecca Salwin. Respondent appeared personally and was represented by counsel, Peter Jarvis and Trisha Thompson.

After consideration of the evidence and the arguments of the parties, and as explained in detail below, the panel finds that the Bar failed to prove any of the charges by clear and convincing evidence. The charges are dismissed.

FACTS

Price and his wife raised five children on a 137-acre property near La Grande that Price dubbed “Monticola Ranch.” The couple dissolved their 62-year marriage in 2012, apparently initiated by their children. Mrs. Price was suffering health problems, including dementia, and had been moved to an adult foster home. Ex. 2. The adult children of Price claim he was resistant to paying for his wife’s medical expenses and care. One of the daughters, Barbara Johnson (Johnson), acting on behalf of their mother, filed the dissolution action to divide the property, allegedly to provide a means of support for Mrs. Price. Ex. 1.

Judge Russell West presided over the divorce proceedings and divided the property between husband and wife in a Dissolution Opinion dated November 13, 2012. Ex. 2. At the time of the dissolution, the real property awarded to Price was valued by the judge at $800,000, less a mortgage of about $125,000. Ex. 2 at 10. Price received a roughly 33-acre tax lot upon which the family house was located and another 13-acre tax lot for a total of about 46 acres. Price’s wife received the remainder. Price had asked the court to sell a conservation easement to raise money for his wife’s care and then order sale of the entire ranch. Id. at 1. Price wanted to avoid developing the ranch and preserve habitat for elk and deer. The judge rejected that approach as “misguided and unrealistic” due to the time that would be required to sell a conservation easement and the fact that no conservation group had made an offer to purchase such an easement. Id. at 9. The judge also noted that the property value would be cut in half if a conservation easement were applied to the property. Id.1

1 In a prescient statement relevant to this proceeding, the judge stated in late 2012: “It appears husband is having problems with cognitive functioning and decision making. I find that it is only a matter of time before husband needs assistance with his own care. I find that he needs assistance at this time with his financial affairs.” Ex. 2 at 6 (emphasis added).
Price lived alone in the family house after the dissolution and increasingly neglected his personal care. He also exhibited cognitive decline. His ex-wife soon died, and the children began selling parts of the ranch she had been awarded in the dissolution. Troyer entered into an agreement with Johnson to buy a 14-acre portion of that land for $195,000. Price and Troyer did not know one another at that time.

In October 2016, Troyer stopped at Price’s house. This was their first meeting. At the time he testified in this proceeding, Troyer was 50 years old. He operates two companies that employ approximately 15 people, one of which is a lawn care business.

When they first met they spoke on Price’s deck and Price asked Troyer for help cleaning up some of his property. Tr. at 824. Approximately two weeks later Troyer sent a crew to help Price by stacking firewood that he used for home heat. About this time Troyer first went into the house with Price and saw that it was a mess, with animal feces and trash scattered in the main room. Tr. at 826–28. The refrigerator/freezer was broken and Price had made himself sick eating spoiled food. Price had moved his bed from the bedroom to the main room next to the fireplace for warmth. Troyer brought Price a meal later that day. After this, Troyer began to visit Price regularly. He brought him meals twice a day, arranged for a housekeeper to clean and otherwise provided transportation and personal care to Price.

Price spoke with Troyer about his hope for the property and his concern that it might be subdivided and developed by his children, as they were doing with the portion of the property given to his wife in the dissolution proceeding. Troyer was aware that Price did not have a good relationship with his children. Tr. at 828.

Price told Troyer that he wanted to give Troyer his property because Troyer would preserve it as Price wanted. Troyer rejected the idea of a gift, and told Price that he would be interested in purchasing the property from Price. Tr. at 834–35. Troyer advised Price that he needed to have a lawyer represent him in the transaction, and later in October made arrangements for Price to meet with a local attorney, Jesse Hardval (Hardval), on October 24, 2016. Tr. at 836. Troyer emailed Hardval after a phone call describing the basic facts as: 1) Price wishes to gift the property to Troyer; 2) Troyer would assume the mortgage (estimated at $118,000); 3) Price wanted to stay on the property until his death; and 4) “under no circumstances is the property to be subdivided.” Ex. 6. Troyer concluded: “If this case was to be agreed to be handled by your firm I would insist that a meeting with [Price] would ensue promptly so that he could express his wishes in person.” Id. Hardval had been in practice for seven months by this time.

Price met privately with Hardval. Hardval’s law firm declined the representation. Hardval’s letter to Price declining the engagement stated that he was concerned that the transaction “raises [too] many red flags for undue influence and lack of capacity.” Ex. 8.

Soon thereafter both parties signed a four-page purchase and sale agreement drafted by Respondent that sold all of Price’s land to Troyer for $400,000. Ex. 16. Respondent included certain conditions that were critical to Price. The parties had to reach agreement on the terms of a life estate in favor of Price that would allow Price to live on the property until his death, and the sale was contingent on a “conservation easement to be drafted and recorded before the closing date,” which, under the contract, was to occur on or before April 1, 2017. At Price’s direction, Respondent also notified Price’s son Peter Price (Peter) that Price was revoking a power of attorney he had previously granted to Peter.

Troyer was unable to secure financing to purchase the 14-acre property from the estate of Price’s ex-wife for $195,000, and that deal fell by the wayside. We heard no further evidence about it.

In early March 2017, Price’s oldest daughter, Kelley, first learned details of the sale from her father and Troyer, which Kelley summarized in an email to her brothers dated March 5, 2017, Exhibit 24, and an email to Respondent dated March 10, 2017, Exhibit 30. She understood that Troyer and his family would buy Price’s land and move into the home. Price would move into the property’s pool house after renovations that would make it habitable as an apartment. Kelley was told that the deal restricted Troyer’s ability to divide and sell the property, so that it would be preserved pursuant to Price’s wishes. Ex. 24. This was the first time Kelley and Troyer met. Troyer told her that Price had not wanted his children to know of the plan, but Kelley noted that Troyer “had no trouble telling me the plan right in front of dad.” Ex. 30.

During this time, Peter, who lived in Las Vegas, made a violent threat against Troyer in a phone call and Troyer responded in-kind. After Respondent learned of this incident, and believed Peter had threatened Price as well, he told Kelley that he reported his concerns about elder abuse to the authorities, and she told him that Troyer’s threats to Peter were also reported. Respondent emailed Kelley on March 9, 2017, stating: “In light of recent threats of violence, I intend to recommend to [Price] that we file a conservatorship and have any proposed transactions reviewed by a conservator or the court. That is the only way that my representation of [Price] can continue.” Ex. 26.

Respondent met with Price in person on March 14, 2017. After this, Respondent identified Tim Donivan (Donivan), to serve as Price’s conservator, if appointed. Donivan was Price’s neighbor. He was a long-time acquaintance. He was also a financial adviser and had managed Price and his wife’s finances in the past.

Respondent drafted a second purchase and sale agreement that included similar conditions to the first one—approval of a life estate and a “conservation easement to be drafted before closing.” Ex. 32. It added a new condition, that the terms of the agreement must be approved by a “court-appointed conservator.”

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2 The Bar noted this agreement incorrectly referenced only part of Price’s property, the tax lot containing his home, as subject to sale, and thus, it claims, would have subdivided Price’s property against his wishes. Respondent acknowledged that this was merely a drafting error that would have been caught when Troyer had to approve the preliminary title report pursuant to ¶ 4 of the agreement and that any ultimate sale would have included the entire property.
Following through on the course of action he outlined to Kelley, Respondent, as petitioner, filed a petition seeking the appointment of Troyer as guardian and Donivan as conservator for Price on March 28, 2017. Ex. 36. Respondent did not mention Troyer’s or Donivan’s relationship to Price or the pending land sale in the petition. Respondent estimated the value of Price’s estate at $500,000. Respondent described his client as “semi-incapacitated” and “suffering from diminished mental acuity” with “money and real property that requires management and protection by a capable financial manager and counselor.” Id. at 2.

The same day Respondent’s office emailed Troyer an unsigned copy of the second purchase and sale agreement for his review. Unknown to Respondent, the purchase and sale agreement was signed by Price and Troyer by March 31, 2017, and submitted to escrow with Eastern Oregon Title Co. Ex. 38.

In early April 2017, Price was hospitalized for an infection secondary to pneumonia. The court-appointed visitor designated to report on Price advised Judge West that Price was experiencing delirium stemming from the infection and possible side-effects of medication. Ex. 39. Around this time, several of Price’s children filed objections to Respondent’s petition, and Kelley filed a cross-petition seeking appointment of herself as guardian and conservator. Exs. 40, 41, 44, and 47.

On April 19, 2017, Respondent filed an amended petition seeking appointment of Troyer and Donivan as guardian and conservator, respectively. His amended petition described Troyer’s relationship to Price as “a friend of [Price] for over seven months. Mr. Troyer helps [Price] with his home and personal care.” Ex. 45. Respondent again did not mention the land sale. Respondent now identified Price as “incapacitated” rather than “semi-incapacitated.”


On May 23, 2017, Kelley filed a Petition to Appoint Temporary Guardian and Temporary Conservator. Ex. 51. Such a petition can be filed when the petitioner alleges an “immediate” threat to the protected person’s finances. ORS 125.600(1). A petition to appoint a temporary guardian and temporary conservator proceeds on an expedited schedule. ORS 125.605. Kelley’s attorney, Timothy Marble (Marble), sent a letter to the court stating that he had set the deadline for objection as May 25, 2017, and pursuant to ORS 125.605(5) asked the court to hold a hearing on those objections within two judicial days of when they were filed. Ex. 50. On Wednesday May 24, 2017, Respondent’s associate, Benjamin Boyd, filed a motion to strike and dismiss the Temporary Petition. Ex. 56. Respondent was out of town at the time.

On the afternoon of May 24, 2017, Respondent’s office received a notice that a “Hearing – Case Management” had been set for May 31, 2017 in the protective proceeding. Ex. 57. The notice stated in capital letters:

“JUDGE POWERS PRESIDING; 30 MIN ALLOWED; RE: SCHEDULING ALL PENDING MATTERS; ATTYS TO HAVE SCHEDULES READY.”

Id. Respondent’s office moved to disqualify Judge Powers the next day. Ex. 268. Later that day, Respondent received a notice that the hearing had been moved to May 30, 2017. Ex. 270. It stated, again in capital letters:
Respondent testified at trial that he understood the notice to advise all parties that the May 30, 2017 hearing was a scheduling conference. Respondent’s office manager, Tami Phinney, emailed Respondent that afternoon asking if he wanted to file a motion to appear by telephone “since it is only relating to scheduling all pending matters.” Ex. 272. Respondent, who lives approximately 60 miles from the Union County Courthouse, told Ms. Phinney he wanted to appear by phone and that they would file a motion the next day. Id.

Uniform Trial Court Rule 5.050 allows a party to request that “a nonevidentiary hearing or a motion not requiring testimony be heard by telecommunication.” Respondent filed a motion to appear by telephone. Ex. 274. Judge West granted the motion and allowed Respondent to appear by telephone. Ex. 275. Judge West also permitted the attorney for one of Price’s daughters to appear by phone.

On Tuesday May 30, the day after Memorial Day, Respondent appeared telephonically at the hearing. Judge West began the proceedings by expressing surprise that Respondent did not appear in person. Ex. 65, at 5:21-22. Respondent explained: “. . . I saw this scheduling that says scheduling all pending matters. That’s what it said; that’s what I expected this call to be, to schedule a hearing. So, no, I didn’t have time, nor did I understand the need to line up witnesses for this; I thought this was simply to schedule what was coming up. So you won’t be hearing from Clint Troyer, and you need to.” Id. at 16:18-24.

Respondent then argued that Price did not want Kelley to be his fiduciary in any capacity and that there was no emergency or imminent threat to Price or his finances that necessitated a temporary guardian or conservator. Respondent offered the video deposition of Price, which attorney Marble had brought to court. Id. at 25:29-24. Respondent’s staff also successfully contacted Troyer who immediately traveled to La Grande from Baker City and appeared as a witness. Id. at 133:3-154:4.

Judge West ultimately ruled that Kelley would serve as Price’s temporary guardian and conservator. No evidence was presented in this disciplinary proceeding to suggest that Respondent’s physical presence at the hearing or any other evidence he might have presented at the hearing would have led to a different outcome.

On June 7, 2017, Kelley filed a motion seeking an order to remove Respondent as counsel for Price and replace him with attorney Michael Collins, who had represented Price’s daughter Johnson as Mrs. Price’s conservator during and after the dissolution proceeding. The motion stated:

“Although Oregon Rule of Professional Conduct 1.14 allows that an attorney may seek the appointment of guardian and conservator for his or her own client, it does not specifically allow that the attorney may continue representing the impaired client in a subsequent hearing.” Ex. 70.

It goes on to state that Price had submitted an objection to the petition. The motion stated that “The Objection does not specify a particular person that Mr. Price does not want to serve as a fiduciary, but appears to be a general objection to the proceeding.” Id. It concluded,
“As his attorney, [Respondent] is therefore obligated to contend for a position which, as petitioner, [Respondent] has directly opposed. This is a non-waivable conflict of interest.” *Id.* This was not true.

The objection Price himself had earlier submitted was not a general objection to the proceeding. Instead, it was a form objection specific as to Kelley. Ex. 261. The form provided an option to choose as an objection: “I do not want anyone else making any of my decisions for me.” Price did not check that option, but instead checked: “I do not want [proposed guardian] making any decisions for me.” *Id.* In a later objection to appointment of a temporary guardian and temporary conservator filed by Boyd on behalf of Price on May 24, 2017, he reminded the court that, at Price’s perpetuation deposition, “[Price] adamantly opposed appointment of [Kelley] to act for him in any capacity whatsoever.” Ex. 55 at 4.

As the dispute between Price and his children continued, Respondent was concerned about protecting client confidences and privileged communications if he was subject to discovery requests from Kelley. Ex. 69. Respondent obtained a lawyer through the Professional Liability Fund (PLF), Thomas Peachey, to help him manage the issues. Peachey filed a Motion for Protective Order on June 19, 2017. Ex. 285. The same day, Marble sent Respondent a letter confirming that the parties had agreed that “the deadline for filing a response to my motion for substitute counsel will be June 26, 2017.” Ex. 286.

On Friday June 23, 2017, the court issued a notice of a hearing at 9:00 AM on Monday June 26, 2017. The notice stated that it was a hearing on “MOTION FOR PROTECTIVE ORDER.” Ex. 287. The notice does not mention the motion for substitute counsel.

At the hearing on June 26, 2017, Judge West announced that he would hear argument on both Respondent’s motion for a protective order and on Kelley’s motion for substitute counsel. Ex. 76 at 4:6-10. Respondent stated that the notice of hearing did not reference the motion for substitute counsel. He stated he was not prepared to address that motion and told the court that the deadline to file a response to Kelley’s motion was midnight that same day. His office was preparing to file his response later that day. *Id.* at 5:21-25. Judge West stated that he had notified the parties on Friday, June 23, 2017, by letter that he would be hearing both motions on the 26th and that he was not willing to wait to hear it. *Id.* at 6:1-8. Respondent said he never received such a letter. He also told the court that he and Marble had agreed that Respondent could file his opposition that day. *Id.* at 6: 9-13. Neither party offered into evidence at this proceeding any letter or other communication from the court regarding consolidation of the motions at the hearing. The only written notice as to the hearing that is in the record is Exhibit 287, which references only the motion for protective order.

Price testified during the hearing that he chose Respondent to be his lawyer because he had seen three or four lawyers in La Grande who would not fulfill his wishes for the property. *Id.* at 96: 8-14. He knew what a guardian was and wanted Troyer to be his guardian. *Id.* at 96: 21—97: 5. He did not want Kelley to be his guardian because she did not value the property the same way he did—she was interested in “dollars” rather than the beauty of the area. *Id.* at 97: 15-23. He further testified that he trusted Donivan and wanted him to manage his finances. *Id.* at 99: 11-25.

Respondent’s office submitted a written response during the hearing. At the end of the hearing, Judge West permitted Respondent to also file a supplemental response on June 27,
2017. Respondent did so. Counsel for Kelley and Peter each filed a reply to this supplemental response on June 28, 2017.

On July 3, 2017, Judge West issued an opinion granting the motion to remove Respondent as Price’s counsel. Ex. 79. Judge West held that Troyer had a conflict of interest as the buyer of the property. The judge believed that Troyer exercised undue influence over Price to facilitate the land sale. He did not believe Price was capable of understanding and waiving any conflict involving Respondent, and that Price was not capable of choosing his own counsel. Judge West later appointed Bruce Anderson as Price’s new counsel, rather than Collins, the lawyer Kelley had urged the court to appoint.

Judge West based his opinion in part on his stated belief that the $400,000 sales price was too low given that the fair market value of the property was $800,000 based upon his prior findings during the dissolution proceedings. Although he expressly took judicial notice of the entire record in the Price dissolution case, he apparently did not recall, and did not take into account, his own finding in the dissolution case that applying a conservation easement to the property would reduce its value by half to $400,000.

Approximately one month after Respondent was removed as counsel, Kelley was appointed Price’s guardian and conservator indefinitely. Anderson, Price’s appointed lawyer, did not challenge her appointment. Judge West did, however, require court approval before leasing, selling, or encumbering the property. Ex. 87 at 240–41.

Price died sixteen days later, on August 18, 2017. Respondent contended that Price lost the will to live once Kelley was appointed indefinite guardian and conservator because he did not believe she would fulfill his wishes as to preserving the property.

Apparently, he was right. On October 8, 2017, Kelley, as personal representative for Price’s estate, sold what remained of the ranch for $815,000. Ex. 307. She took no steps to attempt to preserve it and no conservation easement or other restrictive covenant was entered into. Nor did the court require her to do so. Each of Price’s five children received a cash distribution from his estate of $77,385.21. Ex. 311. We were told the property has been subdivided and is being developed by the purchaser.

ANALYSIS OF THE CHARGES

1. **Respondent did not violate RPC 1.1**

   Although it is the Second Cause of Complaint in the Amended Formal Complaint, the Bar led in its trial memorandum with its charge that Respondent failed to provide competent representation. We will address that charge first.

   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 the Amended Formal Complaint, the Bar alleged that Respondent failed to provide competent representation in the following ways:
“18. In representing Price with respect to the sale of the ranch, Respondent failed to employ the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation, by doing one or more of the following:

A. Failed to adequately ascertain whether Price was competent to enter into the transactions described herein;

B. Failed to obtain independent valuation of the ranch or of the reduction in value of the ranch in light of the proposed life estate and conservation easement;

C. Failed to ascertain whether Price’s sale of his primary asset for less than full value was in Price’s best interests, given Price’s age and the need to maximize resources for his care;

D. Knowing that preserving the ranch against partition and development after his death was Price’s key objective in the representation, Respondent failed to prepare the conservation easement; and

E. Drafted a land sale contract that conveyed only one of the two tax lots comprising the ranch, which would have resulted in a partition of the ranch if enforced.

19. In the probate proceeding described herein, Respondent failed to employ the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation, by doing one or more of the following:

A. Failed to adequately assess and pursue lesser restrictive alternatives to the filing of a petition for guardianship and conservatorship to accomplish the objectives of the representation;

B. Sought the appointment as guardian of an individual, Troyer, whose interests as the putative buyer of the ranch were in conflict with Price’s interests as the seller of the ranch;

C. Failed to read the order setting the May 30, 2017, hearing on his objections to Kelley’s petition for the appointment of temporary fiduciaries described in paragraph 15 herein;

D. Failed to appear in person at the May 30, 2017, hearing on Kelley’s petition for the appointment of temporary fiduciaries, or to request that the hearing be reset for a time at which he could appear in person;

E. Failed to prepare for the May 30, 2017, hearing, produce evidence, or arrange for the appearances of witnesses; and

F. Failed to timely file his objections and supporting memorandum to Kelley’s motion for substitution and appointment of counsel for Price.”
In its trial memorandum, the Bar expanded the list of acts and omissions it argued violated the rule:

- Respondent failed to adequately ascertain whether Gari needed a conservator and guardian to manage his financial affairs, in light of his belief that Gari was competent to enter into the land sale contract.

- Respondent sought the appointment of Troyer as guardian, despite Troyer’s obvious conflict of interest as potential buyer of Gari’s property. If appointed as guardian by the court, Troyer would have the power to relocate Gari at any time to a care facility, ridding himself of the burden of Gari’s care after taking over his property for approximately half its market value.

- Respondent failed to bind Troyer to any specific plan of future care for Gari in exchange for the sale of Gari’s property to Troyer at about half of its fair market value. This oversight made it less likely the court would approve the land sale; further, Gari would have had little recourse if Troyer failed to follow through with his many promises for remodeling and upkeep of the property.

- Respondent failed to follow through with measures to secure a conservation easement for Gari’s property.

- When Peter angrily voiced his displeasure about Troyer and the land sale in a phone call, Respondent almost immediately advised his client to seek court intervention as a means of consummating the land sale, when other measures could have better served his client.

- Respondent advised Gari to pursue a legal strategy that foreseeably would cost his client extensive legal fees. He did so at a time when his client had limited financial resources and when any sale proceeds were needed to both pay off substantial debts and fund Gari’s future health-care expenses.

- Respondent advised his client to pursue a legal strategy that would provide his children reason to intervene in court and effectively block the land sale.

- Respondent advised his client to pursue a legal strategy that would require the appointment of a conservator and then, eventually, under ORS 125.430, would require notice to the children of the sale of Gari’s home, and court approval of that sale.

- Respondent advised his client to pursue a legal strategy that subjected his client to a total loss of autonomy that would result from the appointment of an indefinite conservator and guardian, without considering less restrictive alternatives.

- Respondent drafted a second land sale contract that conveyed only part of Gari’s property to Troyer, thereby effectively partitioning the
property contrary to Gari’s express wishes to have one person own all of his property and preserve it.

- Respondent failed to properly identify the property for sale in the second land sale contract or have the parties provide a date on which they signed the contract.

- Respondent failed to understand an order setting a May 30, 2017, evidentiary hearing set in response to the objection he filed on behalf of Gari to the appointment of Suzi as temporary fiduciary. He failed to have witnesses or evidence prepared for the hearing and failed to request a setover of the hearing after realizing he was unprepared—to Gari’s detriment.

- Respondent failed to timely file his objections to Suzi’s motion seeking his removal as Gari’s lawyer and came to the hearing on that motion unprepared to argue it.

Respondent moved at trial to strike certain of these specifications on the grounds that they were not pleaded in the Amended Formal Complaint. In In re Conduct of Ellis, 356 Or. 691, 344 P.3d 425 (Or. 2015), the Supreme Court stated:

“An accused lawyer must be put on notice “of the conduct constituting the violation,” as well as the rule violation at issue. In re Magar, 296 Or. 799, 806 n. 3, 681 P.2d 93 (1984). In that regard, BR 4.1(c) provides, in part:

‘A formal complaint shall *** set forth succinctly the acts or omissions of the accused, including the specific statutes or disciplinary rules violated, so as to enable the accused to know the nature of the charge or charges against the accused.’

“That rule ‘does not obligate the Bar to plead any fact regarding a charge *** beyond those that the *** [former] disciplinary rules identify.’ In re Kluge, 332 Or. 251, 262, 27 P.3d 102 (2001). The Bar must, however, sufficiently allege facts in connection with the charged allegation. (citing multiple cases).”

356 Or at 738–39 (emphasis added).

Respondent is correct that many of the additional specifications in the trial memorandum allege acts and omissions beyond those identified in the Amended Formal Complaint, and thus we could ignore these in considering this charge. Rather than strike these matters, however, the Adjudicator has concluded that the trial panel will consider all of the Bar’s specifications in the trial brief because we conclude that the Bar has failed to prove any of them by clear and convincing evidence.

“Whether a lawyer has provided competent representation is a fact-specific inquiry.” In re Conduct of Obert, 352 Or. 231, 250, 282 P.3d 825 (2012) (internal quotes omitted). RPC 1.1 does not impose a standard of perfection, and a comment to the corresponding ABA Model Rule 1.1 notes, “In many instances, the required proficiency is that of a general practitioner.” ABA Model Rule 1.1, Official Comment [1].

Oregon case law has noted that isolated instances of ordinary negligence may result in civil liability but they are not enough to warrant disciplinary action. See, e.g., In re Gygi, 273
Or 443, 450–51, 541 P2d 1392 (1975). “The focus is not on whether a lawyer may have neglected a particular task, but rather whether his or her representation in the broader context of the representation reflects the knowledge, skill, thoroughness, and preparation that the rule requires.” Obert, 352 Or at 250 (internal quotes omitted).

Simply put, the fact that alternatives existed to the course of action chosen by Respondent does not establish incompetence. Mere disagreement about choices among alternative courses of action does not establish incompetence. The fact that an expert may testify that she would have done things differently, as occurred here, does not establish incompetence. At the end of the day, that is all we have in this case.

We address the specifications serially:

- Respondent failed to adequately ascertain whether Gari needed a conservator and guardian to manage his financial affairs, in light of his belief that Gari was competent to enter into the land sale contract.

This specification was not proved. At most, the Bar’s evidence at trial showed that reasonable minds could differ as to whether to seek appointment of a guardian and conservator. The Bar’s expert testified that she would have chosen a different path. But that does not make Respondent’s actions incompetent by any stretch. The evidence showed that Price was competent enough to know that he wanted to sell his property and the general conditions under which he was willing to do so, but still needed the guidance of a conservator to select the specifics of a transaction. Moreover, Respondent’s decision to seek a guardian and conservator for Price was vindicated when the court in fact ordered that such be appointed. Although the court disagreed with the individuals nominated by Respondent, it concurred in his assessment that Price needed someone to manage his affairs.

- Respondent sought the appointment of Troyer as guardian, despite Troyer’s obvious conflict of interest as potential buyer of Gari’s property. If appointed as guardian by the court, Troyer would have the power to relocate Gari at any time to a care facility, ridding himself of the burden of Gari’s care after taking over his property for approximately half its market value.

This specification was not proved either. Troyer’s nomination to be guardian did not create a conflict of interest arising from his role as purchaser in the land sale because the conservator (and the court per ORS 125.430(1)), not the guardian, would have to approve any such sale. The Bar’s argument also misses the point that the terms of Price’s life estate and care arrangements with Troyer were left to be negotiated. They were not specified in the purchase and sale agreement, they were not intended to be specified in the purchase and sale agreement, and they did not need to be.

The Bar continually ignored the fact that the purchase and sale agreements for the property were prepared by Respondent as a starting point, not a final recitation of, the parties’ understanding. There were terms expressly left to be negotiated, including what conservation restriction would be employed and how Price’s life estate would be conditioned, that were plain on the face of the agreements, yet the Bar constantly argued that Respondent was incompetent when he failed to include these terms in the initial agreement. The Bar’s position ignored both the testimony and the common practice used in land sale transactions.
This specification also recites the Bar’s contention that the sale price of $400,000 was not fair market value. The Bar ignored Judge West’s own conclusion that a conservation restriction on the property would reduce its value to approximately $400,000, as well as the opinion of Patty Glaze, a real estate agent to the same effect. Ex. 18. The constant repetition of the unproven claim that the property was being sold for an unfair price, when that was clearly Price’s intent due to the conditions he required, weakened the Bar’s case more than on just this specification.

Finally, the Bar ignored the provisions of ORS 125.320(3), which requires a guardian to file with the court and serve on the protected party a statement of intent to move that person to a care facility. The protected party may object and the court must hold a hearing. Troyer’s appointment as guardian would not have given him carte blanche to run roughshod over Price’s rights or wishes.

- Respondent failed to bind Troyer to any specific plan of future care for Gari in exchange for the sale of Gari’s property to Troyer at about half of its fair market value. This oversight made it less likely the court would approve the land sale; further, Gari would have had little recourse if Troyer failed to follow through with his many promises for remodeling and upkeep of the property.

This is another specification of Respondent incompetence that ignored the reality that terms remained to be negotiated. It also ignored the reality of a guardianship. A guardian is under the constant eye of the court. ORS 125.315. And because the court, along with the conservator, had to approve the sale of the residence, either could have insisted on more elaboration of Troyer’s plans as guardian if they were deemed inadequate. In addition, if Troyer ever sought to “change the abode” of Price, he was subject to court oversight. ORS 125.320(3). In any event, the claim that this alleged “oversight” was incompetence that violated the rule is merely a bald assertion.

- Respondent failed to follow through with measures to secure a conservation easement for Gari’s property.

Failure to secure a conservation easement on the property under the circumstances did not demonstrate Respondent’s lack of competence for multiple reasons. First, before Respondent could complete this task, he became embroiled in the litigation with Price’s children. The Bar produced no evidence that Respondent had a duty to secure a conservation easement, or that the level of appropriate competence applied to the matter would have resulted in securing a conservation easement, that early in the process.

Second, the Bar’s position on the issue of a conservation easement was willfully obtuse. The Bar presented evidence at trial that the term “conservation easement” must mean a statutorily recognized restriction on a property’s use that is sold to an entity recognized under the conservation easement law. The evidence showed that Price himself had at some time prior to the events here solicited the Rocky Mountain Elk Foundation to purchase an easement on his property. The foundation was apparently not interested.

This was consistent with the testimony of the Bar’s expert, Steve Cook, general counsel for Columbia Land Trust, who testified that statutory conservation easements could be difficult to obtain, and oftentimes required the property owner to make a significant contribution to the
entity to induce the purchase. Tr. at 578–79. He stated that the odds of obtaining a conservation easement are against the landowner unless the property is “fairly exceptional.” Id. Cook also testified, however, that there were other mechanisms by which a property owner could restrict future development, such as private easements or restrictive covenants. This approach might not be the ideal, but it is a reasonable alternative if no third party is willing to purchase a statutory conservation easement. Tr. at 580. He stated that such a choice would be “rational” if a statutory conservation easement was unavailable. Tr. at 594, 599.

Respondent’s testimony was undisputed that if a statutory conservation easement could not be arranged (as seemed likely given Price’s own prior personal experience) he would have gone the restrictive covenant route. His testimony was undisputed that his client understood this. Given this set of facts, it is unreasonable to conclude that Respondent’s failure to actually get a conservation easement during the period of time involved here was due to incompetence.

When Peter angrily voiced his displeasure about Troyer and the land sale in a phone call, Respondent almost immediately advised his client to seek court intervention as a means of consummating the land sale, when other measures could have better served his client.

This, again, is another conclusion with no evidentiary showing of wrongdoing. Respondent’s decision to initiate the protective proceeding for his client was not an irrational choice given the children’s hostility. The Bar presented no evidence that there were any better options available by which Respondent could have achieved his client’s wishes, much less that the path chosen was an act of incompetence. Again, the mere fact that there were alternative courses of action Respondent could have chosen is not enough. In our view, the Bar was required as a threshold matter to demonstrate that better alternatives existed which actually could have fulfilled Price’s objectives. It did not do so. And it certainly did not prove by clear and convincing evidence that the option chosen was the result of incompetence.

Moreover, given the fact that the court ultimately found that Price should have a guardian and conservator appointed, it is hard to see how pursuing this alternative could be considered incompetent.

Respondent advised Gari to pursue a legal strategy that foreseeably would cost his client extensive legal fees. He did so at a time when his client had limited financial resources and when any sale proceeds were needed to both pay off substantial debts and fund Gari’s future healthcare expenses.

The Bar offered no evidence that a less costly alternative even existed to accomplish Respondent’s client’s objectives. We are convinced from the record before us that any attempt by Price to transfer his property, with the limits on development he desired, would inevitably reduce the sales price, and would have met with swift and determined resistance from his children. Respondent’s attempt to fulfill his client’s objectives in this way was not incompetent. Moreover, Respondent testified that he was always cognizant of the need to provide for Price’s future support in any scenario.
• Respondent advised his client to pursue a legal strategy that would provide his children reason to intervene in court and effectively block the land sale.

This claim suffered from the same defects as the one immediately above. The Price children opposed Price’s dreams for the property regardless of the legal strategy employed, as evidenced by their ultimate disposition of Price’s property against his wishes.

• Respondent advised his client to pursue a legal strategy that would require the appointment of a conservator and then, eventually, under ORS 125.430, would require notice to the children of the sale of Gari’s home, and court approval of that sale.

Respondent’s strategy was not incompetent. Appointment of a conservator and court approval of any sale were strategies utilized to enhance Price’s ability to prevail over his children’s preferences.

• Respondent advised his client to pursue a legal strategy that subjected his client to a total loss of autonomy that would result from the appointment of an indefinite conservator and guardian, without considering less restrictive alternatives.

The Bar’s evidence on this specification, again, was merely that less restrictive alternatives exist in a protected person proceeding and that its expert, Lisa Bertalan, a Bend estate-planning attorney, would have looked to them first. This does not constitute clear and convincing evidence that Respondent violated the rule. It also ignores the fact that Price, the client, desired appointment of a guardian and conservator; that as early as 2012 Judge West had opined that Price needed help managing his financial affairs; and that the court ultimately found that Price was indeed incapacitated sufficiently to merit appointment of both.

• Respondent drafted a second land sale contract that conveyed only part of Gari’s property to Troyer, thereby effectively partitioning the property contrary to Gari’s express wishes to have one person own all of his property and preserve it.

The drafting mistake in the second purchase and sale agreement was merely that, a mistake, one that both buyer and seller recognized and would have cured in the agreed-upon legal description. A drafting error that can be remedied is not incompetence under the rule. Furthermore, conveyance of part of a tract of land does not serve to partition it. It merely results in a divided legal lot.

• Respondent failed to properly identify the property for sale in the second land sale contract or have the parties provide a date on which they signed the contract.

The first part of this specification merely repeats the one above. The fact that Price and Troyer signed the agreement, without Respondent’s knowledge, and failed to date the document is not evidence that Respondent violated the rule.

• Respondent failed to understand an order setting a May 30, 2017, evidentiary hearing set in response to the objection he filed on behalf of Gari to the appointment of Suzi as temporary fiduciary. He failed to
have witnesses or evidence prepared for the hearing and failed to request a setover of the hearing after realizing he was unprepared—to Gari’s detriment.

Even if this specification were true, we are not convinced it would establish incompetence of the type to violate the rule. In fact, though, this specification is completely controverted by the record evidence. Respondent was reasonable in his belief that the scheduling orders sent by the court showed this was just that, a scheduling hearing. Moreover, the fact that the court approved his appearance by telephone reinforced this view. Under the UTCRs, the court should have notified the parties of the proceeding’s purpose, and should not have approved telephonic appearances if it expected evidence to be presented.

Under the circumstances, we believe Respondent presented the best case he could, even getting Troyer to the court to testify. Further, there was no evidence presented that asking for a setover would have improved the situation, much less that one would have been granted. Respondent made the best of a bad situation in front of a judge who was unwilling to recognize Respondent’s legitimate surprise that an evidentiary hearing was on the docket.

- Respondent failed to timely file his objections to Suzi’s motion seeking his removal as Gari’s lawyer and came to the hearing on that motion unprepared to argue it.

Respondent, again, had no reason to believe that the motion to remove him as counsel was on the docket for the day he appeared to argue the motion for protective order. The court notice made no mention of it. Opposing counsel had also given Respondent until the end of that day to file his opposition. We find it remarkable that the Bar claims that Respondent failed to timely file his objections in light of the express written agreement with Attorney Marble that the filing was due by the end of the day. Finally, the letter from the court that supposedly advised Respondent on the Friday before the Monday hearing that the motions were consolidated was strikingly absent from the record.

As mentioned at the beginning of our analysis, a violation of this rule must be premised on something other than mistakes in hindsight. In light of this proposition, we question the bringing of this charge after reviewing Exhibit 313, a February 21, 2019 letter from Maureen A. DeFrank of the PLF to Timothy Marble, attorney for Kelley. Marble had submitted a demand letter regarding a malpractice claim against Respondent. In denying the claim, the PLF responded:

“[Respondent] disagrees with a number of the factual assertions contained in your letter, and believes that Judge West’s findings were not supported by the evidence presented at the hearing. However, I do not believe it is necessary to detail the areas of disagreement. We believe the entirety of the evidence shows [Respondent’s] actions were taken pursuant to Gari Price’s instructions and in the interests of furthering his express wishes. Thus, we do not believe Ms. Kelley would prevail in pursuing a malpractice claim against Hostetter.

“Your primary focus seems to be that [Respondent] attempted to conduct the sale of Mr. Price’s property at a price below fair market value. First, he was specifically following his client’s wishes. Just because Mr. Price’s stated goals differed from those of his children does not mean they were not legitimate and
should not be pursued. Mr. Price had the right to do what he wanted with his property and [Respondent] endeavored to fulfill those goals. Sadly, Mr. Price’s stated desires for his property were never achieved.

“Second, your letter fails to take into account that the March 2017 property sale agreement prepared by [Respondent] specifically reserved a life estate in the property for Mr. Price, and provided for a conservation easement. As you are well aware, Mr. Price’s wishes that a conservation easement be placed on the property were long-standing and well-documented. Nor does anyone question that Mr. Price desired to live out his remaining days on his beloved property. Subjecting real property to a life estate and a conservation easement decreases the market value of the property. Factoring in the appropriate discounts for both a life estate and a conservation easement, the sales price set forth in the property sales agreement was not, in fact, well below market value.

“Because we believe [Respondent’s] actions did not fall below the standard of care, we hereby respectfully deny your client’s claim and demand.” Ex. 313.

The PLF was correct and the Price children never brought any claim against Respondent. Despite this, the Bar decided to pursue charges of incompetence against Respondent based on the same set of facts. The Bar failed to prove by clear and convincing evidence the specifications of incompetence set forth in the Amended Formal Complaint, as well as the additional specifications presented a week before trial in its trial memorandum.

We find that the Bar failed to prove by clear and convincing evidence that Respondent violated RPC 1.1. That charge is dismissed.

2. **Respondent did not violate RPC 1.7(a)(2)**

RPC 1.7(a)(2) states:

“Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if … there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”

The Bar pursued two theories supporting its charge that Respondent violated RPC 1.7(a)(2). It contended first that Respondent had a personal conflict because as petitioner in the protected person proceeding he needed to establish that Price was incapacitated, while as Price’s counsel in the land sale he needed to establish that Price was competent to enter into the agreement. The Bar then contends that a conflict arose when Respondent petitioned the court to find Price incapacitated without a written waiver. We find both theories inadequate.

The Bar premised its case on a black-or-white view of incapacity. Under that approach, if Price was competent to enter into the land sale agreement he was, therefore, in need of no protection whatsoever, but if Price was in need of any protection at all, he was incompetent for all purposes. We reject that view. The record established that Price was competent at the relevant times to make overall decisions about how he wanted to dispose of his property. The record also established, even going back to 2012 and Judge West’s opinion in the dissolution proceeding, that Price had difficulty with the specifics of financial decision-making, and was
a viable candidate for appointment of a conservator and guardian. Incapacity determination by a lawyer is not as clear as the Bar claims here, as evidenced by prior Ethics Opinions. “In determining whether the client can adequately act in his or her own interests, the lawyer needs to examine whether the client can give direction on the decisions that the lawyer must ethically defer to the client. Short of a client being totally non-communicative or unavailable due to his or her condition, a lawyer can most often explain the decisions that the client faces in simple terms and elicit a sufficient response to allow the lawyer to proceed with the representation.” Oregon Formal Ethics Opinion 2005-159 (discussing incapacity in requesting a guardian ad litem in a juvenile dependency case).

Respondent took steps to confirm that Price was competent to move forward with the land sale. He met with Price in January 2017 and concluded that Price was competent. Respondent spoke to Randy Guyer, a CPA, who had a long-standing professional relationship with Price, who agreed. Tr. at 988. He also reviewed a recent medical report issued by Price’s physician, Dr. Stephen Bump, who also concurred in the opinion that Price had the capacity to make his own decisions about the future of his property. Tr. at 984; Ex. 221.

Two months later, in light of the hostile reception from Price’s children, Respondent suggested that they seek appointment of a court-appointed conservator who could approve the land sale and reduce the likelihood that the children could stop or unwind the transaction. The evidence was undisputed that Price believed his children were only after his money and would not follow his wishes regarding the property, a belief that was eventually borne out in fact. Respondent also suggested that they seek appointment of a guardian who could assist Price with his daily tasks and care, a role Troyer had been filling for months already.

Price agreed with both recommendations. Tr. at 1042–44. No evidence to the contrary was offered by the Bar. Further, Price specifically approved of the two individuals nominated to fill those roles, Donivan and Troyer. Tr. at 1050. The petition filed by Respondent in March 2017 alleged that Price was “semi-incapacitated.” Respondent testified that he believed that Price was still independent and competent to make most decisions, but that he needed help with certain things, like financial details. Tr. at 1073–74. This testimony was also uncontested.

We find that Respondent’s interests in completing the land sale on the terms and conditions his client wanted and his interests in having a guardian and conservator appointed at his client’s direction were not in conflict. In actuality, these interests were in agreement with one another. By petitioning the court to appoint someone who could review, negotiate, and approve the detailed terms of the life estate, conservation restrictions, title report, sale price, and other terms, Respondent was pursuing his client’s goal of preventing his children from blocking or unwinding the deal. Approval by a conservator was a reasonable means to accomplish what his client wanted to do. Further, the evidence was uncontested that Respondent explained this approach to Price and that Price approved and directed Respondent to proceed.

On these facts, the contention that a conflict of interest existed here is purely theoretical and insufficient to justify discipline. E.g., In re Stauffer, 327 Or. 44, 48 n.2, 956 P.2d 967 (1998) (citing In re Samuels and Weiner, 296 Or. 224, 230, 674 P.2d 1166 (1983)). It follows that a conflicts waiver was not necessary. See, e.g., The Ethical Oregon Lawyer § 10.2 (OSB
Legal Pubs 2015) (“For an unlikely conflict, however, the disclosure and consent requirements did not have to be met.”).

As in any disciplinary proceeding, the decision on whether a violation occurred is for the trial panel. Judge West’s opinion to the contrary is not dispositive. Gygi, 217 Or at 448. Moreover, Judge West even agreed with the proposition that a lawyer could represent both the proposed protected person and the petitioner seeking appointment of a guardian and conservator if the client did not object to the guardianship or conservatorship, or to the persons nominated to fill those fiduciary roles. Ex. 317 at 54:2-62:1.

The Bar’s second theory also fails. There is no Oregon statute, rule, or case law that prohibits a client’s lawyer from also being the petitioner for the appointment of a guardian and conservator for his client. Further, Respondent cited authority that supports a client’s lawyer acting as the petitioner. A May, 2004 article from the Oregon State Bar Bulletin discussing representation of impaired clients specifically commented: “While the lawyer may act as the petitioner for appointment of a fiduciary for the client, the lawyer may not represent a third party petitioning for guardianship over the lawyer’s client. In re Snell, 15 DB Rptr 166 (2001) (attorney representation of third party to file Petition for Appointment of Conservator/Guardian for a former client in estate planning matters resulted in actual or likely conflict of interest in violation of DR 5-105(C)).” Hierschbiel, “Impaired Clients,” Oregon State Bar Bulletin (May 2004) (emphasis added). The article also cited ABA Formal Op. No. 96-404, 415 (1996), which concluded that a lawyer who reasonably determines that a client has become incompetent may take protective action on behalf of the client, including petitioning for appointment of a guardian.

Respondent also cited The American College of Trust and Estate Counsel Commentaries (5th ed. 2016) at p. 96:

“Client with Diminished Capacity. As provided by MRPC 1.14 (Client with Diminished Capacity), a lawyer may take reasonable steps to protect the interests of a client the lawyer reasonably believes to be suffering from diminished capacity, including the initiation of protective proceedings. Doing so does not constitute an impermissible conflict of interest between the lawyer and the client. See ACTEC Commentary on MRPC 1.14 (Client with Diminished Capacity). A lawyer who is retained on behalf of the client to resist the institution of a protective action may not take positions that are contrary to the client’s position or make disclosures contrary to MRPC 1.6 (Confidentiality of Information).” (emphasis added.)

In the present situation, Respondent filed the petition as his client instructed him to do. Price’s statements on the subject, both unsworn and under oath, consistently affirmed that he wanted Respondent to do what he did and he wanted Donivan and Troyer appointed as his fiduciaries. Again, the assertion that this posed a conflict of interest is merely theoretical and, in our view, cannot be the basis for discipline, with or without a waiver.

The record evidence is consistent that the conflict did not exist in fact. Respondent had an ethical duty to help Price achieve his legal objectives, including the appointment of his chosen fiduciaries. The fact that Price needed assistance with certain things did not permit Respondent to disregard his wishes. RPC 1.14(a) requires an attorney to “maintain a normal client-lawyer relationship” with a client with diminished capacity to the extent doing so is
“reasonably possible.” “[A] lawyer shall abide by a client’s decisions concerning the objectives of representation.” RPC 1.2(a).

The Bar cites us to a trial panel opinion, In re O’Neal, 34 DB Rptr 176 (2020), that it argues supports the view that Respondent did have a conflict. There the respondent personally obtained a Family Abuse Prevention Act (FAPA) restraining order against her then-boyfriend while also representing him in a dissolution proceeding in which he sought parenting time. To obtain the FAPA order, the lawyer had declared that the client had become violent. After she was told by opposing counsel that she would be called as a witness adverse to her client, the lawyer did not withdraw and was ultimately disqualified by the court. The trial panel found that the lawyer’s personal interest in confirming the truth of her sworn statements about her client’s behavior was adverse to her client’s interest in denying or minimizing her claim that he had acted violently. Even though the client wanted the respondent lawyer to continue representing him, the trial panel found the lawyer’s judgment “might have been impaired” and her loyalty “might have been divided” under the circumstances, and she did not cure the conflict by obtaining the client’s informed consent, in writing.

The case is distinguishable from the current proceeding. In O’Neal, the attorney’s testimony would have been adverse to her client’s position in the parental rights proceeding, thereby creating an adverse self-interest on the part of the attorney. Here, Respondent had no self-interest adverse to his client. His interest as petitioner was aligned with his client’s interest in appointment of his chosen fiduciaries.

The Bar notes that the commentary to ABA Model Rule 1.14 cautions a lawyer in Respondent’s position to seek the least intrusive intervention into a client’s affairs, if possible.

“... If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client’s best interests and the goals of intruding into the client’s decisionmaking autonomy to the least extent feasible, maximizing client capacities and respecting the client’s family and social connections.”


The ABA Formal Opinion previously cited concurs:

“Although not expressly dictated by the Model Rules, the principle of respecting the client’s autonomy dictates that the action taken by a lawyer who believes the client can no longer adequately act in his or her own interest should
be the action that is reasonably viewed as the least restrictive action under the circumstances. **The appointment of a guardian is a serious deprivation of the client’s rights and ought not be undertaken if other, less drastic, solutions are available.**”

ABA Formal Ethics Op No 96-404, p 6 (emphasis added).

The argument is not helpful here. The client’s express desire was to pursue the guardian and conservator approach. Just as with the prior charge, all the Bar presented to us on the issue was that there were theoretically less-intrusive alternatives under the law. But the Bar never identified a particular course of action that could have accomplished the client’s legitimate objectives. In particular, we note that the commentary to the Model Rule talks about “respecting the client’s family and social connections.” The family connections here were not helpful in any way. They were, in fact, the most obvious obstacle to accomplishing what Price wanted to do. As far as we can tell, pursuing the appointment of a guardian and conservator whom Price expressly approved of was the most reasonable alternative available that could, if successful, allow him to sell his property as he wished. No witness identified an alternative course of action that had a reasonable chance of success. Even if one had, though, that still does not establish that a conflict of interest existed.

Accordingly, we find that the Bar failed to prove by clear and convincing evidence that Respondent violated RPC 1.7(a)(2). That charge is dismissed.

3. **Respondent did not violate RPC 8.4(a)(4).**

RPC 8.4(a)(4) provides: “It is professional misconduct for a lawyer to … engage in conduct that is prejudicial to the administration of justice.”

There are three elements to establish a violation of RPC 8.4(a)(4): (1) that the respondent’s conduct was improper; (2) that the respondent’s conduct occurred during the course of a judicial proceeding; and (3) that the respondent’s conduct did or could have had a prejudicial effect upon the administration of justice. *In re Carini*, 354 Or 47, 54–55, 308 P3d 197 (2013) (citing *In re Kluge*, 335 Or 326, 345, 66 P3d 492 (2003)). For the purposes of this rule, conduct means doing something that one should not do; or not doing something that one should do. *In re Haws*, 310 Or 741, 746, 801 P2d 818 (1990). The acts or omissions alleged by the Bar all occurred during the course of a judicial proceeding, satisfying the second element. Accordingly, we must examine whether the other two elements are present.

The Bar argues that Respondent improperly failed to disclose pertinent information to the court in his petition for appointment of a guardian and conservator. ORS 125.055(2)(c) required such a petition to include the “relationship” to the protected party of any person nominated as fiduciary. In his initial petition filed March 28, 2017, Respondent omitted any information describing his client’s relationships with Troyer and Donivan. Ex. 36. In his amended petition filed April 19, 2017, Respondent described the nominated fiduciaries’ relationship to Price. Ex. 45. This omission was cured within weeks.

The Bar then faults Respondent for not including any information regarding Troyer’s and Donivan’s “connection to Price’s land sale” in the amended petition. The Bar cites no authority that would require such information to be disclosed in the petition itself. ORS 125.055(2)(d) lists information that must be disclosed about a potential fiduciary. None of these categories would include information about the land sale agreement. In addition, it is not
clear that the fiduciaries’ involvement in the land sale agreement would be encompassed by the term “relationship” as used in the statute.

Even if the information arguably should have been included in the petition itself, we do not find this omission in the petition to rise to the level of “improper conduct.” There was no attempt here to hide this information from the court or anyone else. It may not have appeared in the petition, but it was openly discussed throughout the proceeding.

ORS 125.055(2)(i) further required a petition to include a general description of the estate of the respondent and the respondent’s sources and amounts of income. Respondent’s petition estimated the value of Price’s entire estate at $500,000. The Bar charges this as improper conduct, relying on the previously rejected argument that the value is less than fair market. We have already noted that the value of the land under the conditions that Price required in a sale was reasonably estimated at $400,000. The valuation was not improper.

The Bar then argues that Respondent failed to reference monthly payments of $750 that Price received from a renter on the property. The Bar claims this omission was improper because ORS 125.055(3)(a) required the petition to contain a statement whether the guardian would exercise control over the protected party’s estate, and, if so, required the petitioner to include a statement of the protected party’s monthly income, the sources of that income and the amount of any funds the guardian would be holding for the protected party at the time of the appointment. Again, there was no attempt to hide this information from the court. If the omission ran afoul of the statute, the end result was immaterial. The court was adequately informed about the rental income situation, and there was no evidence that anything against Price’s interests happened with the rent money.

The Bar goes on, noting that ORS 125.320(2) provided that a guardian may not use funds from a protected person’s estate for room and board that the guardian, guardian’s spouse, parent or child have furnished the protected person unless the charge is approved by order of the court before the payment is made. The Bar faults Respondent for not including information in the petition “or later” regarding the land sale deal. First, the land sale deal had not been finalized. The parties never got to the point where the specifics of such an arrangement were set forth anywhere, other than in general terms, so in our view there was nothing yet to disclose in the petition. Moreover, this is another situation in which the facts that were available on the matter were all openly discussed with the court. Nothing improper occurred as it pertained to this alleged omission. If the land sale had ever actually been consummated, both the conservator and the court would have had to approve the specifics.

Finally, ORS 125.055(7) provided: “The court shall review a petition seeking appointment of a guardian and shall dismiss the proceeding without prejudice, or require that the petition be amended, if the court determines that the petition does not meet the requirements of this section.” (Emphasis added.) If the petition was defective, the statutory remedy was either dismissal without prejudice or leave to amend, both envisioning that errors and omissions could occur but could also be easily cured. The facts as proved by the Bar in this regard do not rise to the level of improper conduct.

The Bar also rehashes the issue of Respondent’s belief that certain noticed hearings were for scheduling purposes, not for the presentation of evidence or consideration of motions that were not yet ripe for adjudication. Respondent’s conduct under the circumstances we have outlined previously was not improper in this regard.

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Even if the acts or omissions discussed above constituted “improper conduct” under the rule, the Bar must prove a prejudicial effect by clear and convincing evidence. A prejudicial effect exists “when the lawyer’s conduct harms (or has the potential to harm) either the substantive rights of a party to the proceeding or the procedural functioning of a case or hearing.” *In re Maurer*, 364 Or 190, 199, 431 P3d 410 (2018). Prejudice is shown by “several acts that cause some harm or a single act that causes substantial harm to the administration of justice.” *In re McGraw*, 362 Or 667, 692, 414 P3d 841 (2018) (citing *Kluge*, 335 Or at 345). Attorneys cause harm by “disrupting or improperly influencing the court’s decision-making process or by creating unnecessary work or imposing a substantial burden on the court or the opposing party.” *Carini*, 354 Or at 55.

We do not agree that the acts or omissions identified resulted in any prejudice to either Price’s substantive rights or to the functioning of the proceeding. Respondent was able to present his side of the case to the court. The mere fact that the court ruled against him is not indicative that his conduct caused any prejudice. Whatever prejudice was caused to the proceedings themselves appears to us to be the fault of the court in sending out notices that did not advise that a substantive evidentiary hearing was to take place or that the motion to substitute counsel was to be heard. The court itself further reinforced Respondent’s view on the first hearing when it approved his motion to appear telephonically, which it should not have granted if it intended an evidentiary hearing to take place.

We find that the Bar failed to prove by clear and convincing evidence that Respondent violated RPC 8.4(a)(4). The charge is dismissed.

**CONCLUSION**

Proof by clear and convincing evidence is a heavy burden. At most what we were presented with here was a litany of second-guesses about the choices Respondent made in representation of Price, within the context of a bad set of circumstances. The fact that lawyers may disagree about how to handle Price’s case does not make Respondent’s representation less than competent. Respondent did not have a conflict of interest when he pursued his client’s clear and unchanging goals, and Respondent did not engage in any improper conduct that caused prejudice to the administration of justice. The charges herein are dismissed.

Respectfully submitted this 9th day of February, 2022.

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

/s/ Elizabeth A. Dickson
Elizabeth A. Dickson, Trial Panel Member

/s/ Burl A. Baker
Burl A. Baker, Trial Panel Public Member
ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Frank Wall (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 60 days, effective August 31, 2022, for violation of RPC 1.3 and RPC 1.15-1(d).

DATED this 21st day of March 2022.

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

STIPULATION FOR DISCIPLINE

Frank Wall, 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 21, 1973, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3. Respondent 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 29, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of 1.3 and 1.15-1(d) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5. Client hired Respondent to demand a refund from Client’s landlord. Shortly after Respondent’s demand letter to the landlord, in September 2019, the landlord sent Respondent a refund check payable to Client, which stated that it was void after 90 days. Respondent did not inform Client about the refund check until February 2020, at which point the refund check was stale.

6. In February 2020, Respondent offered to request a replacement check from Client’s landlord, but failed to do so. Client fired Respondent in April 2020, at which time Respondent mailed the stale check to Client and suggested that Client could contact his landlord to request a replacement.

7. When Client met with Respondent in February 2020, Client was seeking Respondent’s assistance in submitting an accommodation request to the landlord. When Client had not received that requested help by April 2020, he terminated Respondent.

Violations

8. Respondent admits that he neglected a legal matter entrusted to him in violation of RPC 1.3 through his delay in providing Client with the refund check, failing to request the replacement check from the landlord, and failing to submit the accommodation request to the landlord.
Respondent admits that his delay in providing the refund check to Client constituted a failure to promptly deliver funds to which his client was entitled in violation of RPC 1.15-1(d).

Sanction

9.

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 (ABA Standards). The ABA 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 most important ethical duties a lawyer owes are to a client. ABA Standards at 5. Respondent violated his duty of diligence in representing his client, ABA Standard 4.4, and his duty to promptly deliver client property. ABA Standard 4.1.

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. ABA 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. Respondent’s lack of diligence was knowing; he acted with the knowledge of the nature or attendant circumstances of his conduct, but without the conscious objective or purpose to accomplish a particular result. As to providing the refund check to Client, Respondent initially had a negligent mental state, but, once he was aware that he held the check and still failed to request that it be reissued, his mental state become knowing.

c. Injury. Injury can be either actual or potential under the ABA Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). Because of Respondent’s delay before his termination, his client was denied his refund check for seven months.

d. Aggravating Circumstances. Aggravating circumstances include:

1. A pattern of misconduct. ABA Standard 9.22(c). On April 1, 2020, Respondent began serving a two-year disciplinary probation for conduct violating RPC 1.3 and RPC 1.4(a). Given the timing of Respondent’s conduct here and the imposition of the sanction in the earlier matter, Respondent’s April 2020 probation does not constitute a factor in aggravation as prior disciplinary offense. See In re Jones, 326 Or 195, 200, 951 P2d 149 (1997) (factors considered in analyzing prior offenses include, but are not limited to, the recency of a prior offense and whether an attorney has been sanctioned for the prior offense before engaging in
the new offense). However, because Respondent’s 2020 probation included a violation of RPC 1.3, which was also violated here, it demonstrates a pattern of misconduct by Respondent. In re Bertoni, 363 Or 614, 644–45, 426 P3d 64 (2018) (although attorney had been admonished or sanctioned in three prior disciplinary proceedings, only one was considered prior discipline, but all demonstrated a pattern of misconduct).

2. **Multiple offenses.** ABA Standard 9.22(d).

3. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent was admitted to practice law in Oregon in 1973.

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

1. **Absence of dishonest motive.** ABA Standard 9.32(b).

2. **Good faith effort to make restitution.** ABA Standard 9.32(d). Wall refunded the full amount of the fee that he collected from his former client.

3. **Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.** ABA Standard 9.32(e).


10. Under the ABA Standards, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. ABA Standard 4.42(a). Similarly, 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. ABA Standard 4.12.

11. Under Oregon case law, generally, lawyers who knowingly neglect a legal matter or fail to keep clients informed are suspended. In re Snyder, 348 Or 307, 232 P3d 952 (2010). In the matter of In re Redden, the Oregon Supreme Court noted that attorneys who knowingly neglect a client’s legal matter are generally sanctioned with 60-day suspensions. 342 Or 393, 401, 153 P3d 113 (2007) (court so concluded after reviewing similar cases); see also, In re Lebahn, 335 Or 357, 67 P3d 381 (2003) (attorney suspended for 60 days for knowing neglect of a client matter and failure to communicate); In re Schaffner, 232 Or 472, 918 P2d 803 (1996) (attorney suspended for 120 days, 60 days of which was attributed to lawyer’s knowing neglect of clients’ case for several months by failing to communicate with clients and opposing counsel). Likewise, holding client funds for a protracted period with a knowing mental state supports suspension. In re Snyder, 348 Or 307, 232 P3d 952 (2010) (imposing 30-day suspension for knowing violations, including failure to return client property upon request); In re Koch, 345 Or 444, 198 P3d 910 (2008) (attorney suspended for 120-day for violating RPC 1.15-1(d), among other violations).
12. Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violation of RPC 1.3 and RPC 1.15-1(d), the sanction to be effective August 31, 2022.

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

14. Respondent 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. Respondent 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. 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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

16. 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.

17. Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 29, 2022. 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 March, 2022.

/s/ Frank Wall
Frank Wall, OSB No. 733160

EXECUTED this 17th day of March, 2022.

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
David J. KELLER,
Respondent.
(OSB 1989; SC S068805)

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

David J. Keller, Portland, argued the cause and filed the brief on behalf of the respondent.

Susan R. Cournoyer, Assistant Disciplinary Counsel, Tigard, argued the cause and filed the briefs on behalf of the Oregon State Bar.

PER CURIAM

The Oregon State Bar brought a disciplinary action against respondent, alleging violations of the Oregon Rules of Professional Conduct (RPC) arising out of his neglect of a legal matter, his misrepresentations to a client, and his failure to respond to lawful demands for information from a disciplinary authority. A trial panel of the Disciplinary Board found that that misconduct violated RPC 1.3, RPC 8.4(a)(3), and RPC 8.1(a)(2), and it suspended him for a period of 120 days. Held: On de novo review, the court concluded that there was clear and convincing evidence that respondent committed all of the charged violations of the disciplinary rules and that respondent should be suspended from the practice of law for a period of 120 days.

Respondent is suspended from the practice of law for 120 days, commencing 60 days from the date of this decision.
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: 
Complaint as to the Conduct of 
MICAH D. FARGEY, Bar No. 096814
Respondent.

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: None
Disciplinary Board: Mark A. Turner, Adjudicator
Honorable Jill A. Tanner
Karina M. Grigorian, Public Member
Disposition: Violation of RPC 1.3, RPC 1.15-1(a), 1.15-1(c), 1.15-1(d), RPC 1.16(d), RPC 8.1(a)(2), RPC 8.4(a)(2), RPC 8.4(a)(3), and RPC 8.4(a)(4). Trial Panel Opinion
Disbarment.
Effective Date of Opinion: April 12, 2022

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged Micah D. Fargey with 11 violations involving multiple Rules of Professional Conduct (RPC). The charges include: knowing conversion of client funds; committing criminal acts reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer; failing to maintain client funds in trust; failing to return client property and refund unearned fees; neglect of a legal matter; and failing to respond to requests for information from a disciplinary authority. The Bar asked us to disbar Respondent.

Respondent failed to file an answer in this proceeding and is in default. As discussed below, we find that the charges are supported by the allegations in the amended formal complaint. We further find that the appropriate sanction in this case is disbarment.

PROCEDURAL POSTURE

The Bar filed the formal complaint against Respondent on September 21, 2021 and an amended formal complaint against him on September 22, 2021. The Bar moved for an order allowing service by publication on November 3, 2021, which was granted on November 4, 2021. The Bar filed a Notice of Completion of Service by Publication on December 20, 2021, and filed a motion for default on January 4, 2022.

The motion for default was granted on January 6, 2022. The Bar also moved for an interim suspension under BR 3.1 based on Respondent’s acts of conversion of client funds.
Respondent failed to respond to the BR 3.1 petition. An interim suspension under BR 3.1 was granted by order dated January 6, 2022 and remains in effect.

When a respondent is in default, the Bar’s factual allegations are deemed to be true. See BR 5.8(a); In re Magar, 337 Or 548, 551–53, 100 P3d 727 (2004). We now must determine whether the facts pleaded establish the rule violations alleged and, if so, what sanction is appropriate. See In re Koch, 345 Or 444, 455, 198 P3d 910 (2008). In assessing whether the charges are established we are limited to considering only the facts alleged in the amended formal complaint. When determining the appropriate sanction, we may consider additional evidence.

ANALYSIS OF THE CHARGES

A. David Peterson Matter (Case No. 21-58) – First Cause of Complaint

The Bar alleges that Respondent neglected a legal matter in violation of RPC 1.3; failed to hold his client’s property separate from his own property in violation of RPC 1.15-1(a); failed to maintain client funds in his trust account until they were earned or expenses were incurred in violation of RPC 1.15-1(c); committed a criminal act (theft) that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of RPC 8.4(a)(2); and knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on his fitness to practice law, including the knowing conversion of client funds, in violation of RPC 8.4(a)(3).

Facts

On August 14, 2020, Respondent agreed to represent David Peterson (Peterson) in an employment matter. Peterson paid Respondent $5,000 by check to be used exclusively for litigation costs. ¶ 6. On August 17, 2020, Respondent deposited Peterson’s check into his trust account. ¶ 7. At all relevant times, Respondent had custody and control over his lawyer trust account maintained at Wells Fargo Bank. ¶ 3.

On August 18, 2020, Respondent transferred $3,500 of Peterson’s funds to his personal bank account without having earned them, with the intent to deprive Peterson of the funds, and knowingly converted those funds to his own use. ¶ 9. On or before September 21, 2020, Respondent transferred the remaining $1,500 of Peterson’s funds to his personal bank account without having earned them, with the intent to deprive Peterson of the funds, and knowingly converted those funds to his own use. ¶ 10.

Between August 14, 2020 and December 1, 2020, when Peterson terminated Respondent’s representation, Respondent failed to perform any substantial work on Peterson’s behalf and did not incur any litigation costs in Peterson’s matter. ¶ 8.

Respondent Neglected Peterson’s Legal Matter in Violation of RPC 1.3.

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. In order to establish a violation of that rule, the allegations must show a course of neglectful conduct, not an isolated instance of negligence. In re Jackson, 347 Or 426,
Respondent failed to take any constructive action for approximately three-and-a-half months after being hired by Peterson. This complete failure to act constitutes neglect in violation of RPC 1.3.

Respondent Violated RPC 8.4(a)(3) by Engaging in Conduct Involving Dishonesty That Reflects Adversely on His Fitness to Practice When He Knowingly Converted His Client’s Funds.

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.”

When an attorney knowingly converts clients funds, the attorney engages in dishonesty in violation of RPC 8.4(a)(3). In re Webb, 363 Or 42, 50, 418 P3d 2 (2018); In re Martin, 328 Or 177, 186, 970 P2d 638 (1998). Conversion is the “intentional exercise of dominion or control over a chattel which so seriously interferes with the rights of another to control it that the actor may justly be required to pay the other the full value of the chattel.” In re Martin, 328 Or at 184. “Knowing” is defined as actual knowledge of the fact in question, but knowledge can be inferred from the circumstances. RPC 1.0(h).

Respondent knowingly converted Peterson’s funds when he took $3,500 of Peterson’s funds from his trust account for his personal use the day after he deposited the funds, and took the remainder of the funds by September 21, 2020. Respondent did not incur any costs requiring reimbursement in Peterson’s matter. Respondent did not have any right to any of Peterson’s funds and knew that he did not have a right to any of the funds at the time he removed the funds from his trust account. Respondent violated RPC 8.4(a)(3).

Respondent Violated RPC 8.4(a)(2) When He Engaged in Criminal Conduct Reflecting Adversely on His Fitness to Practice Law.

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

In order to establish a violation of RPC 8.4(a)(2), a criminal conviction is not required, but the Bar must allege facts that establish that Respondent committed a criminal act. In re Hassenstab, 325 Or 166, 176, 934 P2d 166 (1997). The Bar must also allege facts showing some rational connection, other than the criminality of the act itself, between the conduct and the lawyer’s fitness to practice law. In re White, 311 Or 573, 589, 815 P2d 1257 (1991). In re White instructs us to consider whether the potentially criminal act adversely reflected on a respondent’s honesty, trustworthiness, or fitness to practice law. Id. Relevant factors under White include the lawyer’s mental state; the extent to which the criminal act demonstrates disrespect for the law or law enforcement; the presence or absence of a victim; the extent of
actual or potential injury to a victim; and the presence or absence of a pattern of criminal conduct. *Id.*

When these acts occurred ORS § 164.015 provided:

“A person commits theft when, with the intent to deprive another of property or to appropriate property to the person or to a third person, the person takes, appropriates, obtains or withholds such property from an owner thereof.”

As well, ORS § 164.055(1)(a), provided:

“A person commits the crime of theft in the first degree if, by means other than extortion, the person commits theft as defined in ORS §164.015 and the total value of the property in a single or aggregate transaction is $1,000 or more.”

Theft in the first degree is a Class C felony. ORS § 164.055(3).

We have found that Respondent knowingly converted Peterson’s funds for his own personal use. In so doing, Respondent is guilty of the crime of theft in violation of ORS 164.055. The Oregon Supreme Court has found that theft under ORS § 164.015(1) is a criminal act which reflects adversely on a lawyer’s fitness to practice law and therefore violates RPC 8.4(a)(2). *See In re Anson*, 302 Or at 446, 454, 730 P2d 1229 (1986).

Respondent violated RPC 8.4(a)(2).

**Respondent Violated RPC 1.15-1(a) by Failing to Safeguard His Client’s Property in Trust.**

RPC 1.15-1(a) provides:

“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. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to the rules in the jurisdictions in which the accounts are maintained. Other property shall be identified as such and appropriately safeguarded. 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.”

Attorneys are required to safeguard and hold separate from their own property client funds in their possession. An attorney who withdraws funds belonging to clients from a trust account before they are earned violates RPC 1.15-1(a). *In re Biggs*, 318 Or at 293.

By converting Peterson’s funds to his own use between August 18, 2020 and September 21, 2020, Respondent failed to safeguard client property in violation of RPC 1.15-1(a).
Respondent Violated RPC 1.15-1(c) When He Withdrew Client Funds From His Trust Account.

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).”

Attorneys must keep client funds paid in advance in their trust account until the fees are earned or costs have been incurred. Respondent failed to do so here and violated RPC 1.15 -1(c).

B. David Peterson Matter – Second Cause of Complaint

In this cause, the Bar alleges that Respondent failed to promptly deliver funds or other property that his client was entitled to receive in violation of RPC 1.15-1(d), and failed to take steps to the extent reasonably practicable to protect a client’s interests upon termination of representation in violation of RPC 1.16(d).

Facts


Respondent Violated RPC 1.15-1(d) When He Failed to Promptly Deliver Funds His 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.”

RPC 1.15-1(d) requires attorneys to promptly deliver funds or other property to the client that the client is entitled to receive. “Property” here includes client files. In re Kneeland, 281 Or 317, 319, 574 P2d 324 (1978). The Supreme Court has found that an attorney violated RPC 1.15-1(d) when his client requested his file materials and the lawyer failed to provide them until eight months had passed and his client had filed a Bar complaint. In re Snyder, 348 Or 307, 315, 232 P3d 952 (2010).

Respondent’s complete failure to refund the money or deliver the requested documents to his client violated RPC 1.15-1(d).
Respondent Violated RPC 1.16(d) When He Failed to Deliver Requested Documents and Funds to His Client.

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.”

RPC 1.16(d) requires attorneys to return client property upon termination. For the reasons described in the preceding section, Respondent also violated RPC 1.16(d).

C. David Peterson Matter – Third Cause of Complaint

In the third cause of complaint, the Bar charges Respondent with knowingly failing to respond to requests for information from Disciplinary Counsel’s Office (DCO) in connection with Peterson’s grievance, in violation of RPC 8.1(a)(2).

Facts

On February 11, 2021, DCO received a grievance from Peterson about Respondent’s conduct. By letter dated March 9, 2021, DCO requested Respondent’s response to Peterson’s grievance. The letter was addressed to Respondent at the address then on record with the Bar (record address) and was sent by first class mail. The letter was also sent to Respondent at the email address then on record with the Bar (record email address). The email and letter were not returned undelivered. ¶ 18.

By letter dated April 2, 2021, DCO again requested Respondent’s response to Peterson’s grievance. The letter was sent to Respondent’s record address by both first class and certified mail, return receipt requested. The letter was also sent to Respondent’s record email address. DCO never received the signed certified mail receipt back from Respondent or anyone at his firm. Neither the letter sent by first class mail nor the letter sent to Respondent’s record email address was returned as undeliverable. ¶ 19.

In early April 2021, DCO learned of a home address for Respondent. By letter dated April 14, 2021, DCO again requested Respondent’s response to Peterson’s grievance by mailing a letter to Respondent at his home address. The letter was sent by both first class and certified mail, return receipt requested. DCO never received the signed certified mail receipt back from Respondent or anyone else at his home address. The letter sent by first class mail was not returned as undeliverable. ¶ 20.

On April 23, 2021, DCO filed a petition pursuant to BR 7.1 seeking Respondent’s immediate suspension from the practice of law for his failure to respond to DCO. The petition was sent to Respondent by first class mail addressed to Respondent at his record address. Respondent did not respond to the petition. ¶ 21. On May 12, 2021, the Adjudicator issued an order suspending Respondent from the practice of law, pursuant to BR 7.1. ¶ 22.
Respondent Violated RPC 8.1(a)(2) When He Knowingly Failed to Respond to DCO’s Inquiries.

RPC 8.1(a)(2) states:

“(a) An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

“(2) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, 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 when DCO investigates disciplinary matters. That includes an obligation to respond to DCO’s inquiries.

DCO made multiple written requests to Respondent for information in response to Peterson’s grievance that were mailed and emailed to Respondent’s record addresses and residential address. The law presumes that “a letter duly directed and mailed was received in the regular course of the mail.” ORS 40.135(1)(q). The statute directs us to find that Respondent received the requests; Respondent failed to respond. Respondent’s knowing failure to respond to lawful demands for information from DCO violates 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). We find that Respondent knowingly violated RPC 8.1(a)(2).

D. (Case No. 21-59) – Fourth Cause of Complaint

In the fourth cause the Bar charged Respondent with committing criminal acts that reflect adversely on his fitness to practice in violation of RPC 8.4(a)(2), and with engaging in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

Facts

These charges arise from several driving offenses Respondent committed, and his conduct in the two criminal proceedings involving those offenses.

On October 23, 2020, Respondent committed the crime of Driving Under the Influence of Intoxicants (DUII) under ORS § 813.010 in Washington County (Washington County Circuit Court Case No. 20CR6113) (“Washington County matter”). Respondent’s Oregon driver’s license was subsequently suspended because of his alleged blood alcohol content. ¶ 28.

On November 18, 2020, Respondent pled not guilty in the Washington County matter and signed a release agreement which required Respondent to not possess or consume any alcohol, not drive a motor vehicle until he obtained a valid Oregon driver’s license, and to appear at all of his court dates. ¶ 29.

On December 30, 2020, Respondent again committed the crime of DUII in violation of ORS § 813.010 in the City of Beaverton. ¶ 30. At the same time, Respondent also committed the crime of Driving While Suspended (DWS) in violation of ORS § 811.182 (Beaverton Municipal Court Case No. 21-10007) (“Beaverton Municipal matters”). ¶ 31.
As a result of the Beaverton Municipal matters, on or about January 5, 2021, the State moved for an order requiring Respondent to show cause why his release should not be revoked or, in the alternative, for an order issuing a bench warrant in the Washington County matter. ¶ 32.

On January 12, 2021, the court entered an order forfeiting Respondent’s security and issued a bench warrant. ¶ 33. On February 1, 2021, Respondent was taken into custody on the bench warrant, and Respondent signed a second release agreement. ¶ 34. On February 24, 2021, Beaverton Municipal Court issued a bench warrant for Respondent when he failed to appear for a pre-trial conference. ¶ 35.

On April 26, 2021, Respondent failed to appear at a hearing in the Washington County matter, and the court issued a second bench warrant. ¶ 36. On May 10, 2021, Respondent was taken into custody in the Washington County matter and signed a third release agreement. ¶ 37.

On June 16, 2021, Respondent failed to appear for a pre-trial conference in his Beaverton Municipal matter and the court issued another bench warrant. ¶ 38.


**Respondent Engaged in Criminal Conduct That Reflects Adversely on His Fitness to Practice Law in Violation of RPC 8.4(a)(2).**

As noted before, RPC 8.4(a)(2) provides: “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.”

We previously set forth the elements of this rule violation as it pertained to Respondent’s theft of client funds. Applying the analysis the Oregon Supreme Court has found that an attorney’s criminal acts reflected adversely on his fitness to practice law when the attorney knew that the law prohibited him from driving while he was intoxicated and while his license was suspended. *In re McDonough*, 336 Or 36, 77 P3d 306 (2003). In *McDonough*, an attorney was charged with 18 driving-related offenses involving driving while intoxicated or driving while suspended between 1983 through 2001. The court held that the attorney’s driving-related offenses violated the predecessor to RPC 8.4(a)(2) because the attorney’s conduct was intentional, caused actual injury to his passenger in one event and created a potential injury to the public every time he drove while intoxicated. The attorney’s decision to continue to drive while his license was suspended also revealed a pattern of criminal conduct that caused actual injury to the legal system by undermining the orders that had suspended his driving privileges and by demonstrating an indifference to the law. *Id.*

Here we find that Respondent’s multiple acts of driving while intoxicated and driving while suspended within a short period of time demonstrate a pattern of criminal conduct that reflects adversely on his fitness to practice law.

Respondent intentionally drove while his license was suspended. After signing his release agreement promising to refrain from consuming alcohol he intentionally breached that agreement when he was arrested for his second DUII.

Respondent’s failure to appear for court-ordered hearings also demonstrates disrespect for the law and the judicial system. It shows a disregard for the increased and unnecessary
resources that the court expended in his criminal matters. His conduct in both criminal matters increased the likelihood for a potential injury to a victim and his pattern of criminal conduct increased the likelihood that someone may have been injured should he have been in an accident.

Respondent’s conduct in his pending criminal matters reflects adversely on his fitness to practice law because his conduct was intentional, caused potential injury to the public every time that he drove while intoxicated, and his decision to drive after his license was suspended caused actual injury to the legal system by undermining the orders suspending his driving privileges issued by the DMV and the court in his Washington County matter. The driving-related offenses at issue here and Respondent’s numerous failures to appear at court-ordered hearings demonstrate an indifference to the law.

We find that Respondent violated RPC 8.4(a)(2).

**Respondent Engaged in Conduct Prejudicial to the Administration of Justice in Violation of RPC 8.4(a)(4).**

RPC 8.4(a)(4) provides: “It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.”

To establish a violation of RPC 8.4(a)(4), the Bar must allege that (1) the respondent lawyer’s action was improper; (2) the lawyer’s conduct occurred during the course of a judicial proceeding; and (3) the lawyer’s conduct had or could have had a prejudicial effect on the administration of justice. *In re Ard*, 369 Or 180, ___ P3d ___ (2021). “Administration of justice” refers to both “the procedural functioning of the proceeding and the substantive interests of the parties.” *In re Kluge*, 335 Or 326, 345; 66 P3d 492 (2003); *In re Meyer*, 328 Or 211, 214, 970 P2d 652 (1999). To violate the rule, the conduct must have resulted in prejudice and “prejudice may arise from several acts that cause some harm or a single act that causes substantial harm to the administration of justice. *Kluge*, id.

An attorney violated RPC 8.4(a)(4) when he was arrested on charges of domestic violence, harassment, and coercion arising out of a domestic disturbance and, after being ordered to have no contact with the victim, was arrested at his home where the victim also resided, resulting in the court finding contempt. *In re Rodolfo A. Camacho*, 32 DB Rptr 150 (2018). In *Camacho*, the court entered a judgment in the attorney’s criminal matter, finding that the attorney committed contempt of court by willfully engaging in disobedience of, resistance to or obstruction of the court’s authority, process, orders, or judgments by violating his release agreement.

An attorney also violated RPC 8.4(a)(4) when he failed to comply with three court orders issued in his own domestic relations proceeding for which he was also found in contempt, and his conduct caused injury to his spouse and children, and also to the legal system by consuming court time and resources. *In re J. Stefan Gonzalez (I)*, 25 DB Rptr 1 (2011).

Respondent’s conduct here in the Washington County matter was improper. He disobeyed court orders to not consume alcohol. He disobeyed an order not to drive without a valid Oregon driver’s license. He disobeyed orders to appear at all court hearings. Respondent’s multiple failures to appear in both criminal matters required the court to expend time and resources to hold hearings which he did not appear for, issue bench warrants for which law enforcement had to arrest and release him, hold additional hearings to address the warrants and
reset other hearings. Respondent’s conduct prejudiced the procedural functioning of the court and the substantive interests of the State to seek justice in both matters.

Respondent violated RPC 8.4(a)(4).

E. OSB Matter – Fifth Cause of Complaint

In this cause of complaint, the Bar again charged Respondent with knowing failure to respond to requests for information from DCO in violation of RPC 8.1(a)(2).

Facts

By letter dated April 21, 2021, DCO requested Respondent’s response regarding the Washington County and Beaverton Municipal matters. The letter was addressed and sent by first class mail to Respondent at his record address, home address and was also sent to his record email address. The email and letter sent to Respondent’s record address and home address were not returned undelivered. Respondent did not respond. ¶ 42.

By letter dated May 14, 2021, DCO again requested a response to the Washington County and Beaverton Municipal matters. The letter was addressed to Respondent at his record address and his home address and was sent by both first class and by certified mail, return receipt requested. The letter was also sent to his record email address. The letter and certified letter addressed to the home address were returned undeliverable. ¶ 43.

On or about May 28, 2021, DCO became aware of a second email address for Respondent. On that date, DCO sent a copy of the May 14, 2021 letter to Respondent at this new email address. The email was not returned undeliverable. ¶ 44.

On or about June 10, 2021, DCO filed a petition pursuant to BR 7.1 seeking Respondent’s immediate suspension for his failure to respond to DCO. The petition was sent by first class mail addressed to Respondent at his record address and by email to his record email address. Respondent did not file a response to the petition. ¶ 45. On or about June 30, 2021, the Adjudicator issued an order suspending Respondent from the practice of law, pursuant to BR 7.1. ¶ 46.

Respondent Again Violated RPC 8.1(a)(2).

As noted earlier, RPC 8.1(a)(2) 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.”

The conduct described above constitutes a knowing failure to respond to a disciplinary authority in violation of RPC 8.1(a)(2).

SANCTION

We refer to the ABA Standards for Imposing Lawyer Sanctions (ABA Standards) and Oregon case law for guidance in determining the appropriate sanctions for lawyer misconduct.
ABA Standards.

The ABA 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 sanction, after which we may adjust the sanction based on the existence of recognized aggravating or mitigating circumstances. See In re Nisley, 365 Or 793, 815, 453 P3d 529 (2019).

Duty Violated.

The most important ethical duties a lawyer owes are to his clients. ABA Standards at 5. Respondent violated the duty he owed to his client to preserve client property. ABA Standard 4.1. Respondent violated the duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. ABA Standard 4.4. Additionally, by committing criminal acts that reflect adversely on his fitness to practice law, Respondent violated his duty to maintain his personal integrity. ABA Standard 5.1.

Respondent also violated the duties he owed to the legal system, the legal profession, and the public by engaging in conduct prejudicial to the administration of justice. ABA Standards 6.1, 6.2.

Finally, Respondent violated his duty to cooperate with disciplinary authorities. ABA Standard 7.0.

Mental State.

The ABA Standards recognize three mental states: intent, knowledge, and negligence. “Intent” is when a lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA 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, which failure deviates from the standard of care that a reasonable lawyer would exercise in the situation. Id.

With regard to the conversion, dishonesty, and trust account violations, we find that Respondent acted intentionally. We infer from the circumstances that Respondent acted with the conscious objective to convert his client’s funds for his own use. Respondent also knowingly neglected Peterson’s case.

We find that he knowingly committed certain criminal acts. Although the first DUII offense could be attributed to negligence, the second DUII incident and the driving while suspended charge both resulted from knowing conduct.

Respondent also acted knowingly when he ignored his duty to respond to DCO. Despite receiving multiple requests for information, he never responded to his regulatory authorities.

Finally, Respondent acted knowingly when he engaged in conduct prejudicial to the administration of justice. He did not appear for court hearings. As an officer of the court, he knew how that would negatively affect the court’s functioning and that bench warrants would issue.
Extent of Actual or Potential Injury.

For purposes of determining an appropriate disciplinary sanction, we may take into account both actual and potential injury. ABA Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). “Injury” is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. “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.

Respondent’s client, the public, the legal profession, and the Bar have all sustained actual injury as a result of respondent’s misconduct. A lawyer who converts client funds causes actual injury to a client. In re Webb, 363 Or 42, 51–52, 418 P3d 2 (2018). A client also 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 conduct that caused prejudice to the administration of justice also injured the legal system, the public, and the legal profession. Ard, supra.

Additionally, Respondent’s failure to cooperate with DCO’s investigations also caused actual injury to the legal profession, the public, and the Bar. Miles, 324 Or at 221–22.

Preliminary Sanction.

Absent aggravating or mitigating circumstances, the following ABA Standards apply here:

Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. ABA Standard 4.11. Suspension is generally appropriate when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury to a client. ABA Standard 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. ABA Standard 4.41(b). Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. ABA Standard 4.42(a).

Disbarment is generally appropriate when a lawyer engages in serious criminal conduct, a necessary element of which includes interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation or theft. ABA Standard 5.11(a).

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. ABA Standard 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. ABA Standard 7.2.

Given the knowing conversion and theft of client funds, the presumptive sanction here is disbarment.
Aggravating and Mitigating Circumstances.

We find the following aggravating factors recognized under the ABA Standards present here:

1. A dishonest or selfish motive. ABA Standard 9.22(b). Respondent’s conduct in converting his client’s funds demonstrates that Respondent acted with both a dishonest and a selfish motive.

2. Pattern of Misconduct. ABA Standard 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). Respondent converted Peterson’s funds twice within one month in the fall of 2020, and then engaged in repeated acts of criminal conduct throughout that same time period. He continued to engage in misconduct in 2021 when he repeatedly missed court appearances in both of his criminal proceedings.


In mitigation we find only the absence of a prior record of discipline. ABA Standard 9.32(a). The aggravating factors outweigh the mitigating factors here. There is no basis for reducing the sanction here to less than the presumptive sanction of disbarment.

Oregon Case Law.

Oregon cases confirm that disbarment is warranted. The Supreme Court has consistently disbarred lawyers who convert client funds. Webb, 363 Or at 52. “Drawing together the factors of duty, mental state, and injury, and before examining aggravating and mitigating factors, under both the ABA Standards and this court’s case law, disbarment is the presumptively appropriate sanction” for conversion of client funds. Id. “[A] lawyer may suffer all the claimed disabilities and may have the greatest of attributes, but if he or she steals funds from a client, the sanction is disbarment.” Martin, 328 Or at 193 (quoting In re Phelps, 306 Or 508, 520, 760 P2d 1331 (1988)); In re Pierson, 280 Or 513, 518, 571 P2d 907 (1977) (“a single conversion by a lawyer to his own use of his client’s funds will result in permanent disbarment”); In re Phelps, 306 Or 508, 520, 760 P2d 1331 (1988) (despite mitigating circumstances, where an attorney “steals funds from a client, the sanction is disbarment”); In re Benjamin, 312 Or 515, 823 P2d 413 (1991) (lawyer disbarred for failing to promptly pay money to clients and using client money for personal expenses); In re Biggs, 318 Or 281, 864 P2d 1310 (1994); In re Murdock, 328 Or 18, 968 P2d 1270 (1998) (attorney disbarred for embezzling from his law firm).

Respondent’s conversion of client funds alone warrants 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. In addition to sanctioning Respondent, we order Respondent to make restitution of $5,000 to David Peterson.
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. ABA Standard 1.1. To fulfill this goal, we order that Respondent be disbarred effective the day this decision becomes final, and that he pay restitution in the amount of $5,000 to his former client, David Peterson.

Respectfully submitted this 10th day of March 2022.

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

/s/ Honorable Jill Tanner
Honorable Jill Tanner, Trial Panel Member

/s/ Karina Grigorian
Karina Grigorian, Trial Panel Public Member
ORDER GRANTING BR 3.5 PETITION FOR RECIPROCAL DISCIPLINE

This matter is before me on the Oregon State Bar’s (Bar) Petition for Reciprocal Discipline pursuant to BR 3.5. Respondent failed to answer the petition. It appears from the record that Respondent received a public reprimand pursuant to an “Amended Discipline by Consent and Settlement Agreement” in the State of Utah, which was approved by court order dated July 16, 2021. The Utah discipline arose from Respondent charging and attempting to collect an unreasonable fee and soliciting employment in writing from a prospective client who had made it known she did not wish to be solicited. Respondent’s admitted conduct violated Oregon Rules of Professional Conduct 1.5(a) and 7.3(b).

Accordingly,

IT IS HEREBY ORDERED that the Petition for Reciprocal Discipline is GRANTED and Respondent is PUBLICLY REPRIMANDED.

DATED this 11th day of March, 2022.

/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. 21-69
 )
SEAN O’HALLORAN, Bar No. 752824 )
 )
Respondent. )

Counsel for the Bar: Rebecca Salwin
Counsel for the Respondent: Peter R. Jarvis
Disciplinary Board: None
Disposition: Violation of RPC 1.3 and RPC 1.15-1(d). Stipulation for Discipline. 30-day suspension.
Effective Date of Order: June 15, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Sean O’Halloran (Respondent) and the Oregon State Bar (Bar), and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 30-days, effective June 15, 2022, for violation of RPC 1.3 and RPC 1.15-1(d).

DATED this 25th day of April, 2022.
/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Sean O’Halloran, 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, 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.

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 15, 2021, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.3 and RPC 1.15-1(d) 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.

Respondent represented Carole Morris (Morris) on claims stemming from her June 14, 2016 motor vehicle accident. In June 2018, Respondent, on behalf of Morris, had accepted a settlement offer and received $25,000 to settle Morris’s claims against the at-fault driver. On June 19, 2018, Respondent deposited Morris’s $25,000 settlement funds into his lawyer trust account, and within a month, had paid himself $6,000 in legal fees from the funds with the intent to disburse the appropriate settlement funds to Ms. Morris, as well. Respondent had questions about when he could distribute Morris’s settlement funds to her, but he did not take any proactive steps to find out or to distribute them. He did not distribute her funds to her for another 31 months, or until January 2021, after she filed a Client Security Fund (CSF) claim against him. Settlement funds distributed to Ms. Morris at that time were in excess of the amount that Respondent believed were owed under their contingency fee agreement.

6.

Meanwhile, Morris’s insurance company had denied her uninsured/underinsured motorist (UIM) claim. Respondent was aware that to preserve Morris’s UIM claims under her insurance policy and relevant statute, he would need to file a lawsuit or initiate formal arbitration within a two-year limitations period, or by June 14, 2018. Respondent orally requested arbitration to Ms. Morris’s UIM carrier on a telephone call on June 11, 2018. However, he did not provide a written notice until over one month late, on July 20, 2018. The next month, on August 22, 2018, Ms. Morris’ UIM carrier wrote him that he had not timely submitted a UIM claim. Respondent noted in his file his concerns about failing to timely preserve her claims. On May 9, 2019, Respondent met with Morris and advised her that he would attempt to remedy his error within the next 30 days. However, Respondent knowingly failed to take any further substantial action on Morris’s legal matter.
Violations

7.

Respondent admits that by failing to distribute Morris’s $19,000 in proper contingent settlement funds to her for approximately two-and-a-half years after she was entitled to them, he violated RPC 1.15-1(d). Respondent admits that, by neglecting to timely preserve Morris’s claims and neglecting to take any meaningful steps to remedy it thereafter, he violated RPC 1.3.

Sanction

8.

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 (ABA Standards). The ABA 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.** Duty Violated. The most important ethical duties a lawyer owes are to a client. ABA Standards at 5. Respondent violated his duty of diligence in representing his client, ABA Standard 4.4, and his duty to preserve client property. ABA Standard 4.1.

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. ABA 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, Respondent knowingly neglected his client’s legal matter and negligently delayed in distributing her funds.

c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Here, Respondent’s client was denied the use of $19,000 in settlement funds for approximately 31 months.

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

1. **Multiple offenses.** Standard 9.22(d).
2. **Vulnerability of victim.** Standard 9.22(h). Respondent’s client was dealing with the terminal illness and death of her husband while these events occurred.
3. **Substantial experience in the practice of law.** Standard 9.22(i). Respondent was licensed to practice in Oregon in 1975.
e. **Mitigating Circumstances.** Mitigating circumstances include:

2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Standard 9.32(e).

Under the ABA Standards, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, and when a lawyer should know that he is dealing improperly with client property and causes injury or potential injury to a client. ABA Standards 4.12, 4.42.

Under Oregon case law, lawyers who knowingly neglect a legal matter generally receive a suspension. *See In re Snyder, 348 Or 307, 232 P3d 952 (2010); In re Redden, 342 Or 393, 401, 153 P3d 113 (2007)* (noting that neglect often results in a 60-day suspension). In similar cases, attorneys have stipulated to a 30-day suspension. *See, e.g. In re Walsh, 34 DB Rptr 126 (2020)* (attorney suspended for 30 days when he represented a client in a personal injury matter from a car accident but neglected her legal matter due to health problems; he mislead her about his progress then tried to remedy her financial injury with improper financial assistance); *In re Sterner, 34 DB Rptr 7 (2020)* (attorney suspended for 30 days when he represented a plaintiff on personal injury claims in a legal area that he was unfamiliar with; rather than attempting to attain competence he neglected her claims such that they were dismissed for want of prosecution, and he then failed to revive them such that they became time-barred).

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30-days for violation of RPC 1.3 and RPC 1.15-1(d), the sanction to be effective on June 15, 2022.

Respondent 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, Respondent has arranged for an active member of the Bar to either take possession of or have ongoing access to Respondent’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Respondent represents that the custodian has agreed to accept this responsibility, and he has lodged the custodian’s contact information on file with the Bar. Respondent further represents that all files and records are maintained and managed by his paralegal, Eileen Sublette, eileen@ohalloranassociates.com, (503) 666-6000.

Respondent 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. Respondent 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.

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. This requirement is in addition to any other
 provision of this agreement that requires Respondent to attend continuing legal education
(CLE) courses.

14.

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.

15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on
July 24, 2021. 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 21st day of April, 2022.

/s/ Sean O’Halloran
Sean O’Halloran, OSB No. 752824

APPROVED AS TO FORM AND CONTENT:

/s/ Peter R. Jarvis
Peter R. Jarvis, OSB No. 761868

EXECUTED this 22nd day of April, 2022.

OREGON STATE BAR
By: /s/ Rebecca Salwin
Rebecca Salwin, OSB No. 201650
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
 ) Case No. 22-22
Complaint as to the Conduct of )
 )
MARK THOMAS McLEOD, )
 Bar No. 102951, )
 Respondent. )

Counsel for the Bar: Stacy R. Owen
Counsel for the Respondent: None
Disciplinary Board: None
Effective Date of Order: April 28, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Mark Thomas McLeod is publicly reprimanded for violation of RPC 4.2.

DATED this 28th day of April 2022.

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

STIPULATION FOR DISCIPLINE

Mark Thomas McLeod, 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 August 16, 2010, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On March 12, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of 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.

Respondent represented a client in a family law matter, which involved a dispute between the parties regarding parenting time. In an effort to resolve that issue for his client, Respondent sent email messages to the opposing party, when Respondent knew that the opposing party was represented by an attorney on that subject.

Violations

6.

Respondent admits that by sending email messages to the opposing party when he knew that she was represented by a lawyer on the subject of his communication, he violated RPC 4.2.

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 (ABA Standards). The ABA 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. Respondent violated a duty owed to the legal system by communicating with a represented party. ABA Standard 6.3.
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. ABA 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, Respondent had a knowing mental state.

c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Williams,* 314 Or 530, 547, 840 P2d 1280 (1992). Although there is no evidence of actual harm to the opposing party, there was the potential for harm.

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

1. **Pattern of misconduct.** ABA Standard 9.22(c). Respondent sent three email messages to a represented party.

2. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent was licensed to practice in Oregon by reciprocity in August 2010 and was previously licensed to practice in Mississippi in October 2003.

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

1. **Absence of prior disciplinary record.** ABA Standard 9.32(a).

2. **Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.** ABA Standard 9.32(e).

8. Absent aggravating or mitigating circumstances, under the ABA Standards, 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. ABA Standard 6.32. A reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding. ABA Standard 6.33.


Oregon cases have generally concluded that a reprimand is appropriate when an attorney knowingly communicates with a represented party. *In re Newell,* 348 Or at 413 (imposing reprimand for attorney who communicated with a represented party, even if not the same

When an attorney violates the rule prohibiting communicating with a represented party, along with at least one other rule violation, attorneys have typically received suspensions. *In re Knappenberger*, 338 Or 361 (noting that the court had reprimanded attorneys for violations of the rule prohibiting communicating with a represented party, but imposing suspension because attorney violated another rule, as well); *In re Williams*, 314 Or 530, 548, 840 P2d 1280 (1992) (imposing 63-day suspension for multiple rule violations, including speaking with a representative of a landlord known to be represented by an attorney); *In re Lewelling*, 296 Or 702, 706–07, 678 P2d 1229 (1984) (imposing suspension for attorney who knowingly communicated with a represented party, along with another rule violation).

Because only RPC 4.2 was violated here, a public reprimand is the appropriate sanction.

10.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 4.2.

11.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

12.

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: Mississippi.

13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 12, 2022. 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 April 2022.

/s/ Mark Thomas McLeod
Mark Thomas McLeod, OSB No. 102951

EXECUTED this 26th day of April 2022.

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. 21-02
Complaint as to the Conduct of )
) BRETT J. HALL, Bar No. 035694 )
) Respondent. )
Counsel for the Bar: Rebecca Salwin
Counsel for the Respondent: Nellie Q. Barnard
Disciplinary Board: None
Disposition: Violation of RPC 8.1(c)(4). Stipulation for Discipline. 30-day suspension.
Effective Date of Order: May 9, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Brett J. Hall (Respondent) and the Oregon State Bar (Bar), and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 30-days, effective August 1, 2022, for violation of RPC 8.1(c)(4).

DATED this 9th day of May 2022.

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

STIPULATION FOR DISCIPLINE

Brett J. Hall, 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 October 21, 2003, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah 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 26, 2021, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 8.1(c)(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 2017, Respondent was referred to the State Lawyers Assistance Committee (SLAC). On October 27, 2017, SLAC took jurisdiction, on December 21, 2017, Respondent completed a treatment assessment, and on February 9, 2018, Respondent executed a monitoring and cooperation agreement with SLAC (SLAC monitoring agreement). In his SLAC monitoring agreement, Respondent agreed to, among other requirements, abstain from all alcohol, regularly meet and communicate with his monitor and follow the monitor’s directives, and undergo treatment, as necessary.

6. Over the next two-and-a-half years, from February 2018 through July 2020, Respondent repeatedly breached his SLAC monitoring agreement by: failing to abstain from alcohol or report for alcohol screenings; repeatedly failing to provide information to his monitor; and intermittently failing to undergo treatment. Although SLAC continued with Respondent’s remedial program for over two years, on July 30, 2020, SLAC referred his matter to DCO.

**Violations**

7. Respondent admits that by failing to comply with aspects of his SLAC monitoring agreement, he violated RPC 8.1(c).
Sanction

8.

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 (ABA Standards). The ABA 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.** Respondent violated his duties to the profession when he failed to comply with SLAC. ABA Standard 7.0.

b. **Mental State.** Knowledge is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. ABA Standard 1.0. Respondent knowingly failed to comply with the SLAC monitoring agreement.

c. **Injury.** SLAC sustained actual injury because SLAC devoted additional time and resources trying to elicit Respondent’s cooperation with his SLAC monitoring agreement.

d. **Aggravating Circumstances.** Aggravating circumstances include:
   1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been licensed since 2003.

e. **Mitigating Circumstances.** Mitigating circumstances include:
   2. Personal or emotional problems. ABA Standard 9.32(c).

9.

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. ABA Standard 7.2.

10.

Lawyers who have failed to cooperate with SLAC have also been suspended. In *In re Sheridan*, 29 DB Rptr 179 (2015), an attorney received a 60-day stayed suspension, fully stayed, when she was referred to SLAC for numerous errors and delays in representing a vulnerable client, then promptly began questioning SLAC’s authority, including by threatening a restraining order against SLAC. Unlike here, that attorney violated numerous rules: RPC 1.1, RPC 1.16(a)(2), RPC 1.16(d), RPC 8.4(a)(4), RPC 8.1(c)(3), and RPC 8.1(c)(4); see also *In re William L. Tufts*, 29 DB Rptr 141 (2015) (attorney stipulated to a 120-day suspension with formal reinstatement proceedings when he failed to cooperate with SLAC, then failed to respond to DCO).
The misconduct here is not as egregious as the misconduct present in *Sheridan* or *Tufts*, because Respondent has been cooperative with DCO, has no other rule violations, and has provided evidence of his independent efforts to address his alcohol use after ceasing SLAC. In this case, there is no evidence of ongoing impairment to Respondent’s practice or harm to his clients.

11.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30-days for violation of RPC 8.1(c)(4), the sanction to be effective August 1, 2022.

12.

Respondent 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, Respondent has arranged for Adam Dean, Bar No. 952481, an active member of the Bar, to either take possession of or have ongoing access to Respondent’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Respondent represents that Mr. Dean has agreed to accept this responsibility.

13.

Respondent 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. Respondent 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.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

15.

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 April 1, 2022. 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 3rd day of May 2022.

/s/ Brett J. Hall
Brett J. Hall, OSB No. 035694

APPROVED AS TO FORM AND CONTENT:

/s/ Nellie Q. Barnard
Nellie Q. Barnard, OSB No. 122775

EXECUTED this 3rd day of May 2022.

OREGON STATE BAR
By: /s/ Rebecca Salwin
Rebecca Salwin, OSB No. 201650
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of

DONALD R. SLAYTON, Bar No. 862898

Case No. 21-79

Respondent.

Counsel for the Bar: Eric J. Collins
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 3.4(c). Stipulation for Discipline. 30-day suspension.
Effective Date of Order: May 24, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Donald R. Slayton is suspended for 30 days, effective July 4, 2023, one day after the conclusion of the suspension he is currently serving, for violation of RPC 3.4(c).

DATED this 24th day of May 2022.

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

STIPULATION FOR DISCIPLINE

Donald R. Slayton, 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.
Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 19, 1986, and has been a member of the Bar continuously since that time, having his office and place of business in Lane County, Oregon.

Respondent 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).

On September 11, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 3.4(c) 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 this proceeding.

Facts

In 2018 and 2019, Respondent represented Gloria J. Wilson (Gloria) regarding a dispute with her ex-husband Douglas A. Wilson (Douglas) that arose after the Wilsons obtained a divorce in Lane County Circuit Court Case 18DR07601. Gloria’s position was that Douglas owed her more than $103,000 in a money award included in the General Judgment of Dissolution of Marriage. In 2018, Respondent engaged in settlement discussions with Douglas, who was not represented by counsel. As part of those communications, Douglas wrote: “In order to end and (sic) further litigation I shall pay to your client the total sum of $40,000.00 by December 14, 2018. To further show my good will in this matter I am enclosing a certified check made out to Donald R. Slayton Trust Account for the sum of $10,000.00. I will provide to (sic) remaining $30,000.00 by 5:00 pm Friday December 14, 2018 provide (sic) the following has been completed by your client: (five conditions listed). Douglas enclosed a $10,000 cashier’s check with the correspondence.

Respondent deposited the $10,000 check into his trust account. Subsequently, Respondent informed Douglas in writing that the parties had not reached agreement and that the $10,000 had been applied to the underlying amount Gloria maintained Douglas still owed her. Respondent did not return the $10,000 to Douglas but instead ultimately disbursed the funds—$9,052 to Gloria and $948 to himself to cover Gloria’s accrued but unpaid legal fees.

Subsequently, Douglas hired counsel who sent a written demand to Respondent for return of the $10,000. Respondent informed that lawyer he would not return the funds. When Douglas later retained different counsel, Mindy Wekselblatt (Wekselblatt), she reiterated the demand for return of the $10,000 to no avail.

On behalf of their clients, both Wekselblatt and Respondent filed motions related to the post-dissolution dispute that were consolidated for an evidentiary hearing. None of the pleadings before the court moved or prayed for return of the $10,000. During the hearing,
Wekselblatt requested the court order the return of the $10,000 that Douglas had previously sent Respondent. On a subsequent date, the judge who presided over the hearing issued an oral ruling from the bench, granting Douglas’s motion while denying Gloria’s motion. Additionally, the judge ordered the following: “Wife’s attorney shall immediately return Husband’s funds offered in any settlement negotiations.” The court then asked the attorneys individually whether the judge had neglected or overlooked anything, and neither attorney raised any issues or objections prior to the close of the hearing.

When Wekselblatt subsequently provided Respondent a proposed order for his review, Respondent notified her that he objected to the reference requiring him to return $10,000, writing that the funds were disbursed to his client and he did not possess them. Wekselblatt forwarded Respondent’s objection to the court when she filed her proposed order. The court signed the order as drafted by Wekselblatt, which required Respondent to immediately return $10,000 to her.

Respondent did not return $10,000 to Wekselblatt per the court’s order nor did he take any other action to object to or seek reconsideration of the order.

Violations

6.

Respondent knew he had an obligation to comply with the court’s order to return $10,000 to Wekselblatt but did not do so. Respondent admits that both prior to and after the entry of that order, he never openly refused to comply with the order based on an assertion that the obligation to comply was invalid. Thus, Respondent admits he violated RPC 3.4(c).

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 (ABA Standards). The ABA 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.** Respondent violated his duty to avoid abuse of the legal process. ABA Standard 6.2.

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. ABA 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.*
Respondent has acted intentionally or, at least, knowingly in failing to comply with the court’s order of the return of the $10,000 at issue. Respondent was aware of the order and forwarded it to his client but otherwise took no other action. Respondent could have taken some affirmative step to challenge the order or he could have attempted to comply with it by returning the nearly $1,000 he personally received as payment for his client’s accrued but unpaid legal billings.

c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Respondent caused actual injury to Douglas, who has not been reimbursed $10,000. Respondent caused potential injury to the public’s trust and respect for the court by failing to comply with a court’s order.

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

1. **Prior disciplinary record.** ABA Standard 9.22(a). Respondent has been sanctioned in two prior disciplinary proceedings that constitute prior disciplinary offenses or past misconduct as each sanction preceded Respondent’s acts that led to this proceeding and involved similar violations; namely, violating RPC 8.4(a)(4) or its predecessor. *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018); *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997) (discussing that to qualify as a prior disciplinary offense, the prior offense must have been adjudicated before the imposition of the current sanction and the similarity and temporal relationship between the prior offense and current offense are relevant).

   In 2004, Respondent was reprimanded for violating DR 1-102A(4) [engaging in conduct prejudicial to the administration of justice], the predecessor to RPC 8.4(a)(4), after he negligently signed a motion for issuance of a bench warrant that inaccurately claimed an opposing party had failed to appear at a show cause hearing. *In re Slayton*, 18 DB Rptr 56 (2004).

   In 2010, Respondent was suspended for 60 days for violating RPC 8.4(a)(3) [misrepresentation] and RPC 8.4(a)(4) [conduct prejudicial to the administration of justice] for making a misrepresentation to a court regarding the reason he could not appear for trial. *In re Slayton II*, 24 DB Rptr 106 (2010).

2. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent has been licensed to practice law in Oregon since September 19, 1986.

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

1. **Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.** ABA Standard 9.32(e).

The aggravating factors outweigh the mitigating factor.
Without considering aggravating or mitigating factors, the following ABA Standards apply:

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.” ABA Standard 6.22.

Oregon cases support a suspension for knowingly disobeying court orders. Examples include:

_In re Chase_, 339 Or 452, 121 P3d 1160 (2005) [30-day suspension] Lawyer found in violation of (DR) 7-106(A), the predecessor to RPC 3.4(c), by repeatedly failing to pay court-ordered child support and being found in contempt of court. The court found the accused lawyer acted knowingly rather than intentionally but that a suspension of at least some duration was required for knowing failures to comply with court rules or orders.

_In re Levie_, 342 Or 462, 154 P3d 113 (2007) [1-year suspension] Lawyer found in violation of (DR) 7-106(A), the predecessor to RPC 3.4(c), when he failed to comply with an arbitrator’s order that all his client’s sculptures had to be turned over to a gallery for sale. The attorney had retained three sculptures for display in his law firm. The attorney was also found in violation of several other rules.

_In re Rhodes_, 331 Or 231, 13 P3d 512 (2000) [2-year suspension] Attorney was suspended for two years as a result of two contempt orders stemming from his dissolution and his subsequent noncooperation with the Bar. The attorney was found in contempt for failing to produce documents that his wife had requested in connection with marital separation proceedings and was later found in contempt for failing to make child support payments. The attorney was also found in violation of several other rules.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30 days for violation of RPC 3.4(c), the sanction to be effective July 4, 2023, one day after the conclusion of the suspension he is currently serving.

Respondent 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, Respondent represents he is currently suspended from the practice of law and has previously arranged for Jeff Farr Law, P.C., dba Progressive Legal, operated by an active member of the Bar, to take possession of Respondent’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Respondent represents that Jeff Farr Law P.C. previously agreed to accept this responsibility.
12. Respondent 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. Respondent 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. 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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

14. 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.

15. Approval of this Stipulation for Discipline as to substance was given by the SPRB on February 23, 2022. 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 10th day of May 2022.

/s/ Donald R. Slayton
Donald R. Slayton, OSB No. 862898

EXECUTED this 19th day of May 2022.

OREGON STATE BAR
By: /s/ Eric J. Collins
Eric J. Collins, OSB No. 122997
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
)
Complaint as to the Conduct of ) Case Nos. 20-47, 20-58, & 21-66 )
)
ROBERT A. GRAHAM, JR., )
Bar No. 982396 )
)
Respondent. )

Counsel for the Bar: Eric J. Collins
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.16(d), and RPC 8.4(a)(4). Stipulation for Discipline. 1-year suspension.
Effective Date of Order: June 2, 2022

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. Respondent is suspended from the practice of law in the State of Oregon for a period of one year, effective one day after the date of this order.

/s/ Martha L. Walters
Martha L. Walters, Chief Justice
Supreme Court 6/2/2022 9:20 AM

STIPULATION FOR DISCIPLINE

Robert A. Graham Jr., 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 October 2, 1998, 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 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 April 24, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 8.4(a)(4), and RPC 1.16(d) of the Oregon Rules of Professional Conduct. On June 5, 2021, the SPRB authorized formal disciplinary proceedings against Respondent for additional alleged violations of RPC 1.3 and RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct. On July 24, 2021, the SPRB authorized formal disciplinary proceedings against Respondent for additional alleged violations of RPC 1.3 and RPC 1.4(a) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5. In July 2019, Respondent undertook to represent Sandra Diesel (Diesel) in a breach of contract matter, Ashland Insurance v. Sandra Diesel, Jackson County Circuit Court Case No. 19CV10549 (Ashland matter) and filed an answer on her behalf. Subsequently, a dispute arose between Respondent and Diesel over his representation of her in other corporate matters, and Respondent announced his withdrawal from representing her in all matters. Although Respondent advised Diesel to find new legal counsel for the Ashland matter, he failed to notify the court of his withdrawal and failed to take any substantive action thereafter on behalf of his client.

Additionally, although Respondent told Diesel that he would forward her file in the Ashland matter, he never did. Respondent also failed to communicate with Diesel for about six months, between mid-August 2019 and February 2020, including about substantive developments in the case, such as the appointment of an arbitrator and her obligation to pay a portion of the arbitrator’s fee.

Respondent reengaged with the case to a limited extent in 2020, but encouraged Diesel to attend an arbitration hearing with a different attorney. Respondent ultimately failed to timely notify Diesel of a deadline to pay the outstanding arbitration fee, and Diesel was precluded from participating in or even attending an arbitration hearing in May 2020. The arbitrator found for the opposing party and awarded damages in the amount of $43,734.
Violations

6.

Respondent admits that by failing to take substantive action in the Ashland matter as described in paragraph 5 when he was obligated to do so because he remained attorney of record on the case, he engaged in a course of neglectful conduct in a matter entrusted to him in violation of RPC 1.3. Respondent also admits that by failing to communicate with Diesel for a substantial period of time and, at times, in an untimely manner, he failed to keep her reasonably informed about the status of her matter in violation of RPC 1.4(a), and failed to explain that matter to the extent reasonably necessary to permit Diesel to make informed decisions regarding his representation in violation of RPC 1.4(b). Respondent additionally admits that the aforementioned conduct caused delay in the procedural functioning of the Ashland matter and affected the substantive rights of the parties and thus constituted engaging in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4). Finally, Respondent admits that by failing to provide Diesel with her file, he failed to take steps to the extent reasonably practicable to protect her interests upon termination of the representation in violation of RPC 1.16(d).

Steve Hunt/Sandra Gross Matter – Case No. 20-58

7.

In or around November 2017, Respondent undertook to represent Andrew R. Harrison (Harrison) in a breach of contract matter, Sandra Gross, individually; and Service Lighting Products, Inc. v. Andrew R. Harrison, Jackson County Circuit Court Case No. 17CV36177 (Gross matter).

Subsequently, Respondent received notice of, but failed to appear at, a pre-trial conference, and he later failed to appear for the deposition of Sandra Gross (Gross), which he had noticed. After the court entered a general judgment and money award in favor of the plaintiffs and against Harrison, Respondent failed to timely file Harrison’s objection to plaintiffs’ statement for attorney fees.

In November 2019, Respondent filed a notice of appeal and undertook to represent Harrison to appeal the trial court judgment in the Gross matter, Oregon Court of Appeals Case No. A172575 (appellate matter). Thereafter, Respondent failed to follow a number of appellate procedural rules, including failing to pay the filing fee when he filed the notice of appeal, failing to file a settlement conference statement, failing to timely file appellant’s opening brief, and failing to timely file a response to plaintiffs-respondents’ motion to dismiss.

Although the court denied the motion to dismiss, Respondent subsequently continued to commit various errors in filings, such as filing his opening brief late, without a motion for extension of time and lacking a signature. In another filing, he failed to include a statement reflecting conferral with opposing counsel and opposing counsel’s position on the motion, among other deficiencies. Additionally, Respondent’s amended opening brief was deemed “severely deficient” because the case caption was incorrect, the assignment of error needed to be set out in the index, the excerpt of record needed to begin with an index, and it needed to include a current copy of the trial court register.
Ultimately, Harrison moved to dismiss the appeal, and the court granted the motion. However, Respondent committed additional errors in filings related to plaintiff-respondents’ motion for attorney fees.

**Violations**

8.

Respondent admits that by failing to take substantive action in the Gross matter and subsequent appeal as described in paragraph 7, he engaged in a course of neglectful conduct in a matter entrusted to him in violation of RPC 1.3. Respondent additionally admits that his inaction and errors as described in paragraph 7 also constituted engaging in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

**Joseph Bellantoni Matter – Case No. 21-66**

9.

In March 2017, Respondent undertook to represent Joseph R. Bellantoni (Bellantoni) in transactional matters related to Bellantoni’s business. In February 2018, Bellantoni advised Respondent that he had purchased real property and one hundred percent (100%) of the business interest of an Oregon Liquor Control Commission (OLCC)-licensed business entity. Within a very short time after the conversation, Respondent was advised by Bellantoni that he was initially only buying fifty percent (50%), desiring the seller to keep an ownership interest until all contingencies of the purchase agreement were satisfied by the seller. Accordingly, under the then-existing OLCC rules in February 2018, a change to the capital structure form (business structure filing) was required to be submitted to the OLCC with the annual renewal of the license. Respondent did file the renewal and the business structure filing in mid-September 2018. However, OLCC had made a rule change in August 2018 that required filing the business structure form separate from the annual license renewal. Respondent was not aware of that rule change at the time he filed the paperwork in mid-September 2018. In May 2019, Respondent resubmitted the business structure filing.

Subsequently, an OLCC staff member assigned to review the business structure filing repeatedly requested additional information from Respondent in June, July, and August 2019 due to deficiencies in the paperwork. When Respondent failed to timely provide the information, OLCC requested that Respondent resubmit the paperwork, which would restart the process. Respondent received this news and told Bellantoni that he would resubmit the business structure filings in August 2019, but Respondent did not do so until January 2020.

In March 2020, Respondent informed Bellantoni he wanted to terminate the representation and would send Bellantoni his documents electronically. However, Respondent failed to do so over the next several weeks. Meanwhile, the OLCC notified Bellantoni of deficiencies in the business structure filings Respondent had submitted in January 2020. Facing an April 10, 2020, deadline to provide additional information to OLCC, Bellantoni made numerous attempts to communicate with and obtain information from Respondent between March 14, 2020, and April 9, 2020, with limited success. Ultimately Bellantoni prepared a response to OLCC himself, which Respondent reviewed shortly before the deadline, and Bellantoni filed it with OLCC.
Violations

10.

Respondent admits that by failing to take substantive action regarding required OLCC filings on behalf of Bellantoni as described in paragraph 9, he engaged in a course of neglectful conduct in a matter entrusted to him in violation of RPC 1.3. Respondent also admits that by failing to communicate with Bellantoni in March and April 2020 at a time when Bellantoni repeatedly requested assistance with the filings for OLCC, Respondent failed to keep Bellantoni reasonably informed about the status of his matter and failed to promptly comply with Bellantoni’s reasonable requests for information in violation of RPC 1.4(a).

Sanction

11.

Respondent 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 (ABA Standards). The ABA 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 most important ethical duties a lawyer owes are to his clients. ABA Standards at 5. Respondent violated his duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. ABA Standard 4.4. Respondent also violated his duty to properly handle client property. ABA Standard 4.1. Additionally, Respondent violated the duty he owed to the legal system to avoid conduct prejudicial to the administration of justice. See In re Coyner, 342 Or 104, 112, 149 P3d 1118 (2006).

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. ABA 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, Respondent acted knowingly in failing to follow through with his professional obligations to his clients and the court. He was aware that he needed to take certain actions in representing his clients, and even told his clients he would take those actions, but he failed to do so.

c. Injury. Injury can be either actual or potential under the ABA Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). Respondent caused actual injury to Diesel, who was not allowed to participate in arbitration due to Respondent’s communication failures and neglect. In her absence, the arbitrator found for the plaintiff and awarded damages in the amount of $43,734. Additionally, Diesel and Bellantoni suffered uncertainty, anxiety, and aggravation...
when Respondent failed to respond or follow through with matters on their behalf. “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, Respondent burdened the court of appeals by requiring it to expend its limited time and resources on correcting Respondent’s errors and deficiencies in his filings.

d. **Aggravating Circumstances:**

1. **Prior disciplinary record.** ABA Standard 9.22(a). Respondent received a public reprimand in 2003 for failing to properly identify and safeguard client property under former DR 9-101(C)(2) and for failure to promptly return client property under former DR 9-101(C)(4). He lost or misplaced client documents and failed to provide his clients a copy of their deposition testimonies in time for review prior to an arbitration hearing.

In 2012, Respondent received an admonition for neglecting a legal matter under RPC 1.3 and failing to abide by the client’s decisions regarding the objectives of the representation under RPC 1.2(a). Respondent failed to promptly act to ensure that a supplemental judgment stated that his client was not obligated to pay another attorney’s fees until certain real property sold. Admonition letters are evidence of past misconduct if the misconduct that gave rise to the letter was of the same or similar type as the misconduct at issue in the present case. *In re Cohen*, 330 Or 489, 500, 8 P3d 953 (2000).

To determine the significance to apply to an admonition, and prior discipline in general, several factors are considered: (1) the relative seriousness of the prior offense and resulting sanction; (2) the similarity of the prior offense to the offense in the case at bar; (3) the number of prior offenses; (4) the relative recency of the prior offense; and (5) the timing of the current offense in relation to the prior offense and resulting sanction, specifically, whether the accused lawyer had been sanctioned for the prior offense before engaging in the offense in the case at bar. *Id.* at 499.

Respondent received the admonition approximately six to seven years prior to the conduct at issue in the current disciplinary proceeding. The admonition also involved neglect. However, since the past misconduct resulted in an admonition, it was not treated with the same level of seriousness as this case. Ultimately, under the factors, the prior admonition is given significant weight in aggravation as it shows Respondent was warned about engaging in neglect and was knowledgeable about the disciplinary process at the time of the facts of this case. His prior public reprimand should receive less significance due to the amount of time since the violation; however, the circumstances of that misconduct are similar to those here in terms of mishandling client property, thus that disciplinary sanction should not be discounted.
2. **A pattern of misconduct.** ABA Standard 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). Respondent’s repeated neglectful conduct established a pattern.

3. **Multiple offenses.** ABA Standard 9.22(d).


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

1. **Absence of a dishonest or selfish motive.** ABA Standard 9.32(b).
2. **Personal or emotional problems.** ABA Standard 9.32(c).

12.

Under ABA Standard 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.” Suspension is also generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. ABA Standard 4.12. 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. ABA Standard 7.2.

13.

Oregon cases support a suspension when a lawyer knowingly neglects a legal matter; a more significant suspension is warranted when a lawyer engages in multiple rules violations including neglect. Examples include:

- **In re Schaffner**, 325 Or 421, 939 P2d 39 (1997) [2-year suspension] The lawyer neglected a legal matter, failed to deliver property to the client, failed to fully respond to inquiries from disciplinary counsel, and failed to return client documents to the client. The attorney had received discipline for similar misconduct the year prior, an aggravating factor that heightened the sanction.

- **In re Lipetzky**, 31 DB Rptr 275 (2017) [6-month suspension] After an attorney agreed to prepare a supplemental judgment in a domestic-relations matter and failed to do so, he also failed to return the supplemental judgment drafted by his opposing counsel for nearly seven months, despite multiple inquiries about its status. In another case, he was appointed arbitrator but eventually was removed by
the court for his lack of communication with counsel for the parties and failure to reschedule the arbitration hearing.


14.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for one year for violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), 1.16(d), and RPC 8.4(a)(4), the sanction to be effective one day after the stipulation is approved.

15.

Respondent 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, Respondent has arranged to have all client files returned to clients by May 1, 2022.

16.

Respondent 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. Respondent also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

17.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

18.

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: California.

19.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 12, 2022. 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 May 2022.

/s/ Robert A. Graham Jr.
Robert A. Graham Jr., OSB No. 982396

EXECUTED this 6th day of May 2022.

OREGON STATE BAR

By: /s/ Eric J. Collins
Eric J. Collins, OSB No. 122997
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )

) Case No. 21-22

Complaint as to the Conduct of )

) NICOLE E. SCHAEFFER,
Bar No. 151476 )

Respondent. )

Counsel for the Bar: Eric J. Collins
Counsel for the Respondent: Amber Bevacqua-Lynott
Disciplinary Board: None
Disposition: Violation of RPC 7.1, RPC 5.5(b)(2), and ORS 9.160(1). Stipulation for Discipline. 30-day suspension.
Effective Date of Order: June 2, 2022

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 Nicole E. Schaefer is suspended for 30 days, effective June 28, 2022, for violation of RPC 7.1, RPC 5.5(b)(2), and ORS 9.160(1).

DATED this 2nd day of June 2022.

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

STIPULATION FOR DISCIPLINE

Nicole E. Schaefer, 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.
Respondent 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 Washington County, Oregon.

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).

On January 31, 2022, an amended formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 7.1 and RPC 5.5(b)(2) of the Oregon Rules of Professional Conduct and ORS 9.160(1) of the Oregon Revised Statutes. 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

In 2020, Respondent, the sole attorney in her law firm, maintained a website, LetsUntieTheKnot.com, to promote do-it-yourself (DIY) legal forms and support services in uncontested divorce matters. Respondent’s LetsUntieTheKnot.com website, which she promoted through a “waitlist” link that she provided to the members of the Bar’s Estate Planning listserv, communicated both that she had lawyers and a panel of other professionals—including accountants, child custody experts, and family counselors—all available for consultation at a fraction of the cost of outside professionals. The website also communicated that five legal-services packages were available for purchase at varying levels of membership options.

Respondent promoted the site to lawyers and other professionals seeking to grow the site’s professional resources. Specifically, she encouraged attorneys on the listserv to “spread the word to your clients if they are seeking an inexpensive alternative to traditional divorce.” Site visitors who selected a membership option were informed that they would be placed on a waitlist and contacted. At that time, Respondent had no detailed agreements with any lawyers or professionals to provide low-cost legal services through the website, and nothing on the website disclosed that.

Thus, the above representations on LetsUntieTheKnot.com were false or misleading as neither Respondent, other lawyers, nor other professionals were available at that time to provide the services as advertised.

Separately, between August 14, 2021, and October 15, 2021, Respondent served a 60-day suspension from the practice of law stemming from a prior disciplinary matter. While
serving the suspension, Respondent had an online presence on two websites—YellowDogLegal.com and NicoleSchaeferLaw.com—that remained viewable to the public and held Respondent out as currently practicing law while she was suspended. Also, during her suspension, Respondent maintained an active profile page on LinkedIn, a business and employment-oriented social networking service for professionals. While she thought she had removed any references to her status as an attorney on the profile, Respondent did not during the period of her suspension clarify that she was suspended and not currently able to practice law in Oregon.

Violations

7.

Respondent admits that the LetsUntieTheKnot.com website did not contain disclosures about the availability of the offers and services as advertised and thus contained materially misleading statements in violation of RPC 7.1. Further, Respondent admits that she unknowingly held herself out to the public or otherwise represented she was admitted to practice law in this jurisdiction while suspended, in violation of RPC 5.5(b)(2), and RPC 7.1, and held herself out as qualified to practice law while suspended and not an active member of the Bar, in violation of ORS 9.160(1).

Sanction

8.

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 (ABA Standards). The ABA 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.** Respondent violated her duty to the profession to refrain from making false or misleading communications regarding her legal services. ABA Standard 7.0.

b. **Mental State.** “Intent” is the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Id. “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Id. Respondent knowingly promoted services on the LetsUntieTheKnot.com website that were not then available but failed to appreciate that visitors to the site could be misled because they could not sign up for services and were instead directed to a wait-list. Subsequently, Respondent negligently held herself out as able to practice law while she was suspended.
c. **Injury.** Injury can either be actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). “Potential injury” is harm to a client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. ABA Standards at 9. Respondent caused potential injury to prospective clients who could have been persuaded to sign up for the services advertised on *LetsUntieTheKnot.com* despite the fact that those services were not then available nor was it clear that those services would ever be available—especially at less than a fraction of the cost of outside lawyers or professionals. Similarly, regarding Respondent’s online presence during the 60-day suspension, her failure to disclose her suspension from the practice of law could have misled the public about her ability to practice law at that time.

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

1. A prior record of discipline. ABA Standard 9.22(a). In 2019, Respondent was disciplined for violations of RPC 1.1, RPC 8.4(a)(4), RPC 7.1, and RPC 8.1(a)(1). The RPC 7.1 violation stemmed from false or misleading representations made on websites Respondent used to promote herself and her legal services, including on the website at issue here—*LetsUntieTheKnot.com*. The similarity and recency of the prior offenses as well as the fact that Respondent received discipline in those matters prior to engaging in the current misconduct would give the prior discipline significant weight in aggravation. *See In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997) (finding the following considerations important in analyzing prior misconduct: the relative seriousness, similarity, amount, recency of the prior offense or offenses, as well as whether the attorney was sanctioned prior to engaging in the current misconduct).

2. A pattern of misconduct. ABA Standard 9.22(c). The similarity between the current misconduct and that found in 2019 regarding Respondent’s websites reflects a pattern.

3. Multiple offenses. ABA Standard 9.22(d).

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

1. Absence of a dishonest or selfish motive. ABA Standard 9.32(b). Respondent sought to establish * LetsUntieTheKnot.com* to promote access to justice through a low-cost alternative to traditional legal services.

2. Personal or emotional problems. ABA Standard 9.32(c). Respondent has been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD), which she describes as severe.

3. Timely good faith effort to rectify consequences of misconduct. ABA Standard 9.32(d). Respondent took down the *LetsUntieTheKnot.com* when she was alerted to the Bar’s concerns over its content.
4. **Cooperative attitude toward proceedings.** ABA Standard 9.32(e).

5. **Inexperience in the practice of law.** ABA Standard 9.32(f). Respondent was admitted to practice law in 2015.

6. **Remorse.** ABA Standard 9.32(l). Respondent has expressed remorse regarding this matter.

9.

Without considering aggravating or mitigating factors, the following ABA Standards apply:

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. ABA Standard 7.2.

Additionally, suspension is generally appropriate when a lawyer has been reprimanded for the same or similar conduct 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. ABA Standard 8.2.

Respondent’s prior discipline coupled with Respondent’s knowing mental state as to one of the violations suggests that a term of suspension is warranted.

10.

Oregon cases indicate a short suspension is warranted.

- **In re Foster,** 29 DB Rptr 35 (2015) [30-day suspension]: An attorney, while administratively suspended, held herself out as a practicing attorney on television and internet advertising and then falsely denied doing so to the Bar. An aggravating factor was the imposition of discipline near the time the misconduct occurred. The attorney stipulated to violating RPC 7.1, RPC 5.5(b)(2) and RPC 8.1(a)(1);

- **In re Kenney,** 28 DB Rptr 269 (2014) [30-day suspension]: An attorney transferred to inactive status but continued to represent clients before the Social Security Administration and held herself out in advertisements in Oregon as qualified to do so when she was not; the lawyer also failed to update her advertisements concerning other professional qualifications and memberships as they changed. The lawyer stipulated to violating RPC 5.5(a), RPC 5.5(b)(2), and RPC 7.1; and

- **In re Johnson,** 20 DB Rptr 223 (2006) [30-day suspension]: An attorney practiced law despite failing to complete the requirements for reinstatement after serving a disciplinary suspension. A trial panel found her in violation of ORS 9.160 and the predecessor rule to RPC 5.5(a).
Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30 days for violation of RPC 7.1, RPC 5.5(b)(2), and ORS 9.160(1), the sanction to be effective June 28, 2022.

In addition, on or before August 1, 2022, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of $698.05, incurred for her deposition. Should Respondent fail to pay $698.05 in full by August 1, 2022, 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.

Respondent 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. Respondent represents that she has no active clients or active client files that require tender to active counsel during the period of her suspension.

Respondent 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. Respondent 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.

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. 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, 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.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 29, 2022. 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 1st day of June 2022.

/s/ Nicole E. Schaefer
Nicole E. Schaefer, OSB No. 151476

APPROVED AS TO FORM AND CONTENT:

/s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott, OSB No. 990280

EXECUTED this 2nd day of June 2022.

OREGON STATE BAR
By: /s/ Eric J. Collins
Eric J. Collins, OSB No. 122997
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )
) Case No. 21-33
Complaint as to the Conduct of )
) MATTHEW HORGAN, Bar No. 163249 )
) Respondent.

Counsel for the Bar: Susan R. Cournoyer
Counsel for the Respondent: None
Disciplinary Board: Mark A. Turner, Adjudicator
Disposition: Violation of RPC 3.3(a)(1), RPC 3.3(a)(4), and RPC 5.5(a). Order granting BR 3.5 petition for reciprocal discipline. Four-month suspension.
Effective Date of Order: May 5, 2022

ORDER GRANTING BR 3.5 PETITION FOR RECIPROCAL DISCIPLINE

This matter is before me on the Oregon State Bar’s (Bar) Petition for Reciprocal Discipline pursuant to BR 3.5. By order dated February 24, 2021, the Supreme Court of California adopted a stipulation for discipline whereby Respondent was suspended from the practice of law for two years, all but 90 days stayed, pending successful completion of a two-year probation. The court required that, before Respondent could be reinstated from the 90-day imposed suspension, he make restitution to two former clients ($1,000 to one, $2,500 to the other, plus interest). In addition, Respondent was ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) by July 24, 2021, or face suspension. Respondent was also ordered to pay costs in two installments, with his 2022 and 2023 annual fees.

The California disciplinary proceeding arose from Respondent’s involvement with a nonlawyer engaged in the practice of law, and his filing, in bankruptcy proceedings, multiple compensation disclosure statements that misrepresented the amounts and sources of the legal fees he received in representing debtors.

The Bar argues that Respondent violated ORPC 3.3(a)(1), ORPC 3.3(a)(4), and ORPC 5.5(a), and requests that he be suspended for a period of four months, a sanction greater than that imposed in California.

I am informed by Disciplinary Counsel that Respondent has communicated that he does not oppose this petition or the imposition of the requested sanction, and that he asks that his suspension begin to run as soon as possible.
Accordingly,

IT IS HEREBY ORDERED that the Petition for Reciprocal Discipline is GRANTED and Respondent is suspended for a period of four months effective as of this order’s date.

DATED this 5th day of May, 2022.

/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  

DREW W.S. CUTLER, Bar No. 151943  

Respondent.  

Counsel for the Bar:  Angela W. Bennett  
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:  June 16, 2022  

ORDER APPROVING STIPULATION FOR DISCIPLINE  

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Drew WS Cutler is publicly reprimanded for violation of RPC 5.5(a) and ORS 9.160(1).  

DATED this 16th day of June 2022.  

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

STIPULATION FOR DISCIPLINE  

Drew WS Cutler, 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.
Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 26, 2015, and has been a member of the Bar continuously since that time, having his office in Jackson County, Oregon.

Respondent 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).

On April 30, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 5.5(a) of the Oregon Rules of Professional Conduct (RPC) and ORS 9.160(1). 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

On March 17, 2020, Cutler was administratively suspended for failing to timely file his 2020 Professional Liability Fund (PLF) certification form, which is required to maintain an active Oregon law license. A few weeks later, he paid the fee to get reinstated, but he did not submit the required reinstatement forms. He did not realize that he was still suspended, and continued to practice law through December 2020, when he learned that he was still administratively suspended. Soon thereafter, he applied for reinstatement, and disclosed in his application forms that he practiced law during his suspension.

During the time in question, Cutler was employed with the U.S. Air Force, attached to the National Guard Bureau in Washington, D.C., as a Special Victim’s Attorney for the National Guard. Cutler could have continued to do his job as long as he was licensed in good standing in another state. During the period of his administrative suspension, Cutler did not have an active law license in any state to support his continued practice of law for his employer.

Violations

Respondent admits that, by practicing law while his license to do so was administratively suspended in Oregon, he violated RPC 5.5(a) and ORS 9.160(1).
Sanction

8.

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 (ABA Standards). The ABA 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. Cutler’s unauthorized practice of law violated his duty owed as a professional. ABA Standard 7.0.

b. Mental State. Cutler knew he was suspended but then incorrectly thought he had been reinstated after he paid the reinstatement fee. He acted negligently from that point on in failing to check on his licensure status or realize that he had not been reinstated.

c. Injury. Injury can be either actual or potential under the ABA Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). It is unknown whether Cutler’s conduct actually injured any clients, and there have been no reports that it did. Despite that, the “unauthorized practice of law always has the potential to cause injury to the legal system.” In re Whipple, 320 Or 476, 488, 886 P2d 7 (1994). There was potential injury here, but no known actual injury to clients or the public.

d. Aggravating Circumstances. None.

e. Mitigating Circumstances. Mitigating circumstances include:
   3. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).
   4. Remorse. ABA Standard 9.32(l). Cutler has expressed remorse for his conduct.

9.

Under the ABA Standards, a public 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. ABA Standard 7.3.

10.

The Bar has stipulated to public reprimands for attorneys who have acknowledged practicing law while they were unaware of being suspended. See, e.g., In re Grant, 33 DB Rptr 435 (2019), In re Rose, 33 DB Rptr 308 (2019), and In re Bassett, 16 DB Rptr 190 (2002).
11.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 5.5(a) and ORS 9.160(1), the sanction to be effective immediately upon approval by the Disciplinary Board.

12.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

13.

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: Virginia.

14.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 30, 2022. 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 2022.

/s/ Drew WS Cutler
Drew WS Cutler, OSB No. 151943

EXECUTED this 14th day of June 2022.

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. 22-40
Complaint as to the Conduct of )
) RICH BILLIN, Bar No. 904546 )
) Respondent. )

Counsel for the Bar: Samuel Leineweber
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.4(a), and RPC 1.4(b). Stipulation for Discipline. Public reprimand.
Effective Date of Order: June 28, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Rich Billin (Respondent) and the Oregon State Bar (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) and RPC 1.4(b).

DATED this 28th day of June 2022.

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

STIPULATION FOR DISCIPLINE

Rich Billin, 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.
Cite as *In re Billin*, 36 DB Rptr 136 (2022)

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 22, 1990, 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 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 11, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.4(a) and RPC 1.4(b) 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 2018, Edwin G. Franks hired Respondent to assist him in a property dispute. Respondent began working on Mr. Franks’ case, and on July 20, 2018, opposing counsel sent Respondent a pre-filing offer to settle the dispute, with a deadline of August 6, 2018, to accept the offer. Respondent did not communicate the settlement offer to Mr. Franks, and did not otherwise respond to opposing counsel. Although Respondent missed the deadline to respond to the offer, opposing counsel did not file suit.

6.

On November 20, 2018, opposing counsel sent a second pre-filing settlement offer to Respondent. Opposing counsel said that if this settlement offer was not accepted by December 4, 2018, she would file suit. Respondent was out of the country when the second offer was sent. When opposing counsel had not received a response to the second settlement offer by December 13, she filed suit and served Mr. Franks. Mr. Franks then met with Respondent on December 18 and learned about the two settlement offers for the first time.

7.

Respondent continued to represent Mr. Franks in the matter until May 2019, at which point he withdrew. Mr. Franks went on to settle his case *pro se* in June 2019.

Violations

8.

Respondent admits that, by failing to timely communicate settlement offers to Mr. Franks, he violated RPC 1.4(a) and RPC 1.4(b).
Sanction

9.

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 (ABA Standards). The ABA 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. Respondent violated his duty to diligently represent his client when he failed to timely communicate with Mr. Franks. ABA Standard 4.4.

b. Mental State. “Intent” is the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Id. “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Id.

Respondent stated that while it was his practice to forward correspondence to clients, he has no record of doing so in this matter. Respondent was negligent in ensuring that the opposing party’s settlement offers were timely communicated to Mr. Franks.

c. Injury. For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). Mr. Franks suffered actual injury when he was deprived of the opportunity to resolve his case quickly and on terms that were acceptable to him; instead Mr. Franks had to spend extra time and approximately $2,000 engaging in litigation. Mr. Franks also suffered injury from Respondent’s failure to communicate in the form of frustration, stress, and anxiety upon learning that he had missed opportunities to settle his case in the pre-filing stage. See In re Cohen, 330 Or 489, 496, 8 P3d 953 (2000); In re Schaffner, 325 Or 421, 426–27, 939 P2d 39 (1997).

d. Aggravating Circumstances. Aggravating circumstances include:

1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been licensed to practice law since 1990.

e. Mitigating Circumstances. Mitigating circumstances include:

2. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).
3. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).
Under the ABA Standards, reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. Standard 4.43.


Similar Oregon cases have resulted in a public reprimand. See In re Doyle, 33 DB Rptr 327 (2019) (attorney was publicly reprimanded when he failed to advise his client of a post-judgment offer by the opposing party to structure his client’s judgment debt into monthly payments, resulting in a garnishment of the client’s wages); In re Burt, 30 DB Rptr 139 (2016) (a criminal defense attorney was publicly reprimanded when he failed to respond to his client’s requests for updates and information about the case, and failed to convey a potential plea offer from the prosecution); In re Bottoms, 23 DB Rptr 13 (2009) (attorney was publicly reprimanded when he failed to appear for court hearings related to his client’s criminal case, did not fully explain the district attorney’s settlement offer to his client, and failed to otherwise keep the client reasonably informed about the status of the case).

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 1.4(a) and RPC 1.4(b), the sanction to be effective upon approval of this stipulation by the Disciplinary Board.

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.

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.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 11, 2022. 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 June 2022.

/s/ Rich Billin
Rich Billin, OSB No. 904546

EXECUTED this 21st day of June 2022.

OREGON STATE BAR

By: /s/ Samuel Leineweber
Samuel Leineweber, OSB No. 123704
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:

Complaint as to the Conduct of

HUNTER C. TONRY, Bar No. 001776

Respondent.

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 5.5(a) and ORS 9.160(1). Stipulation for Discipline. 30-day suspension.
Effective Date of Order: June 28, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Hunter C. Tonry (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 30 days, effective upon approval, for violation of RPC 5.5(a) and ORS 9.160(1).

DATED this 28th day of June, 2022.

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

STIPULATION FOR DISCIPLINE

Hunter C. Tonry, 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 14, 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.
Respondent 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 30, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of 5.5(a) of the Oregon Rules of Professional Conduct and 9.160(1) of the Oregon Revised Statutes. 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 March 17, 2020, Respondent was suspended due to his failure to pay his Professional Liability Fund (PLF) assessment or file a PLF exemption form, and was notified by email of his suspension that day. Respondent emailed the Bar’s Regulatory Services Coordinator and inquired what he had to do to be reinstated. That afternoon, the coordinator emailed Respondent and informed him that he needed to complete the PLF requirements, apply for reinstatement under BR 8.4, and pay a $100 reinstatement fee. The coordinator attached the BR 8.4 reinstatement form to her email.

On March 18, 2020, Respondent paid his 2020 member dues, MCLE late fee and $100 reinstatement fee, and provided an exemption form to the PLF, but he inadvertently did not apply for reinstatement by submitting a BR 8.4 form. Thereafter, Respondent continued to practice law until August 4, 2021, when he learned that his March 17, 2020 suspension remained in effect. After Respondent learned he was still suspended, he again emailed the Bar’s Regulatory Services Coordinator and asked if he could continue working. The coordinator told Respondent that he was “not allowed to practice law in any capacity while [he was] suspended,” and that he could not practice until he was reinstated.

Despite those statements, Respondent continued to practice law between August 4, 2021 and when he was reinstated on September 22, 2021, albeit in a significantly reduced capacity. Respondent did not believe that his limited activities constituted practicing law but he accepts that he was mistaken.
Violations

6.

Respondent admits that, by engaging in the practice of law while he was suspended, he practiced law in violation of the regulations of the legal profession, and therefore violated RPC 5.5(a) and ORS 9.160(1).

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 (ABA Standards). The ABA 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.** Respondent violated his duty to the profession to refrain from the unauthorized practice of law. ABA Standard 7.0.

b. **Mental State.** “Intent” is the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

Respondent appears to have acted negligently by practicing while suspended between March 17, 2020, and August 4, 2021. He somehow missed the need to apply for reinstatement and thought that he had resolved the issues.

However, his mental state appears to have been at least knowing as of August 4, 2021, when the Bar informed him, in writing, that he could not practice law until he was reinstated. Despite that, Respondent continued to practice law.

c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). However, violation of these rules always creates potential for harm. *See In re Koliha*, 330 Or 402, 409, 9 P3d 102 (2000) (noting that “the unauthorized practice of law inherently carries with it the potential to injure the legal system”) (*citing In re Whipple*, 320 Or 476, 488, 886 P2d 7 (1994)).

There is no evidence that Respondent actually injured his client during his administrative suspension. During that time, his client had the potential to suffer injury as the result of his unauthorized practice of law.
d. **Aggravating Circumstances.** Aggravating circumstances include:

1. **Multiple offenses.** ABA Standard 9.22(d). Not realizing he was suspended, Respondent practiced law for about 17 months. After he knew he was suspended, Respondent continued to engage in the unauthorized practice for another seven weeks, in the reduced capacity described above, until reinstated.

2. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent was licensed to practice in Oregon in 2000. Before that, he was licensed in Minnesota in 1997.

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

1. **Absence of a prior record of discipline.** ABA Standard 9.32(a).

2. **Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.** ABA Standard 9.32(e). Respondent disclosed his practice while suspended and he cooperated in the subsequent investigation.

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

9. Oregon decisions support a period of suspension. *In re Johnson, 34 DB Rptr 165 (2020)* [stipulation] (imposing 30-day suspension on inactive and administratively suspended attorney who knowingly practiced law through providing legal assistance to a friend); *In re Kenney, 28 DB Rptr 269 (2014)* [stipulation] (imposing 30-day suspension on inactive MD attorney, for knowingly practicing in OR before the Social Security Administration); *In re Foster, 27 DB Rptr 163 (2013)* [trial panel opinion] (imposing 30-day suspension where lawyer practiced administrative law while she knew that she was suspended and knowingly made misleading communications about her ability to perform services); *In re Mary W. Johnson, 20 DB Rptr 223 (2006)* [trial panel opinion] (imposing 30-day suspension where, as a result of “willful ignorance … tantamount to knowing” the reinstatement procedures, lawyer practiced law while suspended); *In re Pavithran, 16 DB Rptr 321 (2002)* [stipulation] (one year suspension for attorney who, among other violations, knowingly continued to hold herself out as eligible to practice law in litigated matter after being suspended for failure to pay her PLF assessment).

10. Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30 days for violation of RPC 5.5(a) and ORS 9.160(1), the sanction to be effective upon approval by the Disciplinary Board.
11. Respondent represents that he is between assignments, and has no active matters or files to which access may be required for any client purpose.

12. Respondent 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. Respondent 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. 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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

14. 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: Minnesota.

15. Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 30, 2022. 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 June 2022.

/s/ Hunter C. Tonry
Hunter C. Tonry, OSB No. 001776

EXECUTED this 23rd day of June 2022.

OREGON STATE BAR
By: /s/ Courtney C. Dippel
Courtney C. Dippel, OSB No. 022916
Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: )

Complaint as to the Conduct of ) Case No. 22-30

MICHAEL GUZMAN, Bar No. 823269 )

Respondent. )

Counsel for the Bar: Samuel Leineweber
Counsel for the Respondent: Wayne Mackeson
Disciplinary Board: None
Disposition: Violation of RPC 8.4(a)(2). Stipulation for Discipline.
30-day suspension.
Effective Date of Order: June 30, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 30-days, effective July 1, 2022 for violation of RPC 8.4(a)(2).

DATED this 30th day of June 2022.

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

STIPULATION FOR DISCIPLINE

Michael Guzman, 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, 1986, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah 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 April 30, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 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. On October 21, 2020, Respondent was driving home from a park in Beaverton, at a time when his driver’s license was suspended and he was prohibited from driving. While exiting the park, the front of Respondent’s car collided with the rear of the car in front of him. The car in front of Respondent was damaged, but no one was injured. Respondent got out of his vehicle, had a brief conversation with the occupants of the other car, and then drove away from the accident without giving the occupants of the other car any of the information required by law when a traffic accident occurs.

6. The occupants of the other car called the police after Respondent left. Respondent was then charged with the misdemeanors of Failure to Perform the Duties of a Driver (FPDD), and Driving while Suspended (DWS) in State v. Guzman, Washington County Case No. 20CR64917. Respondent pled guilty to FPDD on December 2, 2020, and was sentenced to 18 months of probation, an additional 90-day driver’s license suspension, and $200 in restitution. One of Respondent’s probation conditions was that he not drive a car without a valid driver’s license or insurance. Respondent’s DWS charge was dismissed as part of his plea deal.

7. On the evening of January 21, 2021, Respondent was on a residential street in Tigard, when he suddenly veered out of his lane and struck a parked car. Respondent hit the parked car with such force that it spun the car 90 degrees into a driveway and struck another parked car. Respondent’s car then spun 180 degrees and came to a stop. Witnesses saw Respondent get out of his car, inspect the front of his car, and then get back in and try to drive away. Respondent’s car engine revved loudly, but he was only able to drive a short distance before his car would not go any further. Witnesses said that Respondent continued to try to drive
away, but his car was too badly damaged to move. Police contacted Respondent, and did not suspect him of being intoxicated.

8. Respondent was subsequently charged with two counts misdemeanor FPDD and misdemeanor DWS in State v. Guzman, Washington County Case No. 21CR09589. In August 2021, Respondent pled guilty to one count of FPDD and one count of DWS, was placed on 18 months of probation, had his driver’s license suspended for an additional year, and was ordered to pay $400 in fines and $348 in restitution. Respondent was further ordered to perform 48 hours of community service as a sanction for violating earlier FPDD probation.

9. Although more remote in time, Respondent was convicted of misdemeanor Driving Under the Influence of Intoxicants (DUI), and misdemeanor Criminal Mischief in the Second Degree as in 2006.

Violations

10. Respondent admits that, by committing the above traffic crimes, he committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of RPC 8.4(a)(2).

Sanction

11. 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 (ABA Standards). The ABA 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 committing criminal acts that reflect adversely on his fitness to practice law, Respondent violated his duty to maintain his personal integrity. ABA Standard 5.1.

b. **Mental State.** “Intent” is the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Id. “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Id. Respondent knew that he had been in a car accident in which property was damaged, and
knowingly left, or attempted to leave, without providing the required information to the other parties. Although Respondent’s DWS conviction does not require a mental state, he acted “knowingly” as he had just had a similar charge dismissed per his first plea deal, had received a new driving suspension for his FPDD conviction, and was just placed on probation in which he was ordered not to drive without a valid license and insurance.

c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). When Respondent left the scene of traffic accidents, he created the risk that the people who suffered damage would not be able to receive compensation for the damage that he caused. When Respondent repeatedly chose to drive after his driver’s license was suspended, he caused actual injury to the legal system by undermining the orders that had suspended his driving privileges. Respondent’s actions also had the potential to damage the reputation of the legal profession. *Id.*

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

1. A **dishonest or selfish motive.** ABA Standard 9.22(b). Respondent exhibited a selfish motive in trying to avoid responsibility for car accidents that he was involved in.

2. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent has been licensed to practice law since 1986.

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


2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).

3. **Character or reputation.** ABA Standard 9.32 (g). Respondent has engaged in numerous volunteer activities; including those that benefit the Spanish-speaking community, non-profit legal operations, and the Special Olympics.

4. **Imposition of other penalties or sanctions.** Standard 9.32(k). Respondent was convicted of misdemeanors in two cases, and sentenced to probation, community service, and restitution.

5. **Remorse.** Standard 9.32(l). Respondent deeply regrets the harm that he caused to the occupants and owners of the other vehicles, as well as the harm that he caused to the reputation of legal profession.

Under the ABA Standards, suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in ABA
Standard 5.11\(^1\) and that seriously adversely reflects on the lawyer’s fitness to practice. ABA Standard 5.12.

Sanctions in disciplinary matters are not intended to penalize the accused lawyer, but instead are intended to protect the public and the integrity of the profession. *In re Stauffer*, 327 Or 44, 66, 956 P2d 967 (1998). Appropriate discipline deters unethical conduct. *In re Kirkman*, 313 Or 181, 188, 830 P2d 206 (1992).

13.

Oregon cases hold that criminal conduct that adversely reflects upon a lawyer’s fitness to practice law warrants a suspension.

In *In re McDonough*, the court suspended a lawyer for 18 months as a result of committing repeated traffic crimes over the course of several years. *In re McDonough* 336 Or 36, 48-49, 77 P3d 306, 307 (2003).

In *In re Reiner*, 33 DB Rptr 216 (2019), a police officer attempted to pull over a lawyer for speeding, but the lawyer eluded the officer and abandoned his car. The lawyer was subsequently caught, pled guilty to the misdemeanor crime of fleeing a police officer, and was suspended for 30 days.

*In re Bosse*, 32 DB Rptr 283 (2018), a lawyer was suspended for six months after he was convicted three times for DUI, twice for DWS, and once for Reckless Driving between 1998 and 2017.

*In re Bowman*, 28 DB Rptr 308 (2014), a lawyer was given a two year probation and suspended for 180 days (all by 30 days stayed) when he repeatedly and knowingly drove his car while under the influence of intoxicants (twice), and while his driving privileges were suspended or revoked (three times).

14.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30-days for violation of RPC 8.4(a)(2), the sanction to be effective July 1, 2022.

15.

Respondent 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, Respondent has arranged for James F. O’Rourke, OSB# 783286 748 SE 181st, Gresham, OR 97233, an active member of the Bar, to either take possession of or have ongoing access to Respondent’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Respondent represents that James O’Rourke has agreed to accept this responsibility.

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\(^1\) ABA Standard 5.11 contains a list of criminal elements that are inapplicable here.
Respondent 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. Respondent 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.

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. 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.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 30, 2022. 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 June 2022.

/s/ Michael Guzman
Michael Guzman, OSB No. 862003

APPROVED AS TO FORM AND CONTENT:

/s/ Wayne Mackeson
Wayne Mackeson, OSB No. 823269

EXECUTED this 29th day of June 2022.

OREGON STATE BAR
By: /s/ Samuel Leineweber
Samuel Leineweber, OSB No. 123704
Assistant Disciplinary Counsel
ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Jessica S. Cain (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 1.8(a).

DATED this 5th day of July 2022.

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

STIPULATION FOR DISCIPLINE

Jessica S. Cain, 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.
Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 2003, and has been a member of the Bar continuously since that time, having her office and place of business in Lincoln County, Oregon.

Respondent 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).

On January 28, 2022, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging two violations of 1.8(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**

Respondent represented Steve Miller (Miller) on multiple legal matters in or around 2013 through December 2014. On or around April 25, 2014, Respondent borrowed $12,000 from Miller, memorialized by a promissory note she drafted. On or around September 8, 2014, Respondent borrowed another $24,623 from Miller, memorialized by another note she drafted. The terms of the loans were not fair or reasonable to Miller, in that the April 2014 loan was not secured by collateral, and the September 2014 loan did not provide for late fees in the event of the default.

Respondent failed to fully disclose and transmit all terms of the loans to Miller in writing. This included Respondent’s failure to disclose in writing the essential repayment term that any bills for her ongoing legal services could be deducted from her loan balances owed to Miller.

Respondent did not receive Miller’s informed consent, in writing signed by Miller, to the essential terms of either loan.

**Violations**

Respondent admits that she entered into a business transaction with a client on terms that were not fair and reasonable to the client, were not fully disclosed and transmitted in writing that could be reasonably understood by the client, and without obtaining the client’s informed consent, in writing signed by the client, to the essential terms of the transaction and the lawyer’s role in the transaction, including whether Respondent was representing the client in the transaction, in violation of 1.8(a) of the Oregon Rules of Professional Conduct.
Upon further factual inquiry, the parties agree that the second alleged violation of RPC 1.8(a) as alleged in the second cause of complaint, 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 (ABA Standards). The ABA 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.** Respondent violated her duty as a professional by entering into a business transaction with a client, but without obtaining the client’s informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer’s role in the transaction. ABA Standards 4.3.

b. **Mental State.** “Intent” is the conscious objective or purpose to accomplish a particular result. ABA Standards. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Id. “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Id. Here, Respondent negligently failed to disclose all terms of her loan agreements in writing, and failed obtain her client’s signed, informed consent to the transaction.

c. **Injury.** Respondent harmed her client by failing to secure his first loan with collateral and which ultimately resulted in litigation between the parties.

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

   1. A prior record of discipline. ABA Standard 9.22(a). Respondent has two prior public reprimands, from 2012 and 2017: In re Cain, 26 DB Rptr 55 (2012) (reprimanded for an excessive fee and false web advertising, in violation of RPC 1.5(a) and RPC 7.5(d)); In re Cain, 31 DB Rptr 105 (2017) (reprimanded for failing to communicate, in violation of RPC 1.4(a) and (b)).

   2. A pattern of misconduct. ABA Standard 9.22(c). Respondent failed to reduce essential terms to writing in both loans.

   3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been a member of the Bar since 2003.

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

   1. Personal or emotional problems. ABA Standard 9.32(c). Respondent details significant personal and emotional problems, most notably, amid
the two loans, Respondent relays that she suffered a severe mental health crisis.

2. Cooperative attitude toward disciplinary proceedings. ABA Standard 9.32(e).


8.

Absent aggravating or mitigating circumstances, 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. ABA Standard 4.33.

9.

Oregon cases confirm that violations of RPC 1.8(a) have resulted in public reprimands. See In re Duboff, 37 DB Rptr __ (Case No. 19-123) (public reprimand when attorney leant money to a client and drafted their agreement with ambiguous repayment terms, such that client had to perform free manual labor on the attorney’s construction projects for several years to repay his debt, with no understanding of when the debt would be satisfied); In re Bassett 35 DB 194 (2021) (public reprimand when attorney leant money to a client to pay part of his mortgage, but required client to immediately execute a warranty deed giving the attorney title to the client’s house, then threatened to evict his client from his residence).

10.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 1.8(a).

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 or the denial of her reinstatement. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

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: South Dakota.

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1 Respondent in the Duboff matter has appealed the trial panel decision and a decision from the Supreme Court is not expected until next year.
13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 11, 2022. 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 June 2022.

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

EXECUTED this 1st day of July 2022.

OREGON STATE BAR

By: /s/ Courtney C. Dippel
Courtney C. Dippel, OSB No. 022916
Disciplinary Counsel
In the Supreme Court
Of the State of Oregon

In re: the Conduct of

ANDY MILLAR, Bar No. 890962

Respondent.

Counsel for the Bar: Samuel Leineweber
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.2(b), RPC 1.3, RPC 1.4(a), and RPC 1.4(b). Stipulation for Discipline. 60-day suspension.
Effective Date of Order: July 22, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 60-days, effective as of the date of this order, for violations of RPC 1.2(b), RPC 1.3, RPC 1.4(a) and RPC 1.4(b).

DATED this 22nd day of July, 2022.

/s/ Mark A. Turner
Mark A. Turner

STIPULATION FOR DISCIPLINE

Andy Millar, 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 April 14, 1989, and has been a member of the Bar continuously since that time, having his office and place of business in Umatilla County, Oregon.

3.
Respondent 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 11, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.2(b), RPC 1.3, RPC 1.4(a) and RPC 1.4(b) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.
In February 2014, Jane Larson (Larson) filed a civil suit against Linda Lane (Lane) and her business, Lazy K Ranch, for approximately $21,500. Shortly after filing, Respondent undertook representation of Lane and advised her to avoid service. Lane was eventually served with the complaint on May 1, 2014, and was required to file an answer by May 31. After being served, Lane’s daughter, Karla Lane, delivered a copy of the service documents to Respondent.

Respondent asserts that he attempted to limit his representation in Lane’s case to the sole task of requesting a 10 day notice from Larson’s lawyer before filing for a default judgment. Respondent said that this limitation was designed to delay the matter as much as possible so that Lane had more time to deal with her legal and financial issues. However, Respondent did not communicate this limitation to Lane and did not obtain her informed consent to limiting the scope of his representation.

On June 3, 2014, Larson’s attorney filed a motion and order for a default judgment. At this time, Respondent had not answered the complaint or submitted a notice to Larson’s attorney which would have required Larson to provide 10 days’ notice prior to moving for an order of default pursuant to ORCP 69B. On June 4, 2014, the court granted Larson’s motion for default. On June 5, 2014, Respondent emailed Larson’s attorney to notify him that he was representing Lane, and to request a 10 day notice before he moved for a default judgment. Respondent did not inform Lane that a default judgment had been entered against her at this time.

On June 18, 2014, Larson’s lawyer submitted an attorney fee statement for approximately $2,200 to the court, and served a copy on Respondent. On July 9, 2014, the court granted the attorney fee petition, and entered a supplement judgment awarding the requested fees. Thereafter, Larson’s lawyer sent a demand for payment of the default judgment via mail to Lane and via mail and fax to Respondent. On September 2, 2014, Larson’s lawyer filed a
motion and order for a debtor examination of Lane, and served a copy on Respondent and
Lane. Respondent took no action and did not communicate with Lane about the petition for
attorney fees, the supplemental judgment, the demand letter, or the debtor examination. Lane
learned about the default judgment and attorney fees for the first time when she was served
with the debtor examination documents.

On September 15, 2014, Respondent sent Lane a letter telling her that he could not
represent her due to a conflict of interest and that she needed to find another attorney to
represent her to set aside the default judgment.

Violations

6.

Respondent admits that his attempt to limit the scope of his representation was not
reasonable under the circumstances, and that he failed to obtain his client’s informed consent,
in violation of, RPC 1.2(b).

Respondent admits that by failing to file an answer to Larson’s complaint, and failing
to respond to Larson’s lawyer’s attorney fee statement, demand letter, and motion for debtor
examination, he neglected a legal matter entrusted to him in violation of RPC 1.3.

Respondent admits that, by failing to adequately communicate with Lane about the
scope of his representation and about actions in her case, he violated RPC 1.4(a) and RPC
1.4(b).

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
(ABA Standards). The ABA 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 circum-
stances.

a. Duty Violated. In violating RPC 1.2(b), RPC 1.3, RPC 1.4(a), and RPC 1.4(b),
Respondent violated his duty to provide diligent representation to his client.
ABA Standard 4.4.

b. Mental State. “Intent” is the conscious objective or purpose to accomplish a
particular result. ABA Standards at 9. “Knowledge” is the conscious awareness
of the nature or attendant circumstances of the conduct but without the con-
scious objective or purpose to accomplish a particular result. Id. “Negligence”
is the failure of a lawyer to heed a substantial risk that circumstances exist or
that a result will follow, which failure is a deviation from the standard of care
that a reasonable lawyer would exercise in the situation. Id.

Respondent acted negligently when he failed to properly limit the scope of his
representation. Respondent acted knowingly when he failed to communicate
adequately with Lane about the events happening in her case and when he failed to take any action to protect or advance Lane’s interests in her case.

c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Respondent’s failure to properly limit the scope of his representation, failure to communicate with Lane about important events in her case, and failure to take any action to advance or protect her interests caused Lane to suffer default judgments and an uncontested debtor examination. Lane also had to spend additional time and resources to find a new attorney.

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

1. A prior record of discipline. ABA Standard 9.22(a). Respondent was previously suspended due to his knowing failure to pay payroll taxes. *In re Millar*, 29 DB Rptr 197 (2015).

2. Multiple offenses. ABA Standard 9.22(d).

3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been practicing law since 1989.

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

1. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).

2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e). Respondent has been open and responsive to the Bar during its investigation.

8.

Under the ABA Standards, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or engages in a pattern of neglect and causes injury or potential injury to a client. ABA Standard 4.42.

9.

Oregon cases that deal with misconduct related to negligence and communication often result in a short suspension. See *In re Knappenberger*, 337 Or 15, 32–33, 90 P3d 614 (2004) (court stated that it has generally imposed a 60-day suspension as appropriate for neglectful conduct, including failing to adequately communicate with clients); *In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (attorney suspended for 30 days for failing to adequately communicate with his client). Recently, attorneys have been suspended for approximately 60 days for similar violations. See *In re Celuch*, 35 DB Rptr 28 (2021) (attorney suspended for 60 days for neglect, communication, and improper fee violations); *In re Yunkers*, 34 DB Rptr 26 (2020) (attorney with prior discipline was suspended for 60 days for neglect, communication, and conflict of interest violations); *In re Ramirez* 33 DB Rptr 362 (2019) (attorney with prior discipline was suspended for 60 days for violations of neglect, communication, and failure to return client property).
10. Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60-days for violation of RPC 1.2(b), 1.3, RPC 1.4(a) and RPC 1.4 (b), the sanction to be effective immediately upon approval by the Disciplinary Board.

11. Respondent 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. Respondent has ceased actively practicing law and has turned his practice over to Eric Wolfe, OSB# 196570, an active member of the Bar. Eric Wolfe both has possession of, and ongoing access to, Respondent’s client files and serves as the contact person for any clients in need of the files during the term of Respondent’s suspension. Respondent represents that Eric Wolfe has agreed to accept this responsibility.

12. Respondent 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. Respondent 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. 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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

14. 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.

15. Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 11, 2022. 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 July 2022.

/s/ Andy Millar
Andy Millar, OSB No. 890962

EXECUTED this 21st day of July 2022.

OREGON STATE BAR

By: /s/ Samuel Leineweber
Samuel Leineweber, OSB No. 123704
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of

WILLIAM A. HENDERSON,
Bar No. 810551
Respondent.

Counsel for the Bar: Rebecca Salwin and Courtney C. Dippel
Counsel for the Respondent: None
Disciplinary Board: Mark A. Turner, Adjudicator
Jon W. Monson
Melanie Timmins, Public Member
Disposition: Violations of RPC 1.2(a), RPC 1.4(b), RPC 1.6, RPC
1.16(a)(3), RPC 1.16(d), and RPC 8.1(a)(2). Trial Panel Opinion. 1-year suspension.
Effective Date of Opinion: August 28, 2022

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged William Henderson with violating RPC 1.2(a)
(failing to abide by a client’s decision regarding the client’s objectives), RPC 1.4(b) (failing to
explain a matter to the extent reasonably necessary to permit the client to make informed
decisions), RPC 1.16(a)(3) (failing to withdraw when the lawyer is discharged), RPC 1.16(d)
(failing to protect the client’s interests upon termination of representation), and RPC 8.1(a)(2)
(failing to respond to demands for information from a disciplinary authority).

The charges arise from Respondent’s representation of Melvin Sweet (Melvin). Respondent was appointed to represent Melvin, age 82, in October of 2019 to contest a petition
for conservatorship filed by Melvin’s wife, Beverly Sweet (Beverly). Melvin believed he still
had capacity to make his own financial decisions and wanted to remain in control of his affairs. Melvin’s friends and family believed that Beverly filed the petition in order to gain access to Melvin’s money. Respondent met with Melvin once, for an hour, soon after appointment, and
one other time in February of 2020.

By early March of 2020 Melvin was dissatisfied with Respondent’s representation and
he fired Respondent, leaving a voice mail to that effect. Melvin retained another lawyer. Respondent, without further communication with Melvin on the subject, refused to withdraw
until ordered to do so many months later. Respondent argued that Melvin lacked the capacity
to fire him. During the months this matter was pending, Respondent failed to communicate
with Melvin. Further, while still representing Melvin, Respondent acted against Melvin’s
wishes, aiding Beverly and her lawyer in their attempt to take control of Melvin and his money.
In doing so, the Bar alleges, Respondent disclosed confidential client information to Melvin’s detriment, including in a declaration he filed, which caused a Multnomah County judge to file a complaint with the Bar. When the Bar launched an investigation Respondent refused to cooperate, refusing to produce a copy of the declaration despite being ordered to do so. The Bar asked us to suspend Respondent for at least nine months.

The case was tried by videoconference on May 10–12, 2022, before a trial panel consisting of the Adjudicator, Mark A. Turner, attorney member Jon W. Monson, and public member Melanie Timmins. The Bar appeared through counsel, Courtney Dippel and Rebecca Salwin. Respondent appeared personally and represented himself.

After consideration of the evidence and the arguments of the parties, and as explained in detail below, the panel finds that the Bar proved the charges by clear and convincing evidence. We suspend Respondent for one year.

**FACTS**

Beverly and Melvin Sweet had been married since 1975. They separated in 2006 when Beverly moved out without warning, taking approximately $150,000 from Melvin’s bank account that she used to buy a house and a car. The couple remained legally married however, and had regular contact with each other.

More recently, but preceding the events at issue here, Melvin was diagnosed with Alzheimer’s and cancer. On multiple occasions prior to the events at issue here Beverly took Melvin to the bank and had him withdraw cash for her. She also had him sign over the title of his car to her, then took his keys and gave his car away without his knowledge. Melvin’s family and friends were concerned that Beverly was manipulating him. There was testimony that Melvin found it hard to say “no” to Beverly.

In response, Melvin and his daughter, Melanie Fields (Melanie), moved the bulk of Melvin’s money, approximately $220,000, to a joint account with Melanie as a mandatory co-signer. The evidence showed that Melvin was fully aware of and supported this decision, in part because he wanted to ensure that that money would be immediately available to his daughter if she survived him, consistent with his estate plan. Tr. at 484.

**August 2019—Beverly files a petition for a conservatorship over Melvin.**

This move apparently prompted Beverly to file a petition to have herself appointed Melvin’s conservator on August 2, 2019. She alleged that Melvin was “unable to effectively manage his financial resources due to physical illness and disability.” Ex. 2. She also alleged that Melvin was estranged from Melanie, which was belied by Melanie’s trial testimony. Tr. at 476–77. If the petition was granted Beverly would control Melvin’s finances. When Beverly filed the petition Melvin was 82 and Beverly was 77 years old. Beverly made Melvin write her a check to pay the retainer for her attorney. Tr. at 487.

Melvin objected to the petition. Unrepresented at the time, Melvin filed an objection to the petition on August 23, 2019, indicating that he did not want anyone else making decisions for him. Ex. 4. He believed he had the mental capacity to make his own financial decisions. In

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1 The only medical evidence on the subject was a conclusory statement from a physician that Melvin had Alzheimer’s. No further clarification was provided as to the severity of the condition.
particular, Melvin drew satisfaction from handling his day-to-day finances and paying his own bills. Tr. at 368. Melanie also objected and cross-petitioned, alleging that less restrictive means than a permanent conservatorship could protect Melvin. Melanie nominated a professional fiduciary, Van Loo Professional Fiduciary Services (Van Loo Services), to temporarily protect Melvin from Beverly. Ex. 3.

October 2019—Respondent is appointed to represent Melvin in the conservatorship case.

On October 21, 2019, the court appointed Respondent to represent Melvin. The Multnomah County Court routinely appoints counsel if an unrepresented party objects to a protected-person proceeding. Tr. at 366. Respondent identified six prior cases in which he had been appointed by the court to represent individuals in protected-person proceedings. Respondent met with Melvin at his home October 26, 2019. At the meeting Respondent observed that Melvin understood he had memory issues, but also understood his sources of income, understood his monthly expenses, and had no problems paying his bills. Tr. at 368, Ex. 113 at 11 (Depo. Tr. 35–36). Additionally, Melvin “objected to the appointment of a conservator” and “expressed that he - he wanted to handle his own finances. He wanted to handle his own money.” Tr. at 368.

Respondent, however, stated that at the meeting “it became obvious” to him that, although Melvin and Beverly lived separately, “they very much remained husband and wife.” Ex. 118 at ¶ 3.e. Contrary to what others who better knew the couple thought, Respondent believed they had a “mutually supportive and caring husband-wife relationship.” Id.

Beverly was deposed in the conservatorship proceeding on December 19, 2019. Despite the deposition being scheduled to accommodate Respondent’s schedule, Respondent arrived late and left early. Respondent admitted he never ordered or reviewed the transcript, but said he came away from the deposition with a favorable impression of Beverly.

Beverly testified at the deposition that she had been instructing Melvin, whom she believed to not fully understand what he was doing, to give her cash as well as to give away his van. She testified that the only reason she sought to be appointed his conservator was because she needed a new way to access Melvin’s funds once he switched accounts. Ex. 9 at 112. As noted, Respondent was not present for this and was unaware of it because he never reviewed the transcript. Instead, based on his attendance at only part of the deposition, Respondent concluded that it was in Melvin’s best interests to have Beverly managing his financial affairs.

Melvin, Beverly, Melanie, and their counsel had a mediation session on January 6, 2020. Respondent was present. Melvin’s brother Charles Sweet and his wife Jackie Sweet were also present. Beverly and Melanie executed a written agreement that neither of them would take Melvin to the bank for any reason and Charles would transport Melvin if the need arose. Ex. 56. Respondent was present but refused to sign it, claiming that Melvin lacked capacity. Despite signing the agreement, Beverly violated it within a week by taking Melvin to the bank to get cash. Tr. at 497.

Respondent again met with Melvin at his home on February 1. Respondent testified that Melvin told him in that meeting, in front of Melvin’s brother Chuck, that Melvin wanted Beverly to be his conservator rather than Van Loo Services. Tr. at 370. Before Respondent’s
arrival, however, Beverly had cornered Melvin in his home and told him that he needed to agree to her as conservator because she would not charge for the services, whereas Van Loo Services would. Tr. at 500–01, Ex. 116. Respondent, however, did not ask Melvin why he stated this preference for Beverly over Van Loo Services that day.

At this same meeting Melvin’s neighbor Joi Shervey (Shervey) told Respondent about Beverly’s breach of the mediation agreement by taking Melvin to the bank. Shervey told Respondent she was going to take Melvin to court to obtain an elder abuse restraining order against Beverly. Tr. at 371–72. Shervey and Melvin appeared in court on February 7, 2020 and obtained the restraining order. Exs. 45, 46 (Sweet v. Sweet, Case No. 20PO01263, Multnomah County Circuit Court). The order specifically prohibited Beverly from exercising control over any of his money. Respondent made no effort to confer with Melvin about the reasons for the restraining order and, in particular, whether his attitude about Beverly as his conservator had changed. He never spoke to his client about this critical development. Tr. at 374–75. In fact, the February 1, 2020 meeting was the last time Respondent communicated in any substantive way with his client.

March 2020—Melvin files for divorce from Beverly.

As circumstances further developed, Melvin decided to seek a divorce from Beverly, and hired attorney Jennifer Peckham (Peckham) to handle the matter. Melvin had concluded that he could not trust Beverly and a divorce was necessary. Tr. at 503. Peckham filed a petition for dissolution on March 2, 2020. Before filing, Peckham contacted Respondent, who emailed her that he had concerns about Melvin seeking a divorce and that she should delay filing Melvin’s petition. Peckham sought more information from Respondent about his concerns, but he did not respond, so she proceeded per Melvin’s instructions. She also advised Melvin that he might consider seeking a second opinion in his conservatorship case, since Respondent was unresponsive. She gave him several names and he ultimately retained attorney Anne Furniss (Furniss) to replace Respondent.

Respondent assumed that Melvin was manipulated by Shervey and Melvin’s brother Chuck into obtaining the restraining order and then seeking a divorce. Melvin got along well with both Shervey and Chuck, and his daughter Melanie did not believe there was anything untoward in those relationships. Tr. at 480–81. As will be seen, however, Respondent consistently sided with Beverly throughout his representation of Melvin. Respondent’s suspicions regarding Shervey and Chuck were not based on any evidence from Melvin or any other source. We also found it entirely counterintuitive that Respondent would be suspicious of Shervey and Chuck, neither of whom had anything to gain from the conservatorship proceeding or the divorce, and side with Beverly, who clearly had a financial interest in controlling Melvin’s money, getting out from under the restraining order, and defeating the divorce action.

Inexplicably, Respondent never consulted with Melvin about whether he was being influenced, never asked Melvin any questions about why he filed the divorce action or what he understood about the divorce, and never took any other actions to investigate this development. Nevertheless, Respondent would thereafter assert that Melvin and Beverly were still very much acting as husband and wife, and that Melvin lacked capacity to seek a divorce, akin to Beverly’s position.

Beverly’s lawyer sought an ORCP 44 mental examination of Melvin in the conservatorship proceeding. Respondent did not discuss the issue with Melvin, but on March 2,
2020, Respondent filed his own declaration objecting to a Rule 44 examination. In his declaration, Respondent revealed that Melvin sought the restraining order against Beverly “without my advice or assistance.” Ex. 10. Respondent further revealed that divorcing Beverly was against his advice. Id. Respondent opined that a medical examination of Melvin was “unwarranted” and “wholly unnecessary” in light of existing evidence that already confirmed that Melvin was financially incapable. Id. Respondent admitted he did not have Melvin’s informed consent to disclose that Melvin had acted against his advice in any respect. Tr. at 378–79.

March 2020—Melvin fires Respondent.

On March 3, 2020, Melvin terminated Respondent via a voice mail message. Melvin stated that he had new counsel. Respondent kept a recording of the message. At the end of the message Shervey can be heard telling Melvin that it was “perfect.” Melanie testified that her father was nervous and had difficulty communicating something like the decision to fire Respondent, and that having his lines written out beforehand with the assistance of a friend was nothing unusual. Tr. at 512–13. Respondent, on the other hand, testified that he believed Melvin was acting at the instruction of others and did not really want to fire him. Again, Respondent did nothing to inquire of his client about what was actually going on.

The next morning, Respondent, Melvin, Furniss, and Peckham appeared in court for a scheduling conference. In the hallway outside the courtroom, prior to the conference, Respondent had the opportunity to speak with Melvin about the message firing him but chose not to do so. He said he thought it would be “inappropriate” to ask his client how and why he had made the decision. Tr. at 394. During the conference Respondent acknowledged being fired, but stated, “I’d represent to the Court that Mr. Sweet does not have the capacity to essentially fire me.” Ex. 115 at 7. Respondent also played the voice mail message in open court during the scheduling conference. Respondent admitted that his client had not given him consent to discuss the issue of his capacity or to play the voice mail message. Tr. at 391.

As with the restraining order and divorce, Respondent assumed that Melvin was manipulated into terminating his representation. However, Respondent again did not speak with Melvin or his new lawyer, Furniss, about why Melvin fired him or who Melvin wanted to represent him and why. Ex. 113 at 21 (Depo. Tr. 75–76). In fact, Respondent never spoke to his client again after the March 4, 2020 scheduling conference. He refused to withdraw, but made no effort to confer with his client on this subject.

Furniss tried to coordinate with Respondent about taking over the representation of Melvin, but Respondent told her that he was not going to resign and they had nothing to discuss. On April 2, 2020, Furniss emailed Respondent seeking to resolve the issue as soon as possible, and offering to have Respondent speak with Melvin directly to confirm his desires. Ex. 64. Respondent did not reply.

During the following weeks the parties tried to settle all three civil matters (conservatorship, elder abuse, dissolution), but could not complete an agreement because Respondent refused to cooperate or withdraw. The parties exchanged several emails stating that they could not discuss settlement until they knew who represented Melvin in the conservatorship matter. During those email exchanges, Peckham confirmed that Melvin wanted to proceed with
Furniss, not Respondent, but that the matter was unresolved and prevented settlement. Respondent was included on these emails. He had to know that his intransigence was preventing any progress toward resolution, but he still refused to act or respond.

In April 2020, Melvin contacted the Bar’s Client Assistance Office (CAO) by letter. Ex. 65 at 3. He told CAO that he fired Respondent but Respondent refused to withdraw. He wrote that he had a hard time communicating with Respondent, who did not speak to him clearly or listen to his choices.② Respondent was provided with this complaint but still it did not prompt him to communicate with his client, or address any of Melvin’s concerns. On April 28, 2020, Furniss emailed Respondent a proposed motion to settle the issue of representation and asked for his position. Ex. 71. Respondent did not reply. Furniss and Peckham were working at the time to get the court to consider the representation as soon as possible, but due to COVID and other factors affecting the court they were unable to get an expedited hearing. Ex. 74. Meanwhile, the court was telling them to work the issue out with Respondent. Ex. 75. That continued to prove impossible. ③

A hearing was held on May 11 and 14, 2020 to extend Melvin’s order of protection against Beverly. Respondent did not attend. Melvin testified at the hearing. He made clear that he understood certain financial decisions. He testified that he took $65 out of his bank account each week, that he recalled switching his money to an account with his daughter instead of with Beverly, that this decision was important to him so the money would go to his daughter “in case I pass off,” and that he understood and was not upset by the fact that both he and Melanie had to sign when withdrawing money from the account. Ex. 116. He further testified that when Beverly took money from him she did not use the money to buy things for him, nor did she return it. He stated that he wanted to make sure that Beverly did not have access to his money. He testified that when Beverly was his wife, he hated to tell her no when she asked for money, but the divorce changed that. Exs. 116.

Beverly testified that she influenced Melvin when objecting to the conservatorship to fill out a second objection which listed Beverly as his preferred choice of conservator. Ex. 5. She told Melvin he had to choose a conservator, either her or a professional fiduciary; but if he chose the professional, Melvin would have no say over his finances and would have to pay for it. Ex. 116.

After the hearing, the court extended the restraining order and re-imposed restrictions on Beverly. Respondent never reviewed the transcript of this hearing. Afterward he did not communicate with his client about his client’s stated desire to keep Beverly away from his money, about the nature of the court’s restraining order, or about how it would undermine Beverly’s nomination as his conservator, which Respondent continued to presume was in Melvin’s best interest.

On June 30, 2020, Beverly was arrested for violating the restraining order. She picked up Melvin from his house, told him to sign over the deed to his house to be solely in her name, ② The CAO responded to Melvin that it did not have authority to remove Respondent as his lawyer, and that it appeared a court hearing was scheduled to resolve the issue, so it would take no further action. Ex. 66.
③ Scheduling was difficult with the onset of COVID restrictions, but Respondent admitted that COVID was not the reason he refused over this seven-month period to meet with his client. Tr. at 396.
and drove Melvin to the bank to have it notarized. 4 Beverly was charged with criminal contempt, and the court imposed a no-contact order for her and Melvin, which would remain in effect for the remainder of Respondent’s involvement in the cases.

Respondent knew generally of the charges but “maintained a favorable impression of Beverly Sweet.” Ex. 113 at 22 (Depo. Tr. 79–80). He never reviewed the court documents, or conducted further investigation, but simply presumed Beverly was innocent and should still be his client’s conservator. Respondent did not consult with Melvin about the circumstances of the criminal no-contact order and how this might affect Melvin’s opinion from back on February 1, 2020 about who should be his conservator if one was appointed.

August 2020—Respondent assists Beverly’s lawyer in seeking a guardian ad litem for Melvin in the divorce case.

In August 2020, Respondent learned that Beverly’s divorce counsel wanted to depose Melvin. Respondent told Beverly’s counsel that they would likely need a guardian ad litem (GAL) appointed for Melvin first. He did not consult with Melvin about these issues or how they could affect the conservatorship proceedings. Respondent then proceeded to assist Beverly (the opposing party) and her counsel in efforts to obtain a GAL and depose Melvin, again without informing Melvin or discussing whether he was authorized to take any of the actions that followed.

Respondent coordinated with Beverly’s divorce counsel to help prepare and file a motion for a GAL. On August 19, 2020, Respondent provided a declaration attesting that Melvin was incapacitated, even though Respondent knew that Melvin did not believe himself to be incapacitated and that the court appointed Respondent so that Melvin would have an attorney to advocate on his behalf against the conservatorship petition. Ex. 33A. When Respondent signed his declaration, he knew his declaration would make Melvin’s divorce less likely to occur, but he believed the divorce was wrong and Melvin should remain married to Beverly. Ex. 113 (Depo. Tr. 209).

In the declaration Respondent revealed his personal observations and beliefs about Melvin’s memory, decision-making capacity, and relationship with Beverly, which were contrary to Melvin’s positions on these issues. Ex. 33A. Respondent also disclosed advice that he had given Melvin about the divorce, again contrary to Melvin’s position in the case. Ex. 33A. Beverly’s counsel submitted the motion to appoint a GAL, with Respondent’s August 19, 2020 declaration, to the court’s public docket. Ex. 33, Ex. 33A.

August 2020—Multnomah County Circuit Court Judge finds that Respondent breached his duty of confidentiality to Melvin.

Peckham objected to Respondent’s declaration, and the judge hearing the motion asked a different judge, the Honorable Morgan Wren Long, to conduct an in camera review of the declaration. After that review Judge Long issued an order finding that Respondent had breached his duty of confidentiality to his client. The court’s order found that Respondent’s

4 Melvin had resided in the marital house alone since Beverly left in 2006, but it remained titled in both of their names. As noted earlier, Beverly lived in a separate residence titled solely to her that she purchased with money she took when she left Melvin.
declaration “is a gross intrusion upon Petitioner’s right to have his attorney keep all information regarding representation of Petitioner confidential.” Ex. 38.

Still unable to persuade Respondent to voluntarily withdraw, Furniss filed a motion on August 28, 2020 to remove Respondent as counsel in the conservatorship proceeding. Ex. 15. Melvin filed a declaration in support of the motion. Ex. 16. He reiterated that Respondent had not adequately communicated with him and that Respondent “has made other statements to the court about what I want that I do not agree with and that I have not spoken with [Respondent] about.” Id., ¶ 6. He confirmed that Respondent had not communicated with him since the March 4 hearing more than five months ago, and concluded: “I do not want William Henderson to be my attorney.” Id. ¶ 7. Respondent again made no effort to consult with Melvin or Furniss about the statements made in Melvin’s declaration.

In fact, rather than discuss the matter with Melvin, Respondent and Beverly each filed objections to Melvin’s motion. Ex. 17, 18. Respondent even filed his document as “Respondent Melvin Sweet’s Objection to Removal of Court Appointed Attorney” even though he did not confer with Melvin or obtain any authority to make a filing on his behalf. Respondent submitted (again, without his client’s consent) a declaration supporting the objection suggesting that he believed Melvin was incapacitated and being manipulated into firing him. Ex. 18. He also included false allegations of misconduct and malfeasance against attorney Furniss with no basis in fact for making such statement. Most importantly, however, Respondent continued his crusade opposing his own client’s filing without taking even a moment to communicate with his client or investigate the situation further. From the record it appears that the only people Respondent communicated and cooperated with in pursuing this course of action were Beverly’s divorce attorney and perhaps Beverly herself.

October 2020—The court finally terminates Respondent’s representation of Melvin.

On October 1, 2020, the court held a hearing on Beverly’s petition for conservatorship. Melanie had filed a cross-petition for temporary conservatorship, which noted the immediate threat Beverly posed, and it was heard at the same time. Ex. 19. The court first addressed whether Respondent continued to represent Melvin. The court examined Melvin, who testified as to his awareness of the proceedings and his choices among counsel. He also testified that he wanted nothing to do with Respondent, and that Respondent had not spoken to him for months. After examination, the court terminated Respondent’s representation from the bench. A written order followed. Ex. 20.

The court then addressed the petitions. After argument and testimony, the court granted Melanie’s cross-motion for temporary conservatorship and appointed a professional fiduciary. The court did not rule on the indefinite conservatorship and after several months, it was withdrawn as part of a global resolution on all three matters.

February 2021—After Judge Long files a bar complaint, Respondent defies disciplinary counsel’s investigation.

After issuing her order regarding in camera review of Respondent’s declaration, Judge Long filed a Bar complaint, reiterating her order, but without providing a copy of Respondent’s declaration to the CAO. By letters dated February 5, 2021, February 24, 2021, and March 10, 2021, DCO requested Respondent’s response, asking about his rationale, and requesting him to provide a copy of his declaration. Although he provided a partial response, he repeatedly
refused to provide his August 19, 2020 declaration claiming only that it was confidential and could not be disclosed per RPC 1.6.

DCO tried to explain that RPC 1.6 expressly allowed Respondent to provide information protected by the Rule in response to DCO inquires. DCO further proposed that the declaration could be submitted pursuant to a protective order protecting its confidentiality in the investigative file. Respondent rejected these arguments and the Bar petitioned for his administrative suspension under BR 7.1. Exs. 96, 98. In response, Respondent claimed that the Bar was engaging in “fraudulent” activity. Ex. 99. After full briefing on this issue, the Adjudicator offered Respondent an additional opportunity to explain why he believed that the exception in RPC 1.6(b)(4), which allows attorneys to reveal client information to respond to allegations, did not “expressly authorize disclosure of the declaration” and why it was not “dispositive” of the issue. Ex. 100A. Respondent reiterated that the declaration was confidential. Ex. 101.

The Adjudicator then suspended Respondent for failing to respond to DCO’s inquiries, explaining that “Respondent is not asserting a good faith objection that excuses his failure to comply with the request [for the declaration].” Ex. 102 at 2. Despite the Adjudicator’s email and subsequent order, Respondent did still did provide the declaration; and he again refused to produce it during discovery. Exs. 106, 107. The Bar moved to compel production. Ex. 108. The Adjudicator granted the motion, ordering that the requested documents were to be produced by 5:00 p.m. on February 18, 2022. Ex. 110.

The Bar stated in its trial memorandum that Respondent had finally produced the declaration in response to the order. Respondent, however, stated at trial that he only produced a draft of the declaration and that the Bar had gotten the actual declaration from another source. Tr. at 34. Respondent was proud of the fact that he had refused to produce the actual document, even in the face of an order from this tribunal. Id.

ANALYSIS OF THE CHARGES

Respondent violated RPC 1.2 and RPC 1.4.

RPC 1.2 (a), states, in relevant part: “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.” Rule 1.4 then provides that “a lawyer shall keep a client reasonably informed about the status of a matter” and “a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” All lawyers are required to abide by their client’s decisions regarding the objectives of the representation and to communicate with their client so that the client is kept informed and is able to make informed decisions about the representation. Here Respondent ignored his client during seven months of active litigation and acted contrary to his client’s objectives during that time. Respondent violated both of these rules.

Deciding whether a lawyer has violated RPC 1.4 “requires a careful examination of all of the facts. In re Groom, 350 Or 113, 124, 249 P3d 976 (2011) (cited by In re Graeff, 368 Or 18, 25, 485 P3d 258 (2021)). RPC 1.4 places the responsibility on the lawyer to initiate the communication in many circumstances. Id. That requirement definitely applied here.

Respondent contended in response to these charges that his client had diminished capacity and that his conduct must be measured under RPC 1.14. But under that rule, even if a
client has diminished capacity, the client is still entitled to make decisions to the fullest extent
that the client is capable, without concern that the lawyer will override the client’s objectives
or substitute the lawyer’s own preferences for the client’s interests. We have a formal ethics
opinion that directly discusses this issue:

“[T]he lawyer needs to examine whether the client can give direction on the
decision that the lawyer must ethically defer to the client. Short of a client’s
being totally non-communicative or unavailable due to his or her condition, a
lawyer can most often explain the decisions that the client faces in simple terms
and elicit a sufficient response to allow the lawyer to proceed with the
representation. … the lawyer should always seek the lawful objectives of the
client and should not substitute the lawyer’s judgement for the client’s in
decisions that are the responsibility of the client.”

Oregon Formal Ethics Op No 2005-159, Competence and Diligence: Requesting a
Guardian Ad Litem in a Juvenile Dependency Case (discussing when to seek a guardian for an
adult parent with diminished capacity).

Respondent here failed to communicate with Melvin in any substantive way over a
seven month period despite material developments in Melvin’s cases and circumstances. Even
worse, Respondent refused to communicate with his client to ensure that Melvin’s current
objectives were being pursued. When events called Melvin’s prior instructions to Respondent
into question Respondent had an obligation to investigate further and confer with his client
about whether and how his objectives changed. Instead, Respondent made no effort to obtain
input from his client or his client’s other lawyers about whether Respondent’s initially drawn
conclusions were valid.

Respondent refused to abide by Melvin’s objectives regarding three critical issues in
the conservatorship case. First, Melvin always wanted to assert that he had the capacity to
make his own financial decisions, yet Respondent actually advocated to the contrary for the
benefit of Beverly. Second, the evidence was clear and convincing that, at least by the time
Melvin had obtained the restraining order against Beverly and had filed the divorce proceeding,
Melvin wanted someone other than Beverly to serve as conservator in the event one was
appointed. Yet Respondent refused to accept this fact, relying on a single conversation with
Melvin early in the process that should have been called into question as Beverly’s actions and
Melvin’s responses became obviously adverse. Third, Melvin expressly wanted to fire
Respondent and use a lawyer of his own choosing. Respondent refused to even consider the
possibility that Melvin could and did make such a decision. And after receiving the voicemail
terminating his representation, Respondent never once communicated with Melvin about
whether he wished to have Respondent to continue to act as his attorney. Instead, he forced his
client to file a motion to force Respondent’s withdrawal—which required Melvin, among other
things, to wait several months to obtain the lawyer of his own choosing. This also forced
Melvin, an elderly man who was admittedly not comfortable appearing in open court, to appear
and testify in person about the reasons why he did not want Respondent to represent him.

Respondent failed to communicate with Melvin sufficiently to understand Melvin’s
objectives on these topics from March 2020 through October 2020, as key developments
unfolded. Melvin’s stated position on these topics may have evolved over time, but that made
it even more necessary for Respondent to consult with Melvin rather than ignore him and pursue an agenda that was not his client’s.

Any of the following events in the cases should have prompted Respondent to communicate with his client. When Beverly admitted in her deposition in December 2019 that she had acted in ways adverse to Melvin’s interests and instructions she raised significant red flags as to whether she would be an appropriate conservator. Respondent either ignored her testimony or did not bother to review it. In either event, this was something Respondent should have asked Melvin about when Melvin stated in February that he wanted Beverly to be his conservator rather than the paid fiduciary.

When Beverly agreed to stop taking Melvin to the bank after the January 2020 mediation, but immediately did so again, more red flags were raised. Respondent would have known about this if he had fulfilled his duty to communicate with his client. As well, when Melvin petitioned for and obtained a restraining order against Beverly, in February 2020 Respondent should have investigated further, but chose not to.

Melvin left his voice mail message firing Respondent in early March 2020. Respondent said he did not believe Melvin was acting voluntarily when he did so and that Melvin did not have capacity to fire him. Respondent reached these conclusions without making a single inquiry of his client as to how and why he had made such a decision. If Respondent questioned Melvin’s decision, Respondent had a duty to inquire of his client. Ignoring Melvin’s instruction and refusing to discuss the matter with him violated Respondent’s duties to his client.

The same is true when Melvin petitioned for a divorce from Beverly in March 2020. Respondent told Melvin’s divorce lawyer that he recommended against the divorce, but Respondent made no effort to communicate with Melvin on the issue.

The decision to fire Respondent also should have been obeyed or investigated further when Melvin filed a complaint with the Bar, in April 2020. The complaint specifically noted that Respondent had failed to adequately communicate with Melvin. Rather than remedy this situation, Respondent exacerbated it by continuing his intransigent silence.

Respondent again ignored his duty when Furniss attempted to confer with him in April 2020 on the issue of who represented Melvin. Respondent claimed at the time that Furniss had acted inappropriately when Melvin hired her, but Respondent had no actual evidence to support that conclusion and made no effort to inquire further.

Melvin appeared and testified at a hearing to extend the restraining order against Beverly in May 2020. The order was extended. This event and testimony should have been considered, examined, and investigated further by Respondent. Again, he did nothing.

Respondent completely discounted the fact that Beverly was arrested for violating the restraining order, in June 2020, again without any effort to confer with his client.

These developments each had significant implications for the conservatorship matter. They were relevant to whether Beverly would be an appropriate choice as Melvin’s conservator, and whether Melvin even wanted Beverly as his conservator. Even if Melvin had once wanted Beverly to handle his finances, these developments cast doubt on whether that was appropriate and whether Melvin had changed his mind. The issue should have been discussed with Melvin. The Supreme Court has specifically found that developments which undermine a client’s position “are precisely the kind of information that a client needs to know
in order to make informed decisions about the case” under RPC 1.4(b). In re Snyder, 348 Or 307, 316, 232 P3d 952 (2010).

Respondent should also have consulted with his client before making a number of filings in the respective cases. Respondent repeatedly stated his client was incapacitated and he aligned himself with Beverly and her attorney. Respondent should have consulted with Melvin before filing anything in the various cases, but he certainly had a duty to inform his client when he was filing documents that were actually adverse to his client’s stated interests. “A lawyer may not withhold information to serve the lawyer’s own interest or convenience or the interests or convenience of another person.” Model RPC 1.4, cmt. 7. Specifically, the Bar proved that Respondent should have consulted with Melvin before taking the following actions:

1. In March 2020, Respondent filed an objection in the conservatorship matter to a Rule 44 mental examination of his client, with Respondent’s supporting declaration, which revealed client information.

2. Respondent appeared in court and stated on the record that he believed Melvin lacked the capacity to fire him, then played Melvin’s voicemail for the court, in March 2020.

3. Respondent advised Beverly’s counsel that to facilitate taking Melvin’s deposition, she should move to have a guardian ad litem appointed for Melvin in the dissolution matter, in August 2020.

4. Respondent coordinated with Beverly’s attorney to move for a guardian ad litem to be appointed for Melvin, in August 2020, which revealed client information.

5. Respondent filed an objection to his termination as Melvin’s counsel with a supporting declaration, in September 2020, which revealed client information.

Capacity is assessed along a spectrum. A client may be incapable of making certain decisions, for example, involving complicated financial affairs, yet still be capable of making the decision whether to hire or fire an attorney. The right to retain counsel is specifically spelled out for the subjects of protected-person proceedings. See ORS 125.300(3). “Although a marginally competent client can be difficult to represent, a lawyer must maintain as regular a lawyer-client relationship as possible.” Oregon Formal Ethics Op No 2005-159, supra. Respondent ignored this command and in doing so violated his duty to abide by Melvin’s decisions and consult with Melvin to determine what those were. The evidence was clear and convincing that Respondent violated RPC 1.2(a) and RPC 1.4(b).

Respondent breached his duty of confidentiality to his client in violation of RPC 1.6(a).

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).” Respondent ignored this duty and repeatedly disclosed client confidential information to the detriment of his client.

Under RPC 1.6, “information relating to the representation of a client” includes “information gained in a current or former professional relationship that . . . the disclosure of which
would be embarrassing or would be likely detrimental to the client.” RPC 1.0(f). See Oregon Formal Ethics Op No 2011-185 (explaining an attorney should not make statements that are embarrassing or likely detrimental to the client, such as that the client will not listen to advice, has not paid bills, or has been uncooperative).

Even if information relating to the representation of a client is available to others, an attorney is not permitted to disclose information that the attorney learned during the representation in a manner that is harmful to the client. See In re Huffman, 328 Or 567, 581 (1999). When a lawyer learns such client information it “still could be a ‘secret’ if the client had requested that it be held inviolate or if the disclosure would be embarrassing or likely be detrimental to the client”— even if the information was already disclosed to another party and no longer privileged. In re Lackey, 333 Or 215, 227, 37 P3d 172 (2002); see also The Ethical Oregon Lawyer, § 6.2-2 “What is Information Relating to the Representation” (“The rule [on confidentiality] applies not only to matters that are communicated in confidence but also to almost any information gained during the lawyer-client relationship.”).

Respondent testified to his familiarity with RPC 1.14 and claimed that guided his conduct. Yet he apparently ignored the fact that a client’s lack of capacity is information specifically protected by the duty of confidentiality. The comments to RPC 1.14 note that “disclosure of the client’s diminished capacity could adversely affect the client’s interests” and is protected by RPC 1.6, such that “unless authorized to do so, the lawyer may not disclose such information.” ABA Model RPC 1.14, cmt. 8.

Here, Respondent was appointed to help Melvin object to Beverly’s petition to appoint a conservator. Melvin’s consistent position was that an indefinite conservatorship was too extreme because he still had the capacity to make a number of financial decisions, some with his family’s help. In his own words, Melvin testified, when asked if he wanted someone else to make decisions about his money, “I want to do it myself. I have no problem making my own decisions, thank you. But in case I can’t, my daughter’s here, she’ll help me.” Ex. 117.

Despite Melvin’s opposition to the conservatorship, Respondent opined publicly multiple times that he personally believed Melvin lacked capacity. He also revealed information that was directly contrary to Melvin’s stated position in the conservatorship proceeding, as well as his positions in the divorce and elder abuse matters.

The Bar identified the following specific disclosures:

1. January 6, 2020 — At mediation Respondent refused to sign any agreements, claiming his client lacked capacity.

2. March 2, 2020 — Respondent filed a declaration in the conservatorship proceeding to oppose a mental examination of Melvin stating that such an examination was unnecessary because Melvin was clearly incapacitated already, and that Melvin sought a restraining order and divorce from Beverly against his advice. Ex. 10.

3. March 4, 2020 — Respondent appeared for a scheduling conference in court and stated “I’d represent to the Court that Mr. Sweet does not have the capacity to essentially fire me,” then played Melvin’s attorney-client communications for the court. Ex. 115.
4. August 19, 2020 — Respondent submitted a declaration in support of a motion to have himself appointed Melvin’s guardian that was again counter to Melvin’s position and akin to Beverly’s adverse position that Melvin was too incapacitated to sue for divorce. It also revealed Respondent’s observations, impressions, and advice about Melvin and Beverly. Ex. 33A.

5. September 16, 2020 — Respondent filed a declaration objecting to his removal as Melvin’s attorney. He again claimed Melvin as too impaired to fire Respondent and choose his own attorney. Ex. 18.

We find that Respondent’s repeated communications that Melvin lacked capacity to make financial decisions, that Melvin lacked capacity to make the even more basic decision of choosing an attorney, that Melvin ignored Respondent’s advice about Beverly, and that Melvin had previously spoken more highly of Beverly, all constituted information relating to the representation under RPC 1.6(a). While Respondent may claim that the February 1, 2020 conversation and the March 3, 2020 email were overheard by those helping Melvin communicate with his attorney (Melvin’s brother and friend, respectively), this does not undermine their confidential nature. See ORS 24.225 (defining “confidential communication” as “a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication”). The information was gained during the course of the attorney-client relationship, and its disclosure was both embarrassing and detrimental to Melvin. Respondent violated RPC 1.6(a).

**Respondent’s refusal to withdraw and subsequent conduct violated RPC 1.16(a)(3) and (d).**

RPC 1.16(a)(3) states that a lawyer “shall withdraw from the representation of a client if … the lawyer is discharged.” RPC 1.16(a)(3). Further 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.” Respondent was required to withdraw when Melvin fired him, and to protect Melvin’s interests when the relationship terminated. Instead, Respondent refused to withdraw or coordinate with substitute counsel, completely ignored his client for seven months, and repeatedly took actions directly contrary to Melvin’s interests.

In addition to RPC 1.16, and as noted before, ORS 125.300(3) specifies that “a protected person retains all legal and civil rights provided by law except those that have been expressly limited. … Rights retained by the person include but are not limited to the right to contact and retain counsel.” Protected-persons retain their fundamental right to choose their own counsel.

Here, Melvin terminated Respondent’s representation on March 3, 2020, after Melvin had retained new counsel. Respondent then stopped speaking to Melvin, yet refused to withdraw. Respondent made no attempt to investigate Melvin’s capacity as to this particular decision, not even by speaking with him. Respondent’s inaction harmed Melvin’s interests by
delaying and complicating Melvin’s ability to resolve his cases quickly with a global settlement. The added time, expense, and general burden of unnecessary litigation was counter to Melvin’s interests.

Upon being fired, Respondent also took steps that harmed Melvin’s interests. Respondent moved to be appointed Melvin’s guardian in his dissolution matter after being terminated, which was counter to Melvin’s wishes. He assisted Beverly in trying to depose Melvin. And as already discussed, Respondent repeatedly revealed client information. Overall, Respondent’s actions and inaction after being discharged harmed Melvin’s interests.

Although Respondent claims that he refused to withdraw because he believed Melvin was being influenced, this does not explain Respondent’s refusal to speak with Melvin, refusal to investigate Respondent’s threadbare suspicions, and refusal to otherwise take action to protect his client from the so-called influence that Respondent was suspicious of. Respondent also cannot satisfactorily explain why he refused to respond to Furniss’s repeated attempts to resolve this issue, and never proactively sought resolution from the court.

Respondent’s explanation does not justify his actions and inaction. He testified that he felt any attempt by him to communicate on the issue of his firing with Melvin would be an inappropriate attempt to influence Melvin. Tr. at 394. We find this reasoning remarkably unpersuasive. If Respondent really believed Melvin was being unduly influenced by others his duty was to investigate further and take appropriate steps to protect his client if his suspicions turned out to be true, or to withdraw if his suspicions turned out to be baseless. A simple conversation with Melvin in early March of 2020 might have avoided all of the delay and conflict that followed. It might have avoided these disciplinary charges as well.

Respondent has also claimed that he had no duty to withdraw because he was court appointed. He cited ORS 9.380(1) in support. See Ex. 112 at 7 (answer to amended formal complaint). However, that statute provides no such authority. It lists only the procedure for withdrawing mid-case, namely either by filing a notice with the court or upon court order. It does nothing to override an attorney’s duty to withdraw when discharged, even if the proper procedure requires a court order. For example, in In re Seligson, an attorney was sanctioned when his bankruptcy client fired him in April 2009, but “the Accused did not immediately seek withdrawal and did not seek the bankruptcy court’s permission to withdraw until February 2010, a time period of ten months.” In re Seligson, 27 DB Rptr 314 (2013). A trial panel found he violated RPC 1.16(a). Id; see also In re Daraee, 32 DB Rptr 252 (2018) (attorney stipulated to violating RPC 1.16 when failing to file a motion to withdraw for 11 months after being discharged by the client). While there were certain procedures Respondent needed to follow to withdraw, his duty to withdraw upon being discharged remained the same.

The Bar also cited cases finding a violation of RPC 1.16(a)(3) when an attorney failed to withdraw upon being discharged, even when the attorney claimed he was motivated by what he believed was the client’s interests. See, e.g., In re Alan G. Seligson, 27 DB Rptr 314 (2013) (unlike here, noting that the attorney failed to withdraw when discharged citing a concern that his client would be left unrepresented, but still finding the attorney violated RPC 1.16); In re Hafez Daraee, 32 DB Rptr 252 (2018) (same); In re Mark G. Obert, 32 DB Rptr 32(2018) (attorney violated the rule when the client repeatedly tried to discharge him, but the attorney refused to file a motion to withdraw, believing that his client had since changed his mind).

We find that Respondent violated the charged provisions of RPC 1.16.
Respondent violated RPC 8.1(a)(2) when he knowingly refused to cooperate with the disciplinary authorities investigating his conduct.

RPC 8.1(a)(2) states: “a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not … 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.” Rule 1.6, though, specifically states that a lawyer may reveal client information to “respond to allegations in any proceeding concerning the lawyer’s representation of the client.” RPC 1.6(b)(4). Respondent contended that the use of the word “may” in this context left him with the discretion to decide whether to comply with the investigative requests. We reject that reading. The word “may” in this context means that a lawyer is allowed to disclose RPC 1.6 information when responding to allegations regarding the lawyer’s representation of a client and therefore it is no longer “protected” by RPC 1.6. The Rules of Professional Conduct compel lawyers to cooperate with investigatory authorities. If the information sought is no longer protected by Rule 1.6, it must be produced. Respondent was advised that the information was not shielded from disclosure when he was suspended under BR 7.1. Ex. 102. Refusal to produce it from this point forward was a violation of RPC 8.1(a)(2).

However, even if Respondent’s position was correct to this point, once the Adjudicator issued an order expressly requiring production of the document, Respondent was required to produce it. RPC 1.6(b)(5) authorizes disclosure if a lawyer reasonably believes it necessary to comply with a court order. An express order from the Adjudicator compelling production of the specific document at issue is such an order under the rule. According to Respondent’s statements at trial, he proudly refused to comply with that order. Accordingly, at the very least Respondent violated RPC 8.1(a)(2) when he knowingly failing to comply with the order compelling production.

SANCTION

We refer to the ABA Standards for Imposing Lawyer Sanctions (ABA Standards), in addition to Oregon case law for guidance in determining an appropriate sanction.

ABA Standards

The ABA 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 presumptive sanction, after which we may adjusts the sanction, if appropriate, based on recognized aggravating or mitigating circumstances.

Duties Violated

The ABA Standards state that “the most important ethical duties are those obligations which a lawyer owes to clients.” ABA Standards at 5. Respondent violated his duties to Melvin to maintain client confidences and to diligently communicate. ABA Standards 4.2, 4.4.

Respondent also violated the duties he owed as a professional to properly withdraw from representation and to cooperate with his regulators. ABA Standard 7.0
Mental State

Respondent acted at least knowingly with respect to each of his violations. A lawyer acts knowingly when the lawyer acts with a “conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” ABA Standards at 7. During the seven months in which Respondent failed to communicate or consult with Melvin, Respondent was consciously aware of his lack of communications. Respondent was also consciously aware that Melvin asserted he had financial decision-making capacity, when Respondent communicated otherwise. Finally, he received the Bar’s inquiries and discovery requests and he was aware of his obligations to comply.

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. ABA Standards at 6; In re Williams, 314 Or 530, 840 P2d 1280 (1992). Actual injury includes harm to client, public, legal system, or profession. ABA Standards at 7. Potential injury is the harm that is reasonably foreseeable at the time of the misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. ABA Standards at 9.

Uncertainty, anxiety, and aggravation are actual injuries for purposes of lawyer sanctions. In re Obert, 352 Or 231, 260, 282 P3d 825 (2012) (Obert II). A respondent also needlessly draws out and injures the lawyer discipline process, when he forces the Bar to seek orders of immediate suspension and compelling production before providing information. See In re Keller, 369 Or 410, 417, ___ P3d ___ (2022).

Respondent injured his own client by repeatedly revealing information that was detrimental to Melvin’s objectives. He injured Melvin and the legal system generally, by necessitating added time, resources, and expenses to resolve Melvin’s cases when Respondent refused to withdraw. Respondent injured the disciplinary process by refusing to provide his August 19, 2020 declaration to DCO until the Bar obtained an order compelling him to do so.

Preliminary Sanction

Absent aggravating or mitigating circumstances, the following ABA Standards appear to apply:

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. ABA Standard 4.22.

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. ABA Standard 4.42.

Suspension is appropriate when 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. ABA Standard 7.2.
Aggravating and Mitigating Circumstances

The following aggravating factors are present here:

1. **A dishonest or selfish motive.** ABA Standard 9.22(b). With respect to the violation of RPC 8.1(a)(2), Respondent appears to have been motivated selfishly rather than by his client’s interests or objectives. Although the Bar urged us to find that all of Respondent’s misconduct was selfishly motivated, we cannot agree, for the reasons set forth below regarding mitigation.

2. **A pattern of misconduct.** ABA Standard 9.22(c). Respondent engaged in repeated instances of misconduct both in representing Melvin and in the disciplinary proceeding.

3. **Multiple offenses.** ABA Standard 9.22(d).

4. **Bad faith obstruction of the disciplinary proceeding.** ABA Standard 9.22(3). Respondent intentionally refused to comply with the Adjudicator’s order granting the Bar’s motion to compel production of the August 19, 2020 declaration.

5. **Refusal to acknowledge wrongful nature of conduct.** ABA Standard 9.22(g). Respondent has testified that he has no remorse for any of his conduct.

6. **Vulnerability of victim.** ABA Standard 9.22(h). Melvin was an extremely vulnerable individual with diminished capacity.

7. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent was licensed in 1981.

In mitigation, Respondent has demonstrated the following:

1. **Absence of a prior record of discipline.** ABA Standard 9.32(a).

2. **Absence of a dishonest or selfish motive.** ABA Standard 9.32(b). With respect to the violations of RPC 1.2, 1.4, and 1.6(a), it did not appear that Respondent acted out of a dishonest or selfish motive. Rather, it appeared that Respondent subjectively (albeit erroneously) believed what he was doing to be in the client’s best interest. Any mitigation under this factor is diminished, however, due to Respondent’s failure to appreciate the harm he was doing to his client and that his duty was to carry out his client’s (as opposed to his own) views on the objectives of the representation.

Oregon Case Law

The Bar asked that Respondent be suspended for at least nine months. We find that in light of the aggravating factors outlined above, Respondent should be suspended for one year.

Oregon cases support our conclusion. The Supreme Court has imposed lengthy suspensions when attorneys violated client confidentiality. In *In re Lackey*, an attorney prepared an advice memorandum with confidential information, but when his superiors failed to follow his
recommendations, he disclosed it to the press. In re Lackey, 333 Or 215, 226, 37 P3d 172 (2002). Lackey demonstrates the importance of maintaining the duty of confidentiality, even when an attorney’s advice is not being followed. Similarly, here, Respondent disagreed with his client’s choices, but he did not abide by his client’s objectives or even withdraw. He instead improperly revealed client information to further what he considered a better course of conduct - for Beverly to remain as Melvin’s wife and involved with his finances. In Lackey, the Supreme Court imposed a one-year suspension, even though the lawyer had no other violations and far fewer aggravating factors than are present here.

In In re Huffman, the court imposed a two-year suspension on a lawyer who disclosed client confidences and threatened criminal charges in a letter to the client’s new counsel, in violation of former DR 4-101(B)(1) through (3) and DR 7-105(A). In re Huffman, 328 Or 567, 592, 983 P2d 534 (1999). The Court stated that “the nature of the disclosures, the overall tone of the letter, and the circumstances surrounding its preparation lead us to conclude that the accused’s purpose in sending the letter, at least in part, was to embarrass [the client] and to portray him as a criminal or a cheat in order to induce [new counsel] to question the client’s character and to refrain from pursuing [the client’s] claims.” Id. at 581. Here, Respondent revealed client information, repeatedly, to portray Melvin as incapacitated, in order to undermine Melvin’s efforts to pursue his divorce.

Suspension is also appropriate when attorneys fail to communicate or consult with clients. In re Gatti, 356 Or 32, 57, 333 P3d 994 (2014) (90-day suspension for multiple violations, and noting that “a finding that a lawyer has failed to adequately explain a legal matter to a client under RPC 1.4(b), without more, also justifies a 30-day suspension”).

The Oregon Supreme Court has recently observed that attorneys are typically suspended for several months or longer when they fail respond to lawful requests for information from the Bar, “alongside other knowing violations.” See Keller, 369 Or 410, 420 (imposing a 120-day suspension for attorney who engaged in neglect of a client matter, RPC 1.3, misrepresentation, RPC 8.4(a)(3), and failure to respond to the Bar’s inquiries, RPC 8.1(a)(2)).

Respondent has multiple violations, any one of which would merit a several-month suspension. The case also presents a number of aggravating factors, including Respondent’s decided lack of remorse. Accordingly, we believe the purpose of lawyer sanctions is achieved with a suspension of one year.

CONCLUSION


Given Respondent’s numerous violations, including revealing client information, failing to communicate about and abide by his client’s objectives, failing to properly withdraw, and failing to respond to Bar inquiries, Respondent is hereby suspended from the practice of law for one year, commencing 30 days after this decision becomes final.
Respectfully submitted this 28th day of June 2022.

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

/s/ Jon W. Monson
Jon W. Monson, Attorney Panel Member

/s/ Melanie Timmins
Melanie Timmins, Public Panel Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of

JAMES R. TSCHUDY, Bar No. 141956

Respondent.

Counsel for the Bar: Matthew S. Coombs
Counsel for the Respondent: Wayne Mackeson
Disciplinary Board: None
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.5(c)(3), and RPC 1.15-1(c). Stipulation for Discipline. 60-day suspension.
Effective Date of Order: August 23, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Respondent James R. Tschudy 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 60 days, effective the date of this order for violation of RPC 1.3, RPC 1.4(a), RPC 1.5(c)(3), and RPC 1.15-1(c).

DATED this 23rd day of August 2022.

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

STIPULATION FOR DISCIPLINE

James R. Tschudy, 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 July 1, 2014, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah 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 November 4, 2021, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.3, RPC 1.4(a), RPC 1.5(c)(3), and RPC 1.15-1(c) 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 or about July 9, 2019, Respondent undertook to represent Jayson and Christine Haskel (the Haskells) in a consumer protection claim against an auto dealer related to a vehicle they had purchased from the dealer. Respondent and the Haskells entered into a contingent fee agreement that required the Haskells to pay “a one-time flat fee of $750” and denominated the fee as “fully earned upon receipt.” The fee agreement did not state that the Haskells may be entitled to a refund of all or part of the fee if the services for which the fee was paid was not completed. Upon receipt of the $750 flat fee, Respondent did not deposit the funds into his lawyer trust account.

Following the execution of the contingent fee agreement, Respondent proceeded to negotiate on behalf of the Haskells and, when negotiations failed to resolve the matter, filed an arbitration matter with Arbitration Services of Portland in December 2019. An arbitrator was appointed in January 2020, and preliminary discussions commenced between Respondent and opposing counsel to schedule the arbitration hearing.

In or around the spring of 2020, Respondent began experiencing issues managing his caseload based on health and family issues, in addition to the onset of the COVID-19 pandemic. Between approximately April 2020 and November 2020, Respondent failed to respond to the Haskells’ reasonable requests for information and failed to take any substantive action on the Haskells’ matter. Respondent withdrew from representing the Haskells in or around November 2020. Cognizant of the severity of his health issues and their impact on his law practice, Respondent closed his office and indefinitely ceased the practice of law.
Violations

6.

Respondent admits that, by failing to include the language required by RPC 1.5(c)(3) in the contingent fee agreement that involved accepting non-refundable compensation for his services, he violated RPC 1.5(c)(3). Respondent further admits that because his contingent fee agreement did not include the required language, it was improper for him to fail to deposit the Haskells’ initial $750 payment into his lawyer trust account, in violation of RPC 1.15-1(c).

Respondent admits that by failing to take substantive action on the Haskells’ matter between April of 2020 and November of 2020, he neglected the Haskells’ matter in violation of RPC 1.3. Respondent further admits that by failing to respond to the Haskells’ requests for information related to their matter between April of 2020 and November of 2020, he failed to keep the Haskells reasonably informed about the status of their matter and promptly respond to requests for information, in violation of 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 (ABA Standards). The ABA 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.** A lawyer’s most important ethical duties are owed to their clients. ABA Standards at 5. Respondent violated his duty of diligence, which includes the duty to timely and effectively communicate with the Haskells. ABA Standard 4.4. Respondent violated his duty as a professional by using a fee agreement that failed to comply with the rules and by failing to deposit his clients’ funds into this lawyer trust account. ABA 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. ABA 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. In the current matter, Respondent acted negligently with regard to his fee and fee agreement and knowingly with regard to his neglect and failure to communicate.

c. **Injury.** Injury can be either actual or potential under the ABA Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). The Haskells suffered uncertainty, anxiety, and aggravation when Respondent failed to respond or follow through with matters on their behalf. “Client anguish, uncertainty,
anxiety, and aggravation are actual injury under the disciplinary rules.” In re Snyder, 348 Or 307, 321, 232 P3d 952 (2010).

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

1.  **Prior disciplinary record.** ABA Standard 9.22(a). In April 2019, Respondent received an admonition for neglecting a legal matter under RPC 1.3 and failing to keep his client reasonably informed pursuant to RPC 1.4(a), among other violations. Admonition letters are evidence of past misconduct if the misconduct that gave rise to the letter was of the same or similar type as the misconduct at issue in the present case. In re Cohen, 330 Or 489, 500, 8 P3d 953 (2000).

   To determine the significance to apply to an admonition, and prior discipline in general, several factors are considered: (1) the relative seriousness of the prior offense and resulting sanction; (2) the similarity of the prior offense to the offense in the case at bar; (3) the number of prior offenses; (4) the relative recency of the prior offense; and (5) the timing of the current offense in relation to the prior offense and resulting sanction, specifically, whether the accused lawyer had been sanctioned for the prior offense before engaging in the offense in the case at bar. *Id.* at 499.

   Due to the recency of the prior letter of admonition for conduct also present in these proceedings, the letter should be considered an aggra-

2.  **Multiple offenses.** ABA Standard 9.22(d).

3.  **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent was licensed to practice in Arizona in 2009 and in Oregon in 2014 by reciprocity.

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

1.  **Absence of a dishonest motive.** ABA Standard 9.32(b).

2.  **Personal or emotional problems.** ABA Standard 9.32(c). Respondent reported working with OAAP and the PLF practice management advisers to aid in managing his health and family issues and his law practice.

3.  **Cooperative attitude toward proceedings.** ABA Standards 9.32(j).

Regarding Respondent’s lack of diligence and failure to adequately communicate, under the ABA Standards, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. ABA Standard 4.42(a). For the violations related to Respondent’s contingent fee agreement, an admonition is generally appropriate when a lawyer engages in an isolated instance of negligence demonstrat-

8.
Under Oregon case law, generally, lawyers who knowingly neglect a legal matter or fail to keep clients informed are suspended. In re Snyder, 348 Or 307, 232 P3d 952 (2010). In the matter of In re Redden, the Oregon Supreme Court noted that attorneys who knowingly neglect a client’s legal matter are generally sanctioned with 60-day suspensions. 342 Or 393, 401, 153 P3d 113 (2007) (court so concluded after reviewing similar cases); see also, In re Lebahn, 335 Or 357, 67 P3d 381 (2003) (attorney suspended for 60 days for knowing neglect of a client’s legal matter and failure to communicate); In re Schaffner, 232 Or 472, 918 P2d 803 (1996) (attorney suspended for 120 days, 60 days of which was attributed to lawyer’s knowing neglect of clients’ case for several months by failing to communicate with clients and opposing counsel).

9.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violation of RPC 1.3, RPC 1.4(a), RPC 1.5(c)(3), and RPC 1.15-1(c). The sanction shall be effective on the date this stipulation is approved.

10.

In addition, on or before December 1, 2022, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of $110, incurred for process server attempts. Should Respondent fail to pay $110 in full by December 1, 2022, the Bar may thereafter, without further notice to him, 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.

11.

Respondent represents that he has no active matters or files to which access may be required for any client purpose.

12.

Respondent 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. Respondent 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.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.
14.

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: Arizona.

15.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 11, 2021. 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 August 2022.

/s/ James R. Tschudy
James R. Tschudy, OSB No. 141956

APPROVED AS TO FORM AND CONTENT:

/s/ Wayne Mackeson
Wayne Mackeson, OSB No. 823269

EXECUTED this 19th day of August 2022.

OREGON STATE BAR

By: /s/ Matthew S. Coombs
Matthew S. Coombs, OSB No. 201951
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of

JAY R. FAULCONER, Bar No. 002553   Case No. 22-72
Respondent.

Counsel for the Bar:  Susan R. Cournoyer
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 1.16(a)(1). Stipulation for discipline. 60-day suspension.
Effective Date of Order: August 29, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Jay R. Faulconer (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 60 days, effective October 3, 2022, for violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 1.16(a)(1).

DATED this 29th day of August, 2022.

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

STIPULATION FOR DISCIPLINE

Jay R. Faulconer, 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 October 4, 2000, and has been a member of the Bar continuously since that time, having his office and place of business in Benton County, Oregon.

3. Respondent 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 23, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 1.16(a)(1) 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 late October 2019, Client hired Respondent to defend her in a civil dispute regarding a puppy she had sold to Purchaser for $850. Purchaser, represented by Geordie Duckler (Duckler), claimed that the puppy had congenital health problems. Respondent agreed to take on Client’s case on a pay-as-you-can basis, and attempted to negotiate a settlement, to no avail. Duckler filed a civil action against Client alleging breach of contract, negligent misrepresentation, and violations of Oregon’s Unfair Business and Trade Practices Act, and sought damages of $6,350 and attorney fees. In January 2020, Respondent filed an answer asserting $20,000 in counterclaims against Purchaser for breach of contract and libel, and also seeking attorney fees.

In January 2020, Respondent forwarded Duckler’s request for production to Client, and Client sent him responsive documents on February 1, February 23, and May 7, 2020. However, Respondent neither produced these documents to Duckler, nor asserted an objection. (Duckler would eventually cite this failure to comply with discovery as a basis for an enhanced fee award against Client.)

Duckler wrote to Respondent in an attempt to confer on the factual or legal bases for Client’s counterclaims; Respondent did not respond or attempt to amend the pleading. (Duckler would eventually cite this failure as a basis for an enhanced prevailing party fee award against Client.)

The court referred the case to arbitration in January 2020. Respondent failed to respond to the arbitrator’s calendar request for available hearing dates, so she scheduled the case for a remote hearing on April 29, 2020, without his input. In mid-April 2020, Respondent sent Duckler and the arbitrator a letter stating that he could not attend due to on-going medical issues. “Even if that were not the case, I would not agree to telephonic hearing or other format
such as Zoom, which I am not set up for.” He announced that he would continue to assist Client in complying with her discovery obligations but would otherwise withdraw.

One week later, on April 22, 2020, Respondent informed the arbitrator that he would “immediately withdraw,” and asked that the April 29 hearing be set over. He did not withdraw. At a conference call held April 28, the arbitrator ordered a 30-day continuance “so that … Faulconer could withdraw and [Client] could locate alternative counsel or prepare to [proceed pro se].”

Despite the 30-day extension, Respondent did not withdraw and did not appear at the May 28 hearing. The day before the hearing, Respondent sent the arbitrator and Duckler a letter arguing that Purchaser’s legal action was an unwarranted expansion of a simple $850 dispute over a dog in order to bootstrap the matter into a claim for attorney fees, against a defendant who was demonstrably judgment-proof. He disclosed the substance of the parties’ October 2019 settlement negotiations. He announced that neither he nor Client would participate at the next day’s hearing, that he would appeal any adverse result to circuit court for trial de novo, and that Client was judgment-proof. He did not send a copy of this communication to Client. (Duckler would eventually cite this unsolicited letter as another basis for an enhanced fee award against Client.)

Client was unaware of the May 28 arbitration hearing, so also did not appear. The arbitrator awarded Purchaser $8,200 in damages and $8,160 in attorney fees against Client. Respondent did not respond to Duckler’s attorney fee petition, and did not inform Client about either award.

On July 3, 2020, Respondent filed a notice of appeal and request for trial de novo in the circuit court. The matter was set for a December 3, 2020 jury trial. Duckler moved for summary judgment. Respondent, who remained Client’s attorney of record, objected on the basis that Ducker had not properly served him. However, Respondent did not inform Client of the motion, and did not file any further response after the service issue was addressed.

Respondent intended to prepare for and try the case, but was unexpectedly hospitalized on October 31, followed by a recovery period extending until November 17. He was unable to adequately communicate with Client during this period.

After May 2020, Respondent did not respond to or acknowledge Client’s multiple attempts to contact him by phone or email. He did not inform her of the arbitration date, the trial date, or the motion for summary judgment. He did not consult with her about his decision to not appear at the arbitration hearing; did not inform her that he had decided not to appear in the arbitration; did not inform her that an arbitration award was made against her; did not inform her of the attorney fee petition or the attorney fee award against her; and did not inform her that he had appealed the arbitration award to trial court. He remained attorney of record throughout the proceeding until the court removed him.

At some point, Client became aware of the pending motion for summary judgment and December 3, 2020 trial date, and contacted the court directly for help. The court removed Respondent from the case November 19, 2020, and set over the trial date for 30 days. Client could not find another lawyer to represent her at this juncture. The court granted summary judgment for Purchaser in January 2021, and dismissed Client’s counterclaims as frivolous. The court awarded Purchaser $9,350 in compensatory damages and $16,467 in attorney fees,
costs, and an enhanced prevailing party fee. Client withdrew funds from her retirement account to satisfy the judgment, and was then reimbursed by the PLF.

Violations

6.

Respondent admits that, by failing to act for Client with respect to Duckler’s attempt to confer, to produce discovery, to respond to the attorney fee petition, or to respond in substance to the summary judgment motion, he neglected Client’s legal matter in violation of RPC 1.3. By failing to keep Client reasonably informed about developments in the litigation, to respond to Client’s reasonable requests for information, and to explain the matter to the extent necessary to permit Client to make informed decisions about the representation, Respondent violated RPC 1.4(a) and RPC 1.4(b). Finally, after announcing that he would withdraw from representing Client, Respondent violated RPC 1.16(a)(1) by failing to withdraw for many months, during which he failed to act on her behalf or to maintain reasonable communication with her, resulting in violations of the Rules of Professional Conduct.

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 (ABA Standards). The ABA 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.


b. Mental State. “Intent” is the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Id. “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Id.

Respondent may have acted negligently in strategically declining to participate in the arbitration hearing in favor of appealing to circuit court, and perhaps also in failing to confer with Duckler, but his failures to produce discovery in his possession and to notify his client of or to respond in substance to fee petitions and the motion for summary judgment were knowing. Respondent acted knowingly when he failed to withdraw and to communicate with Client.

c. Injury. For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992).
Client suffered serious actual injury in the form of a significant monetary award entered against her, including attorney fees based specifically upon Respondent’s failures to act on her behalf.

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

1. **Vulnerability of victim.** ABA Standard 9.22(h). Respondent claims to have taken Client’s case out of sympathy for her impecuniosity, but his misconduct left her in a substantially worse financial position.

2. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent was admitted to practice in 2000.

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

1. **Absence of a prior record of discipline.** ABA Standard 9.32(a).

2. **Personal or emotional problems.** ABA Standard 9.32(c). Respondent has been hospitalized and experienced unidentified medical issues.

8.

Under the ABA Standards, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or engages in a pattern of neglect and causes injury or potential injury to a client. ABA Standard 4.42.

9.

Oregon cases reach a similar conclusion. Knowing neglect of a legal matter, alone, has resulted in a 60-day suspension. *See, In re LaBahn*, 335 Or 357, 364–67, 67 P3d 381 (2003) (aggravating and mitigating factors in equipoise); *In re Redden*, 342 Or 393, 401–02, 153 P3d 113 (2007) (three mitigating factor were absence of prior discipline, absence of dishonest or selfish motive, and inexperience in practice of law; there were no aggravating factors); *In re Schaffner*, 232 Or 472, 918 P2d 803 (1996) (attorney suspended for 120 days, 60 days of which was attributed to lawyer’s knowing neglect of clients’ case for several months by failing to communicate with clients and opposing counsel).

Recent stipulations for discipline have generally resulted in 60-day suspensions. *In re Yunker*, 34 DB Rptr 26 (2020). Attorney failed to timely appeal an adverse administrative ruling when he miscalculated the deadline, and then failed to file a petition for review with the Oregon Supreme Court; he did not inform his client that the case was dismissed. Aggravating factors included prior discipline for similar misconduct; pattern of misconduct; and substantial experience. Mitigating factors included absence of dishonest motive, cooperation in proceedings, and remorse.

*In re Sowa*, 34 DB Rptr 100 (2020), also resulted in a 60-day suspension when an attorney ceased working on a client’s custody dispute and failed to respond to his client’s attempts to contact him. Aggravating factors included multiple offenses, refusal to acknowledge wrongful nature of conduct, and substantial experience. Mitigating factors present were absence of prior discipline and cooperative attitude toward proceedings.
Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 1.16(a)(1), with the sanction to be effective October 3, 2022.

Respondent 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, Respondent represents that at this time he has only one active case, and that he has arranged for an active member of the Bar to have ongoing access to that client file and to serve as the contact person for the client during the term of Respondent’s suspension. Respondent represents that this active member of the Bar has agreed to accept this responsibility.

Respondent 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. Respondent 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.

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. 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 not admitted to practice law in any other jurisdictions, whether his current status is active, inactive, or suspended.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 23, 2022. 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 August, 2022.

/s/ Jay R. Faulconer
Jay R. Faulconer, OSB No. 002553

EXECUTED this 23rd day of August, 2022.

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: the Conduct of
AMELIA OSTHOLTHOFF, Bar No. 114842
Respondent.

Counsel for the Bar: Courtney C. Dippel
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.4(b), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(1), and ORS 9.160(1). Stipulation for Discipline. 5-month suspension.
Effective Date of Order: September 26, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Amelia Ostholthoff (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 five months, effective 10 days after the date of this Order, for violation of RPC 1.4(b), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(1), and ORS 9.160(1).

DATED this 16th day of September 2022.

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

STIPULATION FOR DISCIPLINE

Amelia Ostholthoff, 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.
Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 6, 2011, and has been a member of the Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

Respondent 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).

On September 22, 2021, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of 1.4(b), 1.16(d), 5.5(a), 8.1(a)(1) of the Oregon Rules of Professional Conduct 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

Respondent has been administratively suspended from practicing law in Oregon since January 17, 2020, for failure to pay her Professional Liability Fund assessment; while still suspended, she was again administratively suspended on April 2, 2020, for failing to pay Bar dues.

In January 2020, Respondent was working with a law firm (the law firm) on a contract basis, to represent Della Rae Simmelink (Simmelink) in a juvenile dependency case involving Simmelink’s son. On or about January 21, 2020, while administratively suspended, Respondent appeared in court and represented Simmelink.

In or about late January 2020, Respondent learned of her administrative suspension and ceased performing any legal work on behalf of Simmelink. She did not seek reinstatement and the law firm terminated her contract the firm on February 6, 2020.

However, at no time did Respondent communicate to Simmelink that she had been suspended, that she would cease performing legal work on Simmelink’s behalf, that she decided to not seek reinstatement to practice law, or that she was terminating her work with the law firm. Respondent has had no contact with Simmelink since or about January 23, 2020.
9. On or about January 31, 2020, the mediator in Simmelink’s case sent Respondent and Simmelink a case update and/or draft mediation agreement. Respondent did not contact Simmelink.

10. In or about February 2020, Simmelink contacted the Bar for help reaching Respondent, whom she believed was still her attorney. Only then did Simmelink learn that Respondent had been suspended from practicing law.

11. In the weeks after she was administratively suspended, Respondent appeared at several hearings on behalf of clients. Respondent admits receiving the Bar’s communications regarding her suspension, but such notices were automatically sent to an email folder that Respondent failed to review until sometime after January 29, 2020, when she learned from a court employee that she was suspended from the practice of law.

12. Prior to terminating her work with the law firm, Respondent did not staff her cases with other attorneys at the law firm. After terminating her work with the law firm, Respondent’s cases were assigned to new attorneys, and the law firm contacted Respondent multiple times for information about her former cases. Respondent did not respond to multiple requests for information about her former cases.

13. From or about January 29, 2020, through March 2020, attorneys at the law firm covered at least 39 court appearances for Respondent. Respondent did not assist or prepare them for those hearings. Additional hearings in Respondent’s former cases could not be covered by attorneys at the law firm, and were rescheduled or were covered by outside counsel.

14. On or about February 12, 2020, Simmelink filed a grievance about Respondent with the Bar’s Client Assistance Office, complaining about Respondent’s lack of communication and the fact that Respondent failed to inform her that she had been suspended and would cease representing her.

15. On or about May 14, 2020, Simmelink’s grievance was referred to Disciplinary Counsel’s Office (DCO). DCO wrote to Respondent in the course of its investigation, including in letters dated July 7, 2020, and January 15, 2021. DCO asked Respondent specific questions, including, but not limited to:

- How she kept Ms. Simmelink informed about important developments in her case, and what steps she took to do so;
How and when Respondent’s representation of Ms. Simmelink ended;

The steps Respondent took upon termination of representation to protect Ms. Simmelink’s interests; and

Respondent’s explanation of exactly what she did to make the transition for her clients “as seamless as possible,” as Respondent had previously described it.

In response, Respondent wrote letters to DCO dated August 23, 2020, and February 2, 2021. In her letters to DCO, Respondent indicated that her cases were staffed with the law firm before she terminated working with the firm, and she omitted that the majority of her cases were transferred without her assistance or her responses to requests for information about them. Respondent also represented that:

- Respondent’s caseload continued to be supported and represented seamlessly during her exit.
- There was no time where her clients were not supported, able to communicate, and vigorously represented.
- Respondent had planned for members of the firm to cover her cases for most of February 2020. She had prepped staff and attorneys of cases status while she would be away; she had already planned to have her cases covered for most of February.
- To make the transition for the clients as seamless as possible, she staffed the cases within the firm prior to her departure.

Respondent admits that the statements she made to DCO were false and material to the disciplinary investigation of Respondent’s conduct, and Respondent knew at the time she made them that they were false and material.

Violations

Respondent admits that, by failing to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation; failing to, upon termination of representation, 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; practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction; knowingly making false statements of material fact in connection with a disciplinary matter; and practicing law in this state, and/or representing that she was qualified to practice law in this state, while she was not an active member of the Oregon State Bar, she violated RPC 1.4(b), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(1), and ORS 9.160(1).
Sanction

17.

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 (ABA Standards). The ABA 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.** Respondent violated her duty to her client to diligently attend to her legal matter when she failed to maintain communication. ABA Standard 4.4. When Respondent made false, material statements to the Bar, Respondent violated her duty to the public to maintain her personal integrity, and her duty as a professional to truthfully respond in a disciplinary proceeding. ABA Standards 5.1 and 7.0. Respondent also violated her duty to the profession when she failed to protect her client’s interests upon termination of the representation, and when she practiced law during her suspension. ABA Standard 7.0.

b. **Mental State.** Respondent acted knowingly when she failed to communicate with Simmelink, failed to take action to protect Simmelink’s interests upon termination of the representation, and made false, material statements to the Bar in response to the Bar’s inquiries. Respondent acted negligently when she practiced law while she was not an active member of the Bar.

c. **Injury.** Respondent’s conduct injured her client in that Simmelink was unknowingly unrepresented for more than two weeks while her case was in active litigation. Simmelink experienced anxiety and frustration when Respondent failed to communicate with her during that critical time. See, *In re Koch*, 345 Or 444, 456, 198 P3d 910, 917 (2008), citing *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989) (anxiety and aggravation constitute actual injury in determining disciplinary sanction). Respondent’s misrepresentations caused actual harm to the legal profession and the public. *In re Nisley*, 365 Or 793, 794, 453 P3d 529, 530 (2019) (lawyer can cause injury to the lawyer disciplinary system when the lawyer is not candid during the investigatory process).

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

1. **A dishonest or selfish motive.** ABA Standard 9.22(b). Respondent was dishonest with the Bar in the investigation of this case.

2. **Multiple offenses.** ABA Standard 9.22(d). Respondent admits to several different acts that violated multiple rules.

3. **Vulnerability of victim.** ABA Standard 9.22(h). Simmelink was a vulnerable victim, fighting for time with her child who was in DHS custody.
e. **Mitigating Circumstances.** Mitigating circumstances include:

1. **Absence of a prior record of discipline,** ABA Standard 9.32(a).
2. **Personal or emotional problems,** ABA Standard 9.32(c). Respondent was experiencing stressful family events, professional burnout, and vicarious trauma due to her heavy juvenile dependency caseload, at the time the conduct occurred.
3. **Remorse,** ABA Standard 9.32(l). Respondent has expressed that she is deeply remorseful for her conduct.

18.

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. ABA Standard 4.4(a). A suspension is also generally imposed 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. ABA Standard 7.2.

19.

A suspension of five months (150 days) is consistent with prior Oregon cases involving similar rule violations. Lawyers who have knowingly made false statements to the Bar have been suspended for 60 days. *In re Nisley*, 365 Or 793, 818, 453 P3d 529, 543 (2019) (60 day suspension for lawyer who made four false statements to the Bar in the course of a disciplinary investigation).

Lawyers who have failed to adequately communicate with clients have received suspensions of 30 to 60 days. *In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (attorney suspended for 30 days for violation of RPC 1.4(a), 1.4(b), and 1.15-1(d) for failing to respond to client’s inquiries, failing to inform the client of communications with adverse party and with the client’s own insurer, failing to explain the strategy attorney decided upon regarding settlement negotiations, and failing to promptly return client’s files and medical records; court found that 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 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, although Knappenberger also had significant aggravating circumstances); *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).

A trial panel of the Disciplinary Board recently suspended a lawyer for 30 days for violation of RPC 1.15-1(d) and RPC 1.16(d) for failing to take steps to protect a client’s interests upon termination, including failing to promptly return client property and unearned fees. *In re Ledesma*, 35 DB Rptr 188 (2021).
20. Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for five months for violation of RPC 1.4(b), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(1), and ORS 9.160(1) the sanction to be effective ten (10) days after the Stipulation is approved.

21. In addition, on or before March 31, 2023, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of $203 incurred for Respondent’s deposition. Should Respondent fail to pay $203 in full by March 31, 2023, 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.

22. Respondent 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, Respondent represents that she has no active cases or clients, and does not have possession of any client files.

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

24. 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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

25. 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: Washington.

26. Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 14, 2022. 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 September, 2022.

/s/ Amelia Ostholthoff
Amelia Ostholthoff, OSB No. 114842

EXECUTED this 15th day of September, 2022.

OREGON STATE BAR
By: /s/ Courtney C. Dippel
Courtney C. Dippel, OSB No. 022916
Disciplinary Counsel
TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged Sandon M. Duncan with violating RPC 8.4(a)(3) (misrepresentation and dishonesty reflecting adversely on fitness to practice law) and ORS 9.527(2) (commission of a misdemeanor crime involving moral turpitude). Respondent arranged to meet a woman at a Beaverton motel for sex in exchange for payment of $2,500 in cash. While in the motel room, a man in league with the woman began loudly banging on the door and yelling. Respondent eventually opened the door and the man physically attacked him, attempting to take the $2,500 in cash from his pocket. Respondent escaped the room with the man in pursuit, eventually winding up in the motel parking lot. The man fled, the police arrived, and they began questioning Respondent and the woman. They apprehended the man.

The Bar alleges that Respondent lied to the police and concealed material information from them during his questioning, in violation of RPC 8.4(a)(3). Respondent later pleaded guilty to the crime of commercial sexual solicitation, a misdemeanor the Bar contends is a crime involving moral turpitude, such that Respondent violated the above-cited statute. The Bar asked us to suspend Respondent for at least 30 days.

The case was tried by videoconference on April 18 and 19, 2022, before a trial panel consisting of the Adjudicator, Mark A. Turner, attorney member Amy E. Bilyeu, and public member James E. Parker. The Bar appeared through counsel, Eric Collins. Respondent appeared personally and was represented by counsel, Amber Bevacqua-Lynott and Steven Ungar.
After consideration of the evidence and the arguments of the parties, and as explained in detail below, the panel finds that the Bar proved the charges by clear and convincing evidence. We suspend Respondent for 60 days.

FACTS

On March 18, 2020, Respondent set up a meeting in downtown Portland with a young woman he found online on Seeking Arrangements (Seeking.com), where her online profile identified her by the name “Baby Herizen.” According to the testimony of Detective Chadwick Opitz of the Beaverton Police Department, who is lead investigator for the department in sex trafficking cases, Seeking.com is a website commonly used by those involved in prostitution. Tr. at 112–14. In a series of texts prior to meeting that day, Respondent stated that he wanted to meet Baby Herizen at a downtown Portland hotel and would bring $400. Ex. 7. Respondent used a false name in his communications, identifying himself as “Chris Trick.” Id.

Respondent did not know that he was actually communicating with Tariq Knapper, a man pretending to be the 19-year-old woman pictured in the profile of Baby Herizen. Ex. 9, Bates OSB 000182-183; 000198; 000204; 000211. Knapper, posing as Baby Herizen, texted that she did not have sex on the first meeting but would meet him if he paid her. Ex. 7, Bates OSB 000320. Respondent then sought further clarification:

“hey, so I re-read your texts and I just wanted to be clear on expectation. the $400 [sic] I’ll bring is for if you like me and we get a hotel and fool around. If you just want to get a coffee with me and then maybe hook up a different day, I’ll offer you $100 [sic] for that. cool?” Id. at Bates OSB 000323.

Knapper countered—texting that Baby Herizen would meet Respondent at a hotel for a massage and conversation in exchange for $500 or they could “just have a good time around downtown” for $400. Id. at Bates OSB 000323-24. Respondent texted back and the following exchange occurred:

“**Respondent:** I’ll do $500 [sic], but I’m gonna need some pussy for that. I promise you’ll love my dick. If you don’t like me when we meet, I’ll just give you a $100 [sic] bill and you can take off.

**Herizen:** So if I like you You’re giving me $500 (smiley emoji)

**Respondent:** yes cash. And I’m [sic] I’ll fuck you better than you’ve ever had it, too ;)

I promise I’ll make you cum a couple times before I do

**Herizen:** So $400 when we meet in a couple minutes. Then next time we meet things will really something worth if [sic]

Worth it * oops lol

**Respondent:** if no sex today, I’ll give you $100 plus a nice latte

**Herizen:** And I believe you daddy

Haha sorry no thank you. If you change your mind let me know. I was actually excited for the next time I saw you :

But thank you for showing your interest in me!
**Respondent**: why not today?

**Herizen**: I told you I do not have sex the first day I meet someone

**Respondent**: are you just not ready right now?

**Herizen**: And sex is more than $400

Look at me

You’ll look in my eyes and feel me riding your dick.”

*Id.* at Bates OSB 000324-26.

Ultimately, Respondent met the woman in person at a downtown Portland Starbucks. Her real name was Hailee Jo Swiger. He brought her to his downtown law firm office where they kissed before she left with $100 that Respondent paid her for the meeting.

The next day, Respondent was driving on Highway 217 on his way to the coast when his car developed trouble, leading him to take the vehicle to a downtown Beaverton BMW dealership. He was given a loaner car and contacted Baby Herizen to potentially meet at a motel. Ex. 7, Bates OSB 000330-37. Knapper was still texting on her behalf. Ex. 5, Bates OSB 000251. Knapper initially texted that sex would cost a minimum of $1,500:

“I’ll give you the best sex you’ve ever had but I need $1,500 nothing lower. I’m glad I got to meet you yesterday, now that I’m comfortable I’m ready to pursue this. But as I said I know my worth. Specially when it comes to giving my body”

*Id.* at Bates OSB 000331.

Respondent replied:

“I offered you ?600 [sic] yesterday when I was intoxicated by you, and I’ll honor [sic] that still. I’ll give you a monthly allowance instead, say ?2500 [sic] per month, if we can meet once a week.

Plus I’ll cover hotels and food/drinks and gifts :)

i promise I’ll make you cum first

I just got a loner [sic] car so I’m ready to go. should I meet you? Or I’ll be on my way out to the coast for the weekend

I’ll make it $750 if you can meet me right away”

*Id.* at Bates OSB 000332.

Knapper responded:

“We can do monthly if you do $2,500 today and I promise I’m yours! I have no reason not to come back if you’re showing me you’re serious

I’m really in need of money right now considering I got laid off today, so trust me I’ll be all yours”

*Id.*

Respondent replied:

“ok, your [sic] mine once a week

if you can get to embassy suites in 30 mins or less …”

*Id.* at Bates OSB 000332-33.
Knapper responded:

“$2,500 right? I really don’t want to be lied to…” *Id.* at Bates OSB 000333.

Respondent replied:

“yes. I’ll venmo you when were i in [sic] the room together you know where i work, i would never mess with you deal?” *Id.*

Knapper insisted by text that Respondent pay in cash and Respondent texted that he would go to a bank. Respondent subsequently texted a photo of a large number of $100 bills. Respondent then rented a room at the Beaverton Comfort Suites, texted the room number, and waited for Swiger to arrive. *Id.*

Once they were together in the room, Respondent showed Swiger an envelope containing the $2,500 in cash. He said he then put his wallet and car keys, along with the envelope containing the cash, on a table. Swiger told the police that she and Respondent had sexual intercourse. Respondent denied that they had sex.

Respondent testified that Swiger was hesitant about having sex and that they sat on the bed and talked. He said that they engaged in some intimate contact, but that she seemed distracted and was looking at her phone. After they had been in the room for some 10 to 15 minutes, Knapper began pounding on the door, yelling that his sister was inside and that she was being raped. Respondent testified that he grabbed the items from the table, including the envelope, and stood between Swiger and the door. He said that she was telling him to calm down and that she attempted to open the door.

After some conversation between Respondent and Knapper through the door, Knapper appeared to calm down and Respondent opened the door. He testified that Knapper barged through the door and began to physically attack him. Respondent said that both Knapper and Swiger kept trying to get into his front pocket where he had put the envelope full of cash. *Tr.* at 226–27. At some point Knapper began to strike Respondent with a table lamp as well as with his fists. Respondent was able to break free and make it out the door with the cash still in his pocket. He was shoeless and Knapper pursued him. A motel guest stood in the open doorway to his room. Respondent told him to call the police but the man quickly shut his door. A motel employee appeared at the end of the hallway and Respondent told her to call the police. He ran after her into the parking lot, still followed by Knapper. The employee went into the lobby area and locked the door behind her. She called the police. Respondent positioned himself under a security camera by the door and told Knapper that the police were on their way and that anything further that Knapper did would be caught on video. Knapper fled before the police arrived.

Multiple Beaverton police officers arrived to investigate what was dispatched as a “disturbance/fight.” *Ex. 5, Bates OSB 000219.* While some officers searched for Knapper, others spoke with Respondent and Swiger. *Id.* at Bates OSB 000223; 000226-228; *Ex. 16, Body Camera Video Transcript at 4:4-20.* Respondent’s first statement to an officer was that he was “hooking up with a girl in the hotel room” when “this black guy comes to the door and starts pounding on the door” accusing him of “whatever” and starts hitting him with a lamp. *Ex. 16 at 2:3-22.* Officers located Swiger nearby as she was getting into her car. They questioned her but she was not initially cooperative.

Sergeant Robert Lamb then spoke with Respondent and asked Respondent for more details. Ex. 16 at 25:9-25. Lamb asked Respondent whether the male assailant tried to take anything during the altercation in the motel room. Respondent told him, “Yeah. He had his hands in my pockets and so did she. They were trying to, like, take my wallet or whatever.” Ex. 16 at 28:9-13. Respondent did not tell the officer that he had $2,500 in cash that he brought to the motel room or that Knapper and Swiger were trying to take it from his pocket. Id. Lamb asked Respondent more about Respondent’s involvement with the woman, which led to the following exchange:

**Lamb:** How long have you known her?
**Respondent:** Like, I met her, like three days ago or something
**Lamb:** Okay. You guys hooked up today for sex?
**Respondent:** I was hoping to.
**Lamb:** Okay. That didn’t happen?
**Respondent:** No
**Lamb:** How long—
**Respondent:** It was, like, a couple of—
**Lamb:** How long were you guys in the—
**Respondent:** —days ago I met her for the first time.
**Lamb:** Okay.
**Respondent:** And we just, like, got coffee.
**Lamb:** How—how long had you guys been in the room before this guy showed up?
**Respondent:** 10 minutes?
**Lamb:** Okay.
**Respondent:** 15 minutes?
**Lamb:** Anything occur in the room?
**Respondent:** We were, like, being a little bit intimate.
**Lamb:** Okay.
**Respondent:** Kissing and stuff.
**Lamb:** No clothes off?
**Respondent:** No.
**Lamb:** Nothing like that?
**Respondent:** No.
Lamb: Okay. All right. She was in your pockets as well trying to take your wallet?

Respondent: Yeah.

Lamb: What was she saying during all of that?

Respondent: She was like, “Just be calm. It’s okay,” you know, trying to be all sweet and shit.

Lamb: Okay.

Respondent: Like total deceptive –

Lamb: Clearly –

Respondent: — bullshit

Lamb: — she knows him?

Respondent: Yeah, obviously

Lamb: Okay. Let me ask you this. Was – was this – you met her three days ago how?

Respondent: On the Internet on a dating website.

Lamb: Which one?

Respondent: I’d rather not talk about it.

Lamb: Okay. That’s fine.

Respondent: I don’t think it’s relevant.

Lamb: Was there any transaction for today?

Respondent: No.

Lamb: I’m just trying to get –

Respondent: No.

Lamb: Because she doesn’t want to give any information. She says you guys are friends and you guys know each other and –

Respondent: Yeah. She was, like, “Oh, no. We can hook up.”

Lamb: — she has no idea who this other guy is.

Respondent: “This is great. We can do whatever.”

Lamb: Yeah.

Respondent: I’m like, okay. Great.

Lamb: Clearly she’s being deceptive.

Respondent: And then – and then, like, apparently the – like, they’re just planning to rob my ass.

Lamb: Yeah.
Respondent: And, like – I don’t know – take my car. I don’t know what the fuck they were going to do.

Lamb: Did they end up getting any of your stuff?

Respondent: No. Well –

Lamb: Do you have your wallet?

Respondent: I think I have all my stuff. I have my phone and my wallet. My shoes are in the room.

Lamb: Okay.


Respondent spoke with Lamb multiple times at the motel over the course of an hour or so after police arrived. At no time did Respondent correct his statements denying that he had arranged a financial transaction with the woman for that day. Nor did he advise the police that he had come to the motel with $2,500 in cash, or that he had sent pictures of the cash to Knapper, or that he had then shown the cash to Swiger, and that the two of them tried to take the $2,500 from his pocket by force.

After Lamb had questioned Respondent, Frye spoke with him again. Ex. 16 at 9:4-12. Frye asked Respondent how he was communicating with Swiger. Respondent said they were texting each other. Id. When Frye asked Respondent if he still had those texts on his phone, Respondent said “no.” Id. This exchange followed:

Frye: Hey, what was the agreed upon dollar amount for this thing?”

Respondent: Zero. There was no dollar amount.

Frye: No. How much – how much were you – what was – what was the arrange-ment?

Respondent: I wasn’t going to pay her for anything.

Frye: No?

Respondent: I was going to hopefully do whatever I could.

Frye: So you were going to – you made arrangements to meet up with her.

Respondent: Yeah

Frye: You made arrangements to meet up with her and with the intent to have an encounter with a prostitute. And you have her come here –

Respondent: I didn’t – I don’t think – I didn’t think of her as a prostitute.

Frye: No?

Respondent: I just wanted to hook up.

Frye: Okay. Well, there you go.

Ex. 16 at 13:16-25; 14:1-12.
Detective Opitz then spoke to Respondent by phone while Respondent was at the scene. During the call, Respondent again claimed that he and Swiger “didn’t have any sort of an agreement,” and that he “didn’t know what she was hoping for, but apparently she was trying to rob me.” Ex. 16 at 14:14-25.

Frye also asked Respondent for the number Swiger was texting him from. Ex. 16 at 23:5-9. Respondent said he did not know.

Respondent spoke with Frye several times at the motel. At no time did Respondent tell Frye that he had, in fact, arranged to exchange a specific dollar amount of cash for sex.

Officers located and arrested Knapper that day. He was later indicted on charges including robbery in the second degree and promoting prostitution. During a search of Knapper’s phone, police located the texts between Respondent and Knapper acting as Baby Herizen. These texts, as noted above, showed the negotiations Respondent went through to arrange a sexual encounter for money. Id. at Bates OSB 000200-11. Respondent was subsequently charged with commercial sexual solicitation under ORS 167.008. The statute provides:

“1) A person commits the crime of commercial sexual solicitation if the person pays, or offers or agrees to pay, a fee to engage in sexual conduct or sexual contact.

2) Commercial sexual solicitation is a Class A misdemeanor.”

Respondent pled guilty and was convicted of that charge on Dec. 21, 2020. In his plea petition, Respondent admitted the following:

“On March 19, 2020, in Washington County, Oregon, [he] did unlawfully and knowingly offer and agree to pay a fee to engage in sexual conduct and sexual contact.” Ex. 3.

The court sentenced Respondent to 18 months of probation and to pay a fine. Ex. 4.

Respondent testified that he was given no Miranda warnings. He further testified that he appeared the week after the incident to testify before a grand jury considering charges against Knapper. He said he grew concerned about his potential criminal exposure and told the Assistant District Attorney (ADA) that he wanted to consult with a lawyer. He said the ADA told him that if he left that day the ADA would charge him with a crime and report him to the Bar. He did leave and retained a lawyer. The ADA followed through on his threat, leading to the criminal charge, Respondent’s guilty plea, and this disciplinary proceeding.

ANALYSIS OF THE CHARGES

Was Respondent convicted of a misdemeanor crime involving moral turpitude?

We address this question first. ORS 9.427(2) states:

“The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that … the member has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of the conviction shall be conclusive evidence.”
The question before us is whether the misdemeanor crime of commercial sexual solicitation is a crime involving moral turpitude.


Respondent notes for us that in *Chase* the court conceded that it had been inconsistent in the past about whether a violation of ORS 9.527(2) was determined using a variable standard that considered the circumstances of each case or by a fixed standard in which the elements of the crime alone determine whether it involves moral turpitude. It concluded that the Oregon determination of moral turpitude is a fixed definition: “The circumstances of the individual case do not alter the determination.” 299 Or at 396–99.

We do not have precise guidance in this state to find that fixed definition, however. The Oregon Supreme Court has acknowledged the difficulty in defining what constitutes “moral turpitude.” More than a century ago, in *Ex parte Mason*, 29 Or 18, 43 P 651 (1896), the Court concluded that a respondent’s conviction for publishing a libelous newspaper article was a misdemeanor involving moral turpitude. The court noted that the term lacked precision, but it explained in the language of the times: “‘Moral turpitude’ may therefore be defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” *Id.* at 20.

The court also recognized that “moral turpitude” could be subject to changing moral standards:

“This element of moral turpitude, … is necessarily adaptive; for it is itself defined by the state of public morals, and thus far fits the action to be at all times accommodated to the common sense of the community.’ … [T]he term is vague, and that moral turpitude is involved only when so considered by the state of the public morals, and hence it might be applied in some sections, and denied in others; thus rendering a satisfactory definition of the term difficult, if not impossible.” 29 Or at 23 (internal citations omitted).

*See also, Marleau v. Truck Ins. Exch.*, 333 Or 82, 95–96, 37 P3d 148 (2001) (discussing relative to slander *per se* how treatment of adultery as a crime of moral turpitude has changed over time).

The most recent substantive discussion of ORS 9.527(2) presented by the parties is *In re Nuss*, supra. The court there found that harassment did not amount to a misdemeanor involving moral turpitude. It stated:

“When a lawyer is charged under ORS 9.527(2) with committing a misdemeanor involving moral turpitude, this court will apply the following test, remembering that the Bar bears the burden of proof. First, this court will consider whether the crime was intentional or knowing…. Second, this court will consider whether the accused lawyer’s crime involved any of the following:
fraud; deceit; dishonesty; illegal activity for personal gain; or “an act of base-
ness, vileness, or depravity in the private and social duties which a man owes
to his fellow man, or to society in general, contrary to the accepted and
customary rule of right and duty between man and man.” … If the Bar sustains
its burden of proof as to both parts of the test, either because the crime itself
“announces” those facts or because those facts actually and necessarily were
resolved in the conviction, then the accused lawyer committed a misdemeanor
involving moral turpitude.” 335 Or. at 376. (internal citations omitted).

The court has not applied the Nuss analysis to commercial sexual solicitation.

As to the first issue, it is clear to us that the crime committed was “intentional or
knowing.” Paying or offering to pay money for sex is by its very nature an intentional or
knowing act. One knows that one is engaging in an exchange of money for sex. The plea
petition establishes that as well, since Respondent did “knowingly offer and agree to pay a fee
to engage in sexual conduct and sexual contact.” Ex. 3.

The Bar urged us to find that commercial sexual solicitation constitutes illegal activity
for personal gain, namely, sexual satisfaction, and thus satisfies the second prong in Nuss. We
do not find support for the proposition that sexual satisfaction is the sort of “personal gain”
that is contemplated in Nuss.

Accordingly, we must determine whether commercial sexual solicitation equates to
“baseness, vileness, or depravity in the private and social duties which a man owes to his fellow
man, or to society in general.” Respondent contends that an exchange of money for sex in an
otherwise consensual arrangement does not rise to this level. The Bar argues that prostitution
involves a private act of depravity that remains illegal in 2022 in Oregon and thus runs contrary
to accepted customs between persons.

Oregon cases support a determination that commercial sexual solicitation is a crime of
moral turpitude. The Oregon Supreme Court has previously accepted a stipulation for
discipline and reprimanded an attorney under the predecessor statute to ORS 9.527(2) when
the attorney agreed that his misdemeanor conviction for prostitution under ORS 167.0071
Howard with approval in the case of In re Wolf, 312 Or 655, 660, 826 P2d 628 (1992),
specifically noting that “a conviction for prostitution supported a stipulation for lawyer
discipline because crime was a misdemeanor involving moral turpitude.” The court has also
previously treated prostitution-related crime as involving moral turpitude. See Chase, supra at
397 (citing State ex rel. Ricco v Biggs, 198 Or 413, 417, 255 P2d 1055 (1953), a charge of
“keeping a bawdy house,” which was described in the indictment as a house used “for the
purpose of prostitution, fornication and lewdness.”).

One arena in which this question has been litigated in the more recent past is the field
of immigration law. Crimes involving moral turpitude can be grounds for removal from the
United States. In Reyes v Lynch, 835 F3d 556 (6th Cir 2016), the court considered whether the
petitioner’s conviction for solicitation of prostitution was a crime involving moral turpitude.
The court held that it was, following Rohit v Holder, 670 F3d 1085 (9th Cir 2012). In Rohit the

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1 At that time, ORS 167.007 criminalized the payment of a fee to engage in sexual conduct. In re Howard, 297 Or at 178.
Ninth Circuit held that solicitation of prostitution was a crime similar to many others that had been considered to involve moral turpitude, including the act of prostitution itself, “keeping a house of ill-fame,” and renting rooms with knowledge that they would be used for purposes of prostitution. *Reyes* at 559. The court noted that significant precedent in the field compelled this conclusion. *Id.*

Although not binding on us, *Reyes* and *Rohit* document that solicitation of prostitution has historically been viewed as a crime involving moral turpitude. We believe that is consistent with the Oregon Supreme Court’s historical treatment of acts involving prostitution and thus conclude that we should so find as well. We acknowledge Respondent’s argument that times and attitudes are changing when it comes to how society views sex work and a more enlightened view might prevail if the question were asked of our current court. But we believe that is a question for the Oregon Supreme Court to answer. It is not for us to reject what precedent compels us to find here.

The Bar further argues that we can also find that Respondent’s crime involved fraud, deceit, and dishonesty, and is thus one involving moral turpitude, premised on Respondent’s statements to law enforcement that he intended to engage in sexual intercourse with Swiger without paying her. We reject this view insofar as the evidence contradicts that stated intention. In other words, Respondent intended to pay for sex if it happened. He did not try to defraud Swiger.

This conclusion is also required because, on this charge, we are bound by the terms of the conviction, not by extrinsic evidence. Respondent admitted in his plea that he offered and agreed to pay for sex. For purposes of this analysis it would be inappropriate to disregard that fact to conclude that the misdemeanor here involved moral turpitude because of an element of fraud, deceit, or dishonesty arising from the Bar’s theory that Respondent intended to stiff Swiger after they had sex.

We find that Respondent’s conviction for commercial sexual solicitation is a crime of moral turpitude. Respondent violated ORS 9.527(2).

**Did Respondent violate RPC 8.4(a)(3) in his communications with law enforcement?**

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 contends that Respondent made misrepresentations to the police in violation of this rule. It further asserts that Respondent engaged in conduct involving dishonesty in violation of the rule.

RPC 8.4(a)(3) prohibits an attorney from making “misrepresentations,” whether direct or by omission, that are knowing, false, and material. *In re Eadie*, 333 Or 42, 53, 36 P3d 468 (2001). To prove an affirmative misrepresentation, the Bar must prove that the statement was false when it was made, the lawyer knew it was false at that time, the statement was material, and the lawyer knew it was material. *In re Nisley*, 365 Or 793, 802–03, 453 P3d 529 (2019) (citations omitted). To prove misrepresentation by omission, the Bar must prove that the lawyer failed to disclose information that the lawyer was aware of, that such information was material, and the lawyer knew it was material. See *In re Gustafson*, 327 Or 636, 648, 968 P2d 367 (1998) (analyzing misrepresentation by omission under predecessor disciplinary rule). The rules
define “knowingly” as actual knowledge of the fact in question. RPC 1.0(h). A person’s knowledge may be inferred from circumstances. *Id.*

A fact is material if it “would or could significantly influence the hearer’s decision-making process.” *In re Huffman,* 331 Or 209, 218, 13 P3d 994 (2000) (“material facts” are those that, had they “been known by the court or other decision-maker, would or could have influenced the decision-making process significantly” (quoting *Gustafson,* 327 Or at 648–49). Proof of actual reliance on the misrepresentation is unnecessary. *In re Kluge,* 332 Or 251, 256, 27 P3d 102 (2001).

“When considering an assertion that a lawyer has engaged in affirmative misstatement, our initial focus is on the truth or falsity of the fact asserted.” *In re Carpenter,* 337 Or 226, 233, 95 P3d 203 (2004) (citing *In re Kumley,* 335 Or 639, 644–45, 75 P3d 432 (2003)). We find by clear and convincing evidence that Respondent made multiple misrepresentations to police officers who spoke with him while he was at the Beaverton motel. Respondent stated that he had not agreed to an exchange of money for sex nor a specific amount of money for sex. The evidence showed without doubt that Respondent specifically agreed to pay $2,500 to have sex with Swiger that day. The amount was specific. The exchange for sex was specific.

Respondent argued at trial that there was no “agreement” to exchange money for sex because, when Swiger arrived, she did not follow through on the bargain and resisted having sex with Respondent, and thus he did not lie. If Swiger’s statements to the police are believed, this argument fails because she claims they did have sex. Although we could discern no reason why Swiger would admit that fact after multiple denials, we recognize that Respondent denied it, thus creating a swearing match on the subject and making the evidence less than clear and convincing. However, we do not have to choose between the competing stories to find that Respondent lied to the police.

Respondent’s argument that Swiger’s resistance to sex meant that there was no agreement because there was no meeting of the minds is legally flawed. The fact is that there was a specific meeting of the minds (between Respondent and Knapper) in their text exchange—$2,500 in exchange for sex. If Swiger did not follow through in the motel room that does not mean there was no agreement. It only means she breached the agreement. Respondent’s attempt to split hairs here is unpersuasive. He lied when he told the police there was no agreement to exchange sex for money and no specific money amount.

Respondent also lied to the police when he said he never thought of Swiger as a prostitute. He made the same statement to us in his testimony at trial. Tr. at 292. The assertion is false beyond reasonable doubt in our opinion. The graphic statements Respondent sent via text were clearly communications intended for a woman who would exchange sex for money—a prostitute. Respondent’s feigned naiveté was not only unpersuasive, it undercut his credibility in our eyes.

Respondent also obscured the truth when he said he wanted to “hook up” (have sex) with Swiger at the motel, but not in exchange for payment. Instead, he “was just going to hopefully do whatever (he) could.” He furthered this false narrative when he told the police that he and Swiger were friends and that was the reason for the liaison.

The Bar urged us to find that Respondent lied as well when he denied having sex with Swiger and instead stated that they engaged in kissing “and stuff.” Swiger’s unsworn statement
to the contrary is not clear and convincing evidence that Respondent lied when he denied having sex.

The Bar also argued that Respondent’s denial that text messages were still on his phone and that he did not know the number he had been texting violated the rule. Here, though, Respondent’s statements could have been truthful. He claimed that he had deleted the messages and number from his phone, apparently minutes after police arrived. While these actions may be consistent with his larger attempt to mislead the police, they do not constitute misrepresentations proved by clear and convincing evidence.

Respondent also omitted material facts when responding to officer questions. Specifically, when asked on more than one occasion if Knapper or Swiger took any of his property, Respondent truthfully responded in the negative, but intentionally omitted a crucial fact to give context to the seriousness of the incident. He did not disclose that he had brought $2,500 in cash, that Knapper and Swiger knew he had the cash on him in the room, and that they were focused on taking the envelope containing the cash during their struggle. He also claimed that he did not know what Knapper and Swiger sought to steal from him even though he knew they had specifically focused on taking the envelope. Tr. at 226–27.

We find that Respondent knew his misrepresentations were false. The text exchanges completely contradict his affirmative falsehoods. They show that the only reason for meeting was to exchange money for sex. Respondent also chose to omit any reference to the $2,500 because to reveal that he brought that money to the motel would have contradicted his prior lies regarding his reason for meeting Swiger.

The misrepresentations were material. Respondent provided the false information in response to questions by police who were trying to determine the type and extent of criminal activity that had occurred at the motel. Respondent’s answers would or could influence such determinations. Similarly, Respondent knew his misrepresentations were material. He was aware that officers were trying to gather information regarding a criminal investigation and were asking him questions regarding that investigation.

Rather than respond truthfully to police, Respondent engaged in deliberate deception to avoid embarrassment and the consequences of his own actions. “A person must be able to trust a lawyer’s word[,] as the lawyer should expect his [or her] word to be understood, without having to search for equivocation, hidden meanings, deliberate half-truths or camouflaged escape hatches.” In re Nisley, 365 Or at 818, citing In re Hiller, 298 Or 526, 534, 694 P2d 540 (1985). This is especially true when a lawyer is interacting with law enforcement. Respondent could have declined to answer questions from the police without running afoul of the disciplinary rules. When he chose to lie and omit material facts in his version of events he violated RPC 8.4(a)(3).

The Bar also contended that Respondent engaged in dishonesty in violation of the rule. The concepts of dishonesty, fraud, deceit, and misrepresentation overlap but are not identical. In re Claussen, 331 Or 252, 260, 14 P3d 586 (2000) (interpreting the predecessor to RPC 8.4(a)(3)). The Oregon Supreme Court defines dishonest conduct as that, “evidencing a disposition to lie, cheat or defraud as well as a lack of trust worthiness or integrity.” In re Kluge, 335 Or 326, 340, 66 P3d 492 (2003); Claussen, 331 Or at 260.

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Respondent moved to strike this specification of a violation, arguing that it had not been pleaded in the amended formal complaint. In In re Conduct of Ellis, 356 Or 691, 344 P3d 425 (Or. 2015), the supreme court stated:

“All accused lawyer must be put on notice “of the conduct constituting the violation,” as well as the rule violation at issue. In re Magar, 296 Or. 799, 806 n. 3, 681 P.2d 93 (1984). In that regard, BR 4.1(c) provides, in part:

‘A formal complaint shall *** set forth succinctly the acts or omissions of the accused, including the specific statutes or disciplinary rules violated, so as to enable the accused to know the nature of the charge or charges against the accused.’

“That rule ‘does not obligate the Bar to plead any fact regarding a charge *** beyond those that the *** [former] disciplinary rules identify.’ In re Kluge, 332 Or. 251, 262, 27 P.3d 102 (2001). The Bar must, however, sufficiently allege facts in connection with the charged allegation. (citing multiple cases).” 356 Or at 738–39.

Whether the violation was pleaded is a question for the Adjudicator.

The request to strike is denied. The amended formal complaint recites the alleged misconduct and then concludes that the conduct involved “dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law…” Amended Formal Complaint at ¶ 11. That is sufficient to put Respondent on notice that a theory of “dishonesty” could be argued by the Bar.

While the Bar may pursue this theory, we find that it failed to prove it by clear and convincing evidence however. All of the Bar’s alleged misconduct involved misrepresentation to the police in a single encounter. Kluge tells us that the concept of “dishonesty” in the rule must involve something more than an incident of misrepresentation because it is a separate and distinct theory. Proof that Respondent engaged in misrepresentation does not mean we can conclude that he is “dishonest” in violation of the rule.

The critical factor present in Kluge is intentional conduct demonstrating a lack of integrity. In Kluge the lawyer had intentionally failed to serve a judicial disqualification motion on the judge and upon opposing counsel before appearing ex parte to obtain an order of disqualification.

The Bar also cites In re Carpenter, supra, in support of this aspect of the charge. In that case the lawyer was found to have engaged in dishonesty when he created an online Classmates.com account in the name of a high school teacher in his community and posted a message on the website purportedly written by the teacher that suggested the teacher had engaged in sexual relations with his students. The posting led to a police investigation into the true identity of the poster and the local prosecutor’s office became involved. Although the accused lawyer claimed he posted the message solely as a practical joke, the court found the conduct showed that the lawyer lacked aspects of trustworthiness and integrity relevant to the practice of law because it demonstrated the lawyer’s willingness to disregard the teacher’s legal rights. 337 Or at 236–37. “That willingness reflects adversely on the accused’s fitness to practice law, because it causes us to question whether the accused possesses the requisite
trustworthiness and integrity to handle important matters involving legal rights that clients commonly entrust to lawyers.” *Id.* at 237.

Similar to *Kluge*, the lawyer in *Carpenter* intentionally disregarded the teacher’s legal rights in posting the false information. Here we are faced with a single incident in which Respondent engaged in misrepresentation, namely, the encounter with the police at the Beaverton motel. Arguably Respondent made the misrepresentations he did because he was ashamed, embarrassed, and scared. Those misrepresentations to law enforcement run afoul of the rule, but they do not show by clear and convincing evidence a “disposition” to lie, or that Respondent otherwise lacks trustworthiness or integrity.

We find that Respondent violated RPC 8.4(a)(3) insofar as he engaged in acts of misrepresentation with law enforcement.

**SANCTION**

We refer to the ABA *Standards for Imposing Lawyer Sanctions* (ABA Standards), in addition to Oregon case law for guidance in determining an appropriate sanction.

**ABA Standards**

The ABA 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 may adjust the sanction based on the existence of aggravating or mitigating circumstances.

**Duty Violated**

Respondent violated his duty to the public to maintain his personal integrity. ABA Standard 5.1. He also violated his duty to the legal system to refrain from making false statements. ABA Standard 6.1.

**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. ABA 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 find that Respondent acted at least with “knowledge,” as indicated in his plea petition, when with conscious awareness he offered and agreed to pay a fee to engage in sexual conduct. We further find that Respondent acted with intent when he misrepresented facts to police in their investigation.

**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. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).
Injury is defined as harm to a client, the public, the legal system, or the profession that results from a lawyer’s misconduct. Potential injury is the harm that is reasonably foreseeable at the time of the misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. ABA Standards at 9.

Here, Respondent’s criminal conduct harmed the legal system due to the time and expense to process and prosecute his case even though he pled guilty. *In re Hassenstab*, 325 Or 166, 180, 934 P2d 1110 (1997).

Respondent’s misrepresentation and dishonesty made the police investigation more difficult. Tr. at 127. Respondent’s criminal conduct also caused potential injury to the profession by damaging the public’s confidence in attorneys. *In re McDonough*, 336 Or 36, 44, 77 P3d 306 (2003).

**Preliminary Sanction**

Under the ABA Standards, a suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that does not include the elements of the more aggravated crimes described in ABA Standard 5.11, but seriously reflects adversely on the lawyer’s fitness to practice law. ABA Standard 5.12. Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer’s fitness to practice law. ABA Standard 5.13.

A suspension is also generally appropriate when a lawyer knowingly makes false statements that interfere or have the potential to interfere with a legal proceeding. ABA Standard 6.12.

We find the imposition of a suspension is the appropriate preliminary sanction here.

**Aggravating and Mitigating Circumstances**

We find the following aggravating factors under the ABA Standards present here:

- **Dishonest or selfish motive.** ABA Standard 9.22(b). Respondent lied to law enforcement in an attempt to avoid accountability. *See In re Nisley*, 365 Or at 816 (respondent acted with a selfish motive trying to avoid negative consequences of an investigation of the lawyer’s conduct).

- **Multiple Offenses.** ABA Standard 9.22(d).

- **Submission of false evidence, false statements, or other deceptive practices during the disciplinary process.** ABA Standard 9.22(f). The Bar did not argue this aggravating factor, but we are compelled to conclude it applies here. Respondent repeated many of the false statements he made to the police while testifying at trial. He told us under oath that he never viewed Swiger as a prostitute, a statement we have already identified as a blatant falsehood. Further, when attempting to support the contention that no agreement had been reached, which we have found to be objectively false in light of the text messages between the parties, Respondent’s testimony was evasive and decidedly unpersuasive when subjected to examination by disciplinary counsel. Tr. at 202–08.

- **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent has been licensed to practice law in Oregon since October 8, 2009.
The Bar asked us to also find a pattern of misconduct. ABA Standard 9.22(c). Respondent’s misconduct was limited to a single incident on a single day. Although he may have committed multiple offenses on that day, the evidence did not establish a pattern of misconduct.

The Bar acknowledged that in mitigation, Respondent has no prior discipline, ABA Standard 9.32(a), and the imposition of other penalties or sanctions, ABA Standard 9.32(k). Respondent asked us in addition to find in mitigation that he did not act with a dishonest motive; ABA Standard 9.32(b); was experiencing personal problems at the time of the incident; ABA Standard 9.32(c); was cooperative with the police investigators and has shown a cooperative attitude toward these proceedings, ABA Standard 9.32(e); has already experienced significant injury and consequences as a result of his conduct, ABA Standard 9.32(k); and genuinely feels remorse for his behavior in these circumstances, ABA Standard 9.32(l).

We cannot find these additional mitigating factors. When Respondent lied to the police he acted with a dishonest motive. Respondent failed to present more than mere reference to personal problems at the time, showing us nothing to connect such problems to his misconduct. We also cannot find that he was cooperative with police investigators when he lied to them in the investigation. Although Respondent has shown a cooperative attitude toward these proceedings, we do not recognize any demonstration of genuine remorse for his behavior. Respondent appeared to regret only that he got caught, not that he had committed any improper acts by offering to pay for sex and thereafter lying about it to police.

The aggravating factors outweigh the mitigating factors here, which could support an upward adjustment of the preliminary sanction.

Oregon Case Law

Oregon case law confirms that a period of suspension is appropriate. Significant sanctions have been imposed on lawyers making false statements in response to investigations of their conduct. The Bar cites us to: In re Brown, 298 Or 285, 692 P2d 107 (1984), rehearing denied (1985) (two year suspension for lawyer who prepared and had his client sign an affidavit that he knew was false in order to persuade the Bar to drop an investigation against him); In re Wyllie, 327 Or 175, 181, 957 P2d 1222 (1998) (two-year suspension for lawyer who misrepresented his CLE activities to the MCLE board and then lied to the Bar in its investigation of his conduct); In re Nisley, 365 Or at 818 (60-day suspension for lawyer who made four false statements during an investigation by the Bar).

Lawyers who provide false statements to law enforcement and engage in criminal conduct also have received lengthy suspensions. In In re Strickland, 339 Or 595, 124 P3d 1225 (2005) an attorney received a one-year suspension after he staged a disturbance between himself and construction workers and then falsely reported to police that he had been threatened and assaulted by them. The attorney was subsequently convicted for initiating a false police report, improper use of the emergency reporting system, and disorderly conduct. Id. Also, in In re Smith, 348 Or 535, 236 P3d 137 (2010), a lawyer received a 90-day suspension for engaging in misrepresentation and criminal trespass when he assisted a client in taking over a medical marijuana clinic based on a frivolous argument that the client had a right to do so because the non-profit operating the clinic had been administratively dissolved. The lawyer was present during the attempted takeover and falsely asserted to the police and others that his client had written authorization from a government entity to take control of the clinic. Id. at 542, 549–50.
Respondent cites us to cases where public reprimands were given rather than suspensions, but they all involve issues relating to sexual conduct, and do not involve charges of misrepresentation under RPC 8.4(a)(3). We do not find them persuasive.

The Bar asked us to suspend Respondent for at least 30 days. We conclude that Respondent’s conduct here warrants something more, in particular because a more serious sanction is necessary to deter lawyers from lying to law enforcement. We order that Respondent is suspended for a period of 60 days, commencing 30 days after this decision becomes final.

CONCLUSION

Sanctions in disciplinary matters are not intended to penalize the accused lawyer, but instead are intended to protect the public and the integrity of the profession. In re Stauffer, 327 Or 44, 66, 956 P2d 967 (1998). Appropriate discipline deters unethical conduct. In re Kirkman, 313 Or 181, 188, 830 P2d 206 (1992). We believe a 60-day suspension will accomplish those objectives here.

Respectfully submitted this 13th day of June 2022.

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

/s/ Amy E. Bilyeu
Amy E. Bilyeu, Attorney Panel Member

/s/ James E. Parker
James E. Parker, Public Panel Member
TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged Respondent with violation of RPC 8.1(a)(2) based on his failure to respond to inquiries from disciplinary authorities investigating a complaint of misconduct. The Bar asks that Respondent be suspended for at least 60 days. Respondent is in default for his failure to appear and answer the formal complaint against him. As explained below, this trial panel finds that the Bar has adequately alleged the charged rule violation. We suspend Respondent for 60 days. Further, we order that Respondent be subject to the formal reinstatement requirements of BR 8.1 after his suspension has run. We believe a 60-day suspension, standing alone, is not a sufficient sanction for a lawyer who has chosen to ignore his obligations to cooperate with disciplinary authorities and has further chosen to ignore this disciplinary proceeding.

PROCEDURAL POSTURE

On January 19, 2022, the Bar filed a formal complaint against Respondent. On March 7, 2022, the Adjudicator granted the Bar’s Motion for Order Allowing Service by Publication. Service of the formal complaint was accomplished by publication in two newspapers, one in Oregon and one in California, between March 10, 2022, and April 1, 2022.

On April 29, 2022, and then again on May 10, 2022, the Bar notified Respondent of its intent to take default if Respondent did not file an answer. On June 3, 2022, the Bar filed a motion for order of default. The Adjudicator granted the motion on June 8, 2022. A trial panel was appointed on June 27, 2022, consisting of the Adjudicator, Mark A. Turner, attorney member Christopher Kent and public member James Parker.
In a default case the Bar’s factual allegations are deemed true. BR 5.8(a). See also, In re Magar, 337 Or 548, 551–53, 100 P3d 727 (2004); In re Kluge, 332 Or 251, 253, 27 P3d 102 (2001). Our task is first to determine whether the facts alleged support a finding that Respondent committed the disciplinary rule violation alleged. If we so conclude, we must determine the appropriate sanction. See, In re Koch, 345 Or 444, 447, 198 P3d 910 (2008). In assessing whether the facts alleged support a finding that the rule at issue was violated we are limited to the four corners of the formal complaint. In assessing the appropriate sanction we may receive additional evidence and argument, which is usually presented by a memorandum from the Bar addressing the issue of sanctions. That procedure was followed here.

FACTS ALLEGED AND CHARGE ASSERTED

Disciplinary Counsel’s Office (DCO) received a grievance from one Andrew McLain (McLain) regarding Respondent’s conduct on January 27, 2021. ¶ 3.1 DCO requested Respondent’s response to the grievance by letter of March 3, 2021. Id. The letter was mailed to Respondent by first class mail to two addresses: 2105 NE Everett Street #4, Portland, Oregon 97232, the address then on record with the Bar (record address); and 15705 LaMar Court, Morgan Hill, California 95037, an address obtained by DCO based on a records search by a Bar investigator (California address). Id. The letter was also emailed to Respondent at pdxstryder@yahoo.com, the email address then on record with the Bar (record email address). Id. Neither of the letters sent by mail were returned as undeliverable, nor did the email trigger a delivery failure notification. Respondent, however, did not reply. Id.

McLain’s grievance contained information showing that Respondent no longer resided at the record address. ¶ 4. DCO tried to contact Respondent again by email on April 2, 2021 at his record email address to request confirmation of the California address and for permission to update that information with the Bar. That email did trigger a delivery failure notification. Id. On the same day, DCO attempted to contact Respondent at a different email address, pdxstryder@gmail.com, an address Respondent had used in litigation then pending in an Oregon court (gmail address). In the email, DCO again requested Respondent’s confirmation of the California address as his true address and permission to update that information with the Bar. The email did not trigger a delivery failure notification. Respondent again did not respond. Id.

DCO once again requested Respondent’s response to McLain’s grievance by letter of April 15, 2021. The letter was mailed to Respondent by both first class and by certified mail, return receipt requested, at the California address. Someone signed the certified mail receipt. The letter was also emailed to Respondent at the gmail address, and that email did not trigger a delivery failure notification. Respondent again did not respond. ¶ 5.

On June 3, 2021, DCO filed a petition pursuant to BR 7.1 seeking Respondent’s immediate suspension for his failure to respond to DCO. The petition was sent by first class mail to the California address and to the gmail address. The letter sent to the California address was not returned undelivered. The email did not trigger a delivery failure notification. Respondent did not file any response to the petition. ¶ 6.

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1 Paragraph references here are to the allegations in the formal complaint.
The Adjudicator issued an order suspending Respondent pursuant to BR 7.1 on July 1, 2021. ¶ 7.

The Bar asserts that this course of conduct constituted knowingly failing to respond to lawful demands for information from a disciplinary authority in connection with a disciplinary matter in violation of RPC 8.1(a)(2). ¶ 9. We agree.

That rule provides in relevant part: “[A] lawyer…in connection with a disciplinary matter, shall not: (2)...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.” RPC 8.1(a)(2).

The rule requires full cooperation from a lawyer subject to a disciplinary investigation. In re Schaffner, 325 Or 421, 425, 939 P2d 39 (1997) (emphasis in original). We follow the guidance of the Oregon Supreme Court in not tolerating violations of this rule. See In re Miles, 324 Or 218, 222–25, 923 P2d 1219 (1996) (emphasizing the seriousness with which the court views the failure of a lawyer to cooperate with a disciplinary investigation). This duty to cooperate is at the heart of our regulatory system. Lawyers who knowingly ignore this obligation are holding themselves above the rules, an attitude we do not countenance.

DCO expended significant effort investigating a complaint about Respondent’s conduct. DCO sent repeated letters and emails to various addresses during a period of more than four months before finally seeking Respondent’s administrative suspension. DCO received only a single notice that its communications were not delivered. In that case, DCO took the initiative to locate a different email address that Respondent had provided the court in litigation then pending in Oregon. DCO then sent the same inquiries to that email address but still received no response. Respondent’s conduct demonstrates a lack of regard for his ethical responsibilities as a lawyer. He knowingly failed to respond to a lawful demand for information from DCO, a disciplinary authority, in violation of RPC 8.1(a)(2).

SANCTION

We refer to the ABA Standards for Imposing Lawyer Sanctions (ABA Standards), in addition to Oregon case law for guidance in determining an appropriate sanction for lawyer misconduct.

ABA Standards

The ABA 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 may adjust the sanction, if appropriate, based on the existence of aggravating or mitigating circumstances. ABA Standard 3.0.

Duty Violated

Respondent violated his duty to the legal profession when he failed to cooperate with DCO’s investigation. ABA Standard 7.0; see In re Gastineau, 317 Or 545, 556, 857 P2d 136 (1993). Respondent also violated his duty to the public because the disciplinary process serves to protect the public. ABA Standard 5.0; see In re Kluge, 335 Or 326, 349, 66 P3d 492 (2003).
Mental State

The ABA Standards recognize three mental states. “Intent” is when a lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA 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 find that Respondent at least knowingly disregarded DCO’s inquiries. DCO sent Respondent multiple letters to a number of mail and email addresses associated with him. Only one of the emails was returned as undeliverable. This caused DCO to direct emails thereafter to an email address that Respondent had been using in then-pending litigation. Moreover, someone signed the certified mail receipt for the regular mail sent to the California address. We must conclude that Respondent simply chose not to communicate with DCO.

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. ABA Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). “Potential injury” is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. ABA Standards at 9.

Respondent’s failure to cooperate with DCO’s investigation caused actual harm to the legal profession and the public. Miles, 324 Or at 222. First, Respondent’s failure to cooperate prevented the Bar from determining whether Respondent engaged in the misconduct alleged in the grievance. To maintain public confidence in the integrity of the legal profession, the Bar must be able to fully investigate allegations of attorney misconduct. Respondent’s lack of cooperation thwarted that goal. Second, the Bar’s investigation has been significantly delayed by Respondent’s failure to respond. DCO has been unable to reach a resolution regarding McLain’s grievance as a result of Respondent’s lack of cooperation. The Bar was unable to provide a timely resolution of this matter for McLain or any other member of the public seeking information about Respondent’s disciplinary record.

Preliminary Sanction

The following ABA Standards apply here:

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. ABA Standard 7.2.

Our preliminary assessment is that Respondent’s misconduct merits at least a suspension.
**Aggravating and Mitigating Circumstances**

The following aggravating factors under the Standards exist in this case:

1. **A prior record of discipline.** Standard 9.22(a). Respondent received a public reprimand in 2015 for failing to comply with applicable law requiring notice to or permission of a tribunal when terminating the representation of his clients in violation of RPC 1.16(c) and for failing to appear at trial on behalf of those clients in violation of RPC 8.4(a)(4). *In re Baker I*, 29 DB Rptr 204 (2015).

   When assessing the significance of a lawyer’s prior discipline, we are to consider: (1) the relative seriousness of the prior offense and resulting sanction; (2) the similarity of the prior offense to the offense in the present case; (3) the number of prior offenses; (4) the relative recency of the prior offense; and (5) the timing of the current offense in relation to the prior offense and resulting sanction, specifically, whether the accused lawyer had been sanctioned for the prior offense before engaging in the offense in the case at bar. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997).

   The Bar acknowledges that Respondent’s prior offenses are not similar to the misconduct in this case, and the reprimand he received is the least serious sanction allowed under the disciplinary rules. The Bar correctly notes, however, that the timing of the prior offenses confirms that Respondent was aware of the disciplinary process and the need for his participation in it when the inquiries here were made.

2. **Substantial experience in the practice of law.** Standard 9.22(i). Respondent has substantial experience in the practice of law. He was admitted to practice in Oregon on November 4, 1991.

   We find no mitigating factors in the record before us.

   The aggravating factors here support imposing a significant suspension.

**Oregon Case Law**

The Oregon cases submitted by the Bar confirm that a significant suspension is warranted here.

Lawyers who have refused to respond to a Bar inquiry have received 60-day suspensions for that violation alone. *See In re Schaffner*, 323 Or 472, 481, 918 P2d 803 (1996) (finding a 60-day period of suspension was justified for a violation of DR 1-103(C) (former rule regarding failing to respond to disciplinary inquiries)); *see also Miles*, 324 Or at 223–24 (imposing a 120-day suspension for failure to respond to the Bar in two separate matters).

Failing to respond to the Bar undermines the public’s confidence in the disciplinary system by hampering the timeliness of the Bar’s response to a complaint. *Miles*, 324 Or at 222–23. That court stated: “The public protection provided by [the rule] is undermined when a lawyer accused of violating another provision of the Code of Professional Responsibility fails to participate in the investigatory process. Indeed the disciplinary system likely would break down if the mandatory cooperation rule set forth in [the rule] were not in place, given the lack of incentive for a lawyer to cooperate with a Bar investigation if that lawyer had the option of not cooperating.” *Id.*
Considering the above analysis, a suspension of at least 60 days is warranted.

Further, we find that Respondent’s apparent cavalier attitude toward compliance (and toward this formal proceeding) merits additional protection for the public. The presumptive route under BR 8.3 for returning to practice after a 60-day suspension will not adequately ensure that Respondent is fit to practice. Accordingly, we order that Respondent be subject to the requirements for formal reinstatement found in BR 8.1 before he is able to resume practice in this state. Respondent will have the burden of proof to show that he is willing and able to take his professional duties seriously in order to practice again. The public deserves this level of protection.

CONCLUSION


We suspend Respondent for a period of 60 days, effective 30 days from the date this decision becomes final. We further order that Respondent must apply for formal reinstatement under BR 8.1 before he is able to resume practice.

Respectfully submitted this 26th day of September, 2022.

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

/s/ Christopher Kent
Christopher Kent, Attorney Panel Member

/s/ James Parker
James Parker, Public Panel Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of )
MARK JOHN HOLADY, Bar No. 900682 ) Case No. 21-67
Respondent. )

Counsel for the Bar: Samuel Leineweber
Counsel for the Respondent: David J. Elkanich
Disciplinary Board: None
Disposition: Violation of RPC 5.5(b), RPC 7.1, RPC 8.4(a)(3), and
RPC 8.4(a)(4). Stipulation for discipline. 30-day suspension.
Effective Date of Order: December 3, 2022.

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Mark
John Holady (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 30-days, effective December 3, 2022, for violation of RPC 5.5(b),
RPC 7.1, RPC 8.4(a)(3), and RPC 8.4(a)(4).

DATED this 17th day of November, 2022.
/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Mark John Holady, 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.
Respondent 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.

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).

On November 9, 2021, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 5.5(b), RPC 7.1, RPC 8.4(a)(3), and RPC 8.4(a)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

Respondent was suspended from the practice of law for 60 days beginning on December 23, 2019, as a result of his conduct in In re Holady, 33 DB Rptr 512 (2019). Throughout Respondent’s suspension, he continued to use an office sign that listed him as “attorney at law,” and used letterhead that referred to him as “attorney at law,” “admitted in Oregon,” and also listed his Oregon State Bar number.

In August of 2018, while an active member of the Bar in good standing, Respondent was appointed as the arbitrator in Haughwout v. Iverson, Multnomah County Court Case No. 17CV51589. Respondent believed that he was still able to act as an arbitrator during his suspension and did not disclose his suspension to the parties of the Haughwout arbitration. On February 21, 2020, Respondent conducted the Haughwout arbitration hearing at his Beaverton office while he was still suspended.

After the Haughwout arbitration hearing concluded, an attorney for one of the parties to the arbitration (Garner) discovered that Respondent was suspended and objected to Respondent acting as arbitrator. Garner inquired with Respondent, who acknowledged that he was suspended. Garner filed a motion to disqualify Respondent from acting as an arbitrator on the basis that Respondent should have been disqualified from acting as an arbitrator during his suspension, or that Respondent should have disclosed his suspension to the parties pursuant to UTCR 13.090. The circuit court granted Garner’s motion to disqualify after a hearing and the case was thereafter set for trial in the normal course.
Violations

8.

Respondent admits that, by continuing to use an office sign and letterhead that identified him as an attorney, he violated RPC 5.5(b) and RPC 7.1. Respondent admits that by not disclosing his suspension to the parties in the Haughwout case prior to arbitration, he violated RPC 8.4(a)(3) and RPC 8.4(a)(4).

Sanction

9.

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 (ABA Standards). The ABA 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. When Respondent engaged in misleading communication about the status of his law license, he violated his duty to the legal profession. ABA Standard 7.0. When Respondent committed a misrepresentation, he violated his duty to the public by failing to maintain his personal integrity. ABA Standard 5.1. When Respondent engaged in conduct prejudicial to the administration of justice, he violated his duty to the legal system. ABA Standard 6.1.

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. ABA 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.

At the beginning of his suspension, Disciplinary Counsel’s Office (DCO) sent Respondent a letter warning him to cease using language on his office sign, letterhead, and webpage that identified him as an attorney. Approximately one month in to his suspension, DCO communicated with Respondent warning him again to cease holding himself out as a lawyer during his suspension. Based on these communications, Respondent acted with knowledge when he continued to hold himself out as an active lawyer. Respondent acted knowingly when he made a misrepresentation by omission and Respondent was negligent in failing to be aware of the particular harm that could be caused to the parties and court system by acting as an arbitrator while he was suspended.

c. Injury. Injury can be either actual or potential under the ABA Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). There was actual and potential injury to the parties and members of the public who relied on Respondent’s
representations that he was an active member of the Bar. There was actual injury to the parties and the court system in the form of additional litigation and expense.

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

1. A prior record of discipline. ABA Standard 9.22(a). At the time of Respondent’s conduct in this matter he was suspended for violations of RP 1.3 [neglect] and RPC 1.15-1 [failure to return client property]. *In re Holady*, 33 DB Rptr 512 (2019). The following factors are considered in applying an attorney’s prior discipline as an aggravating factor: (1) the relative seriousness of the prior offense and resulting sanction; (2) the similarity of the prior offense to the offense in the case at bar; (3) the number of prior offenses; (4) the relative recency of the prior offense; and (5) the timing of the current offense in relation to the prior offense and resulting sanction, specifically, whether the accused lawyer had been sanctioned for the prior offense before engaging in the offense in the case at bar. *In re Cohen*, 330 Or 489, 499, 8 P3d 953, (2000).

Pursuant to the *Cohen* factors, Respondent’s prior record of discipline is considered to be aggravating factor.

2. Substantial experience in the practice of law. ABA Standard 9.22(i).

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

1. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).

2. Timely good faith effort to make restitution or to rectify consequences of misconduct. ABA Standard 9.32(d).

3. Character or reputation. ABA Standard 9.32(g).


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. ABA Standard 7.2. Reprimand is generally appropriate when a lawyer knowingly engages in any [non-criminal] conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer’s fitness to practice law. ABA Standard 5.13. Suspension is generally appropriate when a lawyer knows that material information is improperly being withheld, 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. ABA Standard 6.12.

Fact matching between cases is a difficult endeavor, especially when, as here, multiple violations are at issue. Sanctions in disciplinary matters are not intended to penalize the accused lawyer, but instead are intended to protect the public, the profession, and deter

Generally, violations of RPC 5.5(b)(2) and RPC 7.1 result in a reprimand. See *In re Carstens*, 22 DB Rptr 97 (2008) (lawyer reprimanded for continuing to use letterhead on which he was identified as an attorney, failing to remove his name from the firm website and office sign, and provided comments to local media as an attorney during a time when he was suspended); *In re Fjelstad*, 29 DB Rptr 122 (2015) (lawyer reprimanded for continuing to hold himself out as an attorney on his website during period of suspension).

Violations of RPC 8.4(a)(3) carry a wider range of possible sanctions, and are particularly fact specific. In cases where there is a misrepresentation by omission, a short suspension is usually imposed. See *In re Obert*, 336 Or 640, 89 P3d 1173 (2004) (attorney was suspended for 30 days after he committed a material misrepresentation by omission by failing to inform his client for five months that the client’s appeal had been dismissed due to attorney’s untimely filing); *In re Petranovich*, 26 DB Rptr 1 (2012) (attorney was suspended for 60 days after he committed a material misrepresentation by omission by not telling his client that summary judgment had been granted and the lawsuit dismissed, and not telling his client that the opposing party had filed a motion for sanctions against the client).

Violations of RPC 8.4(a)(4) resulting from an single act that causes substantial harm to the functioning of the court system or a party result in a reprimand or a short suspension. See *In re Burke*, 34 DB Rptr 106 (2020) (attorney sent discovery documents to her client in violation of a protective order, causing additional litigation, court hearings, and harm to the parties in the case); *In re Glass* 28 DB Rptr 295 (2015) (attorney suspended for 30 days after missing several court appearances, causing harm to the judicial system and potential harm to his clients).

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30-days for violation of RPC 5.5(b), RPC 7.1, RPC 8.4(a)(3), and RPC 8.4(a)(4), the sanction to be effective December 3, 2022.

In addition, on or before December 3, 2022, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of $298.80, incurred for Respondent’s deposition. Should Respondent fail to pay $298.80 in full by December 3, 2022, the Bar may thereafter, without further notice, 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.

Respondent 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, Respondent has arranged for Scott C. Adams, OSB No. 990076, PO Box 111, Banks, OR 97106, an active member of the Bar, to either take possession of or have ongoing access to Respondent’s
client files and serve as the contact person for clients in need of the files during the term of his suspension. Respondent represents that Scott C. Adams has agreed to accept this responsibility.

15.

Respondent 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. Respondent 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.

16.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

17.

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: Washington.

18.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 10, 2022. 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 November, 2022.

/s/ Mark John Holady  
Mark John Holady, OSB No. 900682

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich  
David J. Elkanich, OSB No. 992558

EXECUTED this 16th day of November, 2022.

OREGON STATE BAR  
By: /s/ Samuel Leineweber  
Samuel Leineweber, OSB No. 123704  
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of
GINA MARIE STEWART,
Bar No. 925859
Respondent.

Counsel for the Bar: Angela W. Bennett
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 3.4(d). Stipulation for Discipline.
Effective Date of Order: November 17, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Gina Marie Stewart 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 3.4(d).

DATED this 17th day of November 2022.

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

STIPULATION FOR DISCIPLINE

Gina Marie Stewart, 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 10, 2002, and has been a member of the Bar continuously since that time, having her office and place of business in Douglas County, Oregon.

3.

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

4.

On October 22, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 3.4(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.

Respondent represented her client (Husband) against his ex-wife (Wife) in a family law matter. Wife’s counsel sent a discovery request (RFP) on July 13, 2020, with a due date of August 12, 2020. Respondent promptly transmitted a copy of the RFP to Husband, who timely provided the requested discovery to Respondent. Respondent then failed to produce the requested documents to Wife’s attorney by the due date. In late August 2020, Wife’s attorney sent a letter notifying Respondent that he intended to file a motion to compel and that the letter constituted his attempt to confer. Respondent did not respond. Wife’s attorney filed the motion to compel in early September 2020. In October, the court entered an order against Husband to compel production and a supplemental judgment for attorney fees related to the motion to compel. Respondent promptly paid the attorney fee award and notified Husband of what happened verbally and by letter, but she did not produce the discovery. Wife’s attorney was still asking for the discovery as of March 3, 2021, two days before the hearing was set to occur in the matter.

Violations

6.

Respondent admits that, by failing to comply with a legally proper discovery request by an opposing party, she violated RPC 3.4(d).

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 (ABA Standards). The ABA 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 comply with a lawful discovery request, Respondent violated her duties owed to the legal system. ABA Standard 6.0.

b. **Mental State.** Respondent acted with a knowing mental state, 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. ABA Standards at 9. Respondent obtained the requested discovery materials from her client, and failed to provide them, despite being court-ordered to do so.

c. **Injury.** There was potential injury to Husband in that a judgment was entered against him for attorney fees arising out of Respondent’s conduct. Respondent’s decision to pay the fees out of her own pocket saved this from being an actual injury to her client. Respondent injured the legal system by necessitating an additional court hearing and unnecessary motion practice.

d. **Aggravating Circumstances.** Aggravating circumstances include:
   1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been licensed in Oregon since 2002.

e. **Mitigating Circumstances.** Mitigating circumstances include:
   2. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).
   3. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).

8. Under the ABA Standards, absent aggravating and mitigating circumstances, a suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. ABA Standard 6.22. Respondent’s mitigating factors outweigh those in aggravation in number and weight, therefore a downward departure in the sanction is appropriate, and a public reprimand is consistent with the ABA Standards in this case.

9. There are no similar Oregon cases for violation of RPC 3.4(d); however, there is a similar case for a violation of DR 7-102(A)(3), the closest predecessor to RPC 3.4(d), in which a reprimand was imposed for improperly withholding discovery. See, In re Clark, 11 DB Rptr 123 (1995) (reprimand imposed for single violation of the rule where attorney failed to produce insurance policy pursuant to lawful discovery request).
10.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 3.4(d).

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 or the denial of her reinstatement.

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 22, 2022. 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 November 2022.

/s/ Gina Marie Stewart
Gina Marie Stewart, OSB No. 025859

EXECUTED this 16th day of November 2022.

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: the Conduct of  

LEONARD R. BERMAN,  
Bar No. 960409  
Respondent.  

Counsel for the Bar:  Eric J. Collins  
Counsel for the Respondent:  None  
Disciplinary Board:  None  
Disposition:  Violation of RPC 1.3, RPC 3.4(d), RPC 8.4(a)(4), and RPC 1.16(d). Stipulation for Discipline. 60-day suspension.  
Effective Date of Order:  November 22, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Leonard R. Berman 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 60 days, effective January 16, 2023 for violation of RPC 1.3, RPC 3.4(d), RPC 8.4(a)(4), and RPC 1.16(d).

DATED this 22nd day of November 2022.

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

STIPULATION FOR DISCIPLINE

Leonard R. Berman, 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 April 23, 1996, and has been a member of the Bar continuously since that time, having his office and place of business in Washington County, Oregon.

3.

Respondent 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 7, 2022, an amended formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.3, RPC 3.4(d), RPC 8.4(a)(4), and RPC 1.16(d) 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.

Lippold matter – Case No. 21-82

Facts

5.

In 2017, Respondent filed a complaint in U.S. District Court for the District of Oregon on behalf of several former inmates of the Oregon Department of Corrections (DOC) against various DOC employees (DOC lawsuit). The complaint alleged that defendants acted with deliberate indifference to plaintiffs’ nutritional and health needs by feeding plaintiffs food that fell short of minimum health, safety, and nutrition standards. Plaintiffs requested class certification.

6.

In November 2017, the Oregon Department of Justice (DOJ), the legal representative for DOC, subsequently served interrogatories and requests for production (RFP) on plaintiffs that were legally proper under the Federal Rules of Civil Procedure. Respondent submitted answers to the interrogatories and responses to the RFP that DOJ found materially deficient and incomplete. After additional time and conferral, DOJ filed a motion to compel that was granted by U.S. District Judge Michael Simon (Judge Simon), who ordered plaintiffs to supplement the interrogatory answers and RFP by a specific date. DOJ subsequently filed a motion for sanctions, alleging that Respondent failed to comply with the court’s order.

7.

Respondent subsequently stipulated to the sanctions motion, which required him to personally pay $1,500 to defendants and required Respondent to comply with strict requirements and timelines regarding the plaintiffs’ answers to the interrogatories. Specifically, Respondent was required to provide DOJ with drafts of “complete” interrogatory answers for all plaintiffs by July 1, 2018. Then, if DOJ approved those answers, Respondent was required
to obtain plaintiffs’ signatures on those answers within several weeks. Failure to comply would result in Respondent pre-paying deposition costs.

8.

Subsequently, on February 6, 2019, DOJ filed a renewed motion for sanctions, alleging that one of the plaintiffs testified at her deposition that she “didn’t read” the final interrogatory answers prepared by Respondent and that he only provided her with the signature page to sign. The plaintiff also testified that the interrogatory answers provided in her name contained multiple inaccuracies and omissions. Defendants requested sanctions against both her and Respondent. Judge Simon granted the sanctions motion as to Respondent only, ordering him to pay the cost of his client’s deposition as well as an additional $3,000 sanction.

9.

Subsequently, Respondent stipulated to additional sanctions after another plaintiff testified in her deposition that she only “very briefly” reviewed her interrogatories prior to signing them and that the final interrogatory answers that she signed must have been “mixed up” between herself and her sister, another plaintiff in the case. As a sanction, Respondent was required to pay all costs related to that plaintiff’s deposition.

10.

During the pendency of the case, Respondent also sought class certification on behalf of thousands of current and former DOC inmates. DOJ opposed the motion on several grounds, including Respondent’s adequacy to prosecute the class action. In response, Respondent obtained an additional 120 days to conduct discovery, seek experienced co-counsel, and to file a reply. After obtaining another short extension, Respondent filed a reply in which he indicated he had not obtained co-counsel during the five-month extension and believed he could “handle the entirety of litigation or will associate accordingly.”

11.

In a subsequent order, Judge Simon denied plaintiffs’ motion for class certification without prejudice, finding that Respondent had not shown he could “fairly, adequately, and vigorously” prosecute the action alone on behalf of a class, noting Respondent had repeatedly missed discovery and filing deadlines and had been sanctioned by the court, among other deficiencies.

12.

The court allowed Respondent to associate with class counsel and renew his motion for class certification. Thereafter, Respondent sought several continuances to try to associate class counsel until Judge Simon ceased granting any further extensions and denied the motion, noting that Respondent had failed to take the court’s deadlines seriously.
Violations

13.

Respondent admits that by engaging in the conduct described in paragraphs 5 through 12 above, he neglected a legal matter entrusted to him in violation of RPC 1.3, failed to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party in violation of RPC 3.4(d), and engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

Rohmer matter – Case No. 21-83

Facts

14.

Respondent filed a lawsuit in federal court on behalf of a child who allegedly suffered abuse while in the custody of Oregon Department of Human Services foster parents. The case settled in December 2018, and probate court approval of the settlement was required because the child was a minor. Respondent recruited Carla Rohmer (Rohmer), the child’s grandmother, to act as conservator. In 2019, the court subsequently appointed her as conservator and approved the settlement. Respondent then took possession of the settlement funds, paid himself his contingent fee and held the remainder in his trust account.

15.

Thereafter, the relationship between Respondent and Rohmer deteriorated. This was related to disagreement about the investment and use of the minor’s settlement funds. For example, Respondent sent the majority of the funds back to the state for purposes of an investment to benefit the child, but he did not follow through with necessary court filings for that investment to be made. Ultimately, in July 2019, Respondent withdrew from representing Rohmer in the conservatorship.

16.

Thereafter, Rohmer hired attorney Brooks Cooper (Cooper), who immediately filed a motion seeking to rescind the probate court’s order granting Respondent his contingent fee from the settlement funds. During the course of several weeks, Cooper repeatedly requested the client file from Respondent and specifically requested the contingent fee agreement signed by the minor’s father. Although Respondent provided some copies of correspondence and discovery from the minor’s lawsuit, he never provided the complete client file. Nor did Respondent provide the requested contingent fee agreement, which he eventually told Cooper he could not find.

Violations

17.

Respondent admits that by engaging in the conduct described in paragraphs 14 through 16 above, he failed to take reasonable steps to the extent reasonably practicable to protect his client’s interests upon termination of representation in violation of RPC 1.16(d).
Sanction

18.

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 (ABA Standards). The ABA 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. In the Lippold matter, Respondent failed to act with reasonable diligence and promptness while representing clients. ABA Standard 4.4. Respondent also violated the duty he owed to the legal system to avoid conduct prejudicial to the administration of justice and to obey court orders. ABA Standard 6.1; In re Coyner, 342 Or 104, 112, 149 P3d 1118, 1122 (2006). In the Rohmer matter, Respondent violated his duty to preserve his client’s file and promptly deliver it to the client. ABA Standard 4.1.

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. ABA 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. In the Lippold matter, Respondent acted knowingly as he was consciously aware of the court’s orders relating to plaintiffs’ discovery obligations without the conscious objective to violate them. Respondent acted at least negligently in failing to provide discovery that did not contain errors and omissions and in failing to confirm his clients had reviewed their interrogatory answers for accuracy before signing the documents. In the Rohmer matter, Respondent acted knowingly when he failed to promptly provide Rohmer’s complete client file in light of Cooper’s repeated requests. Respondent acted negligently when he failed to maintain an organized client file that could be provided to subsequent counsel and when he lost significant documents from that file.

c. Injury. In the Lippold matter, Respondent caused actual injury to the court by requiring it to expend its limited time and resources to manage his compliance with basic discovery obligations and court-imposed deadlines. Respondent caused actual injury to defendants by requiring the expenditure of additional resources to obtain plaintiffs’ compliance with discovery obligations. Respondent’s conduct also was a factor in the court’s denial of class certification to the potential detriment of his clients and other potential class members. In the Rohmer matter, Respondent created the potential for injury by failing to keep an organized client file capable of being provided to subsequent counsel and delaying return of documents Rohmer was entitled to receive. Cooper made it
clear to Respondent that his request for those materials was urgent so Cooper could assess Rohmer’s potential legal remedies. Respondent’s delay made it harder for that assessment to timely occur.

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

1. **A prior record of discipline.** ABA Standard 9.22(a). Respondent was previously reprimanded in 2020 for three ethical rule violations related to his improper solicitation of clients. *In re Berman*, 34 DB Rptr 120 (2020). Although the matter qualifies as prior discipline, it would carry less weight in aggravation because the sanction did not precede Respondent’s misconduct in this proceeding. *See In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997) (discussing that to qualify as a prior disciplinary offense, the prior offense must have been adjudicated before the imposition of the current sanction; further, more weight is attributed to misconduct that occurs after imposition of the sanction related to the prior offense).

2. **Multiple offenses.** ABA Standard 9.22(d).

3. **Vulnerability of victim.** ABA Standard 9.22(h).

4. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent has been a member of the Bar since 1996.

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

1. **Cooperative attitude toward these proceedings.** ABA Standard 9.32(e).

2. **Imposition of other penalties or sanctions.** ABA Standard 9.32(k),

Under the ABA Standards, suspension is generally appropriate when a lawyer engages in a pattern of neglect that causes injury or potential injury to a client. ABA Standard 4.42(a). Suspension is generally appropriate when a lawyer knows that he 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. ABA Standard 6.22. 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. ABA Standard 4.12. Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. ABA Standard 4.13.

Oregon cases confirm that a period of suspension is warranted for Respondent’s misconduct but fact-matching between cases is difficult. Knowing neglect of a client’s legal matter typically results in a 60-day suspension. *See In re Redden*, 342 Or 393, 401–02, 153 P3d 113 (2007) (court so concluded after reviewing similar cases). Suspensions imposed for violations of RPC 8.4(a)(4) vary depending on the underlying facts. *See, e.g., In re Glass* 28 DB Rptr 295 (2014) (attorney suspended for 30 days after missing several court appearances, causing harm to the judicial system and potential harm to his clients); *In re Rhoades*, 331 Or 231, 13 P3d
512 (2000) (attorney suspended for two years for series of obstructionist tactics in domestic relations matter, including failing to heed the court’s document production order and a child support order, such that lawyer was found in contempt; lawyer also failed to cooperate with the Bar). A lawyer’s failure to promptly deliver the client’s file, when considered in isolation, has previously resulted in a variety of sanctions. See, e.g., In re Kneeland, 281 Or 317, 574 P2d 324 (1978) (lawyer publicly reprimanded for delaying 49 days before providing client file); In re Fjelstad, 31 DB Rptr 268 (2017) (attorney suspended for 60 days for failing to provide his client’s file upon request, among other violations related to neglect).

21.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violation of RPC 1.3, RPC 3.4(d), RPC 8.4(a)(4), and RPC 1.16(d), the sanction to be effective January 16, 2023.

22.

In addition, on or before April 1, 2023, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of $1,716.70, incurred for court reporting services. Should Respondent fail to pay $1,716.70 in full by April 1, 2023, the Bar may thereafter, without further notice to him, 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.

23.

Respondent 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, Respondent has arranged for Ian Jeffrey Slavin, an active member of the Bar with a business address of 6312 SW Capitol Highway #434, Portland, Oregon 97239, to either take possession of or have ongoing access to Respondent’s client files and serve as the contact person for clients in need of the files during the term of his suspension. Respondent represents that Ian Slavin has agreed to accept this responsibility.

24.

Respondent 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. Respondent also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

25.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.
26.

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: Washington.

27.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 5, 2022. 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 21st day of November 2022.

/s/ Leonard R. Berman
Leonard R. Berman, OSB No. 960409

EXECUTED this 21st day of November 2022.

OREGON STATE BAR

By: /s/ Eric J. Collins
Eric J. Collins, OSB No. 122997
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of  

DAVID J. CELUCH, Bar No. 952291  

Respondent.

Case Nos. 21-64, 21-103, 21-104, 22-69, and 22-114

Counsel for the Bar: Eric J. Collins  
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(c)(3), RPC 1.8(f)(1), RPC 1.15-1(c), and RPC 8.4(a)(3). Stipulation for Discipline. One-year suspension, six months stayed, two-year probation.  
Effective Date of Order: November 23, 2022

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court, the court accepts the Stipulation for Discipline. Effective on January 31, 2023, respondent is suspended for one year. All but six months of the suspension period is stayed pending successful completion of a two-year term of probation under the probation conditions set forth in the stipulation.

/s/ Martha L. Walters  
Martha L. Walters, Chief Justice  
Supreme Court 11/23/2022 9:23 AM

STIPULATION FOR DISCIPLINE

David J. Celuch, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure (BR) 3.6(c).

1. The Bar was created and exists by virtue of the laws of the State of Oregon and is, 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 22, 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. Respondent 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 BR 3.6(h).

4. On September 14, 2022, a second amended formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(c)(3), RPC 1.8(f)(1), RPC 1.15-1(c), and RPC 8.4(a)(3) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Cunningham matter – Case No. 21-64

Facts

5. In June 2018, Sandra Kay Cunningham (Cunningham) hired Respondent regarding a restraining order granted against her on an ex parte basis by her neighbor. During a subsequent hearing on the matter, the parties agreed to the entry of a mutual no-contact order to replace the restraining order. The settlement terms were read into the record, and the court ordered counsel for the neighbor to draft an order (stipulated written order). The judge advised that the conditions would take effect that day but that the stipulated written order should be submitted to the court quickly and that the parties should keep a copy of it with them in case of future issues between them.

6. On August 20, 2018, opposing counsel emailed Respondent a draft of the stipulated written order for review but Respondent did not respond. Opposing counsel subsequently filed the stipulated written order, which was entered on October 11, 2018. The court emailed Respondent notice the same day it was entered. Although Respondent was aware of the entry of the order, he failed to notify Cunningham of that development or provide her with a copy. He also failed to tell her that opposing counsel had previously provided him an opportunity to review the order and object to its content prior to filing.

7. Around the same time, Cunningham was contacted by a police officer wanting to discuss potential restraining order violations that could subject Cunningham to arrest. In communication with Respondent, Cunningham expressed confusion about the status of the
restraining order and the lack of a superseding stipulated written order. Respondent told Cunningham in an email: “We are operating on the agreement we made in court.” In subsequent communications with Respondent, Cunningham expressed her concern that the failure to enter the stipulated written order put her at a disadvantage and made it appear that the original restraining order remained in effect. Although Respondent knew that his client wanted a copy of the stipulated written order, Respondent’s communications falsely led Cunningham to believe that it had not yet been entered, and he never corrected her as to that erroneous belief.

8.

Eventually, Cunningham learned on her own that the stipulated written order had been filed and entered, and she believed it erroneously contained a restriction on her use of her front yard not previously agreed upon in court.

Violations

9.

Respondent admits that, by engaging in the conduct described above, he failed to keep his client reasonably informed about the status of her matter and promptly comply with her reasonable requests for information in violation of RPC 1.4(a). Respondent also admits that he engaged in conduct involving misrepresentation by omission that reflects adversely on his fitness to practice law in violation of RPC 8.4(a)(3).

Geren matter – Case No. 21-103

Facts

10.

In December 2015, John Michael Geren (Geren) hired Respondent to represent him in an appeal of Geren’s conviction for misdemeanor Driving Under the Influence of Intoxicants (DUII appeal). Then, in August 2016, Geren hired Respondent to represent him in a separate criminal matter in which Geren was charged with criminal Driving While Suspended or revoked, a misdemeanor (DWS case).

11.

In the DUII appeal, after the parties submitted their briefs, the appellate court issued its opinion in December 2017, affirming the ruling of the trial court without issuing a written opinion. In March 2018, Respondent filed a petition seeking review by the Oregon Supreme Court, which was denied in May 2018. Meanwhile, in the DWS case, Geren entered a conditional plea of guilty in June 2017 after the trial court denied his motion to suppress and then Geren hired Respondent to appeal.

12.

Between approximately July 2017 and July 2019, Geren attempted on a number of occasions to reach Respondent for information on the status of the pending appeals but received no response. Respondent also provided Geren no copies of any briefs or other documents in the appeals. During that two-year period, Respondent failed to inform Geren
about significant events in the DUII appeal, including that the appeal concluded unfavorably for Geren with his DUII conviction upheld. The lack of communication led Geren to mistakenly believe that the DUII appeal was still pending. Respondent knew that the appeal was not pending, that he had failed to inform Geren otherwise, and that the outcome of the appeal was significant to Geren.

13. Meanwhile, in the DWS appeal, after the parties submitted their briefs, oral argument was scheduled for October 9, 2019. In July 2019, Respondent left a voicemail for Geren, providing the date for oral argument. Geren tried unsuccessfully to discuss the case with Respondent and then complained to the Bar in September 2019 regarding Respondent’s lack of communication. Respondent contacted Geren on the day set for oral argument.

14. Thereafter, Respondent provided Geren no further information on the status of the DWS appeal, which the appellate court denied without issuing a written opinion. Respondent also did not discuss with Geren whether to file a petition for review before the Oregon Supreme Court. Geren eventually learned about the outcome of the matter by obtaining the information from the Oregon Court of Appeals himself.

Violations

15. Respondent admits that, by engaging in the conduct described above, he failed to keep his client reasonably informed about the status of his matter and promptly comply with his reasonable requests for information and failed to explain matters 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), and he engaged in conduct involving misrepresentation by omission that reflects adversely on his fitness to practice law in violation of RPC 8.4(a)(3).

Seaquist matter – Case No. 21-104

Facts

16. On March 20, 2017, Respondent undertook to represent Jeremy Wayne Seaquist (Seaquist) in his petition for post-conviction relief pursuant to a written retainer agreement (the agreement). Stanley R. Clarke (Clarke) was identified in the agreement as a “Third-Party Payor” who would be responsible for paying $5,000 on behalf of Seaquist for Respondent’s legal services. Although Clarke and Respondent signed the agreement, Seaquist never reviewed or signed it, and Seaquist never provided his informed consent to the arrangement, though he was aware of it.
17.

Respondent collected payments from Clarke pursuant to the agreement but did not deposit them into his trust account. Because Respondent’s written retainer agreement was deficient as described above, those funds belonged to Clarke until they were earned. Respondent was thus required to deposit those funds into his trust account and could only withdraw those funds as fees were earned or expenses were incurred.

18.

During the representation, the trial court denied Seaquist’s petition for relief on October 25, 2017, and Seaquist requested that Respondent appeal. On November 29, 2017, Respondent filed a notice of appeal on behalf of Seaquist. However, Respondent failed to file the trial transcript or otherwise facilitate transferring the appeal to court-appointed counsel, and an order of dismissal was entered on April 12, 2018, with an appellate judgment entered on May 31, 2018. Respondent took no action to seek reinstatement of the appeal.

19.

Respondent provided Seaquist no information about the status of the appeal, including that the appeal had been dismissed, despite Seaquist’s repeated attempts to obtain such information from Respondent. Seaquist, who remained incarcerated throughout, falsely believed that his appeal was still pending, even though Respondent knew otherwise. Seaquist did not learn the appeal had been dismissed until approximately late March 2019. Seaquist subsequently wrote Respondent demanding that Respondent reactivate the appeal. Respondent took no such action. After receiving no response from Respondent, Seaquist filed his own motion to reinstate the appeal and to obtain court-appointed counsel, and the appellate court granted those motions.

Violations

20.

Respondent admits that, by engaging in the conduct described above, he neglected a legal matter entrusted to him in violation of RPC 1.3; he failed to keep his client reasonably informed about the status of his matter and promptly comply with his reasonable requests for information and failed to explain matters 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); and he engaged in conduct involving misrepresentation by omission that reflects adversely on his fitness to practice law in violation of RPC 8.4(a)(3).

Respondent also admits that, due to deficiencies in the fee agreement used at the outset of the representation, Respondent charged and collected a fee denominated as earned on receipt without a written fee agreement with required disclosures in violation of RPC 1.5(c)(3); he accepted compensation for representing a client from a third party without obtaining the client’s informed consent in violation of RPC 1.8(f)(1); and he failed to deposit third-party funds into a lawyer trust account in violation of RPC 1.15-1(c).
Asch matter – Case No. 22-69

Facts

21.

In November 2016, Respondent undertook to represent Kevin Asch (Asch) regarding a motion to set aside a misdemeanor conviction on Asch’s criminal record. Although Respondent conducted some work on the matter, he did not complete that work, and the motion was never filed. Between approximately fall 2016 and 2021, Asch repeatedly sought status updates on the motion by calling Respondent’s law office but did not receive a response, even though Respondent was aware that Asch had attempted to reach him about the matter.

22.

In 2021, Asch was arraigned on new criminal charges, and his lawyer in that matter subsequently informed Asch that the misdemeanor conviction remained on Asch’s criminal record. Asch sought an explanation from Respondent, who exchanged emails with Asch for several weeks in February 2022, stating that he would resume work on the motion. At some point, Respondent determined that Asch’s misdemeanor conviction was no longer eligible to be set aside due to Asch’s pending criminal case. Respondent never communicated that opinion to Asch directly, but instead ceased any further communication with Asch about the matter.

23.

Violations

Respondent admits that, by engaging in the conduct described above, he neglected a legal matter entrusted to him in violation of RPC 1.3; and he failed to keep his client reasonably informed about the status of his matter and promptly comply with his reasonable requests for information and failed to explain matters to the extent reasonably necessary to permit his client to make informed decisions regarding the representation in violation of RPC 1.4(a).

Plank Matter – Case No. 22-114

24.

In August 2017, Roy Gene Plank (Plank) hired Respondent to seek post-conviction relief from a felony conviction. On April 17, 2018, the trial court denied Plank’s petition for relief, and Respondent subsequently filed a notice of appeal on behalf of Plank on January 4, 2019. After Respondent filed an opening appellate brief on behalf of Plank, he told Plank in May 2020 that once both sides had filed their respective briefs, the appellate court would have the information necessary to render a decision.

25.

On September 14, 2020, the State of Oregon, as respondent in the appeal, filed a motion seeking an order summarily affirming the judgment of the trial court because “no substantial question of law is presented by the appeal.” This occurred before the state had filed its answering brief. The state’s motion stated that Respondent objected to the motion and that Respondent intended to file a response. However, Respondent never filed a response. On
October 15, 2020, the appellate commissioner granted the state’s motion, and the appellate judgment was entered on December 4, 2020.

26.

Prior to the granting of the state’s motion for summary affirmance, Respondent never informed Plank about the motion, advised Plank about its merit, discussed whether to respond to the motion, or advised Plank that Respondent did not intend to respond to the motion. Instead, after the appellate commissioner granted the state’s motion, Respondent drafted a letter to Plank dated October 17, 2020, in which he explained the outcome by stating: “The Court of Appeals has made a finding that your appeal does not present a substantial question for review. That means the Court of Appeals is not willing to disturb findings of the trial court because the ruling the trial court made is not the type that the Court of Appeals can overturn.” Additionally, Respondent explained in the letter that Plank could petition the Oregon Supreme Court for review but that doing so was in Respondent’s opinion not “worth the effort at this point” and provided his rationale for that opinion. Respondent told his client that he would need to know about Plank’s decision regarding appeal by November 18, 2020. Despite the short time period in which Plank needed to make a decision, Respondent never contacted Plank by phone or email but mailed the letter, which Plank never received.

27.

When Plank did not hear from Respondent, he incorrectly believed that his appeal was still pending. In December 2021, Plank emailed Respondent seeking an update on the appeal and subsequently learned in a phone call with Respondent that the court had long ago dismissed it. During the call, Respondent did not explain how the appellate court had reached its decision nor did he mention that the dismissal occurred as a result of the state filing a dispositive motion that Respondent did not contest. Although Plank requested that Respondent send him the appellate court documents, Respondent never did so.

28.

In his communication with Plank about the outcome of the appeal, Respondent failed to disclose in the letter or in the later call that Respondent did not file a response to the state’s dispositive motion, which left Plank misinformed.

Violations

29.

Respondent admits that, by engaging in the conduct described above, he failed to keep his client reasonably informed about the status of his matter and promptly comply with his reasonable requests for information and failed to explain matters 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); and he engaged in conduct involving misrepresentation by omission that reflects adversely on his fitness to practice law in violation of RPC 8.4(a)(3).
Sanction

30.

Respondent and the Bar agree that in fashioning an appropriate sanction in this case, the Oregon Supreme Court should consider the ABA Standards for Imposing Lawyer Sanctions (ABA Standards). The ABA 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 ABA Standards presume that a lawyer’s most important ethical duties are those owed to clients. ABA Standards at 5. Respondent violated his duty of diligence to his clients, including the duty to timely and adequately communicate with them, and his duty of candor. ABA Standards 4.4, 4.6. See, e.g., In re Mark G. Obert, 336 Or 640, 651, 89 P3d 1173 (2004) (where a lawyer procrastinated on client matters then chose not to update clients out of shame and embarrassment, the lawyer “violated his duty of candor, ABA Standard 4.6, by waiting five months to inform [his client] that his case had ended”). Finally, Respondent violated his duty as a legal professional related to his handling of legal fees, which includes his non-compliant fee agreement and his handling of payment in the Seaquist matter. ABA 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. ABA 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.

Respondent acted knowingly in most respects. For example, in the Seaquist matter, Respondent knowingly omitted facts from his client by failing to inform him of an adverse case event—the dismissal of the appeal. In the Cunningham matter, Respondent learned that opposing counsel had filed the stipulated written order yet he never informed his client, who had repeatedly questioned him about the status of the document.

Respondent also acted with negligence. He negligently failed to pursue the motion to set aside Asch’s conviction record and did not discover that error for years. He was also negligent in failing to provide the retainer agreement to Seaquist for review and signature.

c. **Injury.** Injury can be either actual or potential under the ABA Standards. In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). Seaquist and Asch suffered actual injury through Respondent’s failure to advance Seaquist’s appeal and failure to file Asch’s motion to set aside his conviction record. The Oregon Supreme Court has held that there is actual injury to a client when an attorney fails to actively pursue the client’s matters. See, e.g., In re Parker, 330 Or 541,
All five clients suffered actual injury in the form of anxiety and frustration as a result of Respondent’s failure to adequately and transparently communicate with them. “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 re Schaffner, 325 Or 421, 426–27, 939 P2d 39 (1997).

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

1. Prior disciplinary offenses. ABA Standard 9.22(a). In 2008, Respondent was admonished for violating RPC 1.4(a) when he failed to respond to his client’s request for information for five months and failed to apprise his client of a development in his case for months. Admonition letters are evidence of past misconduct if the misconduct that gave rise to the letter was of the same or similar type as the misconduct at issue in the present case. In re Cohen, 330 Or 489, 500, 8 P3d 953 (2000).

   In June 2021, Respondent was suspended for 60 days for violating RPC 1.3, RPC 1.4(a), RPC 1.5(e)(3), RPC 1.15-1(a), RPC 1.15-1(c), and two counts of RPC 1.15-1(d).

   To determine the significance to apply to an admonition, and prior discipline in general, several factors are considered: (1) the relative seriousness of the prior offense and resulting sanction; (2) the similarity of the prior offense in the case at bar; (3) the number of prior offenses; (4) the relative recency of the prior offense; (5) the timing of the current sanction, specifically, whether the accused lawyer had been sanctioned for the prior offense before engaging in the offense in the case at bar. *Id.* at 499.

   Respondent received the admonition approximately 8–10 years prior to the start of the conduct at issue in the current disciplinary proceeding. The admonition also involves Respondent’s deficient communication with a client. However, since the past misconduct resulted in an admonition, it was not treated with the same level of seriousness as this case. Ultimately, despite its age, the prior admonition is given significant weight in aggravation as it shows Respondent was warned about the standards regarding client communication and was knowledgeable about the disciplinary process at the time of the facts of these matters.

   Respondent’s 2021 suspension should receive less significance as prior discipline because the underlying misconduct in that matter occurred between 2018 and 2019—roughly the same time period as the events here. He was not sanctioned for that offense before engaging in the conduct at issue here. However, the circumstances of that misconduct are similar to those here in terms of neglecting a legal matter and client communication and certainly cannot be discounted.

2. Pattern of misconduct. ABA Standard 9.22(c). The misconduct in the five client matters spanned a period of years and reflects a pattern as it
shows a lack of diligence in completing client matters and adequately and transparently communicating with clients.

3. **Multiple offenses.** ABA Standard 9.22(d).

4. **Vulnerability of victim.** ABA Standard 9.22(h). Seaquist was particularly vulnerable as he was incarcerated when Respondent abandoned his responsibilities regarding his client’s appeal.

5. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent was licensed to practice in Oregon in 1995.

e. **Mitigating Circumstances.** Mitigating circumstances include:
   
   1. **Personal or emotional problems.** ABA Standard 9.32(c). Respondent reports he was suffering from depression issues and professional burnout during the time of the misconduct.
   
   2. **Cooperative attitude toward proceedings.** ABA Standard 9.32(e).

   The aggravating factors far exceed the mitigating factors.

31.

Without considering aggravating or mitigating factors, the following ABA Standards apply:

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. ABA Standard 4.42(a) and (b). Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client. ABA Standard 4.62. As to Respondent’s fee agreement and his handling of the funds in the Seaquist matter, admonition is generally appropriate when a lawyer engages in an isolated instance in determining whether the lawyer’s conduct violates a duty owed as a professional and causes little or no actual or potential injury to a client, the public, or the legal system. ABA Standard 7.4.

32.

Similar cases involving a pattern of misconduct regarding multiple clients and spanning a period of years have resulted in significant suspensions. See, e.g., *In re Smith*, 31 DB Rptr 333 (2017) (imposing 6-month suspension on a lawyer who failed to adequately communicate with multiple clients, neglected one client’s matter, and failed to provide a full accounting and promptly refund unearned client funds upon request); *In re Huebschman*, 33 DB Rptr 524 (2019) (imposing 12-month suspension, with 6 months stayed pending successful completion of a 3-year probation, for a lawyer who failed to adequately communicate with multiple clients, failed to promptly return unearned client funds upon request, failed to respond to her disciplinary authority regarding multiple client complaints, engaged in the unauthorized practice of law, and engaged in misrepresentation when submitting a compliance affidavit for reinstatement); *In re Recker*, 309 Or 633, 789 P2d 663 (1990) (imposing a two-year suspension on a lawyer who neglected multiple client matters, failed to respond to clients, including their
requests for an accounting and the return of original documents, failed to respond to her disciplinary authority, and engaged in misrepresentation regarding a client to a trial court).

33.

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, ABA 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.

34.

Consistent with the ABA Standards and Oregon disciplinary cases, the parties agree that Respondent shall be suspended for one (1) year for violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(c)(3), RPC 1.8(f)(1), RPC 1.15-1(c), and RPC 8.4(a)(3), with all but six (6) months of the suspension stayed, pending Respondent’s successful completion of a two-year term of probation. The sanction shall be effective on January 31, 2023 (effective date).

35.

Respondent’s license to practice law shall be suspended for a period of six (6) months beginning on the effective date (actual suspension), assuming all conditions have been met. Respondent 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 Respondent re-attains his active membership status with the Bar, Respondent 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.

36.

Probation shall commence upon the date Respondent is reinstated to active membership status and shall continue for a period of two (2) 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 his probationary terms.

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

c) After Respondent is reinstated to active membership status, he shall maintain an active membership status for the duration of the period of probation. Any failure by Respondent to maintain active membership status for a period of
longer than one month during the period of probation shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.

d) During the period of probation, Respondent 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, client management and communication, and attorney wellness. These credit hours shall be in addition to those MCLE credit hours required of Respondent for his normal MCLE reporting period. (The Ethics School requirement does not count toward 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, 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 attend to client matters and adequately communicate with clients regarding their cases.

g) Each month during the period of probation, Respondent shall review all client files to ensure that he is timely attending to client matters and that he is maintaining adequate communication with clients, the court, and opposing counsel.

h) 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.

i) Ryan Anfuso shall serve as Respondent’s probation supervisor (Supervisor). Respondent 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 Respondent’s clients, the profession, the legal system, and the public. Respondent agrees that, if Supervisor ceases to be his Supervisor for any reason, Respondent will immediately notify DCO and engage a new Supervisor, approved by DCO, within one (1) month.
j) Respondent and Supervisor agree and understand that Supervisor is providing his services voluntarily and cannot accept payment for providing supervision pursuant to this Stipulation for Discipline.

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) Allowing Supervisor to review the status of Respondent’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 Respondent’s active caseload, whichever is greater, to determine whether Respondent is timely, competently, diligently, and ethically attending to matters, and taking reasonably practicable steps to protect his clients’ interests upon the termination of employment.

2) 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 (7) days of his reinstatement date, Respondent shall contact the Professional Liability Fund (PLF) and schedule an appointment on the soonest date available to consult with PLF’s Practice Management Attorneys 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 Attorneys 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 Attorneys, Respondent shall adopt and implement those recommendations.

o) No later than sixty (60) days after recommendations are made by the PLF’s Practice Management Attorneys, Respondent shall provide a copy of the Office Practice Assessment from the PLF’s Practice Management Attorneys and file a report with DCO stating the date of his consultation(s) with the PLF’s Practice
Management Attorneys; 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 two follow-up reviews with PLF Practice Management Attorneys. The first follow-up review shall occur six (6) months after the initial appointment, and the second follow-up review shall occur six (6) months after the first follow-up review.

q) Within the first ninety (90) days of the probationary period, Respondent shall schedule and meet with a mental health care professional to evaluate Respondent and develop and implement a course of treatment, if appropriate. If recommended, Respondent shall continue to attend regular counseling/treatment sessions with the health care professional for the entire term of his probation and shall provide proof of compliance from the treatment provider to DCO.

r) On a quarterly basis, on dates to be established by DCO beginning no later than ninety (90) days after his reinstatement to active membership status, 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.

s) Respondent is responsible for any costs required under the terms of this stipulation and the terms of probation.

t) 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.

u) 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.

In the event of Respondent’s noncompliance with any provision of the Stipulation for Discipline, DCO may seek to revoke probation and impose the stayed portion of suspension.

Upon the filing of a petition to revoke Respondent’s probation pursuant to BR 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.

In addition, on or before March 1, 2023, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of $1,056.25, incurred for Respondent’s deposition. Should Respondent fail to pay $1,056.25 in full by March 1, 2023, the Bar may thereafter, without further notice to him, 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.

Respondent 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, Respondent has arranged for Eric J. Hale, an active member of the Bar with a business address of 1318 SW 12th Avenue, Portland, Oregon 97201, to either take possession of or have ongoing access to Respondent’s client files and serve as the contact person for clients in need of the files during the term of his actual suspension. Respondent represents that Eric J. Hale has agreed to accept this responsibility.

Respondent 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. Respondent 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.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.
41.

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.

42.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 5, 2022. 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 21st day of October 2022.

/s/ David J. Celuch
David J. Celuch, OSB No. 952291

EXECUTED this 24th day of October 2022.

OREGON STATE BAR
By: /s/ Eric J. Collins
Eric J. Collins, OSB 122997
Assistant Disciplinary Counsel
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of )
) )
CLAYTON J. LANCE, Bar No. 852640 ) Case No. 22-151 )
) )
Respondent. )

In re Lance, 36 DB Rptr 262 (2022)

Counsel for the Bar: Samuel Leineweber
Counsel for the Respondent: Larry R. Roloff
Disciplinary Board: None
Disposition: Violation of RPC 8.4(a)(4). Stipulation for discipline. 30-day suspension.
Effective Date of Order: November 28, 2022.

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Clayton J. Lance (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 30-days, effective December 17, 2022, for violation of RPC 8.4(a)(4).

DATED this 28th day of November, 2022.

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

STIPULATION FOR DISCIPLINE

Clayton J. Lance, 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 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.

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 22, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of 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. Respondent failed to appear without notice to the parties or the court on the following dates in the following hearings:
   - April 28, 2021, State v. Lawson, Josephine County Case No. 21CR11417, trial call.
   - May 19, 2021, State v. Burke, Josephine County Case No. 20CR64235, trial call.
     May 25, 2021, State v. Burke, Josephine County Case No. 20CR64235 trial.
   - June 2, 2021, State v. Burke, Josephine County Case No. 21CN00115, trial call.
   - January 6, 2022, State v. Underwood, Josephine County Case No. 21CR46580, status hearing.
   - July 13, 2022, State v. Lawson, Josephine County Case No. 21CR38493, status hearing.

Violations

6. Respondent admits that, by repeatedly failing to attend court appearances, he violated RPC 8.4(a)(4).
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 (ABA Standards). The ABA 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.** Respondent violated his duty owed to the legal system by engaging in conduct prejudicial to the administration of justice. ABA Standard 6.0.

b. **Mental State.** “Intent” is the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

Respondent explained that the majority of his failures to appear were the result of his computer being destroyed, which contained his court calendar. Respondent also attributed his absences to longstanding difficulties with his health. Under the circumstances, Respondent acted with a negligent mental state when he failed to appear at the court hearings in question.

c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). By failing to attend numerous court hearings, Respondent caused serious actual injury to his clients by leaving them unrepresented and unnecessarily prolonging the adjudication of their cases. Respondent’s conduct also caused injury to the court, which was required to expend resources to try to contact Respondent and to reset hearings.

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

1. **A prior record of discipline.** ABA Standard 9.22(a). ABA Standard 9.22(a). Respondent has a long record of prior discipline. The following factors are considered in applying an attorney’s prior discipline as an aggravating factor: (1) the relative seriousness of the prior offense and resulting sanction; (2) the similarity of the prior offense to the offense in the case at bar; (3) the number of prior offenses; (4) the relative recency of the prior offense; and (5) the timing of the current offense in relation to the prior offense and resulting sanction, specifically, whether the accused lawyer had been sanctioned for the prior offense before engaging in the offense in the case at bar. *In re Cohen*, 330 Or 489, 499, 8 P3d 953 (2000).
First, Respondent’s prior discipline is relatively serious; he has been suspended twice for misconduct involving neglect, mishandling client property, and failing to respond to Bar inquiries. In re Lance, 21 DB Rptr 87 (2007); In re Lance, 33 DB Rptr 544 (2019). Second, while Respondent’s prior matters do not implicate the same violation here, the theme of neglecting his professional obligations is similar. Third, Respondent has a significant number of prior offenses; two separate proceedings that encompass more than ten separate rule violations. As to elements four and five, Respondent committed his current misconduct while on probation for his most recent disciplinary sanction. Given these factors, Respondent’s prior discipline is given considerable weight as an aggravating factor in this matter.

2. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been practicing law since 1985.

e. Mitigating Circumstances. Mitigating circumstances include:

1. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).
2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e). Respondent promptly admitted his misconduct in this case.
3. Remorse. ABA Standard 9.32(I). Respondent expressed a great deal of remorse for his failure to attend court, acknowledged the difficulty that it caused his clients and the court.

Under the ABA Standards, 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. ABA Standard 6.23.


The sanction analysis in In re Carini, 354 Or 47, 308 P3d 197 (2013) is highly instructive. The lawyer in Carini also missed multiple criminal court appearances, which resulted in a violation of RPC 8.4(a)(4) and caused the same type of injury to clients and the court system. In Carini, the court found that the presumptive sanction was a public reprimand, but imposed a suspension of 30 days, specifically citing the lawyer’s record of prior discipline. Carini 354 Or at 59. Respondent, like the lawyer in Carini, also violated one rule, and has a significant record of prior discipline.
10.
Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30 days for violation of RPC 8.4(a)(4), the sanction to be effective December 17, 2022.

11.
Respondent 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, Respondent has arranged for Janie Mogensen OSB# 143883 and Larry Roloff OSB# 722167, 132 E Broadway, Suite 233, Eugene OR 97437, active members of the Bar, to either take possession of or have ongoing access to Respondent’s client files and serve as the point of contact for clients in need of the files during the term of his suspension. Respondent represents that Ms. Mogensen and Mr. Roloff have agreed to accept this responsibility.

12.
Respondent 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. Respondent 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.
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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

14.
Respondent is not admitted to practice law in any jurisdictions outside of Oregon.

15.
Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 22, 2022. 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 November, 2022.

/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

EXECUTED this 21st day of November, 2022.

OREGON STATE BAR

By: /s/ Samuel Leineweber  
Samuel Leineweber, OSB No. 123704  
Assistant Disciplinary Counsel
IN THE SUPREME COURT OF THE STATE OF OREGON

In re: the Conduct of
)
)
VIRGINIA BOND, Bar No. 893938) Case No. 22-149
)
Respondent.
)

Counsel for the Bar: Susan R. Cournoyer
Counsel for the Respondent: None
Disciplinary Board: None
Effective Date of Order: November 28, 2022.

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Virginia Bond (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 Idaho RPC 8.4(d) (“It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.”).

DATED this 28th day of November, 2022.

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

STIPULATION FOR DISCIPLINE

Virginia Bond, attorney at law (Respondent), and the Oregon State Bar hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

The Oregon State 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 21, 1989, and has been a member of the Oregon State Bar continuously since that time. At all times described below, Respondent was also a member in good standing of the Idaho State Bar, having her office and place of business in Payette County, Idaho.

3. A lawyer admitted to practice in Oregon is subject to Oregon’s disciplinary authority, regardless of where the lawyer’s conduct occurs. A lawyer may be subject to the disciplinary authority of both Oregon and another jurisdiction for the same conduct. Oregon Rule of Professional Conduct (Oregon RPC) 8.5(a).

In the exercise of Oregon’s disciplinary authority for conduct that occurred in connection with a matter pending before a tribunal, the rules of professional conduct of the jurisdiction in which that tribunal sits shall be applied. Oregon RPC 8.5(b)(1).

4. Respondent 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 Oregon State Bar Rule of Procedure 3.6(h).

5. On October 22, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violation of Rule 8.4(d) of the Idaho Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

6. While she was a sole practitioner in private practice, Respondent represented Wife, the petitioner in an Idaho marital dissolution proceeding. Husband was the respondent.

   After the dissolution petition was filed, the Payette County, Idaho court issued a joint preliminary injunction (injunction) on November 22, 2019, restraining both parties from transferring any property without the consent of the other or prior court order.

   Two weeks after the injunction was issued, Respondent assisted Wife to violate it by typing a quitclaim deed whereby Husband conveyed his joint interest in the marital residence (“the residence”) to Wife and then notarizing Wife’s signature, as Husband’s attorney-in-fact pursuant to a July 2019 general power of attorney. Before notarizing Wife’s signature, Respondent discussed the injunction with Wife, and warned that there could be negative repercussions in court if Wife transferred Husband’s interest in the residence. Wife recorded the deed.
Husband’s power-of-attorney in favor of Wife was no longer valid when Wife executed the quitclaim deed, because Idaho Code § 15-12-110(2)(c) terminates spousal powers-of-attorney upon the filing of a dissolution proceeding. Respondent was not aware of this statute.

Respondent delayed disclosing to Husband the quitclaim deed until 13 days before the May 27, 2020 trial date (and one day after the close of discovery), when she produced 469 pages of documents that included copies of the power of attorney and quitclaim deed. Husband’s counsel successfully moved for a continuance in order to conduct more discovery.

Five months later, in November 2020, Respondent responded to a set of discovery interrogatories on behalf of Wife.

Interrogatory No. 36, “Is it your position that you are the sole owner of [the residence]?”

ANSWER: “Yes. In 2019, [Husband] had previously removed or destroyed all personal and financial documents that [Wife] had saved from 1990 to approximately 2013. [Husband] has not been employed since his release from prison in 2009.”

Interrogatory No. 37, “Is it your position that [Husband] has no ownership interest in [the residence]…?”

ANSWER: “Yes. [Husband] has not been employed since his release from prison in 2009. [Husband] received Social Security when he turned 62.”

Interrogatory No. 39, “Since entry of the injunction entered in this matter, have you or anyone acting on your behalf disposed of any marital property? If yes, please provide all documentation of such disposition.”

ANSWER: “No.”

Respondent did not disclose in Wife’s responses that, after entry of the injunction, Wife had executed a quitclaim deed purporting to transfer to herself all of Husband’s interest in the residence.

Respondent did not realize that the interrogatory responses were inaccurate and incomplete when her staff prepared the response for Wife, but she acknowledges that she should have caught the errors before sending the response. At the time, Wife was frequently unavailable for consultation due to serious illness.

Respondent became aware during this disciplinary investigation of the Idaho statute terminating spousal powers-of-attorney upon the filing of a dissolution proceeding. She then advised Wife that the power-of-attorney was invalid at the time Wife signed the quitclaim deed as Husband’s attorney-in-fact. Wife prepared and signed a new quitclaim deed conveying the residence from herself, to herself and Husband as joint owners, thus restoring their original joint interests.

Violation

7.

Respondent admits that, by assisting Wife to execute the quitclaim deed using Husband’s power-of-attorney when she knew that Wife’s doing so violated the injunction, and by submitting interrogatory responses denying the purported property transfer, she engaged in
repeated acts causing some harm to Husband’s substantive interests in the judicial proceeding. Respondent admits that she engaged in conduct prejudicial to the administration of justice, in violation of Idaho RPC 8.4(d) (“It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.”)

8.

Respondent and the Oregon State Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA Standards for Imposing Lawyer Sanctions (ABA Standards). The ABA Standards require that 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.** Respondent violated her duty to the legal system to avoid taking acts that prejudice to the administration of justice. ABA Standard 6.0.

b. **Mental State.** “Intent” is the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Id. “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Id. Respondent acted with knowledge that she was assisting her client in conduct that violated the injunction, but was negligent in making inaccurate statements in her client’s interrogatory response regarding the property transfer.

c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the Supreme Court and Disciplinary Board may take into account both actual and potential injury. ABA Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992).

No actual injury resulted to Husband or the court as a result of Respondent’s conduct, because the quitclaim deed was invalid due to the terminated power-of-attorney, and because Husband was notified of the purported transfer in the May 2020 document production. However, Respondent’s assisting her client to violate an injunction exposed Husband and the administration of the legal proceeding to potential injury, or an injury Respondent actually foresaw at the time of her misconduct. ABA Standards at 9 (defining “potential injury”).

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

   1. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent was admitted to practice in Idaho in 1988, and in Oregon in 1989.

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

   1. **Absence of a prior record of discipline.** ABA Standard 9.32(a).
2. Absence of a dishonest or selfish motive. ABA Standard 9.32(b). Respondent was acting for the benefit of her client, who was gravely ill at the time.

9.

Although not directly on point, under the ABA Standards, public reprimand is generally appropriate when a lawyer is negligent either in determining whether statements are false, or in failing to take 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. ABA Standard 6.13.

10.

Similar circumstances have resulted in public reprimand in Oregon.

In re Angela T. Lee-Mandlin, 31 DB Rptr 14 (2017). Attorney 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 Sydney E. Brewster, 30 DB Rptr 181 (2016). Attorney represented 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, attorney engaged in conduct prejudicial to the administration of justice.

In re William Bryan Porter, 29 DB Rptr 326 (2015). During the prosecution of an aggravated murder case, a disputed issue was whether the defendant was legally entitled to enter the trailer where he shot the victim. In emails with the widow, attorney (the district attorney) learned of communications and evidence that suggested that rent was paid such that the defendant would not have had permission to be on the premises at the time of the shooting. Thereafter, attorney did not disclose his or a detective’s emails with the widow on this issue and the widow’s communications with the respondent were not discovered until the widow was cross examined by the defense at trial. In response to the defense’s assertion of a discovery violation, additional court time and hearings were necessitated and, ultimately, the widow’s testimony was stricken in its entirety.

In re Brett Corey Jaspers, 28 DB Rptr 211 (2014). Attorney filed 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. After the court signed the order, attorney did not serve it on the opposing party but sent a copy to counsel a few days later.

In re Daniel Kuge Christensen, 26 DB Rptr 241 (2012). In response to a request for administrative review of his child support obligation filed by his former wife, attorney failed to include in a uniform income statement significant bonuses he had received that year.
However, information from sources other than the income statement, including some information from attorney, allowed the state to accurately calculate attorney’s income for support purposes.

*In re Scott J. Rubin*, 25 DB Rptr 13 (2011). Attorney violated a protective order issued in one proceeding when he filed a motion in another proceeding describing information that the protective order deemed confidential.

11.

Consistent with the ABA Standards and relevant case law, the parties agree that Respondent shall be publicly reprimanded for violation of Idaho RPC 8.4(d).

12.

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.

13.

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 Oregon State Bar will inform these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Respondent is admitted: Idaho.

14.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 22, 2022. 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 21st day of November, 2022.

/s/ Virginia Bond
Virginia Bond, OSB No. 893938

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: the Conduct of

EDMUND J. SPINNEY, Bar No. 840940

Case No. 22-26

Respondent.

Counsel for the Bar: Matthew S. Coombs
Counsel for the Respondent: None
Disciplinary Board: Mark A. Turner, Adjudicator
Yvonne Ana Tamayo
Gary Allen Kanz, Public Member
Disposition: Violation of RPC 1.15-1(d), RPC 1.16(d), and RPC 8.1(a)(2). Trial Panel Opinion. 1-year suspension.
Effective Date of Opinion: December 31, 2022

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged Respondent with violation of RPC 1.15-1(d), 1.16(d), 8.1(a)(2) based on his failure to return an original will when requested to do so by his clients and their new attorney and his subsequent failure to respond to inquiries from disciplinary authorities investigating this alleged misconduct. The Bar asks that Respondent be suspended for at least 90 days.

Respondent is in default for his failure to appear and answer the formal complaint against him. As explained below, this trial panel finds that the Bar has adequately alleged the charged rule violations. We believe a 90-day suspension is inadequate here, however, and suspend Respondent for one year. We find that a lesser sanction would not accomplish the stated purposes of lawyer discipline—protecting the public and deterring future misconduct.

PROCEDURAL POSTURE

On June 3, 2022, the Bar filed a formal complaint against Respondent that was served on June 10, 2022. Respondent failed to file an answer within the time allowed by the rules (14 days, BR 4.3). The Bar served Respondent with a notice of intent to seek a default unless Respondent filed his answer. He failed to do so and the Bar moved for default on July 18, 2022. The motion was granted.

A trial panel was appointed on August 11, 2022, consisting of the Adjudicator, Mark A. Turner, attorney member Yvonne A. Tamayo and public member Gary A. Kanz.

In a default case, the Bar’s factual allegations are deemed true. BR 5.8(a). See also, In re Magar, 337 Or 548, 551–53, 100 P3d 727 (2004); In re Kluge, 332 Or 251, 253, 27 P3d 102
Our task is first to determine whether the facts alleged support a finding that Respondent committed the disciplinary rule violations alleged. If we so conclude, we must then determine the appropriate sanction. See, *In re Koch*, 345 Or 444, 447, 198 P3d 910 (2008). In assessing whether the facts alleged support a finding that the rule at issue was violated, we are limited to the four corners of the formal complaint. In assessing the appropriate sanction we may receive additional evidence and argument, which is usually presented by a memorandum from the Bar addressing the issue of sanctions. That procedure was followed here.

**FACTS ALLEGED AND CHARGES ASSERTED**

Respondent received an original will from his clients, two surviving children, regarding administration of their mother’s estate in March of 2016. The children did not move forward with the estate administration at that time. ¶ 3.1

Five years later, in April 2021, the children decided to move forward with the estate administration. They retained another attorney, Shawn Irwin Walker (Walker), to handle the matter. In April, May, and June 2021, Walker and his staff sent numerous requests to Respondent to obtain the original will. They received no response. Walker and his staff tried to reach Respondent over 15 times, via letter, email, telephone, and facsimile at multiple addresses, including by using the contact information Respondent had on record with the Bar. ¶ 4.

Because Walker never received the original will and could not locate a copy, Respondent’s former clients were forced to spend additional funds for Walker to petition the court for the administration of the decedent’s intestate estate, on or around August 3, 2021 (Lane County Circuit Court Case No. 21PB06514). That matter resolved on February 10, 2022. ¶ 5.

Walker complained to the Bar about Respondent on June 15, 2021, and the Bar’s Client Assistance Office made two unsuccessful attempts to reach Respondent. The Bar’s Disciplinary Counsel’s Office (DCO) then sent an inquiry to Respondent, via email and first class mail to the Bar’s record addresses. Neither the email nor the letter were returned as undeliverable. Respondent did not respond. DCO sent a follow up inquiry to Respondent via first class, certified mail, and email. None of these letters were returned as undeliverable, but to date, DCO has not received the certified mail return receipt and Respondent has not responded to DCO’s inquiries. ¶ 8.

On March 22, 2022, DCO petitioned for Respondent’s suspension pursuant to BR 7.1. The Adjudicator ordered Respondent’s suspension on April 4, 2022. ¶ 9. As noted earlier, Respondent was personally served with the formal complaint at the address on record with the Bar on June 10, 2022. Ex. 2.

**Respondent Violated RPC 1.15-1(d) When He Failed to Promptly Deliver Client Property When Requested.**

RPC 1.15-1(d) states:

“[U]pon 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.”

“Property” here includes client files. In re Kneeland, 281 Or 317, 319, 574 P2d 324 (1978). The Supreme Court has found a violation of RPC 1.15-1(d) when an attorney failed to deliver materials requested by his client until eight months had passed and his client had filed a Bar complaint. In re Snyder, 348 Or 307, 315, 232 P3d 952 (2010).

Respondent held his former clients’ mother’s original will. Five years after receiving the original will, Respondent was told his former clients were moving forward with another lawyer. Respondent received numerous requests from the new attorney to return the will. Respondent ignored those requests and never delivered the will. We find that Respondent’s failure to turn over the will violated RPC 1.15-1(d).

The Bar also asked us to find that Respondent violated the rule when his clients decided not to move forward with the estate in 2016. We decline to do so. The allegations before us state only that the clients did not move forward at that time, but do not suggest that Respondent was terminated or that he ignored a request to deliver the will. There is nothing alleged to indicate that the duty to deliver the will was triggered at that time. Once the requests were made by Walker, however, the duty to deliver arose and a violation ensued.

Respondent Also Violated RPC 1.16(d) When He Failed to Surrender Client Papers and Property After He Was Discharged.

RPC 1.16(d) provides:

“[U]pon 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 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.”

As described above, when Respondent was advised that a new lawyer had been hired and Respondent had been terminated, he failed to surrender the crucial document needed to administer the decedent’s estate in violation of RPC 1.16(d).

Respondent Violated RPC 8.1(a)(2) When He Failed to Respond to the Bar’s Investigation.

RPC 8.1(a)(2) 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 sent Respondent several letters to his record street addresses and email addresses. Respondent ignored them all. Complete refusal to engage with the Bar’s inquiries violated RPC 8.1(a)(2).

SANCTION

We look to the ABA Standards for Imposing Lawyer Sanctions (ABA Standards), in addition to case law for guidance in determining the appropriate sanctions for lawyer misconduct.

ABA Standards

The ABA 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 may adjust the sanction based on the existence of recognized aggravating or mitigating circumstances.

Duty Violated

The most important ethical duties a lawyer owes are to his clients. ABA Standards at 4. Respondent violated the duty he owed to his client to preserve client property. ABA Standard 4.1. Respondent also violated his duty to cooperate with disciplinary authorities. ABA Standard 7.0.

Mental State

The ABA Standards recognize three mental states. The most culpable mental state is “intent,” when the lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA 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.

Respondent’s failure to promptly return his clients’ property when it was requested by their new counsel is knowing conduct in our view. Respondent also acted knowingly when he failed to respond to DCO. The Oregon Supreme Court has previously held that an attorney acted with knowledge of efforts to reach them when the Bar produced certified mailing receipts. In re Miles, 324 Or 218, 221, 923 P2d 1219 (1996). Here the proof of personal service has the same effect.

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. ABA Standards at 6; In re Williams, 314 Or 530, 547, 840 P2d 1280 (1992). “Potential injury” is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. ABA Standards at 9.
Respondent’s former clients suffered actual injury when they were forced to incur attorney fees beyond what they would have but for the Respondent’s failure to turn over the original will.

Respondent also caused harm to the legal profession and to the public in failing to participate in the Bar’s investigation. See In re Gastineau, 317 Or 545, 558, 857 P2d 136 (1993).

Preliminary Sanction

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

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

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

Aggravating and Mitigating Circumstances

The following aggravating factors are found here:

1. **Multiple offenses.** ABA Standard 9.22(d).
2. **Substantial experience in the practice of law.** ABA Standard 9.22(i). Respondent was admitted to the Oregon State Bar in 1984.

In mitigation, the most we can find is:

1. **Absence of a prior record of discipline.** Standard 9.32(a).

Oregon Case Law

The cases cited by the Bar fully support the imposition of at least a 90-day suspension for the multiple offenses. The Bar notes that the Oregon Supreme Court approved a 30-day suspension for an attorney who knowingly failed to promptly return client property upon request with aggravating and mitigating factors similar to this case. In re Snyder, 348 Or 307, 232 P3d 952 (2010). The Bar also points to In re Spencer, 335 Or 71, 58 P3d 228 (2002), where an attorney was suspended for 60 days after being found to have negligently failed to return property to a prospective client. That case involved intentional dishonesty, which the Bar distinguishes from the current case. Accordingly, the Bar recommends attributing a sanction of 30 days to Respondent’s violations related to failing to turn over client property.

Regarding failure to respond to the Bar’s inquiries, the Supreme Court has stated that, “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). When an attorney was initially unresponsive to the Bar’s efforts to investigate, but eventually provided some information, the court imposed a 63-day suspension. In re Haws, 310 Or 741, 801 P2d 818 (1990) (attorney suspended for 63 days for seven counts of failing to cooperate with the Bar when providing brief, inadequate responses); In re Shaffner, 323 Or 472, 918 P2d 803 (1996) (attorney suspended for 60 days after failing to respond to the Bar initially and subsequently providing
information and sitting for a deposition). Here, Respondent has failed to cooperate with the Bar’s investigation completely.

The Bar also cited In re Miles, 324 Or 218, 923 P2d 1219 (1996). In Miles, the attorney never responded to any of the multiple attempts the Bar made to reach her. The court imposed a 120-day suspension for violations of the predecessor rule to RPC 8.1(a)(2) with no other violations.

We, however, believe that a suspension of that length does not fulfill the purposes of attorney discipline. The rule requires full cooperation from a lawyer subject to a disciplinary investigation. Schaffner at 425 (emphasis in original). We follow the guidance of the court in not tolerating violations of this rule. Miles at 222–25 (emphasizing the seriousness with which the court views the failure of a lawyer to cooperate with a disciplinary investigation). This duty to cooperate is at the heart of our regulatory system. Lawyers who knowingly ignore this obligation are holding themselves above the rules—an attitude we do not countenance.

Respondent’s conduct demonstrates a lack of regard for his ethical responsibilities as a lawyer. He ignored his former clients’ need for their mother’s original will. He knowingly failed to respond to a lawful demand for information from DCO, a disciplinary authority, in violation of RPC 8.1(a)(2). He then continued to ignore his duties when he refused to answer the formal complaint in this case and explain his conduct. Lawyers who treat the disciplinary process as a nuisance that can be ignored are a danger to the public and to the profession. The only way to deter such conduct from others in the future is to impose a penalty that demonstrates the seriousness with which we respond to an attorney’s cavalier attitude toward disciplinary compliance. We find that a one-year suspension is necessary and appropriate in this case.

CONCLUSION


We suspend Respondent for a period of one year, effective 30 days from the date this decision becomes final.

Respectfully submitted this 1st day of November, 2022.

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

/s/ Yvonne A. Tamayo
Yvonne A. Tamayo, Attorney Panel Member

/s/ Gary A. Kanz
Gary A. Kanz, Public Panel Member
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of )
) CLAUDIA A. CULLISON, ) Case No. 21-47
Bar No. 912462 )
Respondent. )

Counsel for the Bar: Matthew S. Coombs
Counsel for the Respondent: W. Greg Lockwood
Disciplinary Board: None
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC
8.1(a)(2), RPC 8.4(a)(3), and ORS 9.160(1). Stipulation
for Discipline. 90-day suspension.
Effective Date of Order: December 8, 2022

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by
Claudia A. Cullison (Respondent) and the Oregon State Bar (Bar), and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and
Respondent is suspended for 90 days, effective upon the date of this order for violations of
RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 8.1(a)(2), RPC 8.4(a)(3), and ORS 9.160(1).

DATED 8th day of December, 2022.

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

STIPULATION FOR DISCIPLINE

Claudia A. Cullison, 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 27, 1991, and has been a member of the Bar continuously since that time, having her office and place of business in Washington 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 9, 2022, a Formal Complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.16(a)(1), RPC 5.5(a), RPC 8.1(a)(2), RPC 8.4(a)(3), and ORS 9.160(1) 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 July 2019, Respondent agreed to handle a bankruptcy matter for ToRn Rose (Rose) and Pauline Curtis (Curtis). At the initial consultation or soon thereafter, Rose and Curtis provided all the necessary information for a substantially complete chapter 7 bankruptcy petition. Respondent agreed to allow Rose and Curtis to pay the fee for her services in installments and that she would finalize and file the petition after receiving the final installment payment.

6.

In 2019, Respondent suffered a fall that exacerbated an existing injury. The injury partially resulted in Respondent experiencing depression which manifested itself through symptoms of amotivation, social isolation, excessive fatigue, and foggy thinking.

7.

On November 9, 2019, Respondent was suspended from practicing law for failing to pay her Professional Liability Fund (PLF) dues.

8.

Soon after her suspension took effect, Respondent received Rose and Curtis’ final installment payment.

9.

From or around November 2019, until or around June 17, 2020, Respondent elicited some information necessary to update Rose and Curtis’ bankruptcy petition and repeatedly
stated she would promptly complete the petition. Curtis and Rose repeatedly experienced an
inability to get in contact with Respondent, despite numerous attempts by phone, email and
text message. Respondent did not withdraw from representation, inform her clients about her
suspension, or refer her clients to substitute counsel.

10.

When Rose and Curtis did hear from Respondent via email, Respondent’s email footer
included a standard disclaimer regarding attorney/client privileged communications that would
lead a recipient to believe that Respondent was licensed to practice law.

11.

On or around June 17, 2020, Respondent instructed Curtis to contact her former law
partner, Christopher Kane (Kane), about taking over the representation, but still did not inform
her clients about her suspension. Respondent, Curtis and Rose agreed that Kane would file the
petition with the bankruptcy court once it was updated.

12.

From or around June 21, 2020, until or around June 30, 2020, Respondent communi-
cated with Curtis and/or Rose multiple times, eliciting updated debt and income information
in order to update the bankruptcy petition.

13.

On or around June 29, 2020, Respondent handed off the bankruptcy petition to Kane.
Kane subsequently finalized the petition and filed it with the bankruptcy court. Rose and Curtis
ultimately received a chapter 7 bankruptcy discharge.

14.

From the time Respondent was suspended in November 2019, through the remainder
of her representation in June 2020, Respondent did not tell her clients that she had been
suspended. This information was material to the representation of her clients and Respondent
knew that it was material. Respondent instead told her clients at various times that she was
experiencing health issues to explain her delays.

15.

Although Respondent had performed some intermittent administrative tasks on Rose
and Curtis’ bankruptcy, from or around November 2019, until or around June 2020, she did
not finalize or file their bankruptcy petition, or otherwise take any substantial action for their
benefit.

16.

From on around December 16, 2019, through or around March 2, 2020, Respondent
did not communicate with Curtis or Rose, despite their numerous attempts to contact Respon-
dent via telephone, email, and text message.
17. On or around May 18, 2020, Rose filed a grievance with the Bar about Respondent’s conduct. The matter was referred to Disciplinary Counsel’s Office (DCO) and in letters dated December 7, 2020, January 5, 2021, and April 15, 2021, DCO asked Respondent for her response and for answers to specific questions. Respondent did not respond to DCO’s inquiries.

18. On or around May 26, 2021, DCO filed a petition seeking Respondent’s immediate suspension for failing to respond to DCO’s inquiries, pursuant to Bar Rule of Procedure (BR) 7.1. Respondent did not respond. On or around June 14, 2021, the Adjudicator entered an order suspending Respondent from the practice of law under BR 7.1.

Violations

19. Respondent admits that, by failing to complete and file her clients’ bankruptcy petition for approximately seven months, she violated RPC 1.3.

20. Respondent admits that, by failing to regularly keep in contact with her clients for extended periods of time, despite their attempts to contact her, she violated RPC 1.4(a).

21. Respondent admits that, by failing to disclose to her clients her suspended status when they could reach her, she violated RPC 1.4(b) and RPC 8.4(a)(3).

22. Respondent admits that, by failing to respond to DCO’s inquiries, she violated RPC 8.1(a)(2).

23. Respondent admits that, by communicating with third parties with an email footer that implied she was licensed to practice law during her suspension, she violated ORS 9.160(1).

24. Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 1.16(a)(1) and RPC 5.5(a) should be and, upon the approval of this stipulation, are dismissed.

Sanction

25. 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
(ABA Standards). The ABA 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 most important ethical duties a lawyer owes are to his clients. ABA Standards at 4. Respondent violated her duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. ABA Standard 4.4. Respondent violated her duty owed to the public to maintain personal integrity when engaged in conduct involving dishonesty. ABA Standard 5.1. Respondent violated her duty as a professional by not cooperating with DCO in its investigation as to her conduct. ABA Standard 7.0.

b. **Mental State.** “Intent” is the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Id. “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Id.

Here, Respondent acted knowingly by failing to follow through with her professional obligations to her clients and by failing to cooperate with the Bar. She was aware that she needed to take certain actions in shepherding her clients’ bankruptcy case and told her clients she would take those actions. Respondent acted negligently when she failed to disclose her suspended status and implied she was licensed to practice law.

c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

Respondent’s clients ultimately received the bankruptcy discharge that they sought, although it was substantially delayed after they paid the entire fee. Additionally, they suffered actual injury in the form of uncertainty, anxiety, and aggravation due to Respondent’s failure to keep them properly informed and neglecting their matter. “Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules.” *In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010).

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

1. **Multiple offenses.** ABA Standard 9.22(d).

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

1. **Absence of a prior record of discipline.** ABA Standard 9.32(a).
2. **Absence of a dishonest or selfish motive.** ABA Standard 9.32(b).
3. **Personal or emotional problems.** ABA Standard 9.32(c). Respondent reported experiencing extreme depression during the relevant time period that interfered with her ability to appropriately tend to her clients’ matter.

4. **Remorse.** ABA Standard 9.32(l). I found the Respondent to be credible and sincere when she expressed regret for failing to appropriately serve her clients.

26.

Absent aggravating or mitigating circumstances, the following ABA Standards appear to apply:

Under ABA Standard 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.”

Under ABA Standard 7.2, suspension is generally appropriate when a lawyer engaged in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public or the legal system.

Under ABA Standard 5.13, reprimand is generally appropriate when a lawyer knowingly engages in conduct that involves dishonesty that reflects adversely on the lawyer’s fitness to practice law.

27.

Under Oregon case law, the case *In re Shaffner*, 323 Or 472, 918 P2d 803 (1996) is instructive in this matter; there, the lawyer was suspended for a total of 120 days. Half of the suspension was attributed to the lawyer’s knowing neglect of his client’s case for several months by failing to communicate with his clients and opposing counsel. The other half was attributed to his failure to respond to the Bar’s inquiries, but he did ultimately sit for a deposition. Each of those circumstances is present here. It is true that Respondent has the additional violations of RPC 1.4(a) and 1.4(b) that were not found in the Shaffner case. There, the communication misconduct was included within the neglect charge under the old disciplinary rules that did not provide for violations specifically for failing to communicate. Based on the similarity of the conduct, if not the specific violations, the cases are somewhat analogous.

In the Shaffner case, the aggravating factors outweighed the mitigating factors. Respondent’s mitigating factors outweigh the aggravating factors. Based on this, a 90-day suspension is appropriate to attribute to the violations of RPC 1.3, 1.4(a), 1.4(b), and 8.1(a)(2). Due to the conduct related to communication regarding Respondent’s suspended status only warranting a reprimand, no increase in suspension should be attributed to the violation of RPC 8.4(a)(3) and ORS 9.160(1).

28.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 90 days for violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC
8.1(a)(2), RPC 8.4(a)(3), and ORS 9.160(1), the sanction to be effective on the date this stipulation is approved.

29.

In addition, on or before March 1, 2023, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of $171.00, incurred for personal service of the formal complaint and the court reporter’s appearance fee at Respondent’s deposition. Should Respondent fail to pay $171.00 in full by March 1, 2023, 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.

30.

Respondent represents that she has no active matters or files to which access may be required for any client purpose.

31.

Respondent 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. Respondent 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.

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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

33.

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: California.

34.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 22, 2022. 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 6th day of December, 2022.

/s/ Claudia A. Cullison
Claudia A. Cullison, OSB No. 012462

APPROVED AS TO FORM AND CONTENT:

/s/ W. Greg Lockwood
W. Greg Lockwood, OSB No. 114415

EXECUTED this 7th day of December, 2022.

OREGON STATE BAR
By: /s/ Matthew S. Coombs
Matthew S. Coombs, OSB No. 201951
Assistant Disciplinary Counsel