

**DISCIPLINARY
BOARD
REPORTER**

Report of Lawyer Discipline Cases
Decided by the Disciplinary Board
and by the
Oregon Supreme Court
for 2025

VOLUME 39

January 1, 2025, to December 31, 2025

Oregon
State
Bar

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 2025 decisions of the Oregon Supreme Court involving the discipline of lawyers, and related matters. Cases in this DB Reporter should be cited as 39 DB Rptr ____ (2025).

In 2025, 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 page numbers and DB Reporter citations have been added, 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: the Conduct of)
)
FREDERIC E. CANN, Bar No. 781604) Case No. 23-323
)
Respondent.)

Counsel for the Bar: Alison F. Wilkinson

Counsel for the Respondent: Rachel Frances O’Neal

Disciplinary Board: Mark A. Turner, Adjudicator

Disposition: Violation of RPC 1.7(a)(1). Stipulation for discipline. Public reprimand.

Effective Date of Order: January 31, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Frederic E. Cann (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 1.7(a)(1).

DATED this 31st day of January, 2025.

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

STIPULATION FOR DISCIPLINE

Frederic E. Cann, 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 18, 1978, 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 December 9, 2023, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.7(a)(1) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth relevant facts, all violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In April 2019, Wife and Husband retained Respondent to file immigration paperwork based on her marriage to Husband. As part of this representation, Respondent filed notices of representation for both Husband and wife, a petition to approve the validity of Husband's marriage to Wife, and a petition to adjust Wife's immigration status to that of legal permanent resident.

6.

In September 2021, Respondent's staff at his immigration practice renewed Wife's work authorization.

7.

Respondent has not withdrawn from representation of Husband or Wife in their immigration petitions, and remained their attorney as of March 21, 2022.

8.

On November 19, 2021, Husband retained Respondent to divorce his Wife. Respondent did not run a conflict check prior to accepting this representation, which he believed would be by consent.

9.

In January 2022, it became clear to Respondent that the divorce would not proceed by consent. On January 4, 2022, Respondent filed the dissolution petition on Husband's behalf. Wife came to Respondent's office to review the paperwork, picked it up, and left.

10.

In February 2022, Respondent recalled he was representing both Husband and Wife in their immigration matters, but continued to represent Husband in the dissolution proceeding.

11.

Wife initiated a Family Abuse Prevention Act (FAPA) proceeding in December 2021, in which Respondent was not originally involved, but learned of from Husband in February 2022. Respondent and Husband met on February 24, 2022, and Respondent prepared a withdrawal of Husband's request for a hearing in the FAPA proceeding that day. Husband used Respondent's OJIN account to file the withdrawal and Respondent assisted him in that due to time constraints, as the FAPA hearing was scheduled for the following day, and that Husband could not file it electronically himself. On February 25, 2022, Wife requested dismissal of the FAPA, which the court granted. Thereafter, with court approval, Respondent withdrew as Husband's attorney in the dissolution matter.

Violations

12.

Respondent admits that, by proceeding against Wife in the dissolution matter without her consent, and appearing on behalf of Husband in the FAPA matter, while he was still Wife's attorney in the immigration matter, he had a current client conflict of interest in violation of RPC 1.7(a)(1).

Sanction

13.

Respondent and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (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 of loyalty to a current client. ABA Standard 4.3.
- 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. ABA Standards at 9. "Negligence" is the failure to be aware of a substantial risk that circumstances exist or that a result will follow and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

Here, Respondent was negligent in not running a conflict check before agreeing to represent Husband in a proceeding against Wife. Because of his failure to properly screen, he did not realize that he represented Wife in immigration proceedings when he agreed to represent Husband adverse to Wife in the dissolution matters and appeared on behalf of Husband in the FAPA matter.

Accordingly, Respondent's mental state was that of negligence.

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

Actual injury resulted from Respondent's representation of both Husband and Wife in the immigration proceeding, and Husband in the dissolution proceeding. Wife was confused and alarmed that her attorney in the immigration proceeding was now proceeding against her.

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

1. Prior disciplinary offenses. ABA Standard 9.22(a). Respondent has one prior record of discipline from 2002, which included discipline for a current conflict of interest. *In re Cann*, 16 DB Rptr 173 (2002). In determining what weight to give to prior discipline, the following considerations apply: (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. *In re Jones*, 326 Or 195, 201, 951 P2d 149 (1997).

Respondent's prior discipline was serious, involving four rules of professional conduct and resulting in a six-month suspension. In addition, there was some similarity between the prior offense and the current

offense, in that both involved a current conflict of interest. However, the 2002 matter was Respondent's only prior offense, and it occurred over 20 years ago. Further, the underlying conduct occurred approximately 25 years ago. Because this offense is remote, its weight as an aggravating factor is diminished. *See In re Dugger*, 334 Or 602, 625, 54 P3d 595, 610 (2002) (remoteness of a prior offense diminishes its weight as an aggravating factor).

2. Substantial experience in the practice of law. ABA Standard 9.22(j). Respondent was licensed to practice law in Oregon in 1978.

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).

14.

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

15.

Similar cases suggest that a public reprimand is warranted. *See, e.g., In re Abel*, 33 DB Rptr 175 (2019) (stipulated reprimand where attorney concurrently represented husband on criminal matters that may adversely affect wife, and wife, without informed consent from either party); *In re Greif*, 21 DB Rptr 233 (2007) (stipulated reprimand when lawyer represented both husband and wife in divorce and assisted in negotiation of property-settlement agreement without making clear his belief he was acting as mere scrivener).

16.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 1.7(a)(1), the sanction to be effective upon approval of this stipulation.

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: Washington; U.S. District Court for Oregon; US District Court for Western District of Washington; Ninth Circuit Court of Appeals.

19.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 9, 2024. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 27th day of January, 2025.

/s/ Frederic E. Cann

Frederic E. Cann OSB No. 781604

APPROVED AS TO FORM AND CONTENT:

/s/ Rachel O'Neil

Rachel O'Neil, OSB No. 114810

EXECUTED this 29th day of January, 2024.

OREGON STATE BAR

By: /s/ Alison F. Wilkinson

Alison F. Wilkinson, OSB No. 096799

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
DOUGLAS L. SCHAEFFER, Bar No. 801034) Case No. 24-170
)
Respondent.)

Counsel for the Bar: Susan R. Cournoyer

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator

Disposition: Violation of RPC 1.5(c)(3) and RPC 1.15-1(c). Stipulation for discipline. Public reprimand.

Effective Date of Order: January 31, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Douglas L. Schaeffer (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 1.5(c)(3) and RPC 1.15-1(c).

DATED this 31st day of January, 2025.

/s/ Mark A Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Douglas L. Schaeffer, 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 18, 1980, 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 7, 2024, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.5(c)(3) and RPC 1.15-1(c)(3) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

David M. (Client) paid Respondent \$5,000 to defend him on drug-related felony charges. Their March 23, 2022, fee agreement included the following terms:

- As compensation for legal services, Client agrees to pay Respondent \$400 per hour and a nonrefundable fee of \$5,000. Unearned portions of the fee shall be returned.
- Client may discharge Respondent for any cause upon telephone notice followed by written notice either from Client of the new attorney who Client chooses to hire.
- The fee agreement did not disclose that the advance fee would not be deposited into Respondent's trust account.

- Respondent viewed the \$5,000 as a fee paid in advance to be earned at the \$400 hourly rate upon provision of legal services.

6.

Respondent received the \$5,000 advance fee on April 6, 2022. He deposited the funds into his business account. According to the itemized statement he later provided to the Bar, he had worked 3.75 hours on the matter (and earned \$1,500 at the \$400 hourly rate) as of April 6, 2022.

Violations

7.

Respondent admits that, by entering into an agreement for and collecting a fee denominated as “nonrefundable” without a written agreement explaining that the funds would not be deposited into his trust account, he violated RPC 1.5(c)(3). Respondent further admits that, by depositing Client’s \$5,000 advance fee into his business account upon receipt when his fee agreement did not comply with RPC 1.5(c)(3), he failed to deposit into and maintain in his trust account legal fees paid in advance until the fees are earned, in violation of RPC 1.15-1(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 duty to his client to preserve his client’s property. ABA Standards 4.12. He also violated a duty owed as a professional to ensure that his fee agreement contained required disclosures. 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 acted with negligence, or a failure to heed the substantial risk that his agreement was required to comply with RPC 1.5(c)(3), in that he denominated the fee as nonrefundable even if he did not intend to treat the fee as nonrefundable.

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the 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). There is no evidence of actual injury, but mishandling of client funds always presents potential injury.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. A prior record of discipline. ABA Standard 9.22(a). Respondent was admonished in 2019 for the same violations. When a prior letter of admonition involved the same or similar type of misconduct as that presently at issue, the relative recency of the prior misconduct and whether the lawyer received the admonition before engaging in the misconduct at issue will serve to increase or lessen the weight in aggravation. *In re Cohen*, 330 Or 489, 496-501, 8 P3d 953 (2000). Here, the admonition was fairly recent and issued prior to Respondent's conduct here, so it will have increased weight in aggravation.
 2. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to the Bar in 1980.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. Absence of 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).

9.

Under the ABA Standards, absent aggravating or mitigating circumstances, 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. Admonition is also appropriate, absent aggravating or mitigating circumstances, when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client. ABA Standard 4.14.

10.

Given Respondent's prior admonition for the same violations, the parties agree that a public reprimand is appropriate here. A public reprimand would be consistent with other cases in which trust account violations have occurred without resulting in actual injury:

In re Meyer, 38 DB Rptr __ (2024) (reprimand for violation of RPC 1.4(a), RPC 1.15-1(c), and RPC 1.16(d)). Believing that her client had agreed to allow his unlawful discharge case to be dismissed, attorney failed to tell him that the court had indeed dismissed the action. She also failed to deposit or maintain in trust client's cost advance until the expenses (filing and service fees) were fully incurred, and did not refund the balance of his cost advance when the case was dismissed and her representation terminated.

In re Brown, 34 DB Rptr 144 (2020) (reprimand for violation of RPC 1.15-1(d) and RPC 1.16(d)). Attorney worked for a client on a custody, parenting time, and child support matter. The client terminated Attorney, requested an itemized billing, and asked for a refund of unused retainer. Attorney sent the bill, showing a \$783 balance. The client's new lawyer declined to handle the refund. Attorney was uncertain about whether she could contact the client directly now that the client had new counsel. She eventually called the client twice, but the client's voicemail was full. Attorney held the unearned retainer for a period of 19 months.

In re Morgan, 31 DB Rptr 28 (2017) (reprimand for violation of RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.15-1(d)). After a client terminated Attorney's representation, Attorney transferred the entire amount paid by the client for costs from trust to her general account, without balancing the trust account or checking other records, and therefore did not realize that her client was actually entitled to a substantial refund of unused costs.

11.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 1.5(c)(3) and RPC 1.15-1(c), the sanction to be effective upon approval of this stipulation.

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: none.

14.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on December 7, 2024. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 29th day of January, 2025.

/s/ Douglas L. Schaeffer

Douglas L. Schaeffer, OSB No. 801034

EXECUTED this 30th day of January, 2024.

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)
)
JAMES R. ECKLEY, Bar No. 780368) Case No. 24-301
)
Respondent.)

Counsel for the Bar: Susan R. Cournoyer

Counsel for the Respondent: Nellie Q. Barnard

Disciplinary Board: Mark A. Turner, Adjudicator

Disposition: Violation of RPC 1.4(b) and RPC 1.7(a)(2). BR 3.5 Petition for Reciprocal Discipline. 6-months and 1-day suspension.

Effective Date of Order: February 11, 2025

STIPULATION FOR IMPOSITION OF SUSPENSION EFFECTIVE FEBRUARY 13, 2025

The Adjudicator granted the Oregon State Bar’s (Bar’s) petition for imposition of reciprocal discipline on James R. Eckley (Respondent) pursuant to BR 3.5 on February 11, 2025 (the Order). The Order imposes a term of suspension of 6 months plus one day. The Order is not effective until March 14, 2025, meaning the term of suspension does not begin to run until March 14, 2025.

Mr. Eckley does not currently have any Oregon clients, has no plans to appeal the Order, and prefers immediate imposition of the term of suspension. The Oregon State Bar likewise has no plans to appeal the Order.

The Parties stipulate agree that the Order may be made effective immediately, as indicated by their signatures below. Mr. Eckley respectfully requests and order making the Order effective as of February 13, 2025 (with the term of suspension running from that date).

IT IS HEREBY ORDERED THAT the request to make the Order Granting BR 3.2 Petition for Reciprocal Discipline is effective as of February 13, 2025 is GRANTED.

DATED this 12th day of February 2025.

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

ORDER GRANTING BR 3.5 PETITION FOR RECIPROCAL DISCIPLINE

The Oregon State Bar (Bar) petitioned for imposition of reciprocal discipline on James R. Eckley (Respondent) pursuant to BR 3.5 on February 7, 2025. Respondent was disciplined in Arizona effective on November 19, 2024, for violations of Arizona Rules of Professional Conduct (ARPC) 1.4(b) and 1.7(a)(2) for using an engagement agreement that was vague, convoluted, and open-ended thus preventing the client from knowing precisely what fees were being charged. The agreement included an arbitration provision that was subject only to Respondent's election but shared the expense of the arbitration jointly. The court found that Respondent failed to explain the terms of the representation to the extent reasonably necessary for the client to make informed decisions and that the agreement placed Respondent's personal interests above his client's. Respondent was given a suspension of six months and one day by the Arizona Supreme Court. The Bar seeks imposition of an equivalent suspension of six months and one day.

Respondent's counsel stated in a letter also dated February 7, 2025: "Without agreeing that the conduct set out in the Decision may form the basis for discipline under Oregon or Arizona law, that the conduct occurred as set out in the Decision, or that the discipline imposed by the Arizona Supreme Court is proper under the circumstances, Mr. Eckley does not object to the imposition of reciprocal discipline in Oregon under BR 3.5." Accordingly,

IT IS HEREBY ORDERED THAT the petition for reciprocal discipline is GRANTED and Respondent is suspended for a period of six months and one day effective on the date this order becomes final.

DATED this 11th day of February 2025.

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

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
GARY M. BULLOCK, Bar No. 660229) Case Nos. 22-146 and 23-132
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: Nellie Q. Barnard

Disciplinary Board: None

Disposition: Violation of RPC 1.6(a) and RPC 3.4(c). Stipulation for Discipline. Public reprimand.

Effective Date of Order: February 19, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved, and Gary M. Bullock is publicly reprimanded for violation of RPC 1.6(a) and RPC 3.4(c).

DATED this 19th day of February 2025.

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

STIPULATION FOR DISCIPLINE

Gary M. Bullock, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 16, 1966, 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(8).

4.

On September 14, 2024, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for an alleged violation of RPC 1.6(a) of the Oregon Rules of Professional Conduct. On October 9, 2024, the SPRB authorized formal disciplinary proceedings against Respondent for an alleged violation of RPC 3.4(c) of the Oregon Rules of Professional Conduct and authorized consolidation of the two matters for prosecution. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Case No. 22-146
Facts

5.

In 2020, Respondent's law firm filed a lawsuit against a former client and her intimate partner (defendants) in Multnomah County Circuit Court for failure to pay the outstanding balance of the former client's legal bill (breach of contract litigation). The defendants proceeded *pro se*.

6.

During the breach of contract litigation, a judge ordered Respondent's firm to produce the former client's file to the defendants within a few days. Respondent and his wife, the firm's office manager, obtained boxes of documents from a storage facility to be copied for the production. While reviewing the contents of one box, Respondent inadvertently failed to find

and remove documents from all unrelated client matters that had been misfiled in the former client's file. Copies were subsequently made and produced to the defendants.

7.

After receiving the production, defendants informed Respondent that the production contained copies of documents from 25 unrelated client matters. During further communication, defendants said they could notify those clients that Respondent had disclosed their confidential client material. Respondent's firm promptly requested that the defendants destroy the inadvertently produced documents, but the defendants did not do so. Instead, Respondent's firm obtained said documents several weeks later.

Violations

8.

Respondent admits that he violated RPC 1.6(a) by mistakenly revealing information related to the representation of numerous clients of his law firm.

Case No. 23-132 Facts

9.

In August of 2022, Respondent's law firm filed a lawsuit against a former client in relation to a fee dispute (fee litigation). The former client retained counsel who moved for a protective order in the fee litigation regarding the use of the former client's identifying information. The former client had changed her name and social security number and had moved residences several times to avoid an abusive ex-boyfriend, and the former client did not want her prior identifying information disclosed in public records.

10.

On September 9, 2022, a Multnomah County Circuit Court judge signed an Order Prohibiting Disclosure of Personal Identification Information Pursuant to UTCR 2.100, ORS 192.355, and ORS 192.368 (protective order), which was entered the same day. The protective order listed several protective actions that needed to occur to protect the former client's name and other identifying information. That included a provision that stated: "[Former client's] Confidential Information, including her social security number, maiden/former name, birth date, contact information and any other personal identification information, shall not be placed in the public record."

11.

In November of 2022, the former client filed a complaint with the Bar regarding Respondent's conduct related to the fee litigation. In May of 2023, while the protective order remained in effect in the litigation, Respondent provided a response to the Bar that included unredacted documents showing the former name and other identifying information of the complainant. In that response, Respondent acknowledged his understanding that Bar complaint materials are subject to the Oregon Public Records Law.

12.

Subsequently, after the Bar received notice of the protective order from the former client's counsel, the Bar asked Respondent to address his apparent violation of the protective order based on the submission to the Bar described in paragraph 11.

13.

In June 2023, Respondent provided a response to the Bar in which he apologized and characterized as a mistake the inclusion of his former client's identifying information in his response to the Bar. However, Respondent also attached an unredacted retainer agreement containing the former client's personal identifying information – including her social security number and date of birth. The protective order remained in effect at that time. Respondent subsequently provided redacted copies of his attachments to the Bar.

Violations

14.

Respondent admits that he violated RPC 3.4(c) by submitting documents to the Bar containing the former client's personal identifying information in violation of the protective order.

Sanction

15.

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.** Regarding Case No. 22-146, Respondent violated his 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. Regarding Case No. 23-132, Respondent violated his duty to the legal system to comply with applicable court orders. 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.* Regarding Case No. 22-146, Respondent acted negligently by mistakenly disclosing information related to the representation of numerous clients. Regarding Case No. 23-132, Respondent acted knowingly, in part, when he submitted to the Bar documents containing his former client’s personally identifying information while aware of the protective order; he acted negligently, in part, by failing to redact some of that information.
- c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Regarding Case No. 22-146, there was the potential for injury to the clients whose information was mistakenly disclosed as Respondent lost control of the information for some time. Regarding Case No. 23-132, Respondent’s former client suffered injury in the form of frustration and anxiety after Respondent on more than one occasion disclosed her personally identifying information to the Bar, a public records agency. *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). As an officer of the court, Respondent caused potential injury to the public trust by failing to abide by the court’s protective order.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Vulnerability of victim. ABA Standard 9.22(h). Respondent’s former client in Case No. 23-132 was a victim of abuse, and a judge determined that she was sufficiently vulnerable to warrant entry of the protective order.
 2. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has practiced law since 1966.
- 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. Timely good faith effort to make restitution or to rectify consequences of misconduct. ABA Standard 9.32(d). In Case No. 22-146, Respondent's firm promptly took steps to seek destruction of the mistakenly disclosed client information and ultimately retrieved it.
4. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).
5. Character or reputation. Former clients of Respondent have attested to his good character and appreciation for his work on their behalf.
6. Remorse. ABA Standard 9.32(l). Respondent expressed remorse for his actions.

16.

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

Under the ABA Standards, a public 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. ABA Standard 6.23.

17.

Oregon cases support the imposition of a public reprimand in this case. Lawyers who have violated RPC 1.6(a), or the predecessor rule, have been reprimanded. *See In re Scannell*, 8 DB Rptr 99 (1994) (attorney reprimanded after negligently revealing to opposing counsel and the court a letter that included legal analysis and strategy, without the client's consent); *see also In re Dennis*, 33 DB Rptr 61 (2019) (lawyer reprimanded for disclosing to the court that his client, a professional fiduciary, had paid herself without court approval).

Lawyers found in violation of RPC 3.4(c), or the predecessor rule, have also been reprimanded. *See In re Rubin*, 25 DB Rptr 13 (2011) (attorney reprimanded for violating a protective order issued in one proceeding when he filed a motion in another proceeding describing information that the protective order deemed confidential. The attorney's mental state was determined to be partially knowing and partially negligent); *see also In re Dodge*, 22 DB Rptr 271 (2008) (attorney disclosed to a Bureau of Labor and Industries investigator the existence and terms of a confidential mediation settlement offer his client's employer had extended in a workers' compensation mediation).

18.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 1.6(a) and RPC 3.4(c).

19.

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.

20.

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, California, Idaho.

21.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 14, 2024, and October 19, 2024. 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 February 2025.

/s/ Gary M. Bullock
Gary M. Bullock, OSB No. 660229

APPROVED AS TO FORM AND CONTENT:

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

EXECUTED this 18th day of February 2025.

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)
)
BRENT J. GOODFELLOW, Bar No. 033277) Case Nos. 23-294, 23-324, 23-325, 24-55,
) and 24-154
Respondent.)

Counsel for the Bar: Matthew S. Coombs

Counsel for the Respondent: Arden J. Olson and Julian W. Marrs

Disciplinary Board: None

Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a),
RPC 1.7(a)(1), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d),
RPC 1.16(d), RPC 4.2, RPC 5.3(a), and RPC 8.4(a)(4).
Stipulation for discipline. 9-month suspension.

Effective Date of Order: February 20, 2025

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court. The court accepts the Stipulation for Discipline. Mr. Brent J. Goodfellow is suspended from the practice of law in the State of Oregon for a period of 9 months, effective 60 days from the date of this order.

DATED February 20, 2025.

/s/ Meagan A. Flynn
Chief Justice, Supreme Court

STIPULATION FOR DISCIPLINE

Brent J. Goodfellow, 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 6, 2003, and has been a member of the Bar continuously since that time, having his office and place of business in Yamhill 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 August 16, 2024, the Bar filed an amended formal complaint against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of three counts of RPC 1.3; one count of RPC 1.4(a); RPC 1.4(b); RPC 1.5(a); RPC 1.7(a)(1); RPC 1.15-1(a); RPC 1.15-1(c); RPC 1.15-1(d); RPC 1.16(d); RPC 4.2; RPC 5.3(1); and two counts of RPC 8.4(a)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Case No. 23-294 – OSB (CSF John)

In June 2017, Terri Sue John (John) retained Respondent and his former law firm, Johnstone & Goodfellow, PC, to pursue a wrongful death claim.

6.

In April 2019, John signed a second fee agreement and paid Respondent a retainer for a probate matter required by Oregon Health & Science University (OHSU) in connection with the wrongful death case.

7.

On or about April 22, 2019, Respondent filed the wrongful death complaint against OHSU, Case No. 19CV18342, in Multnomah County Circuit Court, and filed a probate petition, Case No. 19PB03110, in Yamhill County Circuit Court.

8.

In June 2019, John relocated from Oregon to Puerto Rico, however, as noted below, the probate court continued to send notices to John's former Oregon address.

9.

On or about August 8, 2019, the probate court issued a notice of intent to dismiss, because the court had not received anything since Respondent filed the initiating petition. On or about September 30, 2019, the court issued a general judgment closing the probate estate. On or about November 19, 2019, Respondent filed a motion to set aside general judgment of dismissal in the probate matter and the court signed that order on or about November 24, 2019. In a limited judgment, dated December 30, 2019, John was appointed personal representative (PR) of her late husband's estate.

10.

On or about March 26, 2021, the probate court issued a notice regarding documents that had been due on March 30, 2020. This notice was sent to John's Oregon address and to Respondent. On or about May 26, 2021, the probate court sent Respondent a second notice regarding the overdue documents. On or about June 22, 2021, Respondent's staff emailed the probate commissioner stating that they anticipated filing the required forms within days.

11.

On or about July 22, 2021, the probate court set a hearing for August 17, 2021, to address John's non-compliance and sent a copy of the hearing notice to John in Oregon. On or about July 29, 2021, Respondent filed the annual accounting in the probate matter, and the court cancelled the hearing.

12.

On or about November 8, 2021, the probate court issued another notice regarding overdue documents, which was sent to John in Oregon and Respondent and stated that those documents had been due on March 30, 2020. On or about November 17, 2021, John's copy was returned to the probate court. Court staff called John and obtained her Puerto Rico address.

13.

On or about February 15, 2022, the probate court issued another notice regarding the overdue documents that had been due on March 30, 2020. The notice was sent to John in Puerto Rico and to Respondent. John contacted Respondent's office after receiving the court's notice.

14.

John and Respondent terminated their attorney-client relationship on or about March 16, 2022. On or about March 25, 2022, the probate court approved Respondent's motion to withdraw and on or about May 10, 2022, John appeared in probate court to respond to the court regarding the delays in the probate filings. The court instructed John to file a declaration outlining her due diligence in contacting any heirs or creditors of the estate. The court received John's submission on July 1, 2022, and subsequently closed the matter.

15.

Respondent's repeated failures to timely comply with the court's deficiency notices were improper, occurred during judicial proceedings, and caused harm to the administration of justice, John and the court.

16.

Around the time John initially engaged Respondent, John wrote a \$4,000 check for an expert review of her late husband's medical records. The funds were deposited into Respondent's former law firm's client trust account

17.

After Respondent's former law partner's death, Respondent formed a new law firm in April 2018, and John followed Respondent to his new firm.

18.

On or about July 12, 2018, Respondent's former law partner's widow sent Check No. 4253 to Respondent, payable to his client trust account. The check was written for more than \$13,000 to transfer client trust funds for multiple matters, including \$3,961.50 for John. On or about July 20, 2018, Respondent made a deposit to his trust account, which included more than \$7,000 from Check No. 4253.

19.

On or about December 27, 2021, the wrongful death lawsuit settled. On or about December 30, 2021, the probate court issued an order authorizing the personal representative to settle the wrongful death claim. Starting on January 24, 2022, John began communicating with Respondent's staff about receiving a wire transfer of her settlement funds. On or about January

26, 2022, Respondent withdrew his attorney fees from his client trust account. John emailed Respondent on or about February 11, 2022, asking about her settlement funds and how much remained in trust.

20.

On or about February 17, 2022, Respondent disbursed settlement funds to John. On or about February 18, 2022, John inquired again about her trust account balance and Respondent's staff informed John that they had to keep \$5,500 of funds remaining in trust until resolution of the probate matter. John believed the amount left in trust was too low and requested an accounting.

21.

After John and Respondent terminated their attorney-client relationship in March of 2022, John asked Respondent numerous times for an accounting and a refund of funds held in trust. John made such requests in March, April, May, June, and July 2022. On or about August 18, 2022, Respondent released \$5,436.33 to John. The amount released inadvertently did not include the \$3,961.50 that Respondent had received from his former firm that had been held in trust on John's behalf.

Violations

22.

Respondent admits that he neglected John's probate matter in violation of RPC 1.3 and engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4). Respondent admits that he failed to deliver property to which his client was entitled to receive and to promptly render a full accounting of such property in violation of RPC 1.15-1(d). Respondent admits that he failed to refund any advanced payment of fees or expenses that had not been earned or incurred upon termination of representation in violation of RPC 1.16(d).

23.

Case No. 23-324 - Brandon and Michelle Smith

In December of 2019, Michelle and Brandon Smith (the Smiths) engaged Respondent's firm to initiate a lawsuit. On or about April 14, 2020, Respondent filed a complaint on behalf of the Smiths and named two defendants. Subsequently, one of the defendants filed an answer and one of the defendants was held in default.

24.

On or about January 12, 2021, the court issued a notice directing Respondent to take specific action within 28 days regarding the defaulted defendant or else the claims against that

defendant would be dismissed. Respondent received and reviewed this notice but failed to take any action nor did he provide the Smiths with an update.

25.

From November of 2020 to March of 2022, the Smiths did not receive a substantive update on their case from Respondent despite six attempts to reach him.

26.

On or about February 20, 2022, the court dismissed the Smiths' claims against one of the defendants for want of prosecution. The Smiths only discovered the dismissal after they contacted the court themselves.

27.

In the course of the Bar's investigation of Respondent's conduct related to the Smiths, Respondent delivered to Disciplinary Counsel's Office materials that included client names and case details unrelated to the Smiths. This information was information relating to the representation of clients protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the clients had requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the clients.

Violations

28.

Respondent admits that he neglected the Smiths' matter in violation of RPC 1.3, and that he failed to keep a client reasonably informed about the status of a matter and comply with reasonable requests for information in violation of RPC 1.4(a). Respondent admits that he failed to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation in violation of RPC 1.4(b). Respondent further admits that he revealed constituted revealing information relating to the representation of a client without informed consent or implied authorization and was otherwise impermissible, in violation of RPC 1.6(a).

29.

Case No. 23-325 – Leonard Leis

On or about June 13, 2019, Eric Leis passed away, leaving two heirs, sons Tyler and Jordan Leis. On or about June 23, 2019, Leonard Leis (Leis), father of Eric Leis and grandfather to Tyler and Jordan Leis, retained Respondent to initiate a guardianship proceeding and probate

proceeding. By August 2, 2019, Respondent had filed each action and on or about September 4, 2019, the probate court appointed Leis as the PR of his son's estate.

30.

On or about December 9, 2019, the Washington County Probate Department sent a deficiency letter to Respondent, noting that the inventory filing was overdue. The letter instructed Respondent to file the inventory or request an extension within 10 days. On or about December 11, 2019, Respondent filed an inventory.

31.

On or about November 9, 2020, the Washington County Probate Department sent a deficiency letter to Respondent seeking the annual accounting or an explanation of delay within 30 days and warning that failure to administer the case could result in removal of the PR. On or about December 15, 2020, the Washington County Probate Commissioner sent Respondent a follow up letter, noting his lack of response to the previous inquiry and asking for submission of the required documents or an explanation within 10 days. That letter also warned of the potential for removal of the PR.

32.

On or about January 13, 2021, Timothy Marble, Circuit Court Judge Pro Tem, wrote to Respondent in follow up to the deficiency letters that had been sent previously, noting that the accounting had been due on November 4, 2020. Prior to sending his letter, Judge Marble had attempted to reach Respondent in his office, without success. The letter closed by requiring the filing of an accounting by January 20, 2021, or some other appropriate pleading to avoid the court's setting the matter for a hearing to show cause why the PR should not be removed.

33.

By January 23, 2021, Respondent filed a final accounting and petition for general judgment of final distribution.

34.

On or about May 5, 2021, Respondent filed a notice of time for filing objections to final accounting and petition for general judgment of final distribution, which called for objections by February 15, 2021, and was dated January 10, 2021.

35.

On or about June 5, 2021, the Washington County Probate Commissioner issued a letter to Respondent indicating that the proposed judgment had not been signed and had to be resubmitted after several identified deficiencies were cured.

36.

On or about November 8, 2021, the Washington County Probate Department issued a letter to Respondent noting that the estate was still open and requiring an explanation within 30 days, including when the court could expect the estate to close. That notice also warned that failure to administer the case could result in the removal of the PR.

37.

On or about December 14, 2021, the Washington County Probate Commissioner sent a follow up letter to Respondent, noting that he had not responded to the preceding letter and asking for the appropriate documents or an explanation within 10 days. On or about January 25, 2022, the court issued an order to show cause, ordering Leis to appear on March 25, 2022, to show cause why he should not be removed as PR for failure to administer the estate. Leis received this order, and it was copied to Respondent.

38.

On or about March 1, 2022, Respondent filed an affidavit of publication, however the notice referred to the earlier guardianship proceeding, and not the estate case. On or about March 9, 2022, Respondent filed a declaration of mailing of information to Oregon Department of Human Services, which stated that the information “was mailed on or about the 16th day of September, 2019.” Also around that time, Respondent filed a declaration of mailing final accounting and petition for general judgment to heirs, which stated that the information was “mailed on or about the 12th day of January, 2021.” On or about March 9, 2022, Respondent also filed a declaration of mailing information to heirs, which stated that the information was “mailed on or about the 12th day of January, 2021.”

39.

At 5:59 p.m. on March 24, 2022, Respondent’s office filed a declaration of mailing final accounting and petition for general judgment to heirs, which indicated the information had been sent “on or about the 20th day of January, 2021.” Also at 5:59 p.m. on March 24, 2022, Respondent’s office filed an information to heirs, devisees and other interested persons, which was signed by Leis and dated December 11, 2019.

40.

On the morning of the show cause hearing, at 10:01 a.m. on March 25, 2022, Respondent filed a motion to cancel hearing and a declaration regarding motion to cancel hearing, which indicated that the court’s required tasks had been completed. Prior to the hearing, at 10:32 a.m., the court denied Respondent’s motion to cancel the hearing and the hearing occurred at 11:30 a.m. The court removed Leis as PR after finding that “[t]he personal representative and/ or the personal representative’s attorney has been unfaithful to and has neglected the estate.”

41.

Respondent's repeated failures to timely file required documents in the probate proceeding and timely comply with the deficiency notices were improper, occurred during judicial proceedings, and caused harm to the administration of justice, Leis, and the court.

42.

In December 2020, Respondent issued an invoice to Leis purportedly related to the guardianship matter Respondent was handling for Leis. However, the billing entries were all related to the probate matter. Leis subsequently paid the invoice from funds of the estate and Respondent's staff accepted the payment. Respondent failed to obtain court approval, as required by ORS 116.183, to accept these estate funds.

43.

On or about March 5, 2020, Susan Snell (Snell) sent a letter to Respondent informing him that she was assisting Jordan Leis in the probate matter and made several inquiries regarding the probate matter related to documents that were overdue.

44.

When Snell did not receive a response from Respondent, she wrote to the Washington County Probate Commissioner, indicating that she was assisting Jordan Leis, relaying the issues that she had raised to Respondent, and noted that he had not responded to her letter. Snell asked the court to contact the PR about those issues and she filed her letter in the probate matter on or about May 18, 2020.

45.

On or about October 5, 2020, Snell filed a request for notice in the probate matter, identifying herself as "attorney for Jordan Leis," and requested copies of all future filings in the matter.

46.

On or about January 12, 2021, Respondent and/or his staff mailed a final accounting, petition for general judgment and information to heirs, directly to Jordan Leis.

47.

On or about January 20, 2021, Respondent and/or his staff mailed a final accounting and petition for general judgment directly to Jordan Leis.

48.

Upon receiving the several overdue filing notices described herein, Respondent forwarded the notices to his staff, but failed to make reasonable efforts to confirm that the identified deficiencies were promptly and adequately cured.

49.

Respondent failed to make reasonable efforts to train his staff regarding when it is legal to accept payment for probate matters before they accepted payment as described in the Bar's sixth cause of complaint.

50.

Respondent failed to make reasonable efforts to train his staff regarding contacting represented parties as described in the Bar's seventh cause of complaint.

Violations

51.

Respondent admits that he neglected Leis' matter in violation of RPC 1.3, and that his conduct was prejudicial to the administration of justice in violation of RPC 8.4(a)(4). Respondent admits he charged or collected an illegal fee in violation of RPC 1.5(a). Respondent admits that he communicated on the subject of representation with a person the Respondent knew to be represented by a lawyer on that subject, in violation of RPC 4.2. Respondent further admits he failed to make reasonable efforts to ensure the conduct of nonlawyers under Respondent's direct supervision was compatible with Respondent's professional obligations in violation of RPC 5.3(a).

52.

Case No. 24-55 – Candace Ruiz

On or about March 16, 2023, Candace Ruiz (Ruiz) met with Respondent to discuss opposing an opposing party's effort to register a Nevada judgment in Oregon.

53.

On or about April 19, 2023, Ruiz followed up with Respondent to inquire into how much he would charge to file an opposition per their earlier conversation. Respondent indicated the filing would cost no more than \$500.

54.

Without direction or request from Respondent's office, Ruiz used Respondent's website payment option to remit the \$500 capped fee and selected the options to deposit the funds

directly into Respondent's operating account on or around April 20, 2023, without notice to Respondent or his office that she had done so or intended to move forward with representation until April 24, 2023. April 24, 2023. At that time, Respondent's office had not yet billed any time on Ruiz's matter.

55.

Ruiz never signed a written fee agreement for Respondent's legal services.

Violations

56.

Respondent admits he failed to hold property of clients or third persons in Respondent's possession separate from his own and failed to deposit into his trust account legal fees and expenses which had not been denominated as "earned on receipt," "nonrefundable" or otherwise similarly termed in compliance with RPC 1.5(c)(3), in violation of RPC 1.15-1(a) and RPC 1.15-1(c).

57.

Case No. 24-154 – Kerrie Jones

On or around September of 2022, Kerrie Jones (Jones) hired Respondent to represent her in litigation involving the division of proceeds from a property co-owned by Jones, Jones's ex-husband and Jones's father, Jacky Jones (Jacky).

58.

At or around the time of Respondent's hiring, Jones and Respondent discussed the possibility of Respondent representing Jacky in the litigation as well. Respondent failed to obtain written informed consent from either Jones or Jacky regarding any potential conflict of interest that could arise.

59.

After Jacky was added as a necessary party to the property litigation, Respondent filed pleadings on behalf of both Jones and Jacky. The share of the proceeds sought by Respondent on behalf of Jacky would inevitably decrease the share allotted to Jones, resulting in a current client conflict of interest.

Violations

60.

Respondent admits that his concurrent representation of Jacky and Jones constituted representing a client when the representation involves a conflict of interest in violation of RPC 1.7(a)(1).

Sanction

61.

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 4. Respondent violated his duty to his clients by failing to preserve confidences and avoid conflicts of interest. ABA Standards 4.2 and 4.3. Respondent violated his duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. ABA Standards 4.4. He also violated his duty to properly handle client property. ABA Standards 4.1.

Respondent violated the duty he owed to the legal system by engaging in conduct prejudicial to the administration of justice and communicating with a represented party. ABA Standards 6.2 and 6.3.

Respondent violated his duties owed as a professional when he charged an improper fee and failed to properly supervise his nonlawyer assistant. ABA Standards 7.

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 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 but failed to do so.

Respondent acted negligently when he failed to properly train his staff, appropriately handle client property, charged an illegal fee, contacted a represented party, undertook representation involving a conflict of interest and improperly disclosed client information.

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 Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

Respondent's clients the Smiths, John, and Leis suffered actual injury in the form of uncertainty, anxiety, and aggravation due to Respondent's failure to keep them properly informed and neglecting their matters. "Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules." *In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010).

Respondent's client John suffered actual injury to due Respondent's failure to properly account and refund money deposited for an expert review that never occurred.

Respondent's actions also resulted in actual injury to the court that had to dedicate extra resources to Respondent's matters unnecessarily.

Respondent's actions involving the conflict of interest and contact with a represented party resulted in potential injury.

d. Aggravating Circumstances.

1. A pattern of misconduct. ABA Standard 9.22(c). Respondent failed to act diligently and properly handle client property across multiple client matters.
2. Multiple offenses. ABA Standard 9.22(d). Respondent's conduct resulted in 16 rule violations.
3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to the Bar in 2003.

e. Mitigating Circumstances.

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 reports that he was dealing with medical issues at the time that some of his misconduct occurred.

4. Remorse. ABA Standard 9.32(l).

62.

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.

Under ABA Standard 6.2, suspension is generally appropriate when a lawyer knowingly causes harm to a legal proceeding.

Under ABA Standard 4.2, reprimand is generally appropriate when a lawyer negligently reveals information related to the representation of a client not lawfully permitted to be disclosed.

Under ABA Standard 6.3, 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 potential injury.

Under ABA Standard 7.3, 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.

63.

The matter of *In re Bertoni*, 363 Or 614, 426 P.3d 64 (2018) provides helpful guidance regarding what sanction is appropriate in this matter. There, the attorney was charged with 13 violations over three client matters, including multiple charges for failing to adequately communicate with clients, multiple charges for failing to appropriately handle client property, and one RPC 1.5(a) charge for charging an excessive fee. Each of these violations is also present in Respondent’s case.

Bertoni was found to have committed the violations with a combination of negligent and knowing states of mind and caused actual injury to three separate clients. *Id* at 643. The injuries in *Bertoni* mostly stemmed from stress and anxiety of his clients, but also included some economic harm to at least one of the clients who paid Bertoni \$3,000 for legal services that were never provided. *Id*. The court noted that that the excessive fee charge warranted a suspension alone based on Bertoni’s knowing mind state. Bertoni’s aggravating factors far outweighed his single mitigating factor. The court gave significant aggravating weight to the fact that Bertoni had been admonished or sanctioned in three prior disciplinary proceedings and in some instances, repeating identical violations. *Id*. at 644.

Like *Bertoni*, Respondent caused three separate clients stress and anxiety. However, the economic harm Respondent caused was negligent rather than knowing. Respondent's mitigating factors slightly outweigh his aggravating factors, including a lack of a prior record of discipline, a factor given great weight by the Oregon Supreme Court. See *In re Jones*, 326 Or 195, 199, 951 P2d 149 (1997). These distinguishing details support imposing a sanction of less than the 18 months imposed in *Bertoni*.

64.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for a period of nine months for violations of three counts of RPC 1.3; one count of RPC 1.4(a); RPC 1.4(b); RPC 1.5(a); RPC 1.7(a)(1); RPC 1.15-1(a); RPC 1.15-1(c); RPC 1.15-1(d); RPC 1.16(d); RPC 4.2; RPC 5.3(1); and two counts of RPC 8.4(a)(4), the sanction to be effective 60 days after stipulation is approved.

65.

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 Mark O. Cottle, 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 Mark O. Cottle has agreed to accept this responsibility.

66.

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 acknowledges that due to the length of Respondent's suspension, he must apply for formal reinstatement pursuant to BR 8.1. Respondent further acknowledges that BR 8.1 requires the Bar to conduct a character and fitness investigation, which may take up to 12 months, before making a recommendation to the Supreme Court as to whether Respondent should be reinstated. 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.

67.

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.

68.

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.

69.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 14, 2024. 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 22nd day of December, 2024.

/s/ Brent J. Goodfellow

Brent J. Goodfellow, OSB No. 033277

APPROVED AS TO FORM AND CONTENT:

/s/ Julian W. Marrs

Julian W. Marrs, OSB No. 154743

EXECUTED this 2nd day of January, 2024.

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)
)
CHAD KOSIERACKI, Bar No. 064016) Case Nos. 23-119, 23-120, & 23-218
)
Respondent.)

Counsel for the Bar: Alison F. Wilkinson

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator
Justin Thorp
Sylvia Rasko, Public Member

Disposition: Violation of RPC 1.3, RPC 8.4(a)(4), and RPC 8.1(a)(2). Trial panel opinion. 1-year suspension.

Effective Date of Opinion: March 25, 2025

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged Chad Kosieracki with four rule violations involving three Rules of Professional Conduct. Respondent abandoned his practice and failed to respond to the Bar’s investigation of his conduct. He is in default for failing to appear in response to the formal complaint filed against him.

The Bar requests that we suspend Respondent for one year. Respondent’s misconduct shows a disregard for his ethical duties to his client, the judicial system, and the authority tasked with regulating lawyer misconduct. For these reasons we agree with the Bar, find that Respondent committed the alleged violations, and suspend him for one year.

PROCEDURAL POSTURE

The Bar filed a formal complaint against Respondent on August 8, 2024. He was personally served on August 9, 2024. He failed to file a timely answer so the Bar notified him of its intent to take a default. Receiving no answer in response to the notice, the Bar filed a motion for an order of default on October 8, 2024. The motion was granted.

When a respondent is in default the Bar’s factual allegations are deemed to be true. *See*, BR 5.8(1); *In re Magar*, 337 Or 548, 550, 100 P3d 727 (2004); *In re Kluge*, 332 Or 251, 253, 27 P3d 102 (2001). Our task is to first determine whether the facts establish the disciplinary rule violations alleged and, if so, what sanction is appropriate. *See In re Koch*, 345 Or 444, 447, 198 P3d 910 (2008); *see also*, *In re Kluge*, 332 Or at 253.

DISCUSSION

We consider the charges in the order presented by the Bar in its memorandum regarding sanction filed on January 13, 2025. The facts recited are all found in the Bar’s formal complaint.

Second Cause of Complaint--Donahue Matter (Case No. 23-218)

FACTS

Respondent represented the personal representative (PR) in a contested probate case. On May 5, 2023, the court entered an order approving the final accounting and general judgment of final distribution. Pursuant to this order, the PR was required to make final distributions and submit receipts for the distributions. The PR also had to submit a closing judgment before the estate could be closed.

The PR suffered a series of strokes that made administering the estate difficult. The court set a status hearing for May 16, 2023. Respondent did not appear at the status hearing and did not tell the court that he would be absent.

The judge reset the status hearing for June 6, 2023. Respondent again did not appear. The judge then sent Respondent a letter that stated, in part, that his failure to appear “created an undue hardship on opposing counsel and . . . left many questions unanswered as to how we can conclude this case in a timely manner.”

The judge reset the status hearing again, this time for July 25, 2023. Respondent again did not appear. The judge conferred with the contesting party’s attorney and learned that Respondent had not responded to counsel’s communications either. The judge removed Respondent as attorney for the PR.

Respondent’s failures to engage in the case led the judge to direct the contesting party’s attorney to take the necessary steps to administer the estate to resolution. This led to additional surcharges on the bond in the matter and case management costs.

VIOLATIONS

A. Respondent neglected his client's case.

RPC 1.3 provides: "A lawyer shall not neglect a legal matter entrusted to the lawyer." Neglect is the failure to act or the failure to act diligently. A single negligent act is not sufficient to establish a violation of this rule, but a course of neglectful conduct or an extended period of neglect is. *In re Jackson*, 347 Or 426, 435, 223 P3d 387 (2009). A "course" of neglectful conduct is a succession or series of negligent actions. *In re Redden*, 342 Or 393, 397, 153 P3d 113 (2007). "An extended period of time" for purposes of this rule depends on the circumstances of the case. If the matter is urgent, neglect may be found if the lawyer fails to act over a relatively short period. *In re Meyer*, 328 Or 220, 225, 970 P2d 647 (1999).

Respondent here missed three consecutive court dates. He failed to complete the tasks required to close the estate. Respondent's client needed his assistance to fulfill her duties, in particular because of her health issues. Even though Respondent failed to act for a period of only three months he did so when his timely action was required. We also find that failing to provide distribution receipts and draft a closing judgment, along with missing three court appearances, constitutes a series of negligent actions which violated RPC 1.3.

B. Respondent engaged in conduct prejudicial to the administration of justice.

RPC 8.4(a)(4) provides, in relevant part: "It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice." The Bar must establish the following to support a finding that this rule has been violated: (1) the lawyer engaged in "improper conduct," i.e., either did something the lawyer should not have done or failed to do something the lawyer should have done; (2) the conduct occurred during the "administration of justice," i.e., during the course of a judicial proceeding or an analogous proceeding; and (3) the lawyer's conduct resulted in "prejudice" to either the functioning of the proceeding or to a party's substantive interests in the proceeding. *In re Ard*, 369 Or 180, 193, 501 P3d 1036 (2021); *In re Sione*, 355 Or 600, 608, 330 P3d 588 (2014).

Respondent engaged in improper conduct when he failed to appear and failed to perform necessary tasks to accomplish his client's objectives. Respondent engaged in this conduct during a probate case.

Respondent's conduct harmed, or had the potential to harm, both the substantive rights of his client as well as the procedural functioning of the case. This establishes the third element of the charge. See *In re Maurer*, 364 Or 190, 199, 431 P3d 410 (2018). Respondent engaged in several acts that caused substantial harm. This also establishes a violation of the rule. *In re McGraw*, 362 Or 667, 692, 414 P3d 841 (2018).

We find that Respondent violated RPC 8.4(a)(4).

First and Third Causes of Complaint--(Donahue, Ellis, Estrada)

FACTS

Respondent did not respond to repeated requests for information from Disciplinary Counsel's Office (DCO) in three matters. Respondent was administratively suspended twice pursuant to BR 7.1 while this case was pending.

VIOLATIONS

Respondent failed to respond to lawful demands for information from a disciplinary authority.

RPC 8.1(a)(2) provides:

"An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not ... fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6."

This rule requires Oregon lawyers to cooperate and respond when DCO investigates disciplinary matters. The Bar alleged that Respondent received and failed to respond to two inquiries about his conduct from DCO. These failures resulted in the two orders suspending him under BR 7.1.

The Oregon Supreme Court has held that the "failure to cooperate with a disciplinary investigation, standing alone, is a serious ethical violation." *In re Parker*, 330 Or 541, 551, 9 P3d 107 (2000). The court does not tolerate violations of this rule. *In re Miles*, 324 Or 218, 222-25, 923 P2d 1219 (1996) (although no substantive charges were brought, the court imposed a 120-day suspension and required formal reinstatement for non-cooperation with the Bar). We do not either.

Respondent violated 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 the 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 the appropriate sanction, after which we may adjust the sanction based on the existence of recognized aggravating or mitigating factors.

Duty Violated.

Respondent violated his duty of diligence to his client when he neglected her legal matter. ABA Standard 4.4. By engaging in conduct prejudicial to the administration of justice, Respondent violated his duties owed to the legal system. ABA Standard 6.0. Respondent also violated his duty to the legal profession by failing to cooperate with the DCO investigation. ABA Standard 7.0.

Mental State.

The ABA Standards recognize three mental states. "Intent" is 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 was given notice of court hearings that he missed and was told by the court what he needed to do to complete his engagement in the Donahue matter. We find that Respondent's inaction here was at least knowing. DCO also repeatedly tried to contact Respondent about the ongoing investigation of his conduct. Respondent received these communications but chose not to respond. This misconduct also presents a knowing mental state.

Extent of Actual or Potential Injury.

We may take into account both actual and potential injury in determining an appropriate sanction. 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 caused actual injury by his neglect in the Donahue matter. His neglect made it difficult for his client to fulfill her duties as the PR. The estate was forced to pay additional funds before it could be closed. The court system spent additional time and resources trying to get Respondent to finish the case. Respondent's failure to respond to the Bar also amounts to actual

injury because it causes disciplinary investigations to take more time and diminishes the public's respect for the Bar's ability to address complaints. See *In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993).

Preliminary Sanction

The following ABA Standards apply here:

Disbarment is generally appropriate when a lawyer abandons the practice and causes serious or potentially serious injury to a client; or a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client. ABA Standard 4.41(a) and (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; or a lawyer 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 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.

Respondent's misconduct merits a suspension.

Aggravating and Mitigating Factors

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

1. A pattern of misconduct. ABA Standard 9.22(c). On multiple occasions, Respondent failed to respond to Bar inquiries and missed multiple court appearances without explanation.
2. Multiple offenses. ABA Standard 9.22(d). Respondent engaged in distinct acts constituting separate violations of the disciplinary rules rather than one bad act charged under multiple rules. *In re Strickland*, 339 Or 595, 606, 124 P3d 1225 (2005).
3. Refusal to acknowledge wrongful nature of conduct. ABA Standard 9.22(g). Because Respondent has not responded to Bar inquiries, there has been no acknowledgment of his wrongful conduct.
4. Vulnerability of victim. ABA Standard 9.22(h). Respondent's client in the Donahue matter was vulnerable due to her health conditions.
5. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice law in Oregon in 2006.

In mitigation, the Bar acknowledges the following factors apply:

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).

Oregon Case Law.

The Bar cites multiple cases justifying imposition of a lengthy suspension. Neglect of a client's legal matter generally results in at least a 60-day suspension. See *In re Redden*, 342 Or at 401-02. When aggravating factors outweigh those in mitigation a longer suspension is justified. *In re Knappenberger*, 337 Or 15, 32-33, 90 P3d 614 (2004) (90 day suspension justified); see also *In re Worth*, 337 Or 167, 181, 92 P3d 721 (2004) (attorney who failed to move case forward and ignored court warnings and directives suspended for 120 days, where neglect resulted in the court granting motion to dismiss).

Attorneys who engage in conduct prejudicial to the administration of justice by missing court hearings have also been suspended. *In re Carini*, 354 Or 47, 60, 308 P3d 197 (2013); *In re Jackson*, 347 Or at 445.

Failure to respond to the Bar is also a serious violation that can justify a lengthy suspension. The Disciplinary Board's statement in *In re Spinney*, where it suspended the respondent lawyer for one year, applies with equal force here:

"[A suspension of 60-120 days] does not fulfill the purposes of attorney discipline. The rule requires *full* cooperation from a lawyer subject to a disciplinary investigation. We follow the guidance of the court in not tolerating violations of this rule. 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.

"* * * 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."

In re Spinney, 36 DB Rptr 274 (2022) (omitting citations; emphasis in original); see also *In re Miles*, 324 Or 218, 225, 923 P2d 1219 (120-day suspension for two violations of predecessor to RPC 8.1(a)(2)).

We find that, as in *Spinney*, Respondent's disregard of his client's needs, the court, and his ethical responsibilities, merits a suspension of one year.

CONCLUSION

Sanctions in disciplinary matters are not intended to penalize the respondent 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, 830 P2d 206 (1992). To serve these purposes we order that Respondent be suspended for one year beginning on the date this decision becomes final.

Respectfully submitted this 21st day of February 2025.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/Justin Thorp

Justin Thorp, Attorney Panel Member

/s/ Sylvia Rasko

Sylvia Rasko, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
TAMMY R. SCHILLING, Bar No. 000981) Case Nos. 23-67, 23-68, 23-69, 23-267, and
) 24-64
Respondent.)

Counsel for the Bar: Matthew S. Coombs

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator
Lorena Reynolds
Sylvia Rasko, Public Member

Disposition: Violation RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 8.1(a)(2),
RPC 8.4(a)(2) and RPC 8.1(c). Trial panel opinion. 1-year
suspension.

Effective Date of Opinion: March 29, 2025

TRIAL PANEL OPINION

The Oregon Stater Bar (Bar) asks us to suspend Tammy R. Schilling for at least a year. The Bar alleges multiple violations of six Oregon Rules of Professional Conduct (RPCs): four violations of RPC 1.3 (neglect), four violations of RPC 1.4(a) (failure to communicate), four violations of RPC 1.4(b) (failure to explain a matter sufficiently to permit a client to make informed decisions), three violations of RPC 8.1(a)(2) (knowing failure to respond to a disciplinary authority), two violations of RPC 8.4(a)(2) (conduct prejudicial to the administration of justice) and one violation of RPC 8.1(c) (failure to fulfill obligations to the State Lawyers Assistance Commission (SLAC)).

Respondent is in default for failure to appear. When a respondent is in default the Bar’s factual allegations in the complaint are deemed true. BR 5.8(a); *In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004). Our role is to first determine whether the facts alleged establish the charged rule violations. If we conclude they do, we then determine what sanction is appropriate. See *In re Koch*, 345 Or 444, 446, 198 P3d 910 (2008); see also *In re Kluge*, 332 Or 251, 253, 27 P3d 102 (2001).

As explained below, we find that the facts pleaded support the charged violations. We suspend Respondent for one year.

PROCEDURAL POSTURE

On July 11, 2024, the Bar filed a formal complaint against Respondent in Case Nos. 23-69 and 24-64. The complaint and notice to answer were served via publication effective on September 3, 2024. Respondent failed to answer the complaint by September 17, 2024, the time allowed by Bar Rule of Procedure (BR) 4.3. On September 18, 2024, the Bar filed an amended formal complaint which included case nos. 23-67, 23-68, and 23-267. Respondent failed to file a timely answer to the amended complaint.

On October 4, 2024, after the time for answering had passed, the Bar notified Respondent of its intent to seek an order of default if Respondent failed to file an answer within ten days of the notice. Respondent filed no answer. The Bar moved for an order of default on October 16, 2024. The motion was granted on October 18, 2024.

FACTS

We address the charges in the order presented in the amended formal complaint.

A. Case No. 23-69 – Chandler Matter ¹

Alisha Chandler (Chandler) hired Respondent in April of 2021, to represent her as personal representative (PR) in the probate of her father’s estate.

On April 18, 2022, the court issued an Order Approving Verified Statement in lieu of Final Accounting and a General Judgment of Final Distribution was entered. The order provided that the estate would be closed upon the filing of creditor receipts and a proposed supplemental judgment.

Almost five months later, on September 13, 2022, Respondent received a notice from the court stating that the creditor receipts and proposed judgment were still outstanding. The court directed Respondent to file the materials or explain to the court when the documents would be filed. Respondent forwarded the notice to Chandler, but did not submit the documents or provide an explanation to the court.

On October 12, 2022, Respondent received another notice from the court. This notice set a 30-day deadline to submit the delinquent documents or the court would set a hearing. Respondent did not provide this notice to Chandler, nor did she submit the documents.

On December 5, 2022, the court set a hearing for January 31, 2023, to address the delinquent documents. Respondent did not tell Chandler that this hearing had been scheduled.

¹ The facts summarized herein are pleaded in the amended formal complaint.

On December 29, 2022, Chandler informed Respondent that the creditors of the estate had been paid. Respondent told Chandler that she would file the appropriate documents as soon as possible.

Respondent failed to appear at the January 31, 2023 hearing. The hearing was rescheduled to February 14, 2023. Respondent failed to appear for the rescheduled hearing. Neither the court nor Chandler could make contact with Respondent at this point. The hearing was rescheduled again to March 10, 2023. On March 8, 2023, Respondent filed documents reflecting that the estate creditors had been paid. The March 10 hearing was cancelled. The court entered a supplemental judgment closing the estate on March 14, 2023.

Between November of 2022 and March of 2023, Respondent was dealing with personal matters that made her unavailable for extended periods of time. During that period Respondent was not personally monitoring Chandler's matter. Respondent did not disclose her unavailability to Chandler.

Respondent's conduct was improper, occurred during judicial proceedings, and caused harm or had the potential to cause harm to the administration of justice and to Chandler.

On August 17, 2023, Disciplinary Counsel's Office (DCO) sent a letter to Respondent seeking additional information regarding the Chandler matter. The letter was sent by first class mail to Respondent's address then on record with the Bar (record address). The letter was also sent to Respondent at her email address then on record with the Bar (record email address). Respondent did not respond. Neither the email nor the letter was returned as undeliverable. Respondent had responded to previous inquiries sent to the same addresses.

On October 23, 2023, DCO sent a follow up letter to Respondent's record address via first class mail and certified mail, return receipt requested, and via email to Respondent's record email address. The email and first-class letter were not returned undelivered. The certified mailing was returned unclaimed. Respondent again did not respond.

DCO petitioned for Respondent's administrative suspension under BR 7.1 for failing to respond. Respondent did not answer the petition. It was granted and Respondent was suspended on December 12, 2023.

B. Case No. 24-64 – SLAC Matter

Respondent was referred to SLAC under ORS 9.568 due to concerns about a mental or physical condition or other impairment that may have affected her ability to practice or her professional competence. Committee member Sara L. Butcher (Butcher) was assigned to investigate. After a preliminary investigation, SLAC assumed jurisdiction and sent Respondent an intake letter in late August 2023.

Butcher was designated Respondent's SLAC monitor. On September 19, 2023, Butcher emailed Respondent requesting a meeting and left a voice message on her office phone asking

Respondent to call her to schedule one. Butcher then sent emails dated September 22, October 12, October 13, and October 20, 2023, telling Respondent it was important that she respond. Butcher also left multiple voicemail messages on Respondent's office phone and on her cell phone in September and October 2023.

Butcher received no response. Butcher told Respondent in a letter dated October 20, 2023, that she needed to hear from her before the next SLAC meeting, scheduled for October 26, 2023, or Butcher would need to recommend she be referred to DCO for failure to cooperate. The letter was sent via priority mail to Respondent's home and office addresses, and delivery was confirmed to both addresses on October 23, 2023. The letter was also sent to Respondent's record email address. She did not respond.

SLAC determined that Respondent failed to cooperate. Pursuant to Bar Bylaw Section 19.2(a), the committee directed the Bar's SLAC liaison to report the matter to DCO for possible action under RPC 8.1(c).

SLAC referred the matter to DCO on March 1, 2024. DCO sent a letter to Respondent on March 8, 2024, about her failure to cooperate with SLAC. The letter was sent to Respondent at her record email address and by mail to her record address. They were not returned undelivered. Respondent did not respond.

DCO sent another letter to Respondent on April 2, 2024, requesting her response. The letter was sent to Respondent's record addresses via email, first class mail, and certified mail, return receipt requested. The certified letter was returned as unclaimed. The email and first-class mail were not returned undelivered. Respondent did not respond.

DCO filed another petition for Respondent's suspension pursuant to BR 7.1 for failing to cooperate with DCO's inquiries on April 23, 2024. Respondent did not respond to the petition. It was granted on May 8, 2024.

C. Case No. 23-67 – Myronenko Matter

Sherry Myronenko (Myronenko) hired Respondent to represent her in the administration of Myronenko's mother's estate in August of 2021. Respondent filed a petition to probate the estate and had Myronenko appointed PR that same month.

On May 25, 2022, the probate court entered a judgment approving a final accounting and authorized Myronenko to make final distributions to creditors and heirs. Over the next three months, Respondent filed all the required receipts documenting distributions per the final accounting except one.

Myronenko and Respondent discussed filing a declaration in lieu of receipt based on being unable to obtain a receipt from the final heir despite having paid him. They agreed Respondent would file a declaration attesting to the payment being made and attach alternative evidence of

payment. In late August or early September of 2022, Myronenko delivered the alternative evidence of payment to Respondent's office.

On December 28, 2022, the court issued a notice of late documents indicating that the final receipt had not been filed with the court. Respondent did not tell Myronenko the court had issued the notice.

On February 7, 2023, the court issued a notice of intent to dismiss the probate matter if the missing documents were not filed within 30 days. Respondent again did not tell Myronenko about the notice.

Since the day she delivered the evidence of payment in the late summer of 2022 through March of 2023, Myronenko unsuccessfully tried to contact Respondent by telephone, email, text message and in person. Respondent's voicemail was full each time she called. Respondent never responded to Myronenko's attempts to reach her.

Respondent filed the declaration in lieu of receipt with the court on March 15, 2023. The probate was closed the next day.

D. Case No. 23-68 – Wallace Matter

In May of 2021, Kresta Wallace (Wallace) hired Respondent to draft and facilitate funding of a family trust. Respondent drafted the trust documents and Wallace and her husband signed them in November of 2021. For eight months following the signing of the trust documents Respondent failed to accomplish the funding of the trust.

From February 2022 to July 2022, Wallace made ten unsuccessful attempts to contact Respondent by telephone, email and text message about funding the trust. Wallace fired Respondent in July of 2022 and hired another lawyer who completed the task within weeks.

E. Case No. 23-267 – Peterman Matter

Respondent was hired by David Thibedeau (Thibedeau) to represent him as PR of the Estate of Mary Jane Harris Mason (Mason). Respondent filed a petition to probate Mason's will and appoint Thibedeau as PR on December 18, 2018. The court appointed Thibedeau as PR.

On April 8, 2019, the court issued a notice of late documents because the PR had failed to timely file an inventory. Respondent filed the inventory three weeks later.

On March 4, 2020, the court issued a notice of late documents because the PR had failed to timely file an annual accounting. On May 8, 2020, the court issued a second and final notice regarding the unfiled annual accounting. Respondent filed the accounting three weeks later.

The next year, on July 2, 2021, the court issued a notice of late documents because the PR had again failed to timely file an annual accounting. On October 1, 2021, the court issued a second and final notice regarding the unfiled annual accounting. On February 3, 2022, the court

ordered Thibedeau to appear on March 15, 2022, and show cause why he should not be removed as PR based on the failure to file an annual accounting. Respondent filed the overdue annual accounting on March 1, 2022.

On March 15, 2022, Respondent appeared at the show cause hearing on behalf of Thibedeau. The court did not remove Thibedeau as PR, but it did chastise Respondent for ignoring court notices and failing to timely file estate documents.

On April 21, 2023, the court again issued a notice of late documents indicating the PR had failed to timely file an annual accounting. On June 29, 2023, the court issued a second final notice regarding the unfiled accounting.

On May 4, 2023, an interested party alleged in a court filing that Thibedeau had breached his fiduciary duties by, among other things, failing to timely file accountings. The court set a hearing on the matter for September 1, 2023. Respondent did not notify Thibedeau of the hearing. Neither Respondent nor Thibedeau appeared at the hearing.

The court entered a judgment removing Thibedeau as PR on September 5, 2023. It ordered him to turn over control of estate assets and to file a final accounting within 30 days. On December 1, 2023, the court issued another notice of late documents indicating that the PR had failed to timely file the final accounting per the court's order.

Throughout Respondent's representation of Thibedeau, she never told him that accountings were required to be filed annually, nor did she tell him of the court's notices regarding the delinquent annual accountings.

The Mason estate case was active as of the date of the filing of the amended formal complaint in this disciplinary proceeding and at that time Respondent was still listed as Thibedeau's attorney of record. Thibedeau had not heard from Respondent from May of 2023 to the date the amended formal complaint was filed.

Respondent's repeated failures to timely comply with court notices and her failure to appear for a hearing were improper, occurred during judicial proceedings, and caused harm to the administration of justice.

VIOLATIONS

A. Neglect of a legal matter (four violations)

RPC 1.3 states simply: "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. A lawyer's conduct must be viewed over time rather than as discrete, isolated events. *In re Magar*, 335 Or 306, 321, 66 P3d 1014 (2003). A mere act of negligence is not sufficient to show a violation of the rule, but a course of neglectful conduct or an extended period of neglect will. *In re Jackson*, 347 Or 426, 435, 223 P3d 387 (2009); *In re Eadie*, 333 Or 42, 64, 36 P3d 468

(2001). In *In re Redden*, 342 Or 393, 153 P2d 113 (2007), the Oregon Supreme Court noted that a “course” is “an ordered continuing process, succession, sequence, or series,” such that there must be proof of a “succession or series of negligent actions.” 342 Or at 397. The Bar pleads the necessary facts to show a violation of this rule in all four of the client matters discussed above.

As to Chandler, Respondent took no substantive action on her case between April 22, 2022, and September 8, 2022. Respondent failed to act when instructed to by the court on multiple occasions. Respondent failed to advise her client of court notices and scheduled hearings. Respondent also failed to appear for two court hearings. Respondent did not submit documents required by the court until March of 2023.

As to Myronenko, Respondent failed to act when action was needed, and she neglected the case for an extended period of time. She took no action between late August 2022 and March 15, 2023, a period of approximately six months despite receiving court notices requiring her to act.

As to Wallace, Respondent agreed to work on funding the trust and then did nothing for eight months. After the eight months of neglect and several months of no return calls or communication, Wallace fired Respondent and found a new attorney who completed the work.

As to the Peterman matter, Respondent engaged in a course of neglectful conduct. After filing the accountings late for 2019, 2020, and 2021, the court warned Respondent that if the 2022 accounting was not timely filed her client, Thibedeau, would be removed as PR. Despite this warning, Respondent never filed it. Respondent did nothing on the case after May 2023, even though an objector had appeared, and a hearing was set to consider the objections in September 2023. Thibedeau was removed as PR in September 2023 during a hearing where Respondent failed to appear. She had never told her client about the hearing either. Respondent consistently filed the accountings she did submit months or even a year or more late.

Respondent’s course of conduct in each of these instances violated RPC 1.3.

B. Duty to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information (four violations)

RPC 1.4(a) states: “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” In determining whether a lawyer’s failure to communicate has violated RPC 1.4(a), we are to consider the length of time a lawyer failed to communicate; whether the lawyer failed to respond promptly to reasonable requests for information from the client; and whether the lawyer knew or a reasonable lawyer would have foreseen that a delay in communication would prejudice the client. The Oregon Supreme Court has also noted that, in certain circumstances, a lawyer may be required to communicate information immediately in order to keep a client reasonably informed and that, in many circumstances, the attorney has the responsibility to initiate the communication. *In re Graeff*, 368 Or 18, 26, 485 P3d 258 (2021) (citing *In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011)). In *Graeff*, the court found a violation when the attorney’s failure to communicate with

his clients took place over a relatively short period of time because it occurred when a motion for summary judgment had been filed in the clients' case and the lawyer had decided not to oppose it because he had concluded the clients' case was without merit. *Graeff*, 368 Or at 25-26.

Here Respondent failed to tell Chandler about the court's notice of intent to dismiss, This was time-sensitive information Respondent should have told Chandler of immediately. Respondent also failed to tell Chandler about the January 31, 2023, hearing or the fact that it was rescheduled. Respondent was generally unreachable in the weeks after each hearing date. Between July 2022 and January 2023, Respondent initiated only two communications to Chandler and failed to advise her of multiple significant events that were occurring.

Respondent failed to tell Myronenko about the notice of late documents or the notice of intent to dismiss, both significant developments and time sensitive. Respondent was unresponsive to her client from late August 2022 to March 2023.

Wallace tried to contact Respondent ten times from February to July 2022, and Respondent did not respond until after Wallace went to Respondent's office and spoke with the office building's manager in mid-July 2022. Wallace's contacts and requests for information were reasonable under the circumstances. Respondent failed to respond within a reasonable time.

Respondent never told Thibedeau of the need to file an annual accounting and he did not know if one had ever been filed. Respondent never told him about the March 2022, communication from the court threatening to remove him as PR if the annual accountings were not filed on time. Respondent failed to notify Thibedeau that she had missed the hearing removing him as PR. Respondent failed to communicate with Thibedeau for more than a year despite his case being active and her remaining the attorney of record.

In each of these matters Respondent violated RPC 1.4(a).

C. Duty to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (four violations)

Along with the duty to communicate in a timely manner and to respond to reasonable client inquiries, RPC 1.4(b) provides: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Cases analyzing RPC 1.4(b) identify many events during litigation about which an attorney is obligated to keep their client informed, e.g., a determination that a case lacks merit (*In re Snyder*, 348 Or 307 (2010)); that an attorney is not available for court appearances (*In re Jordan*, 26 DB Rptr 191 (2012)); and information about dispositive events during a case (*In re Hudson*, 27 DB Rptr 226 (2013)).

As discussed above, Respondent kept her clients in the dark about significant case events and developments on many occasions. Respondent's deficient communications also violated RPC 1.4(b).

D. Duty to respond to disciplinary inquiries (three violations)

“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.” RPC 8.1(a)(2) (emphasis added.).

Despite responding to initial letters from DCO, Respondent stopped doing so even when warned that her failure to cooperate could result in administrative suspension and disciplinary charges. She is charged with violation of this rule in the Chandler, SLAC, and Peterman matters, and she failed to comply with her obligation to respond to DCO as to each matter.

Respondent did so knowingly. All attorneys admitted to practice in Oregon must keep the Bar apprised of a current business and email address unless granted an exemption. BR 1.11(a) and (b). It is the attorney’s duty to “promptly notify the Bar in writing of any change in his or her contact information.” BR 1.11(d). In each of the cases where Respondent is charged with a violation of this rule the Bar’s letters were sent to Respondent’s record addresses. They were not returned as undeliverable, although Respondent apparently refused to sign return receipts for certified mail letters. Respondent was aware of the inquiries and she knowingly failed to respond.

Respondent also failed to respond to two petitions for her administrative suspension under BR 7.1, which were then granted. The petitions were sent to the record email and mailing addresses for her on file with the Bar, and there is no indication she did not receive them.

Respondent violated RPC 8.1(a)(2) in the three instances charged.

E. Conduct prejudicial to the administration of justice (two violations)

RPC 8.4(a)(4) states: “It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice.” To prove a violation of this rule, the Bar must show that a lawyer did something they should not do (or failed to do something they should have done), during the course of a judicial proceeding, and that such conduct caused substantial actual or potential harm to the administration of justice if it consisted of a single act. *In re Ard*, 369 Or 180, 501 P3d 1036 (2021). If there were several wrongful acts or omissions, the Bar need only prove that there was some actual or potential harm to the administration of justice. *Id.* The concept “administration of justice” includes the procedural functioning of the court and the substantive interests of the parties. *In re Hartfield*, 349 Or 108, 115, 239 P3d 992 (2010).

Respondent engaged in several wrongful acts in the Chandler matter which caused some harm to the court’s functioning. Respondent neglected the case for several months, which extended the time the estate was in probate to almost two years. Her inaction required the court to send multiple notices and set three court dates that should not have been needed. Court staff

had to expend time and energy trying to contact Respondent and fielding Chandler's calls about what she should do.

Respondent also engaged in several wrongful acts which created some harm to the procedural functioning of the case and the parties' interests in the Peterman matter. Respondent neglected the case for a lengthy period which again extended the time the estate was in probate. Her inaction again required the court to send notices and hold hearings that should not have been needed. Respondent was late filing the inventory and the 2019 and 2020 annual accountings. Her neglect of the case led to removal of Thibedeau as PR. Both the court and Respondent's client suffered actual harm due to her wrongful acts.

Respondent violated RPC 8.4(a)(4) in the Chandler and Peterman matters.

F. Duty to cooperate with SLAC (one violation)

RPC 8.1(c) provides: "A lawyer who is the subject of a complaint or referral to the State Lawyers Assistance Committee shall, subject to the exercise of any applicable right or privilege, cooperate with the committee and its designees." Respondent was referred to SLAC and SLAC took jurisdiction. For the next several weeks her investigator and then monitor, Butcher, tried to contact Respondent a number of times by email, mail, and telephone. Butcher told Respondent of her duty to cooperate and warned her that failure to respond before SLAC's upcoming meeting would cause SLAC to refer her for discipline. Respondent never responded to Butcher. Respondent violated RPC 8.1(c).

SANCTION

We refer to the *ABA Standards for Imposing Lawyer Sanctions* (ABA Standards), in addition to Oregon case law, for guidance in determining the 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 the appropriate sanction, after which we may adjust the sanction based on the existence of recognized aggravating or mitigating factors.

Duty Violated.

The most important ethical duties lawyers owe are to their clients. ABA Standards at 4. Respondent violated her duty to act with reasonable diligence and promptness, which includes the obligation to communicate timely and effectively. ABA Standard 4.4. Respondent violated her duty to the legal system by engaging in conduct prejudicial to the administration of justice. ABA

Standard 6.2. Respondent also violated her duty as a professional by not cooperating with DCO and SLAC. ABA Standard 7.0.

Mental State.

The ABA Standards recognize three mental states. “Intent” is 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 her professional obligations to her clients, the court, and the Bar. She was aware that she needed to act on behalf of her clients but failed to do so over multiple client matters. She knew she needed to respond to DCO and SLAC but again failed to do so.

Extent of Actual or Potential Injury.

We may consider both actual and potential injury in determining an appropriate sanction. 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.

Chandler, Myronenko, and Wallace suffered actual injury. Uncertainty, anxiety, and aggravation caused by a lawyer’s failure to keep clients properly informed and neglecting matters is actual injury under the disciplinary rules. *In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010). In the Peterman matter, Respondent’s client also suffered actual injury when he was removed as PR due to Respondent’s neglect.

In the Chandler, Myronenko and Peterman matters, Respondent caused harm to the justice system by repeatedly forcing court resources to be unnecessarily spent to address Respondent’s misconduct.

Finally, Respondent’s failure to respond to the Bar caused actual injury to the Bar and the legal profession. “The Bar’s work of administering the profession and protecting the public with a relatively small staff depends to a significant degree on the honesty and cooperation of the lawyers whom the Bar regulates.” *In re Wyllie*, 327 Or 175, 182, 957 P2d 1222 (1998); *see also In re Gastineau*, 317 Or 545, 558, 857 P.2d 136, 143 (1993) (Bar is prejudiced when a lawyer fails to cooperate because the Bar’s investigation takes more time than it should and the public’s respect for the Bar is diminished because the Bar cannot provide timely and informed responses to complaints).

Preliminary Sanction

The following ABA Standards apply in identifying an appropriate sanction:

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.” ABA Standard 4.42,

Suspension is generally appropriate when a lawyer violates a duty to the legal system and causes potentially serious interference with a legal proceeding. ABA Standard 6.22.

Suspension is generally appropriate when a lawyer violates 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.

Respondent’s misconduct merits at least a substantial suspension before we consider the question of aggravating and mitigating factors.

Aggravating and Mitigating Factors

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

1. 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 a 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 has demonstrated a pattern of neglect and failure to communicate with multiple clients over a number of years.
2. Multiple offenses. ABA Standard 9.22(d). We have found 18 rule violations.
3. Substantial experience in the practice of law. Standard 9.22(i). Respondent was admitted to the Bar in 2000.

In mitigation, the Bar acknowledges the following factors:

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 caring for ill family members during the time relevant to these charges that contributed to her lack of diligence.

Oregon Case Law.

Knowing neglect of client matters usually merits a suspension of at least 60 days. *See In re Knappenberger*, 337 Or 15, 32-33, 90 P3d 614 (2004) (60-day suspension is generally imposed

in a case involving neglect). The Bar, though, cites a number of cases where the facts warranted more than a 60-day suspension:

- *In re Lipetzky*, 31 DB Rptr 275 (2017) (6-month suspension by stipulation). 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.
- *In re Iversen II*, 27 DB Rptr 269 (2013) (1-year suspension). The attorney neglected his client's expungement matter for approximately five months, repeatedly misrepresented to the client that he was working on it, then knowingly failed to respond to the Bar's inquiries.
- *In re Jackson*, 347 Or 426, 223 P3d 387 (2009) (120-day suspension). The attorney was unprepared for a settlement conference held at his request, failed to send the arbitrator his calendar of available dates, failed to respond to messages from the arbitrator's office, and failed to take steps to pursue the arbitration after a second referral to arbitration by the court. The attorney also engaged in conduct prejudicial to the administration of justice and knowingly made false statements to the court.
- *In re Lopez*, 350 Or 192, 252 P3d 312 (2011) (9-month suspension). The attorney knowingly engaged in neglect and knowingly failed to communicate with his clients sufficiently across seven different matters. The attorney had a history of discipline, and his conduct resulted in economic harm.

In the present case there is a pattern of neglect covering multiple years and affecting multiple clients. Respondent failed to fulfill her duty to communicate sufficiently with her clients, prejudiced the administration of justice, and ignored her obligation to cooperate with SLAC. A suspension of more than 60 days is required here.

In addition, "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). Respondent's knowing refusal to respond to DCO or SLAC is further conduct that must be deterred in future cases. It is the type of behavior that poses a serious threat to the public.

The Bar argues that *In re Devers*, 317 Or 261, 855 P2d 617 (1993) should guide us here. In *Devers* the attorney committed eleven rule violations, which included three charges for neglect under RPC 1.3, one charge for failing to communicate under RPC 1.4(a), two charges for failing to cooperate with DCO under RPC 8.1(a)(2) and one charge for engaging in conduct prejudicial to the administration of justice under RPC 8.4(a)(4). We have found multiple violations of these same rules here.

Devers committed the violations with a knowing state of mind and caused actual injury to three separate clients. *Id* at 267. The injuries in *Devers* mostly stemmed from stress and

anxiety of the clients while their matters were not properly handled, but they also included some economic harm to at least one of the clients involving an excessive fee. The aggravating factors there outweighed the single mitigating factor. *Id.* The court imposed a six-month suspension.

Respondent here caused four clients stress and anxiety and caused one client to be removed as the PR in a probate matter. Like *Devers*, Respondent's aggravating factors outweigh the two in mitigation. The number of violations here and the consistent pattern of misconduct support a sanction of more than the six months imposed in *Devers*. We agree with the Bar that a one-year suspension is appropriate.

CONCLUSION

Sanctions in disciplinary matters are not intended to penalize the respondent 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, 830 P2d 206 (1992). To serve these purposes we order that Respondent be suspended for one year effective on the date this decision becomes final.

Respectfully submitted this 26th day of February 2025.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Lorena Reynolds

Lorena Reynolds, Attorney Panel Member

/s/ Sylvia Rasko

Sylvia Rasko, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)	
)	
RONALD L. SPERRY, Bar No. 091525)	Case Nos. 23-47, 23-87, 23-90 and 23-276
)	
Respondent.)	

Counsel for the Bar: Alison F. Wilkinson

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.3, RPC 3.4(c), RPC 8.1(a)(2), and RPC 8.4(a)(4). Stipulation for discipline. 6-month suspension, 3-months stayed, 2-year probation.

Effective Date of Order: June 1, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for six (6) months with all but three (3) months of the suspension stayed, pending Respondent’s successful completion of a two-year term of probation, effective June 1, 2025, or as otherwise directed by the Disciplinary Board, for violation of RPC 1.3, RPC 3.4(c), three counts of RPC 8.1(a)(2), and three counts of RPC 8.4(a)(4).

DATED this 4th day of March, 2025.

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

STIPULATION FOR DISCIPLINE

Ronald L. Sperry, 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(3).

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 21, 2009, and has been a member of the Bar continuously since that time, having his office and place of business in Douglas County, Oregon.

3.

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(8).

4.

On July 29, 2024, 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(c), three counts of RPC 8.1(a)(2), and three counts of RPC 8.4(a)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

Case No. 23-47 (Moyer)

5.

Brett Moyer (Moyer) retained Respondent to file an eviction case against his tenants, who were engaging in illegal drug activity and not paying rent. Respondent filed an eviction action against the tenants on April 7, 2022.

6.

An initial hearing for the case was set for April 21, 2022. Respondent failed to appear on time and missed the hearing. The action was dismissed due to Respondent's failure to appear.

7.

Respondent refiled the matter on April 25, 2022. However, Respondent filed based on the wrong cause of eviction, leading to the matter's voluntary dismissal.

8.

On June 7, 2022, Respondent refiled the eviction case to include the proper grounds for eviction. The initial appearance was scheduled for June 21, 2023; Respondent failed to appear and the case was dismissed.

9.

Respondent arranged to inspect the property with Moyer on July 8, 2022. However, Respondent failed to appear for the inspection.

10.

In February 2023, Disciplinary Counsel's Office (DCO) received a complaint from Moyer relating to Respondent's conduct. In letters dated March 14, 2023, April 11, 2023, and April 18, 2023, DCO sought information from Respondent relating to his representation of Moyer. Respondent received but did not respond to any of these inquiries.

11.

On April 20, 2023, the Bar petitioned for Respondent's suspension pursuant to BR 7.1 until he responded to the Bar's inquiries in this matter. On April 27, 2023, Respondent responded to DCO's BR 7.1 petition, and admitted he failed to respond previously.

12.

DCO requested additional information from Respondent regarding this grievance, by letters dated December 14, 2023, and January 26, 2024. Respondent received but did not respond to either of these inquiries.

13.

On February 9, 2024, the Bar petitioned for Respondent's suspension pursuant to BR 7.1 until he responded to the Bar's inquiries in this matter. On February 21, 2024, Respondent responded to DCO's BR 7.1 petition, and admitted he failed to respond previously.

Violations

14.

Respondent admits that by repeatedly failing to move Moyer's case forward in a timely manner, and by failing to appear for multiple court appearances, Respondent neglected a legal matter entrusted to him in violation of RPC 1.3, and engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4). Respondent further admits that by knowingly failing to respond to disciplinary inquiries, he violated RPC 8.1(a)(2).

Case No. 23-87 (Lane)

15.

In April 2023, DCO received a complaint from Respondent's client, Norma Lane (Lane). In letters dated May 11, 2023, and July 5, 2023, DCO sought information from Respondent relating to his representation of Lane. Respondent received but did not respond to any of these inquiries.

16.

On August 2, 2023, the Bar petitioned for Respondent's suspension pursuant to BR 7.1 until he responded to the Bar's inquiries in this matter. On August 11, 2023, Respondent responded to DCO's BR 7.1 petition, and admitted he failed to respond previously.

17.

DCO requested additional information from Respondent regarding this grievance, by letters dated November 30, 2023, and December 14, 2023. Respondent received but did not respond to either of these inquiries.

18.

On February 9, 2024, the Bar petitioned for Respondent's suspension pursuant to BR 7.1 until he responded to the Bar's inquiries in this matter. On February 21, 2024, Respondent responded to DCO's BR 7.1 petition, and admitted he failed to respond previously.

Violations

19.

Respondent admits that by failing to respond to disciplinary inquiries, Respondent violated RPC 8.1(a)(2).

Case No. 23-90 (West)

20.

On March 19, 2019, the court admitted the estate of Patricia Devenney to probate and appointed Respondent personal representative upon the nomination of Devenney's mortgage lender. The court ordered Respondent not to sell or abandon the property without court approval and to inform the court of any potential foreclosure.

21.

Respondent moved for court approval to sell the property that was subject to the mortgage on May 20, 2019. On July 15, 2019, the court sent Respondent a letter asking for

additional information about the sale of the property before ruling. Respondent received but did not respond to the letter.

22.

On November 29, 2019, Respondent submitted a final accounting to the court that indicated that the property was abandoned. On February 4, 2020, the court sent a letter to Respondent instructing him not to abandon the property and telling him to respond to the court within 14 days. Respondent received the letter but did not respond. The court sent two additional requests for a status update in July and August 2020. Respondent received these requests but did not respond.

23.

After a hearing on January 29, 2021, the court ordered Respondent to file an amended motion to abandon the property with additional and updated information by March 5, 2021. Respondent was aware of the court's order, but did not comply with it.

24.

On April 2, 2021, the court scheduled a show cause hearing to for April 23, 2021, to address Respondent's failure to file the amended motion. Respondent was aware of the hearing, but did not appear.

25.

On April 20, 2021, Respondent filed a motion to abandon the property. In this motion, Respondent also noted for the first time that the property was foreclosed on January 8, 2020, for a credit bid of \$244,491. The court denied the motion.

26.

In June 2021, one of Patricia Devenney's heirs, Robert West (West), filed an objection to the final accounting and a motion to disburse excess funds. The court held a hearing on the objection in November 2021. The court ordered Respondent to submit additional information regarding issues with the estate property by December 1, 2021. Respondent submitted information to the court, but the court found it to be inadequate. The court ultimately removed Respondent as personal representative in December 2022.

27.

In April 2023, DCO received a complaint from West relating to Respondent's conduct. In letters dated May 11, 2023, and July 5, 2023, DCO sought information from Respondent relating to this matter. Respondent did not respond substantively.

28.

On August 2, 2023, the Bar moved for Respondent's suspension pursuant to BR 7.1 until he responded to the Bar's inquiries in this matter. Respondent replied to the BR 7.1 petition on August 11, 2023, acknowledging that he did not timely respond to the Bar's investigation.

Violations

29.

Respondent admits that by failing to respond to numerous court inquiries, by failing to abide by court orders, by failing to attend the April 2021 hearing, by abandoning the estate's real property without court approval, and by failing to timely alert the court to the property's foreclosure, he knowingly disobeyed an obligation under the rules of a tribunal in violation of RPC 3.4(c), and engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4). Respondent further admits that by knowingly failing to respond to disciplinary inquiries, he violated RPC 8.1(a)(2).

Case No. 23-276 (Erwin)

30.

On June 25, 2018, the court admitted the intestate estate of Norma Janice Gabel (Gabel estate) to probate and appointed Respondent as personal representative upon the request of an estate creditor.

31.

On September 4, 2019, the court sent Respondent a notice informing him that the Gabel estate accounting was overdue and directing him to respond within 30 days. Respondent filed the accounting, disclosing that the decedent's home had been foreclosed upon on April 11, 2019.

32.

On August 31, 2020, the court sent a letter to Respondent informing him that his annual accounting was late and directing him to respond within 30 days. Respondent did not respond. On October 12, 2020, the court again informed Respondent that the accounting was overdue, and directed him to respond within 10 days. Respondent did not respond. After a show cause hearing, the court ordered that Respondent file the annual accounting within 14 days. Respondent filed the annual accounting approximately 20 days later.

33.

On March 3, 2021, the court sent a letter to Respondent requesting that he submit appropriate pleadings to admit the decedent's will – which was attached as an exhibit to the

annual accounting – or explain why it should not be admitted, within 30 days. Respondent did not respond. The court sent another letter to Respondent asking him to respond to the issue of the will within 10 days. Although Respondent responded stating that there was no reason why the will should be excluded, he did not take the appropriate steps to admit the will to probate. The court requested additional information regarding why Respondent had not sought to admit the will on June 30, 2021. Respondent did not respond.

34.

On August 31, 2021, the court informed Respondent that the third annual accounting was overdue and directed him to respond within 30 days. Respondent did not respond. On October 5, 2021, the court requested that he file the third annual accounting within 10 days. Respondent filed the final accounting on October 7, 2021, along with a copy of the decedent's will, and an amended final accounting on October 26, 2021.

35.

On February 22, 2022, the court approved the amended final accounting and directed that Respondent file receipts of the final distribution and move to close the estate. He did not do so. On May 31, 2022, the court sent Respondent a letter, asking why he had not yet closed the estate. Respondent did not respond. By letter dated July 5, 2022, the court again requested a response. Respondent responded with receipts for two of the three heirs, but not the third. He requested an order allowing him to distribute the remaining probate assets to the Department of State Lands. Because Respondent provided no basis for this proposed distribution, the court informed Respondent on October 20, 2022, that the proposed order must be resubmitted. Respondent did not do so, despite two additional requests from the court. The court removed Respondent as personal representative on April 21, 2023.

Violations

36.

Respondent admits that by failing to respond to numerous requests for information from the court, failing to timely file annual accountings, and failing to admit the decedent's will to probate for a substantial period of time, Respondent engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

Sanction

37.

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.

Moyer: By failing to attend to his client's matter in violation of RPC 1.3, Respondent violated ABA Standard 4.4.

By engaging in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4), Respondent violated ABA Standard 6.2.

By failing to respond to disciplinary inquiries in violation of RPC 8.1(a)(2), Respondent violated ABA Standard 7.0.

Lane: By failing to respond to disciplinary inquiries in violation of RPC 8.1(a)(2), Respondent violated ABA Standard 7.0.

West: By engaging in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4), and by knowingly disobeying an obligation of the tribunal, Respondent violated ABA Standard 6.2.

By failing to respond to disciplinary inquiries in violation of RPC 8.1(a)(2), Respondent violated ABA Standard 7.0.

Erwin: By engaging in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4), Respondent violated 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 substantially from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

Moyer: Respondent acted negligently with respect to failing to attend to Moyer's matter in a timely manner. Respondent acted knowingly by failing to attend two court hearings in Moyer's matter; he was aware of when the hearings were, but failed to attend.

Respondent acted knowingly in failing to respond to disciplinary inquiries in the Moyer matter. Respondent received DCO's inquiries and was aware he needed to respond, but did not.

Lane: Respondent acted knowingly in failing to respond to disciplinary inquiries in the Lane matter. Respondent received DCO's inquiries and was aware he needed to respond, but did not.

West: Respondent acted knowingly in failing to abide by obligations under the rules of the tribunal in the West matter. Respondent was given court orders and directives, both in writing and orally at hearings, which he disobeyed.

Respondent acted negligently by failing to appear at the show cause hearing in the West matter and knowingly by failing to respond to court inquiries on numerous occasions.

Respondent acted knowingly in failing to respond to disciplinary inquiries in the West matter. Respondent received DCO's inquiries and was aware he needed to respond, but did not.

Erwin: Respondent acted knowingly in failing to respond to repeated requests from the court for information in the Erwin matter and by failing to timely file annual accountings, and negligently in failing to properly submit the decedent's will to probate.

c) Injury.

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

Moyer: Respondent caused actual injury to Moyer, who experienced substantial delay in evicting his tenant due to Respondent's repeated inaction. Respondent caused actual injury to the court, which was required to dispose of three eviction matters due to Respondent's failure to appear and request the proper form of relief, causing a drain on court resources.

Respondent caused actual injury to the Bar and to the public by failing to respond to DCO inquiries. *See In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993) (the Bar is prejudiced when a lawyer fails to cooperate as it makes investigations more time-consuming, and public respect for the Bar is diminished because the Bar cannot provide timely and informed responses to complaints).

Lane: Respondent caused actual injury to the Bar and to the public by failing to respond to DCO inquiries. *See In re Gastineau*, 317 Or 545 at 558.

West: Respondent caused actual injury to the court in the form of wasted judicial resources by failing to abide by court directives and requests for information over a substantial period. This led to the scheduling of two show cause hearings, one of which Respondent failed to attend, leading to an additional drain on court resources.

Respondent caused actual injury to the Bar and to the public by failing to respond to DCO inquiries. See *In re Gastineau*, 317 Or 545 at 558.

Erwin: Respondent caused actual injury to the court in the form of wasted judicial resources by failing to provide information over a substantial period despite repeated requests by the court. This led to two show cause hearings, an additional drain on court resources.

d) Aggravating Circumstances.

Aggravating circumstances include:

1. Prior disciplinary offenses. ABA Standard 9.22(a). Respondent has one prior reprimand for an unrelated violation. 33 DB Rptr 288 (2019). In determining what weight to give to prior discipline, the following considerations apply: (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 offense in relation to the prior offense and resulting sanction. *In re Jones*, 326 Or 195, 201, 951 P2d 149 (1997).

Respondent's prior discipline resulted in a reprimand. The prior offense was not similar, involving violations of RPC 1.2(a) and RPC 1.4(a) and (b). Respondent had only one prior incident of discipline. This discipline occurred in 2019 based on conduct that occurred in 2015 to 2016, approximately ten years ago. Because the prior discipline resulted in the lowest form of discipline, and because it involved unrelated violations, the prior disciplinary offense should be given only some weight.

2. Multiple offenses. ABA Standard 9.22(d). Respondent violated four separate rules of professional conduct across four clients, and failed to respond to DCO inquiries.
3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to the Oregon Bar in 2009 and has been practicing since then.

e) Mitigating Circumstances.

Mitigating circumstances include:

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

2. Timely good faith effort to make restitution or rectify consequences of misconduct. ABA Standard 9.32(d). Respondent provided a full refund to Moyer and finalized his matter at no cost.
3. Remorse. ABA Standard 9.32(l). Respondent has shown significant remorse for his conduct and has taken concrete steps to prevent this conduct from recurring.

38.

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. ABA Standard 4.43. Suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. ABA Standard 4.42(b).

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.

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.

39.

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).

Prior Oregon cases indicate that a substantial period of suspension is appropriate for Respondent's cumulative misconduct where it involves neglect of a legal matter, disobeying court orders, failing to respond to the Bar's investigation, and engaging in conduct prejudicial to the administration of justice. There are no cases involving the exact same rule violations as those found in this matter, and the court has noted that in the context of disciplinary proceedings "case-matching is an inexact science." *In re Stauffer*, 327 Or at 70.

The presumption is that neglect of a client's legal matter results in a 60-day suspension. See *In re Redden*, 342 Or at 401-02 (court so concluded after reviewing similar cases). However, factors such as an imbalance of mitigating and aggravating factors, or the length of the neglect, can result in longer periods of suspension. *In re Knappenberger*, 337 Or 15, 32-33, 90 P3d 614 (2004) (noting that a 60-day suspension for neglect is generally appropriate, but imposing a 90-day suspension based on the facts of the case); *In re Worth*, 337 Or 167, 181, 92 P3d 721 (2004) (attorney who failed to move a client's case forward, despite several warnings from the court and a court directive to schedule arbitration by a date certain, was suspended for 120 days, where his neglect resulted in the court granting the opposing party's motion to dismiss). Because

the period of neglect in this matter was relatively confined, a downward deviation from the 60-day presumption is warranted.

Violations of RPC 3.4(c) warrant suspension. See *In re Slayton*, 36 DB Rptr 108 (2022) (stipulated 30-day suspension for violation of RPC 3.4(c)); *In re Chase*, 339 Or 452, 121 P3d 1160 (2005) (failure to comply with his own child support order resulting in finding of contempt warranted 30-day suspension).

Attorneys who engage in conduct prejudicial to the administration of justice by missing court hearings have also been suspended. *In re Carini*, 354 Or 47, 60, 308 P3d 197 (2013) (30-day suspension where Respondent engaged in conduct prejudicial to the administration of justice by repeatedly failing to appear at court hearings); *In re Jackson*, 347 Or at 445 (120-day suspension arising out of Respondent's representation of a client in a dissolution-of-marriage proceeding, where Respondent was not prepared for a settlement conference he had requested, failed to send his calendar of available dates to an arbitrator, failed to respond to messages from the arbitrator's office, and failed to take steps to pursue the arbitration after a second referral to arbitration by the court).

Respondent's failure to respond to the Bar is also a serious violation. A complete failure of response to discipline alone has been deemed to warrant suspensions of 60 days or more per violation. As the Disciplinary Board stated in *In re Spinney*:

[A suspension of 60-120 days] does not fulfill the purposes of attorney discipline. The rule requires full cooperation from a lawyer subject to a disciplinary investigation. We follow the guidance of the court in not tolerating violations of this rule. 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. . . . 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.

In re Spinney, 36 DB Rptr 274 (2022) (imposing one-year suspension). See also *In re Miles*, 324 Or at 225 (120-day suspension for two violations of predecessor to RPC 8.1(a)(2)).

Respondent repeatedly failed to respond to DCO in the investigatory phase of its investigation. However, Respondent has been responsive to DCO and complete in his responses in the litigation phase of his matters.

Taken collectively, Respondent's conduct would warrant a suspension of at least six months. However, Respondent has shown genuine remorse and has taken significant steps to avoid future unethical conduct. The steps that he has taken include no longer taking cases in which he is appointed as personal representative; meeting regularly with support staff; having clear calendaring guidelines; and meeting with a mental health professional. Since implementing

these steps, DCO has received no further complaints against Respondent. Because of Respondent's significant steps toward improving his practice and preventing future misconduct, the Bar believes a suspension of six months, all but three months stayed pending a successful two-year period of probation, is appropriate.

40.

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.

41.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for six (6) months for violations of RPC 1.3, RPC 3.4(c), three counts of RPC 8.1(a)(2), and three counts of RPC 8.4(a)(4), with all but three (3) months of the suspension stayed, pending Respondent's successful completion of a two-year term of probation. The sanction shall be effective June 1, 2025, or as otherwise directed by the Disciplinary Board ("effective date").

42.

Respondent's license to practice law shall be suspended for a period of three (3) months beginning on the effective date, or as otherwise directed by the Disciplinary Board ("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.

43.

Probation shall commence upon the date Respondent is reinstated to active membership status (the "reinstatement date") and shall continue for a period of two (2) years, ending on the day prior to the two-year anniversary of the reinstatement date (the "period of probation"). During the period of probation, Respondent shall abide by the following conditions:

- (a) Respondent will communicate with (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) During the period of probation, Respondent shall attend not less than six (6) MCLE accredited programs, for a total of twelve (12) hours, which shall emphasize law practice management, and time management. 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 towards the 12 hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of his period of probation, Respondent shall submit a Declaration of Compliance to DCO.
- (d) Throughout the period of probation, Respondent shall diligently attend to client matters and adequately communicate with clients regarding their cases.
- (e) Each month during the period of probation, Respondent shall review all client files to ensure that he is timely attending to the clients' matters and that he is maintaining adequate communication with clients, the court, and opposing counsel.
- (f) James Forrester 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 month.
- (g) 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.
- (h) Beginning with the first month of the period of probation, Respondent shall meet with Supervisor in person at least once a month for the purpose of:
 - (1) Allowing his 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.

- (i) Respondent authorizes his Supervisor to communicate with DCO regarding his compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Respondent's compliance.
- (j) 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.
- (k) Respondent shall attend the appointment with the PLF's Practice Management Attorneys and seek advice and assistance regarding procedures for diligently pursuing client matters and managing a client caseload. No later than thirty (30) days after recommendations are made by the PLF's Practice Management Attorneys, Respondent shall adopt and implement those recommendations.
- (l) 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 recommendation he has not implemented and explaining why he has not adopted and implemented those recommendations.
- (m) Respondent shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with PLF Practice Management Attorneys within approximately six (6) months after the first meeting .
- (n) On a quarterly basis, on dates to be established by DCO beginning no later than 90 days after his reinstatement to active membership status, Respondent shall submit to DCO a written "Compliance Report," approved as to substance by his 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 his 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 his 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.
- (o) Respondent is responsible for any costs required under the terms of this stipulation and the terms of probation.
 - (p) A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to DCO on or before its due date.
 - (q) 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 his Supervisor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.
 - (r) 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.
 - (s) Upon the filing of a petition to revoke Respondent's probation pursuant to BR 6.2(4), Respondent's remaining probationary term shall be automatically tolled and shall remain tolled, until the BR 6.2(4) petition is adjudicated by the Adjudicator or, if appointed, the Disciplinary Board.

44.

In addition, on or before the date Respondent is reinstated to active practice, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$1,077.30, incurred for personal service of the formal complaint and deposition costs. Should Respondent fail to pay \$1,077.30 in full by the date he is reinstated to active practice, 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.

45.

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 Randy Rubin (family law matters), 766 SE Kane Street, Roseburg, OR 97470, and Dan McKinney (non family law matters), 435 SE Kane Street, P.O. Box 1265, Roseburg, OR 97470, active members 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 actual suspension. Respondent represents that Randy Rubin and Dan McKinney have agreed to accept this responsibility.

46.

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.

47.

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.

48.

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.

49.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on February 2, 2025. 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 March, 2025.

/s/ Ronald L. Sperry
Ronald L. Sperry, OSB No. 091525

Cite as *In re Sperry*, 39 DB Rptr 60 (2025)

APPROVED AS TO FORM AND CONTENT:

/s/ James Forrester
James Forrester, OSB No. 060604

EXECUTED this 3rd day of March, 2025.

OREGON STATE BAR

By: /s/ Alison F. Wilkinson
Alison F. Wilkinson, OSB No. 096799
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
JOSEPH M. DOMINGO, Bar No. 030943) Case No. 24-184
)
Respondent.)

Counsel for the Bar: Susan R. Cournoyer

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator

Disposition: Violation of RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2).
Stipulation for discipline. 60-day suspension.

Effective Date of Order: March 15, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Joseph M. Domingo (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 March 15, 2025, for violation of RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2).

DATED this 6th day of March, 2025.

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

STIPULATION FOR DISCIPLINE

Joseph M. Domingo, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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, 2003, 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(8).

4.

On January 25, 2025, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Respondent represented Client on a personal injury claim that settled on December 8, 2023. On or about December 12, 2023, Respondent received a settlement check for \$15,250 representing the settlement proceeds. Respondent deposited the check into his trust account on December 15, 2023, and collected his fee and cost reimbursement totaling \$4,037.50 on December 26, 2023.

6.

Under Oregon's Payee Notification Law, the insurer's counsel had notified Client on December 12, 2023, that he was sending the settlement check to Respondent. Thereafter, throughout March – July 2024, Client asked Respondent multiple times for the status of her settlement disbursement by text messages, phone calls, and email. Respondent did not respond except to send one text message response in April 2024, apologizing for his delay and stating that he would process the disbursement soon. Finally, upon receiving notice that Client had made a

Bar complaint about his conduct, Respondent disbursed Client's net proceeds to her and provided an accounting of her funds on July 23, 2024.

7.

By letter dated July 25, 2024, the Bar's Disciplinary Counsel's Office (DCO) asked Respondent to address Client's Bar complaint by August 15, 2024, which deadline was extended at Respondent's request to September 15, 2024. Respondent did not respond. On September 19, 2024, DCO again requested his response, by September 26, 2024, but Respondent did not respond.

8.

Based on Respondent's failure to respond, DCO petitioned for Respondent's administrative suspension under BR 7.1 on October 10, 2024. The Disciplinary Board Adjudicator administratively suspended Respondent on October 30, 2024. Respondent responded to DCO's requests for information on December 9, 2024.

Violations

9.

Respondent admits that: by failing to promptly comply with Client's reasonable requests for information about her settlement funds disbursement, he violated RPC 1.4(a); by failing to promptly deliver to Client the funds in his possession that Client was entitled to receive and to promptly render a full accounting of the funds, he violated RPC 1.15-1(d); and by knowingly failing to respond to a lawful demand for information from DCO, he violated RPC 8.1(a)(2).

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 duties owed to his client to act with diligence in communication and to handle client property appropriately. He violated his duty to the profession to maintain its integrity. ABA Standards at 9.
- 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 knowingly when he failed to respond to Client’s requests for information, distribute her settlement proceeds promptly, and respond to DCO’s inquiries.

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the Disciplinary Board may take into account both actual and potential injury. ABA Standards at 6; *In re Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

Client experienced actual injury in that she was denied the use of her settlement funds for over six months after Respondent received them. Moreover, an attorney’s repeated failure to respond to a client’s requests for information causes injury to the clients measured in terms of time, anxiety, and aggravation in attempting to coax cooperation from the lawyer. *In re Koch*, 345 Or 444, 456, 198 P3d 910 (2008). *See also, In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010) (“Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules”).

The legal system suffers injury when a lawyer fails to respond to the Bar in that the Bar unnecessarily expends resources seeking to obtain the information. *In re Koch, supra*, 345 Or at 45.

- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. Multiple offenses. ABA Standard 9.22(d). Respondent violated rules involving communication with clients, handling client property, and cooperation with Bar investigations.
 2. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice in Oregon in 2003.
- 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). There is no evidence that Respondent acted with an intention to conceal bad acts (such as conversion of client property).
 3. Personal or emotional problems. ABA Standard 9.32(c). Respondent cites difficulties in his personal life that impaired his ability to respond to Client’s inquiries or attend to the disbursement of her funds.

4. Remorse. ABA Standard 9.32(I). Respondent has taken responsibility for his conduct, expressed remorse, and apologized.

11.

Under the ABA Standards:

Suspension is generally appropriate when a lawyer knowingly engages in a pattern of neglect (failure to communicate) and causes injury or potential injury to a client. ABA Standard 4.42(b);

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; and

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 the legal system. ABA Standard 7.2.

12.

Oregon cases reach a similar 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).

The Oregon Supreme Court typically imposes a term of suspension of at least 30 days for failures to communicate. *In re Gatti*, 356 Or 32, 57, 333 P3d 994 (2014) (“[A] finding that a lawyer has failed to adequately explain a legal matter to a client under RPC 1.4(b), without more . . . justifies a 30-day suspension.”); *In re Snyder*, 348 Or 307, 324, 232 P3d 952 (2010) (attorney suspended for 30 days because, among other violations, he failed to provide his client any status updates or other information needed to make informed decisions about the case for an eight-month period).

A 30-day suspension is also common for failure to promptly deliver client property. *In re Ledesma*, 35 DB Rptr 188 (2021) (trial panel suspended Respondent for 30 days for violations of RPC 1.15-1(d) and RPC 1.16(d)); *In re Grimes*, 33 DB Rptr 332 (2019) (stipulated 30-day suspension for violations of RPC 1.15-1(d) and RPC 1.16(a)(3)). *Snyder* also involved a violation of RPC 1.15-1(d), because the lawyer failed to return client file, including medical records, until after the statute of limitations passed. While the court noted that violations of RPC 1.4 and RPC 1.15-1(d) could justify a total 60-day suspension, it reduced the suspension to 30 days because the lawyer’s mitigating factors outweighed the aggravating factors. The *Snyder* mitigating and aggravating factors are the same ones present here, except that the lawyer also cooperated with the Bar investigation.

A 60-day suspension is generally the lower limit for an attorney's failure to cooperate with the Bar. See, *In re Miles*, 324 Or 218, 225, 923 P2d 1219 (1996) (120-day suspension for two violations of former DR 1-103(C) (predecessor to RPC 8.1(a)(2)). The attorney in *Miles* never responded to the Bar and was eventually defaulted in the subsequent prosecution. Respondent eventually responded in full to the Bar's inquiries.

While Respondent's conduct justifies suspension, his violations were not aggravated or extreme examples. He eventually cooperated with DCO, and his lack of communication with Client did not occur during a time in which her position in the underlying legal matter was at risk of prejudice. His delay in delivering her funds did not result in her claim being time-barred or other prejudice.

13.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violation of RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2), the sanction to become effective March 15, 2025.

14.

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 represents that he has no active client matters that would require him to arrange for an active Bar member to either take possession of or have ongoing access to Respondent's client files or to serve as a contact person for clients in need of the files during the term of his suspension.

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.

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: None.

18.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 25, 2025. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 4th day of March, 2025.

/s/ Joseph M. Domingo

Joseph M. Domingo, OSB No. 030943

EXECUTED this 4th day of March, 2025.

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)
)
CHARLES ALLEN KOVAS, Bar No. 071391) Case Nos. 23-318 and 23-333
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.3 and RPC 1.4(a). Stipulation for Discipline. 60-day suspension, all stayed, 2-year probation.

Effective Date of Order: March 11, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Charles Allen Kovas (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, with all of the suspension stayed pending successful completion of a two-year probation, the terms of which are set forth in the Stipulation for Discipline, for violation of RPC 1.3 and two counts of RPC 1.4(a). This sanction, including the probationary term, shall commence immediately upon the signing of this order by the Adjudicator.

DATED this 11th day of March 2025.

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

STIPULATION FOR DISCIPLINE

Charles Allen Kovas, 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 9, 2007, 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 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 June 8, 2024, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.3 and two counts of RPC 1.4(a) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Case No. 23-318 - Gibson Matter

Client CG (CG) hired Respondent in September 2022 to initiate an FED action against tenants living in a space at a recreational vehicle park. Respondent prosecuted the FED proceeding and the court issued a judgment of restitution on October 25, 2022, stating October 29, 2022, as the date of possession. CG and the tenants agreed that the tenants could stay on the premises until November 14, 2022.

6.

When the tenants failed to vacate as agreed, Respondent obtained a Notice of Restitution (NOR) from the court administrator. CG and the tenants then agreed to a new delayed move-out deadline, and the tenants again failed to comply. Respondent obtained an amended NOR from the court administrator in December 2022. The amended NOR stated a December 27, 2022, move-out deadline.

7.

Pursuant to ORS 105.151(1)(b), if a tenant remains on premises after the deadline cited in the NOR, a landlord may seek from the court clerk a writ of execution (writ) directing the sheriff to enforce the judgment by removing the tenant and returning possession of the premises to the landlord. Unless the judgment of restitution otherwise provides, the clerk may not issue a NOR or writ more than 60 days after the judgment is entered or after any date for possession specified in the judgment, whichever is later. ORS 105.159(3). Here, the 60-day deadline to complete the enforcement process was December 28, 2022.

8.

The tenant did not move by December 27, 2022. Respondent then attempted to file for the writ, but the court clerk rejected it because more than 60 days had passed since the October 29, 2022, possession date stated in the judgment of restitution.

9.

On December 29, 2022, CG emailed Respondent, “Will the sheriff remove [tenants] from the property?” Respondent did not respond to this inquiry, or to four more emails from CG inquiring about the status sent December 30, 2022, January 1, 2023, January 11, 2023, and January 17, 2023. Respondent did not inform CG until late January 2023 that the judgment of restitution could not be executed after December 28, 2022. CG terminated the representation and filed a new FED action. The tenant remained on the property for another six months.

10.

Case No. 23-333 – Ansari Matter

Client HA (HA) hired Respondent in April 2023 to initiate an FED action against her tenants. Respondent filed an FED action on June 6, 2023, and on June 13, 2023, HA agreed to the tenants’ request (through their counsel) to remove the action from justice court to circuit court. Respondent’s legal assistant filed the action in circuit court on June 16, 2023, and shortly thereafter took unplanned medical leave.

11.

The FED action was set for a first appearance on June 27, 2023. Respondent was not aware of the setting, and neither he nor HA appeared. Based on the failure to appear, the court dismissed HA’s action with prejudice and awarded attorney fees and costs to the tenants. Tenants’ counsel served Respondent with a petition for attorney fees and costs by email on July 12, 2023, but Respondent did not respond. The court awarded the tenants a judgment against HA for \$3,694.

12.

Between June 13 and August 11, 2023, HA emailed Respondent seven times and called him four times for a status update on the case, but Respondent responded only once, in mid-July 2023, when he answered the phone and informed HA that he had filed the case in circuit court and promised to send her copies of the pleadings. She received no further communication, despite her follow-up emails requesting an update and explaining that she was facing increasing pressure from her mortgage company after her tenants had ceased paying rent.

13.

HA learned on August 10, 2023, that her case had been dismissed and the court had awarded her tenants a judgment against her when she received a demand to pay the judgment. She terminated Respondent's representation on August 11, 2023.

14.

Respondent maintains that he was not aware of the June 27, 2023, FED first appearance setting, and therefore did not notify Ansari or appear at it himself; that he was not aware that the court had dismissed Ansari's case with prejudice at that hearing; or that defendants had filed a petition for attorney fees.

15.

In addition to his legal assistant's medical leave, Respondent's practice was disrupted during this period by his residential relocation in June and July 2023 due to his March 2023 marital dissolution.

Violations

16.

Respondent admits that, by failing to respond to CG's inquiries during the period in which the judgment of restitution became unenforceable, he failed to keep his client reasonably informed about the status of the case or respond to his client's reasonable requests for information, in violation of RPC 1.4(a). Respondent further admits that he neglected HA's legal matter and failed to keep her reasonably informed about the status of her case or respond to her reasonable requests for information, in violation of RPC 1.3 and RPC 1.4(a).

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.** In both matters, Respondent violated his duty to his clients by failing to communicate in a timely and effective manner. ABA Standard 4.4. In HA's case, Respondent also violated his duty to his client by failing to diligently attend to her matter. 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 acted with knowledge in failing to communicate with both CG and HA. He acted negligently in failing to ascertain the status of HA's action after it was filed in circuit court.

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the Disciplinary Board may take into account both actual and potential injury. ABA Standards at 6; *In re Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

Both CG and HA experienced actual injury due to Respondent's misconduct. HA was subject to a judgment for attorney fees and costs, and her FED action was dismissed as a result of Respondent failing to ascertain that the first appearance had been set and that they were required to attend. CG was also injured, in that he did not realize for over one month after the eviction judgment had become stale that he needed to start over again with a new FED action. Finally, client uncertainty, anxiety, and aggravation are considered actual injuries for purposes of sanction analysis. *In re Keller*, 369 Or 410, 417, 506 P3d 1101 (2002), *citing*, *In re Obert*, 352 Or 231, 260, 282 P3d 825 (2012) (*Obert II*); *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). Respondent engaged in misconduct in two clients' cases.
 2. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice in 2007.

- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Personal or emotional problems. ABA Standard 9.32(c). During the relevant period, Respondent experienced distraction and emotional upheaval due to divorce and the related relocation of his residence. His legal assistant's unplanned medical leave further interfered with his ability to monitor his cases and client communications.
 2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Respondent has been forthright in his communications with the Bar. ABA Standard 9.32(e).
 3. Imposition of other penalties or sanctions. ABA Standard 9.32(k). Although not a penalty *per se*, Respondent was sued for fees by CG, and HA made a PLF claim against him. Respondent paid CG's company \$8,500.
 4. Remorse. ABA Standard 9.32(l). Respondent has expressed regret and apology for his mishandling of both cases. As a result of these matters, Respondent has implemented new tracking systems and reminders to ensure that clients are aware of statutory deadlines.

18.

Under the ABA Standards, absent aggravating or mitigating circumstances, suspension is generally appropriate when an attorney knowing fails to act with diligence in representing a client. ABA Standard 4.42.

Oregon cases reach a similar 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).

Neglect of a client's legal matter presumptively results in a 60-day suspension. See *In re Redden*, 342 Or 393, 401, 153 P3d 113 (2007) (court so concluded after reviewing similar cases). Similar sanctions have been imposed in cases involving neglect and failure to communicate. *In re Knappenberger*, 337 Or 15, 90 P3d 614 (2004) (noting that a 60-day suspension for neglect, including failing to adequately communicate with clients, is generally appropriate, but imposing a 90-day suspension based on the facts of the case); *In re LeBahn*, 335 Or 357, 67 P3d 381 (2003) (imposing 60-day suspension where attorney filed lawsuit on last day before statute of limitations ran, failed to effect timely service, which caused the court to dismiss the case, and then failed to inform his client of the dismissal for more than a year); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (imposing 60-day suspension for failing to respond to communications from clients and opposing lawyer, failing to respond to discovery requests, and failing to inform the clients of their scheduled depositions, a motion for sanctions, and an arbitration hearing).

Oregon case law supports a 30-day suspension for violations of 1.4. *In re Schlesinger*, 32 DB Rptr 198 (2018) (attorney failed to abide by the client's objectives when he made an unauthorized settlement offer and failed to communicate adequately with client and disclose conflict, resulting in 30-day suspension); *In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (attorney's failure to respond to his personal injury client's status inquiries, failure to inform the client of communications with the adverse party and with the client's own insurer, and failure to explain the strategy attorney decided upon regarding settlement negotiations, were not just poor client relations; attorney was suspended for 30 days because he kept from the client precisely the kind of information that the client needed to know to make informed decisions about the case); *In re Franklin*, 26 DB Rptr 122 (2012) (30-day suspension when attorney failed to contact designated mediator or follow through on mediation then failed to secure an abatement agreement tolling the statute of limitations, resulting in dismissal of client's case).

Thus, while Respondent's neglect in one case and failures to communicate in two cases warrant a 60-day suspension, the unique circumstances he faced at the time – his divorce, relocation, and his legal assistant's unplanned medical leave – suggest that the misconduct likely will not be repeated.

19.

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.

20.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violations of RPC 1.3 and RPC 1.4(a), with the full suspension stayed, pending Respondent's successful completion of a two-year term of probation. The sanction shall be effective immediately upon approval by the Disciplinary Board, or as otherwise directed by the Disciplinary Board (effective date).

21.

Probation shall commence upon the effective date and shall continue for a period of two years, ending on the day prior to the two-year anniversary of the effective date (probation period). During the probation period, 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. During the probation period, Respondent shall attend at least two (2) MCLE accredited programs, for a total of twelve (12) hours, which shall emphasize law practice management. 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 hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of the probation period, Respondent shall submit a Declaration of Compliance to DCO.
- d. Throughout the probation period, Respondent shall diligently attend to client matters and maintain reasonable communication with clients regarding their cases.
- e. Each month during the probation period, Respondent shall review all client files to ensure that he is timely attending to the clients' matters and that he is maintaining adequate communication with clients, the court, and opposing counsel.
- f. Jane Marie Claus shall serve as Respondent's probation supervisor (Supervisor). Respondent shall cooperate and comply with all reasonable requests made by Supervisor that Supervisor, in her sole discretion, determines are designed to achieve the purpose of the probation and the protection of Respondent's clients, the profession, the legal system, and the public. Respondent agrees that, if Supervisor ceases to be Supervisor for any reason, Respondent will immediately notify DCO and engage a new Supervisor, approved by DCO, within one month.
- g. Respondent and Supervisor agree and understand that Supervisor is providing her services voluntarily and cannot accept payment for providing supervision pursuant to this Stipulation for Discipline.
- h. Beginning with the first month of the probation period, Respondent shall meet with Supervisor in person at least quarterly for the purpose of allowing Supervisor to review the status of Respondent's law practice and his performance of legal services on the behalf of clients. Each quarter during the probation period, 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.
- i. 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.

- j. Within seven (7) days of the effective date, Respondent shall contact the Professional Liability Fund (PLF) and schedule an appointment on the soonest date available to consult with a PLF Practice Management Attorney (PMA) to obtain practice management advice. Respondent shall notify DCO of the time and date of the appointment.
- k. Respondent shall attend the appointment with the PMA and seek advice and assistance regarding procedures for diligently pursuing client matters, communicating with clients, and effectively managing a litigation caseload. No later than thirty (30) days after recommendations are made by the PMA, Respondent shall adopt and implement those recommendations.
- l. No later than sixty (60) days after recommendations are made by the PMA, Respondent shall provide a copy of an Office Practice Assessment from the PMA and file a report with DCO stating the date of his consultation(s) with the PMA; identifying the recommendations that he has adopted and implemented; and identifying the specific recommendations he has not implemented and explaining why he has not implemented those recommendations.
- m. Respondent shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with a PMA approximately six months after his first meeting.
- n. On a quarterly basis, on dates to be established by DCO beginning no later than 90 days after the effective date, Respondent shall submit to DCO a written "Compliance Report," approved as to substance by Supervisor, advising whether Respondent is in compliance with the terms of this Stipulation for Discipline, including:
 - 1. The dates and purpose of Respondent's meetings with Supervisor.
 - 2. The number of Respondent's active cases and percentage reviewed in the quarterly audit with Supervisor and the results thereof.
 - 3. 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.
- o. Respondent is responsible for any costs required under the terms of this stipulation and the terms of probation.
- p. 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.

- q. A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to DCO on or before its due date.
- r. The SPRB's decision to bring a formal complaint against Respondent for unethical conduct that occurred or continued during the probation period shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.
- s. 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.

22.

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 any term of his suspension, if any stayed period of suspension is actually imposed. In this regard, if any stayed period of suspension is actually imposed Respondent has arranged for Damon J. Petticord, 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 actual suspension. Respondent represents that Mr. Petticord has agreed to accept this responsibility.

23.

Respondent acknowledges that reinstatement is not automatic on expiration of any period of suspension, if any stayed period of suspension is actually imposed. If a period of suspension is necessitated by his non-compliance with the terms of his probation, he will be required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Respondent also acknowledges that, should a suspension occur, he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

24.

Respondent acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement, if a suspension is imposed. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

25.

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.

26.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 8, 2024. 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 7th day of March 2025.

/s/ Charles Allen Kovas
Charles Allen Kovas, OSB No. 071391

EXECUTED this 7th day of March 2025.

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)
)
NIC SCHAEFER (KNA)
N. SHEPHERD), Bar No. 151476) Case No. 22-61
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: Amber Bevacqua-Lynott

Disciplinary Board: Mark A. Turner, Adjudicator
Erin Lufkin
Marian Taloi, Public Member

Disposition: Violation of RPC 1.2(a), RPC 1.4(b), RPC 1.5(c)(3), and
RPC 1.15-1(c). Trial Panel Opinion. 60-day suspension.

Effective Date of Opinion: April 15, 2025

TRIAL PANEL OPINION

The Oregon State Bar (Bar) asks us to suspend Nic Schaefer for 30 to 60 days for failure to consult with a client about a critical decision in the client’s case. She is also charged with using a deficient fee agreement in the engagement and improperly handling the client’s fee payments. As explained below, we unanimously find that Respondent violated four Oregon Rules of Professional Conduct (RPCs) as alleged in the formal complaint. By a 2-1 decision we order a 60-day suspension.

Although Respondent initially defended this action, she later decided to withdraw her defense and asked that an order of default be entered against her. She made this decision with the assistance of counsel. Her request was granted. When a respondent is in default the Bar’s factual allegations in the complaint are deemed true. BR 5.8(a); *In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004). Our role as the trial panel is to first determine whether the facts alleged constitute the charged disciplinary rule violations. If we conclude they do, we then determine what sanction is appropriate. *See In re Koch*, 345 Or 444, 446, 198 P3d 910 (2008); *see also In re Kluge*, 332 Or 251, 253, 27 P3d 102 (2001).

PROCEDURAL POSTURE

On January 23, 2024, the Bar filed a formal complaint against Respondent. On February 6, 2024, Respondent accepted service of the complaint and notice to answer. On February 20, 2024, Respondent filed an answer. Trial was scheduled to begin on December 3, 2024.

On September 9, 2024, Respondent filed a “Notice of Withdrawal of Answer to the Formal Complaint” in which she stated that she consented to the entry of an order of default. The Bar filed a motion to that effect on September 17, 2024. The motion was granted on September 23, 2024

Along with her Notice of Withdrawal of Answer Respondent submitted a document entitled “Declaration of Nicole Schaefer in Support of Notice of Withdrawal of Answer and For Use in Consideration of Violations and Sanction” (Respondent’s Declaration). The Bar moved to strike Respondent’s Declaration on September 17, 2024. That motion was denied by order dated September 23, 2024. In the order the Adjudicator stated that the trial panel “will advise the parties in the trial panel opinion whether we considered Respondent’s Declaration in making our decision.”

As noted above, in a default case we are bound to accept the allegations in the complaint as true and assess whether they support the charges alleged. To the extent that Respondent’s Declaration offers “facts” for us to consider in determining culpability they have been ignored. The discussion below regarding the alleged violations is based on the facts in the formal complaint.

This is especially true with regard to the Declaration of Emil J. Ali (the Ali Declaration) that was attached as Exhibit A to Respondent’s Declaration. The Ali Declaration contains a detailed description regarding United States Patent and Trademark Office (USPTO) practice. The bulk of the Ali Declaration is directed to whether Respondent made misrepresentations to the USPTO that would support a finding that RPC 8.4(a)(2) (making a materially false or misleading statement) was violated. The Bar did not charge Respondent with violating that rule. The Ali Declaration is thus irrelevant to the charges before us and has not been considered in our analysis.

When we consider the question of the appropriate sanction in a default case BR 5.8(a) allows us, in our sole discretion, to consider “evidence or legal authority limited to the issue of sanction.” To the extent that Respondent’s Declaration contains “evidence” relevant to the question of the appropriate sanction it is referenced in the following discussion.

FACTS ALLEGED IN THE FORMAL COMPLAINT

Jessi Dall (Dall) operated a tutoring business under the name Advantage Tutoring. She had used that name for more than a decade. On May 4, 2021, Dall retained Respondent to seek trademark protection for a different name, Sophos Tutoring, that Dall wanted to use to rebrand her business. Dall agreed to pay Respondent \$2,399 for the engagement.

Respondent gave Dall a written fee agreement (the agreement) that described the \$2,399 payment as “considered earned in its entirety when the Firm initiates representation of Client and will not be refunded once the intake process has commenced, even if Client ultimately decides not to file a trademark or copyright application. If Client ultimately decides not to file a trademark or copyright application, only government filing fees that have been paid by Client to Firm will be refunded.” The agreement did not tell Dall that the \$2,399 would not be deposited into Respondent’s trust account or that she could discharge Respondent at any time and could be entitled to a refund of all or part of the fee if the services for which the fee was paid were not completed. Dall paid the \$2,399. Respondent did not deposit the funds into her trust account.

Respondent planned to file a trademark application on Dall’s behalf with the USPTO. In a trademark application, the USPTO requires the applicant to assert a basis for the mark. The two most common types distinguish between whether the applicant has actually used the mark in commerce or whether the applicant intends to use the mark in commerce at a future time. The USPTO warns that registration is subject to cancellation for any inaccuracies in filings.

Respondent and Dall discussed the basis to assert in the trademark application. Dall told Respondent on May 19, 2021, that Dall had “nothing with Sophos on it” because she wanted to make sure the name “gets approved before I completely rebrand my company (which has been going by a different name for over a decade).” After learning this Respondent recommended filing the trademark application under an “intent to use” basis to give Dall six months to begin using the name Sophos Tutoring in trade.

Eight days later, on May 27, 2021, Respondent had a videoconference with Dall and Dall’s business coach, Paul Kuthe (Kuthe). In that meeting Respondent discussed filing the application on the basis that the mark was “in use” in commerce and submitting a business card with the name Sophos Tutoring as valid proof.

On June 1, 2021, Dall asked Respondent to schedule a phone call to discuss filing the trademark application under the basis of “intent to use.” Dall was concerned about representing in the application that the mark was in actual use. Respondent said she was not available for a call until June 13, 2021.

On June 3, 2021, Kuthe emailed Respondent and Dall an image of a business card with the name Sophos Tutoring. Dall did not respond to the email, nor did Respondent respond to either Dall or Kuthe about the email.

On June 7, 2021, Respondent filed the trademark application without first speaking with Dall or providing her with a copy of the application before it was filed. Respondent did not discuss with Dall that the application asserted an “in use” basis for the trademark. Respondent uploaded the business card image provided by Kuthe as a specimen. Respondent subsequently told Dall by email that she had filed the trademark application but did not otherwise speak with Dall.

On June 13, 2021, during a phone call Dall asked that Respondent change the trademark application to reflect a basis of “intent to use” the mark in commerce. Dall also expressed concern

about Respondent continuing to represent her, and Respondent said she intended to withdraw from the representation. A month later, on July 13, 2021, Respondent filed a notice of withdrawal with the USPTO.

Dall hired new counsel who filed an amendment to the trademark application reflecting a change to the filing basis indicating an “intent to use” the mark Sophos Tutoring.

CHARGED VIOLATIONS

RPC 1.2(a): Failure to consult the client in pursuit of the client’s objectives

RPC 1.2(a) states:

“Subject to paragraphs (b) and (c), a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. ...”

RPC 1.4(b): Failure to communicate to permit the client to make informed decisions

RPC 1.4(b) states:

“A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

Respondent failed to ensure that Dall understood that she intended to file the application asserting that the mark was in use and Respondent failed to obtain Dall’s consent to make this representation to the USPTO.

Respondent initially told Dall that she should file the application on an “intent to use” basis. Respondent then changed her position and advised Dall to file on an “in use” basis. Dall told her on June 1, 2021, that she had reservations about claiming that the mark was actually in use, and she asked that Respondent discuss the matter with her before filing the application. Respondent told Dall she was not available to discuss the issue until June 13, yet she went ahead and filed the application on June 7 on an in-use basis. Respondent ignored her client’s concerns and filed the application without any further discussion.

RPC 1.2(a) required Respondent to consult with her client before filing the application. There were real consequences for Dall’s trademark application if the USPTO determined that the application contained inaccuracies. Dall told Respondent about her reservations about the application and that she needed to speak with Respondent about those concerns. At this point Respondent was neither expressly nor impliedly authorized to file the application without further consultation and approval from Dall. We find that her failure to do so violated RPC 1.2(a).

This failure to communicate with Dall about her concerns regarding the basis that would be asserted for registration also violated RPC 1.4(b). The Bar cites a number of cases where lawyers violated RPC 1.4(b) by failing to explain critical information in a variety of circumstances. See, *In re Snyder*, 348 Or 307, 315-16, 232 P3d 952 (2010) (violation of RPC 1.4(b) when lawyer failed to properly inform a client about the risks and weaknesses in the client’s civil case); *In re Gatti*, 356 Or 32, 51-52, 333 P3d 994 (2014) (lawyer’s failure to accurately convey information to clients regarding how a settlement would be allocated violated RPC 1.4(b)); *In re Bertoni*, 363 Or 614, 633, 426 P3d 64 (2018) (lawyer violated RPC 1.4(b) by providing inaccurate or incomplete information to the client regarding how work on the client’s cases would be handled or what the client’s financial obligations would be).

Respondent had a duty to ensure that Dall’s concerns about the application were addressed before filing it. Failing to do so deprived Dall of her right to make an informed decision about how to proceed. We find that Respondent also violated RPC 1.4(b).

RPC 1.5(c)(3): Charging or collecting a fee denominated as earned on receipt without written fee agreement with required disclosures

RPC 1.5(c)(3) provides:

“A lawyer shall not enter into an arrangement for, charge or collect ... a fee denominated as “earned on receipt,” “nonrefundable” or in similar terms unless it is pursuant to a written agreement signed by the client which explains that:

“(i) the funds will not be deposited into the lawyer trust account, and

“(ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.”

Respondent’s fee agreement with Dall failed to include the explanation required under subdivisions (i) and (ii) of the rule. It failed to state that the funds would not be deposited into the lawyer trust account. It failed to state that the client could discharge Respondent and could be entitled to a refund of all or part of the fee if the services for which the fee was paid were not completed. We find these omissions violated RPC 1.5(c)(3).

RPC 1.15(1)(c): Duty to deposit client funds into trust

RPC 1.15(1)(c) provides:

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

Because Respondent's fee agreement did not comply with RPC 1.5(c)(3), she was prohibited from treating those funds as her own and depositing them in her business account. She should have deposited the funds into her lawyer trust account. We find that Respondent violated RPC 1.15-1(c).

SANCTION

We refer to the *ABA Standards for Imposing Lawyer Sanctions* (ABA Standards), in addition to Oregon case law, for guidance in determining the 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 the appropriate sanction, after which we may adjust the sanction based on the existence of recognized aggravating or mitigating factors.

Duty Violated.

The most important ethical duties are those a lawyer owes to her clients. ABA Standards at 5. Respondent violated her duty to timely and effectively communicate with her client. ABA Standard 4.4.

Respondent also violated her duty as a professional by using a fee agreement that failed to comply with the rules and by failing to deposit her client's funds into her lawyer trust account. ABA Standard 7.0.

Mental State.

The ABA Standards recognize three mental states. "Intent" is 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 knowingly when she filed the trademark application without first speaking to her client. Respondent did so despite being aware that her client had expressed concerns about representations made in the application and despite being aware that her client wanted to speak with Respondent about those concerns.

We find that Respondent acted negligently regarding her fee and fee agreement.

Extent of Actual or Potential Injury.

We may consider both actual and potential injury in determining an appropriate sanction. 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 caused Dall actual injury in the form of uncertainty, anxiety, and frustration. “Uncertainty, anxiety, and aggravation are actual injuries for purposes of our sanction analysis.” *In re Keller*, 369 Or 410, 417, 506 P3d 1101 (2022) (citing *In re Obert*, 352 Or 231, 260, 282 P3d 825 (2012); *In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010)).

With regard to Respondent’s fees and fee agreement, we agree with the Bar that mishandling of client funds always presents potential injury.

Preliminary Sanction

The following ABA Standards apply in identifying an appropriate sanction:

Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client, including the failure to communicate, and causes injury or potential injury to a client. ABA Standard 4.42(a).

As to the deficient fee agreement, 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.

We find that Respondent’s misconduct merits a suspension.

Aggravating and Mitigating Factors

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

1. A prior record of discipline. ABA Standard 9.22(a). In 2019, Respondent was disciplined for violation of RPC 7.1 [making a false or misleading communication concerning a lawyer’s services], RPC 8.1(a)(1) [knowingly making a false statement of material fact in connection with a disciplinary matter], RPC 1.1 [failure to render competent representation], and RPC 8.4(a)(4) [engaging in conduct prejudicial to the administration of justice] relating to several matters. Respondent stipulated to a 90-

day suspension, with 60 days stayed pending successful completion of a 3-year probation. *In re Schaefer* (Schaefer I), 33 DB Rptr 461 (2019).

In 2021, a trial panel revoked Respondent's probation and suspended her for the 60-day portion of the stipulated discipline that was stayed. The panel found that she had violated a material term of her probation. The State Professional Responsibility Board authorized the filing of additional charges against Respondent based on "probable cause that she has continued to engage in the same type of deceptive practices that resulted in the stipulated discipline." *In re Schaefer* (Schaefer II), 35 DB Rptr 67, 69-70 (2021).

In 2022, Respondent again stipulated to discipline for maintaining a divorce-related website that contained materially misleading claims. These were the charges that led to her probation revocation. Respondent also stipulated to violations of RPC 5.5(b)(2) [holding oneself out as a lawyer when not admitted to practice in the jurisdiction], RPC 7.1 [making a false or misleading communication concerning a lawyer's services] and ORS 9.160(1) [representing oneself as qualified to practice law while not an active OSB member] for unknowingly holding herself out to the public or otherwise representing she was admitted to practice law in Oregon while serving her 60-day suspension in 2021. *In re Schaefer* (Schaefer III), 36 DB Rptr 123 (2022).

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 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 Jones*, 326 Or 195, 200, 951 P2d 149 (1997).

We must give Respondent's prior discipline from 2019 significant weight in aggravation. The prior discipline involved serious misconduct, including knowingly making a false statement to Disciplinary Counsel's Office, and making false or misleading representations about herself and her legal services on websites that promoted her practice. The prior misconduct also involved several unrelated client matters and occurred just a few years prior to the misconduct here. Finally, although the discipline from 2019 is distinct from the violations at issue here, Respondent's sanction for that misconduct was imposed before Respondent engaged in the misconduct at issue in this case in 2021.

Respondent's discipline from 2022 was not imposed prior to Respondent committing the violations here so we give less weight to that prior discipline.

2. Refusal to acknowledge wrongful nature of conduct. ABA Standard 9.22(g). The Bar argues that Respondent chose to default in this matter and has never made any acknowledgement of the wrongfulness of her conduct. See *In re Hageman*, 37 DB Rptr

104, 115 (2023) (in a disciplinary case in which the lawyer was found in default for failing to file an answer, the trial panel found this aggravating factor present regarding the lawyer's failure to provide responses to the Bar or make any acknowledgement of the wrongfulness of his conduct). By withdrawing her answer and agreeing to the default, however, Respondent has acknowledged that her conduct merits discipline. We do not find this aggravating factor applicable here.

The Bar admits, and we will consider, two mitigating factors. First, Respondent was relatively inexperienced in the practice of law in 2021 when she committed this misconduct. She was admitted to practice in Oregon in 2015. ABA Standard 9.32(f). Second, Respondent experienced personal or emotional problems during the relevant time—she has been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD), social anxiety disorder, and autism spectrum disorder and experienced depression and anxiety. ABA Standard 9.32(c).

Respondent also stated in Respondent's Declaration that she did not act with a selfish or dishonest motive. This is a recognized mitigating factor. ABA Standard 9.32(b).

The Bar asks us to ignore Respondent's assertion because it did not have an opportunity to develop an evidentiary record in the case that could have shed light on Respondent's motivation for the misconduct. On the other hand, the Bar could have asked us to consider a dishonest or selfish motive as an aggravating factor but chose not to do so. See ABA Standard 9.22(b). We do not need to decide whether this mitigating factor applies here, however, because even if we did give Respondent credit for this mitigating factor it would not lessen the sanction we impose. Respondent's history of prior discipline outweighs any grounds for mitigation.

Oregon Case Law.

Oregon case law supports the imposition of a suspension here. The Oregon Supreme Court has imposed a 30-day suspension when a lawyer failed to explain a legal matter to permit a client to make informed decisions in violation of RPC 1.4(b). *Gatti*, 356 Or at 57 (citing *Snyder*, 348 Or at 323-24). The Bar concedes that the RPC 1.2(a) violation is based on the same conduct and does not justify an enhancement of a 30-day suspension. It also admits that the violations regarding Respondent's fee agreement would generally result in a public reprimand and it does not argue that these charges merit any further period of suspension.

We find, however, that Respondent's record of prior discipline has repeatedly shown that she has difficulty complying with the Rules of Professional Conduct. Her disciplinary record merits an increase in the suspension beyond 30 days. The Bar asks for no more than 60 days total, explaining that the client avoided significant injury and this is the first time Respondent has violated these particular rules. Given that, the Adjudicator and the public member find that a suspension of 60 days is appropriate. The attorney trial panel member finds that a 30-day suspension is more appropriate here.

CONCLUSION

Sanctions in disciplinary matters are not intended to penalize the respondent lawyer but are instead 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, 830 P2d 206 (1992). To serve these purposes we order that Respondent be suspended for 60 days, effective on the date this decision becomes final.

Respectfully submitted this 14th day of March 2025.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Erin Lufkin

Erin Lufkin, Attorney Panel Member

/s/ Marian Taloi

Marian Taloi, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
LAWRENCE L. TAYLOR, Bar No. 921410) Case No. 24-83
)
Respondent.)

Counsel for the Bar: Stacy R. Owen

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.5(c)(3) and RPC 1.15-1(c). Stipulation for Discipline. Public reprimand.

Effective Date of Order: March 25, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Taylor is publicly reprimanded for violations of RPC 1.5(c)(3) and RPC 1.15-1(c).

DATED this 25th day of March 2025.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Lawrence L. Taylor, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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, 1992, 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(8).

4.

On March 8, 2025, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.5(c)(3) and RPC 1.15-1(c) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In October 2021, Respondent was retained to defend a client in a criminal matter and the client signed a “flat fee” agreement, requiring a basic fee for the representation and stating that all fees were earned immediately and were non-refundable. The client provided the basic fee in two installments. Respondent did not deposit the first payment into his attorney trust account, but he deposited the second payment into his attorney trust account.

Respondent’s flat fee agreement included some, but not all, of the disclosures required by RPC 1.5(c)(3). The fee agreement did not explicitly state that funds would not be deposited into the lawyer trust account. Because Respondent’s fee agreement did not fully comply with RPC 1.5(c)(3), Respondent was required to hold all the client funds in his attorney trust account pursuant to RPC 1.15-1(c).

Violations

6.

Respondent admits that, by failing to include language in his flat fee agreement stating that client funds would not be deposited into his lawyer trust account, he violated RPC 1.5(c)(3). Respondent admits that because his flat fee agreement was not compliant, he was required to hold all client funds in his attorney trust account and his failure to do so violated RPC 1.15 1(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 a duty owed as a legal professional related to his handling of legal fees. ABA Standard 7.0.
- b. **Mental State.** Respondent acted negligently by utilizing a non-conforming flat fee agreement template and failing to properly handle his client funds, which amounted to not exercising the standard of care that a reasonable lawyer would exercise.
- c. **Injury.** There is no evidence of any injury to Respondent's client.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. A prior record of discipline. 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; (5) when the conduct at issue in the current matter occurred 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 reprimand in 2009, *In re Taylor*, 23 DB Rptr 151 (2009) (violations of RPC 5.3(a) [duty to supervise non-lawyer personnel], RPC 5.3(b) [responsibility for conduct by non-lawyer personnel], and RPC 8.4(a)(4) [conduct prejudicial to the administration of justice], but because it involved different issues and occurred more than 10 years ago,

this offense should not be given much weight in aggravation. *In re Jones*, 326 Or at 201.

Respondent received a letter of admonition in March 2021 for the same misconduct. Although generally not considered “discipline,” a prior admonition can result in an increased sanction when the conduct is close in time and of the same or similar nature to the conduct at issue. *In re Cohen*, 330 Or 489, 500-01, 8 P3d 953 (2000); *In re Jones*, 326 Or at 200.

2. A pattern of misconduct. ABA Standard 9.22(c). In a 2018 decision, the Oregon Supreme Court discussed the aggravating factors of prior disciplinary offenses and pattern of misconduct and noted that at times, they have been conflated. *In re Bertoni*, 363 Or 614, 643, 426 P3d 64 (2018) (citing *In re Bourcier*, 325 Or 426, 435-36, 939 P2d 604 (1997) and *In re Schaffner*, 325 Or 421, 427, 939 P2d 39 (1997)). “[W]hen a lawyer violates a rule for which he or she previously has been disciplined, the prior violation can establish both a record of prior discipline and a pattern of misconduct.” *In re Bertoni*, 363 Or at 643. “However, the two aggravating factors are not coextensive.” *Id.* at 644.

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 the current offense are also relevant.” *Id.* “By contrast, 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.” *Id.*

Respondent’s 2021 admonition qualifies in both categories. In March 2021, Respondent received a letter of admonition for a flat fee agreement which also failed to include the trust account disclosure and for improperly handling client funds. Near the end of the 2021 matter, Respondent provided an updated and compliant fee agreement. In October 2021, Respondent entered into the fee agreement in this matter and inadvertently utilized an outdated template.

3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice law in Washington in 1991 and admitted to practice in Oregon in 1992.

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). Respondent reported that he had updated his fee agreement template as the result of this complaint and provided a copy of his new template.
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). Respondent acknowledged that his errors were avoidable, and he expressed regret for those mistakes.

8.

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. Pursuant to ABA Standard 8.3(b), a reprimand is generally appropriate when a lawyer has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

9.

An admonition letter would be consistent with the resolution of cases involving single violations of RPC 1.5(c)(3), even with related violations of RPC 1.15-1(c). *See, e.g., In re Trimble*, OSB Case No. 20-01, Letter of Admonition (December 9, 2020) (RPC 1.5(c)(3), RPC 1.15-1(a), RPC 1.15-1(c)); *In re Krick*, OSB Case No. 18-40, Letter of Admonition (March 27, 2018) (RPC 1.5(c)(3), RPC 1.15-1(a), and RPC 1.15-1(c)); *In re Lawrence*, OSB Case No. 18-41, Letter of Admonition (March 20, 2018) (RPC 1.5(c)(3), RPC 1.15-1(a), and RPC 1.15-1(c)). Because Respondent received a letter of admonition for the same conduct just a few months before the events here, pursuant to ABA Standard 8.3(b), the parties agree that Respondent shall be publicly reprimanded for violation of RPC 1.5(c)(3) and RPC 1.15 1(c).

10.

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.

11.

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.

12.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 8, 2025. 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 2025.

/s/ Lawrence L. Taylor

Lawrence L. Taylor, OSB No. 921410

EXECUTED this 24th day of March 2025.

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: the Conduct of)
)
ROBERT E. REPP, Bar No. 742687) Case No. 23-334
)
Respondent.)

Counsel for the Bar: Alison F. Wilkinson

Counsel for the Respondent: Wayne Mackeson

Disciplinary Board: None

Disposition: Violation of RPC 8.1(c). Stipulation for Discipline. Public reprimand.

Effective Date of Order: April 8, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Robert E. Repp (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 8.1(c).

DATED this 8th day of April 2025.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Robert E. Repp, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 10, 1974, 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(8).

4.

On August 2 2024, 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) 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 was referred to the State Lawyers Assistance Committee (SLAC) on November 10, 2021. SLAC member Dr. Michael R. Villanueva (Villanueva), a clinical neuropsychologist, was assigned to contact Respondent and begin an investigation.

6.

From approximately the end of February through the end of March 2022, Villanueva made approximately ten unsuccessful attempts to communicate substantively with Respondent about the SLAC referral. Around the end of March 2022, Respondent and Villanueva spoke, and Respondent agreed to provide medical records to SLAC.

7.

After roughly two months without hearing from Respondent, Villanueva requested an update by May 26, 2022. Respondent did not provide an update. Villanueva made three other

inquiries about the records in June and July 2022. Throughout this time, Respondent was in communication with a member of the Oregon Attorney Assistance Program (OAAP), including about the SLAC referral, however, Respondent's communications with OAAP did not satisfy his obligations to cooperate with SLAC.

8.

Villanueva eventually received records; the most recent were from 2018. Due to the remoteness of the information, SLAC required that Respondent undergo a neuropsychological evaluation promptly. Although Respondent initially declined to undergo an examination, several months later he indicated that he would schedule a cognitive examination.

9.

Villanueva scheduled an examination for Respondent on February 6, 2023. Citing to the provider being out of network, Respondent canceled the appointment.

10.

Several months later, Respondent eventually underwent an examination, which he voluntarily scheduled, and disclosed the resulting report to SLAC.

Violations

11.

Respondent admits that, by failing to cooperate with the State Lawyers Assistance Committee and its designee, he violated RPC 8.1(c).

Sanction

12.

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 cooperate with SLAC. 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 was in regular communication with a member of the OAAP throughout the SLAC referral process. This individual was not a member of SLAC, and communicating with this individual did not satisfy Respondent’s cooperation obligations. However, the OAAP member conveyed to Respondent that he was a liaison to SLAC, and that he sat in on the SLAC meetings in which Respondent’s matter was discussed. Respondent believed that his progress in cooperating with SLAC was being conveyed to SLAC through his communications with the OAAP member. Although this belief was not accurate, and Respondent was negligent in not better understanding how to comply with his obligations, his failure to cooperate initially was not knowing.

Respondent eventually provided an evaluation to SLAC that appeared to be in compliance with SLAC’s requirements.

- 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 Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

SLAC was actually injured in that Villanueva devoted substantial time and effort trying to elicit Respondent’s cooperation from February 2022 through June 2023. More importantly, SLAC was unable to carry out its statutory obligation to investigate a report made against a practicing attorney due to Respondent’s failure to respond or provide the initial report.

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

1. A pattern of misconduct. ABA Standard 9.22(c). Respondent’s failures to respond to Villanueva’s attempts to contact him demonstrate a year-long pattern of avoidance and noncooperation.
2. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice in 1974.

- 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 the disciplinary board. ABA Standard 9.32(e).

13.

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

14.

There were no Oregon cases found in which the Respondent's mental state was negligent in the context of a violation of RPC 8.1(c). When the mental state is knowing, a suspension of at least 30 days is appropriate. *See, e.g., In re Hall*, 36 DB Rptr 102 (2022) (attorney suspended for 30 days after failing to cooperate with SLAC to address his alcohol use); *In re Sheridan*, 29 DB Rptr 179 (2015) (attorney suspended for 60 days, fully stayed, when she was referred to SLAC, then began questioning SLAC's authority, including by threatening a restraining order against SLAC; Respondent was also found in violation of four additional Rules of Professional Conduct). Based on Respondent's negligent mental state, and the unusual facts of this case, a reprimand is warranted.

15.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 8.1(c), the sanction to be effective immediately upon approval of this stipulation by the Disciplinary Board.

16.

In addition, on or before July 1, 2025, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$116.00, incurred for the appearance cost of Respondent's deposition. Should Respondent fail to pay \$116.00 by July 1, 2025, 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.

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 March 21, 2025. 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 April, 2025.

/s/ Robert E. Repp

Robert E. Repp, OSB No. 742687

APPROVED AS TO FORM AND CONTENT:

/s/ Wayne Mackeson

Wayne Mackeson, OSB No. 823269

EXECUTED this 4th day of April, 2025.

OREGON STATE BAR

By: /s/ Alison F. Wilkinson

Alison F. Wilkinson, OSB No. 096799

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
JAMES LEE VON BOECKMANN, Bar No. 031516) Case Nos. 23-199, 24-65, and 24-145
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator
Arnold S. Polk
Karina M. Grigorian, Public Member

Disposition: Violation of RPC 1.16(c), RPC 8.1(a)(2), RPC 8.1(c)(1), and
RPC 8.4(a)(4). Trial Panel Opinion. Disbarment.

Effective Date of Opinion: June 3, 2025

TRIAL PANEL OPINION

Without warning or explanation, Respondent James Lee Von Boeckmann walked away from his practice, and apparently from the state of Oregon. He did nothing required of him to properly withdraw from dozens of active cases. His abrupt departure created serious problems for his clients and the court system. The Oregon Stater Bar (Bar) asks us to disbar him for abandoning his practice, his clients, and his duties and responsibilities as a lawyer. As discussed below, we agree with the Bar and order that Respondent be disbarred.

Respondent is in default for failure to appear. When a respondent is in default the Bar’s factual allegations in the complaint are deemed true. BR 5.8(a); *In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004). Our role is to first determine whether the facts alleged establish the charged rule violations. If we conclude they do, we then determine what sanction is appropriate. *See In re Koch*, 345 Or 444, 446, 198 P3d 910 (2008); *see also In re Kluge*, 332 Or 251, 253, 27 P3d 102 (2001).

PROCEDURAL POSTURE

On March 19, 2024, the Bar filed a formal complaint against Respondent. On April 2, 2024, Respondent waived personal service in an email to the Bar and requested that all future

communications with the Bar occur via a Gmail email address that he provided. On September 11, 2024, the Bar filed an amended formal complaint. It was served on Respondent the same day. On September 27, 2024, the Bar sent Respondent a ten-day notice of intent to take default if Respondent did not file an answer. When Respondent had filed no answer by October 15, 2024, the Bar filed a motion for order of default. The Adjudicator granted the motion on October 18, 2024, and entered an order of default.

FACTS¹

Grievance by Clatsop County Judge McIntosh

In the summer of 2023, Respondent was practicing in Clatsop County as a member of a public defense consortium that provided indigent criminal defense. On July 27, 2023, Respondent told Clatsop County Circuit Court staff in an email that he was “not well and not able to work this week.” Respondent was due in court that day on behalf of 13 in-custody clients. He did not appear. The court reset those matters.

The next day Respondent failed to appear for a case management conference. The conference was set over to July 31, 2023, when Respondent was already scheduled to appear on behalf of the same defendant. Respondent did not appear. The case was set over to August 3, 2023.

During this time court staff attempted to contact Respondent. They were unsuccessful.

On July 31, 2023, Respondent sent an email to the administrator of the defense consortium he worked for stating that he was on his way to Wyoming and did not know if he would return to Oregon. Respondent appeared to have left the area.

Respondent later told the Bar that he did not plan to return to Oregon and had left due to a family matter. He did not describe it in any detail other than to state he “absolutely, urgently, had to leave” and that “horrible things befell my family and we are still reeling.”

When Respondent abandoned his practice, he was the attorney of record in 98 matters in Clatsop County. 32 of these clients were in custody. Respondent filed no motions for leave to withdraw in any of his cases. He filed no notices of termination of representation in any of his cases. He filed nothing with the court informing it that he was no longer going to act as the lawyer for those clients. Respondent did not have, and never obtained, the court’s permission to withdraw from representing any of his clients.

Following Respondent’s sudden departure court staff devoted considerable time and resources to rescheduling matters set in those clients’ cases. Court staff spent weeks trying to assign new counsel to Respondent’s former clients.

¹ The facts summarized herein are all found in the amended formal complaint.

Respondent's departure caused a public defense crisis in Clatsop County. Dozens of defendants were left unrepresented during this time due to a shortage of available criminal defense attorneys. Respondent's failure to properly withdraw impaired the procedural functioning of the court by creating substantial unnecessary work and caused the potential for harm to the substantive rights of his clients.

On August 25, 2023, Disciplinary Counsel's Office (DCO) received a grievance against Respondent from Clatsop County Circuit Court Judge Dawn M. McIntosh. By letter dated October 18, 2023, DCO requested Respondent's response to the 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.² The letter was also sent to Respondent at vonboeckmann@mac.com, the email address then on record with the Bar (record email address). The letter was returned undelivered while the email was not returned undelivered.

DCO gave Respondent more information from Judge McIntosh in a letter dated October 19, 2023, and asked him to consider the additional information when answering DCO's first letter. The second letter was again sent by first class mail to Respondent's record address and by email to Respondent's record email address. Just as with the first, the letter was returned as undelivered while the email was not returned undelivered.

Respondent remained silent. DCO sent another inquiry on November 9, 2023, by first class mail and certified mail, return receipt requested, to Respondent's record address and by email to Respondent's record email address. The email was not returned undelivered. The letter was returned undelivered, and the receipt was returned unsigned.

On November 14, 2023, Respondent sent an email to DCO via his record email address regarding DCO's investigation of his conduct in a separate matter. Respondent did not provide a substantive response to DCO's inquiries.

On November 17, 2023, DCO filed a petition pursuant to BR 7.1 seeking Respondent's immediate suspension until he responded to DCO's requests for information. On December 6, 2023, the Adjudicator granted the petition and administratively suspended Respondent under BR 7.1. Respondent had not provided any substantive response to DCO's inquiries regarding the judge's grievance as of September 11, 2024, the date the amended formal complaint was filed.

² All attorneys admitted to practice in Oregon must keep the Bar apprised of a current business and email address unless granted an exemption. BR 1.11(a) and (b). It is the attorney's duty to "promptly notify the Bar in writing of any change in his or her contact information." BR 1.11(d).

SLAC Grievance

Respondent was referred to the State Lawyers Assistance Committee (SLAC)³ on August 7, 2023, a week after he left the state. SLAC assigned committee member Jay Bodzin to Respondent's case. Bodzin sent correspondence to Respondent on September 5, 2023, telling him of the SLAC referral and of his obligation to cooperate with the SLAC investigation. Bodzin asked Respondent to contact him and schedule an in-person meeting. Respondent sent Bodzin an email on September 11, 2023, telling Bodzin he needed more time to review the material and would get back to him. Respondent also told Bodzin that he was in Georgia with family and had no plans to return to Oregon.

Bodzin heard nothing more from Respondent. He sent Respondent another email on September 28, 2023. Bodzin asked Respondent whether he planned to cooperate with SLAC. Bodzin also asked Respondent whether he was receiving any treatment for his mental health, and, if so, to execute a release allowing Bodzin to speak to the provider.

Respondent then emailed Bodzin on October 10, 2023, asking that he be given until November 3, 2023, to answer Bodzin's questions. Bodzin responded that he would take Respondent's request to the SLAC committee. Bodzin also wrote:

"If you want to cooperate and seek assistance in returning to practice, we stand ready to assist you. If you do not believe recent events are related to a problem of the sort we can address – physical or mental illness or incapacity, substance abuse problems or other addiction, &c [sic] – then this would not be appropriate for SLAC intervention, and would be referred to Bar Counsel or the CAO."

Respondent did not reply to this email.

Bodzin referred the matter to the Bar's General Counsel on January 30, 2024. General Counsel referred the matter to DCO on March 1, 2024. DCO then sent Respondent a letter on March 14, 2024, asking about his failure to cooperate with SLAC. The letter was sent to Respondent's record address and record email address. DCO knew that Respondent was admitted to practice law in New York state and obtained different contact information from the state. DCO then sent the letter to those additional addresses. On April 2, 2024, DCO received an email from Respondent requesting the Bar send all future correspondence to jvonboeckmann@gmail.com (Gmail address) rather than via US mail. Respondent did not substantively respond to DCO's inquiry.

³ SLAC is authorized by statute to investigate and resolve complaints or referrals regarding lawyers whose ability to practice appears impaired by substance abuse, depression or mental health issues, gambling addiction, cognitive impairment, or some other cause. SLAC has the authority to develop a remedial action plan for the lawyer and monitor the lawyer's compliance with the plan while ensuring confidentiality.

On April 5, 2024, DCO again requested Respondent's response to the SLAC grievance by letter addressed to Respondent at the Gmail address. Respondent did not respond. The email was not returned undeliverable. On April 15, 2024, DCO filed a BR 7.1 petition seeking Respondent's immediate suspension until he responded to DCO's requests for information. On May 1, 2024, the Disciplinary Board Adjudicator granted the petition and administratively suspended Respondent. Respondent had not made any substantive response to the SLAC grievance as of September 11, 2024, the date the amended formal complaint was filed.

Ogier Grievance

On May 21, 2024, DCO received a grievance against Respondent from Respondent's former client, James L. Ogier. Respondent had represented Ogier in five criminal cases in 2021 and 2022. Ogier complained that he had requested that Respondent send him the discovery obtained in all cases both before and after resolution of those matters on March 31, 2022, but Respondent had not provided anything. Ogier was in custody serving a prison sentence when he filed his grievance. The Bar's Client Assistance Office (CAO) notified Respondent on May 13, 2024, of Ogier's complaint by letter sent to the record email address.

On May 16, 2024, Respondent emailed CAO telling it that he left Oregon almost a year ago "due to family business" and no longer practices law. "...not sure what you want from me at this point." Respondent asked that any further communications be sent to the Gmail address he had given to DCO the month before. Respondent did not substantively respond to Ogier's allegations.

The grievance went to DCO. DCO requested a response to Ogier's grievance in a letter dated May 21, 2024, sent to the Gmail address. Respondent did not reply. The email was not returned undeliverable. DCO again asked for Respondent's response to Ogier's grievance in a letter dated June 12, 2024, again sent to the Gmail address. Respondent did not respond to this letter either. The email was not returned undeliverable.

On June 20, 2024, DCO filed a BR 7.1 petition seeking Respondent's immediate suspension until he responded to DCO's requests for information regarding Ogier's grievance. On July 8, 2024, the Disciplinary Board Adjudicator granted the petition and administratively suspended Respondent. Respondent had provided no substantive response to DCO as of September 11, 2024, the date the Bar filed the amended formal complaint.

CHARGES

- 1. We find that Respondent violated RPC 1.16(c) when he abandoned his practice and that his improper withdrawals from representation in 98 matters caused significant prejudice to the administration of justice in violation of RPC 8.4(a)(4).**

We are concerned with two rules here. The first, RPC 1.16(c), provides:

“A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.”

The second, RPC 8.4(a)(4), states:

“It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.”

Respondent abandoned his clients in 98 active criminal matters without warning, without seeking leave of court, and without notice to the court other than an email to staff that he was “not well and not able to work this week.” The only notice he gave that he was leaving the state was his message a week later to the director of the defense consortium he practiced with. Respondent violated RPC 1.16(c).

As to the charge for violation of RPC 8.4(a)(4), the Bar must show that (1) the lawyer’s action or inaction was improper; (2) the lawyer’s conduct occurred during 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, 193, 501 P3d 1036 (2021). The administration of justice includes procedural functioning as well as the substantive interests of parties to the proceeding. *In re Haws*, 310 Or 741, 747, 801 P2d 818 (1990). Prejudice may result from 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). The lawyer’s conduct need not cause actual harm; the potential for harm is sufficient to establish a violation of the rule. *In re Dugger*, 334 Or 602, 614, 54 P3d 595 (2002). A showing that the lawyer acted negligently is sufficient to establish the mental state required by the rule. *In re Carini*, 354 Or 47, 58, 308 P3d 197 (2013).

Respondent’s improper withdrawal establishes the first element of the charge—improper conduct. His abandonment of 98 ongoing criminal matters establishes the second element—that the conduct occurred in connection with a judicial proceeding. The third element appears to us to be self-evident here—the conduct had a prejudicial effect on the functioning of the court and a potential prejudicial effect on the substantive rights of the abandoned clients. No reasonable person could deny that Respondent’s conduct was prejudicial to the administration of justice. We find that Respondent violated RPC 1.16(c) and RPC 8.4(a)(4).

2. We find that Respondent knowingly failed to respond to the Bar’s investigation in violation of RPC 8.1(a)(2).

RPC 8.1(a)(2) provides:

“A lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.”

This rule “requires *full* cooperation from a lawyer who is the subject of a disciplinary investigation.” *In re Munn*, 372 Or 589, 611, 553 P3d 1039 (2024), quoting *In re Schaffner*, 325 Or 421, 425, 939 P2d 39 (1997) (emphasis in original). Partial or incomplete and inadequate responses do not satisfy the rule’s requirements. *Id.* 611-12.

The Oregon Supreme Court has no tolerance for 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). We follow the court’s guidance in this regard and similarly have no tolerance for lawyers who ignore this important professional obligation.

To establish a violation here the Bar must show that a respondent “knowingly” failed to respond to the investigation. The respondent must have actual knowledge of the facts, but knowledge can be inferred from circumstances. RPC 1.0(h).

Here, the Bar repeatedly sent disciplinary inquiries to Respondent involving three grievances. Respondent replied to some of the Bar’s correspondence, showing he was receiving the letters and/or emails and was aware of the investigations. But Respondent never provided any substantive response to DCO. Respondent knowingly failed to fulfill his obligation to respond. We find Respondent violated RPC 8.1(a)(2).

3. We find that Respondent failed to cooperate with SLAC in violation of RPC 8.1(c)(1).

RPC 8.1(c)(1) provides:

“A lawyer who is the subject of a complaint or referral to the State Lawyers Assistance Committee shall, subject to the exercise of any applicable right or privilege, cooperate with the committee and its designees, including responding to the initial inquiry of the committee or its designees”

Respondent acknowledged receipt of the initial SLAC inquiry but never provided a substantive response. Bodzin warned Respondent that he had a duty to cooperate with SLAC and failure to do so could result in referral to Bar disciplinary authorities. Respondent ignored his duty. We find he violated RPC 8.1(c)(1).

SANCTION

We refer to the *ABA Standards for Imposing Lawyer Sanctions* (ABA Standards) and Oregon case law for guidance in determining the 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 the appropriate sanction, after which we may adjust the sanction based on the existence of recognized aggravating or mitigating factors.

Duty Violated.

Lawyers owe duties to their clients, to the public, and to the legal system. The most important ethical duties lawyers owe are to their clients. ABA Standards at 4. A lawyer who abandons their practice clearly violates one of these duties. ABA Standard 4.41(a).

Respondent also violated his duties to the public and the legal system when he engaged in conduct prejudicial to the administration of justice. *See In re Ard*, 369 Or at 201, citing *In re Jaffee*, 331 Or 398, 409, 15 P3d 533 (2000); ABA Standard 6.1.

Respondent further breached his duty as a professional by failing to cooperate with DCO and SLAC. ABA Standard 7.0; *see In re Munn*, 372 Or at 612-13. This misconduct 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 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 here acted knowingly as to each rule violation.

Extent of Actual or Potential Injury.

We may consider both actual and potential injury in determining an appropriate sanction. 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.

When Respondent abandoned his practice, he actually harmed the functioning of the Clatsop County Circuit Court, and this act had the potential to cause enormous harm to dozens of clients.

When Respondent failed to cooperate with DCO's investigation he caused actual harm to the public and the legal profession. *In re Munn*, 372 Or at 613. His lack of cooperation impeded the Bar's effort to investigate the extent of his misconduct. His failure to cooperate delayed the Bar's investigation. The Bar was unable to provide a timely and informed resolution of this matter, which is necessary to preserve confidence in the integrity of the legal profession. The same holds true for Respondent's failure to cooperate with SLAC. "The Bar's work of administering the profession and protecting the public with a relatively small staff depends to a significant degree on the honesty and cooperation of the lawyers whom the Bar regulates." *In re Wyllie*, 327 Or 175, 182, 957 P2d 1222 (1998); see also *In re Gastineau*, 317 Or 545, 558, 857 P.2d 136, 143 (1993) (Bar is prejudiced when a lawyer fails to cooperate because the Bar's investigation takes more time than it should and the public's respect for the Bar is diminished because the Bar cannot provide timely and informed responses to complaints).

Preliminary Sanction

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

Disbarment is generally appropriate when a lawyer abandons the practice and causes serious or potentially serious injury to a client. ABA Standard 4.41(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.

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 determination is that disbarment is the presumptive sanction.

Aggravating and Mitigating Circumstances.

We agree with the Bar that the following recognized aggravating factors are present here:

1. Multiple offenses. ABA Standard 9.22(d). Respondent committed four rule violations.
2. Refusal to acknowledge wrongful nature of conduct. ABA Standard 9.22(g). Respondent chose to default in this case. He has never made any acknowledgement of the wrongfulness of his conduct. See *In re Hageman*, 37 DB Rptr 104, 115 (2023) (in a case in which the lawyer was found in default for failing to file an answer, the trial panel found this aggravating factor present because when a lawyer fails to provide any response to the Bar or to the formal complaint, that lawyer has refused to acknowledge the wrongfulness of their conduct).

3. Vulnerability of victim. ABA Standard 9.22(h). Respondent's clients were indigent. Many were in custody when he abandoned them.
4. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to the Oregon State Bar on April 23, 2003.

In mitigation, the Bar acknowledges that ABA Standard 9.32(a) applies because Respondent has no prior disciplinary record. We can find no other mitigating factors in the limited record before us.

The aggravating factors here would justify enhancing the sanction imposed if we had not already determined that the most severe sanction is the presumptive result.

Oregon Case Law.

The Bar was unable to identify another disciplinary case in Oregon where a lawyer abruptly abandoned an indigent defense practice. It did cite three cases in which lawyers who neglected client matters and then abandoned their practice were disbarred: *In re Sharp*, 32 DB Rptr 21 (2018) (trial panel disbarred lawyer who took no action on behalf of two clients and then abandoned his practice without notice to the clients and without refunding any portion of the fees they paid him); *In re Stedman*, 31 DB Rptr 220 (2017) (trial panel disbarred lawyer who abandoned his practice without notice to his clients after engaging in a wide variety of misconduct that included numerous instances of dishonesty and converting client funds); and *In re Thies*, 305 Or 104, 750 P2d 490 (1988) (Oregon Supreme Court disbarred attorney who abandoned his practice after neglecting work on behalf of three clients, lying to some to cover for his neglect, and failing to provide refunds to some for work never performed).

This case presents no allegations of mishandling client funds or refusal to refund unearned fees like the cases cited above. This is not unexpected given that Respondent's practice involved appointed defense of indigent clients. Even without additional misconduct of that nature, however, the Bar argues that the unprecedented magnitude of the harm to the criminal justice system caused by Respondent's abrupt decision to abandon his practice merits disbarment. The Bar points us to this statement from the Oregon Supreme Court:

"The question in disciplinary proceedings ... is not how heavy a penalty a lawyer's professional misconduct deserves (except to demonstrate the gravity of a violation for purposes of deterrence) but what is needed to protect the public against further unprofessional conduct of a member of the Bar. The record of the accused's conduct shows that he cannot be entrusted with the liberty, property, or other legal interests of people who rely on what his license to practice law represents." *In re Bridges*, 302 Or 250, 254-55, 728 P2d 863 (1986).

Respondent's misconduct here was egregious and extensive and caused or had the potential to cause enormous harm. That, coupled with his failure to cooperate with the Bar or SLAC, undermines any hope that he could conform to the ethical requirements of the profession

if allowed to practice in the future. He is a danger to the public. He can no longer be trusted to represent clients in Oregon. Consistent with the ABA Standards' presumptive sanction, we find that disbarment is the only appropriate consequence for Respondent's misconduct. Accordingly, we order that Respondent be disbarred effective on the date this decision becomes final.

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 accomplish this goal, we order that Respondent be disbarred effective the date this decision becomes final.

Respectfully submitted this 1st day of May 2025.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/Arnold S. Polk

Arnold S. Polk, Attorney Panel Member

/s/ Karina M. Grigorian

Karina M. Grigorian, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
ROGER A. PEARCE, Bar No. 140521) Case No. 23-21
)
Respondent.)

Counsel for the Bar: Samuel Leineweber

Counsel for the Respondent: Janet Lee Hoffman

Disciplinary Board: None

Disposition: Violation of RPC 8.1(a)(1), RPC 8.4(a)(2), and RPC 8.4(a)(3).
Stipulation for discipline. 60-day suspension.

Effective Date of Order: May 8, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Roger A. Pearce (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 upon approval by the Disciplinary Board Adjudicator for violation of RPC 8.1(a)(1), RPC 8.4(a)(2), and RPC 8.4(a)(3).

DATED this 8th day of May 2025.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Roger A. Pearce, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 Mach 21, 2014, and has been a member of the Bar continuously since that time, having his office and place of business in Seattle, King County, Washington.

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(8).

4.

On March 8, 2025, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 8.1(a)(1), RPC 8.4(a)(2), and RPC 8.4(a)(3) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Respondent was born Willie Ragan Casper Jr. in 1946 in Mississippi. By the early 1970's, Respondent had moved to Texas, dropped out of college, and became deeply involved in the anti-Vietnam War movement. During this time, Respondent with others were involved in a check-kiting scheme. The funds were used to help people in the community buy groceries, pay for the living expenses of the newspaper commune he was involved with and a small amount for his personal expenses. At the time he felt entitled to use the funds in this way because they felt the banks were complicit in the Vietnam War. He also left Texas and started a new life because he had dropped out of college, was in a failing marriage, and was also concerned about potential legal liability stemming from his check cashing activity. Respondent reflected on his life and came to believe that he wanted to start over. To that end, Respondent moved to Eugene, Oregon, in approximately 1972 and took the name and date of birth of Roger Alfred Pearce Jr., a baby who was born in 1951 and died in 1952 in Vermont. Respondent also obtained a social security number under that name.

6.

Respondent went to school in Eugene, Oregon, and worked at a number of jobs over the ensuing years, including jobs as a tree planter in Oregon and as a restaurant cook, union baker, and actor in Seattle, Washington. In 1988, Respondent enrolled in a program at the University of Puget Sound that allowed people without undergraduate degrees to attend law school. Respondent graduated from law school and began a successful career as a land use attorney in Seattle, Washington. At the time that he began practicing law Respondent thought of himself only as Roger Pearce. In 2014, Respondent was reciprocally admitted to practice law in Oregon under the Roger Pearce identity and thereafter practiced law in Ashland.

7.

In 2023, Respondent was indicted by the United States Attorney's Office in Portland, Oregon, after his passport was flagged by the Department of Homeland Security for potential fraud. In August 2024, Respondent pled guilty to one count of Possession of an Identification Document Without Lawful Authority in violation of Title 18, USCS 1028(a)(6).¹ The count he pled guilty to does not include any element of fraud or intentional deceit. In November 2024, Respondent was sentenced to two years of probation. As part of Respondent's plea and sentencing, he is required to surrender his Oregon and Washington bar licenses and never reapply for admission to any bar association. Respondent is now retired from the practice of law, Respondent lived under the name Roger Pearce for approximately 50 years.

Violations

8.

Respondent admits that, by not disclosing his true legal identity to the Oregon State Bar, he knowingly made a false statement of material fact in a Bar admission application, in violation of RPC 8.1(a)(1). Respondent admits that his criminal conviction reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of RPC 8.4(a)(2). Respondent admits that his use of an identity that was not his true legal identity during his practice of law reflected adversely on his honesty, trustworthiness, and fitness as a lawyer, in violation of RPC 8.4(a)(3).

¹ There are four elements in a violation of 1028(a)(6). First, a defendant must knowingly possess an identification document; second, the identification document was issued by or under the authority of the United States; third, the identification document was produced without lawful authority; and fourth, a defendant must know the identification document was produced without lawful authority. A violation of this statute is a misdemeanor.

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.** Despite the fact Respondent considered himself Roger Pearce, at the time he applied for admission to the Oregon State Bar by not considering the relevance of fact he had assumed a different name, Respondent violated his duty of candor. ABA Standard 4.6. By committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, 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.* As outlined above, Respondent acted with a knowing mental state.
- c. **Injury.** For the purpose of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Keller*, 359 Or 410, 417, 506 P3d 1101 (2022). Actual injury to the government occurred when Respondent possessed a passport issued under an assumed name and to the Bar when Respondent did not fully disclose his true legal identity on his admission application. There was potential injury to Respondent's clients and the public by Respondent's practice of law under an assumed identity.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Substantial experience in the practice of law. ABA Standard 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. Absence of a prior record of discipline. ABA Standard 9.32(a).
 2. Character or reputation. ABA Standard 9.32(g). Respondent had a distinguished career as a lawyer and submitted a number of references to attest to his good character and extensive civic and charitable work.

3. Imposition of other penalties or sanctions. ABA Standard 9.32(k). Respondent was criminally convicted of a federal offense based upon his conduct and is required to resign from the Bar and never reapply for admission as part of his sentence.

10.

Under the ABA Standards, suspension is generally appropriate when a lawyer engages in criminal conduct which does not contain the elements listed in ABA Standard 5.11² and that seriously adversely reflects on the lawyer's fitness to practice. ABA Standard 5.12. Suspension is generally appropriate when a lawyer causes an injury or potential injury to the client. ABA Standard 4.62.

11.

Sanctions in disciplinary matters are not intended to penalize the respondent 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).

Fact matching between cases is always difficult, and that is especially true here given Respondent's unprecedented conduct. Cases in which a lawyer unlawfully used the identity of another person offer some guidance, but the facts of Respondent's case are so unique as to make any case comparison inadequate.

In balancing the long-term deception committed upon the Bar and the public, with the uncontroverted evidence that Respondent lead an otherwise exemplary life, and in consideration of Respondent's requirement to resign his law license, the parties believe that a suspension of 60-days, followed by Respondent's resignation from the Bar, is a satisfactory resolution to this matter.

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 8.1(a)(1), RPC 8.4(a)(2), and RPC 8.4(a)(3), the sanction to be effective on the date that this stipulation is approved.

² A lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses. ABA Standard 5.11.

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. Respondent represents that he does not have any active client matters and that he has held an inactive status Bar membership since January 2024.

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 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 also admitted to practice law in the state of Washington. Respondent is retired, and his bar status is Inactive in Washington. Respondent acknowledges that the Bar will be informing the Washington State Bar Association of the final disposition of this proceeding.

17.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 8, 2025. 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.

Cite as *In re Pearce*, 39 DB Rptr 129 (2025)

EXECUTED this 5th day of May, 2025.

/s/ Roger A. Pearce
Roger A. Pearce, OSB No. 140521

APPROVED AS TO FORM AND CONTENT:

/s/ Janet Lee Hoffman
Janet Lee Hoffman, OSB No. 781145

EXECUTED this 6th day of May, 2025.

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)
)
CHEL ROWAN, Bar No. 194604) Case No. 23-327
)
Respondent.)

Counsel for the Bar: Eric Collins

Counsel for the Respondent: David J. Elkanich

Disciplinary Board: None

Disposition: Violation of RPC 8.4(a)(2) and ORS 9.527(2). Stipulation for Discipline. 36-month suspension.

Effective Date of Order: May 15, 2025

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. Chel Rowan (Bar No. 194604) is suspended from the practice of law in the State of Oregon for a period of 36 months, effective as of the date of this order.

DATED May 15, 2025.

/s/ Meagan A. Flynn
Chief Justice, Supreme Court

STIPULATION FOR DISCIPLINE

Chel Rowan, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 3, 2019, and has been a member of the Bar continuously since that time, having her 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(8).

4.

On February 5, 2024, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 8.4(a)(2) [committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects] of the Oregon Rules of Professional Conduct, and ORS 9.527(2) [conviction of an offense which is a felony under the laws of the state] 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

5.

In June 2020, Respondent's former partner was granted emergency temporary custody of their son and Respondent's parenting time was suspended indefinitely. On December 27, 2020, while the custody matter was pending, Respondent traveled to her former partner's home, where Respondent used an ax to break into the residence and caused extensive damage throughout. Respondent also damaged valuable bonsai trees on the property. Respondent suffered a significant head wound during the incident. After she returned to her residence, her neighbors called an ambulance, and Respondent was transported to the hospital. Respondent told others that her former partner had hurt her. However, police contacted her former partner, who provided documents that showed he and their son were out of state at the time.

6.

Subsequently, a grand jury returned a 14-count indictment charging Respondent with one count of Burglary in the First Degree (ORS 164.225), 10 counts of Criminal Mischief in the First Degree (ORS 164.365), one count of Attempted Arson in the First Degree (ORS 164.325), one count of Criminal Trespass in the First Degree (ORS 164.255), and one count of Initiating a False Report (ORS 162.375).

7.

In 2023, Respondent pleaded guilty to the lesser-included offense of Burglary in the Second Degree (ORS 164.215), a Class C Felony, and a lesser-included offense of Criminal Mischief in the Second Degree (ORS 164.354), a Class A Misdemeanor, and the remainder of the charges were dismissed. As part of her sentence, the court ordered Respondent to pay nearly \$283,000 in restitution.

Violations

8.

Respondent admits that she committed criminal acts that reflect adversely on her honesty, trustworthiness, or fitness as a lawyer in violation of RPC 8.4(a)(2). Respondent further admits that her felony conviction, as outlined above, violated ORS 9.527(2).

Sanction

9.

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.** Respondent's criminal conduct violated her duty to maintain her 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 acted intentionally as an element of the criminal conduct at issue requires an intentional mental state and the facts also support that Respondent had the conscious objective or purpose to accomplish a particular result.

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the court may consider both actual and potential injury. ABA Standards at 6; *In re Keller*, 369 Or 410, 417, 506 P3d 1101 (2022). 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. Respondent caused hundreds of thousands of dollars in damage to her former partner's property, and her former partner and son were displaced from their home for a period of time. The child also lost additional time with his mother. Respondent's conduct also caused the police, prosecutors, and the courts to expend their limited time and resources on her criminal case.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. A dishonest or selfish motive. ABA Standard 9.22(b). Respondent was motivated by animus toward her former partner.
 2. Vulnerability of victim. ABA Standard 9.22(h). Respondent's son, age 6, was displaced from his home for a period of time as a result of Respondent's criminal conduct.
 3. Illegal conduct. ABA Standard 9.22(k).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a prior disciplinary record. ABA Standard 9.32(a).
 2. Cooperative attitude toward proceedings. ABA Standard 9.32(e).
 3. Character or reputation. ABA Standard 9.32(g). Respondent provided several letters from those who know her attesting to her good character and reputation in the legal community.
 4. Imposition of other penalties or sanctions. ABA Standard 9.32(k). Respondent pleaded guilty and was ordered to complete 5 years of probation and pay \$283,000 in restitution.
 5. Remorse. ABA Standard 9.32(l) Respondent states that she regrets her actions and is remorseful.

10.

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 5.11¹ and that seriously adversely reflects on the lawyer's fitness to practice. ABA Standard 5.12.

11.

Oregon cases support the imposition of a lengthy suspension when an attorney engages in serious criminal conduct. *In re Graeff*, 368 Or 18, 485 P3d 258 (2021) (attorney suspended for five years following his conviction for unlawful use of a weapon, a felony, and reckless endangerment, a misdemeanor, stemming from the lawyer's decision to fire multiple gunshots into an occupied law office while engaged in a dispute with another attorney); *In re McDonough*, 336 Or 36, 77 P3d 306 (2003) (attorney suspended for 18 months where the attorney repeatedly drove with a suspended license or while intoxicated); *In re Allen*, 326 Or 107, 949 P2d 710 (1997) (attorney suspended for one year following his conviction for attempted possession of a controlled substance, reduced to a misdemeanor, for assisting a known addict in the purchase of drugs on which the man overdosed).

12.

Consistent with the ABA Standards and Oregon case law, and based on the substantial harm caused by Respondent's conduct, the parties agree that Respondent shall be suspended for 36 months for violation of RPC 8.4(a)(2) and ORS 9.527(2), the sanction to be effective upon approval of this stipulation.

13.

In addition, on or before June 30, 2025, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$747.80, incurred for court reporting and deposition transcripts. Should Respondent fail to pay \$747.80 in full by June 30, 2025, 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.

¹ A lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses. ABA Standard 5.11(a).

14.

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 current or active clients.

15.

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 acknowledges that due to the length of Respondent's suspension, she must apply for formal reinstatement pursuant to BR 8.1. Respondent further acknowledges that BR 8.1 requires the Bar to conduct a character and fitness investigation, which may take up to 12 months, before making a recommendation to the Supreme Court as to whether Respondent should be reinstated. 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.

16.

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.

17.

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: Colorado.

18.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 25, 2025. 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 14th day of April 2025.

/s/ Chel Rowan
Chel Rowan, OSB No. 194604

APPROVED AS TO FORM AND CONTENT:

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

EXECUTED this 15th day of April 2025.

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)
)
JOEL GREENBERG, Bar No. 943233) Case No. 24-234
)
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: May 20, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

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

DATED this 20th day of May 2025.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Joel Greenberg, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 23, 1994, 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(8).

4.

On April 26, 2025, 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 and ORS 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 15, 2024, Respondent's license to practice law was administratively suspended for failing to timely file his 2024 Professional Liability Fund (PLF) exemption. He was a half-time staff attorney with Disability Rights Oregon (DRO), and his work focused on special education.

Respondent did not see the emailed notices of his suspension and continued practicing law until September 13, 2024, when DRO's legal director learned of the suspension and informed him. Respondent was unsure about why he did not see the suspension notices but could not find them in his email account. He believes they may have been delivered to an inactive email address which he admits was his responsibility to timely update. Upon learning of his suspension, Respondent immediately ceased practicing law, filed a reinstatement application, and disclosed that he had practiced law for DRO during his suspension.

Violations

6.

Respondent admits that, by practicing law while his license to do so was suspended, he 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's unauthorized practice of law violated his duty owed as a professional. ABA Standard 7.0.
- b. **Mental State.** Respondent acted negligently by not timely updating his email account and/or adequately monitoring important communications from the Bar and was therefore unaware of his suspension until informed about it by DRO's Legal Director.
- 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 Respondent'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.** Aggravating circumstances include:
 1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been licensed in Oregon since 1994.
- 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. Timely good faith effort to make restitution or to rectify consequences of misconduct. ABA Standard 9.32(d).

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).

8.

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.

9.

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 Cutler*, 36 DB Rptr 132 (2022); *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).

10.

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.

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: None.

13.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 26, 2025. 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.

Cite as *In re Greenberg*, 39 DB Rptr 143 (2025)

EXECUTED this 16th day of May 2025.

/s/ Joel Greenberg
Joel Greenberg, OSB No. 943233

EXECUTED this 16th day of May 2025.

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)
)
KATHLEEN O'BRIEN, Bar No. 830717) Case No. 23-168
)
Respondent.)

Counsel for the Bar: Alison F. Wilkinson

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),
and RPC 1.15-1(c). Stipulation for discipline. 30 day
suspension.

Effective Date of Order: August 1, 2025

SECOND AMENDED ORDER ACCEPTING STIPULATION FOR DISCIPLINE

The Oregon State Bar and Respondent Kathleen O'Brien entered into a Stipulation for Discipline in which they agreed that Respondent would be suspended for 30 days, effective July 1, 2025, for violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(c)(3), and RPC 1.15-1(c). Respondent requested, and the Bar agreed, that the effective date for the suspension could be modified to July 9, 2025, which was done by order dated June 25, 2025. Respondent has now requested, and the Bar has again agreed, that the effective date for the suspension be modified to August 1, 2025. The Bar has further indicated that it will not agree to any further extensions of the effective date. Now, therefore,

IT IS HEREBY ORDERED that Respondent be suspended for 30 days, effective August 1, 2025, for violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(c)(3), and RPC 1.15-1(c).

DATED this 8th day of July 2025.

/s/ Mark A. Turner

Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Kathleen O'Brien, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 22, 1983, and has been a member of the Bar continuously since that time, having her 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(8).

4.

On October 10, 2024, a 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 1.15-1(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.

Facts

5.

In July 2021, Client¹ hired Respondent to handle the adoption of his adult stepdaughter and obtain an amended birth certificate from the California Department of Public Health (CDPH). Client paid Respondent a flat fee of \$1,208 to complete the engagement, representing \$900 in attorney fees, \$263 in filing fees, and \$45 for the amended birth certificate.

¹ Because of the confidential nature of adoption proceedings, Client's name is withheld.

6.

These funds were not deposited into Respondent's trust account. Instead, they were deposited into Respondent's general business account directly through her Venmo account, not into her Lawyer Trust Account.

7.

Respondent and Client did not enter into a written fee agreement signed by the client. The fee was not denominated as "earned on receipt" or "nonrefundable" or something similar. Respondent provided no disclosure to Client that the funds would not be deposited into her lawyer trust account or that he could discharge Respondent at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee were paid were not completed.

8.

The adoption of Client's adult daughter concluded without incident on October 14, 2021. Although the terms of Respondent's agreement with Client required that she also obtain an amended birth certificate, she took no steps to do so at this time.

9.

On January 26, 2022, client emailed Respondent, requesting an update on when he could expect to receive the amended birth certificate. Respondent did not respond.

10.

On February 8, 2022, Client texted Respondent about the amended birth certificate. Respondent told Client she had ordered the amended birth certificate and CDPH had cashed the check required to order it. However, this was not true, as Respondent was mistaken as to having sent the documents and payment to CDPH to order the amended birth certificate.

11.

Respondent ordered two certified copies of the General Judgment of Adoption from the Yamhill County Circuit Court on February 11, 2022, which were required to order the amended birth certificate from CDPH. However, Respondent did not complete the process for ordering the amended birth certificate by sending these copies along with a check to CDPH until October 2022.

12.

Between approximately October 2021, when the adoption was finalized, and October 2022, when Respondent requested the amended birth certificate from CDPH, Respondent only communicated with Client two times, in February 2022 and October 2022.

Although Respondent intended to properly request the amended birth certificate from CDPH in March 2022, Respondent did not perfect her request for the amended birth certificate by sending two copies of the certified judgment to CDPH with a check for payment until October 2022. Client was entitled to know about this delay.

Violations

13.

Respondent admits that, by failing to take the steps necessary to order the amended birth certificate until October 2022, and by failing to communicate with Client about her failure to timely do so, despite knowing that her failure to do so was likely to prejudice her client, she neglected a legal matter entrusted to her in violation of RPC 1.3. Further, by failing to keep her client reasonably informed about the status of his matter, Respondent violated RPC 1.4(a). By failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, Respondent violated RPC 1.4(b). By failing to deposit or maintain in trust client's payment for attorneys' fees and costs and by failing to include the language required by RPC 1.5(c)(3) in a written fee agreement signed by Client, Respondent violated RPC 1.15-1(c) and RPC 1.5(c)(3).

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 8.4(a)(3) should be and, upon the approval of this stipulation, is dismissed.

Sanction

14.

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 her duty of diligence, which includes the duty to timely and effectively communicate with her client. ABA Standard 4.4. Respondent violated her duty as a professional by using a fee agreement that failed to comply with the rules and by failing to deposit her client's funds into her 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 that situation. Respondent acted negligently with regard to her fee and fee agreement and knowingly with regard to her neglect and failure to communicate.
- c. **Injury.** Injury can be either actual or potential pursuant to the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Client suffered anxiety and aggravation when Respondent failed to communicate with him or follow through with matters on his behalf. Client wanted to finalize the adoption, including by receiving his daughter’s amended birth certificate, expeditiously to provide closure to the family and for purposes of providing medical insurance to his daughter. “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). Respondent admits to engaging in conduct that violates multiple rules of Professional Conduct.
 2. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been practicing law for over forty years.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a prior disciplinary record. ABA Standard 9.32(a). Respondent has been practicing law for over forty years without any disciplinary history.
 2. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).
 3. Full and full disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).
 4. Remorse. ABA Standard 9.32(l).

15.

Regarding Respondent’s lack of diligence and failure to adequately communicate, pursuant to 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 improper fee agreement and failure to

correctly deposit client's fees, an admonition is generally appropriate when a lawyer engages in an isolated instance of negligence demonstrating a breach of their duty as a professional that causes little or no actual or potential injury to a client, the public, or the legal system. ABA Standard 7.4.

Oregon case law generally requires a period of suspension for lawyers who knowingly neglect a legal matter or fail to keep clients informed of the status of their matter. *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 a 60-day suspension. *In re Redden*, 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 client's case for several months by failing to communicate with clients and opposing counsel).

In this matter, due to the imbalance in mitigating and aggravating factors, a downward departure from the recommended sanction of 60 days to 30 days is acceptable pursuant to the ABA Standards. *See* ABA Standard 9.31; *see also In re Obert*, 336 Or 640, 650, 89 P3d 1173 (2004) (noting that after focusing on the duty violated, the accused's mental state, and the actual or potential injury involved, the court then examines any aggravating or mitigating circumstances to determine if the sanction should be adjusted, before finally reviewing comparable case law).

16.

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, RPC 1.4(a), RPC 1.4(b), RPC 1.5(c)(3), and RPC 1.15-1(c), the sanction to be effective July 1, 2025.

17.

In addition, on or before September 1, 2025, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$130.50, incurred for the appearance fee for Respondent's deposition. Should Respondent fail to pay \$130.50 in full by September 1, 2025, 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.

18.

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 affirms that by July 1, 2025, she will have no active clients. Respondent represents that she will serve as the contact person for clients in need of their files during her term of suspension.

19.

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.

20.

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.

21.

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.

22.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on May 12, 2025. 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 May, 2025.

/s/ Kathleen O'Brien

Kathleen O'Brien, OSB No. 830717

EXECUTED this 23rd day of May, 2025.

OREGON STATE BAR

By: /s/ Alison F. Wilkinson

Alison F. Wilkinson, OSB No. 096799

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
MATTHEW P. GOLDMAN, Bar No. 183468) Case No. 24-118
)
Respondent.)

Counsel for the Bar: Samuel Leineweber

Counsel for the Respondent: Steven J. Sherlag

Disciplinary Board: None

Disposition: Violation of RPC 8.4(a)(2) and ORS 9.527(2). Stipulation for discipline. 2-year suspension with formal reinstatement.

Effective Date of Order: May 29, 2025

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The stipulation for discipline is accepted. Pursuant to the terms of the stipulation and the Oregon State Bar’s Rules of Procedure (BR), respondent Matthew P. Goldman (Bar No. 183468) is suspended from the practice of law in the State of Oregon effective as of the date of this order, for a minimum of two years. Respondent has acknowledged that reinstatement is not automatic on expiration of the period of suspension; that due to the length of his suspension, he must apply for formal reinstatement pursuant to BR 8.1; and that the Bar will conduct a character and fitness investigation before making any recommendation regarding possible reinstatement.

DATED May 29, 2025.

/s/ Meagan A. Flynn
Chief Justice, Supreme Court

STIPULATION FOR DISCIPLINE

Matthew P. Goldman, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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, 2018, 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 advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(8).

4.

On March 8, 2025, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 8.4(a)(2) and ORS 9.527(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 April 4, 2024, Respondent began conversing with a person in an online dating platform that he believed was a 15-year-old girl, but was actually an undercover police officer. Respondent's conversation with the undercover officer was sexually explicit and Respondent arranged to meet her at her house with the intent of engaging in sexual contact. Respondent went to the home of the purported 15-year-old girl and was arrested by law enforcement.

6.

On October 1, 2024, Respondent plead guilty to one count of Online Sexual Corruption of a Child in the First Degree (ORS 163.433), a Class B Felony.

Violations

7.

Respondent admits that his conviction for a felony sex offense reflects adversely on his honesty, trustworthiness or fitness as a lawyer, in violation of RPC 8.4(a)(2) and ORS 9.527(2).

Sanction

8.

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.** By committing a felony sex crime, Respondent failed 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's conduct reflects both "knowing" and "intentional" conduct. Respondent knowingly contacted a person he believed to be a minor for a sexual purpose, and Respondent intentionally took a substantial step toward engaging in a sexual act with the minor.

- c. **Injury.** For the purpose of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Keller*, 359 Or 410, 417, 506 P3d 1101 (2022). "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 7. Due to law enforcement intervention, Respondent's conduct resulted in potential injury.

- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. A dishonest or selfish motive. ABA Standard 9.22(b). Respondent prioritized his own sexual gratification over the harm that could be done to a child.
 2. Vulnerable victim. ABA Standard 9.22(h). Respondent's intended victim was a child.
- 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 described experiencing severe depression in the wake of a failed relationship that affected his decision making.
 3. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).
 4. Imposition of other penalties or sanctions. ABA Standard 9.32(k). Respondent was criminally convicted and must register as a sex offender.
 5. Remorse. ABA Standard 9.32(l). Respondent states that he regrets his actions.

9.

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 5.11¹ and that seriously adversely reflects on the lawyer's fitness to practice.

10.

Sanctions in disciplinary matters are not intended to penalize the respondent lawyer, but instead are intended to protect the public and the integrity of the profession. *In re Stauffer*, 327 Or 44, 66, 956 P2d 967 (1998). Appropriate discipline deters unethical conduct. *In re Kirkman*, 313 Or 181, 188, 830 P2d 206 (1992).

¹ A lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses. ABA Standard 5.11(a).

Oregon Supreme Court cases dealing with attorneys that have committed sex offenses are few and far between. See *In re Wolf* 312 Or 655, 826 P2d 628 (1992)[a lawyer was suspended for 18 months after having sex with his minor client]; *In re Hassenstab*, 325 Or 166, 934 P2d 1110 (1997)[a lawyer was disbarred for multiple offenses, including a criminal conviction for sex abuse involving a client].

Due to the age of Oregon’s case law on this subject, and the desire to find more factually comparable cases, the Bar reviewed cases outside of Oregon involving similar fact patterns. In 2017, a New Jersey lawyer was disbarred for arranging to meet with a minor for sex, only to arrive at the meeting location to find that the minor was an undercover police officer. *In re Gillen*, 2017 NJ Discipl. Rev Bd Dec LEXIS 108. DRB 16-269, at 16-17 (2017) (convicted of attempted dissemination on indecent materials to minors in the first degree; aggravated by pattern of behavior over a 14-month period, plea of guilty and term of imprisonment); *affirming* 230 NJ 382 (2017) Also in 2017, a Minnesota lawyer was suspended for two years for soliciting a minor to engage in sex. *In re Siders*, 903 NW2d 218 (2017). In 2021, a lawyer in Ohio received an “indefinite suspension” after he solicited sex from an undercover police officer posing as 15-year-old girl. *Disciplinary Counsel v. Cosgrove*, 165 Ohio St 3d 280, 178 NE 3d 481 (2021). In 2024, an Ohio lawyer who worked in the child-support unit received an “indefinite suspension” after he solicited sex for remuneration from an undercover police officer posing as 15-year-old girl. *Disciplinary Couns. v. Bell.*, 176 Ohio St 3d 303, 247 NE 3d 301 (2024).

11.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 2 years for violation of RPC 8.4(a)(2) and ORS 9.527(2), the sanction to be effective upon approval of this stipulation.

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 Jo Wan, telephone: (503) 367-4890, email: jwonesq@gmail.com, 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 Jo Wan 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 acknowledges that due to the length of Respondent’s suspension, he must apply for formal reinstatement pursuant to BR 8.1. Respondent further acknowledges that BR 8.1 requires the Bar to conduct a character and fitness investigation, which may take up to 12 months, before making a recommendation to the Supreme Court as to whether

Respondent should be reinstated. 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: Washington.

16.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 8, 2025. 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 28th day of April, 2025.

/s/ Matthew P. Goldman
Matthew P. Goldman, OSB No. 183468

APPROVED AS TO FORM AND CONTENT:

/s/ Steven J. Sherlag
Steven J. Sherlag, OSB No. 931034

EXECUTED this 28th day of April, 2024.

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)
)
JENNIFER N. TOWNE, Bar No. 120175) Case Nos. 22-188 & 23-261
)
Respondent.)

Counsel for the Bar: Matthew S. Coombs

Counsel for the Respondent: Amber Bevacqua-Lynott and Dallis Norstrom Rohde

Disciplinary Board: Mark A. Turner, Adjudicator
Tom Kranovich
Clark Haass, Public Member

Disposition: Violation of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.7(a)(2),
RPC 1.16(d), RPC 4.2, and RPC 5.3(a). Trial panel opinion.
60-day suspension.

Effective Date of Opinion: September 17, 2025

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged Jennifer N. Towne with violations of the following Oregon Rules of Professional Conduct (RPC): RPC 1.3 (neglect--two counts), RPC 1.4(a) (failure to communicate), RPC 1.16(d) (failure to promptly turn over client files and refund unspent trust funds), and RPC 5.3(a) (failure to adequately supervise non-lawyer staff--two counts). The case involved two clients and two separate matters, mainly during the COVID pandemic. Respondent failed to perform the work she had promised and ignored the cases over long stretches of time. She did not properly train or monitor her staff, which contributed to the delays. The Bar asks us to impose a six-month suspension.

Respondent argues she did her best under a heavy workload and denies responsibility for training or supervising her staff. Her counsel excused her conduct by arguing that she was performing "triage," allocating her time to cases with the most pressing demands. This excuse is insufficient. Clients should not suffer because a lawyer is overwhelmed.

The Bar must prove misconduct by clear and convincing evidence. BR 5.2. Clear and convincing means that the truth of the facts asserted is highly probable. *In re Merkel*, 314 Or. 142,

144, 138 P.3d 837 (2006) citing *In re Cohen*, 316 Or. 657, 659, 853 P.2d 286 (1993). As explained below, we find the Bar proved the charges and order that Respondent be suspended for 60 days.

Trial was held on March 17 and 18, 2025, at the offices of the Oregon State Bar before a trial panel consisting of the Adjudicator, Mark A. Turner, attorney member Tom Kranovich, and public member Clark Haass. The Bar appeared through counsel, Matthew Coombs. Respondent appeared personally and was represented by counsel, Amber Bevacqua-Lynott and Dallis Nordstrom Rohde.

FACTS

Backdrop

In 2017 Respondent began working with Gary Carlson at The Carlson Law Group (the firm). She had no litigation experience. Tr. at 33. She hoped to gain some by working with Carlson.

Oregon court filings are primarily electronic. Non-lawyer staff handled electronic filing at the firm. Respondent did not know how to e-file documents. *Id.* The firm lost an experienced paralegal and Respondent had to rely on legal assistant Amber Bannick. Respondent knew that Bannick had previously made mistakes trying to e-file documents that required the firm to refile them. Tr. at 40.

In March or April of 2020, Carlson proposed selling the firm to Respondent. She signed a purchase contract, despite not being allowed to see the firm financials or trust account records. Bannick left the firm around the same time. Respondent and Carlson hired a replacement, Heather Rimmer-Ledford. Ledford claimed two years' experience with a bankruptcy firm. Neither Respondent nor Carlson confirmed this. Ledford's claim was not true.

The sale of the firm closed in the summer of 2020. Respondent acquired the firm's name, clients, and office equipment. In September of 2020, she discovered Ledford had embezzled money and fired her. Respondent hired Clint Hoover, a client with no law firm experience, to replace Ledford. Tr. at 57.

The Probate

As noted above, the complaint here involves two client matters—a probate proceeding and a litigation engagement.

The clients in the probate proceeding were a married couple, Kurt and Linda Wilke. Kurt emailed Respondent on April 16, 2020, about his late mother-in-law's estate, which consisted of a bank account and a piece of real property in Washington. Linda then hired Respondent on May

4, 2020, paying \$1,500 for expenses.¹ At their first meeting Kurt and Linda told Respondent they wanted to expedite the probate due to Linda's brother's terminal cancer. Tr. at 109.

Respondent completed the probate petition in short order. Linda signed it on May 18, 2020. Respondent assured Kurt the petition would be filed the next day. Ledford claimed to have filed it.

On June 8, 2020, Kurt asked for an update and Respondent incorrectly told him that everything had been filed or mailed to the probate department. She told Kurt, "[w]e will keep checking throughout the week and let you know once the paperwork has been processed by the Court to start the probate." Ex. 23. Respondent did not keep this promise.

Kurt emailed Respondent on June 23, 2020, for another status update. No answer. Almost two months later, on August 17, Kurt sent Respondent an email repeating his request for an update. No answer.

Kurt or Linda also tried to contact Respondent by phone four times between September 30, 2020, and October 9, 2020, for an update. Respondent finally returned their calls on October 12 and told them she would begin providing status updates every Friday. She broke that promise on the next Friday.

On October 14, 2020, Respondent learned the probate petition had not been filed. It had been rejected four months earlier due to procedural issues. Tr. at 78. She told Kurt in an email on October 18 that the documents were now properly filed. They were not. She and Hoover tried to file the probate petition several times over the next month and were finally successful on November 17, 2020.

By January 7, 2021, the probate court had admitted the will. Respondent told Kurt the next steps would be filing an inventory and publishing the required public notice to potential claimants against the estate. She failed to meet court deadlines for both tasks. Kurt complained about the delay in an email on January 23 and reminded her of his brother-in-law's terminal condition. Tr. at 85. Kurt told Respondent to get the required filings started that week.

In mid-February Respondent told Hoover to draft the inventory despite the fact that Hoover had no experience drafting legal documents. Tr. at 80. She told him to review inventories from older cases she had on file to see how it was done. Tr. at 89-91.

On April 12, 2021, the Washington County court sent Respondent a notice that the inventory was past due. It directed Respondent to submit the appropriate documents or request an extension of time within 10 days. On April 26 the Washington County Probate Commissioner sent Respondent another notice since she had failed to comply with the previous one. It told her to fix the problem within 10 days. Respondent did not tell the Wilkes about either notice.

¹ Apparently, the Wilkes' legal fees were covered by a prepaid legal insurance program.

On May 5, 2021, Respondent filed a statement with the court that the inventory was prepared, but she needed more time to get Linda's notarized signature. This was complicated due to COVID. Respondent tried to set up a home visit with a notary to get Linda's signature. Respondent then learned from the court the document did not need to be notarized. Tr. at 93. She got the signed inventory from Linda and filed it on May 21, 2021. Tr. at 93-94.

Respondent knew the estate had to publish a notice which would begin a four-month period in which others could file claims against an estate. Tr. at 95-6. Despite this Respondent delayed more than three months, until September 1, 2021, before using Pamplin Media to publish the notice. Pamplin completed publication as of September 21, 2021, and sent Respondent an affidavit of publication. Respondent failed to file it with the court.

Also on September 1, 2021, Kurt emailed Respondent telling her the real property in Washington had been sold. On September 27, Kurt emailed Respondent telling her he and Linda had been waiting for a call to discuss finalizing the estate. Respondent replied that day, stating that funds from the home sale could be distributed to heirs, that she would send out receipts once the Wilkes confirmed the addresses and that the estate, "should be closing" in a few weeks. Ex. 51.

On October 6, 2021, Kurt sent Respondent the addresses. Kurt, Linda, and Linda's sister tried four times over the next three weeks to get an update, but they received no reply until October 28. Respondent told them she may have misunderstood the status of the distribution of funds and asked for clarification. Ex. 50. Linda's sister confirmed that the previous understanding was correct. Respondent blamed the misunderstanding on her staff.

Linda's sister complained to Kurt and Linda that Respondent had done nothing on the probate over the summer. Kurt told her they were frustrated and that they "should have changed lawyers long ago but were worried about having to start over." Ex. 52.

On January 19, 2022, Kurt emailed Respondent asking for an update but again got no response. He followed up on January 27. Respondent replied on January 28 stating she had received the final signed receipt and would send an updated timeline over the weekend. Having received nothing by February 26, Kurt emailed her again. Respondent replied, telling Kurt she had to, "wait for all the responses" despite previously telling him she had all the receipts. Kurt asked if they could meet in person. Ex. 53. No answer.

On March 6, 2022, Kurt and Linda sent an email asking what fees they may owe beyond what was paid by their legal insurance benefit. They heard nothing. Kurt left a voicemail but got no reply. Kurt went to Respondent's office address in person but discovered her office was no longer there.

In April of 2022, Linda fired Respondent, who had still not filed the affidavit of publication with the court. Tr. at 96-7. Kurt and Linda hired another attorney, Katheryn Ireland, to finish the probate process. On April 5, 2022, Ireland emailed Respondent and told her she was fired. Ireland asked for a copy of the clients' file. Ireland needed the file quickly because she needed to comply

with a notice from the court. Ireland and her assistant tried over the next five weeks to get a complete copy of the file without success.

On April 26, 2022, Ireland demanded Respondent produce the file by April 29, 2022. She also told Respondent to provide complete billing records for the case. Respondent turned over some documents, but never delivered the complete file and did not provide any billing records. Ireland dropped the issue at that point.

Later in the year, on November 4, 2022, Ireland sent Respondent an email requesting an accounting and a refund of any remaining funds that Linda had paid for expenses. Respondent mailed Ireland a check 10 days later with a billing statement and a refund of what remained of the retainer.

The Litigation

In late November 2019, Gene Summerfield hired Respondent to handle a matter in which Summerfield claimed an equity interest in real property he had purchased with his former domestic partner, Quiana Nolan. When they first met Summerfield told Respondent she needed to act quickly because he feared his former partner might sell the property.

Respondent planned to take what she characterized as a novel approach, which was to file a petition for dissolution of the domestic partnership against Nolan to claim Summerfield's interest in the property. She believed this would preclude a successful statute of limitations defense. Tr. at 37. Respondent spent three hours on December 1, 2019, communicating with Summerfield and drafting the petition. Respondent then did nothing on the case until February the next year. Tr. at 38.

Respondent reviewed the petition again on February 11, 2020, and assigned responsibility for e-filing the case to Bannick. Bannick gave Respondent a copy of the petition with a handwritten note stating, "Jen, I filed this!" Ex. 2. Respondent knew the petition had to be served but made no effort to get that done, apparently relying on Bannick to do so.

Bannick left the firm and was replaced by Ledford. Respondent discovered in May of 2020, that Bannick had not actually filed the petition in February. Tr. at 47. She told Ledford to file and serve it. Tr. at 48-9. Ledford gave Respondent a copy of the petition with a handwritten notation: "Filed 5-19-2020."

Ledford also gave Respondent an electronic filing receipt. But the receipt showed only that the petition had been submitted, not that it had been accepted by the court. Respondent did not know how to confirm that a successful electronic filing was acknowledged by the court. Tr. at 48. She accepted Ledford's representation that the petition had been filed. It had not.

In September of 2020, Respondent discovered the petition still had not been filed. Tr. at 51. But she waited more than five months, until February 12, 2021, to tell Summerfield. Tr. at 52-3. Prior to that date Summerfield had tried to contact Respondent about his case but had no luck.

When Respondent finally did communicate with Summerfield she apologized for her lack of communication and blamed her staff for failing to file the petition.

She asked if Summerfield wanted to go forward with the case. Summerfield told her he wanted her to file the petition. He did not have money to hire another lawyer.

Respondent later told Hoover to file the petition. Hoover tried to do so. He then gave Respondent a hard copy of the petition on which he had written "Efiled 4/9/2021" at the top. Ex. 8. Instead, the petition was rejected again. Respondent discovered this fact relatively quickly, and she and Hoover finally filed the petition successfully on April 14, 2021. Tr. at 54. She told Summerfield that same day that the petition had actually been filed.

By late July of 2021, the process server Respondent hired still had not successfully served the petition despite multiple attempts. Ex. 10. Respondent recommended to Summerfield that she file a motion to allow alternative service. Tr. at 61. She told Summerfield he would have to pay more money to cover the cost involved. Summerfield resisted paying more than he already had.

Although Respondent did not have accurate records covering the firm trust account (presumably due in part to Ledford's embezzlement), she decided to "credit" Summerfield with \$1,000 in trust to cover the increased cost. Tr. at 62-3. Summerfield approved asking the court to allow alternative service, but Respondent never filed the required motion. Tr. at 64.

Four more months went by. The process server finally personally served the petition on December 7, 2021, nearly eight months after the petition had been filed.

Nolan filed a motion to dismiss arguing, among other things, that the claim was barred by the statute of limitations. A hearing was set for June 2, 2022. Respondent testified at trial that she did not believe Summerfield would pay her for the time necessary to handle a case that had become more complicated and requiring more time than she had anticipated. Tr. at 66-7. She felt the case might be beyond her litigation experience, and also knew she had to take time off during the summer for planned surgeries. *Id.* She decided she needed to resign, and Summerfield should hire a different lawyer. In a letter on March 14, 2022, she told him she was withdrawing for medical reasons, and he needed to find a new lawyer for the June hearing. He apparently had not done so by the time of the June 2 hearing, and Respondent testified that she appeared at the hearing by video to protect his rights even though she had resigned. Tr. at 68.

Respondent testified at trial that she was overwhelmed by her workload and was taking "things that had deadlines that were going to be important, first." *Id.*

ANALYSIS OF THE CHARGES

1. We find Respondent violated RPC 1.3 in both cases.

RPC 1.3 states simply: “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. A lawyer’s conduct must be viewed over time rather than as discrete, isolated events. *In re Magar*, 335 Or 306, 321, 66 P3d 1014 (2003). A mere act of negligence is not sufficient to show a violation of the rule, but a course of neglectful conduct or an extended period of neglect will. *In re Jackson*, 347 Or 426, 435, 223 P3d 387 (2009); *In re Eadie*, 333 Or 42, 64, 36 P3d 468 (2001). In *In re Redden*, 342 Or 393, 153 P2d 113 (2007), the Oregon Supreme Court noted that a “course” is “an ordered continuing process, succession, sequence, or series,” such that there must be proof of a “succession or series of negligent actions.” 342 Or at 397.

Respondent ignored the probate matter for prolonged periods of time during which she accomplished nothing on behalf of her clients. The facts established at trial showed multiple failures to act or to act in a timely way, misleading assurances to her clients, unjustified reliance on untrained staff, blaming the same staff in order to excuse her own failures, and a fundamental failure to master even the simple act of properly filing her clients’ case with the court. Even when she discovered her staff had lied to her about the case being properly filed, she inexplicably delayed taking corrective action.

Respondent knew her clients wanted her to move quickly. When the probate was finally opened in January of 2021, months after it could--and should--have been, Respondent did nothing to make up for lost time. She treated the court deadlines not as standards to be met, but as nuisances to be ignored.

She unjustifiably relied on her inexperienced assistant to prepare the inventory in February of 2021, which he failed to do. Then, even after receiving two delinquency notices from the court, Respondent failed to file the simple, two-page inventory until late May. She also failed to arrange for timely publication of the required notice. She waited eight months before even contacting Pamplin Media to handle the job, and when Pamplin had done what was required of it Respondent never even filed the affidavit of publication with the court.

When the clients finally fired Respondent, it was a year after the probate had been opened, which in turn was seven months after she had been hired to commence the process. Even then Respondent continued to ignore tasks she could have, and should have, performed. Respondent’s pattern of inaction constitutes neglect in violation of RPC 1.3.

Summerfield hired Respondent and told her to move quickly because a sale of the property could make his claim worthless. She decided a petition for dissolution of the domestic partnership had the best chance of success (which apparently turned out to be correct). She had a draft prepared within days of being hired, had it in final form in two months, yet failed to have the petition properly filed for 14 months. She then failed to get it served for another eight

months. A delay of more than two years here is inexcusable regardless of whether the case was in fact urgent.

Respondent's staff failed to properly file the petition despite multiple attempts. They lied to Respondent and said they had. She did nothing to confirm whether the task had actually been accomplished. Even if we concluded the first instance was not her fault because she could not anticipate that her assistant would lie to her, once that happened, she should have made sure that her staff were truthful when they falsely claimed the petition had been filed two more times. Instead, the pattern repeated itself. The same held true when they lied to her about serving the petition. Perhaps "fool me once, shame on you" applies here, but "fool me twice, shame on me" applies too. And here it even happened three times. Respondent compounded the misconduct when she inexplicably waited months before trying again to file the petition once she discovered her assistants' failures.

She also neglected the case when she failed to have the petition served. The initial delay may be excused since the process server was actually trying to get the job done, but when months had passed with no success she needed to act. Although she advised her client to move to allow alternative service and Summerfield agreed to the plan she did nothing on that front. Months went by before the process server finally served Nolan. We have no idea how many more months might have elapsed if the process server had not been able to finally serve the petition.

The Bar cites us to *In re Keller*, 369 Or 410, 506 P3d 1101 (2022), where a lawyer's neglect was deemed misconduct when he failed to comply with his client's request to tend to a simple task for eight months. Here Respondent failed to accomplish the simple task of commencing a case and serving the petition for more than two years even though the client had told her his need was urgent. We find the prolonged delays in this case also constitute neglect in violation of RPC 1.3.

2. We find that Respondent violated RPC 1.4(a) in the probate matter.

RPC 1.4(a) states: "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." In determining whether a lawyer's failure to communicate has violated RPC 1.4(a), we are to consider the length of time a lawyer failed to communicate; whether the lawyer failed to respond promptly to reasonable requests for information; and whether the lawyer knew or a reasonable lawyer would have foreseen that a delay in communication would prejudice the client. *In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011). The Oregon Supreme Court has also noted that, in certain circumstances, a lawyer may be required to communicate information immediately in order to keep a client reasonably informed and that, in many circumstances, the attorney has the responsibility to initiate the communication. *In re Graeff*, 368 Or 18, 26, 485 P3d 258 (2021) (citing *In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011)). In *Graeff*, the court found a violation when the attorney's failure to communicate with his clients took place over a relatively short period of time because it occurred when a motion for summary judgment had been filed against his clients' case. The lawyer decided not to oppose the motion because he had concluded the clients' case was without merit, but he did not promptly tell his clients of his intent. *Graeff*, 368 Or at 25-26.

Here Respondent failed to respond to her clients' reasonable requests for updates multiple times. Sometimes months went by before they heard back. A reasonable lawyer would know Respondent's delays could prejudice her clients. Respondent had to be particularly aware of this fact since the clients made it clear from the outset that the probate needed a prompt resolution due to Linda's brother's terminal illness.

The factual recitation above shows a pattern—Respondent failed to move the case forward, the clients would ask for updates, Respondent would ignore them for extended periods of time, and when she did respond she always had a handy excuse. At least twice she promised to monitor the case and provide regular updates. She broke those promises.

Respondent received notices from the court about delinquent filings. She never told her clients, who remained unaware that she failed to perform essential tasks in a timely manner.

In October of 2021, Kurt admitted to Linda's sister that they should have hired a different lawyer but were afraid of having to start over. Respondent continued her insufficient communication with her clients through the end of 2021 and into early 2022. Respondent became angry with the Wilkes' frustration at the pace of the probate, yet she admitted that she had in fact decided the probate matter was not pressing and made a conscious decision to focus on other matters. The Wilkes would have wanted to know this, but by March and April, she stopped communicating with her clients altogether.

Respondent's multiple failures to respond to her clients' reasonable requests for information and her failure to provide them with material information about her handling of the case violated RPC 1.4(a).

3. We find that Respondent violated RPC 1.16(d) in the probate case when she failed to turn over the case file and refund unspent trust funds "upon the termination of representation."

The rule involved here, RPC 1.16(d), provides:

"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."

The Bar advised us that there is no Oregon case law interpreting this rule but it does refer us to three stipulations for discipline for violating the rule which had arguably similar facts: *In re Meaney*, 34 DB Rptr 80 (2020) (lawyer stipulated to RPC 1.16(d) violation when, after conclusion of representation, client requested specific case documents for a period of 15 months before lawyer fully complied); *In re Redden*, 32 DB Rptr 302 (2018) (lawyer stipulated to violating

RPC 1.16(d) when former client’s new counsel repeatedly requested case documents that lawyer failed to provide for 19 months and partially blamed the oversight on staff); and *In re Crawford*, 32 DB Rptr 278 (2018) (after lawyer declined to represent potential client, lawyer failed to turn over original documents for more than a year and stipulated to violating RPC 1.16(d)). We recognize that stipulations are not considered binding precedent by the Supreme Court, but we also note that if they did not reflect a valid interpretation of the rule they would not have been agreed to or approved.

Nevertheless, Ireland sent numerous requests to Respondent over a five-week period asking for the file after Respondent was fired. Ireland needed the file to respond to court deadlines. Respondent never fully complied with the requests. Ireland ultimately dropped the issue and moved ahead with what she had.

Respondent also failed to promptly provide an accounting of the expenses incurred for which Linda had paid a \$1,500 retainer. In April of 2022, Ireland requested that Respondent provide billing records. Respondent ignored the request until she received another email from Ireland seven months later. At this point she sent an invoice and refunded Linda’s retainer.

The rule required respondent, “upon termination of representation,” to surrender “papers and property to which the client is entitled” and to refund “any advance payment of fee or expense that has not been earned or incurred.” Respondent did not do this “upon termination of representation,” but instead produced materials in response to Ireland’s requests in a piecemeal fashion over an unacceptable period of time. She further failed to refund monies due “upon termination of representation,” and instead waited months to do so. We find that this conduct violated RPC 1.16(d).

4. We find that Respondent violated RPC 5.3(a) in the probate and litigation matters when she failed to confirm her staff had the proper training to ensure that their conduct was compatible with Respondent’s professional obligations.

RPC 5.3(a) provides:

“With respect to a nonlawyer employed or retained, supervised or directed by a lawyer ... a lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer...”

The Oregon Supreme Court has not analyzed RPC 5.3, so we find no guidance in our state’s case law. The Bar points to the Restatement (Third) of Law Governing Lawyers for the proposition that a lawyer does not need to actually know when staff fail to act in conformity with the lawyer’s professional obligations. The Restatement explains that a lawyer must, “assume the likelihood that a ... nonlawyer employee may not yet have received adequate preparation for carrying out that person’s own responsibilities.” Further, “lack of knowledge on the part of the lawyer will not constitute a defense if under the circumstances the lawyer either failed to ensure the presence of measures to prevent misconduct or failed to make reasonable efforts to see that a supervised

nonlawyer complied with those measures and otherwise conformed the person's conduct to the professional obligations of the lawyer." *Restatement* at § 11, cmt. C, f. (2003).²

Respondent has argued that she should not be responsible for the legal assistants' conduct because she had no authority to hire or fire them, only Carlson did. A comparison of RPC 5.3(a) to ABA Model Rule 5.3(a) is helpful here. RPC 5.3(a) applies to "a lawyer having direct supervisory authority over the nonlawyer." In contrast, the Model Rule applies to "a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm." Under our rule, regardless of whether Respondent could hire or fire the nonlawyer employees, she did have "direct supervisory authority" over them and was required to make "reasonable efforts" to prevent their misconduct.

Respondent's failures here were due in part to her ignorance about how to electronically file documents. She did not know how to take the simple steps to confirm through the e-filing system that the probate had been opened. She just turned the matter over to Ledford, whose incompetence caused a four-month delay. She then handed the case to Hoover, who was untrained and inexperienced, which added another month of delay to opening the probate. Respondent's ignorance is no excuse.

After the probate was finally opened, she told Hoover, a person with no experience, to prepare and file the inventory. The only guidance she gave him was telling him to look at other files for examples to follow. Hoover took three months to draft the two-page inventory. She also assumed he would take care of publishing the required notice, and that did not happen until seven months later when she stepped in. Much of the neglect in the probate matter can be attributed to untrained staff, but Respondent was the one who was required to ensure that her staff could actually handle the tasks assigned to them. She failed.

There is a similar pattern in Respondent's treatment of the Summerfield litigation. She told two different legal assistants to file the dissolution, and just assumed the task would be done without following up, even after the first assistant had lied to her to cover up the fact that she had not been successful. She then turned the file over to a completely inexperienced employee. She could, and should, have taken reasonable steps to monitor the status of the case. Instead, the petition--finished but not filed--was in limbo for 14 months.

Respondent did not make reasonable efforts to supervise her employees. We find that Respondent violated RPC 5.3(a).

² The Bar also cites a Colorado case, *People v. Smith*, 74 P.3d 566, 573, Colo. Discipl. LEXIS 43 (2003), where a lawyer violated Colorado RPC 5.3 after he filed a divorce case and then neglected the matter partly due to a non-lawyer assistant's failure to forward court communications to the lawyer, and a Nevada case, *In re Donahue*, 132 Nev. 984, 2016 Nev. LEXIS 650 (2016), where a lawyer violated Nevada RPC 5.3 when firm staff accepted funds to pay a client's fine but the lawyer failed to ensure that staff had actually paid it.

SANCTION

We refer to the *ABA Standards for Imposing Lawyer Sanctions* (ABA Standards), in addition to 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 determine a preliminary sanction, which we may adjust, if appropriate, based on recognized aggravating or mitigating factors.

Duty Violated.

Respondent violated her duty of diligence in both cases. ABA Standards 4.0. Respondent violated her duty to preserve client property in the probate matter. ABA Standard 4.4. She violated her duty to the legal profession in both cases when she failed to adequately supervise her staff. ABA Standard 7.0

Mental State.

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.*

In the probate matter Respondent knew of the delays and allowed them to continue for an extended period. At the same time, she ignored her client's attempts to stay up to date on the case. She knew her clients wanted prompt action but made a conscious choice to put the probate on the back burner. She knew Hoover did not have the experience to manage his assigned tasks without supervision but the only guidance she offered was for him to look at her old files and figure things out for himself. Her conduct was knowing.

In the Summerfield case, Respondent delegated important tasks to Bannick without any follow up despite being aware of her prior failures to master e-filing. She then turned to Ledford and again failed to take any action to confirm she had completed the same task despite having been burned before. Even when she discovered that Summerfield's petition had not been filed, she waited months before getting the job done. Respondent also acted knowingly here.

Extent of Actual or Potential Injury.

For purposes of determining an appropriate sanction, we may consider 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.

For both matters, unnecessarily prolonging litigation is an actual injury. *In re Howser*, 329 Or 404, 413, 987 P2d 496 (1999). So is a client's frustration and anxiety. *In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000) (citing *In re Schaffner*, 325 Or 421, 426-7, 939 P2d 39 (1997)). Failure to produce the complete probate file upon termination of employment caused further delay for the Wilkes' new lawyer.

Respondent's delay in filing Summerfield's case also exposed him to the potential that the property would be sold, thus impairing his ability to actually collect on a judgment.

Preliminary Sanction.

We find the following ABA Standards apply to this case:

Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to the client, or engages in a pattern of neglect that causes injury or potential injury to a client. ABA Standard 4.42.

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.

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

Suspension is the presumptive sanction here.

Aggravating Circumstances.

The Bar argues that the following aggravating factors can be found here:

1. A prior record of discipline. ABA Standard 9.22(a). Respondent has had prior discipline imposed, but the Bar acknowledges that when the analysis set forth in *In re Cohen*, 330 Or 489, 498-501, 8 P 3d 953 (2000) is applied we should give little weight to this factor. We agree.

2. A pattern of misconduct. ABA Standard 9.22(c). The Bar argues that this factor applies because Respondent's misconduct occurred in two different cases over a number of years and each involved similar failures on her part. I

Respondent contends that the offenses presented here do not constitute a pattern of misconduct and that, instead, the multiple offenses here only trigger application of the "multiple offenses" aggravating factor (see below). Although we have found that Respondent committed similar rule violations in two client matters these violations occurred during a particularly stressful time (the COVID pandemic/employee theft) and do not appear elsewhere in Respondent's practice history. *See, e.g., In re Redden*, 342 Or. 393, 398, 153 P.3d 113 (2007) (court declined to find pattern of misconduct aggravation because the respondent had "no prior disciplinary history, and the record is devoid of any evidence that the accused engaged in similar professional misconduct in the past."). The accused represented the client on one legal matter, not multiple matters. The Bar did not charge the accused with multiple rule violations, and it admits that the accused did not neglect other clients."). This case differs from *Redden* insofar as Respondent's misconduct here involved two clients and multiple rule violations in each instance and *Redden* involved one client, did not include multiple charges, and the lawyer did not neglect other clients. But in this case the rule violations all arise from the same set of operative facts in each case. Respondent neglected the cases and her failure to supervise contributed to that neglect in both cases. In the probate case her failures to communicate often involved failure to keep the clients apprised of the effects of her neglect. Although we do have similar misconduct in two cases, we do not believe that these two instances constitute a pattern. We do not apply this factor here.

3. Multiple offenses. ABA Standard 9.22(d). Respondent admits in her trial memorandum that this factor would apply, rather than the "pattern of misconduct" discussed above, if we find the Bar proved all of the charges alleged. We agree.
4. Refusal to acknowledge wrongful nature of conduct. ABA Standard 9.22(g). Respondent admits she did some things wrong in the probate case but denies any neglect or failure to supervise in the Summerfield litigation. A lawyer should not be penalized for asserting a vigorous defense when called for, but here the delays in the Summerfield case could not be denied. We also find Respondent's attempt at avoiding responsibility by blaming her staff also indicates refusal to recognize the wrongful nature of her conduct. We apply this factor.
5. Substantial experience in the practice of law. ABA Standard 9.22(i). The Bar says this factor applies. Respondent counters that she had only been practicing

for eight years when the events involved here took place. Respondent claims there are no cases she is aware of where an attorney with less than 10 years of practice was found to have substantial experience in the practice of law. The court has not given us a bright line to use when applying this standard, and the Bar has cited no cases where this factor was applied to an attorney with Respondent's practice history. We decline to apply this factor here.

Mitigating Circumstances.

Respondent argues the following mitigating factors apply:

1. No prior relevant disciplinary history. ABA Standard 9.32(a). We give Respondent's prior disciplinary history little weight as an aggravating factor as discussed above.
2. Absence of a dishonest or selfish motive. ABA Standard 9.32(b). We agree that this factor applies.
3. Personal or emotional problems. ABA Standard 9.32(c). The Bar acknowledges that Respondent "should be given significant mitigating credit for personal or emotional problems." Respondent was coping with the COVID pandemic while representing these clients. She was drawn into a criminal representation that mushroomed into a life problem outside of her practice. Tr. at 240-42. And she had to cope with the fact that her younger son, a special needs child who did well in the Lake Oswego school system, did not fare so well being confined at home during the lockdown. Tr. at 247. This created conflict between her two sons that she had to manage alone. And, tragically, Respondent's older son died on September 13, 2022, while attending his freshman orientation period at college, a time when she was still dealing with Ireland about the probate matter. We agree that these circumstances should result in significant mitigation here.
4. Cooperative attitude toward the proceeding. ABA Standard 9.32(e). We agree that this factor applies.

Respondent also asks us to find mitigation under ABA Standard 9.32(k) based on imposition of other penalties and sanctions. We do not believe the loss of a prepaid legal services contract qualifies as a mitigating factor under this Standard. And she asks us to find that ABA Standard 9.32(l), remorse, also applies. For the reasons discussed above regarding ABA Standard 9.22(g), refusal to acknowledge the wrongful nature of her conduct, we decline to apply this mitigating factor.

All told, we believe that the factors taken as a whole should result in significant mitigation of the sanction to be imposed.

Oregon Case Law.

Lawyers who knowingly neglect a legal matter or fail to keep clients informed are usually suspended. The Bar cites a number of cases in support of this proposition: *In re Snyder*, 348 Or 307, 232 P3d 952 (2010); *In re Knappenberger*, 337 Or 15, 32-33, 90 P3d 614 (2004) (60-day suspension is generally imposed in a case involving neglect); *In re LaBahn*, 335 Or 357, 67 P.3d 381 (2003) (60-day suspension for single violation of RPC 1.3 predecessor rule); and *In re Schaffner*, 323 Ore at 918 (60-day suspension for knowing neglect of clients' case over a period of time). The Bar argues that the presumptive sanction for the RPC 1.3 and RPC 1.4(a) violations is a 120-day suspension.

Respondent counters that a public reprimand is sufficient where, "despite some injury, mitigation greatly outweighs aggravation for negligent and knowing conduct, there is no dishonesty involved, and the conduct is not aggravated by prior discipline." *Respondent's Trial Memorandum* at 34-5. She cites a number of case resolutions supporting her position.³

The Bar is unable to provide us with Oregon case law guidance on the proper sanction for a violation of RPC 5.3(a), but argues that under ABA Standard 7.2, a term of suspension is separately warranted. It then asserts that for the two violations of RPC 5.3(a) and one violation of RPC 1.16(d), a 30-day suspension should be added to our calculation.

We conclude that a suspension is warranted here. But even before considering Respondent's arguments, we would be hard pressed to find justification for a six-month suspension. Further, we find that Respondent's mitigating factors, the most significant of which even the Bar acknowledges, present a substantial case for mitigation.

We acknowledge that case-matching in disciplinary matters is an "inexact science." *In re Hostetter*, 348 Or 574, 603, 238 P3d 13 (2010). Sanctions in disciplinary matters are not intended

³ *In re Daines*, 37 DB Rptr 200 (2023) (trial panel reprimanded respondent for knowing violations of RPC 1.3 and RPC 1.4(b), where there was actual injury in the form of client frustration, but two mitigating factors to counter his substantial experience); *In re Coleman*, 35 DB Rptr 63 (2021) (reprimand for knowing violations of RPC 1.3 and RPC 1.4(a), where there was actual injury in the form of client anxiety and frustration and mitigating factors outnumbered those in aggravation); *In re Clark*, 32 DB Rptr 403 (2018) (reprimand for primarily negligent violation of RPC 1.3 for failing to properly serve the defendant in his client's wrongful death action, resulting in a dismissal of the case, but where mitigation was greater than single aggravating factor); *In re Thompson*, 32 DB Rptr 328 (2018) (reprimand for negligent violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 1.15-1(a), where there was actual injury due to respondent's inaction on a probate, in addition to client frustration, but three mitigating factors outweighed the single aggravating factor of multiple offenses); *In re Bruce*, 32 DB Rptr 290 (2018) (reprimand for negligent violations of RPC 1.1, RPC 1.3, RPC 1.4(a), and RPC 1.4(b), where there was actual injury for failing to pursue a case, but four mitigating factors outweighed aggravating factor of multiple offenses); and *In re May*, 27 DB Rptr 200 (2013) (reprimand for negligent violations of RPC 1.1, RPC 1.3, RPC 1.4(a) & (b), and RPC 1.5(a), where there was actual injury in the form of the client paying for services that did not benefit her by respondent's failure to actively pursue her case, but four mitigating factors outweighed the single aggravating factor of multiple offenses).

to penalize a respondent; they 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 that each of the cases merits a 30-day suspension, for a total of 60 days. In our judgment, the purposes of attorney discipline will be fulfilled by a 60-day suspension.

CONCLUSION

We find that Respondent committed the alleged rule violations and order that Respondent be suspended for 60 days effective 30 days after this decision becomes final.

Respectfully submitted this 30th day of May 2025.

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

/s/Tom Kranovich
Tom Kranovich, Attorney Panel Member

/s/Clark Haass
Clark Haass, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
CHARLES D. YOUNG, Bar No. 954616) Case No. 23-188
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator
David F. Doughman
JoAnn Jackson, Public Member

Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.5(a), RPC 1.16(d),
RPC 5.5(b)(2), RPC 7.1, RPC 8.1(a)(2), RPC 8.4(a)(2), and
ORS 9.160(1). Trial Panel Opinion. Disbarment.

Effective Date of Opinion: July 11, 2025

TRIAL PANEL OPINION

The Oregon State Bar (Bar) asks that we disbar Respondent Charles D. Young. He is alleged to have stolen client funds, misconduct that presumptively results in disbarment. He is also alleged to have failed to cooperate with and respond to the Bar’s investigation, along with a variety of other charges, all relating to the representation of a single client. All told Respondent is accused of violating eight Oregon Rules of Professional Conduct (RPCs) and one Oregon statute.

Respondent is in default for failure to appear. When a respondent is in default the Bar’s factual allegations in the complaint are deemed true. BR 5.8(a); *In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004). Our role is to first determine whether the facts alleged establish the charged rule violations. If we conclude they do, we then determine what sanction is appropriate. *See In re Koch*, 345 Or 444, 446, 198 P3d 910 (2008); *see also In re Kluge*, 332 Or 251, 253, 27 P3d 102 (2001).

As explained below, we find that the facts pleaded support the charged violations and we order that Respondent be disbarred.

PROCEDURAL POSTURE

On June 14, 2024, the Bar filed a formal complaint against Respondent. Respondent was personally served on July 3, 2024. On July 19, 2024, the Bar sent Respondent a ten-day notice of intent to take default. Respondent failed to file an answer, and the Bar filed a motion for an order of default on August 23, 2024. The Adjudicator granted the motion on August 29, 2024.

FACTS

On April 5, 2023, Maria Inzunza Caro spoke by phone with Respondent about preparing a will, an advanced directive for healthcare, and a power of attorney.¹ Respondent was administratively suspended at the time for failure to pay his Professional Liability Fund assessment and had been so for more than three years.

Despite being suspended, Respondent emailed Caro on April 8 to tell her that he would prepare the documents for a \$550 fee, \$275 of which was due upfront. Respondent also told Caro that he anticipated mailing out drafts of the documents for her review and approval by the following week. In his email Respondent used a signature block that identified him as an “Attorney at Law,” and it included his office address in downtown Portland then on record with the Bar (record address).² Respondent did not tell Caro he was suspended.

On April 10 Caro sent Respondent a \$275 check. Three days later Respondent cashed the check. He never provided Caro with the drafts of the documents he had promised.

On April 19, Caro called Respondent at his office. She was unable to reach him, and he did not call her back. On May 1 Caro emailed Respondent. No reply. On May 8 Caro emailed Respondent twice, telling him he was fired in the first email and asking for a refund of her money in the second. No reply. On May 9 and May 21 Caro tried to reach Respondent by phone. No luck. Respondent never responded to Caro’s emails or phone calls. He never did the work for which she paid the \$275 fee. He never sent her a refund even though she had requested he do so.

When these events occurred ORS 164.045 provided that a person commits the crime of theft in the second 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 \$100 or more and less than \$1,000. ORS 164.015(4) provided that a person commits the crime of theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person commits theft by deception as provided in ORS 164.085. ORS 164.085(1)(b) provided that a person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, the person fails to correct a false impression that the person previously created or confirmed. The crime is a Class A misdemeanor.

¹ The facts recited in our opinion are all found in the allegations of the formal complaint.

² All attorneys admitted to practice in Oregon must keep the Bar apprised of a current business and email address unless granted an exemption. BR 1.11(a) and (b). It is the attorney’s duty to “promptly notify the Bar in writing of any change in his or her contact information.” BR 1.11(d).

When Respondent took Caro's money under false pretenses, i.e., that he was a lawyer in good standing and would perform the work he promised, he committed theft by deception.

Disciplinary Counsel's Office (DCO) received a grievance from Caro against Respondent on August 17, 2023. DCO sent a letter to Respondent on September 13 asking for his response to the grievance. The letter was sent by first class mail to Respondent's record address and by email to cyoungpdx@aol.com, the email address then on record with the Bar (record email address). Neither the letter nor the email was returned undelivered. Respondent did not reply.

On September 18, a DCO investigator visited Respondent's office. The building directory identified Respondent as "Attorney at Law." Business cards in the reception area Respondent shared with other lawyers identified Respondent as an "Attorney at Law."

The investigator briefly spoke with Respondent. He admitted he received a letter from the Bar that morning but said he had not yet opened it. The investigator encouraged Respondent to contact DCO. The investigator also took a business card and letterhead from Respondent that identified him as an "Attorney at Law." Neither the building directory nor the business cards and letterhead disclosed that Respondent was suspended from practicing.

Despite the investigator's recommendation, Respondent never contacted DCO or provided a response to the September 13 letter

DCO sent another letter to Respondent's record address and email address dated November 30, 2023, again asking for a response to the grievance. This time the physical letter was sent by first class and by certified mail, return receipt requested. Respondent's agent signed the certified mail receipt. The email was not returned undelivered. Respondent never replied.

On January 25, 2024, DCO filed a BR 7.1 petition seeking Respondent's immediate suspension until he responded to DCO's requests for information. Respondent did not respond to the petition or to DCO. On February 6, 2024, the Adjudicator granted the petition and suspended Respondent. As of June 14, 2024, the date the Bar filed the formal complaint in this case, Respondent had still not provided any response to the grievance.

ANALYSIS OF THE CHARGES

Respondent violated RPC 8.4(a)(2) when he committed theft by deception.

This rule 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." To establish a violation the Bar must prove by clear and convincing evidence that the lawyer violated a criminal statute and that the conduct reflects adversely on the lawyer's fitness to practice. *In re Strickland*, 339 Or 595, 601, 124 P3d 1225 (2005). A criminal conviction is not required to establish a violation of RPC 8.4(a)(2). *In re Graeff*, 368 Or 18, 30 n 9, 485 P3d 258 (2021), citing *In re Walton*, 352 Or 548, 554 n 5, 287 P3d 1098 (2012). Conduct violates the rule when there is a "rational connection" between the criminal act and the lawyer's fitness to

practice. *Strickland*, 339 Or 601, citing *In re White*, 311 Or 573, 589, 815 P2d 1257 (1991). To determine whether that “rational connection” exists, we are to consider the lawyer’s mental state, the extent to which the 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 whether the act is part of a pattern of criminal conduct. *Id.*

Respondent committed the crime of theft by deception. He created or confirmed the false impression that he was authorized to practice law when Caro hired him. Despite his suspension he agreed to perform legal work for Caro and collected a \$275 fee. He never told Caro about his suspension, and she continued to act under the false impression that he was an attorney in good standing. Despite being paid to prepare specific documents, he did nothing for Caro. He then failed to respond to multiple inquiries from her, and he provided no refund despite her request.

Theft of a client’s money is a crime that reflects adversely on a lawyer’s fitness to practice. A lawyer who steals from a client demonstrates disrespect for the law and calls into question the lawyer’s good moral character. *In re Kimmell*, 332 Or 480, 491, 31 P3d 414 (2001). These factors sufficiently demonstrate the rational connection necessary for finding that Respondent violated RPC 8.4(a)(2).

Respondent violated RPC 1.3 when he failed to do the promised work.

RPC 1.3 states simply: “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. A lawyer’s conduct must be viewed over time rather than as discrete, isolated events. *In re Magar*, 335 Or 306, 321, 66 P3d 1014 (2003). A mere act of negligence is not sufficient to show a violation of the rule, but a course of neglectful conduct or an extended period of neglect will. *In re Jackson*, 347 Or 426, 435, 223 P3d 387 (2009). In *In re Redden*, 342 Or 393, 153 P2d 113 (2007), the Oregon Supreme Court explained that a “course” is “an ordered continuing process, succession, sequence, or series,” such that there must be proof of a “succession or series of negligent actions.” 342 Or at 397.

From when he was hired in April of 2023 through the filing of this case in June of 2024 Respondent did nothing for Caro. This constitutes an extended period of neglect in violation of RPC 1.3.

Respondent violated RPC 1.4(a) when he never communicated with his client once he had been paid.

RPC 1.4(a) states: “A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” In determining whether a lawyer has violated RPC 1.4(a), we are to consider the length of time the lawyer failed to communicate; whether the lawyer failed to respond promptly to reasonable requests for information from the client; and whether the lawyer knew or a reasonable lawyer would have foreseen that a delay in communication would prejudice the client. The Oregon Supreme Court has also noted that, in certain circumstances, a lawyer may be required to communicate

information immediately in order to keep a client reasonably informed and that, in many circumstances, the attorney has the responsibility to initiate the communication. *In re Graeff*, 368 Or 18, 26, 485 P3d 258 (2021) (citing *In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011)). In *Graeff*, the court found a violation when the attorney's failure to communicate with his clients took place over a relatively short period of time because it occurred when a motion for summary judgment had been filed in the clients' case and the lawyer had decided not to oppose it because he had concluded the clients' case was without merit. *Graeff*, 368 Or at 25-26.

Respondent never communicated with Caro after he was paid to draft her estate documents despite repeated requests for information. Complete silence during an engagement is a clear failure to communicate in violation of RPC 1.4(a).

Respondent violated RPC 1.5(a) when he collected his client's money but did none of the work.

RPC 1.5(c) states: "A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses." A lawyer collects a clearly excessive fee when they take the client's money, do not do the work for which they were paid, and fail to promptly refund the unearned portion of the fee. *In re Obert*, 352 Or 231, 243, 282 P3d 825 (2012). When Respondent collected \$275 from Caro, never performed the work, and failed to promptly refund the money when he was fired, he violated RPC 1.5(a).

Respondent violated RPC 1.16(d) when he failed to give his client her papers and property or a refund once he was fired.

This rule 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." (emphasis added).

Caro terminated the representation. Respondent did not return any documents to her or refund any of her advance fee payment despite doing none of the work. Respondent violated RPC 1.16(d).

Respondent violated RPC 7.1 when he misled Caro about his suspension.

RPC 7.1 states:

"A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a

material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.”

A misrepresentation 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 *In re Gustafson*, 327 Or 636, 648-49, 968 P2d 367 (1998))). Whether a lawyer is suspended from practice is a material fact.

Although RPC 8.1(a)(1), prohibits lawyers from “knowingly” making a false statement of material fact, RPC 7.1 specifies no required mental state. Proof of a violation of this rule does not require a showing of intent. See *In re Yacob*, 318 Or 10, 14-15, 860 P2d 811 (1993) (lawyer violated the former rule despite his explanation that the misrepresentation contained within his lawyer advertisement was not intentionally dishonest).

Respondent held himself out as a lawyer in good standing. His email signature identified him as a lawyer. His office building’s directory identified him as a lawyer. His business cards and letterhead identified him as a lawyer. The fact that he was suspended at the time makes each of these representations false and misleading in violation of RPC 7.1.

Respondent violated ORS 9.160(1) and RPC 5.5(b)(2).

ORS 9.160(1) states: “Except as provided in this section, a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar.” Similarly, RPC 5.5(b)(2) provides: “A lawyer who is not admitted to practice in this jurisdiction shall not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.”

As with RPC 7.1, neither the statute nor the rule cited above requires the Bar to prove any specific mental state. An attorney need not act knowingly to violate RPC 5.5(b)(2) and ORS 9.160. See, e.g., *In re Kluge*, 332 Or at 258 (attorney violated former DR 3-101(B) when he engaged in the private practice of law in Oregon without PLF coverage). The charged statutory violation occurs because a person suspended from the practice of law is not an active member of the Bar while suspended. *In re Jaffee*, 331 Or 398, 401, 15 P3d 533 (2000).

Respondent was not an active member of the Bar following his administrative suspension in 2019, so when he held himself out to the public as such, he violated ORS 9.160(1) and RPC 5.5(b)(2).

Respondent knowingly failed to respond to the Bar in violation of RPC 8.1(a)(2).

RPC 8.1(a)(2): “A lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.” This rule “requires full cooperation from a lawyer who is the subject of a disciplinary investigation.” *In re Munn*,

372 Or 589, 611, 553 P3d 1039 (2024), quoting *In re Schaffner*, 325 Or 421, 425, 939 P2d 39 (1997) (emphasis in original; applying the former rule). The Oregon Supreme Court has no tolerance for violations of this rule. See *In re Miles*, 324 Or 218, 222-25, 923 P2d 1219 (1996). Neither do we.

The rule requires the Bar to prove that the Respondent “knowingly” failed to respond to the Bar’s demands for information. This means the lawyer must have actual knowledge of the facts, and knowledge can be inferred from the circumstances. RPC 1.0(h).

The Bar sent multiple inquiries to Respondent at his record mailing address and record email address, from which we can infer he knowingly refused to respond. We also know that Respondent admitted to a Bar investigator that he had received Bar correspondence, direct evidence that he knowingly chose to ignore his duty to respond and, as such, he violated 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 an appropriate sanction 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 adjust the sanction based on the existence of aggravating or mitigating circumstances.

Duty Violated.

The most important ethical duties are those lawyers owe to their clients. ABA Standards at 5. Respondent violated his duty to communicate with his client and his duty to preserve her property. ABA Standard 4.4.

Respondent breached his duty to the public when he committed the crime of theft and violated RPC 8.4(a)(2) in so doing. *In re Phinney*, 354 Or 329, 336, 311 P3d 517 (2013). ABA Standard 5.0. He also breached his duty to maintain his personal integrity. ABA Standard 5.1. Failure to cooperate with the Bar investigation 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 at 349 (so stating).

Respondent also violated his duty to the profession when he failed to cooperate with the investigation. ABA Standard 7.0; see *In re Munn*, 372 Or at 612-13 (finding such conduct as a violation of the duty to the legal profession). Respondent’s false and misleading communications

and his collection of an excessive fee violated his duty to the profession as well. ABA Standard 7.0.

Mental State.

The ABA Standards recognize three mental states. “Intent” is 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 Respondent acted intentionally when he stole client funds. He had the conscious objective of misappropriating his client’s money to use it for his own benefit.

We find Respondent acted knowingly when he refused to respond to the Bar. We also find Respondent acted at least knowingly when he failed to do the work he was paid for, failed to communicate with his client, collected a clearly excessive fee, and failed to return his client’s documents or refund her money.

We finally find Respondent acted knowingly when he falsely held himself out to the public as authorized to practice law when he knew he was suspended.

Extent of Actual or Potential Injury.

We may consider both actual and potential injury in our sanctions analysis. ABA Standards at 6; *In re Keller*, 369 Or 410, 417, 506 P3d 1101 (2022). 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.

Respondent caused Caro actual financial injury. He also caused her uncertainty, anxiety or frustration. “Uncertainty, anxiety, and aggravation are actual injuries for purposes of our sanction analysis.” *In re Keller*, 369 Or at 417, citing *In re Obert*, 352 Or at 260; *In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010).

Respondent’s failure to cooperate with the Bar’s investigation caused actual harm to the public and the legal profession. *In re Munn*, 372 Or at 613. Respondent’s lack of cooperation stymied the Bar’s effort to discover the full extent of his misconduct. It also delayed the Bar’s investigation.

Respondent also caused potential injury by failing to disclose his suspension to the public. That omission could have misled prospective clients.

Preliminary Sanction.

We find that the following ABA Standards apply:

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 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).

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.

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.

Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client, including the failure to communicate, and causes injury or potential injury to a client. ABA Standard 4.42(a).

Even without the other proven misconduct, Respondent's theft of his client's money makes disbarment the presumptive sanction here.

Aggravating and Mitigating Circumstances.

We find the following aggravating factors are present here:

1. A dishonest or selfish motive. ABA Standard 9.22(b).
2. Multiple offenses. ABA Standard 9.22(d).
3. Refusal to acknowledge wrongful nature of conduct. ABA Standard 9.22(g). When a lawyer chooses not to defend or respond to the Bar with any defense or explanation, they have refused to acknowledge the wrongfulness of their conduct. *See In re Hageman*, 37 DB Rptr 104, 115 (2023) (panel found this aggravating factor present when lawyer failed to file an answer and failed to provide responses to the Bar).
4. Substantial experience in the practice of law. ABA Standard 9.22(i).

The Bar acknowledges that Respondent has no prior disciplinary record, a mitigating factor under ABA Standard 9.32(a).

The aggravating factors substantially outweigh the lone mitigating factor. This would justify an enhancement of the sanction imposed but for the fact that the presumptive sanction here is the most serious available under the rules.

Oregon Case Law.

The Oregon Supreme Court has stated that “theft from a client is the most egregious form of theft that can be committed by a lawyer and generally warrants disbarment.” See *In re Kimmell*, 332 Or at 490 (citing *In re King*, 320 Or 354, 359, 883 P2d 1291 (1994) (so stating); *In re Phelps*, 306 Or 508, 520, 760 P2d 1331 (1988) (when lawyer “steals funds from a client, the sanction is disbarment” despite mitigating factors); *In re Pierson*, 280 Or 513, 518, 571 P2d 907 (1977) (single conversion of client funds will result in disbarment). The court reiterated this position in 2021, stating that “even a single act of intentional conversion of client funds presumptively warrants disbarment.” *In re Long*, 368 Or 452, 473-474, 491 P3d 783 (2021), citing *In re Webb*, 363 Or 42, 53, 418 P3d 2 (2018).

We find nothing in the record before us to challenge application of that principle. We order that Respondent be disbarred effective on the date this decision becomes final.

Restitution.

BR 6.1(2) authorizes us to require Respondent to make restitution. The Oregon State Bar Client Security Fund (CSF) paid Caro \$275 for the claim she made against Respondent. We order Respondent to make restitution to the CSF in the amount of \$275.

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 accomplish this goal, we order that Respondent be disbarred effective on the date this decision becomes final.

Cite as *In re Young*, 39 DB Rptr 178 (2025)

Respectfully submitted this 10th day of June 2025.

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

/s/David F. Doughman
David F. Doughman, Attorney Panel Member

/s/ JoAnn Jackson
JoAnn Jackson, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
JASMINE M. TRONCOSO, Bar No. 192431) Case Nos. 22-177, 23-161, & 24-282
)
Respondent.)

Counsel for the Bar: Matthew S. Coombs

Counsel for the Respondent: David J. Elkanich

Disciplinary Board: None

Disposition: Violation of RPC 4.2, RPC 1.16(c), and RPC 8.4(a)(4).
Stipulation for discipline. Public reprimand.

Effective Date of Order: June 13, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Jasmine M. Troncoso (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 violations of RPC 4.2, RPC 1.16(c), and RPC 8.4(a)(4).

DATED this 13th day of June 2025.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Jasmine M. Troncoso, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 June 21, 2019, and has been a member of the Bar continuously since that time, having her 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(8).

4.

On October 30, 2024, an amended formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 4.2 and RPC 8.4(a)(3) of the Oregon Rules of Professional Conduct. On April 26, 2025 the SPRB authorized the consolidation of Case No. 24-282 with the prosecution for violations of RPC 1.16(c) and RPC 8.4(a)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Case No. 23-161 – Smalley Matter

In or around February of 2023, Amy Munson (Munson) hired Respondent to file a Family Abuse Prevention Act (FAPA) petition on her behalf. Respondent filed a FAPA petition against Brian Smalley (Smalley) on or about February 17, 2023. An order restraining Smalley was entered that same day.

6.

After the FAPA order was entered, lawyer Charles Kovas (Kovas) began assisting Smalley. Kovas contacted Respondent and disclosed that he had authority to negotiate on Smalley's behalf regarding the FAPA order and other domestic relations issues. In the subsequent weeks, Kovas and Respondent negotiated a resolution which included a dismissal of the FAPA order and other

terms addressing domestic relations issues. Kovas and Respondent agreed that Respondent would draft the documents memorializing the agreement.

7.

Between March 3, 2023, and March 11, 2023, Respondent communicated directly with Smalley numerous times via telephone and text message, including a telephone call during which they discussed a petition for custody, parenting time and child support, among other issues. Kovas never consented to Respondent's communications with Smalley.

8.

On or about March 6, 2023, Respondent filed a motion to dismiss the FAPA restraining order; the court granted the dismissal the next day. In a declaration attached to the motion to dismiss, Respondent identified Kovas as Smalley's attorney.

9.

Case No. 24-282 – Brigl Matter

After the withdrawal of her former lawyer in a dissolution of domestic partnership matter, Shawn Brigl (Brigl) hired Respondent to represent her in the matter in December of 2023. Respondent appeared on behalf of Brigl at a settlement conference on April 26, 2024. A resolution was not reached at the conference, prompting the court to set a trial for August 27, 2024, preceded by a final resolution conference on August 19, 2024.

10.

Following the settlement conference, Respondent spoke with Brigl on the telephone and communicated her intent to withdraw from representation. Following the call, Respondent mistakenly believed she had moved to withdraw from representation. In late May of 2024, Respondent went on medical leave during which she did not perform any substantive legal work.

11.

On May 30, 2024, Lois Albright (Albright), counsel for Brigl's opposing party, filed a motion with the court seeking an order to allow a real estate broker access to Brigl's property in order to perform a comparative market analysis. In the declaration attached to the motion, Albright indicated that Respondent had not responded to any efforts to contact her since the settlement conference occurred.

12.

On August 19, 2024, the court held a final resolution conference. Respondent failed to attend. Court staff called Respondent only to be directed straight to voicemail. During the conference, Albright and Brigl disclosed that neither of them could reach Respondent. The court

then cancelled the trial scheduled for the following week. At a hearing on September 4, 2024, that Respondent also failed to attend, the court removed Respondent as counsel for Brigl.

13.

Respondent's failure to formally withdraw from representing Brigl was improper and occurred during a judicial proceeding. Respondent's improper conduct forced the court to commit additional resources to Brigl's court proceedings unnecessarily.

Violations

14.

Respondent admits that, by knowingly communicating with a represented party on the subject of representation, she violated RPC 4.2. Respondent admits that by failing to comply with applicable law requiring notice to or permission of a tribunal when terminating representation, she violated RPC 1.16(c). Respondent further admits that she engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

15.

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 8.4(a)(3) the sole charge in case No. 22-177, should be and, upon the approval of this stipulation, is dismissed.

Sanction

16.

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 duties owed to the legal system and duties owed as a professional. ABA Standards 6.0 and 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.*

With regard to Respondent's failure to properly withdraw in the Brigl matter, Respondent acted negligently.

In the Smalley matter, Respondent acted knowingly.

- 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 Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

Respondent's failure to withdraw properly caused actual harm to Brigl in the form of frustration and anxiety. See *In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000), citing *In re Schaffner*, 325 Or 421, 426-7, 939 P2d 39 (1997).

Respondent also caused actual harm to the court that had to dedicate resources to attempting to contact Respondent and forcing hearings to be reset.

Respondent caused potential harm by communication with a represented party in the Smalley matter.

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

1. Multiple offenses. ABA Standard 9.22(d).
2. A pattern of misconduct. ABA Standard 9.22(c). Respondent has engaged in ethical misconduct across multiple cases.

- 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).
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).

17.

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. ABA Standards 6.33

18.

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 Standards 7.3

19.

In the matter of *In re Baker*, 29 DB Rptr 204 (2015), a lawyer failed to properly withdraw from a litigation case. When trial arrived, the lawyer failed to appear, causing the court to reschedule trial. The stipulation in that matter noted that the lawyer's, "failure to appear at trial, interfered with the procedural functioning of the court and wasted court resources."

20.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 4.2, RPC 1.16(c), and RPC 8.4(a)(4), the sanction to be effective upon approval of this stipulation.

21.

In addition, on or before December 1, 2025, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$1,074.95, incurred for the deposition of Respondent. Should Respondent fail to pay \$1,074.95 in full by December 1, 2025, 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 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.

23.

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.

24.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 26, 2025. 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 June, 2025.

/s/ Jasmine M. Troncoso
Jasmine M. Troncoso, OSB No. 192431

APPROVED AS TO FORM AND CONTENT:

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

EXECUTED this 11th day of June, 2025.

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)
)
WADE P. BETTIS, Bar No. 720255) Case No. 23-174
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: Amber Bevacqua-Lynott

Disciplinary Board: None

Disposition: Violation of RPC 1.7(a). Stipulation for Discipline. Public reprimand.

Effective Date of Order: June 17, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Wade P. Bettis (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 1.7(a).

DATED this 17th day of June 2025.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Wade P. Bettis, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 22, 1972, and has been a member of the Bar continuously since that time, having his office and place of business in Union 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(8).

4.

On November 14, 2024, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.7(a) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In November 2020, an elderly man retained Respondent regarding alleged elder abuse by his daughter. The client had concern about undergoing the stress of litigation and requested that one of his sons be appointed as his agent to act on his behalf in any lawsuit. To accomplish this, Respondent recommended that they seek the son's court appointment as conservator for the client, and the client agreed to that course of action.

6.

On January 5, 2021, Respondent filed a petition he drafted that identified the son as the petitioner and that nominated the son as conservator for Respondent's client. The petition mistakenly listed Respondent as attorney for the petitioner rather than for the protected party — who was actually his client, and the son signed the petition. Respondent did not recognize or appreciate that it appeared he was representing the son in the protective proceeding. Subsequently, Respondent filed the Notice of Petition to Appoint Conservator, which Respondent

signed as “Attorney for the conservator.” The notice listed the son as the petitioner and identified Respondent as attorney for the petitioner.

7.

On January 19, 2021, the client’s daughter filed an objection to the appointment of a conservator in general as well as to the appointment of her brother as conservator specifically. On February 26, 2021, before the court set a hearing on the objection and before any action was taken that may have required Respondent to respond on behalf of his client or his client’s son, Respondent’s client died.

8.

Respondent now recognizes that when he filed the January 5, 2021, petition and subsequent notice, he became attorney of record for the proposed conservator (son) when he was already representing the protected person (client). This concurrent representation amounted to a current-client conflict of interest, in that his client’s legal interest in preserving autonomy was objectively adverse to the son’s legal interest (as the proposed conservator) in obtaining control over those affairs. This conflict of interest lasted until the client’s death the following month. Although both the client and his son were aware (and in agreement) that Respondent only intended to represent the protected person, this was not a conflict capable of being waived or consented to under the circumstances.

Violations

9.

Respondent admits that by becoming attorney of record for the proposed conservator (the son) while simultaneously representing the protected party (his client) in that proceeding, he had a current-client conflict of interest in violation of RPC 1.7(a).

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 his duty to his client to avoid conflicts of interest. ABA Standard 4.3.

- 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. ABA Standards at 9. “Negligence” is the failure to be aware of a substantial risk that circumstances exist or that a result will follow and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

Here, Respondent was negligent in identifying himself in court filings and notices as the attorney for the party seeking court-appointment as conservator for the protected party while simultaneously representing the protected party.

- c. **Injury.** Injury can be either actual or potential under the ABA Standards. ABA Standards at 6; *In re Keller*, 369 Or 410, 417, 506 P3d 1101 (2022). Here, there was the potential for injury to Respondent’s client in the form of delay or denial of the conservatorship appointment stemming from Respondent’s apparent representation of both the protected party and proposed conservator.
- d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Prior disciplinary offenses. ABA Standard 9.22(a). Respondent received a 30-day suspension in 2006 for violation of DR 6-101(A), the former rule regarding the duty to provide competent representation (current RPC 1.1). In 1998, Respondent received a public reprimand for violation of DR 9-101(C)(3), the former rule regarding safekeeping of property (current RPC 1.15-1(a)). Respondent received an admonition in 1994 for violation of DR 5-101(A), the former rule regarding a current-client conflict of interest.

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). Although generally not considered “discipline,” a prior admonition can result in an increased sanction when the conduct is close in time and of the same or similar nature to the conduct at issue. *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018), citing *In re Cohen*, 330 Or 489, 498-99, 8 P3d 953 (2000).

Here, Respondent’s prior record of discipline would warrant less weight in aggravation due to the passage of time and because it chiefly involved different conduct. Respondent’s prior admonition, which involved similar conduct as occurred here, would also have less significance here as it

occurred more than 30 years ago. See *In re Dugger*, 334, Or 602, 625, 54 P3d 595, 610 (2002) (remoteness of prior offense diminishes its weight as an aggravating factor).

2. Vulnerability of victim. ABA Standard 9.22(h). Respondent's elderly client had significant health issues and died several months after retaining Respondent.
3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has practiced law in Oregon since 1972.

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 proceeding. ABA Standard 9.32(e).

11.

Under the ABA Standards, public reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client will materially adversely affect another client, and causes injury or potential injury to a client. ABA Standard 4.33.

12.

Similar cases are in accord when the lawyer acts with a negligent mental state and there is no actual harm to the client. In *In re Misfeldt*, 24 DB Rptr 25 (2010), the lawyer was publicly reprimanded for negligently engaging in a current-client conflict of interest with facts similar as those that occurred here. In that case, the lawyer became attorney of record for the proposed conservator and guardian in a protective proceeding at a time when the lawyer was already attorney of record for the protected person. Other such cases include *In re Slinde* 37 DB Rptr 153 (2023) and *In re Towne*, 36 DB Rptr 12 (2022).

13.

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

14.

In addition, on or before August 1, 2025, Respondent shall pay \$394.25 to the Bar for its reasonable and necessary costs incurred for court reporting and deposition transcripts. Should Respondent fail to pay \$394.25 by August 1, 2025, 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.

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 September 14, 2024. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 11th day of June 2025.

/s/ Wade P. Bettis

Wade P. Bettis, OSB No. 720255

APPROVED AS TO FORM AND CONTENT:

/s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott, OSB No. 990280

EXECUTED this 12th day of June 2025.

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)
)
LAWRENCE O. GILDEA, Bar No. 620335) Case No. 23-93
)
Respondent.)

Counsel for the Bar: Alison F. Wilkinson

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.7(a)(1) and RPC 1.16(d). Stipulation for discipline. 60-day suspension.

Effective Date of Order: July 1, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Lawrence O. Gildea (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 14 days from entry of this order, for violation of RPC 1.7(a)(1), and RPC 1.16(d).

DATED this 17th day of June 2025.

/s/ Mark A Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Lawrence O. Gildea, 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 13, 1962, and has been a member of the Bar continuously since that time, having his office and place of business in Lane County, Oregon.

3.

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

4.

On October 19, 2024, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.7(a)(1), RPC 1.8(f), and RPC 1.16(d) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

At the time of the underlying events, Respondent believed that he only represented Colby Henton (Husband). On Husband's behalf and at his direction, Respondent prepared a draft settlement agreement between Husband and Sonia Henton (Wife). Husband and Wife negotiated the initial terms and Respondent had no role in those negotiations.

After Husband gave Wife a copy of the draft settlement agreement, Wife met alone with Respondent to make sure the settlement reflected her concerns about the religious upbringing of their children. Respondent relayed these concerns to Husband, who was amenable to her requested changes on that point. Respondent made this change to the settlement agreement. Once Husband and Wife agreed to the revised settlement terms, they asked him to obtain the dissolution judgment, which he told them he could do if they both agreed. In preparing and finalizing the settlement agreement, Respondent had separate meetings with Husband and Wife at least twice.

Husband held a membership interest in Goshen Forest Products, LLC (Goshen), a limited liability company. Respondent confirmed with Wife that Husband would retain his interest in Goshen pursuant to the settlement agreement, but Respondent did not know the value of Husband's interest.

Pursuant to the settlement agreement, on December 26, 2018, Respondent as "Attorney for Co-Petitioners," filed a "Co Petition for Dissolution of Marriage," on behalf of Wife and Husband in Lane County Circuit Court. The couple was divorced pursuant to a general judgment and order of dissolution of marriage (the judgment) entered by the court on January 4, 2019, and supported by a declaration signed by Husband and Wife. Respondent prepared the petition, the declaration, and the judgment. The judgment incorporated the settlement agreement that Respondent prepared.

The judgment provided, in part, that Husband and Wife had joint custody of their three minor children and that Husband would pay \$3,000 per month total in child support (\$1,000 per month per child) until the children reached the age of majority. It also required Husband to pay Wife \$96,000 in a lump sum spousal support payment before December 31, 2018. The judgment provided that Wife would continue to reside in the family home with the children until the children reached the age of majority.

Wife believed that Respondent was her attorney in her divorce. Several years later, Wife alleged that Husband had millions of dollars in income and owned millions of dollars' worth of property and that he and Respondent crafted a divorce settlement that benefitted Husband and his company, Goshen, to Wife's detriment.

Respondent was aware that Wife requested her file from him on August 4, 2022. Respondent believed the file belonged to Husband, but did not inform Wife's attorney of his objections to production at this time. Over the next several months, Respondent took no steps to produce any portion of the file, including those portions that were public or that involved communications between Respondent and Wife. In February 2023, in response to a subpoena, Respondent was prepared to produce the file, subject to objections by Husband's new attorney.

Violations

6.

Respondent admits that his incorporating changes to the settlement agreement that Wife requested, meeting with Husband and Wife separately about the settlement agreement, and preparing, signing, and filing court documents stating that he represented both Husband and Wife, support the conclusion that he represented both Husband and Wife in their dissolution proceeding. Respondent admits that there was significant risk that his representation of one client could have been materially limited by his responsibilities to his other client and that he therefore violated RPC 1.7(a)(1).

Respondent admits that by not providing Wife with a copy of his file that he subsequently provided to the Bar, he violated RPC 1.16(d) of the Oregon Rules of Professional Conduct.

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 1.8(f) 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 his duties to his clients to avoid conflicts of interest. ABA Standard 4.3. Respondent also violated his duty to properly handle his client's property by failing to provide the client's file. ABA Standard 4.1.
- b. **Mental State.** For purposes of determining a lawyer's knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by the exercise of reasonable care should have known will be attributed to the lawyer. RPC 1.0(h). Respondent's mental state was knowing as he was aware of the circumstances that gave rise to the conflict in representing both Husband and Wife as co-competitors in a divorce involving minor children, support, and significant assets.

Respondent acted negligently in failing to provide file materials to Wife, in that he was negligent in determining whether he had an attorney-client relationship with her and what duties were owed to her as a result.

- 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 Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

By undertaking to represent two clients whose interests were adverse to one another, Respondent created a risk that one or both clients would not be fully protected, and caused actual injury to Wife, who filed litigation that resulted in a far more favorable settlement from Husband.

- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. A prior record of discipline. ABA Standard 9.22(a). In 1997, the Oregon Supreme Court suspended Respondent for 120 days for conflicts of interest with an elderly client with dementia for whom he held a power of

attorney and used the power of attorney to complete financial transactions that benefitted him and his daughter. *In re Gildea*, 325 Or 281, 936 P2d 975 (1997).

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's prior discipline and resulting sanction were serious. It was similar to the current case that involved Respondent's conflict of interest, but different as it dealt with his personal conflict of interest with the client, and not representing two adverse clients. The passage of time (27 years) between the sanction and the conduct here weighs against giving the prior offense overly significant weight in aggravation.

2. A pattern of misconduct. ABA Standard 9.22(c). Respondent's prior discipline for conflicts of interest establishes both a prior record and a pattern of misconduct for sanctions purposes. *In re Bertoni*, 363 Or 614, 643-44, 426 P3d 64 (2018).
3. Multiple offenses. ABA Standard 9.22(d).
4. Vulnerability of victim. ABA Standard 9.22(h). Wife was not born here and was entirely reliant on Husband and his family for everything, including the lawyer who Husband hired to handle their divorce.
5. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been licensed to practice since 1962.

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).

8.

Under the ABA Standards, a reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. ABA Standard 4.13. Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not

fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. ABA Standard 4.32.

9.

Generally, the Oregon Supreme Court has imposed 30-day suspensions for knowing conflicts of interest in the absence of any other violations. “[T]his court has repeatedly stated that a finding that a lawyer has violated the rule prohibiting current or former client conflicts of interest, standing alone, typically justifies a 30-day suspension.” *In re Maurer*, 364 Or 190, 431 P3d 410 (2018) (quoting *In re Hostetter*, 348 Or 574, 603, 238 P3d 13 (2010); *In re Campbell*, 345 Or 670, 689, 202 P3d 871 (2009) (same); *In re Hockett*, 303 Or 150, 164, 734 P2d 877 (1987) (“By itself, the violation of the conflicts rule *** would justify a 30-day suspension.”)).

“However, where discipline is imposed for a sole conflict of interest violation, there have been circumstances in which this court has imposed the lesser sanction of a reprimand *** or suspensions lengthier than 30 days.” *In re Campbell*, 345 Or at 686 (internal citations omitted). “[W]e have imposed suspension in cases involving serious aggravating circumstances.” *In re Hockett*, 303 Or at 163.

In re Maurer, 364 Or 190, 431 P3d 410 (2018) [**30-day suspension**] Attorney violated conflict rule when, after leaving the bench, he represented the husband on a subsequent contempt matter brought by the wife after presiding over the underlying dissolution proceeding.

In re Baer, 298 Or 29, 688 P2d 1324 (1984) [**60-day suspension**] Attorney violated the conflict rule when he represented the buyer, his wife, and the sellers, in a real estate transaction.

In re Boyer, 295 Or 624, 669 P2d 326 (1983) [**seven-month suspension**] Attorney violated the conflict rule when he represented the borrower and lender on a loan transaction and failed to disclose to the lender that he had a financial interest in the loan transaction in the form of a finder’s fee paid by the borrower after the loan closed.

In re Wittemyer, 328 Or 448, 980 P2d 148 (1999) [**four-month suspension**] Attorney violated multiple conflicts of interest rules five separate times when, while representing a corporation, the attorney also represented a lender on an underlying loan to the corporation, and sought to represent the lender in collecting the loan.

The court has also imposed suspensions when the lawyer has engaged in a conflict of interest and violated other rules:

In re Campbell, 345 Or 670, 202 P3d 871 (2009) [**60-day suspension**] Attorney violated the conflict rule when, after representing the bankruptcy trustee, the attorney represented secured creditors of the debtor who opposed the trustee’s course of action. Attorney also violated the rule prohibiting charging or collecting excessive fees and had a prior disciplinary history.

In re Hockett, 303 Or 150, 734 P2d 877 (1987) [**63-day suspension**] Attorney violated the conflict rule, dishonesty rule, and the rule prohibiting lawyers from assisting clients in conduct the lawyer knows to be illegal, when attorney, after representing husbands in various business matters, represented their wives in dissolution proceedings with the intent of evading the husbands' creditors. In imposing the sanction, the court noted that the accused acted "for little or no personal financial gain." *Id.* at 162.

In re Knappenberger, 338 Or 341, 108 P3d 1161 (2005) [**90-day suspension**] Attorney violated conflict rule when he originally represented the husband in a dissolution proceeding, but later represented the wife in the same proceeding and a subsequent proceeding to overturn a related restraining order. Attorney also violated the rule prohibiting direct contact with represented parties. Attorney had various aggravating factors, including prior discipline.

In re Hostetter, 348 Or 574, 238 P3d 13 (2010) [**150-day suspension**] Attorney violated the conflict rule when, after representing the borrower in the underlying loan transaction, represented the lender in collecting the loan. Attorney was also found to have violated the dishonesty rule in a separate client matter. Those violations, combined with respondent's prior disciplinary history, warranted a significant suspension.

Respondent's knowing mental state and the actual injury he caused combined with the significant aggravating factors that outweigh his mitigating factors, compels a conclusion that a term of suspension is warranted.

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 1.7(a)(1) and RPC 1.16(d) of the Oregon Rules of Professional Conduct, the sanction to be effective 14 days 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. Respondent is no longer practicing law and has no active client files. Respondent represents that he will serve as the contact person for clients in need of their files during his term of 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 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 October 19, 2024. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 11th day of June 2024.

/s/ Lawrence O. Gildea

Lawrence O. Gildea, OSB No. 620335

EXECUTED this 12th day of June 2024.

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)
)
ROBERT T. SCHERZER, Bar No. 791052) Case No. 24-168
)
Respondent.)

Counsel for the Bar: Samuel Leineweber

Counsel for the Respondent: Steven J. Sherlag

Disciplinary Board: None

Disposition: Violation of RPC 3.5(b). Stipulation for discipline. Public reprimand.

Effective Date of Order: June 26, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Robert T. Scherzer (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 3.5(b).

DATED this 26th day of June, 2025.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Robert T. Scherzer, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 20, 1979, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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(8).

4.

On April 26, 2025, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 3.5(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.

On October 10, 2023, Nathan Sandvig filed a motion to modify the parenting time and child support judgment in his underlying domestic relations case of *Sandvig v. Sandvig (Boller)*, Multnomah County Circuit Court Case No. 19DR05139. Mr. Sandvig was represented by attorney Mike McGrath in his motion to modify and Respondent represented Mr. Sandvig's ex-wife, Laura Boller.

6.

As part of the motion to modify, the parties were required to engage in family therapy. Mr. McGrath and Respondent discussed hiring family therapist Michael Alter and communicated about insurance and cost sharing for family therapy over the next several weeks, but did not reach agreement on those issues.

7.

At a hearing on March 21, 2024, the court ordered the parties to begin family therapy “forthwith.” On March 25, 2024, Mr. McGrath notified Respondent that he was withdrawing from representing Sandvig and asked him to continue to send any correspondence to him until the withdrawal order was signed. On March 26, 2024, Mr. McGrath’s withdrawal order was signed by the court and court staff emailed the parties that the order had been signed. Mr. Sandvig continued *pro se* in the case.

8.

On March 27, 2024, Respondent filed a stipulated order appointing Michael Alter pursuant to the court’s March 21, 2024, order. Respondent attached a certificate of readiness that stated he served a copy of the order on all parties and had received no objection. However, the stipulated order was not signed by Mr. Sandvig or Mr. McGrath, and Respondent neglected to serve the order on either Mr. Sandvig or Mr. McGrath.

9.

After his failure to serve the stipulated order was brought to his attention, Respondent promptly indicated to the court and Mr. Sandvig that there was no opposition to a hearing, but later through discussions resolved insurance and cost allocation issues with Mr. Sandvig and submitted a revised stipulated order.

Violations

10.

Respondent admits that, by failing to serve the stipulated order on either Mr. Sandvig or Mr. McGrath, he engaged in *ex parte* contact with the tribunal in violation of RPC 3.5(b).

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 engaging in *ex parte* communication, Respondent violated his duty to refrain from improper communications with a person in the legal system. ABA Standard 6.3.

- 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 states he negligently failed to send the stipulated order to Mr. McGrath or Mr. Sandvig, and there is no evidence to contradict that.

- c. **Injury.** For the purpose of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

By submitting an order that purported to be stipulated when it had not in fact been stipulated, Respondent misinformed the court. *See In re Burrows*, 291 Or 135, 144, 629 P2d 820 (1981)(The court has stated that the harm that this rule seeks to prevent is the risk that a judge may be improperly influenced and that a judge may be inaccurately informed).

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

1. A prior record of discipline. ABA Standard 9.22(a). Respondent was admonished for a violation of RPC 3.5(b) in 2012. A letter of admonition is considered under ABA Standard 9.22(a), as evidence of past misconduct, if the misconduct that gave rise to that letter was of the same or similar type as the misconduct at issue in the case at bar. *In re Cohen*, 330 Or 489, 501, 8 P3d 953 (2000). For example, in *Cohen*, an attorney’s prior letters of admonitions were considered to be an aggravating factor because he received two admonitions within six years for the same conduct as his pending discipline. *Id.* at 501.

Respondent has also received an admonishment and a public reprimand for violating RPC 4.2, which is similar to this offense in that it involves improper communication with a person in the legal system. 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 at 499.

In total, Respondent has received three prior sanctions for the same or similar conduct as is at issue here (factors 2 and 3). The prior offenses and sanctions were not particularly serious (factor 1) and all occurred over 10 years prior to this matter (factors 4 and 5). Given the number of prior similar violations, these violations are an aggravating factor.

2. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been practicing law for over 40 years.

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).
3. Remorse. ABA Standard 9.32(l).

12.

Under the ABA Standards, 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.

13.

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).

Factually similar Oregon cases involving violations of RPC 3.5(b) where the attorney commits multiple violations or has a history of similar prior misconduct generally result in a sanction of a public reprimand. *See In re Lee-Mandlin*, 31 DB Rptr 14 (2017)[attorney prepared a proposed order in a post-judgment dispute and, despite her instructions, her paralegal failed to send a copy to opposing counsel. Attorney thereafter filed the proposed order, and inadvertently failed to serve a copy on opposing counsel, thereby engaging in an unauthorized *ex parte* communication]; *In re Mercer*, 24 DB Rptr 240 (2010)[attorney personally presented a form of judgment to the court for signature without informing opposing counsel, who had objected, of the date when the matter would be heard]; *In re McGavic*, 22 DB Rptr 248 (2008)[attorney negligently submitted a form of judgment to the court without serving opposing counsel with a copy]. Although Respondent has a history of engaging in similar conduct, the above-mentioned cases also involved violations of multiple rules, as opposed to a single violation here.

14.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 3.5(b).

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 April 26, 2025. 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, 2025.

/s/ Robert T. Scherzer
Robert T. Scherzer, OSB No. 791052

APPROVED AS TO FORM AND CONTENT:

/s/ Steven J. Sherlag
Steven J. Sherlag, OSB No. 931034

EXECUTED this 24th day of June, 2025.

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)
)
ROSCOE C. NELSON, Bar No. 732218) Case No. 23-281
)
Respondent.)

Counsel for the Bar: Matthew S. Coombs

Counsel for the Respondent: Wayne Mackeson

Disciplinary Board: None

Disposition: Violation of RPC 1.1; RPC 1.3; RPC 1.4(a); and RPC 1.16(d).
Stipulation for discipline. 30-day suspension.

Effective Date of Order: August 1, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Roscoe C. Nelson (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 August 1, 2025 for violation of RPC 1.1, RPC 1.3, RPC 1.4(a), and RPC 1.16(d).

DATED this 7th day of July, 2025.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Roscoe C. 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(3).

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 advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(8).

4.

On October 31, 2024, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.1, RPC 1.3, RPC 1.4(a), 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.

Facts

5.

Jeffrey Soule (Soule) hired Respondent to administer the intestate estate of his late sister, Andrea Woodrow Soule (Woodrow), in March of 2022. Woodrow's estate consisted of some bank accounts and an automobile. Woodrow had few debts consisting of a few credit cards and miscellaneous bills. Her only heirs were her brothers.

6.

Respondent filed a petition to administer the estate and appoint Soule as personal representative (PR) with the probate division of the Washington County Circuit Court on May 9, 2022. In response, the court issued a deficiency letter notifying Respondent that Soule's brothers had equal priority and would need to decline serving as PR before Soule could be appointed. The notice also directed Respondent to provide the court with information regarding the estate assets so that the court could either determine the amount of a bond it would require or place a restriction on the assets. A few days later, Respondent filed a declaration indicating that Soule's

brothers did not object to Soule being appointed as PR. Respondent did not provide the court with information regarding the estate assets.

7.

On June 14, 2022, the court entered a judgment appointing Soule as PR. The judgment included the following language: “[a]ll assets are restricted; withdrawal, transfer, sale, or encumbrance only upon prior order of the court. Any bank accounts may be transferred directly by the bank to a restricted estate account evidenced by an Acknowledgement of Restricted Asset within thirty (30) days of this judgment.”

8.

On July 19, 2022, the court sent Respondent a letter stating that in order to comply with the court’s judgment, Respondent was required to file a document identifying the specific accounts holding estate assets and a statement from the financial institution acknowledging receipt of the order restricting the account. Respondent filed an inventory identifying the assets on July 28, 2022. Concurrently with that filing, Respondent filed a letter from himself indicating that the financial institutions had been properly notified of the restrictions, not an acknowledgement from the institutions themselves. The next day, the court notified Respondent that his notice regarding the restrictions was deficient and directed him to the specific bank acknowledgment form that needed to be filed for each bank, within 30 days and cited the applicable court rules.

9.

Upon receiving the court’s deficiency notice, Respondent complained to Soule that the requirements regarding the restrictions had already been met. Soule then obtained the proper forms on his own and sent them to the financial institutions. Upon receiving the proper acknowledgements in return, Soule provided them to Respondent’s office. Respondent filed the forms with the court on August 31, 2022.

10.

On or about November 28, 2022, Soule emailed Respondent inquiring into requesting authorization from the court allowing for the payment of debts of the estate from one of the restricted accounts and how he should go about handling taxes of the estate. Soule also included with his email a form accounting statement he had obtained without the help of Respondent which included a list of all the estate’s assets. In response, Respondent’s assistant said they were waiting for the court to move forward and that Washington County was taking 12 weeks to process documents and 12 weeks had not yet passed (it had been more than 12 weeks since Respondent had filed anything). Soule followed up, asking if it would be possible to post a bond to remove the asset restriction so that he could pay the estate’s bills. He also inquired into whether there was any reason they could not proceed with filing documents to proceed with the administration of the estate.

11.

The next day, Respondent responded asking Soule for a list of all the estate's assets despite Soule providing the list the day before. Respondent also directed Soule to pay the estate's bills from estate assets. He did not address Soule's inquiry regarding taxes. A few weeks later, Soule followed up with Respondent and again brought up the restriction of assets, stating that he would need a court order allowing him to withdraw funds from the restricted accounts. Receiving no response, Soule called the court and was told there was no reason the estate could not proceed to closure.

12.

Soule reached Respondent by telephone on January 4, 2023. During that call, Respondent complained about how slow the court was moving. After Soule disclosed what the court had told him, Respondent suggested that they file a verified statement in lieu of accounting to wrap up Woodrow's estate and the two agreed to meet on January 10, 2023, to complete the verified statement.

13.

Upon arriving at Respondent's office on January 10th, Soule was handed a draft verified statement that stated all creditors of the estate had been paid and that the taxes of the estate had been paid or arrangements had been made for the payment of taxes. At this time, Soule again brought up the restriction language which prevented him from paying the estate's creditors. Respondent denied that Soule could not pay the estate's bills and proceeded to call the court to confirm. On this call, the court clerk reaffirmed the restriction language and told Respondent he would need to file an appropriate motion and post a bond with the court to have it removed. Respondent proceeded to call a bonding company and left a message for a return call. Soule left the meeting without completing the verified statement. Respondent represented that he would let Soule know when the bonding company got back to him.

14.

Soule did not hear anything from Respondent for the next three months. On April 7, 2023, Soule terminated Respondent's representation and requested a copy of his file. Respondent filed a motion to withdraw on April 11, 2023. Soule and his new attorney made four more requests for the case file before Respondent complied on October 6, 2023.

15.

Respondent caused a notice to interested persons to be published, with an initial publication date of April 26, 2022. The notice correctly stated that pursuant to ORS 113.155, persons possessing a claim against the estate must present them within four months of the first date of publication or else the claim may be barred.

16.

Respondent filed with the court proof of publication of the notice to interested persons on or about September 1, 2022. Respondent believed that the estate had to wait four months from the date the proof of publication was filed for interested persons to present their claims. This is despite the proof of publication stating on its face that interested persons had four months from the date of first publication (April 26, 2022) to present their claims.

17.

Respondent failed to do any research or consult with any experienced practitioners to confirm his understanding of when claims against the estate may be time-barred.

18.

Respondent received multiple deficiency notices from the court ordering him to file acknowledgments from the financial institutions holding property of the Woodrow Estate and directed him to the applicable local court rules. Based on an erroneous belief that he had complied with local court rules, Respondent failed to facilitate obtaining the proper acknowledgements, prompting Soule to obtain them on his own.

19.

Respondent failed to do any research or consult with any experienced practitioners to confirm his understanding of what acknowledgments needed to be filed to meet the court's requirements.

20.

Over a period of approximately seven months, Soule repeatedly asked Respondent about how he could pay debts of the Woodrow estate with estate funds considering the plain language of the court's asset restriction indicating a court order was required for withdrawal or transfer of estate assets. Respondent repeatedly advised Soule to pay estate debts with funds from the restricted accounts without court authorization. Respondent erroneously believed that the restriction language forbade only distributions to heirs without a court order.

21.

Respondent failed to do any research or consult with any experienced practitioners to confirm his understanding of the effect of the restriction the court placed on the Woodrow estate asset[s].

Violations

22.

Respondent admits that, by failing to provide competent representation, neglecting a legal matter entrusted to him, failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, and failing to surrender papers or property to which a client is entitled, he violated RPC 1.1, RPC 1.3, RPC 1.4(a), and RPC 1.16(d).

Sanction

23.

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 Soule to handle his legal matter with diligence and competence, which includes the duty to adequately communicate. ABA Standards 4.4.

Respondent violated his duty owed as a professional when he failed to promptly return client property. ABA Standards 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.*

With regard to Respondent's RPC 1.1 competence violation, Respondent believed that his advice was accurate. With regard to this charge, Respondent acted negligently.

Prior to being notified that the Woodrow estate could proceed to closure, Respondent's delays were negligent. However, after he became aware that it was his responsibility to facilitate the matter moving forward and did nothing, his neglect was knowing.

Respondent's failure to promptly turn over Soule's file to replacement counsel was knowing.

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

For Soule, unnecessary prolongation of the estate administration was an actual injury, *In re Howser*, 329 Or 404, 413 (1999), as is a client's frustration and anxiety. *In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000), citing *In re Schaffner*, 325 Or 421, 426-7, 939 P2d 39 (1997). Delay in obtaining the Soule's file could have impeded his new counsel's representation, resulting in potential injury.

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

1. Multiple offenses. ABA Standard 9.22(d). Respondent has violated four ethics rules.
2. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to the Bar in 1973.

- 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).

24.

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 causes injury or potential injury to a client. ABA Standard 4.42.

25.

Reprimand is generally appropriate when a lawyer demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client. ABA Standards at 4.53(a).

26.

Finally, suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client. ABA Standard 7.2.

27.

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).

Oregon cases generally hold that 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); *See also, In re Knappenberger*, 337 Or 15, 32-33, 90 P3d 614 (2004) (60-day suspension is generally imposed in a case involving neglect); *In re LaBahn*, 335 Or 357, 67 P.3d 381 (2003) (60-day suspension for single violation of RPC 1.3 predecessor rule); *In re Schaffner*, 323 Ore. 472, 918 P2d 803 (1996) (60-day suspension for knowing neglect of clients' case over a period of time).

28.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30-days for violation of RPC 1.1, RPC 1.3, RPC 1.4(a), and RPC 1.16(d), the sanction to be effective August 1, 2025.

29.

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 Wayne Mackeson, 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. Mackeson has agreed to accept this responsibility.

30.

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.

31.

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.

32.

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.

33.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 7, 2025. 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 July 2025.

/s/ Roscoe C. Nelson
Roscoe C. Nelson, OSB No. 732218

APPROVED AS TO FORM AND CONTENT:

/s/ Wayne Mackeson
Wayne Mackeson, OSB No. 823269

EXECUTED this 2nd day of July 2025.

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)
)
JAMES E. SHADDUCK, Bar No. 870830) Case Nos. 24-02 and 24-57
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator
Willia B. Perlmutter
Lucia Peterson, Public Member

Disposition: Violation of RPC 1.15-1(a), RPC 1.15-1(b), and
RPC 1.15-1(c). Trial Panel Opinion. 60-day suspension.

Effective Date of Opinion: August 7, 2025

TRIAL PANEL OPINION

The Oregon State Bar (Bar) asks us to suspend James E. Shadduck for mismanaging his lawyer trust account. All lawyers who hold funds, “including advances for costs and expenses and escrow and other funds held for another,” must keep them in a separate lawyer trust account. Rule of Professional Responsibility (RPC) 1.15-1(a). Respondent failed to comply with a number of requirements that apply to such accounts.

First, Respondent paid personal expenses directly from his trust account and regularly commingled his own earned funds with unearned client funds, in violation of RPC 1.15-1(a). Second, in violation of RPC 1.15-1(b), he deposited personal funds into the trust account at least three times to replenish client funds that had been prematurely removed. Finally, Respondent made a personal payment to an insurer in the amount of \$184.67 directly out of his trust account, drawing on client funds that he had not earned or to which he was entitled, in violation of RPC 1.15-1(c). The Bar asks us to suspend Respondent for 30 days.

Respondent is in default for failure to appear. When a respondent is in default the Bar’s factual allegations in the complaint are deemed true. BR 5.8(a); *In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004). Our role is first to determine whether the facts alleged establish the charged rule violations. If we conclude they do, we then determine what sanction is appropriate. *See In*

re Koch, 345 Or 444, 446, 198 P3d 910 (2008); see also *In re Kluge*, 332 Or 251, 253, 27 P3d 102 (2001).

As explained below, we find that the facts pleaded support the charged violations. We further find that a 60-day suspension is appropriate here, effective 30 days after this decision is final.

PROCEDURAL POSTURE

On August 9, 2024, the Bar filed a formal complaint against Respondent. On August 27, 2024, Respondent accepted service. On December 30, 2024, having received no answer to the complaint, the Bar sent Respondent a ten-day notice of intent to take default if Respondent did not file an answer. Respondent filed no answer, so on February 20, 2025, the Bar filed a motion for an order of default. Respondent still filed no answer, so the Adjudicator granted the motion on February 28, 2025.

FACTS AND CHARGES

Respondent practiced as the Law Offices of James E. Shadduck. He controlled his firm's lawyer trust account at OnPoint Community Credit Union (trust account).¹ He paid personal expenses directly from his trust account to third parties not affiliated with any of his clients through 2023 and 2024. He regularly commingled his own earned funds with unearned client funds in his trust account. Respondent did not keep bookkeeping records or otherwise track individual client transactions into or out of his trust account.

On at least three occasions between September 2023 and February 2024, Respondent deposited personal funds into the trust account to make up for client funds that had been withdrawn or spent by Respondent before he was entitled to those funds.

On September 11, 2023, Respondent's trust account held \$12,217.67. Respondent wrote a check for \$12,211.50 from his trust account to opposing counsel in a matter Respondent was handling. On September 13, 2023, the trust account balance dropped to \$12,033 because Respondent had drawn on client funds to make a personal payment to an insurer in the amount of \$184.67. The opposing counsel attempted to negotiate the \$12,211.50 check on the same day that the \$184.67 personal payment was deducted from the trust account. The bank returned the check due to insufficient funds. On September 18, 2023, Respondent deposited \$200 of his personal funds into the trust account. On September 19, 2023, Respondent reissued the check to opposing counsel. It was then honored when presented.

¹ The facts summarized herein are taken from the allegations in the formal complaint.

1. Respondent failed to hold funds belonging to clients separate from his own property and improperly deposited his own funds into trust.

The first cause of complaint alleges violation of two rules:

“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....” RPC 1.15-1(a).

“A lawyer may deposit the lawyer’s own funds in a lawyer trust account for the sole purposes of paying bank service charges or meeting minimum balance requirements on that account, but only in amounts necessary for those purposes.” RPC 1.15-1(b).

Respondent paid personal expenses directly from his trust account to third parties not affiliated with any of his clients, and he regularly commingled his own earned funds with unearned client funds. In doing so, Respondent failed to hold property of clients separate from his own property in violation of RPC 1.15-1(a).

Additionally, he deposited his own personal funds into the trust account at least three times to replenish prematurely removed client funds. Depositing personal funds in a lawyer trust account is allowed only to pay bank service charges or to meet minimum balance requirements, neither of which applied here. Accordingly, Respondent violated RPC 1.15-1(b).

2. Respondent improperly withdrew client funds and then deposited his own funds into trust to cure the withdrawal.

The second cause of complaint alleges another violation of RPC 1.15-1(b), as well as a violation of RPC 1.15-1(c), which provides:

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

Respondent violated RPC 1.15-1(c) when he drew on client funds in his trust account that he had not earned and to which he was not entitled, to make a personal payment to an insurer of \$184.67. This, in turn, caused a check he had written to another lawyer to bounce.

Respondent violated RPC 1.15-1(b) when he subsequently made a personal deposit of \$200 to replenish the trust account so the bounced check would be honored when re-presented.

SANCTION

We refer to the *ABA Standards for Imposing Lawyer Sanctions* (ABA Standards), in addition to Oregon case law, 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, the court makes a preliminary determination of sanctions, after which it adjusts the sanction, if appropriate, based on the existence of aggravating or mitigating circumstances.

Duty Violated.

Respondent violated his duty to preserve client property when he commingled his own funds with unearned client funds and failed to properly account for and safeguard client money that was entrusted to him. ABA Standard 4.1.

Mental State.

The most culpable mental state is that of "intent," 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.*

Respondent was admitted to the Oregon bar in 1987. He had extensive experience practicing law. We find that he knew or should have known that his handling of his trust account was improper. *In re Peterson*, 348 Or 325, 342, 232 P3d 940 (2010).

Although he filed no answer, Respondent gave various explanations for his misconduct in response to the Bar's investigation. He blamed the Bar for failing to train him or explain to him how to reconcile his bank accounts. Ex. B.² He blamed the COVID pandemic, claiming he may have gotten lazy as COVID "stripped" him of his staff. Ex. C. Ultimately Respondent said he was "tired" at the end of his career, while also acknowledging "that's not a defense held up by our rules. At my start I thought I'd make it. My sense is I tried my best. I think we or me got worn out. I accept my penalty." Ex. D.

² At our discretion we may consider evidence or legal authority beyond the allegations of the formal complaint, but such evidence is limited to the issue of sanction. BR 5.8(1). References herein to exhibits are to those attached to the Declaration of Eric J. Collins in Support of Oregon State Bar's Memorandum Re: Sanction filed April 18, 2025.

Practitioners should note that the first two publications listed on the BarBooks link on the Oregon State Bar's website are *A Guide to Setting up and Running Your Law Office* (PLF 2019) and *A Guide to Setting Up and Using Your Lawyer Trust Account* (PLF 2018). The PLF also provides free PDF downloads on its website of two publications, *Launching Your Own Practice* and *Mastering Your Lawyer Trust Account*. These texts have been published since 1986. No Oregon lawyer can claim that a lack of training or resources caused them to mishandle their lawyer trust account.

For our purposes, we find that Respondent acted at least negligently in each of the instances in which he mishandled his trust account.

Extent of Actual or Potential Injury.

In determining an appropriate disciplinary sanction, we may consider both actual and potential injury. ABA Standards at 6; *In re Keller*, 369 Or 410, 417, 506 P3d 1101 (2022). Actual injury is 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.

Apparently, no client suffered injury in the instances involved here, but the Oregon Supreme Court has stated that a lawyer causes actual harm to the legal profession by failing to maintain their trust account in accordance with legal requirements. *In re Peterson*, 348 Or at 342. The Bar also argues, and we agree, there was significant potential injury to clients because Respondent did not adequately keep track of available funds in trust.

Preliminary Sanction.

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; *In re Peterson*, 340 Or at 342.

Aggravating and Mitigating Circumstances.

The Bar argues the following aggravating factors apply:

1. A prior record of discipline. ABA Standard 9.22(a). Respondent was admonished in 2013 for misconduct related to a trust account overdraft. He failed to maintain client funds in trust. His assistant negligently wrote a check to him for a fee he claimed from a client. The assistant later wrote a check to the client for an amount that did not take into account the fee Respondent had already been paid. The client fee was withdrawn twice from Respondent's client trust account in violation of RPC 1.15-1(c).

Although letters of admonition are not considered discipline when issued, they can be used as evidence of past misconduct if the underlying misconduct was of the same

or similar type as the misconduct at issue in the current case. *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018), citing *In re Cohen*, 330 Or 489, 498-99, 8 P3d 953 (2000). Respondent's prior admonition arose from conduct similar to the misconduct here, which shows he is careless with respect to his ethical obligations. *Id.*, citing *In re Knappenberger*, 340 Or 573, 586, 135 P3d 297 (2006). We find this factor applies.

2. Multiple offenses. ABA Standard 9.22(d). The formal complaint alleged multiple instances in which Respondent mishandled his trust account throughout 2023 and 2024. We find this factor applies.
3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been licensed to practice law in Oregon since 1987.

The Bar submits that no mitigating factors are present in this case, and Respondent's proffered excuses for his misconduct do not support the application of any either. Although Respondent essentially acknowledged the wrongfulness of his conduct when he admitted that his excuses were no defense under the rules and stated that he would accept his penalty, this is not sufficient to rise to the level of a mitigating factor because he expressed no remorse. ABA Standard 9.32(l).

Oregon Case Law.

The Bar cites multiple cases showing that violations of RPC 1.15-1's trust account rules usually result in suspensions of 30 to 60 days.³ "The failure of a lawyer with substantial experience to carry out fully the responsibilities imposed by RPC 1.15-1(a) and RPC 1.15-1(c) for the protection of client funds in a lawyer trust account is a serious deviation from the legal profession's ethics." *In re Peterson*, 348 Or at 345 (imposing a 60-day suspension).

A suspension of either 30 or 60 days would be within the realm of reasonable sanctions for the offenses involved here. Sanctions in disciplinary matters are not intended to penalize a respondent but are instead 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). Respondent demonstrated a cavalier attitude toward his obligations under these rules. The rules governing trust accounts arise from a lawyer's most fundamental fiduciary duties to their clients and involve circumstances in which clients are most vulnerable to lawyer malfeasance. To deter such conduct in the future we find that a 60-day suspension is necessary here.

³ *In re Obert*, 352 Or 231, 262, 282 P3d 825 (2012). See *In re Peterson*, 348 Or at 345 (lawyer suspended for 60 days for violation of RPC 1.15-1(a) and (c)); *In re Snyder*, 348 Or 307, 324, 232 P3d 952 (2010) (lawyer suspended for 30 days for violation of RPC 1.4 and RPC 1.15-1(d)); *In re Eakin*, 334 Or 238, 257-59, 48 P3d 147 (2002) (lawyer suspended for 60 days for violations of former DR 9-101(A), (C)(3), and (C)(4), which are the substantially similar predecessors of RPC 1.15-1).

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. To accomplish this goal, we order that Respondent be suspended for a period of 60 days, effective 30 days after this decision is final.

Respectfully submitted this 7th day of July 2025.

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

/s/ Willa Perlmutter
Willa Perlmutter, Attorney Panel Member

/s/ Lucia Peterson
Lucia Peterson, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
P. HEATH HATTAWAY, Bar No. 222750) Case No. 24-194
)
Respondent.)

Counsel for the Bar: Susan R. Cournoyer

Counsel for the Respondent: Nellie Q. Barnard

Disciplinary Board: Mark A. Turner, Adjudicator

Disposition: Violation of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1,4(b), RPC 1.16(a)(1), RPC 1.16(d), RPC 8.4(a)(3), and RPC 8.4(a)(4).
BR 3.5 Petition for Reciprocal Discipline. 60-day suspension, all stayed, one-year probation.

Effective Date of Order: July 18, 2025

ORDER GRANTING BR 3.5 PETITION FOR RECIPROCAL DISCIPLINE

The Oregon State Bar (Bar) petitioned for imposition of reciprocal discipline on Respondent P. Heath Hattaway pursuant to BR 3.5. Respondent was disciplined in Louisiana on April 8, 2025. Respondent stipulated to violations of the following Louisiana Rules of Professional Conduct: 1.1(a) (failure to provide competent representation); 1.3 (failure to act with reasonable diligence); 1.4 (failure to communicate with a client); 1.16(a) (failure to withdraw from representation); 3.2 (failure to make reasonable efforts to expedite litigation); 5.5(a),(e)(3) (unauthorized practice of law); 8.4(a) (violating the Rules of Professional Conduct); 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

The Supreme Court of Louisiana suspended Respondent for 60 days and ordered him to pay costs. The court ordered the suspension fully deferred, with the condition that any misconduct during the deferral period may be grounds for imposing the suspension or imposing additional discipline, as appropriate. The Louisiana proceeding arose from Respondent's representation of a defendant in a housing discrimination civil action brought under the Fair Housing Act. Respondent had no experience defending such claims and failed to take reasonable steps to defend his client which resulted in a default judgment.

In reciprocal discipline cases, an attorney's conduct is analyzed under Oregon's rules and statutes. *In re Skagen*, 367 Or 236, 253, 476 P3d 942 (2020); *In re Sanai*, 360 Or 497, 538, 383 P3d 821 (2016). The Bar contends that Respondent's conduct violated the following Oregon Rules of Professional Conduct (RPCs): RPC 1.1 (competence); RPC 1.3 (neglect); RPC 1.4(a) and 1.4(b) (reasonable and sufficient communication with a client); RPC 1.16(a)(1) (failure to withdraw); RPC 1.16(d) (failure to fulfill duties upon termination of representation); RPC 5.5(a) (unauthorized practice of law); RPC 8.4(a)(3) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice).

Respondent's multiple acts of misconduct would warrant a significant suspension under most circumstances. However, the Louisiana court applied five stipulated mitigating factors: absence of prior discipline; personal or emotional problems; full and free disclosure and cooperative attitude; inexperience in the practice of law; and remorse. It added a sixth, good character and reputation. The Bar acknowledges that since this is a reciprocal discipline case a seventh mitigating factor applies, imposition of other sanctions.

In light of the significant mitigating factors, the Bar asks that reciprocal discipline be imposed consisting of a 60-day suspension, all stayed pending a one-year probation, the terms of which are set out in a separate probation agreement entered into by the parties on July 16, 2025, and effective upon issuance of this order.

Counsel for Respondent advised me by letter dated July 16, 2025, that Respondent does not object to imposition of the Bar's requested discipline.

Now, therefore, being fully advised,

IT IS HEREBY ORDERED that the petition for reciprocal discipline is GRANTED and Respondent is suspended for a period of 60 days, all stayed pending completion of a one-year period of probation subject to the conditions agreed to by the parties in the probation agreement dated July 16, 2025. This order is effective on July 18, 2025.

DATED this 18th day of July 2025.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
MICAH JON JOHNSTONE, Bar No. 121974) Case No. 23-286
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator
Honorable Jill Tanner
Marian Taloi, Public Member

Disposition: Violation of RPC 1.4(b), RPC 1.5(a), RPC 1.5(c)(3),
RPC 1.8(h)(2), RPC 1.16(d), and RPC 8.1(a)(2). Trial Panel
Opinion. 120-day suspension.

Effective Date of Opinion: September 13, 2025

TRIAL PANEL OPINION

Respondent Micah Jon Johnstone closed his practice without warning or notice to a client before completing the engagement for which he had been paid a flat fee. He took no steps to protect his client’s interests when he terminated the representation and failed to refund any unearned fees he had already collected. The Oregon State Bar (Bar) asks us to suspend him for a minimum of 120 days for failure to adequately communicate with his client, failure to protect his client’s interests or return unearned client funds, and failure to cooperate with the Bar’s investigation of his conduct. The Bar also asks that we require Respondent to undergo formal reinstatement under BR 8.1 if we impose a suspension of less than six months. Any term of suspension greater than six months automatically triggers the formal reinstatement requirement pursuant to BR 8.1(1)(d). A trial panel may require formal reinstatement in a case involving a suspension of six months or less.

Respondent is in default for failure to appear. When a respondent is in default the Bar’s factual allegations in the complaint are deemed true. BR 5.8(a); *In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004). Our role is to first determine whether the facts alleged establish the charged rule violations. If we conclude they do, we then determine what sanction is appropriate. *See In*

re Koch, 345 Or 444, 446, 198 P3d 910 (2008); see also *In re Kluge*, 332 Or 251, 253, 27 P3d 102 (2001).

As explained below, we find that the facts pleaded support the charged violations. We order that Respondent be suspended for 120 days and that he must undergo formal reinstatement under BR 8.1 before he may practice law again in this state.

PROCEDURAL POSTURE

On February 4, 2025, the Bar commenced this action by filing a formal complaint. Respondent was personally served on February 21, 2025. On March 11, 2025, the Bar sent Respondent a ten-day notice of its intent to take default if Respondent did not file an answer. Having received no answer, the Bar moved for an order of default on March 24, 2025. The Adjudicator granted the motion on March 27, 2025.

FACTS AND ANALYSIS OF VIOLATIONS

On February 14, 2022, Kanan Malis (Client) entered into a flat fee agreement with Respondent for representation in an open criminal investigation.¹ Client paid Respondent \$2,000 for work to be performed before any indictment. The parties further agreed that Client would pay additional fees for representation post-indictment.

In September 2022, Respondent suffered a “medical event” that interfered with his ability to manage his practice. The allegations do not identify what this medical event was.

Respondent did not tell Client that he was having difficulty running his practice nor did he tell him that he closed his practice in January 2023. Respondent did no further work for Client, thus constructively terminating the representation. Respondent had not completed the work for which he was paid the initial \$2,000.

Respondent gave Client no notice that he was terminating the representation. He did not provide Client with a copy of his file or tell him how he could get a copy. He did not give Client information about how to contact him after he closed his office. He did nothing to help Client find a new lawyer. He also failed promptly to refund any unearned portion of the \$2,000 fee.

On May 17, 2023, Client complained to the Bar. He said that Respondent had “essentially disappeared after being paid \$2,000 retainer fee [*sic*].” Respondent still had not refunded any unearned fees.

The Bar investigated the grievance. Respondent replied to the Bar more than seven weeks after Client had first complained. He told the Bar that he and Client had reached an agreement and that Respondent had paid Client \$1,000 as a partial refund of the flat fee. Respondent

¹ The facts summarized herein are alleged in the formal complaint.

attached a document titled “Settlement Agreement and Mutual Release of All Claims” (the Release). The Release provided that Client released Respondent “...from any and all claims, demands, damages, liabilities, expenses, or causes of suit or action of whatsoever kind or nature, known or unknown, arising from or relating to any actual or alleged act, error, or omission in providing legal services, advice, or representation to” Client in the criminal investigation. The Release identified the \$1,000 refund as consideration for Client’s agreement to release claims. The parties apparently signed the Release on July 5, 2023.

Although Client released any potential malpractice claims, the Release did not include any recommendation that Malis seek independent legal advice before signing it. The Release also omitted any recital that Client had been given a reasonable opportunity to seek independent advice.

Respondent also gave the Bar a copy of an unsigned flat fee agreement that Respondent said was the agreement he had with Client for the engagement. The agreement did include a statement that the \$2,000 flat fee was “earned immediately upon receipt and is nonrefundable except pursuant to the terms of this agreement.”

Client’s grievance was then referred to Disciplinary Counsel’s Office (DCO) for further investigation. DCO asked Respondent for further information by letter dated March 29, 2024. It was sent to Respondent by first class mail addressed to the address then on record with the Bar (record address) and by email at the email address then on record with the Bar (record email address).² Neither the letter nor the email was returned as undelivered.

On April 19, 2024, Respondent emailed to ask for more time to respond in order “to search for the requested documents as [his] office files are boxed up.” DCO extended the deadline to May 3, 2024.

On May 3, 2024, Respondent sent another email asking for one final extension of time to respond because he had “not yet found the requested documentation.” DCO extended the deadline to May 10, 2024. That day Respondent sent another email asking for “another extension of just another week” because he needed “additional time to draft [his] response.” Respondent wrote that he could provide his response “by the end of next week.” DCO extended the deadline again, this time to May 17, 2024.

Respondent did not send his promised response. DCO emailed him on May 28, 2024, asking that he provide a date that he could submit his response. DCO also warned Respondent that failure to respond to the Bar’s inquiries could lead to his administrative suspension under BR 7.1. Respondent did not reply so DCO sent another letter dated June 4, 2024. This letter was sent by first class mail and by certified mail, return receipt requested, to Respondent’s record

² All attorneys admitted to practice in Oregon must keep the Bar apprised of a current business and email address unless granted an exemption. BR 1.11(a) and (b). It is the attorney’s duty to “promptly notify the Bar in writing of any change in his or her contact information.” BR 1.11(d).

address. It was also sent to Respondent's record email address. Respondent signed the certified mail receipt.

On June 25, 2024, DCO sent another email to Respondent, this time telling him that if he failed to respond by the morning of June 27, 2024, it would file a BR 7.1 petition. The deadline passed without any response so DCO filed a petition on June 27, 2024. It was granted and Respondent was suspended on July 12, 2024. The formal complaint recites that Respondent had still not responded to DCO by February 5, 2025.

1. Respondent violated RPC 1.4(b) when he failed to tell Client he was closing his practice.

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

Cases identify many events about which an attorney is obligated to keep their client informed, e.g., a determination that a case lacks merit (*In re Snyder*, 348 Or 307 (2010)); that an attorney is not available for court appearances (*In re Jordan*, 26 DB Rptr 191 (2012)); and information about dispositive events during a case (*In re Hudson*, 27 DB Rptr 226 (2013)).

Respondent here had a medical event in September 2022 that interfered with his ability to practice and caused him to close his office in January 2023. These facts are on par with those identified in the cases cited above and equally required Respondent to tell Client about them. Absent information about Respondent's condition and the closure of his office Client could not make informed decisions about how to proceed. We find that Respondent violated RPC 1.4(b).

2. Respondent violated RPC 1.5(c)(3) because he did not have a signed fee agreement with Client.

"A lawyer shall not enter into an arrangement for, charge or collect ... a fee denominated as "earned on receipt," "nonrefundable" or in similar **terms unless it is pursuant to a written agreement signed by the client** which explains that: the funds will not be deposited into the lawyer trust account, and (ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed." RPC 1.5(c)(3) (emphasis added).

Respondent never produced a signed copy of his earned-on-receipt fee agreement with Client. The blank copy did include the language required by the rule, but his failure to produce a "written agreement signed by the client" means he violated RPC 1.5(c)(3).

3. Respondent violated RPC 1.5(a) when he failed to promptly refund unearned fees.

"A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses." RPC 1.5(a).

A lawyer violates this rule when the lawyer collects an earned-on-receipt flat fee, does not perform or complete the work for which the fee was paid, and then fails to promptly refund the unearned portion of the fee. *In re Obert*, 352 Or 231, 243, 282 P3d 825 (2012) (citing *In re Gastineau*, 317 Or 545, 550-51, 857 P2d 136 (1993)). Here, Respondent collected a \$2,000 earned-on-receipt flat fee to represent Clients in the pre-indictment phase of a criminal investigation. He did not complete the work for which he had been paid because he closed his practice in January 2023, before that portion of the engagement was concluded. He then failed to promptly refund any unearned portion of the fee. Client had still not received a refund by the time he complained to the Bar in May of 2023.

In July 2023, Respondent told the Bar that he had paid Client \$1,000; but the Bar alleges that payment was consideration for Client releasing potential malpractice claims rather than a refund of unearned fees. Regardless, Respondent did not promptly provide the \$1,000 payment to Malis and so he collected a clearly excessive fee in violation of RPC 1.5(a).

4. Respondent violated RPC 1.16(d) when he failed to protect Client’s interests upon termination of the representation.

“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).

When Respondent closed his office, he terminated the representation without notice. Respondent then took no steps to protect Client’s interests. He gave no reasonable notice of the closure, he did not provide Client with a copy of the file or tell Client how he could obtain a copy, and he failed to tell Client how to contact him. He did nothing to help Client find new counsel. Also, since his duty to provide a refund arose when he terminated the representation his failure to promptly pay violates this rule as well. We find Respondent failed to take steps to protect his client’s interests in violation of RPC 1.16(d).

5. Respondent violated RPC 1.8(h)(2) when failed to properly advise Client regarding the agreement to release any claim for malpractice.

“A lawyer shall not ... settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.” RPC 1.8(h)(2).

Respondent and his now former client signed a document entitled “Settlement Agreement and Mutual Release of All Claims” (the Release) in July 2023 that appeared to settle any potential malpractice claims arising from the engagement. Respondent agreed to pay \$1,000

to settle the matter. Respondent did not advise his former client in writing that it was desirable to get independent counsel, nor did he memorialize or otherwise demonstrate that the former client had been given a reasonable opportunity to seek such advice. These omissions violated RPC 1.8(h)(2).

6. Respondent violated RPC 8.1(a)(2) when he knowingly failed to respond to the Bar’s investigation of his conduct.

“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.” RPC 8.1(a)(2).

Our disciplinary system requires all lawyers to cooperate when the Bar investigates allegations of misconduct against them. This rule “requires *full* cooperation from a lawyer who is the subject of a disciplinary investigation.” *In re Munn*, 372 Or 589, 611, 553 P3d 1039 (2024) (quoting *In re Schaffner*, 325 Or 421, 425, 939 P2d 39 (1997) (emphasis in original)). The Oregon Supreme Court does not tolerate violations of this rule. See *In re Miles*, 324 Or 218, 222-25, 923 P2d 1219 (1996)

Mere failure to cooperate, however, does not prove a violation of this rule. The Bar must show that a lawyer “knowingly” failed to respond to the Bar’s demand for information. This means the lawyer must have actual knowledge of the facts, and knowledge can be inferred from circumstances. RPC 1.0(h).

Here, Respondent received multiple inquiries from DCO about the grievance. We know Respondent was aware of these inquiries because he asked for, and was given, multiple extensions of time to respond. When he failed to meet the deadline he had specifically requested, DCO warned him that his failure to provide a response could lead to his administrative suspension. After months of delay DCO obtained an order suspending Respondent until he fulfilled his duty to respond. Respondent has been suspended since July 12, 2024, but has still provided no response. Respondent knowingly failed to respond to DCO’s requests for information. We find he violated RPC 8.1(a)(2).

SANCTION

We look to the *ABA Standards for Imposing Lawyer Sanctions* (ABA Standards), and Oregon case law for guidance in assessing an appropriate sanction.

ABA Standards

The ABA Standards use an analytical framework for determining the appropriate sanction 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 a proper sanction, after which we may adjust the sanction based on the presence of recognized aggravating or mitigating considerations or factors.

Duty Violated

The most important ethical duties are those lawyers owe to their clients. ABA Standards at 5. Respondent violated his duty to communicate information that was necessary for his client to make informed decisions. He also failed to preserve his client's property. ABA Standard 4.1 and 4.4. He violated duties owed as a professional to refrain from collecting a clearly excessive fee, to properly withdraw from the representation, and to ensure that his fee agreement and the Release met the requirements specified in the rules. ABA Standard 7.0.

Respondent further violated his duty to the legal profession when he failed to cooperate with DCO's investigation. ABA Standard 7.0; *see In re Munn*, 372 Or at 612-13 (finding such conduct a violation of the duty to the legal profession). His failure to cooperate also violated his duty to the public because the disciplinary system 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

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 when he failed to communicate with his client about the closing of his practice, failed to protect his client's interests on termination of the representation, and failed to cooperate with the Bar's investigation. Respondent acted at least negligently when he failed to obtain a signed fee agreement from his client, failed to refund any unearned fees, and failed to advise his client regarding the Release.

Extent of Actual or Potential Injury

We may consider both actual and potential injury when determining an appropriate sanction. ABA Standards at 6; *In re Keller*, 369 Or 410, 417, 506 P3d 1101 (2022). 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 our sanction analysis." *Keller*, 369 Or at 417. Respondent caused his client to suffer uncertainty, anxiety, and

frustration when he closed his practice and abandoned his client's case without notice. To the extent his client was entitled to a refund that was not paid, the client suffered actual financial injury.

Respondent's failure to cooperate with the Bar's investigation caused actual injury to the public and the legal profession. *In re Munn*, 372 Or at 613.

Respondent exposed his client to potential injury when he failed to protect his client's interests at termination of the engagement and failed to properly advise his client regarding the Release.

Preliminary Sanction

Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client, including failure to communicate, and causes injury or potential injury to a client. ABA Standard 4.42(a).

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

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.

Respondent's misconduct merits a suspension of some length absent significant mitigating circumstances.

Aggravating and Mitigating Circumstances

We find the following aggravating factors here:

1. Multiple offenses. ABA Standard 9.22(d). Respondent violated six rules of professional conduct involving distinct acts. This is not a case where a single bad act is charged under multiple rules. *In re Strickland*, 339 Or 595, 606, 124 P3d 1225 (2005).
2. Refusal to acknowledge wrongful nature of conduct. ABA Standard 9.22(g). Respondent chose to ignore the Bar's investigation and to default in this case. As such, he has never made any acknowledgement of the wrongfulness of his conduct. See *In re Hageman*, 37 DB Rptr 104, 115 (2023) (trial panel found that a lawyer who failed to respond to the Bar and failed to appear and defend refused

to acknowledge the wrongfulness of his conduct); *see also In re Kosieracki*, 39 DB Rptr __, 8 (2025) (same finding when the lawyer failed to respond to Bar inquiries).

3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has practiced law in Oregon since April 30, 2012.

The Bar acknowledges that Respondent has no prior disciplinary record, a mitigating factor under ABA Standard 9.32(a). No other mitigating factors can be found in the limited record before us.

The aggravating factors outweigh the single mitigating factor and could serve to lengthen the term of a suspension.

Oregon Case Law

Case-matching in disciplinary matters is an “inexact science.” *In re Hostetter*, 348 Or 574, 603, 238 P3d 13 (2010). Moreover, we recognize that there is often a spectrum of reasonable sanctions for misconduct, not necessarily a single right answer. It is our task to ensure that the sanction we impose falls within that realm of reasonable outcomes.

The Bar argues that the Oregon Supreme Court typically imposes at least a 30-day suspension when a lawyer fails to adequately communicate with a client. *In re Gatti*, 356 Or 32, 57, 333 P3d 994 (2014) (“[A] finding that a lawyer has failed to adequately explain a legal matter to a client under RPC 1.4(b), without more . . . justifies a 30-day suspension.”); *In re Snyder*, 348 Or at 323-24 (attorney was suspended for 30 days because he failed to respond to his client’s status inquiries, failed to inform the client of communications with the other side, and failed to explain the attorney’s settlement negotiation strategy).

The Bar also notes that lawyers have been suspended for 30 to 90 days in excessive fee cases where the lawyer also committed other rule violations. *See, e.g., In re Fadeley*, 342 Or 403, 411-414, 153 P3d 682 (2007) (lawyer suspended for 30 days where he failed to refund any portion of a flat fee when client fired him before he completed the work); *In re Balocca*, 342 Or 279, 298, 151 P3d 154 (2007) (attorney who agreed to perform specified legal services for a flat fee, failed to complete the work, but kept the fee, among other things, was suspended for 90 days in light of multiple violations and aggravating factors).

Finally, the Bar points out that attorneys who fail to cooperate with DCO investigations have received suspensions of 60 days and higher. *See In re Miles*, 324 Or at 225 (120-day suspension for two violations of the predecessor to RPC 8.1(a)(2)).

Respondent’s misconduct warrants a significant suspension. Respondent might have been able to demonstrate a basis for some mitigation based on his medical condition but chose not to appear and explain to us how the condition may have contributed to his rule violations. We cannot speculate on the subject, and regardless of Respondent’s personal issues he was still obligated to comply with his ethical duties to his client, to the public, and to the profession.

Respondent's tale is a client's nightmare. The client paid for work to be done. Respondent abandoned him without a word and without doing what was promised. Respondent then took advantage of the client and demanded a release of malpractice claims before he would refund any unearned fees. When the client complained to the Bar, Respondent stalled and delayed before eventually disappearing without an explanation.

We order that Respondent be suspended for 120 days. Such a suspension is on the low end of the spectrum of reasonable sanctions here, but we are willing to accept the Bar's position because we also order that Respondent must seek formal reinstatement before he may practice law again in this state. We believe this sanction meets the twin goals of lawyer discipline: protecting the public and deterring future misconduct. Respondent will have the burden of proving he is fit to practice again and must assure the Bar that he is no longer a danger to his clients, the public, or the profession.

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 accomplish this goal, we order that Respondent be suspended for 120 days, effective 30 days after the date this decision is final, and that he must undergo formal reinstatement under BR 8.1 if he seeks to practice again.

Respectfully submitted this 13th day of August 2025.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Honorable Jill Tanner

Honorable Jill Tanner, Attorney Panel Member

/s/ Marian Taloi

Marian Taloi, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
SUSAN M. CARTER, Bar No. 206877) Case Nos. 23-159 & 24-172
)
Respondent.)

Counsel for the Bar: Matthew S. Coombs

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.3; RPC 8.1(a)(2); RPC 5.5(a); ORS 9.160(1); and RPC 5.5(b)(2). Stipulation for discipline. 60-day suspension.

Effective Date of Order: November 1, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Susan M. Carter (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 November 1, 2025, for violation of RPC 1.3, RPC 8.1(a)(2), RPC 5.5(a), ORS 9.160(1) and RPC 5.5(b)(2).

DATED this 26th day of August, 2025.

/s/ Mark A. Turner

Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Susan M. Carter, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 28, 2020, and has been a member of the Bar continuously since that time, having her office and place of business in Columbia 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(8).

4.

On January 10, 2025, 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 8.1(a)(2), RPC 5.5(a), ORS 9.160(1) and RPC 5.5(b)(2), of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Case No. 23-159 – Sorenson Matter

On or about March 8, 2021, Michael Van Horn (Van Horn) filed a pro se civil complaint against his sister, Stephanie Sorenson (Sorenson). Van Horn subsequently hired Respondent to represent him in the matter. Respondent made her first filing in the matter on or about July 30, 2021.

6.

On or about September 20, 2021, Respondent filed an amended complaint, adding Skywalker Investments, LLC (Skywalker) as a defendant.

7.

On or around February of 2022, Respondent served a set of requests for production on Sorenson's lawyer. Despite never receiving a response to the discovery request, Respondent failed to move the court for an order compelling production or otherwise force compliance.

8.

Respondent drafted deposition notices for the Van Horn case, but failed to serve them on the opposing parties.

9.

On or about May 13, 2022, counsel for Skywalker filed a motion for summary judgment (Skywalker MSJ) of Van Horn's claims. The court set a hearing on the Skywalker MSJ for June 3, 2022. Respondent moved to postpone the hearing until after the Skywalker MSJ's June 6, 2022, response deadline. The hearing was reset to June 21, 2022. Respondent failed to file a response to the Skywalker MSJ until 11:45 pm on June 20, 2022. The court declined to consider Respondent's response due to its untimeliness and granted the Skywalker MSJ.

10.

On or about June 27, 2022, counsel for Sorenson filed a motion for summary judgment of Van Horn's claims (Sorenson MSJ). The deadline to file a response to the Sorenson MSJ was July 18, 2022, pursuant to ORCP 47(c). Respondent failed to file a timely response and subsequently sought leave to file a late response, which the court granted. After considering the Sorenson MSJ, the court granted summary judgment on all of Van Horn's claims except one.

11.

On or about August 22, 2024, two days before trial, Respondent cited her failure to depose Sorenson and another witness as the basis for a motion to postpone the trial. The court denied her motion as untimely and not in compliance with local rules. The court closed discovery in the case, citing the ample time that Respondent had to conduct discovery throughout the case. On the day of trial (August 24, 2022) Respondent made an oral motion to reset the trial due to illness. Trial was then reset to September 14, 2022, at 9:30 a.m. While counsel for Sorenson and Skywalker filed trial memorandums in the days leading up to the August 24 trial date, Respondent filed a brief trial memorandum at 10:18 a.m. on September 14, nearly an hour after trial was set to begin.

12.

On or about June 21, 2023, Disciplinary Counsel's Office (DCO) received a grievance from Sorenson about Respondent's conduct. On August 8, 2023, DCO requested Respondent's response to Sorenson's grievance. The letter was addressed to Respondent at the address then

on record with the Bar (record address) and to the email address then on record with the Bar (record email address). DCO gave Respondent a deadline of August 29, 2023, to respond, but Respondent did not respond. DCO proceeded to gather other evidence in the complaint, and contacted Respondent again in June 2024, and requested her response to Sorenson's grievance by June 25, 2024. Respondent responded by email on June 24, stating that she was "pretty sure" that she previously responded, but that she has "been unable to find a copy of my response to you, and honestly I have no more time today to search for it. I can do that next weekend."

13.

By August 1, 2024, Respondent had not responded, and DCO sent Respondent another letter requesting her response by August 8, 2024, and warning her that DCO would seek a suspension of her law license pursuant to BR 7.1 if she did not respond. On August 2, 2024, Respondent requested another copy of the original inquiry letter, and DCO provided her with a copy on the same day. Respondent did not respond by August 8, 2024, and on August 9, 2024, DCO contacted her to request a status update. Respondent responded on the same day and said that she would submit her response that evening. Respondent did not submit a response, and on August 14, 2024, DCO filed and served her with a petition to suspend her law license pursuant to BR 7.1. Respondent submitted a response that day after receiving the BR 7.1 petition. DCO then withdrew its petition.

14.

Case No. 24-172 - OSB Matter

Between November 8, 2023, and January 4, 2024, the Professional Liability Fund (PLF) sent Respondent three notices reminding her that her first installment payment was due by January 10, 2024. Respondent timely made her first installment payment.

15.

Between March 15, 2024, and April 8, 2024, the PLF sent Respondent three reminder notices that her second PLF installment payment was due April 10, 2024. Respondent failed to pay her second installment payment, and on April 11, 2024, the PLF sent Respondent a notice that she was delinquent on her second installment payment and directed her to pay by May 13, 2024, to avoid late fees. The PLF sent Respondent a second notice regarding her late second installment on April 30, 2024. Respondent did not pay her second PLF installment on May 13, and on May 14, 2024, the PLF sent Respondent a notice informing her that her entire PLF assessment was now due. The PLF notice further stated that if payment was not received by June 14, 2024, her law license would be suspended. The PLF sent Respondent another notice on May 31, 2024. Respondent did not pay her PLF assessment by June 14, and on June 17, 2024, her law license was suspended.

16.

On June 18, 2024, at 9:08 a.m. the Bar emailed Respondent a notice that her law license was suspended effective June 17, 2024. On June 18, 2024, at 3:37 p.m., Respondent filed a letter with the court in the case of *In re Craig Stowe*, Coos County Circuit Court Case No. 22PB03587.

17.

On June 25, 2024, Respondent paid the balance of her PLF assessment and received a receipt from the PLF that contained the following information written in bold:

“Reinstatement with the Oregon State Bar is separate from Compliance with the PLF. Please contact OSB Regulatory Services for reinstatement: (503) 620-0222, ext. 343.”

18.

Respondent then submitted a reinstatement application to the Bar on June 25, 2024, which acknowledged that she was suspended on June 17, 2024, and asserted that she had not practiced law during the time that she was suspended.

19.

On June 25, 2024, at 4:26 p.m., Respondent filed a trial memorandum, exhibit list, and her client’s Uniform Support Declaration (USD), in the case of *Goergen v. Carreon-Lingana*, Coos County Circuit Court Case No. 24DR04018.

20.

On June 25, 2024, at 7:25 p.m., Respondent filed a motion to show cause in the case of *Green v. Dudley*, Douglas County Circuit Court Case No. 23DR05558.

21.

On June 26, 2024, Respondent appeared for trial in the Goergen matter and reported to the court that her law license was no longer suspended, however, the court postponed the trial after noting that Respondent was still listed as suspended on the Bar’s website. Respondent’s law license was reinstated on June 27, 2024.

Violations

22.

Respondent admits that, by neglecting her client’s legal matter and knowingly failing to respond to a lawful demand for information from a disciplinary authority in the Sorenson case, she violated RPC 1.3 and RPC 8.1(a)(2). Respondent admits that, by performing legal work while

administratively suspended, she practiced law in Oregon in violation of the jurisdiction's regulation, practiced law and represented herself as qualified to practice law while she was not an active member of the Oregon State Bar, and held herself out to the public that she was admitted to practice law in Oregon when she was not, in violation of RPC 5.5(a), ORS 9.160(1) and RPC 5.5(b)(2).

Sanction

23.

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 owed to her client by failing to act with reasonable diligence in the Sorenson matter. ABA Standards 4.0

Respondent violated her duties owed as a professional when she failed to respond to DCO's inquiries and practiced law while administratively suspended. ABA Standards 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's repeated acts of neglect in the Sorenson matter and failure to respond to DCO's inquiries were done knowingly.

Respondent's practice of law during her suspension was negligent. Respondent's explanation for this misconduct is grounded in her lack of knowledge of when her administrative suspension took effect and her misunderstanding of the reinstatement process.

- 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 Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

Respondent's neglect resulted in actual harm when her client's claims were dismissed. Respondent's failure to respond to DCO's inquiries from caused harm to the Bar, which had to dedicate resources to forcing compliance.

Respondent's unlicensed practice resulted in potential harm.

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

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 State Bar of California in 1987.
3. Pattern of misconduct. ABA Standard 9.22(c). Respondent neglected a client's matter, refused to cooperate with her regulators, and then practiced law while she was suspended.

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. Remorse. ABA Standard 9.32(l).

24.

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. ABA Standard 4.42.

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 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

25.

Sanctions in disciplinary matters are not intended to penalize the respondent 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).

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).

Regarding the Respondent's failure to respond to the Bar's inquiries, the Supreme Court has taken the position 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 attorneys have been initially unresponsive to the Bar's efforts to investigate, but eventually provided some information, the court has found around 60 days to be an appropriate suspension. *See 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) 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. Respondent's matter presents similar circumstances. However, in the *Shaffner* case, the aggravating factors outweighed the mitigating factors. Here, the factors are in equipoise, suggesting a downward departure from 120 days is appropriate

26.

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 8.1(a)(2), RPC 5.5(a), ORS 9.160(1) and RPC 5.5(b)(2), the sanction to be effective November 1, 2025.

27.

In addition, on or before September 1, 2025, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$65.00, incurred for personal service of the formal complaint. Should Respondent fail to pay \$65.00 in full by September 1, 2025, 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.

28.

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

and warrants that she has accepted a position with a firm at which she will only represent clients under the authority granted by the State Bar of California. Respondent further represents and warrants that by the time the suspension described herein takes effect, she will no longer have clients with active matters in Oregon.

29.

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.

30.

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.

31.

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.

32.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 26, 2025. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 15th day of August, 2025.

/s/ Susan M. Carter

Susan M. Carter, OSB No. 206877

Cite as *In re Carter*, 39 DB Rptr 244 (2025)

EXECUTED this 18th day of August, 2025.

OREGON STATE BAR

By: /s/ Matthew S. Coombs

Matthew S. Coombs, OSB No. 201951

Assistant Disciplinary Counsel

Cite full opinion as 374 Or 350, 577 P3d 777 (2025)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
GREGORY MARK ABEL, Bar No. 031784)
)
Respondent.)

(SC S071019)

David J. Elkanich, Buchalter, Portland, argued the cause and filed the briefs for respondent. Also on the briefs was David A. Bernstein.

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

PER CURIAM

The Oregon State Bar charged respondent with a single violation of Rule of Professional Conduct (RPC) 8.4(a)(3) (professional misconduct to engage in misrepresentation that reflects adversely on lawyer’s fitness to practice law), relating to statements that he made in a demand letter. A trial panel of the Disciplinary Board determined that respondent had made a knowing, material misrepresentation, and it suspended him from the practice of law for 90 days. On review, respondent argues that the Bar did not prove the alleged violation because it did not sufficiently prove that he had acted with knowledge; he alternatively argues that a public reprimand is the appropriate sanction. We conclude that the Bar proved the alleged violation of RPC 8.4(a)(3), and we suspend respondent for 30 days.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
FREDERICK N. SCHROEDER, Bar No. 075341) Case No. 24-246
)
Respondent.)

Counsel for the Bar: Alison F. Wilkinson

Counsel for the Respondent: Nathan Gabriel Steele

Disciplinary Board: None

Disposition: Violation of RPC 1.2(c). Stipulation for discipline. Public reprimand.

Effective Date of Order: October 9, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Frederick N. Schroeder (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 1.2(c).

DATED this 9th day of October 2025.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Frederick N. Schroeder, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 28, 2007, and has been a member of the Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

Respondent enters into this Stipulation for Discipline freely, voluntarily, and with the advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(8).

4.

On August 11, 2025, an amended formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.2(c) and 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 the proceeding.

Facts

5.

On September 26, 2023, while in the midst of divorce proceedings, Natasha Bacca (Wife) sought a Family Abuse Prevention Act (FAPA) order against her husband, Tony Hnyp (Husband), which the court granted.

6.

The FAPA order ordered Husband to move from and not return to the marital residence by October 4, 2023. The FAPA order further restrained Husband from “interfering” with Petitioner, or attempting to do so, directly or through another person. Husband was served with the FAPA order on October 1, 2023. At all relevant times, Respondent was aware of the contents of the FAPA order.

7.

Wife, who had been staying in a temporary rental property, returned to the marital residence on October 5, 2023. When she arrived at the marital residence, Respondent, on Husband's behalf and acting as Husband's agent, met Wife at the door. Respondent introduced himself and Wife requested entry. Respondent advised Wife to contact her attorney. Respondent then spoke with Wife's attorney by telephone while Wife waited outside the property. During these discussions, Wife's lawyer indicated that Wife desired access to the property and Respondent agreed to allow it. However, by the time the agreement was reached, Wife had already left without entering the property.

8.

Respondent admits that, by having contact with Wife on Husband's behalf and interfering with her property rights, Respondent assisted his client in conduct that he knew was illegal and thereby violated RPC 1.2(c). Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 3.4(c) should be and, upon the approval of this stipulation, is dismissed.

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.** By assisting his client in violating the FAPA order, Respondent violated his duty to avoid abuse of the legal system. ABA Standard 6.2.
- b. **Mental State.** 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 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 being present at the marital residence. Respondent was aware that Husband either directly or through third parties could

not interfere with Wife. Nonetheless, Respondent was present at the marital residence, as Husband's agent, and interfered with Wife's property rights.

- c. **Injury.** Injuries caused by a lawyer's professional misconduct may be either actual or potential. *In re Munn*, 372 Or 589, 613, 553 P3d 1039 (2024), citing *In re Hostetter*, 348 Or 574, 600, 238 P3d 13 (2010). "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.

Respondent caused actual injury to Wife, who was unable to access the marital home. Respondent caused potential injury to the public's trust and respect for the court by assisting his client to violate a court order.

- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has substantial experience in the practice of law, having been admitted to practice in 2007.
- 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. 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 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.

11.

The presumptive sanction in Oregon is suspension. *In re Jagger*, 357 Or 295, 349 P3d 1136 (2015) (attorney suspended for 90 days for violation of RPC 1.1 and RPC 1.2(c) when he coordinated contact between his client and his client's partner, when there was a restraining order prohibiting contact); *In re Levie*, 342 Or 462, 154 P3d 113 (2007) (attorney suspended for one year for violation of *former* DR 7-106(A), among other rules, when he failed to comply with arbitrator's order that client's sculptures had to be sold).

However, given that the mitigating factors outnumber the aggravating factors, including Respondent's lengthy practice of law without prior discipline, a reprimand is appropriate in this matter.

12.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 1.2(c), the sanction to be effective upon approval of the stipulation.

13.

In addition, on or before December 1, 2025, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$526.10, incurred for Respondent's deposition. Should Respondent fail to pay \$526.10 in full by December 1, 2025, 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.

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. The requirement to complete the *Legal Ethics Best Practices* CLE (Ethics School) 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 September 29, 2025. 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 October, 2025.

/s/ Frederick N. Schroeder

Frederick N. Schroeder, OSB No. 075341

Cite as *In re Schroeder*, 39 DB Rptr 255 (2025)

APPROVED AS TO FORM AND CONTENT:

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

EXECUTED this 8th day of October, 2025.

OREGON STATE BAR

By: /s/ Alison F. Wilkinson
Alison F. Wilkinson, OSB No. 096799
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
THOMAS M. SPEAR, Bar No. 951712) Case No. 23-253
)
Respondent.)

Counsel for the Bar: Matthew S. Coombs

Counsel for the Respondent: Nathan Gabriel Steele

Disciplinary Board: None

Disposition: Violation of RPC 1.15-1(a) and RPC 1.15-1(d). Stipulation
for discipline. 60-day suspension.

Effective Date of Order: November 21, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Thomas M. Spear (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 November 21, 2025, for violations of RPC 1.15-1(a) and RPC 1.15-1(d).

DATED this 5th day of November, 2025.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Thomas M. Spear, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 June 8, 1995, and has been a member of the Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

Respondent enters into this Stipulation for Discipline freely, voluntarily, and with the advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(8).

4.

On October 10, 2025, an amended formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.15-1(a), RPC 1.15-1(d), and RPC 8.4(a)(3) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Respondent represented George C. Staab (Staab) in a criminal matter. After bail was set, Respondent posted Staab's bail from his own funds, and Staab reimbursed him. Also, around the time representation commenced, Staab deposited funds with Respondent for legal fees.

6.

Staab was sentenced to prison on November 1, 2021, and his bail money was returned to Respondent on or about November 11, 2021. At the time the funds were received, Respondent mistakenly believed the funds were his. Respondent failed to notify Staab that he received the bail refund and deposited it directly into his business checking account.

7.

In October 2022, Staab filed a Bar complaint which was transmitted to Respondent in November 2022. Upon receiving notice of the complaint, Respondent confirmed that the bail refund had not yet been returned and took steps to perform an accounting.

8.

On or about February 24, 2023, Respondent mailed Staab an invoice and a check for his bail refund.

Violations

9.

Respondent admits that, by depositing Staab's bail refund into his business operating account, he failed to hold property of clients or third persons separate from his own property in violation of RPC 1.15-1(a). Respondent further admits that by failing to promptly deliver the funds to Staab and failing to promptly render an accounting, he violated RPC 1.15-1(d).

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 8.4(a)(3) should be and, upon the approval of this stipulation, is dismissed.

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.** The most important ethical duties a lawyer owes are to his clients. ABA Standards at 4. Respondent violated his duty to safeguard client property and to ensure prompt delivery of client funds. ABA Standards 4.1
- 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 should have done more to determine he possessed funds that Staab was entitled to. Respondent was negligent.

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

Staab was temporarily deprived of his access to his funds until February 2023. There was no permanent loss.

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

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 practice of law in Oregon in 1995 and has been a member of the Bar in good standing since that time.

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

1. Absence of a prior record of discipline. ABA Standard 9.32(a).
2. Character or reputation. ABA Standard 9.32(g).
3. Remorse. ABA Standard 9.32(l).

11.

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

12.

Oregon cases reach a similar 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).

Violations of RPC 1.15-1 (trust account rules) usually result in suspensions with a duration of between 30 to 60 days. *In re Obert*, 352 Or 231, 262, 282 P3d 825 (2012). See *In re Peterson*, 348 Or at 345 (lawyer suspended for 60 days for violation of RPC 1.15-1(a) and (c)); *In re Snyder*, 348 Or 307, 324, 232 P3d 952 (2010) (lawyer suspended for 30 days for violation of RPC 1.4 and RPC 1.15-1(d)); *In re Eakin*, 334 Or 238, 257-59, 48 P3d 147 (2002) (lawyer suspended for 60 days for violations of former DR 9-101(A), (C)(3), and (C)(4), which are the substantially similar predecessors of RPC 1.15-1).

13.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violation of RPC 1.15-1(a) and RPC 1.15-1(d), the sanction to be effective November 21, 2025.

14.

In addition, on or before December 31, 2025, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$543.15, incurred for personal service of the formal complaint on Respondent, and deposition of Respondent. Should Respondent fail to pay \$543.15 in full by December 31, 2025, 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.

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 Dylan Potter and Nicholas F. Patterson, both active members 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. Potter and Mr. Patterson have agreed to accept this responsibility.

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 the reinstatement. The requirement to complete the Legal Ethics Best Practices CLE (Ethics School) 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: none.

19.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 25, 2025. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 4th day of November, 2025.

/s/ Thomas M. Spear

Thomas M. Spear, OSB No. 951712

APPROVED AS TO FORM AND CONTENT:

/s/ Nathan Gabriel Steele

Nathan Gabriel Steele, OSB No. 004386

EXECUTED this 4th day of November, 2025.

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)
)
ERICA STRADER, Bar No. 134974) Case Nos. 23-244, 23-245, 24-32, 24-82 &
) 25-35
Respondent.)

Counsel for the Bar: Matthew S. Coombs

Counsel for the Respondent: Wayne Mackeson

Disciplinary Board: None

Disposition: Violation of three counts of RPC 1.3, two counts of RPC 1.4(a), RPC 1.4(b), two counts of RPC 1.16(d), and three counts of RPC 8.1(a)(2). Stipulation for discipline. 9-month suspension.

Effective Date of Order: November 20, 2025

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

The court accepts the stipulation for discipline. Erica Strader is suspended from the practice of law in the State of Oregon for a period of nine months, effective November 20, 2025.

DATED November 20, 2025.

/s/ Meagan A. Flynn
Chief Justice, Supreme Court

STIPULATION FOR DISCIPLINE

Erica Strader, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 10, 2013, and has been a member of the Bar continuously since that time, having her office and place of business in Deschutes County, Oregon.

3.

Respondent enters into this Stipulation for Discipline freely, voluntarily, and with the advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(8).

4.

On October 7, 2024, an amended formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB). 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.

Case No. 24-32 – Miller Matter

On or around April 25, 2023, Michael J. Miller, ND (Miller) hired Respondent to represent him in a domestic relations matter. Miller's matter was scheduled for trial on June 6, 2023.

6.

Respondent withdrew from representing Miller prior to trial.

7.

On October 10, 2023, Miller complained to the Bar alleging Respondent had engaged in misconduct during and after Respondent's representation.

8.

On February 15, 2024, Disciplinary Counsel's Office (DCO) sent a letter to Respondent inquiring into Miller's allegations. The letter was sent to the mailing address on record with the Bar (record address), as well as the email address on record with the Bar (record email address). Neither communication was returned as undelivered, and Respondent did not respond.

9.

On March 11, 2024, DCO sent a second letter to Respondent via first-class and certified mail to her record address, as well as her record email address. The certified mail receipt has not been returned. Neither the first-class letter nor the email were returned as undelivered. Respondent did not respond.

10.

On March 20, 2024, DCO filed a Petition for Suspension with the Disciplinary Board Clerk pursuant to BR 7.1 with notice to Respondent to respond within 14 calendar days of the date of service. Receiving no response, the Disciplinary Board Adjudicator issued an order suspending Respondent on April 5, 2024.

11.

Respondent admits that, by failing to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter, she violated RPC 8.1(a)(2) in the Miller Matter.

12.

Case No. 24-82 – Pluimer Matter

In December 2021, Respondent substituted in as counsel for Natasha Pluimer (Pluimer) in a then-ongoing domestic relations matter in Deschutes County Circuit Court. After mediation, the parties signed a stipulated general judgment of dissolution, which was entered into the court record on February 14, 2023. In May 2023, Pluimer paid her balance with Respondent, and remitted additional funds for further assistance on a parenting plan.

13.

Starting in early June 2023 and continuing through September 2023, Pluimer tried unsuccessfully to obtain status updates from Respondent regarding the parenting plan, which Pluimer needed before the school year started. During that time, Respondent responded to one of Pluimer's email messages in late July 2023, saying that she would take care of it, but took no further action on behalf of Pluimer.

14.

By mid-August 2023, Pluimer informed Respondent that she wanted to end their relationship and she requested her file and the return of unearned fees. To date, Pluimer has not received her file nor a refund of unearned fees.

15.

On March 25, 2024, DCO sent a letter to Respondent inquiring into allegations of misconduct related to the Pluimer matter. The letter was sent to Respondent's record address as well as her record email address. Neither communication was returned as undelivered, and Respondent did not respond.

16.

On April 16, 2024, DCO send a second letter to Respondent via first-class and certified mail to her record address, as well as her record email address. The certified mail receipt has not been returned. Neither the first-class letter nor the email were returned as undelivered. Respondent did not respond.

17.

On April 24, 2024, DCO filed a Petition for Suspension with the Disciplinary Board Clerk pursuant to BR 7.1 with notice to Respondent to respond within 14 calendar days of the date of service. Receiving no response, the Disciplinary Board Adjudicator issued an order suspending Respondent on May 9, 2024.

18.

Respondent admits that she neglected a legal matter entrusted to her in violation of RPC 1.3; that she failed to keep a client reasonably informed about the status of a matter and promptly complying with requests for information in violation of RPC 1.4(a); that she failed to surrender papers and property to which her client was entitled and refunding any advance payment that had not been earned upon termination of representation in violation of RPC 1.16(d); and failed to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter in violation of RPC 8.1(a)(2) in the Pluimer Matter.

19.

Case No. 23-244 – Schmidt Matter

On or about May 11, 2023, Jennine Schmidt (Schmidt) consulted with Respondent regarding a domestic relations matter. Respondent indicated that she would represent Schmidt if a hearing set for June 6, 2023, could be postponed. Schmidt proceeded to obtain a continuance of the hearing. The hearing was reset to August 1, 2023.

20.

On or about June 8, 2023, Schmidt hired Respondent to represent her in the domestic relations matter. At a meeting that day, Schmidt and Respondent discussed a settlement proposal that Schmidt expected Respondent to discuss with opposing counsel, L. Todd Wilson

(Wilson). Respondent represented to Schmidt that she would contact Wilson immediately after their meeting.

21.

On or about June 8, 2023, Respondent spoke with Wilson by phone. Following the call, Respondent failed to update Schmidt.

22.

From about June 15, 2023, to about July 16, 2023, Schmidt made nine attempts to contact Respondent via phone, text message and email seeking updates on her case. In the final attempt, on around July 16, 2023, Schmidt emailed Respondent letting her know that she was going to proceed as if she was unrepresented due to Respondent's failure to respond to any of her attempts to reach her. Schmidt appeared pro se at the August 1, 2023, hearing.

23.

On June 6, 2024, DCO sent a letter to Respondent inquiring into allegations of misconduct related to the Schmidt matter. The letter was sent to Respondent's record address as well as her record email address. Neither communication was returned as undelivered.

24.

On June 27, 2024, Respondent sent an email to DCO requesting additional time to address Schmidt's complaint. DCO granted Respondent an extension for her response to July 11, 2024.

25.

Having received no response by the extended deadline, on July 15, 2024, DCO sent a second letter to Respondent via first-class and certified mail to her record address, as well as her record email address. The certified mail letter was returned as unclaimed. Neither the first-class letter nor the email were returned as undelivered. Respondent did not respond.

26.

On July 23, 2024, DCO filed a Petition for Suspension with the Disciplinary Board Clerk pursuant to BR 7.1 with notice to Respondent to respond within 14 calendar days of the date of service. Receiving no response, the Disciplinary Board Adjudicator issued an order suspending Respondent on August 8, 2024.

27.

Respondent admits that, by failing to keep a client reasonably informed about the status of a matter and promptly complying with requests for information, she violated RPC 1.4(a); that by failing to explain a legal matter to the extent reasonably necessary to permit the client to make informed decisions about the representation, she violated RPC 1.4(b); and by failing to respond

to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter, she violated RPC 8.1(a)(2) in the Schmidt Matter.

28.

Case No. 23-245 – Floyd Matter

In February of 2023, Jake Floyd (Floyd) hired Respondent to represent him in a dissolution of marriage matter. Respondent filed a notice of representation with the court on or about February 28, 2023.

29.

On or about April 5, 2023, Floyd’s opposing party filed a notice of intent to seek default, which stated that the motion would be filed on April 17, 2023, if a response to the dissolution petition was not filed.

30.

On or about April 17, 2023, Respondent attempted to file a pleading responsive to the dissolution petition, but the court rejected the filing. Respondent received notice of the rejected filing on or about April 18, 2023.

31.

On or about May 18, 2023, Floyd’s opposing party filed an *ex parte* motion for an order of default. The court entered a default against Floyd the next day. Upon ordering the default, the court sent Respondent a, “Notice of Signed Document” to Respondent via U.S. Mail and email. Respondent accessed the email copy of the notice on or about May 19, 2023.

32.

Floyd discovered the default judgment that had been entered against him on June 21, 2023. When Floyd spoke with Respondent that day, they agreed that Respondent would withdraw from representation.

33.

Respondent admits that, by neglecting a legal matter entrusted to her, she violated RPC 1.3 in the Floyd Matter.

34.

Case No. 25-35 – Ellis Matter

Matthew Ellis (Ellis) retained Respondent to represent him in a dissolution of marriage case in May of 2022.

35.

On or about December 15, 2022, Ellis requested that Respondent serve a request for production of documents on the opposing party. Respondent failed to serve the request until March of 2023.

36.

After the opposing party failed to comply with the discovery request, Respondent failed to take any action to force compliance.

37.

In October of 2023, Ellis and his opposing party negotiated a resolution to their dissolution matter. Subsequently, both Ellis and his opposing party sent numerous emails to Respondent asking her to prepare a court pleadings memorializing the agreement to resolve the court proceedings.

38.

Throughout November and December of 2023, Respondent repeatedly assured both Ellis and the opposing party that she would provide them with the requested documents yet failed to do so. Ellis subsequently terminated Respondent's representation and requested an accounting and a refund of unearned funds. Respondent did not issue either to Ellis until over a year later.

39.

Respondent admits that, by neglecting a legal matter entrusted to her, she violated RPC 1.3; by failing to surrender papers and property to which a client is entitled and failing to refund any advanced payment of fee that had not been earned upon termination of representation she violated RPC 1.16(d) in the Ellis Matter.

Sanction

40.

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 her clients. Respondent violated her duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. ABA

Standard 4.4. She also violated her duty to properly handle client property. ABA Standard 4.1.

Respondent violated her duty owed to the profession by failing to respond to DCO's inquiries. 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 admits that she was aware she needed to act yet failed to, that her clients were attempting to communicate with her, and that DCO was investigating her conduct when she failed to respond to lawful inquiries. Respondent acted knowingly.

- 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 Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

All of Respondent's clients suffered actual injury based on delayed outcomes and frustration due to Respondent's misconduct. "Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules." *In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010).

The Bar also suffered actual harm when Respondent failed to participate in the disciplinary process during its investigation of grievances regarding her conduct.

- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. A pattern of misconduct. ABA Standard 9.22(c). Respondent displayed similar misconduct across five separate matters over an extended period.
 2. 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).
4. Remorse. ABA Standard 9.32(i).

41.

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.

42.

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

43.

Oregon cases reach a similar 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).

44.

Attorneys knowingly engaged in neglectful conduct typically receive significant suspensions. *See In re Knappenberger*, 337 Or 15, 32-33, 90 P3d 614 (2004) (noting that a 60-day suspension is generally imposed in a case involving neglect). Examples include:

- *In re Iversen II*, 27 DB Rptr 269 (2013) [1-year suspension] The attorney neglected his client’s expungement matter for approximately five months, repeatedly misrepresented to the client that he was working on it, then knowingly failed to respond to the Bar’s inquiries.
- *In re Lopez*, 350 Or 192, 252 P3d 312 (2011) [9-month suspension] The attorney knowingly engaged in neglectful conduct and knowingly failed to communicate with his clients sufficiently across seven different matters. The attorney had a history of discipline and his conduct resulted in economic harm.
- *In re Myers*, 37 DB Rptr 40 (2023) [6-month suspension] The lawyer neglected two client matters over a significant period of time and failed to communicate adequately in three separate client matters. The lawyer also failed to cooperate with the disciplinary process, handle client property appropriately and interfered with the administration of justice.

- *In re Celuch*, 36 DB Rptr 246 (2022) [one-year suspension, six months stayed pending two-year probation] The lawyer violated rules based on neglect, communication, and dishonesty across five client matters. Lawyer's circumstances favored aggravation, including a prior disciplinary record.

45.

Typically, a lawyer's failure to cooperate with the Bar during a disciplinary investigation is also sanctioned with a 60-day suspension. *See, In re Miles*, 324 Or 218, 225, 923 P2d 1219 (1996) (120-day suspension for two violations of *former* DR 1-103(C) (predecessor to RPC 8.1(a)(2)). Aggregating the presumptive 60-day suspensions for neglect/communication and failing to participate in a disciplinary investigation warrants a one-year of suspension. This would be similar to the suspension approved by the Supreme Court in *Celuch*, a matter that also dealt with misconduct across five client matters.

46.

However, unlike *Celuch*, Respondent's mitigating factors outweigh her aggravating factors, including a lack of a prior record of discipline, a factor given great weight by the Oregon Supreme Court. *See In re Jones*, 326 Or 195, 199, 951 P2d 149 (1997). Based on this, resolving this matter with a nine-month suspension, is appropriate.

47.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 9 months for violations of three counts of RPC 1.3, two counts of RPC 1.4(a), RPC 1.4(b), two counts of RPC 1.16(d), and three counts of RPC 8.1(a)(2), the sanction to be effective upon approval of this stipulation.

48.

In addition, on or before February 1, 2026, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$601.00, incurred for service of the formal complaint, and Respondent's deposition. Should Respondent fail to pay \$601.00 in full by February 1, 2026, 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.

49.

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 and warrants that since she was suspended by the Disciplinary Board Adjudicator on April 5, 2024, for failing to respond to disciplinary inquiries, she has not practiced law, nor has maintained

any attorney-client relationships. Respondent further represents and warrants that she will maintain this status quo until such time that her license to practice law has been reinstated.

50.

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 acknowledges that due to the length of Respondent's suspension, she must apply for formal reinstatement pursuant to BR 8.1. Respondent further acknowledges that BR 8.1 requires the Bar to conduct a character and fitness investigation, which may take up to 12 months, before making a recommendation to the Supreme Court as to whether Respondent should be reinstated. 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.

51.

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. The requirement to complete the *Legal Ethics Best Practices* CLE (Ethics School) is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

52.

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

53.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 13, 2025. 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 20th day of October, 2025.

/s/ Erica Strader

Erica Strader, OSB No. 134974

Cite as *In re Strader*, 39 DB Rptr 267 (2025)

APPROVED AS TO FORM AND CONTENT:

/s/ Wayne Mackeson

Wayne Mackeson, OSB No. 823269

EXECUTED this 27th day of October, 2025.

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)
)
JAMES DODGE, Bar No. 830337) Case No. 23-91
)
Respondent.)

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 8.4(a)(4). Stipulation for Discipline. 30-day suspension, all stayed, one-year term of probation.

Effective Date of Order: December 1, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the stipulation for discipline entered into by James Dodge (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, with all of the suspension stayed, pending Respondent's successful completion of a one-year term of probation, for violation of RPC 8.4(a)(4). This sanction, including the term of probation, shall commence on the first day of the month following the date on which this order is signed by the Adjudicator.

DATED this 24th day of November 2025.

/s/ Mark A. Turner

Mark A. Turner
Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

James Dodge, 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(3).

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 22, 1983, 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(8).

4.

On November 10, 2025, an Amended Formal Complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation for discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In 2022, Respondent represented a claimant (Albers) in a matter before the Workers' Compensation Board (WCB). Respondent requested a hearing on behalf of his client, and an in-person hearing was scheduled for December 8, 2022, in Klamath Falls. An administrative law judge (ALJ) would have to travel from Portland to preside over the hearing. The ALJ set a December 1, 2022, deadline for the parties to file motions to change the format of the hearing or to request postponement or to withdraw the hearing request. When neither party responded, the ALJ extended the deadline to December 5, 2022. Neither side moved to change the hearing by that deadline, and the ALJ informed the parties that she had no choice but to make travel arrangements and that she expected both to appear in person three days later. On December 7, 2022, Respondent informed the ALJ through her assistant that he had a conflict in his schedule and doubted he could participate in the Klamath Falls hearing, but, if his schedule allowed, he would only be able to appear by phone. Later that morning, before the ALJ had started driving to Klamath Falls, Respondent requested postponement of that hearing, opposing counsel had no objection, and the ALJ granted the request.

6.

In a separate matter, Respondent represented a claimant (Soto-Moreno) in a matter before the WCB. Respondent had requested a hearing on behalf of the client to appeal an order denying the client an award of temporary disability benefits. The parties requested that the ALJ presiding over the matter decide the appeal on the written record rather than after a hearing, and the ALJ granted that request. In September 2021, the WCB mailed a written closing argument schedule to the parties that set a deadline for Respondent to file a written closing argument by December 30, 2021. Respondent did not file a closing argument on behalf of his client or seek to dismiss the appeal. On January 12, 2022, defense counsel for the opposing party waived its closing argument, moved to close the record, and requested that the ALJ issue an opinion and order. Respondent did not file a response to the motion. On February 1, 2022, the ALJ granted the opposing party's motion and subsequently issued a written opinion that affirmed the order denying Respondent's client an award of additional temporary disability benefits. Respondent then filed a request for WCB review of the ALJ's opinion and order.

7.

In other separate matters, Respondent represented a claimant (Camarillo) in two cases before the WCB. On July 8, 2021, the parties engaged in mediation and reached a settlement agreement in principle but never reported the cases as settled to the WCB. Thereafter, WCB staff repeatedly contacted Respondent and his staff, as well as opposing counsel, to obtain a status report on the matters. Approximately 20 months after the mediation, the settlement had still not been finalized. During that period, opposing counsel sent settlement documents to Respondent on more than one occasion but had never received a response. Opposing counsel requested that the WCB schedule a new hearing date, and a hearing was scheduled for June 29, 2023. Following additional settlement discussions in June 2023, Respondent and opposing counsel sought postponement of the hearing, and the matters subsequently settled approximately 23 months following the mediation.

Violations

8.

Respondent admits that he failed to timely request postponement in the Albers matter, that he failed to dismiss the Soto-Moreno appeal or otherwise timely file or respond on behalf of his client, that he failed to timely keep WCB staff and opposing counsel apprised of the status of settlement in the Camarillo matters and that doing so forced the WCB to expend additional time and resources unnecessarily, and he potentially exposed the clients of opposing counsel in those matters to additional attorney fee expenses, constituting conduct prejudicial to the administration of justice in violation of 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.** 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 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 both negligently and knowingly regarding his failure to request timely postponement in the Albers matter. Though Respondent apparently missed several communications from the ALJ and her staff regarding the Klamath Falls hearing, he should have had procedures in place to receive and respond to such communications. Subsequently, Respondent became aware of a conflict in his schedule but took no action to seek postponement until the day before the Klamath Falls hearing. Respondent acted negligently in the Soto-Moreno matter when he failed to dismiss the appeal, file written closings, or respond to opposing counsel's efforts to close the record. Respondent acted knowingly and negligently in the Camarillo matter. He was aware that he was not keeping WCB staff and opposing counsel updated on the status of the settlement. He should have had procedures in place to remind him to finalize the settlement.

- c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Keller*, 369 Or 410, 417, 506 P3d 1101 (2022). Respondent's conduct caused injury to the WCB, which had to expend additional time and resources to obtain information from Respondent, such as whether he intended to postpone a hearing in the Albers matter or the status of settlement in the Camarillo matter. He also caused potential harm to his clients. In the Soto-Moreno matter, Respondent's failure to file a closing argument and file an opposition to closing the record could have prevented his client from obtaining benefits he was entitled to receive. He also caused the ALJ to draft an opinion and order despite receiving no argument from Respondent, who had requested review.

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

1. A prior record of discipline. ABA Standard 9.22(a). Respondent received a reprimand in 1997 for violation of *former* DR 7-104(A)(1), the predecessor rule to RPC 4.2 regarding contact with a represented party.

In 2002, Respondent was suspended for two years, with 21 months stayed pending successful completion of a two-year probation. Respondent violated *former* DR 1-102(A)(3), the predecessor to RPC 8.4(a)(3) regarding conduct involving dishonesty; *former* DR 1-102(A)(4), the predecessor to RPC 8.4(a)(4) regarding conduct prejudicial to the administration of justice; *former* DR 1-103(C), the predecessor to RPC 8.1(a)(2) regarding a lawyer's duty to respond fully and truthfully to disciplinary inquiries; *former* DR 2-106(A), the predecessor to RPC 1.5(a) regarding charging or collecting a clearly excessive fee; *former* DR 2-110(A)(2), the predecessor to RPC 1.16(d) regarding a lawyer's duty to protect client interests upon termination of representation; *former* DR 2-110(B)(4), the predecessor to RPC 1.16(a)(3) regarding a lawyer's duty to withdraw from the representation when discharged by the client; *former* DR 6-101(A), the predecessor to RPC 1.1 regarding competent representation; *former* DR 6-101(B), the predecessor to RPC 1.3 regarding neglect; *former* DR 7-101(A)(2), the predecessor to RPC 1.2(a) regarding a lawyer's duty to abide by the client decisions concerning objectives of the representation; *former* DR 9-101(C)(3), the predecessor to RPC 1.15-1(a) regarding the duty to hold funds belonging to clients or third persons separate from lawyer's own property and maintain trust account records; and *former* DR 9-101(C)(4), the predecessor to RPC 1.15-1(d)) regarding the duty to promptly return client property and to provide an accounting upon request. The violations stemmed from Respondent's misconduct while representing five unrelated clients.

In 2008, Respondent received a reprimand for violation of RPC 3.4(c), knowingly disobeying an obligation under the rules of a tribunal, and RPC 8.4(a)(4), engaging in conduct prejudicial to the administration of justice. The violations stemmed from Respondent's release of confidential information acquired in a workers' compensation mediation to a BOLI investigator regarding the employer's settlement offer.

In 2011, Respondent was suspended for 90 days for violation of RPC 1.3, neglect of a legal matter, and RPC 1.4(a), failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. The violations stemmed from Respondent's neglect of a client's personal injury action, which the court dismissed for want of prosecution and which Respondent failed to attempt

to reinstate in a timely manner. Respondent failed to inform his client of these developments for months.

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).

Here, Respondent's prior record of discipline would warrant some weight in aggravation, chiefly due to Respondent's prior violations for engaging in conduct prejudicial to the administration of justice, but also due to the seriousness of the prior offenses and prior suspensions. Additionally, all of the prior misconduct occurred before the events at issue in this case. However, some of the misconduct occurred more than 20 years ago, which would lessen its significance. See *In re Dugger*, 334 Or 602, 625, 54 P3d 595, 610 (2002) (remoteness of prior offense diminishes its weight as an aggravating factor).

2. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to the Bar in 1983.

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

1. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).
2. Physical disability. ABA Standard 9.32(h). Respondent suffered from several significant health issues between 2021 and 2023, including concussions and complications from those concussions, as well as sickness, that contributed to the conduct at issue.
3. Cooperative attitude toward proceedings. ABA Standard 9.32(e).

10.

Under the ABA Standards, 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.

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.

11.

Oregon cases involving conduct prejudicial to the administration of justice have resulted in stayed suspensions subject to an appropriate probationary term. *In re Glass*, 32 DB Rptr 259 (2018) (stipulated 60-day suspension, all stayed, subject to a one-year probation for violation of RPC 8.4(a)(4)); *In re Hanson*, 32 DB Rptr 159 (2018) (stipulated 30-day suspension, all stayed, subject to a one-year probation for violations of RPC 1.1, RPC 1.2, RPC 1.5(a), and RPC 8.4(a)(4)); *In re Day*, 33 DB Rptr 203 (2019) (stipulated 30-day suspension, all stayed, subject to a one-year term of probation for violations of RPC 1.1, RPC 1.7(a), RPC 1.16(a)(1), and RPC 8.4(a)(4)).

12.

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.

13.

Consistent with the ABA Standards and Oregon case law, and recognizing that Respondent's prior discipline would typically warrant a suspension in this matter but that a sanction involving probation would better serve the public, bench, and Bar, the parties agree that Respondent shall be suspended for 30 days for violation of RPC 8.4(a)(4), all of the suspension stayed, pending Respondent's successful completion of a one-year term of probation. The sanction shall be effective on the first day of the month following approval of this stipulation for discipline by the Disciplinary Board (effective date).

14.

Probation shall commence upon the effective date and shall continue for a period of one year, ending on the day prior to the one-year anniversary of the effective date (the period of probation). During the period of probation, 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. During the period of probation, Respondent shall attend not less than four (4) MCLE accredited programs, for a total of twelve (12) hours, which shall emphasize law practice management, time management, and case management. 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 twelve (12) hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of his period of probation, Respondent shall submit a Declaration of Compliance to DCO.

- d. Throughout the period of probation, Respondent shall diligently attend to client matters and adequately communicate with clients and the WCB (including staff) regarding cases and deadlines.
- e. Each month during the period of probation, Respondent shall review all client files to ensure that he is timely attending to the clients' matters and that he is maintaining adequate communication with clients, the WCB (including staff), and opposing counsel.
- f. Matthew M. Fisher 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 month.
- g. 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.
- h. Beginning with the first month of the period of probation, Respondent shall meet with Supervisor in person at least once a month for the purpose of:
 - 1) Allowing Supervisor to review the status of Respondent's law practice and 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.
- i. Respondent authorizes Supervisor to communicate with DCO regarding Respondent's 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.

- j. Within seven (7) days of the effective 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 to obtain practice management advice. Respondent shall notify DCO of the time and date of the appointment.
- k. Respondent shall attend the appointment with the PLF's Practice Management 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.
- l. 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.
- m. Respondent shall implement all recommended changes, to the extent reasonably possible, and participate in at least one (1) follow-up review with PLF Practice Management Attorneys on or before approximately six (6) months after the first meeting.
- n. On a quarterly basis, on dates to be established by DCO beginning no later than ninety (90) days after the effective date, Respondent shall submit to DCO a written "Compliance Report," approved as to substance by Supervisor, advising whether Respondent is in compliance with the terms of this stipulation for discipline, including:
 - 1) The dates and purpose of Respondent's meetings with Supervisor.
 - 2) The number of Respondent's active cases and percentage reviewed in the monthly audit with Supervisor and the results thereof.
 - 3) Whether Respondent has completed the other provisions recommended by Supervisor, if applicable.
 - 4) In the event that Respondent has not complied with any term of this stipulation for discipline, the Compliance Report shall describe the non-compliance and the reason for it.

- o. Respondent is responsible for any costs required under the terms of this stipulation and the terms of probation.
- p. 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.
- q. A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to DCO on or before its due date.
- r. The SPRB's decision to bring a formal complaint against 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.
- s. Upon the filing of a petition to revoke Respondent's probation pursuant to BR 6.2(4), Respondent's remaining probationary term shall be automatically tolled and shall remain tolled, until the BR 6.2(4) petition is adjudicated by the Adjudicator or, if appointed, the Disciplinary Board.

15.

In addition, on or before February 5, 2026, Respondent shall pay to the Bar, in an amount DCO will provide to Respondent after determining the amount, its reasonable and necessary costs incurred for deposition expenses. Should Respondent fail to pay the costs associated with his deposition in full by February 5, 2026, 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.

16.

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 any term of his suspension, if any stayed period of suspension is actually imposed. In this regard, if any stayed period of suspension is actually imposed Respondent has arranged for Ryan M. Leong, an active member of the Bar, with a business address of 825 NE 20th Ave, Ste. 220, Portland, OR 97232, 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 Ryan M. Leong has agreed to accept this responsibility.

17.

If Respondent is administratively suspended for any reason during his period of probation (such as for IOLTA reporting, PLF dues, Bar dues, or MCLE compliance), Respondent must resolve

the suspension and reinstate to active licensure status within 30 days. Failure to do so is cause for termination of his probation.

18.

Respondent acknowledges that reinstatement is not automatic on expiration of any period of suspension, if any stayed period of suspension is actually imposed. If a period of suspension is necessitated by his non-compliance with the terms of his probation, he will be required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Respondent also acknowledges that, should a suspension occur, he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

19.

Respondent acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement, if a suspension is imposed. The requirement to complete the *Legal Ethics Best Practices* CLE (Ethics School) 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.

20.

Approval of this stipulation for discipline as to substance was given by the SPRB on November 14, 2025. 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 2025.

/s/ James Dodge

James Dodge, OSB No. 830337

Cite as *In re Dodge*, 39 DB Rptr 279 (2025)

EXECUTED this 18th day of November 2025.

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)
)
CHAUNCEY COLLINS KIELEY, Bar No. 236348) Case Nos. 24-247, 25-51, & 25-59
)
Respondent.)

Counsel for the Bar: Samuel Leienewber

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of two counts of RPC 1.4(a) and two counts of
RPC 1.16(d). Stipulation for discipline. 60-day suspension.

Effective Date of Order: December 10, 2025

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by
Chauncey Collins Kieley (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 upon approval by the Disciplinary Board
Adjudicator for violation of two counts of RPC 1.4(a) and two counts of RPC 1.16(d).

DATED this 10th day of December, 2025.

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

STIPULATION FOR DISCIPLINE

Chauncey Collins Kieley, attorney at law (Respondent), and the Oregon State Bar (Bar)
hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(3).

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 18, 2023, and has been a member of the Bar continuously since that time, having his 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(8).

4.

On October 25, 2025, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of two counts of RPC 1.4(a) and two counts of RPC 1.16(d) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Respondent unexpectedly lost consciousness in early July 2024, which caused him to fall and hit his head. Respondent explained that either the underlying condition causing him to fall or the blow to his head (or both) resulted in ongoing mental impairment (including sporadic speech impairment, memory issues, and difficulty concentrating). Due to his condition, Respondent contacted the Professional Liability Fund (PLF) and received assistance in winding down his practice beginning in late November 2024.

Case No. 24-247 – Donald Davis

6.

Donald Davis (Davis) met with Respondent on July 19, 2024, to obtain emergency guardianship and conservatorship over his mother. Davis's mother had dementia and Davis believed she was being neglected which was causing immediate danger to her health. Respondent told Davis that he would send a petition for emergency guardianship to him for

review by the following Wednesday or Thursday (July 24 or 25), and then they could go to court on that Friday (July 26) or Monday (July 29). With those assurances, Davis executed a fee agreement and paid a \$2,000 retainer.

7.

By July 29, Davis had not heard from Respondent, so he called Respondent's office and left a voice mail asking him to call back. On July 30, Davis's wife sent Respondent an email, copying his legal assistant (Respondent's wife), to ask for an update and remind Respondent of the urgency of the matter. Both Davis and his wife called Respondent on the telephone multiple times during the ensuing weeks but did not receive a response. Due to the lack of communication, Davis put a hold on his credit card retainer payment and on August 18, filed a Bar complaint against Respondent.

Case No. 25-51 – Shannon Hubbard

8.

Shannon Hubbard (Hubbard) hired Respondent in May 2024 to probate the estate of her father-in-law, Robert Ferraro (Ferraro). On May 31, 2024, Respondent filed a petition to admit Ferraro's will to probate, naming Hubbard as personal representative. Over the next two months, the court issued letters testamentary, notice of the probate was published, and Hubbard completed the required fiduciary class for personal representatives.

9.

On July 19, 2024, Ferraro's son and two stepchildren filed a will contest and alleged undue influence and elder abuse against Hubbard. Respondent timely filed a response to the will contest on August 16, 2024. On September 25, 2024, Respondent filed a motion for remote testimony for the will contest hearing, set for October 22, 2024. On the morning of the hearing (October 22) Hubbard called Respondent's wife (and legal assistant) to check in and learned that Respondent had had an onset of symptoms from his medical episode and the hearing would need to be rescheduled. This was the last contact that Hubbard had with Respondent, despite reaching out to him numerous times during the next few months.

10.

Hubbard's hearing was rescheduled for December 17, 2024, and in early December, the PLF informed Hubbard that Respondent's practice was closing down. Hubbard quickly retained replacement counsel, who postponed the December 17 hearing. Thereafter, Hubbard and her new attorney tried to contact Respondent multiple times to retrieve Hubbard's client file and a refund of her unearned funds in trust, but Respondent did not reply

11.

In February, 2025, Hubbard's attorney sent a demand letter to obtain Hubbard's unearned trust funds. Respondent eventually refunded Hubbard's money held in trust during the summer of 2025.

Case No. 25-59 – David Steiner

12.

On June 26, 2024, David Steiner and his wife (the Steiners) paid Respondent a \$2,500 retainer to file a guardianship action over their grandson. On August 30, 2024, Respondent filed the Steiners' guardianship petition. On September 10, 2024, the Steiners received a billing statement for \$640, leaving a remaining balance on \$1,860 in trust. On November 6, 2024, the circuit court issued a 30-day notice of intent to dismiss due to lack of action in Steiners case. The Steiners attempted to contact Respondent during the next few months but received no response.

13.

On December 3, 2024, the PLF filed a motion to extend the time of the court administrative dismissal and cited Respondent's inability to represent clients and the need for his clients to obtain other counsel. On December 5, 2024, the PLF contacted the Steiners to inform them about the closure of Respondent's office, however, the Steiners did not receive their unspent trust money back. The PLF told the Steiners that they would need to contact Respondent about a refund. The Steiners eventually received a refund of their trust funds in September 2025 after filing a Bar complaint.

Violations

14.

Respondent admits that, by failing to respond to reasonable requests for information from Hubbard and Davis, he violated RPC 1.4(a) in both matters. Respondent admits that by failing to promptly refund unspent client funds to Hubbard and the Steiners' he violated RPC 1.16(d) in both matters.

Sanction

15.

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 communicate with his clients, Respondent failed to act with reasonable diligence and promptness. ABA Standard 4.4. By failing to promptly return his clients’ property at the end of his representation, Respondent breached his duty as a professional to properly withdraw from representation. 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 acted with knowledge, as he was aware of the circumstances surrounding each violation (that he had not responded to clients and had not issued refunds), but did not intend the negative consequences that resulted from his inaction.

- c. **Injury.** For the purpose of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Keller*, 359 Or 410, 417, 506 P3d 1101 (2022).

Respondent’s clients were harmed as a result of his lack of communication, as one client had to scramble to find another attorney and another abandoned his legal action altogether. Respondent’s clients were also harmed when he failed to timely refund their trust account funds as they were unable to use that money to secure new legal representation.

- d. **Aggravating Circumstances.** There are no aggravating circumstances present.
- 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 admits that he practiced longer than he should have because he needed to provide for his family, which caused him a great deal of stress. Respondent also cited the declining health of his father during this time as contributing to his stress and poor decision making. Respondent was also diagnosed

with depression and anxiety after experiencing his health issues and the closure of his practice.

4. Timely good faith effort to make restitution or to rectify consequences of misconduct. ABA Standard 9.32(d). Respondent tried to mitigate damage to his clients by contacting the PLF when he was no longer able to practice law and continued to try to make his clients whole when the issue of the trust account refunds was brought to his attention.
5. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e). Respondent took responsibility for his actions at a very early stage in the Bar complaint process.
6. Inexperience in the practice of law. ABA Standard 9.32(f). Respondent had been practicing law for only one year at the time of these events.
7. Remorse. ABA Standard 9.32(l). Respondent has consistently expressed remorse for his actions.

16.

Under the ABA Standards, suspension is generally appropriate when a lawyer fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury to a client. ABA Standard 4.42.

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.

17.

Sanctions in disciplinary matters are not intended to penalize the 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).

Cases in which attorneys have committed similar violations have generally resulted in 120-day suspensions. See *In re Haraguchi*, 37 DB Rptr 8 (2023)[attorney was suspended for 120 days after she violated RPCs 1.4(a), 1.16(d), and 8.1(a)(2) while winding down her practice]; *In re U'ren*, 37 DB Rptr 1 (2023)[attorney was suspended for 120 days for violations of RPCs 1.3, 1.4(a), 1.15-1(d), 1.16(d), and 8.1(a)(2)]; *In re Lipps*, 38 DB Rptr 117 [attorney suspended for 120 days for violations of RPCs 1.3, 1.4(a), 1.4(b), 1.16(a)(1), and 8.1(a)(2)].

In this case, Respondent's mitigation is compelling. Respondent is an inexperienced lawyer who was faced with significant problems outside of his law practice and who genuinely

tried to mitigate the damage to his clients by contacting the PLF and has consistently taken responsibility for the consequences of actions that were largely outside of his control. Respondent has submitted documentation regarding his medical problems and appears to be successfully addressing his health issues.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violation of two counts of RPC 1.4(a) and two counts of RPC 1.16(d), the sanction to be effective upon approval by the Adjudicator.

18.

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 the PLF has either taken possession of or has ongoing access to Respondent's client files.

19.

Respondent further 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.

20.

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. The requirement to complete the *Legal Ethics Best Practices* CLE (Ethics School) is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

21.

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.

22.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 25, 2025. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree that the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

Cite as *In re Kieley*, 39 DB Rptr 291 (2025)

EXECUTED this 8th day of December, 2025.

/s/ Chauncey Collins Kieley
Chauncey Collins Kieley, OSB No. 236348

EXECUTED this 8th day of December, 2025.

OREGON STATE BAR

By: /s/ Samuel Leineweber
Samuel Leineweber, OSB No. 123704
Assistant Disciplinary Counsel

Cite full opinion as 374 Or 683, 582 P3d 656 (2025)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
ANNE-MARIE W. CLARK, Bar No. 110900)
)
Respondent.)

(SC S071725)

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

Amber Bevacqua-Lynott, Buchalter, P.C., Portland, argued the cause and filed the briefs for respondent.

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

PER CURIAM

The Oregon State Bar charged respondent with knowingly disobeying a court order, in violation of Rule of Professional Conduct (RPC) 3.4(c). That rule provides that a lawyer shall not “knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.” The dispute centers around a verbal order that a trial court judge gave to respondent at a hearing in July 2016. At the time, respondent was serving as trustee of a special needs trust intended to benefit her cousin, Allen, who has an intellectual disability. The Bar contends that, at the conclusion of the hearing, the judge verbally ordered respondent to electronically deposit \$20 per month into Allen’s bank account. Respondent failed to do so. That failure is the basis for the Bar’s charge that respondent knowingly disobeyed a court order in violation of RPC 3.4(c).

Respondent contends that a knowing violation [*685] of a verbal court order falls outside the scope of RPC 3.4(c). Alternatively, as a factual matter, although she agrees that she did not provide Allen with \$20 per month, she denies that the judge ordered her to do so. Instead, she contends that the order addressed only the method that she should use to make cash distributions to Allen—namely, that, when she distributes funds to Allen, she should use electronic deposit rather than written checks. Respondent further maintains that, even if the judge ordered her to provide Allen with \$20 per month, any violation of that order was not done knowingly, because she did not understand the judge to have ordered her to do so.

A divided trial panel of the Disciplinary Board agreed with the Bar, with one member dissenting. Reviewing the matter *de novo*, we conclude that the Bar failed to establish the violation by clear and convincing evidence.