

DISCIPLINARY BOARD REPORTER

Report of Lawyer Discipline Cases
Decided by the Disciplinary Board
and by the
Oregon Supreme Court
for 2023

VOLUME 37

January 1, 2023, to December 31, 2023

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 2023 decisions of the Oregon Supreme Court involving the discipline of lawyers, and related matters. Cases in this DB Reporter should be cited as 37 DB Rptr ____ (2023).

In 2023, 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)	
)	
MATTHEW A.C. U'REN,)	
Bar No. 940361	)	Case No. 22-17
)	
Respondent.)	

Counsel for the Bar:	Matthew S. Coombs
Counsel for the Respondent:	None
Disciplinary Board:	Mark A. Turner, Adjudicator Jonathan W. Monson Melanie Timmins, Public Member
Disposition:	Violation of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2). Trial Panel Opinion. 120-day suspension with formal reinstatement.
Effective Date of Opinion:	January 18, 2023

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged Respondent with violation of RPC 1.3, 1.4(a), 1.15-1(d), 1.16(d), and 8.1(a)(2) based on his failure to pursue claims on behalf of his client who had suffered dental and head injuries while undergoing surgery and his subsequent failure to respond to inquiries from disciplinary authorities investigating this alleged misconduct. The Bar asks that Respondent be suspended for at least 120 days.

Respondent is in default for his failure to appear and answer the formal complaint against him. As explained below, this trial panel finds that the Bar has adequately alleged the charged rule violations and we suspend Respondent for 120 days. Further, we order that Respondent be subject to the formal reinstatement requirements of BR 8.1 after his suspension has run. We believe a 120-day suspension, standing alone, is not a sufficient sanction for a lawyer who has chosen to ignore his obligations to cooperate with disciplinary authorities and has further chosen to ignore this disciplinary proceeding.

PROCEDURAL POSTURE

On June 22, 2022, the Bar filed a formal complaint against Respondent that was served on July 29, 2022. Respondent failed to file an answer within the time allowed by the rules (14 days, BR 4.3). The Bar served Respondent with a notice of intent to seek a default unless Respondent filed his answer. He failed to do so and the Bar moved for default on August 29, 2022. The motion was granted.

A trial panel was appointed on September 20, 2022, consisting of the Adjudicator, Mark A. Turner, attorney member Jon Monson and public member Melanie Timmins.

In a default case, the Bar's factual allegations are deemed true. BR 5.8(a). See also, *In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004); *In re Kluge*, 332 Or 251, 253, 27 P3d 102 (2001). Our task is first to determine whether the facts alleged support a finding that Respondent committed the disciplinary rule violations alleged. If we so conclude, we must then determine the appropriate sanction. See, *In re Koch*, 345 Or 444, 447, 198 P3d 910 (2008). In assessing whether the facts alleged support a finding that the rule at issue was violated, we are limited to the four corners of the formal complaint. In assessing the appropriate sanction we may receive additional evidence and argument, which is usually presented by a memorandum from the Bar addressing the issue of sanctions. That procedure was followed here.

FACTS ALLEGED

Respondent undertook to represent Willa Watkins (Client) in March 2019 after she suffered dental and head injuries during surgery. Client gave Respondent her original records. Respondent agreed to send a demand letter to the insurance company of the physician who conducted the procedure. ¶ 3.1

Over the next 19 months Client tried to reach Respondent four times (three times via email and once in person) for an update on the status of her claim. Respondent failed to respond or otherwise communicate with Client. ¶ 8.

Respondent never sent the promised demand letter, nor did he conduct any other work on her case. ¶ 5.

After nearly two years of silence from Respondent Client filed a grievance with the Bar. ¶ 11. In her communication to the Bar, Client stated she had no copies of the documents provided to Respondent and needed to provide them to an alternate attorney to handle her case prior to the expiration of the statute of limitations on her claim. ¶ 11.

On February 10, 2021, the Bar sent a copy of the grievance to Respondent for response. On March 18, 2021, Respondent explained that he only just found Client's file while unpacking from a recent move. ¶ 12. Respondent then failed to return Client's original documents for another three months. ¶ 13.

On March 24, 2021, Disciplinary Counsel's Office (DCO) received the grievance from the Client Assistance Office. By letter dated January 26, 2022, DCO requested that Respondent provide additional information regarding the grievance. The letter was sent to Respondent at matthewacuren@yahoo.fr, the email address then on record with the Bar (record email address). The email did not bounce back or generate a "delivery failure" notice. Respondent did not respond. ¶ 16.

DCO sent another letter to Respondent on February 16, 2022, requesting his response to the January 26, 2022, letter. The February letter was sent by both first class mail and by certified mail, return receipt requested, to two street addresses: Matthew U'Ren LLC, 630 Sunnyside Road, Trout Lake, Washington 98560, the mailing address then on record with the

¹ Paragraph references are to the formal complaint.

Bar (record address); and to Matthew U'Ren LLC, 2100 NE Broadway Street, Suite 309, Portland, Oregon 97232, another potential address. The letter was also sent to the record email address. Someone signed the certified mail receipt for the letter sent to the record address. The letter sent by regular mail to the Portland address was returned as undeliverable. The email did not bounce back or generate a “delivery failure” notice. Respondent did not respond. ¶ 17.

As of the filing of the formal complaint in this matter, Respondent had not responded to DCO regarding his conduct. ¶ 20.

CHARGES ALLEGED

Neglect of a legal matter

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

The Supreme Court of Oregon has found a violation of this rule when a lawyer failed to perform any work on the client’s behalf for only a period of approximately three months when there was a clear expectation that legal services would be provided. *In re Purvis*, 306 Or 522, 760 P2d 254 (1988) (interpreting RPC 1.3 predecessor rule, DR 6-101(B).

Here, Respondent failed to perform any work on Client’s behalf for approximately two years. We find that Respondent’s failure to act violated RCP 1.3.

Duty to keep a client reasonably informed

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

In determining whether a violation of RPC 1.4(a) occurred we must look to whether a respondent knew, or reasonably should have known, that delay in communication could prejudice the client. *In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011). Here we conclude that Respondent knew or should have known that his failure to communicate could be prejudicial given that a two-year statute of limitations applies to a personal injury claim such as Client’s. ORS 12.110(4). Respondent violated RPC 1.4(a).

Duty to promptly deliver property that client is entitled to receive

RPC 1.15-1(d) states:

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

“Property” for purposes of the disciplinary rules includes client files. *In re Kneeland*, 281 Or 317, 319, 574 P2d 324 (1978). The Supreme Court has found that an attorney violated RPC 1.15-1(d) when his client requested his file materials and the lawyer failed to provide them until eight months had passed and his client had filed a Bar complaint. *In re Snyder*, 348 Or 307, 315, 232 P3d 952 (2010).

The record alleged shows that Respondent held Client's only copies of the case documents needed to prosecute her claim for more than two years. Once he learned from the Bar that a grievance had been filed, Respondent was made explicitly aware of Client's need for her documents before the statute of limitations expired. Despite this knowledge, Respondent still took approximately three months to turn them over. This conduct violated RPC 1.15-1(d).

Duty to respond to disciplinary inquiries

RPC 8.1(a)(2) states:

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

DCO sent Respondent two letters to his record street addresses (including the address at which he was personally served) and email address. When it received no response, the Bar petitioned for Respondent's interim suspension under BR 7.1, which was ordered on April 4, 2022. Respondent violated RPC 8.1(a)(2).

SANCTION

In addition to case law, we look to the *ABA Standards for Imposing Lawyer Sanctions* (ABA Standards) for guidance in determining the appropriate sanctions for lawyer misconduct.

ABA Standards

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

Duty Violated

The most important ethical duties a lawyer owes are to his clients. ABA Standards at 4. Respondent violated the duty he owed to his client to preserve client property, diligently pursue his client's legal matter, and communicate. ABA Standards 4.1, 4.4. Respondent also violated his duty to cooperate with disciplinary authorities. ABA Standard 7.0.

Mental State

The ABA Standards recognize three mental states. The most culpable mental state is "intent," when the lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* "Negligence" is the failure to be aware of a substantial risk

that circumstances exist or that a result will follow and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

Respondent was aware that he had a duty to advance Client's case and communicate with her in some manner during the engagement. Yet Respondent did nothing. We find that Respondent acted knowingly in violating RPC 1.3 and RPC 1.4(a).

After receiving correspondence from the Bar regarding Client's documents, Respondent admitted he had them. Despite that admission, Respondent failed to turn over the documents for another three months. We find that Respondent acted knowingly in failing to promptly turn over the documents once he knew of Client's complaint.

Respondent similarly acted knowingly regarding his failure to respond to DCO. Despite receiving multiple requests for information at his address on file with the Bar (where he was served), he has never responded.

In the past, the Oregon Supreme Court has determined that an attorney acted with knowledge of efforts to reach them when the Bar produced certified mailing receipts. See *In re Miles*, 324 Or 218, 221, 923 P2d 1219 (1996). We agree that proof of personal service here serves that same purpose. Respondent was served at the same address that DCO mailed its written inquiries. Thus, Respondent acted knowingly in violating RPC 1.15-1(d), and RPC 8.1(a)(2).

Extent of Actual or Potential Injury

To determine an appropriate disciplinary sanction, we may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). "Potential injury" is the harm to a client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. ABA Standards at 9.

Client suffered actual injury in the form of uncertainty, anxiety, and aggravation when Respondent failed to keep her properly informed and neglected her case. "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 conduct posed potential injury by possibly causing Client's claim to be time-barred, although the record presented to us did not disclose whether that occurred.

Respondent also caused harm to the legal profession and to the public when he failed to participate in the Bar's investigation. When lawyers fail to cooperate with a Bar investigation, they cause delays for the Bar and for resolution of a complainant's grievance. See *In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993).

Preliminary Sanction

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

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

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

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

Aggravating and Mitigating Circumstances

The following aggravating factors are found here:

1. A pattern of misconduct. ABA Standard 9.22(c). Although not urged by the Bar, we find that Respondent engaged in a pattern of misconduct, mindful of the ABA's general guidance that, "A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation." Comment 2 to Rule 8.4, *Annotated Model Rules of Professional Conduct* (Eighth edition) 2015.
2. Multiple offenses. ABA Standard 9.22(d).
3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to the Oregon State Bar in 1994.

In mitigation, the most we can find is:

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

Oregon Case Law

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 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 period of time). In *Knappenberger*, the attorney failed to respond to his client's requests for updates and failed to perform any substantive work on his client's matter for a period of four months during which critical case events were happening. *Id* at 19.

Like *Knappenberger*, the Respondent failed to respond to reasonable update requests and neglected his client's matter at a critical juncture, namely, its commencement while the statute of limitations period waned. Also like *Knappenberger*, Respondent's aggravating factors outweigh his mitigating factors. A 60-day suspension was approved in *Knappenberger*. We find it appropriate to impose a 60-day suspension for Respondent's violations of RPC 1.3, RPC 1.4(a) and RPC 1.15-1(d).

As to RPC 8.1(a)(2), the Oregon Supreme Court has stated that, "failure to cooperate with a disciplinary investigation standing alone, is a serious ethical violation." *In re Parker*, 330 Or 541, 551, 9 P3d 107 (2000). When attorneys have been initially unresponsive to the Bar's efforts to investigate, but eventually provided some information, the court has found a 63-day suspension appropriate. *See In re Haws*, 310 Or 741, 801 P2d 818 (1990); *see also In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (attorney suspended for 60 days after failing to

respond to the Bar initially and subsequently providing information and sitting for a deposition). Here, Respondent has failed to cooperate with the Bar's investigation completely.

The Bar argues that a more comparable situation is presented in *In re Miles*, 324 Or 218, 923 P2d 1219 (1996). In *Miles*, the attorney never responded to any of the multiple attempts the Bar made to reach her. The court imposed a 120-day suspension for violations of the predecessor rule to RPC 8.1(a)(2) and no other violations. While *Miles* dealt with two separate client complaints, the instant matter stems only from an investigation of a single client relationship of the Respondent. The Bar thus asks for a 60-day suspension for Respondent's single violation of the same rule. We will accept the Bar's recommendation.

Accordingly, we find that a suspension of 120 days in total is appropriate for Respondent's multiple rule violations.

Further, we find that Respondent's apparent cavalier attitude toward compliance (and toward this formal proceeding) merits additional protection for the public. The presumptive route under BR 8.3 for returning to practice after a 120-day suspension will not adequately ensure that Respondent is fit to practice. Accordingly, we order that Respondent be subject to the requirements for formal reinstatement found in BR 8.1 before he is able to resume practice in this state. Respondent will have the burden of proof to show that he is willing and able to take his professional duties seriously in order to practice again. The public deserves this level of protection.

CONCLUSION

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

We suspend Respondent for a period of 120 days, effective 30 days from the date this decision becomes final and order that he be subject to the formal reinstatement process in BR 8.1.

Respectfully submitted this 16th day of December, 2022.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Jon W. Monson

Jon W. Monson, Attorney Panel Member

/s/ Melanie Timmins

Melanie Timmins, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)	
)	
KATIE H. HARAGUCHI,)	
Bar No. 083537	)	Case Nos. 21-60 & 21-61
)	
Respondent.)	

Counsel for the Bar:	Eric J. Collins
Counsel for the Respondent:	None
Disciplinary Board:	None
Disposition:	Violations of RPC 1.4(a), RPC 1.16(c), RPC 1.16(d), and RPC 8.1(a)(2). Stipulation for Discipline. 120-day suspension.
Effective Date of Order:	February 7, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Katie H. Haraguchi (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 120 days, with formal reinstatement required, effective on the date of the Adjudicator's signature for violations of RPC 1.16(c) and RPC 8.1(a)(2) in Case No. 21-60; and for violations of RPC 1.4(a), RPC 1.16(c) and (d), and RPC 8.1(a)(2) in Case No. 21-61. Violations of RPC 1.4(a) and RPC 1.16(d) in Case No. 21-60 are dismissed.

DATED this 7th day of February, 2023.

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

STIPULATION FOR DISCIPLINE

Katie H. Haraguchi, 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 25, 2008, 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(h).

4.

On February 2, 2022, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging two violations of Oregon Rules of Professional Conduct (RPC) 1.4(a), three violations of RPC 1.16(c), two violations of RPC 1.16(d), and two violations of RPC 8.1(a)(2). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Respondent was employed at the law firm of Cable Huston LLP from approximately January 2019, until she resigned in September 2020. At the time of her resignation, Respondent notified her colleagues that she would cease practicing law by the end of 2020. When Respondent resigned from the firm, she took several of her open legal matters with her and continued to work on the matters under The Law Office of Katie H. Haraguchi. Respondent sent letters to her clients, notifying them that she would be closing her practice effective December 31, 2020. Several of Respondent's clients did not receive her letter and Respondent failed to communicate further with them to confirm receipt of the letter or ascertain those clients' plans for substituting counsel before closing her practice.

6.

OSB Case No. 21-60

Respondent represented Jimmy R. Hardaway (Hardaway) in the probate matter of *In the Matter of the Estate of: Gertrud Mata*, Multnomah County Circuit Court Case No. 19PB00695, throughout 2019 and 2020. Toward the end of 2020, Hardaway became frustrated with delays in court proceedings caused by the COVID-19 pandemic and a perceived lack of communication from Respondent. Respondent ceased work on Hardaway's matter at the end of 2020, and, in February 2021, Hardaway hired a new attorney to finish his case.

7.

Although Respondent ceased practicing law at the end of 2020, she did not file a motion to withdraw, notice of termination, or any other such document in Hardaway's case.

8.

Hardaway filed a Bar complaint against Respondent, and on May 18, 2021, the Bar's Disciplinary Counsel's Office (DCO) sent an inquiry letter regarding his complaint to

Respondent at the email address that Respondent had on record with the Bar. The email to Respondent did not bounce back and Respondent did not respond.

9.

On June 14, 2021, DCO sent a second inquiry letter that was addressed to Respondent at her address on record with the Bar. It was sent by both first class and by certified mail, return receipt requested. The letter was also sent to Respondent's email address. The certified mail receipt indicated that the letter was received, but Respondent did not respond to the letter or the email.

10.

On June 23, 2021, DCO telephoned Respondent at the phone number that she had on record with the Bar and left a voicemail. On June 25, 2021, DCO called Respondent's employer and left a voicemail with the company asking for a call back from Respondent. Respondent did not reply to either voicemail.

11.

On June 29, 2021, the Bar petitioned for Respondent's suspension pursuant to Bar Rule (BR) 7.1. Respondent did not respond to the BR 7.1 Petition, and the Disciplinary Board Adjudicator signed an order suspending her from the practice of law.

Violations

12.

Respondent admits that she violated RPC 1.16(c) by failing to submit a motion to withdraw, notice of termination of representation, or other similar document when she ceased working on Hardaway's case.

Respondent also admits that she knowingly failed to respond to lawful demands for information from Disciplinary Counsel's office, in violation of RPC 8.1(a)(2).

13.

OSB Case No. 21-61

On April 22, 2021, a partner at Respondent's former law firm informed the Bar that the firm was receiving information from courts and attorneys that Respondent was not attending to several legal matters that she had taken with her when she left the firm.

14.

In one matter, Respondent was acting as local counsel for Georgia attorney Ryan Pumpian (Pumpian), who was practicing in Oregon *pro hac vice*. Pumpian and Respondent represented the plaintiff in *Reddy v. Morrissey*, US District Court of Oregon Case No. 3:18-CV-000938.

15.

In approximately December 2020, Respondent stopped communicating with Pumpian. In April 2021, the court notified Pumpian that Respondent had missed a telephone status conference and was not responding to the court's attempts to contact her. Thereafter, Pumpian tried multiple times to contact Respondent, but she never responded to him. Pumpian said that

Respondent never told him that she was resigning from the practice of law or from the *Reddy* case. Respondent did not file a notice of withdrawal from representation, notice of termination of representation, or any other similar document with the court in the *Reddy* case.

16.

In another matter, Respondent represented Andrea Tardio (Tardio) in the case of *Craft v. Tardio*, Washington County Circuit Court Case No. 19CV46393. In September of 2020, Respondent told Tardio that she was resigning from her firm and that she would take her case with her when she left. However, after Respondent left the firm, she had no further communication with Tardio.

17.

In June 2021, with a court hearing approaching, Tardio attempted to contact Respondent by phone, email, and by stopping by her office, in an effort to get information from Respondent about her legal matter. Respondent did not respond to any of Tardio's attempts to communicate with her, and Tardio was forced to attend a court hearing by herself and thereafter to retain new counsel for her case.

18.

Respondent did not file a notice of withdrawal, notice of termination of representation, or any other similar document with the court in Tardio's case.

19.

A Bar complaint was filed against Respondent based on these cases, and on May 18, 2021, DCO sent an inquiry letter to Respondent at the email address that Respondent had on record with the Bar. The email to Respondent did not bounce back and Respondent did not respond.

20.

On June 14, 2021, DCO sent a second inquiry letter that was addressed to Respondent at her address on record with the Bar and was sent by both first class and by certified mail, return receipt requested. The letter was also sent to Respondent's email address. The certified mail receipt indicated that the letter was received, but Respondent did not respond to the letter or the email.

21.

On June 23, 2021, DCO telephoned Respondent at the phone number that she had on record with the Bar and left a voicemail. On June 25, 2021, DCO called Respondent's employer and left a voicemail with the company asking for a call back from Respondent. Respondent did not reply to either voicemail.

22.

On June 29, 2021, the Bar petitioned for Respondent's suspension pursuant to Bar Rule (BR) 7.1. Respondent did not respond to the BR 7.1 Petition and the Disciplinary Board Adjudicator signed an order suspending her from the practice of law.

Violations

23.

Respondent admits that, by failing to adequately inform Tardio about her resignation from her case and by failing to promptly respond to Tardio's requests for information after she closed her practice, she violated RPC 1.4(a).

Respondent admits that she violated RPC 1.16(c) by failing to submit a motion to withdraw, notice of termination of representation, or other similar document when she ceased representation in *Reddy v. Morrissey*.

Respondent admits that she violated RPC 1.16(c) by failing to submit a motion to withdraw, notice of termination of representation, or other similar document when she ceased representation in *Craft v. Tardio*.

Respondent admits that, by failing to adequately communicate with Tardio about her resignation from her case, she violated RPC 1.16(d).

Respondent admits that she knowingly failed to respond to lawful demands for information from Disciplinary Counsel's office in violation of RPC 8.1(a)(2).

Sanction

24.

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 ABA Standards provide that the most important ethical duties are those which lawyers owe their clients. ABA Standards at 5. In violating RPC 1.4, Respondent violated her duty to provide diligent representation to her clients. ABA Standard 4.4. In violating RPC 1.16(c) and (d), and RPC 8.1(a)(2), Respondent violated her duty as a professional. ABA Standard at 7.0.
- b. **Mental State.** Respondent's mental state for the conduct in each of her client-based violations amounts to negligence. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. ABA Standards at 7. Respondent failed to ensure that her clients in the cases at issue were fully informed about the status of their cases and that she properly withdrew from representation. With regard to the RPC 8.1(a)(2) charge, Respondent knowingly failed to cooperate with her regulators who were investigating complaints regarding her conduct. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.*

- c. **Injury.** The ABA Standards define “injury” as harm to the client, the public, the legal system, or the profession that results from a lawyer’s conduct. “Potential injury” is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. ABA Standards at 7. An injury does not need to be actual to support the imposition of sanctions. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

Respondent’s inadequate communication caused her clients and colleagues stress, frustration, and anxiety. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426-27, 939 P2d 39 (1997). Respondent’s failure to properly withdraw from representation required her clients and colleagues to expend time and resources to find alternate counsel on short notice, and contributed to delays in the court cases.

Respondent’s failure to respond to DCO caused actual injury to the Bar and the public. *See In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993) (The Bar is prejudiced when a lawyer fails to cooperate. 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).

- 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 has been licensed to practice law in Oregon since 2008.
- 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 described the death of a colleague and the stress associated with the COVID-19 pandemic as contributing to her severe depression and anxiety leading up to and during the events at issue. Respondent’s emotional issues were so significant that she could no longer practice law, and she has not done so since January 2021.
 4. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e). Although Respondent did not respond to the Bar’s investigation, she has since demonstrated a cooperative attitude and a willingness to resolve her disciplinary matters.
 5. Character or reputation. ABA Standard 9.32(g). Respondent’s former colleagues and clients, including some of the complainants, describe having an excellent relationship with Respondent and note that her

conduct in these matters was out of character for her. Respondent also engages in volunteer work at local schools and in her community.

6. Remorse. ABA Standard 9.32(l).

25.

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

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 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.

26.

Fact matching between cases is a difficult endeavor, especially when, as here, multiple violations are at issue. However, a review of Oregon case law provides that a total suspension of 120 days is appropriate in this matter.

Oregon cases that deal with misconduct related to communication and improper withdrawal often result in a short suspension. See *In re Knappenberger*, 337 Or 15, 32–33, 90 P3d 614 (2004) (court stated that it has generally imposed a 60-day suspension as appropriate for neglectful conduct, including failing to adequately communicate with clients); see also *In re Castanza*, 350 Or 293, 253 P3d 1057 (2011) (attorney suspended for 60 days when he improperly withdrew from representing two clients in a civil action, and neglected other aspects of the case); *In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (attorney suspended for 30 days for failing to adequately communicate with his client). Given Respondent’s mitigation, a suspension of 60 days is appropriate for Respondent’s misconduct regarding communication and improper withdrawal violations.

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 has no tolerance for attorneys who fail to cooperate with a Bar investigation and will impose suspensions for even stand-alone violations. *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). See also *In re Murphy*, 349 Or 366, 245 P3d 100 (2010) (Respondent suspended for 120 days for failing to respond to DCO in three separate matters); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (attorney was suspended for 120 days—60 days each for failing to cooperate with the Bar and for knowingly neglecting clients’ cases for several months by failing to communicate with clients and opposing counsel). Here, Respondent failed to cooperate in two disciplinary investigations. Given Respondent’s subsequent cooperation in entering into a stipulation and her numerous mitigating factors, a suspension of 60 days is appropriate for her failure to respond to multiple Bar investigations.

27.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 120 days for one violation of RPC 1.4(a), three violations

of RPC 1.16(c), one violation of RPC 1.16(d), and two violations RPC 8.1(a)(2). The suspension is effective upon approval by the Disciplinary Board Adjudicator. As part of this stipulation, one count of RPC 1.4(a) and one count RPC 1.16(d) in Case No. 21-60 are dismissed.

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. Respondent represents that she does not have any current clients or open legal matters; Respondent's law practice has been closed since December 31, 2020, and her license has been inactive with the Oregon State Bar since January 1, 2021.

29.

Respondent acknowledges that reinstatement is not automatic on expiration of the period of suspension. Respondent acknowledges that, in the event that she wishes to reinstate her Bar membership, she is required to apply for formal reinstatement pursuant to 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 under that rule may result in her 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.

31.

In addition, on or before May 1, 2023, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$447.45, incurred for Respondent's deposition. Should Respondent fail to pay \$447.45 in full by May 1, 2023, the Bar may thereafter, without further notice to her, obtain a judgment against Respondent for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

32.

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.

33.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 22, 2022. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 2nd day of February, 2023.

/s/ Katie H. Haraguchi

Katie H. Haraguchi, OSB No. 083537

EXECUTED this 3rd day of February, 2023.

OREGON STATE BAR

By: /s/ Eric J. Collins

Eric J. Collins, OSB No. 122997

Assistant Disciplinary Counsel

Cite full opinion as 370 Or 720 (2023)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
LEONARD D. DUBOFF,)
Bar No. 774378)
Respondent.)

(SC S069006)

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

PER CURIAM

In this lawyer disciplinary proceeding, respondent Leonard D. DuBoff challenges the conclusion of a trial panel of the Disciplinary Board that respondent had violated Oregon Rule of Professional Conduct (RPC) 1.8(a), which restricts a lawyer from entering into “a business transaction with a client” unless the lawyer satisfies multiple conditions meant to protect the client from the possibility of overreaching. The trial panel determined that respondent had violated that rule by failing to disclose in writing essential terms of a transaction under which respondent’s clients agreed to pay some or all of what they owed for legal services by providing “construction services” to respondent and his law firm. We agree with the trial panel that respondent violated RPC 1.8(a) in that way and that a public reprimand is the appropriate sanction for that violation.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)	
)	
MARK HENDERSHOTT,)	
Bar No. 721182	)	Case No. 22-185
)	
Respondent.)	

Counsel for the Bar:	Alison F. Wilkinson
Counsel for the Respondent:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.4(b), RPC 1.7(a)(2), RPC 1.16(a)(1), and RPC 8.4(a)(4). Stipulation for Discipline. 30-day suspension.
Effective Date of Order:	February 21, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 30-days, effective 30 days from the date of this order, for violation of RPC 1.4(b), RPC 1.7(a)(2), RPC 1.16(a)(1), and RPC 8.4(a)(4).

DATED this 21st day of February, 2023.

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

STIPULATION FOR DISCIPLINE

Mark Hendershott, 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 22, 1972, 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(h).

4.

On December 10, 2022, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.4(b), RPC 1.7(a)(2), RPC 1.16(a)(1), and RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Lucille Muirhead (Lucille) owned a house in Oakland, Oregon, and lived there with her son, Monte Muirhead (Monte). The property contained two parcels. Lucille and Monte obtained a deed from a title company naming them co-owners of one of the parcels, with right of survivorship. As to the second lot, Monte and Lucille inadvertently failed to provide right of survivorship. In 2015, Lucille died. In her will, Lucille devised her real property to Monte. After his mother's death, Monte owned one lot as the surviving tenant and a half interest in the other lot. However, believing he fully owned both parcels, Monte conveyed the property to another party, David Hatcher (Hatcher), by warranty deed. A few months later, Monte died.

6.

In 2020, Hatcher decided to sell the property, but a title search revealed the problem with the second parcel. The title company insisted that Hatcher open probate matters for Lucille and Monte's estates to resolve the title, and that the court name a personal representative (PR) for each estate. Hatcher hired Respondent to resolve the title issue.

7.

Hatcher also spoke with his cousin, Esmond, about helping to clear the title. Esmond was Lucille's son, and as such he had statutory priority to act as PR. Esmond agreed to help Hatcher as a favor and, reportedly, understood that he did not have any interest in the property that Monte conveyed.

8.

Respondent met with Esmond and Esmond agreed to act as the PR for both estates. Hatcher paid for Respondent to represent Esmond in Esmond's role as PR for both Monte's and Lucille's estates.

9.

On April 29, 2020, Respondent filed two petitions in Douglas County Circuit Court appointing Esmond as the PR of both estates. Esmond signed both petitions; both listed Respondent as the PR's attorney and stated that the PR employed Respondent as his attorney.

10.

On April 30, 2020, the court issued letters to Esmond detailing the PR's responsibilities and advising him to seek the advice of counsel in carrying out his duties. Esmond was shocked to receive those letters and felt that Hatcher and Respondent mislead him about the scope of his duties. Esmond called Hatcher and Hatcher agreed to pay for Esmond to hire another attorney, Jeffrey L. Pugh (Pugh). However, Respondent remained attorney of record in the two probate matters.

11.

In May 2020, Esmond signed papers at the title company, resolving Hatcher's issues with the property. On June 3, 2020, Respondent sent Esmond a letter with draft inventories for both estate matters. On June 13, 2020, Esmond informed Respondent that he did not want to continue serving as the PR. Respondent prepared resignations for Esmond, but Esmond refused to sign them. During June 2020, Respondent and Pugh discussed Esmond resigning, but they did not achieve a resolution.

12.

Subsequently, the probate court issued notices regarding overdue inventories for both estate matters and then for Esmond's removal, resulting in a total of five notices. The final citation, on November 1, 2020, called for Esmond's removal as PR because he had "failed, neglected and refused to file herein an Inventory." Respondent did not send the notices to Esmond (because Pugh represented Esmond) and does not recall sharing or mentioning the notices to Pugh.

13.

On December 18, 2020, Esmond signed resignations as PR for both estates. On December 22, 2020, the probate court held a hearing regarding Esmond's removal. Respondent and Esmond appeared. The court removed Esmond and ultimately appointed Hatcher as subsequent PR, represented by Respondent. The estates were closed in July 2021.

Violations

14.

Respondent admits that, by failing to explain the court's notices to Esmond, he failed to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation, in violation of RPC 1.4(b).

15.

Respondent admits that, after Esmond resolved the title issue and then refused to cooperate as PR, his representation of Hatcher was in direct conflict with his representation of Esmond, in violation of RPC 1.7(a)(2).

16.

Respondent admits that, by failing to resign from Esmond's representation when Esmond refused to fulfill his duties as PR, his representation resulted in a violation of the Rules of Professional Conduct, in violation of RPC 1.16(a)(1).

17.

Respondent admits that, by failing to take any action in response to the court's notices, he engaged in conduct prejudicial to the administration of justice, in violation of RPC 8.4(a)(4).

Sanction

18.

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

- a. **Duty Violated.** In connection with Respondent's failure to communicate with his client, he violated ABA Standard 4.4, which generally addresses a failure to act with reasonable diligence and includes an attorney's duty of communication. Respondent's failure to avoid conflicts of interest violated ABA Standard 4.3. Respondent's failure to withdraw from his client's representation in order to avoid a rule violation amounted to a violation of his duties owed as a legal professional pursuant to ABA Standard 7.0. Respondent's conduct prejudicial to the administration of justice violated ABA Standard 6.2, which describes an attorney's duties to the legal process.
- 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.*

In connection to all of his ethical violations, it appears that Respondent's mental state 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 Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

In connection with Respondent's failure to communicate with his client, there was the potential for injury to Esmond because he was not apprised of the court's notices or the possibility that the court would hold him in contempt for failing to fulfill his PR duties. However, the threatened sanction of removing Esmond as the PR was aligned with his preference.

In connection with Respondent's failure to avoid conflicts of interest, there was the potential for injury to both clients. However, at the point that Hatcher no longer needed the probate matters, Esmond concluded that he did not wish to act as the PR. Esmond eventually resigned, without the need for a court order and was not found in contempt of court, so there was not actual injury.

In connection with Respondent's failure to withdraw from Esmond's representation in order to avoid a rule violation, ABA Standard 7.0 considers potential or actual injuries to a client, the public or the legal system. Arguably, there was the potential for injury to Esmond. However, Esmond never considered Respondent as his attorney and, at least as of June 2020, Esmond did not intend to carry out his duties as the PR, so he did not need Respondent's counsel on those issues. However, Respondent's continued representation of Esmond in the probate matters harmed the legal system, through the additional notices required from the court for the inventories and Esmond's removal.

In connection with Respondent's conduct prejudicial to the administration of justice, there was actual harm to the court's procedural functioning, through the additional efforts needed to manage the probate matters after they languished for several months. Similarly, there was at least potential harm to the parties interested in the estate, through the extended delay in completing the PR duties.

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

1. A prior record of discipline. ABA Standard 9.22(a). In 2003, the Bar reprimanded Respondent for a current client conflict in which he represented one client accused of arson, at the same time he represented the fire department, which prepared a report about the events.

In 1987, Respondent received a letter of admonition for another current client conflict in which the Bar found he violated DR 5-105(A) & (B), the former rule approximating RPC 1.7(a)(2). "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." *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018) (citing *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997)). Letters of admonition are only considered prior disciplinary offenses when issued for the same or similar rule violations. *Id.* Here, the admonition was issued for the same rule violation, 1.7(a)(2), prior to the imposition of the current sanction, and therefore qualifies as a prior disciplinary offense.

2. Multiple offenses. ABA Standard 9.22(d). In connection with the same underlying events, Respondent engaged in multiple rule violations.
3. Vulnerability of victim. ABA Standard 9.22(h). Esmond was a vulnerable victim in light of his lack of understanding and general distrust of the process. During the hearing on his small claims matter, he expressed distrust of title companies and expressed concern that his own home could be at risk as the result of his role in these events. His concern was

exacerbated when he realized that the probate matters were court proceedings and he had responsibilities that he did not understand.

4. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was licensed in Oregon in 1972.

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

1. Absence of a dishonest or selfish motive. ABA Standard 9.32(b). There is no evidence that Respondent had a dishonest or selfish motive.
2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e). Respondent cooperated with the Bar's investigation.
3. Personal or emotional problems. ABA Standard 9.32(c). Respondent is ill and is no longer practicing law. He resides in a senior living facility outside of Oregon.
4. Remorse. ABA Standard 9.32(l). Respondent admitted fault and expressed remorse relating to his representation in this matter.

19.

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

In connection with Respondent's failure to withdraw from his client's representation in order to avoid a rule violation, reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as professional, and causes injury or potential injury to a client, the public, or the legal system. ABA Standard 7.3.

As to Respondent's conduct prejudicial to the administration of justice, 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 legal proceedings. ABA Standard 6.23.

In a situation where an attorney faces multiple charges of misconduct, the ABA Standards provide guidance that, the "ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct." ABA Standards at 7.

Here, the most serious preliminary sanction suggested by the ABA Standards is a reprimand in connection with Respondent's failure to withdraw and his conduct prejudicial to the administration of justice.

Because those factors in aggravation include a prior history of discipline for current client conflicts, a sanction greater than reprimand is warranted, here, a period of suspension. ABA Standards 8.2 and 8.3(b).

However, there are also many factors in mitigation, including that Respondent intends to resign from the practice of law due to his ill health, and that he has expressed remorse as to

his behavior in this matter. In light of the aggravating and mitigating factors, a 30-day suspension is appropriate.

20.

A 30-day suspension is consistent with case law in similar matters. *See In re Ross Day*, 33 DB Rptr 203 (2019) (stipulated 30-day suspension stayed pending one year probation where Respondent represented the personal representative and the heir concurrently in the probate proceeding; the PR mishandled the estate putting Respondent in conflict, which he did not address; and Respondent missed deadlines and failed to competently handle the estate, causing multiple show-cause orders to be issued by the court); *see also: In re Campbell*, 345 Or 670, 689, 202 P3d 871 (2009) (finding that an attorney has engaged in a conflict of interest, standing alone, typically justifies imposing a 30-day suspension); *In re Snyder*, 348 Or 307, 323-24, 232 P3d 952 (2010) (a determination that an attorney has failed to explain a legal matter to permit a client to make informed decisions pursuant to RPC 1.4(b), justifies imposing a 30-day suspension).

21.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30 days for violation of RPC 1.4(b), RPC 1.7(a)(2), RPC 1.16(a)(1), and RPC 8.4(a)(4), the sanction to be effective 30 days after this stipulation is approved.

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 the term of his suspension. In this regard, Respondent represents that he has no active client files, only closed client files that former clients may access by contacting Respondent.

23.

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.

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. 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: None.

26.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on December 10, 2022, as amended January 28, 2023. 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 February, 2023.

/s/ Mark Hendershott

Mark Hendershott, OSB No. 721182

EXECUTED this 16th day of February, 2023.

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)
)
KELLY S. HANSEN, Bar No. 063450) Case No. 23-63
)
Respondent.)

Counsel for the Bar:	Matthew S. Coombs
Counsel for the Respondent:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 8.4(a)(4). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	April 18, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

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

DATED this 18th day of April, 2023.

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

STIPULATION FOR DISCIPLINE

Kelly S. Hansen, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 27, 2006, 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 opportunity to seek advice from counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On March 11, 2023, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violation of RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In December 2020, Janelle Leeden (Leeden) entered into a mediated agreement with her husband to settle their dissolution of marriage case. Shortly thereafter, Leeden's attorney withdrew from representation and Leeden contacted her husband's attorney, David Black (Black), to inform him that she repudiated the settlement agreement based on discovery that was allegedly withheld. In April 2021, Black filed a motion to enforce the settlement agreement, and in May 2021, Leeden retained Respondent to represent her on the motion.

A remote hearing (via WebEx) on the motion to enforce was set for July 21, 2021, at 9:00 a.m. in front of Judge Alicia Sykora. On July 19 and 20, Respondent submitted an exhibit list and trial memorandum. On July 21, the parties went on the record for the hearing, but Respondent failed to appear. At approximately 9:07 a.m., Leeden sent Respondent a text message and then tried to call her, but did not receive a response. Approximately 15 minutes later, Respondent's assistant reported to Leeden that Respondent was having problems with WebEx. Leeden notified the court of Respondent's WebEx problem, and Judge Sykora adjourned and told the parties to log back in at 10:00 a.m. in order to give Respondent time to either fix her WebEx or appear in person. At 10:02 a.m., court resumed and Respondent still did not appear. Respondent then told her assistant that Respondent's mother was having a health problem and she would not be able to appear. This information was conveyed to Leeden, who apologized to the court, and the hearing was reset for July 26, 2021. Judge Sykora ordered Respondent to pay the opposing party's attorney's fees as a sanction for her failure to appear.

On July 26, 2021, Respondent and Leeden appeared via WebEx at the reset motion to enforce hearing. At the beginning of the hearing, Judge Sykora asked Respondent to explain her prior absence and Respondent said that she could not get WebEx to work. Respondent then asserted that her mother fell that morning, which she said prevented her from attending court as she was trying to figure out what was happening to her mom. Respondent also blamed the breakup of her law practice for her failure to appear. Approximately three hours into the hearing, Leeden became extremely emotional while testifying. Leeden declared that court was adjourned, and left the hearing. Judge Sykora expressed her astonishment that Leeden left the hearing and stated that court was not adjourned. Minutes later, Respondent disconnected from the hearing without providing any notice or explanation to the court. Judge Sykora then proceeded to make findings and rule on the motion.

During disciplinary counsel's office's (DCO) investigation of the conduct detailed above, Respondent stated that Leeden told her to immediately end the July 26 hearing, and Respondent reported that she notified the court that Leeden was unable to continue the hearing. Leeden denies that she told Respondent to leave the hearing, and the audio recording of the July 26 court proceeding shows Respondent disconnected from the hearing without saying anything to the court.

Violations

6.

Respondent admits that, by failing to attend a court hearing and providing the court a variety of reasons to justify her absence after the fact, and abandoning a court hearing without notice to, or permission of the court, the court and the parties to the domestic relations case were prejudiced, in violation of RPC 8.4(a)(4).

Sanction

7.

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

- a. **Duty Violated.** Respondent violated her duty owed to the legal system by engaging in conduct prejudicial to the administration of justice. ABA Standard 6.0.
- b. **Mental State.** "Intent" is the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id.* Respondent knew that Leeden's hearing was set for July 21, at 9:00 a.m., and did not appear or contact the court directly, but instead, directed her paralegal to only notify Leeden, who then, while unrepresented, had to inform the court and the opposing party that her lawyer was unable to attend the hearing. On July 26, Respondent knew that she left the court proceeding before it had concluded, and did so without permission.
- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

By failing to attend her client's court hearings, Respondent caused her client frustration and anxiety. Respondent's absence also caused the court to expend

resources to reset the hearing, and caused the opposing party to expend more money in attorney fees (which Respondent was later required to pay).

- d. **Aggravating Circumstances.** Aggravating circumstances include:
 - 1. Substantial experience in the practice of law. Standard 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 - 1. Absence of a prior record. Standard 9.32(a).
 - 2. Absence of a dishonest or selfish motive. Standard 9.32(b).

8.

Under the ABA Standards, suspension is generally appropriate when a lawyer knows that they are 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.

9.

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 attorneys who commit a single violation of RPC 8.4(a)(4) often receive a public reprimand or short suspension. In the matter of *In re Carini*, an attorney was suspended for 30 days for conduct involving the failure to appear at multiple hearings, but had been disciplined for violating the same rule in a prior case. *In re Carini*, 354 Or 47, 54-56, 308 P3d 197 (2013). Another attorney was publicly reprimanded when she violated RPC 8.4(a)(4) by disseminating documents that were subject to a protective order. *In re Burke*, 34 DB Rptr 106 (2020). Lastly, an attorney was given a public reprimand when he violated RPC 8.4(a)(4) by improperly submitting a judgment and then neglecting to take steps to correct the judgment when errors were brought to his attention. *In re Sherman*, 33 DB Rptr 95 (2019).

10.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 8.4(a)(4), the sanction to be effective upon approval of this stipulation.

11.

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.

12.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 11, 2023. 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 Hansen*, 37 DB Rptr 26 (2023)

EXECUTED this 17th day of April, 2023.

/s/ Kelly S. Hansen

Kelly S. Hansen, OSB No. 063450

EXECUTED this 17th day of April, 2023.

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)	
)	
L. VIVIEN LYON, Bar No. 043500	)	Case No. 22-73
)	
Respondent.)	

Counsel for the Bar:	Alison F. Wilkinson
Counsel for the Respondent:	David J. Elkanich
Disciplinary Board:	None.
Disposition:	Violation of RPC 1.3. Stipulation for Discipline. 30-day suspension, all stayed, 1-year probation.
Effective Date of Order:	April 20, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 30-days, all stayed pending Respondent's successful completion of a one-year term of probation, effective 30 days from entry of this order, for violations of RPC 1.3.

DATED this 20th day of April, 2023.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

L. Vivien Lyon, 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 28, 2004, 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(h).

4.

On August 30, 2022, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 1.3 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.

On or around December 8, 2017, Christopher Burke (Burke) engaged Respondent to file a wrongful termination suit against his former employer. The relevant statute of limitations period for wrongful termination on the basis of disability is one year. Respondent and Burke were aware of the statute of limitations period at or near the time Respondent was engaged to handle the matter.

6.

For multiple periods lasting several months, Respondent performed no appreciable, substantive work on Burke's matter, despite numerous requests for status updates from him. In or around December 2018, ahead of the expiration of the statute of limitations, Burke reached out to Respondent to remind her of the rapidly approaching statute of limitations deadline. Respondent assured Burke that the complaint would be timely filed. She had not calendared the statute of limitations deadline and did not check the statute of limitations deadline prior to making this assurance, instead relying on her memory.

7.

Respondent failed to file the complaint prior to the expiration of the statute of limitations. Respondent acknowledged missing the deadline in correspondence to Burke, and received his informed consent in writing to continue her representation of him in or around January of 2019.

8.

After failing to file suit on behalf of Burke, despite multiple assurances to him that she would do so by certain dates, Respondent filed a complaint with the Multnomah County Circuit Court on or about May 21, 2019, based on the expired wrongful termination claim and defamation.

9.

On or about May 24, 2019, Respondent's opposing counsel indicated they would accept service on behalf of the named defendant. Despite the foregoing statement, Respondent failed to file an affidavit establishing service of the complaint until September 3, 2019. In or around September of 2019, Respondent discussed the insurmountable statute of limitations issue with Burke and proceeded to dismiss Burke's case.

Violations

10.

Respondent admits that, by failing to attend to Burke's matter in a timely manner, she neglected a legal matter entrusted to her in violation of RPC 1.3.

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.** Respondent violated her duty of diligence in representing her client, ABA Standard 4.4
- b. **Mental State.** The most culpable mental state is that of "intent," when the lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* "Negligence" is the failure to be aware of a substantial risk that circumstances exist or that a result will follow and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Id.* Respondent's lack of diligence was knowing. She failed to dedicate time to Burke's case, despite numerous emails from her client requesting status updates and asking that she perform certain tasks. In doing so, she failed to meet self-imposed and statutorily required deadlines.
- c. **Injury.** Injury can be either actual or potential under the ABA Standards. ABA Standards 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). The ABA Standards define "injury" as harm to the client, the public, the legal system, or the profession that results from a lawyer's conduct. ABA Standards at 9. "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Id.* A client sustains actual injury when an attorney fails to actively pursue the client's case. *See In re Parker*, 330 Or 541, 546-47, 9 P3d 107 (2000). Respondent's neglect caused actual injury to

her client by missing the statute of limitations deadline, leading to the dismissal of his case. Respondent also caused her client stress, frustration, and anxiety. See *In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426-27, 939 P2d 39 (1997).

- d. **Aggravating Circumstances.** Aggravating circumstances include:
 - 1. Vulnerability of victim. ABA Standard 9.22(h). Burke was an individual with identified disabilities.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 - 1. Absence of prior disciplinary record. ABA Standard 9.32(a).
 - 2. Absence of dishonest or selfish motive. ABA Standard 9.32(b).
 - 3. Personal or emotional problems. ABA Standard 9.32(c). Respondent was going through a divorce during her representation of Burke. In addition, Respondent's father passed away less than two weeks after being retained on Burke's case.
 - 4. Inexperience in the practice of law. ABA Standard 9.32(f). Although Respondent was admitted to the Bar in 2004, she was not practicing for the majority of her career until she began representing Burke.
 - 5. Remorse. ABA Standard 9.32(l). Respondent expressed remorse for her actions and the damage it caused to Burke's case.

12.

Under the ABA Standards, a brief suspension, all stayed pending successful completion of a probationary period focused on practice management, is in accord with Oregon case law. See *In re Snyder*, 348 Or 307, 232 P3d 952 (2010). In similar cases, attorneys have stipulated to a 30- to 60-day suspension, with some period of probation. *In re Wall*, 34 DB Rptr 38 (2000) (stipulated 60-day suspension, all stayed, subject to two-year probation for violations of RPC 1.3 and RPC 1.4(a) when attorney did not take any action on a matter after promising to send a demand letter on behalf of his client); *In re Bosket*, 32 DB Rptr 41 (2018) (stipulated 30-day suspension, all stayed, subject to two-year probation, for violations of RPC 1.3, RPC 1.4(a), and RPC 1.16(a) when lawyer experienced personal problems and serious health problems that impacted his ability to perform legal work; he did not respond to his client's requests for information for over six months and did not withdraw); *In re Yunker*, 31 DB Rptr 133 (2017) (stipulated 60-day suspension for violations of RPC 1.3 and RPC 1.4(a), all stayed, subject to one-year probation, where attorney failed to file tort-claim notice, did not attempt to calculate the deadline or inform his client that he no longer intended to file the notice, and ultimately missed the filing deadline).

13.

BR 6.2 recognizes that probation can be appropriate and permits a suspension to be stayed pending the successful completion of a probation. See also, Standard 2.7 (probation can be imposed alone or with a suspension and is an appropriate sanction for conduct which may be corrected). In addition to a period of suspension, a period of probation designed to ensure

the adoption and continuation of better practices will best serve the purpose of protecting clients, the public, and the legal system.

14.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 30 days for violations of RPC 1.3, with all of the suspension stayed, pending Respondent's successful completion of a one-year term of probation. The sanction shall be effective 30 days after the stipulation is approved, or as otherwise directed by the Disciplinary Board (effective date).

15.

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 her probationary terms.
- b) Respondent has been represented in this proceeding by David J. Elkanich (Elkanich). Respondent and Elkanich hereby authorize direct communication between Respondent and DCO after the date this Stipulation for Discipline is signed by both parties, for the purposes of administering this agreement and monitoring Respondent's compliance with her probationary terms.
- c) Respondent shall comply with all provisions of this Stipulation for Discipline, the Rules of Professional Conduct applicable to Oregon lawyers, and ORS Chapter 9.
- d) During the period of probation, Respondent shall attend not less than 5 MCLE accredited programs, for a total of 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 her 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 MCLE programs described in this paragraph, and prior to the end of her period of probation, Respondent shall submit a Declaration of Compliance to DCO.
- e) Throughout the period of probation, Respondent shall diligently attend to client matters and adequately communicate with clients regarding their cases. Respondent shall also calendar all applicable deadlines.
- f) Each month during the period of probation, Respondent shall review all client files to ensure that she is timely attending to the clients' matters and that she is maintaining adequate communication with clients, the court, and opposing counsel, and abiding by statute of limitations deadlines.
- g) Ryan Anfusio shall serve as Respondent's probation supervisor (Supervisor). Respondent shall cooperate and comply with all reasonable requests made by her Supervisor that Supervisor, in their sole discretion, determines are designed

to achieve the purpose of the probation and the protection of Respondent's clients, the profession, the legal system, and the public. Respondent agrees that, if Supervisor ceases to be her Supervisor for any reason, Respondent will immediately notify DCO and engage a new Supervisor, approved by DCO, within one month.

- h) Respondent and Supervisor agree and understand that Supervisor is providing their services voluntarily and cannot accept payment for providing supervision pursuant to this Stipulation for Discipline.
- i) Beginning with the first month of the period of probation, Respondent shall meet with Supervisor in person, or by Zoom or similar online platform (Zoom meeting) at least once a month for the purpose of:
 - (1) Allowing her Supervisor to review the status of Respondent's law practice and her performance of legal services on the behalf of clients. Each month during the period of probation, Supervisor shall review Respondent's case list and identify a random ten (10) client files or ten percent (10%) of Respondent's active caseload, whichever is greater, to audit. Respondent shall send the electronic file for each identified client file to the Supervisor at least one week in advance of the Zoom meeting. The Supervisor shall then conduct an audit of the identified client files in order to determine whether Respondent is timely, competently, diligently, and ethically attending to matters, and taking reasonably practicable steps to protect her clients' interests upon the termination of employment.
- j) Respondent authorizes her Supervisor to communicate with DCO regarding her compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Respondent's compliance.
- k) 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 in order to obtain practice management advice. Respondent shall notify DCO of the time and date of the appointment.
- l) 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 her 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.
- m) 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 her consultation(s) with the PLF's Practice

Management Attorneys; identifying the recommendations that she has adopted and implemented; and identifying the specific recommendations she has not implemented and explaining why she has not adopted and implemented those recommendations.

- n) 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 initial meeting.
- o) On a quarterly basis, on dates to be established by DCO beginning no later than 30 days after the effective date, Respondent shall submit to DCO a written “Compliance Report,” approved as to substance by her 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 her 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 her 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.
- p) Respondent is responsible for any costs required under the terms of this stipulation and the terms of probation.
- 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 her Supervisor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.
- r) A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to DCO on or before its due date.
- s) The SPRB’s decision to bring a formal complaint against Respondent for unethical conduct that occurred or continued during the period of her probation shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.
- t) 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.

16.

In addition, within ninety (90) days of the Effective Date, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$636.00, incurred for service of the

formal complaint and deposition costs. Should Respondent fail to pay \$636.00 in full within 90 days of the Effective Date, 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.

17.

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 any term of her suspension, if any stayed period of suspension is actually imposed. In this regard, if any stayed period of suspension is actually imposed Respondent has arranged for Alena A. Tupper, an active member of the Bar with a business address of: Portland Community College, Cascade Campus Terrell Hall Rm. 108, 705 N. Killingsworth St., Portland OR 97217, 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 her actual suspension. Respondent represents that Ms. Tupper has agreed to accept this responsibility.

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 her non-compliance with the terms of her probation, she will be required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Respondent also acknowledges that, should a suspension occur, she cannot hold herself out as an active member of the Bar or provide legal services or advice until she is notified that her license to practice has been reinstated.

19.

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

20.

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.

21.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 3, 2023. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 19th day of April, 2023.

/s/ L. Vivien Lyon

L. Vivien Lyon, OSB No. 043500

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich

David J. Elkanich, OSB No. 992558

EXECUTED this 19th day of April, 2023.

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)
)
 STEWART B. MYERS, Bar No. 062451) Case Nos. 21-62, 21-93, & 21-94
)
 Respondent.)

Counsel for the Bar: Matthew S. Coombs
Counsel for the Respondent: David J. Elkanich
Disciplinary Board: None
Disposition: Violation of RPC 1.3 (two counts), RPCF 1.4(a) (three counts), RPC 1.16(d), RPC 3.4(c), RPC 8.1(a)(2), and RPC 8.4(a)(4). Stipulation for Discipline. 6-month suspension.
Effective Date of Order: April 28, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for six-months, effective as of the date of this order for violations of RPC 1.3(two counts), RPC 1.4(a)(three counts), RPC 1.16(d), RPC 3.4(c), RPC 8.1(a)(2) and RPC 8.4(a)(4), of the Oregon Rules of Professional Conduct.

DATED this 28th day of April, 2023.

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 2006, 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 July 8, 2022, an amended formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 1.3(two counts), RPC 1.4(a)(three counts), RPC 1.16(d), RPC 3.4(c), RPC 8.1(a)(2) and RPC 8.4(a)(4), of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Chuck Erickson, Case No. 21-62

In late 2015, Chuck Erickson (Erickson) hired Respondent to file a patent for a fishing lure. In February 2016, Respondent submitted Erickson's patent application package to the United States Patent and Trademark Office (USPTO). After receiving comments from a USPTO investigator, Respondent submitted amendments to the patent application in May 2016.

On July 13, 2018, the USPTO issued a non-final rejection of Erickson's patent and sent a letter to Respondent notifying him of the decision. The USPTO's non-final rejection letter informed Respondent that he had three months, with a possible extension of an additional three months, to file a reply. By October 14, 2018, Respondent had not submitted a reply and the USPTO deemed Erickson's application "abandoned." On February 6, 2019, the USPTO sent Respondent a Notice of Abandonment regarding Erickson's application based on Respondent's failure to take action.

On March 4, 2019, Respondent emailed Erickson and apologized for allowing his patent to become abandoned. Respondent received additional information from Erickson about his patent and proceeded to file a reply to the July 2018 USPTO rejection notice, as well as a petition to revive Erickson's application. By this time, Respondent had joined the firm of Chernoff Vilhauer LLP (Chernoff).

On July 22, 2019, Erickson emailed Respondent asking for an update and noted that he had not heard anything from Respondent in four months. Respondent replied on July 23 and said that the USPTO had not taken any action on Erickson's application since he filed the reply and petition to revive in March.

On September 10, 2019, the USPTO rejected Respondent's reply and petition to revive because Respondent failed to sign the documents. Respondent did not inform Erickson about the rejection. On November 1, 2019, Erickson emailed Respondent and requested another update. On November 20, Respondent refiled the reply and petition to revive from March, then he emailed Erickson to say that everything was done on his end and they were waiting for USPTO to process the application. Respondent did not disclose that his previous documents filed in March were rejected and that he refiled the documents on that day.

On February 6 and 7, 2020, Erickson asked for a status update. Respondent responded that he checked the USPTO website and that there had been no new action. One week later, the USPTO rejected Respondent's November 2019 reply and petition to revive, because Respondent again failed to sign it. Respondent did not inform Erickson about this latest rejection. In recalling the incident during a deposition before Disciplinary Counsel's Office (DCO), Respondent maintained that the rejection for failure to sign was an error of the USPTO and stated he had reviewed the documents with colleagues to confirm. Upon further questioning and review of the filings, Respondent realized the failure to sign was referring to a document within his submission to the USPTO that he had not previously considered and admitted the rejection was valid.

In October 2020, Erickson looked up his application with the USPTO on his own and discovered that Respondent's reply and petition to revive were rejected in February of 2020 and that his application remained abandoned. Erickson contacted Kurt Rohlf (Rohlf), another attorney at Chernoff who took over Erickson's case. Rohlf began working with Erickson to correct Respondent's mistakes.

In October 2020, Erickson filed a Bar complaint regarding Respondent's lack of diligence and communication. Respondent failed to respond to the Bar's requests for information which resulted in a BR 7.1 suspension.

Erickson's patent was ultimately issued by the USPTO on January 25, 2022.

Lu An Carone-Rhodes, Case No. 21-93

In November 2016, Running Princess LLC (Running Princess), through its chief operating officer, Lu An Carone-Rhodes (Carone-Rhodes), retained Respondent. Running Princess deposited roughly \$14,000 in retainer funds with Respondent to register and enforce several trademarks on its behalf. During the first few months of his representation, Respondent filed trademark registration applications and researched whether Running Princess's trademarks were being infringed upon by several manufacturers. Respondent identified eight entities that were potentially infringing upon Running Princess's trademark.

On February 6, 2017, Running Princess emailed Respondent, to ask for a status update. Respondent did not respond. On May 6, 2017, Running Princess made another request for information, and on May 8, Respondent responded and stated that he would check with the USPTO regarding the status of the trademark applications.

When Running Princess did not hear back from Respondent after his May 8 email, Carone-Rhodes emailed him again on the following dates in 2017: July 12, August 22, December 7, and December 19. In an email of December 19, 2017, Running Princess demanded a response from Respondent within one week. Over two weeks later, Respondent emailed Running Princess and apologized for the lack of communication. Respondent

promised to continue working on the trademark case, but said that he understood if Running Princess wanted to seek new counsel. After restoring communication with Respondent, Running Princess asked for an accounting, which Respondent provided in early March 2018. Between May 2017 and March 2018, Respondent researched potential trademark violations and issued one cease and desist letter, but further work was contingent upon the USPTO approving trademark registration, which takes one to two years from the time of filing.

On March 19, 2018, Running Princess terminated Respondent by email. Running Princess further instructed Respondent to send copies of its file to its new attorney and requested an accounting and refund by April 2, 2018. On April 11, 2018, Running Princess had not received a refund and instructed Respondent to deduct his outstanding fees from its retainer and issue a refund. By July 23, 2018, Running Princess had not received its complete file nor a refund and filed a Bar complaint. By August 14, 2018, Respondent sent another accounting (which was the same accounting previously provided to Running Princess) and the refund of his unearned fees to Running Princess and provided a copy of his client file to its new attorney.

Frank Prante/Rick Wascher, Case No. 21-94

In August 2017, Frank Prante (Prante) hired Respondent to file two patents with the USPTO by a filing deadline of September 28, 2017. On October 12, 2017 Prante emailed Respondent and asked for a status update and copies of the patent filings. After 10 days passed without a reply from Respondent, Prante asked his former attorney to check the status of the patents for him. On October 23, 2017 Prante's former attorney informed him that his patents had not been filed and that an extension of time to file had not been submitted. On October 24, 2017, Prante emailed Respondent again and requested a status update and copies of the patent filings. On November 14, 2017 Respondent replied and informed Prante that he had just filed his patent applications and he apologized for the delay.

Unbeknownst to Prante, the patent applications that Respondent filed on November 14 were incomplete, as he forgot to include necessary declarations. Respondent's late filing also required the filing of a request for an extension of time and payment of an additional fee.

Soon after, Prante hired another attorney, Rick Wascher (Wascher), to file his patent applications with a different case number. Wascher properly filed Prante's patents on November 28, 2017. Prante did not tell Respondent that he had hired Wascher.

On December 1, 2017 the USPTO sent Respondent a "Notice to File Missing Parts" related to the two patent applications that he filed on November 14. The notices required Respondent to file the missing declarations by February 1, 2018. Respondent did not timely respond to the notices, provide copies of the notices to Prante, or otherwise communicate the contents of the notices to Prante.

On March 5, 2018, after not hearing from Respondent for several months, Prante contacted Respondent and accused him of selling his patent to a third-party and demanded compensation. Respondent replied to Prante and denied that he sold or stole Prante's patents. Respondent also informed Prante of the need to file the additional declarations that the USPTO requested in its December notice. Respondent drafted and provided Prante the missing declarations and informed Prante that he would file them on Prante's behalf. On the same day, Respondent determined that Prante's allegations could create a conflict of interest and sent a

letter to Prante terminating the representation, effective immediately after he filed the declarations. Prante did not return the declarations to Respondent or otherwise continue to cooperate with him. On March 8, 2018, Respondent terminated the representation. At this point Respondent learned that Prante had hired Wascher, and throughout the month of March, Respondent spoke to Wascher on the phone multiple times and turned over Prante's client file to him.

Divorce and Contempt Proceedings, Case Nos. 21-62, 21-93, & 21-94

On or about July 13, 2017, Respondent filed a petition seeking a dissolution of marriage from his wife Heather Myers (Heather) in Benton County Circuit Court Case No. 17DR14642 (divorce case).

On or about December 12, 2017, a Stipulated General Judgment of Dissolution of Marriage (dissolution judgment) was entered in the divorce case. The dissolution judgment required Respondent to pay spousal support, acquire or maintain a life insurance policy of not less than \$1 million of life insurance that named Heather as the primary beneficiary, and required Respondent to remove Heather from any liability associated with a property in Yachats, Oregon, within 12 months of entry of the dissolution judgment, among other requirements.

On or about February 3, 2021, counsel for Heather filed a motion for order to show cause why an order should not be entered adjudging Respondent guilty of contempt of court in Benton County Circuit Court Case No. 21CN00477 (contempt case). The motion alleged that Respondent had willfully disobeyed the dissolution judgment regarding spousal support, the life insurance policy, and the Yachats property, as described above. The court granted the motion and set an evidentiary hearing, which occurred on April 22, 2021.

On or about May 10, 2021, Benton County Circuit Court Judge Locke A. Williams (Judge Williams) signed a General Judgment of Contempt (contempt judgment) stating that the court had found Respondent guilty of contempt for willful failure to obey the dissolution judgment terms relating to spousal support, the life insurance policy, and the Yachats property. The court placed Respondent on probation and ordered Respondent as a probation condition to comply with the dissolution judgment terms relating to the life insurance policy and the Yachats property by June 21, 2021, as well as to pay spousal support arrearage totaling \$15,124.56 by that date.

On or about June 29, 2021, counsel for Heather filed a motion for order to show cause why Respondent's probation should not be revoked in the contempt case. The motion alleged Respondent had failed to comply with any of the probation conditions ordered in the contempt judgment. Judge Williams granted the motion and set an evidentiary hearing, which, after several postponements, occurred on January 7, 2022.

On or about March 7, 2022, Judge Williams signed an order continuing probation for contempt of court and imposing additional sanctions (probation order). In the probation order, Judge Williams stated he found Respondent in violation of his probation for failure to remove Heather from any liability associated with the property in Yachats, Oregon, as ordered in the dissolution judgment. The court also found that Respondent had acquired a life insurance policy per the terms of the dissolution judgment but not by the deadline established in the contempt judgment. Additionally, the court found that Respondent had paid his spousal support

obligations but not by the deadline established in the contempt judgment. The court also found that Respondent only made partial payments in December 2021 and January 2022 before paying in full on January 6, 2022, the day prior to the evidentiary hearing. The court did not find Respondent in violation of his probation based on the tardy compliance with the life insurance and spousal support probation conditions.

Respondent knew that he had an obligation to comply with the dissolution judgment and the contempt order. Prior to the entry of the dissolution judgment and the contempt order, Respondent never openly refused to comply with the order based on an assertion that the obligation to comply was invalid. Moreover, after the entry of the dissolution judgment and contempt order, Respondent never openly refused to comply with the order based on an assertion that the obligation to comply was invalid.

Respondent's conduct in failing to obey the dissolution judgment and contempt order as described above was improper, occurred during judicial proceedings, and caused harm or had the potential to cause harm to the administration of justice and to the opposing parties.

Violations

6.

Respondent admits that, by failing to take substantive action for the periods of time indicated above in the Erickson and Prante matters, he violated RPC 1.3 twice.

Respondent admits that by failing to promptly respond to his clients in the Erickson, Carone-Rhodes, and Prante Matters, he violated RPC 1.4(a) three times.

Respondent admits that by failing to promptly provide an accounting, return of unearned client funds and Running Princess' client file, he violated RPC 1.16(d).

Respondent admits that by failing to comply with his divorce decree and subsequent contempt citation, he violated RPC 3.4 and 8.4(a)(4).

Respondents admits that by failing to respond to DCO's requests for information, he violated RPC 8.1(a)(2).

Sanction

7.

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

- a. **Duty Violated.** The most important ethical duties a lawyer owes are to his clients. ABA Standards at 4. Respondent violated his duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. ABA Standard 4.4. He also violated his duty to properly handle client property. ABA Standard 4.1. Additionally, Respondent violated the duty he owed to the legal system by disobeying a court order and

by engaging in conduct prejudicial to the administration of justice. ABA Standards 6.2. Respondent violated his duty as a professional by not cooperating with DCO in its investigation as to his conduct. ABA Standard 7.0.

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

Here, Respondent acted knowingly in failing to follow through with his professional obligations to his clients, the court, and the Bar. He was aware that he needed to take certain actions in representing his clients and even told his clients he would take those actions, but failed to do so. Respondent also acted knowingly when he failed to comply with the terms of his divorce decree.

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

Respondent’s clients, Erickson, Running Princess, and Prante, suffered actual injury in the form of uncertainty, anxiety, and aggravation due to Respondent’s failure to keep them properly informed and neglecting some of 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 Prante suffered actual economic injury in the amount of \$2,000 when Respondent’s delays forced him to hire another attorney to file a completely new patent application. Respondent’s failure to comply with his divorce decree resulted in his ex-wife being forced to seek redress from the court and the loss of time and attorney fees required to do so.

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 (1993)(the Bar is prejudiced when a lawyer fails to cooperate in inquiries as to their professional conduct because the Bar has to investigate in a more time-consuming way, and the public respect for the Bar is diminished because the Bar cannot provide timely and informed responses to complaints).

- d. **Aggravating Circumstances.** Aggravating circumstances include:
 - 1. A pattern of misconduct. Standard 9.22(c). “[A] pattern of misconduct does not necessarily require proof of a prior sanction. Rather, that aggravating factor bears on whether the violation is a one-time mistake, which may call for a lesser sanction, or part of a larger pattern, which

may reflect a more serious ethical problem.” *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018). Respondent’s neglect and communication issues extended to three separate clients over a period of years. This established a pattern.

2. Multiple offenses. Standard 9.22(d).
 3. Substantial experience in the practice of law. Standard 9.22(i). Respondent was admitted to the Oregon State Bar in 2006.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a prior record of discipline. Standard 9.32(a).
 2. Personal or emotional problems. Standard 9.32(c). Respondent cited his divorce proceedings and resulting personal problems as the main contributor to his misconduct.
 3. Remorse. Standard 9.32(l). Respondent expressed sincere regret for the conduct that resulted in the violations described herein.

8.

The following ABA Standards apply:

Under ABA Standard 4.42, suspension is generally appropriate when: “(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.” 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 6.22, suspension is generally appropriate when a lawyer knowingly violates a court rule and causes injury to a party.

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

9.

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).

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 Lipetzky*, 31 DB Rptr 275 (2017) [6-month suspension] After an attorney agreed to prepare a supplemental judgment in a domestic- relations matter and failed to do so, he also failed to return the supplemental judgment drafted by his opposing counsel for nearly seven months, despite multiple inquiries about its status. In another case, he was appointed

arbitrator but eventually was removed by the court for his lack of communication with counsel for the parties and failure to reschedule the arbitration hearing.

- *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 making false statements to the court.
- *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.

The matter of *In re Devers*, 317 Or 261, 855 P2d 617 (1993) provides helpful guidance regarding what sanction is appropriate in Respondent's matter. There, the attorney was charged with eleven violations including three charges for neglect pursuant to RPC 1.3, one charge for failing to communicate pursuant to RPC 1.4(a), one charge of failing to protect client property upon termination pursuant to RPC 1.16(d) two charges for failing to cooperate with DCO pursuant to RPC 1.16(d) and one charge for engaging in conduct prejudicial to the administration of justice pursuant to RPC 8.4(a)(4). Each of these violations is also present in Respondent's case.

Devers was found to have 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 respective matters were not sufficiently tended to, but also included some economic harm to at least one of the clients who paid *Devers* an excessive fee of \$2,775.00. The aggravating factors, including prior discipline, outweighed the single mitigating factor. *Id*. Ultimately the court found that a six-month suspension was warranted.

Like *Devers*, the Respondent here caused one of his client's similar economic harm and all three clients stress and anxiety. However, Respondent has no prior record of discipline, an aggravating factor given great weight by the Oregon Supreme Court. *See In re Jones*, 326 Or 195, 199, 951 P2d 149 (1997). Although Respondent's aggravating and mitigating factors off-set each other in number, the significant weight placed on the lack of a prior disciplinary record favors mitigation. The similarities otherwise support imposing a sanction of less than the six months imposed in *Devers*. However, Respondent's serious charge of knowingly disobeying an obligation under the rules of a tribunal pursuant to RPC 3.4(c) was not present in the *Devers* matter.

In the past, the court has approved a sanction of a suspension of 30 days for a single violation of RPC 3.4(c). *In re Chase*, 339 Or 452, 121 P3d 1160 (2005)⁵. In *Chase*, the attorney violated the rule based on knowingly failing to pay court-ordered child support, much like

Respondent's failures to comply with his divorce decree. Applying both *Devers* and *Chase* to the facts present in Respondent's case, a suspension of six months is appropriate.

10.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for six-months for violations of RPC 1.3(two counts), RPC 1.4(a)(three counts), RPC 1.16(d), RPC 3.4(c), RPC 8.1(a)(2) and RPC 8.4(a)(4). The sanction shall be effective on the date this stipulation is approved.

11.

In addition, on or before June 1, 2023, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$145.00, incurred for deposition of Respondent. Should Respondent fail to pay \$145.00 in full by June 1, 2023, the Bar may thereafter, without further notice to him, obtain a judgment against Respondent for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

12.

Respondent represents that he has no active matters or files for which access may be required for any client purpose.

13.

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

14.

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

15.

Respondent represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Respondent is admitted: none.

16.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 11, 2023. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 25th day of April, 2023.

/s/ Stewart B. Myers

Stewart B. Myers, OSB No. 062451

APPROVED AS TO FORM AND CONTENT:

/s/David J. Elkanich

David J. Elkanich, OSB No. 992558

EXECUTED this 27th day of April, 2023.

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)	
)	
DAVID J. KELLER, Bar No. 045136	)	Case Nos. 22-37 & 22-134
)	
Respondent.)	

Counsel for the Bar:	Matthew S. Coombs
Counsel for the Respondent:	None
Disciplinary Board:	Mark A. Turner, Adjudicator Frank J. Weiss Natasha P. Voloshina, Public Member
Disposition:	Violation of RPC 1.15(d), RPC 8.4(a)(2), RPC 8.4(a)(3), and two counts of RPC 8.1(a)(2). Trial Panel Opinion. Disbarment.
Effective Date of Opinion:	June 3, 2023

TRIAL PANEL OPINION

The Oregon State Bar (Bar) filed an amended formal complaint against Respondent alleging violation of Oregon Rules of Professional Conduct (RPC) 1.15-(d) (failure to provide an accounting upon request), RPC 8.4(a)(2) (criminal conduct reflecting adversely on fitness to practice), RPC 8.4(a)(3) (conduct involving dishonesty, fraud, deceit or misrepresentation reflecting adversely on fitness to practice), and two counts of RPC 8.1(a)(2) (knowing failure to respond to inquiries from disciplinary authorities). Respondent is alleged to have forged official court documents and then refused to cooperate with the Bar's investigation. Respondent failed to file an answer to the amended formal complaint and has been declared in default. The Bar asks us to disbar Respondent.

In a default case we are tasked with determining whether the alleged facts in the amended formal complaint support the charges made. We are to assume the facts pleaded are true. If we find that a violation is properly alleged, we must then assess the appropriate sanction.

In this case, as explained below, we find that the charges have been properly pleaded and the violations of the RPCs are established. We further find that the appropriate sanction is disbarment. The Oregon Supreme Court has long held that forgery of court records cannot be tolerated. Our decision in this case follows that important principle.

PROCEDURAL POSTURE

On December 15, 2022, the Bar filed an amended formal complaint and served Respondent that day. Respondent failed to answer the complaint by December 29, 2022, as required by Bar Rule of Procedure (BR) 4.3. The Bar then notified Respondent of its intent to seek default in the event Respondent failed to file an answer within 12 days of the notice. No answer was filed. The Bar moved that Respondent be found in default on January 19, 2023. The Adjudicator granted the motion on January 24, 2023.

When a respondent is declared in default the Bar's factual allegations are assumed to be true. *See*, BR 5.8(a); *In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004); *In re Kluge*, 332 Or 251, 27 P3d 102 (2001). We then determine whether the facts deemed true show the disciplinary rule violations alleged and, if so, what sanction is appropriate. *See*, *In re Koch*, 345 Or 444, 198 P3d 910 (2008).

We analyze the charges in the order in which they were pleaded.

FACTS AND CHARGES

The Reed Matter (Case No. 22-37) – First and Second Causes of Complaint

Facts

Barbara Reed (Reed) hired Respondent in April of 2021 to administer the estate of her father, Richard Repp (Repp). ¶ 3.¹ During the following year Reed had difficulties reaching Respondent for updates on her case. When she could reach him, Respondent told her that he would proceed with the administration of Repp's estate. ¶ 4.

In October of 2021, Respondent told Reed that he had filed her father's probate case. ¶ 5. The next month Respondent provided Reed with letters testamentary dated November 10, 2021, bearing Multnomah County Circuit Court case number 21PB01195. The letters indicated that Repp's will had been proven and purported to appoint Reed as the personal representative of the estate. The letters testamentary bore the signature and seal of Multnomah County Circuit Court clerk Alec Straitden (Straitden), with a certification that the letters were true, complete, and accurate copies of the originals. ¶ 6.

Although Respondent gave Reed the letters testamentary, he discouraged her from using them to open a bank account for the estate. He did not tell her why. Reed proceeded to open a bank account with the letters testamentary. ¶ 7.

Respondent subsequently provided Reed with a second set of letters testamentary dated January 22, 2022. The letters were otherwise the same as the letters previously provided. ¶ 8.

Reed became increasingly frustrated with the lack of communication with Respondent and the lack of progress in administering her father's estate. She engaged another attorney to take over the case in March 2022. Reed has had no contact with Respondent since that time. ¶ 9. Reed's new attorney attempted to locate Repp's probate case, but there was no probate case in Multnomah County Circuit Court identified by the case number on the letters testamentary that Respondent provided to Reed. The only case Reed's new attorney could locate with that case number was in Jackson County Circuit Court for a different estate. ¶ 10.

¹ Paragraph citations are to the amended formal complaint.

After discovering that the letters testamentary that Respondent provided to Reed may have been forged, Reed's new attorney contacted the court to inquire into the validity of the documents. In subsequent investigations, Straitden, the clerk whose name appears on the letters, confirmed that the signature is in fact his, but denied that he signed those specific documents. Straitden explained that he had been working remotely at the time the letters were allegedly signed and had not been physically in the Multnomah County Courthouse since the onset of the Covid-19 pandemic in or around March of 2020, where he would have signed such a document. Straitden further represented that by November of 2021, when the first set of letters testamentary were allegedly signed, Multnomah County had ceased utilizing hand-certified letters testamentary in favor of electronic certifications, and the name that electronically auto-filled on all letters testamentary issued during the relevant period is of a different court clerk, Gary W. Vandebush. ¶ 11.

After confirming that no probate case had been filed to administer Repp's estate and that the letters testamentary provided by Respondent were falsified, Reed's new attorney proceeded with filing the probate case. ¶ 12.

ORS 165.007(1) states in relevant part that, "[a] person commits the crime of forgery in the second degree if, with intent to injure or defraud, the person: (a) Falsely makes, completes or alters a written instrument; or [issues, delivers, publishes, circulates, disseminates, transfers or tenders] a written instrument which the person knows to be forged." ¶ 13. Respondent committed the crime of misdemeanor forgery in violation of ORS 165.007(1) when he falsified the letters testamentary and provided them to his client with the intent that his client rely upon them. Forgery is an inherently dishonest crime. ¶ 14.

When the falsified written instrument is a public record, the violation of ORS 165.007 becomes felony forgery. ORS 165.013. ¶ 15. Respondent committed the crime of felony forgery in violation of ORS 165.013 when he falsified the letters testamentary, a public record, and provided them to his client with the intent that his client rely upon them.

Disciplinary Counsel's Office (DCO) received a grievance from Reed's new attorney regarding Respondent's conduct on April 14, 2022. By letter dated April 29, 2022, DCO requested Respondent's response to this grievance. The letter was addressed to Respondent at the address then on record with the Bar (record address) and was sent by first class mail. The letter was also sent to Respondent at david@kellerandkeller.org, the email address then on record with the Bar (record email address). The email and letter were not returned undelivered, and Respondent did not respond to either method of communication. ¶ 19.

By letter of May 23, 2022, DCO again requested Respondent's response to the grievance. The letter was addressed to Respondent at the record address and was sent by first class and by certified mail, return receipt requested. The letter was also sent to the record email address. To date, the Bar has not received a copy of the certified mail receipt. ¶ 20.

On June 1, 2022, DCO petitioned for Respondent's immediate suspension pursuant to BR 7.1 until such time as he responds to DCO's requests for information. On June 28, 2022, the Adjudicator issued an order suspending Respondent. To date, Respondent still has not responded to the Bar's inquiries in this matter. ¶ 21.

Charges

Respondent engaged in criminal conduct that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects.

RPC 8.4(a)(2) states:

“It is professional misconduct for a lawyer to ... commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.”

To establish a violation of RPC 8.4(a)(2), the Bar must initially show that there is sufficient evidence to establish that a respondent committed a criminal act. A violation of this rule does not require a criminal conviction. *In re Hassenstab*, 325 Or 166, 176, 934 P2d 1110 (1997). Second, there must be some rational connection, other than the criminality of the act, between the conduct and the lawyer’s fitness to practice law. *In re White*, 311 Or 573, 589, 815 P2d 1257 (1991). Relevant factors under *White* include the lawyer’s mental state; the extent to which the criminal act demonstrates disrespect for the law or law enforcement; the presence or absence of a victim; the extent of actual or potential injury to a victim; and the presence or absence of a pattern of criminal conduct. *Id.*, at 589.

Forgery is a criminal act. Respondent is alleged to have committed forgery in the first degree which is a felony. ORS 165.013(3).

As noted earlier, misdemeanor forgery occurs when “a person ... with intent to injure or defraud ... falsely makes, completes or alters a written instrument; or [issues, delivers, publishes, circulates, disseminates, transfers or tenders] a written instrument which the person knows to be forged.” ORS 165.007. Felony forgery occurs when a person violates ORS 165.007 when, “the written instrument is or purports to be ... a public record.” ORS 165.013(1)(E).

Respondent here created a document which included forged signatures of a court clerk. He intended to defraud his client into believing that he had submitted her father’s will to probate, that the court had appointed her the personal representative of the estate, and that she was vested with the powers reflected in the letters testamentary. The document purported to be a court document. A court document is a public record.

The court has held that falsifying a single court document constitutes felony criminal forgery as defined by ORS 165.013, and therefore reflects adversely on the lawyer’s fitness to practice law. *In re Kirkman*, 313 Or 181, 184, 830 P2d 206 (1992) (lawyer violated the predecessor to RPC 8.4(a)(2) by committing criminal forgery in violation of ORS 165.013 when he falsified a general judgment of dissolution and provided it to his mistress in an attempt to deceive her as to the status of his marriage; the lack of any criminal charges against the respondent was irrelevant).

Respondent committed a criminal act that adversely reflects on his fitness to practice law in violation of RPC 8.4(a)(2).

Respondent engaged in conduct involving dishonesty and fraud that reflects adversely on his fitness to practice.

RPC 8.4(a)(3) goes on to provide:

“It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.”

RPC 8.4(a)(3) requires the Bar to show two things. First, the attorney must engage in dishonesty, fraud, deceit, or misrepresentation. Second, that conduct must reflect adversely on the attorney’s fitness to practice law.

A misrepresentation in violation of RPC 8.4(a)(3) occurs when a lawyer makes a representation, either directly or by omission, which the lawyer knows is false and material. *In re Jackson*, 347 Or 426, 440, 223 P3d 387 (2009); *In re Lawrence*, 337 Or 450, 464, 98 P3d 366 (2004); *In re Worth*, 337 Or 167, 174, 92 P3d 721 (2004). A representation is material if it would or could significantly influence the hearer’s decision-making process. *Davenport*, 334 Or at 308. The Bar need not establish that the hearer actually relied on the misrepresentation, *In re Summer*, 338 Or 29, 39, 105 P3d 848 (2005), or that the attorney intended to deceive. *In re Claussen*, 322 Or 466, 481, 909 P2d 862 (1996). It is enough for the Bar to show that the lawyer’s statement could have influenced the decision-maker. *Summer*, 338 Or at 39.

In contrast, to show fraud or deceit, an attorney must have an intent to deceive the hearer. *In re Carpenter*, 337 Or 226, 235, 95 P3d 203 (2004) (interpreting DR 1-102(A)(3)) (quoting *In re Hiller*, 298 Or 526, 533, 694 P2d 540 (1985)) (“A misrepresentation becomes fraud or deceit when it is intended to be acted upon without being discovered.”).

Dishonesty in violation of RPC 8.4(a)(3) is an even broader concept than deceit or fraud. *Carpenter*, 337 Or at 235; *In re Holman*, 297 Or 36, 57, 682 P2d 243 (1984) (finding that dishonesty did not require deception intended to mislead the victim). Dishonesty requires a mental state of either knowledge or intent. *Carpenter*, 337 Or at 235. “Dishonesty is conduct that indicates a disposition to lie, cheat, or defraud; untrustworthiness; or a lack of integrity.” *Id.* at 234 (quoting *In re Dugger*, 334 Or 602, 609, 54 P3d 595 (2002)). By definition, dishonesty involves characteristics which are essential to an attorney’s fitness to practice law – trustworthiness and integrity. *Id.*; *In re Leonard*, 308 Or 560, 571, 784 P2d 95 (1990) (“The duty to maintain personal honesty and integrity in his [or her] professional activities is one of a lawyer’s most basic obligations to the public.”).

In this matter, Respondent’s conduct fits all of the potential ways to violate RPC 8.4(a)(3). Respondent provided the fabricated document to Reed, which he claimed had been filed with the court. The misrepresentations were material to Reed. Respondent intended to deceive Reed into believing that her case was proceeding. Respondent’s forgery of the clerk’s signature suggests a disposition to lie and defraud. We find that Respondent violated RPC 8.4(a)(3).

Respondent ignored his duty to respond to disciplinary authorities.

RPC 8.1(a)(2) provides:

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

fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.”

DCO sent Respondent several letters to his record street address and email address to which he did not reply. Respondent was administratively suspended under BR 7.1 on June 22, 2022 for his refusal to cooperate with the investigation. This conduct also violated RPC 8.1(a)(2).

The Gress Matter (Case No. 22-134) – Third Cause of Complaint

Facts

John Keller, Respondent’s father and law partner, had drafted a will for Mary A. Carroll (Decedent). Following John Keller’s death, Respondent took over his father’s law practice. ¶ 24.

Following Decedent’s death, Phyllis Gress (Gress), the appointed personal representative of the estate, engaged Jonathan Mishkin (Mishkin) to file a petition to probate Decedent’s estate. ¶ 24. Personally or through his staff, Mishkin tried to contact Respondent to obtain Decedent’s original will seven times in and around August and September of 2022. The one time that Respondent did respond, on August 22, 2022, he indicated that he believed the original will was at his office and would be in touch the next day. Respondent has been unresponsive since that time. ¶ 26.

DCO sent correspondence to Respondent on October 5, 2022 inquiring into the events surrounding the Decedent’s original will. The letter was sent to the address and the email address that Respondent had on record with the Bar. Neither were returned as undelivered. Respondent had communicated with DCO regarding a different matter via his email address on file with the Bar as recently as October 2021. ¶ 27.

Charges

Respondent failed to promptly deliver property that his client was entitled to receive.

RPC 1.15-1(d) provides:

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

“Property” under this rule includes client files. *In re Kneeland*, 281 Or 317, 319, 574 P2d 324 (1978). The Oregon Supreme Court has found that an attorney violated RPC 1.15-1(d) when his client requested his file materials and the lawyer failed to provide for eight months after his client filed a Bar complaint. *In re Snyder*, 348 Or 307, 315, 232 P3d 952 (2010). When an attorney holding client files knows that surrender of the files is necessary to

avoid foreseeable prejudice to the client, the attorney must deliver them even if he has a possessory lien on the files that the client cannot afford to satisfy. Oregon Formal Ethics Op. No. 2005-90.

Respondent possessed the only original copy of Decedent's will when her chosen personal representative, Gress, sought to initiate a probate matter. Despite receiving numerous requests and having a conversation with Gress' attorney's office regarding the need for the document, Respondent failed to turn it over. This failure is a violation of RPC 1.15-1(d).

Respondent again failed to respond to disciplinary authorities.

The text of RPC 8.1(a)(2) is set forth above. Respondent violated it again in this matter.

SANCTION

We look to the ABA *Standards for Imposing Lawyer Sanctions* (ABA Standards), in addition to case law for guidance in determining the appropriate sanctions for lawyer misconduct.

ABA Standards

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

Duty Violated

The most important ethical duties a lawyer owes are to his clients. ABA Standards at 4. Respondent violated the duty he owed to his client when he misled her about the status of her case using a forged public record. Respondent also violated the duty he owed to another client when he failed to turn over the original will in the Gress matter when asked to do so by the personal representative.

Respondent also violated his duty to the public when he forged a court document, provided it to his client as if it were genuine and induced her and others' reliance on the document. ABA Standards at 5.

Respondent violated his duty owed as a professional when he failed to respond to inquiries from disciplinary authorities. ABA Standards at 7.

Mental State

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

We find that Respondent acted intentionally when he forged the letters testamentary. He created documents intending to mislead his client about the status of her case.

We find that Respondent acted knowingly when he failed to promptly turn over the original will in the Gress matter. He stated his belief that he had the will at his office but never produced it to the requesting lawyer.

We find that Respondent acted knowingly when he failed to respond to DCO. Despite receiving multiple requests for information at his addresses on file with the Bar, he has never responded.

Extent of Actual or Potential Injury

For the purposes of determining an appropriate disciplinary sanction, we may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). “Injury” is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. “Potential injury” is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct.

In the Reed matter, Respondent’s client was exposed to potentially serious injury. After Respondent provided the forged letters testamentary, Reed obtained a tax identification number from the IRS which she used to open a bank account. These actions were based on a document that was legally meaningless. Reed’s use of the forged document could have exposed her to suspicion of wrongdoing. Reed experienced actual harm due to the delay in administering her father’s estate and having to retain a new attorney to accomplish something she believed was already complete.

The Decedent’s estate and its heirs in the Gress matter suffered potential injury because the lack of the original will could result in the estate not being probated as the Decedent intended.

Respondent also caused harm to the legal profession and to the public in failing to participate in the Bar’s investigation. When lawyers fail to cooperate with a Bar investigation, they cause time-consuming delays for the Bar and resolution of the complainant’s grievance. *See, In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993).

Preliminary Sanction

The following ABA Standards regarding the appropriate sanction appear to apply here:

Disbarment is generally appropriate when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice. ABA Standards 5.11(b).

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 Standards 4.12.

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

Disbarment is also generally appropriate when a lawyer has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. ABA Standard 8.1(b).

Given the serious nature of Respondent's forgery and the danger it posed to his client, the public, and the profession, we find that the appropriate preliminary sanction is disbarment.

Aggravating and Mitigating Circumstances

The following aggravating factors under the ABA Standards are present here:

1. A prior record of discipline. ABA Standard 9.22(a). In March of 2022, the Supreme Court suspended Respondent for 120 days. There, Respondent received a suspension for neglecting a client matter, making misrepresentations to a client, and for failing to cooperate with a disciplinary authority in violation of RPC 1.3, RPC 8.4(a)(3), and RPC 8.1(a)(2), respectively. We may consider this a factor if the sanction for the prior offense occurred before the conduct at issue in this matter. *In re Jones*, 326 Or 195, 199, 651 P.2d 149 (1997). Here, Respondent's principal misconduct in the Reed and Gress matters occurred before the Supreme Court had issued its opinion in Respondent's previous disciplinary matter while the failure to respond to DCO related to those matters occurred after, in April, May, and October of 2022. We give this aggravating factor some weight since it is only partially applicable to Respondent's prior record.
2. A dishonest or selfish motive. ABA Standard 9.22(b). In forging an official document, Respondent acted dishonestly and selfishly in order to conceal his inaction.
3. A pattern of misconduct. ABA Standard 9.22(c). Respondent's prior record of engaging in dishonesty and failing to cooperate with the Bar indicate a pattern of misconduct. We may also consider this an aggravating factor based on Respondent's conduct spanning multiple client matters. *In re Obert*, 336 Or 640, 653 89 P.3d 1173 (2004)(finding pattern of misconduct when accused lawyer had neglected several clients and committed multiple rule violations).
4. Multiple offenses. ABA Standard 9.22(d). Respondent has committed five rule violations.
5. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to the Bar on October 18, 2004.

Respondent has not demonstrated any mitigating circumstances.

Oregon Case Law

Oregon case law supports our conclusion that disbarment is the proper sanction. The Oregon Supreme Court has disbarred lawyers for forging court documents with the intent that others rely on them. In *In re Kirkman, supra*, the attorney prepared and presented a fraudulent judgment for dissolution of marriage to his mistress with the intent that she rely on it as genuine. The mistress did rely on it and the couple then married. Following discovery that the divorce document was falsified, the marriage was annulled. *Id* at 183.

The court found that this misconduct violated the predecessor rule to RPC 8.4(a)(2) regardless of whether there was a criminal conviction for the misconduct. The court stated that the intentional misrepresentation so adversely reflected on the lawyer's fitness to practice law that only significant mitigating circumstances could warrant a sanction less than disbarment. The court did not find the attorney's four mitigating factors under the Standards to be sufficiently compelling and he was disbarred. *Id* at 186. *See also, In re Leonhardt*, 324 Or 498, 930 P.2d 844 (1997)(District attorney in violation of predecessor rule to RPC 8.4(a)(2) disbarred for altering grand jury indictment with false statement intending for the court and the defendants' attorney to rely on it as true when aggravating circumstances outweighed mitigating circumstances).

In this case, the Respondent prepared and presented fraudulent letters testamentary to his client with the intent that she rely on them. Not only did she rely on them, the IRS and a bank relied on them.

Respondent's case presents a weaker argument for a lesser sanction that did the lawyer in *Kirkman*. Respondent has not shown any mitigating circumstances. This is a direct consequence of his decision not to participate in the disciplinary process.

In addition, Kirkman's forgery was designed only to further his personal interest in a romantic relationship while Respondent's misconduct occurred in the representation of a client. A lawyer's duty to their client is a lawyer's most important duty. ABA Standards at 4. We can say here what the court said in *Kirkman*: "Because the accused's misconduct is so great, because the nature of the misconduct is so destructive of truth and honesty, because public confidence in the integrity of the legal profession is so important, and because appropriate discipline deters unethical conduct, we conclude that the accused must be disbarred." 313 Or at 188.

We find that Respondent should be disbarred here as well.

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, id.* Accordingly, we find that Respondent should be disbarred on the date on which this opinion becomes final.

Respectfully submitted this 2nd day of May, 2023.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Frank J. Weiss

Frank J. Weiss, Attorney Panel Member

/s/ Natasha P. Voloshina

Natasha P. Voloshina, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)	
)	
LOUIS PAUL MARCANTI,)	
Bar No. 184016	)	Case Nos. 21-77, 22-09, 22-10, 22-88,
	)	22-89, 22-90, 22-102, & 22-107
Respondent.)	

Counsel for the Bar: Matthew S. Coombs

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator
Faith M. Morse

Disposition: Violation of RPC 1.3, RPC 1.4(a) (2 counts), RPC 1.4(b) RPC 1.5(a), RPC 1.15-1(a), RPC 1.15-1(b), RPC 1.15-1(d), RPC 1.16(a)(1), RPC 3.3(a)(1), RPC 3.4(c), RPC 5.5(a) (4 counts), RPC 8.1(a)(1), RPC 8.1(a)(2) (4 counts), RPC 8.4(a)(3) (4 counts), and ORS 9.160(1) (4 counts). Trial Panel Opinion. Disbarment.

Effective Date of Opinion: June 20, 2023

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged Respondent Louis P. Marcanti with 27 rule or statutory violations involving nine consolidated cases. Respondent is alleged to have violated fifteen Rules of Professional Conduct (RPCs) and one statutory prohibition. His alleged misconduct includes making misrepresentations to his clients (RPC 8.4(a)(3)); making misrepresentations to Disciplinary Counsel's Office (DCO) (RPC 8.1(a)(1)); failing to respond to DCO investigations (RPC 8.1(a)(2)); criminal conduct that reflects adversely on his fitness as a lawyer (RPC 8.4(a)(2)); disobeying the order of a tribunal (RPC 3.4(a)); neglect (RPC 1.3); failure to communicate with his client (RPC 1.4(a) and (b)); and charging an excessive fee (RPC 1.5(a)). The Bar argues that the intentional nature of Respondent's misconduct, his complete disregard for the Bar's efforts to investigate his conduct, and the significant injuries Respondent caused his clients, the legal profession, and the Bar, require that we disbar Respondent.

Respondent filed no answer to the charges against him and is in default. As discussed below, we find that the charges are supported by the allegations in the amended formal complaint. We further find that the appropriate sanction in this case is disbarment.¹

PROCEDURAL POSTURE

On December 14, 2022, the Bar filed a second amended formal complaint. Respondent was served with that complaint that same day. Respondent failed to answer the complaint within the time allowed by BR 4.3. The Bar notified Respondent of its intent to seek default in the event Respondent failed to file an answer within ten days of the notice. Respondent still filed no answer.

The Bar moved for an order of default on January 11, 2023. The motion was granted. When an order of default is entered, we are to treat the Bar's factual allegations against Respondent to be true. *See*, BR 5.8(a); *In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004); *In re Kluge*, 332 Or 251, 27 P3d 102 (2001). We then determine whether the facts support the charged disciplinary rule violations and, if so, what sanction is appropriate. *See*, *In re Koch*, 345 Or 444, 198 P3d 910 (2008).

We discuss each cause of complaint below in the order in which they were pleaded.

ANALYSIS OF THE CHARGES

Trust Account Violations (Case Nos. 21-77, 22-09, & 22-10) - First and Second Causes of Complaint

Facts

DCO received an insufficient funds notice on June 25, 2021 from Columbia Bank about Respondent's lawyer trust account. DCO requested Respondent's response to this grievance by letter of July 2, 2021. The letter was sent to the address and the email address that Respondent had on record with the Bar. Neither were returned as undelivered. ¶ 3²

Respondent emailed acknowledgment of receipt of DCO's email that same day. Respondent emailed DCO again on July 12, 2021 and said he would respond, but he never actually replied in substance to the July 2, 2021 letter. ¶ 4.

On August 2, 2021, DCO sent another letter requesting Respondent's response to the insufficient funds notice from Columbia Bank. The letter was sent to Respondent at his email address as well as his mailing address, by both first class and by certified mail, return receipt requested. The certified mail receipt was signed on or about August 5, 2021. Respondent did not reply to DCO's August 2, 2021 letter. ¶ 5.

On August 20, 2021, DCO filed a BR 7.1 petition for an order administratively suspending Respondent for failing to respond to DCO's inquiries. Respondent was notified of this petition by both first-class mail and email. Respondent replied by email on or about August 20, 2021, stating he was experiencing severe COVID-19 symptoms and was unable to respond.

¹ The public member on the panel was unable to participate in the decision in this case. However, since this decision is supported by the two remaining panel members, who constitute a majority, the Adjudicator has determined that it is appropriate to issue it.

² Paragraph citations are to the second amended formal complaint.

By letter of August 31, 2021, DCO requested the Adjudicator delay consideration of the Bar's BR 7.1 petition until Respondent had recovered. ¶ 6.

On October 1, 2021, Respondent contacted DCO explaining he was recovering from COVID-19 and would provide a response to DCO's inquiries. On October 22, 2021, after receiving no further communications from Respondent, DCO requested the Adjudicator reconsider the BR 7.1 petition. On October 27, 2021, the Adjudicator issued an order suspending Respondent under BR 7.1, until such time as he responds to DCO. ¶ 7.

DCO also served Respondent with a copy of a subpoena to Columbia Bank to produce his IOLTA records, in February 2022. Pursuant to the subpoena, DCO received records showing that Respondent prematurely removed client funds from the trust account prior to the overdraft, deposited his own funds into trust to pay a settlement, and used another client's money to cover a settlement check that had insufficient funds. ¶ 10.

On June 21, 2021, Respondent transferred \$500 from his personal savings account to his trust account. This transfer was not used to pay bank fees or to meet a minimum balance requirement. ¶ 11.

That same day Respondent wrote a check for \$2,500 from his trust account to his client Nichole Konoloff (Konoloff), against an available balance of \$2,251. On July 23, 2021, Respondent deposited a \$100,000 settlement check for an unrelated client, Leticia Navarette (Navarette) in his trust account. On July 30, 2021, Respondent's \$2,500 check to Konoloff cleared, using part of Navarette's settlement funds to pay it. ¶ 12.

In July and August 2021, Respondent received a total of \$225,000 in settlement funds on behalf of Navarette. He issued cashiers' checks to Navarette totaling \$130,000, leaving \$95,000 in trust, which consisted of both his earned attorney's fees, as well as additional client funds belonging to Navarette. Respondent did not promptly withdraw his earned fees from his trust account. Instead, over the next six months, he distributed the funds piecemeal through a series of unrelated transactions, and commingled his own earned funds with unearned client funds in his trust account. ¶ 13.

On January 10, 2022, Respondent deposited a \$95,000 settlement check into his trust account for another client, Teresa Sylvester (Sylvester), and issued a cashier's check to her for \$45,000 later that month, leaving \$50,000 in trust, which he did not promptly withdraw from his trust account. Instead, he distributed the funds through a series of unrelated transactions over the course of several weeks.

Charges

- a. Respondent failed to hold funds belonging to clients or third persons separate from his own property.

RPC 1.15-1(a) states:

"A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the lawyer's office is situated...."

The allegations establish that Respondent used funds remaining after proper payments to clients as payments to himself or other clients. Respondent's refusal to cooperate with DCO's investigation makes it impossible to trace all of the funds to see which may have properly belonged to Respondent as earned attorney's fees and/or for reimbursements for expenses or litigation costs Respondent advanced. We agree with the Bar, however, that Respondent continued to commingle his own earned funds with client funds and used his trust account as a general operating account for over six months in violation of RPC 1.15-1(a).

- b. Respondent deposited his own funds into trust for reasons other than bank service fees or minimum balance requirements.

RPC 1.15-1(b) provides:

"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."

On June 21, 2021, Respondent transferred \$500 from his personal savings account with Columbia Bank to his trust account. This transfer was not intended to pay bank fees or meet a minimum balance requirement. The deposit was intended to cover two checks Respondent wrote from the trust account later that same day to insure there were sufficient funds in the account for the checks to process. This conduct violated RPC 1.15-1(b).

- c. Respondent failed to respond to DCO inquiries.

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."

Respondent failed to respond to DCO inquiries regarding his lawyer trust account. On July 2, 2021, DCO sent a letter regarding the overdraft to Respondent at his email address and mailing address on record with the Bar. Neither the letter nor the email were returned undelivered. Respondent also acknowledged receipt of the letter by email that same day.

On August 2, 2021, DCO sent a second follow up letter to Respondent at his record email and mailing address. Respondent again responded by email on August 20, 2021. These facts confirm that Respondent received DCO's inquiries, but knowingly failed to respond in substance. Respondent was also given multiple opportunities to respond to the Bar's BR 7.1 Petition between August 20 and October 22, 2021, but failed to do so. Respondent violated RPC 8.1(a)(2).

Dishonesty in communication to DCO regarding Respondent's suspended status (Case Nos. 21-77, 22-09, & 22-10) – Third Cause of Complaint

Facts

On October 27, 2021, the Adjudicator suspended Respondent pursuant to BR 7.1 due to his failure to respond to DCO's inquiries.

Shortly thereafter, in November 2021, Respondent was appointed as pro bono counsel in a matter before the United States District Court for the District of Oregon. Respondent filed a pro bono appointment response form in the matter in December 2021, stating that he "is currently not in good-standing with the Oregon State Bar." The court then removed him as appointed counsel. ¶ 17.

On or about August 11, 2022, Respondent sent a letter to DCO stating that he was unaware of his suspension. Respondent's statement was false, Respondent knew it was false at the time he made the statement, Respondent's statement was material to the Bar's investigation, and Respondent knew it was material to the Bar's investigation when he made the statement. ¶ 18.

Charges

- a. Respondent made a false statement of material fact in connection with a disciplinary matter.

RPC 8.1(a)(1) states:

"An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: (1) knowingly make a false statement of material fact..."

We are to apply the same analysis in deciding whether an attorney violated RPC 8.1(a)(1) as we apply to a false statement allegation under the "misrepresentation" rule, RPC 8.4(a)(3). *In re Nisley*, 365 Or 793, 802, 453 P3d 529 (2019). When evaluating an affirmative misrepresentation, we ask whether the statement at issue was false when it was made, whether the lawyer knew that it was false at that time, whether the statement was material, and whether the lawyer knew it was material. A statement is material if it would or could have influenced the recipient's decision-making process, in this case the Bar when investigating a disciplinary matter. *Id.*

Respondent admitted in his filing with the federal court that he was aware of his suspended status in December 2021. Despite that, Respondent's August 11, 2022 letter to DCO stated that he was unaware of his suspension. We find that this representation was false and Respondent knew it was false at the time he made it.

Whether Respondent was aware of his suspended status was material to the Bar's investigation. At the time of Respondent's August 11 letter DCO was investigating Respondent's conduct following his administrative suspension in October of 2021. Respondent's knowledge of his suspended status is material to whether he made proper disclosures to his clients regarding his suspension. Finally, Respondent made his representation to DCO to excuse his conduct, which demonstrates his own belief that the statement is material. Respondent's conduct violated RPC 8.1(a)(1).

**The Konoloff Matter (Case Nos. 21-77, 22-09, & 22-10) –
Fourth and Fifth Causes of Complaint**

Facts

While administratively suspended, Respondent represented Konoloff and Jason Eaves (Eaves) in *Konoloff & Eaves v. Safeco & Subaru of America*, United States District Court for the District of Oregon Case No. 20-cv-01622. Respondent signed and filed a motion on his letterhead on or around November 10, 2021; appeared at a hearing on or around November 15, 2021; filed a supplemental memorandum on or around March 3, 2022; and filed two additional pleadings in July of 2022, all while suspended. The district court dismissed the case on summary judgment. Thereafter, Respondent filed a motion for extension of time to object to the dismissal and acknowledged that he was not in good standing with the Bar. ¶ 21.

Respondent sent an email on December 24, 2021 to Eaves regarding the case. On March 17, 2022, Respondent spoke with Eaves and Konoloff about the case. Eaves told DCO in September of 2022, that he was completely unaware of Respondent’s suspended status despite having communicated with Respondent on at least two occasions. Respondent was aware of his suspension at the time of the communications and failed to tell his client he was suspended. This information was material to the representation of his client and Respondent knew it was material. ¶ 25.

Charges

a. Respondent engaged in the unauthorized practice of law.

RPC 5.5(a) provides:

“A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.”

In Oregon, the practice of law is defined as, “consultation, explanation, recommendation or advice or other assistance in selecting particular forms” and how those forms should be used. *Oregon State Bar v. Gilcrest*, 272 Or 552, 563, 538 P2d 913 (1975). Practicing law also includes, “the drafting or selection of documents and the giving of advice” that requires informed and trained discretion. *Oregon State Bar v. Sec. Escrows, Inc.*, 233 Or 80, 89, 377 P2d 334 (1962).

Respondent’s license to practice law was suspended on October 27, 2021. Despite his suspension, Respondent continued to draft and file pleadings and appear as a lawyer in the Konoloff matter, thus engaging in the practice of law in violation of RPC 5.5(a).

b. Respondent practiced while not an active member of the Bar.

ORS 9.160(1) also provides:

“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.”

As discussed above, Respondent practiced law in the Konoloff matter when he was not licensed to do so in Oregon in violation of ORS 9.160(1).

- c. Respondent made a misrepresentation by omission to his clients that reflects adversely on his fitness to practice.

RPC 8.4(a)(3) states:

“It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.”

We use the same analysis here that we did when considering Respondent’s false statement to DCO. *Nisley*, 365 Or at 793.

Respondent omitted disclosure of his suspended status to his clients. We have found that Respondent was aware of his suspension. Despite this knowledge, Respondent failed to mention his suspension to Eaves while he worked on his case and communicated with him. The court has held “[that] a lawyer’s eligibility to practice law is material in the context of an attorney-client relationship and that a lawyer who renders legal services to a client while intentionally failing to disclose his or her suspended status violates [the rule prohibiting misrepresentations].” *In re Jaffee*, 331 Or 398, 401, 15 P3d 533 (2000) citing *In re Whipple*, 320 Or 476, 487, 886 P2d 7 (1994). Respondent’s conduct violated RPC 8.4(a)(3).

The Sylvester Matter (Case Nos. 21-77, 22-09, & 22-10) – Sixth Cause of Complaint

Facts

As discussed above, Respondent received settlement funds for his client Sylvester in her personal injury matter in January 2022, in the amount of \$95,000 and subsequently disbursed \$45,000 to Sylvester. ¶ 28.

In February 2022, Respondent sent text messages to Sylvester stating he was collecting a contingent fee and unidentified costs in the amount of \$25,000 and holding \$25,000 in trust based on a personal injury protection reimbursement claimed by Sylvester’s insurance company. ¶29.

After receiving the initial disbursement, Sylvester requested a detailed accounting of funds received by Respondent on her behalf, which Respondent failed to provide. ¶ 30.

Sylvester had not heard from Respondent since February 3, 2022. She sent messages to him on May 11, 2022, and July 11, 2022, and left one voicemail asking for an update. ¶ 31.

In July 2022, Sylvester exchanged text messages with Respondent in an effort to set up a call to discuss the \$25,000 still held in trust. No telephone call ever occurred. In these communications, Respondent failed to disclose his suspended status to Sylvester, despite Respondent’s knowledge of his suspension. This information was material to the representation of his client and Respondent knew it was material. ¶ 32.

In August 2022, Sylvester learned of Respondent’s suspension through contact with the Bar. On August 8, 2022, Sylvester sent a message to Respondent stating this and demanded an accounting and an update on her matter. To date, Respondent has not responded to Sylvester. ¶ 33.

Charges

- a. Respondent failed to keep his client reasonably informed about the status of a matter and failed to promptly comply with reasonable requests for information.

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 analyzing whether this rule was violated we must 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. *In re Graeff*, 368 Or 18, 26, 485 P3d 258 (2021), citing, *In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011). The court has also noted that circumstances may require a lawyer 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 at 26. In *Graeff*, the court found a violation even though the attorney’s failure to communicate with his clients extended over a relatively short period of time, because it occurred during a critical phase of their matter, i.e., a summary judgment motion had been filed against the clients’ complaint and needed a response. *In re Graeff*, 368 Or at 25-26.

Here, following receipt of Sylvester’s settlement check, Sylvester requested an update on the \$25,000 that Respondent held in trust. Over a period of seven months, Sylvester attempted to set up a call that ultimately never occurred and received no substantive update from Respondent. Sylvester’s requests for updates were reasonable. We find that Respondent violated RPC 1.4(a).

- b. Duty to provide a full accounting upon request.

RPC 1.15-1(d) provides:

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

Sylvester requested an accounting of her settlement funds when the check was received in January 2022. To date, Respondent has provided no accounting. We find that Respondent’s failure to comply with his client’s request violated RPC 1.15-1(d).

- c. Respondent engaged in conduct involving misrepresentation that reflects adversely on his fitness to practice.

Respondent failed to disclose his suspension to Sylvester. As with Eaves, above, the failure to make such a disclosure is a violation of RPC 8.4(a)(3).

The Ashford Matter (Case Nos. 22-89 & 22-90) – Seventh Cause of Complaint

Facts

Respondent filed a complaint in Marion County Circuit Court on July 19, 2022 seeking damages in the amount of \$3,445,000 on behalf of the Estate of Stephanie Leighan Ashford (the Estate) for claims related to an automobile accident that caused Ashford’s death (the Ashford Complaint). ¶ 36.

The Ashford Complaint identifies the plaintiffs as, “Angelina Hirata and Janet Rosgen, Personal Representatives for the Estate of Stephanie Leighan Ashford.” The signature block of the Ashford Complaint states that Angelina Hirata (Hirata) and Janet Rosgen (Rosgen) are “to be appointed co-Personal Representative of the Estate.” The Ashford Complaint bears Rosgen’s electronic signature, but does not include Hirata’s signature. Respondent identifies himself on the Ashford Complaint as “[o]f Attorneys for the Plaintiff.” ¶ 37.

On August 1, 2022, one of the defendants and an attorney for another of the defendants contacted the Bar to complain that Respondent had filed the case while his license to practice law was suspended. ¶ 38. The defendant who contacted the Bar indicated that her insurance company had already settled the claim against her. A complaint had already been filed by the Estate by another attorney, Robert Wolf (Wolf), on behalf of the already-appointed personal representative, Hirata. Those proceedings were pending dismissal upon approval of the settlement in probate court in Marion County. ¶ 39. Wolf subsequently contacted Respondent to notify him of the duplicate filing. ¶ 40.

On August 10, 2022, Hirata filed a declaration in the case filed by Respondent stating, “I have not retained [Respondent] to act as my attorney at any time, nor have I authorized him to file a lawsuit on my behalf, either as an individual or in my capacity as personal representative.” ¶ 41.

Respondent’s statement in the Ashford Complaint that he represented Hirata as personal representative of the decedent was false, he knew it was false at the time it was made, knew it was material, and knew it was material at the time he made the representation to the court. Even after Wolf told Respondent that he already had filed a complaint on Hirata’s behalf, Respondent failed to notify the court of his misrepresentation. ¶ 42. On September 26, 2022, the court dismissed the Ashford Complaint pursuant to a motion filed by the defendants. ¶ 43.

On August 19, 2022, DCO sent correspondence to Respondent inquiring about the Ashford Complaint. The letter was sent to the address and the email address that Respondent had on record with the Bar. Neither were returned as undelivered. Respondent failed to respond to this inquiry and subsequently was suspended pursuant to BR 7.1.

Charges

- a. Respondent engaged in the unauthorized practice of law.

Respondent was suspended when he filed the Ashford Complaint in violation of RPC 5.5(a).

- b. Respondent practiced while not an active member of the Bar.

Filing the Ashford Complaint while suspended also violated ORS 9.160(1).

c. Respondent made a false statement of fact to a tribunal.

RPC 3.3(a)(1) states:

“A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law made to a tribunal by the lawyer.”

In order to establish that an attorney has made a false statement in violation of RPC 3.3(a)(1), the Bar must show that the lawyer made a representation to a tribunal, either directly or by omission, which he knows is false and material. *In re Jackson*, 347 Or 426, 436, 373 P3d 426 (2009); *In re Lawrence*, 337 Or 450, 98 P3d 366 (2004); *In re Worth*, 337 Or 167, 92 P3d 721 (2004); *In re Davenport*, 334 Or 298, 49 P3d 91, *recon*, 335 Or 67 (2002). As noted above, a representation is material if it would or could significantly influence the hearer’s decision making process. *Id.* The Bar need not establish reliance on the misrepresentation, only that it could have influenced the decision-maker. *In re Summer*, 338 Or 29, 105 P3d 848 (2005).

Respondent filed the Ashford Complaint representing that he was counsel for Hirata. Hirata’s declaration directly contradicts that statement. Respondent’s representation was false. It was also material to the court to know whether counsel actually represented a party to the case.

We find based on the allegations in the complaint that Respondent knew he did not represent Hirata when he made the representation to the court and to the defendants that he did. Further, it is indisputable that Respondent knew of the misrepresentation after his conversation with Wolf. Despite that, Respondent did not notify the court of his misrepresentation.

Respondent knowingly made a false statement of fact to a tribunal and knowingly failed to correct a false statement of material fact, in violation of RPC 3.3(a)(1).

d. Respondent again failed to respond to disciplinary inquiries.

On August 19, 2022, DCO sent correspondence to Respondent asking for an explanation regarding the Ashford Complaint. Respondent did not respond in any way. On September 22, 2022, DCO petitioned the Disciplinary Board Adjudicator for an additional suspension pursuant to BR 7.1, which the Adjudicator granted on October 11, 2022. Respondent has not responded to either communication. His silence violated RPC 8.1(a)(2).

The Rodriguez Matter (Case Nos. 22-89 & 22-90) – Eighth Cause of Complaint

Facts

Respondent filed a complaint on August 8, 2022 alleging wrongful death, among other claims, on behalf of Leticia Navarette as personal representative of the Estate of Joseph Rodriguez in Marion County Circuit Court (the Rodriguez Matter). The document bears Respondent’s signature and identifies him as, “[o]f Attorneys for the Plaintiff.” ¶ 47.

On August 10, 2022, the court sent correspondence to Respondent notifying him of his suspended status with the Bar, directing Respondent to file substitution documents within 10 days, and notifying him that failure to do so would result in dismissal of the case. Soon thereafter, the court appointed replacement counsel to aid the plaintiff in the Rodriguez Matter in effectuating service of the complaint. ¶ 48.

Charges

- a. Respondent again engaged in the unauthorized practice of law.

When he filed the Rodriguez Complaint while suspended Respondent again violated RPC 5.5(a).

- b. Respondent practiced while not an active member of the Bar.

Similarly, when Respondent filed the Rodriguez Complaint he again violated ORS 9.160(1).

The Workers' Compensation Matter (Case No. 22-88) – Ninth Cause of Complaint

Facts

On February 3, 2021 and June 16, 2021, Respondent appeared before an administrative law judge (ALJ) in the hearings division of the Oregon Workers' Compensation Board (WCB). Respondent successfully argued that the State Accident Insurance Fund's (SAIF) partial denial of coverage for his client's on-the-job injury was improper. The ALJ issued an order to that effect on October 18, 2021. ¶ 51.

Respondent was awarded \$12,000 in attorney fees determined by the ALJ based on the matter being of "average medical complexity," involving two depositions and two hearings. ¶ 52.

SAIF appealed the ALJ's decision to the WCB. As detailed above, Respondent was suspended from practicing law that same day the appeal was filed. Despite knowing of his suspension, Respondent failed to withdraw from representation of his client before the WCB and continued to provide legal services. ¶ 53.

SAIF filed an opening brief on December 14, 2021. Respondent filed a response brief on January 7, 2022. SAIF filed its reply brief on January 21, 2022. On review, and without oral argument, the WCB ultimately upheld the decision of the ALJ in a decision issued on May 19, 2022, and ordered SAIF to pay Respondent's fee for attorney services provided at the board review level. ¶ 54.

Respondent filed a petition for attorney fees incurred on the appeal with the WCB on July 19, 2022. Respondent submitted billing records claiming that he spent 435.5 hours working on the appeal at a rate of \$270 per hour and requested a total award of \$117,585. Of those 435.5 hours, 429.5 hours were billed while Respondent was suspended. ¶ 55.

SAIF filed a response to the petition on July 21, 2022. In that response, SAIF detailed a variety of reasons that Respondent's request was unreasonable. ¶ 56. Those reasons include, but are not limited to, the following:

- a. From November 2, 2021³ to January 3, 2022, Respondent claimed he conducted a "massive medical file review and undertaking for Appellee's Reply Brief in this Medically Complex case w/ 7 differing doctors opinions and thousands of pages of medical records." In total, Respondent claimed he spent 81.5 hours reviewing these records. This is alleged to be unreasonable because the case at

³ The Bar points out that most of the entries following November 2, 2021 are recorded in seven, eight, or nine hour blocks of time in a single day.

the appellate level before the WCB had a closed record consisting of 37 exhibits totaling less than 100 pages. Further, Respondent was the attorney of record when the case was tried before the ALJ in the hearings division and thus was already familiar with the record.

- b. From January 1, 2022 to January 7, 2022, Respondent claimed he spent 48 hours on research, preparation, drafting and submission of his response brief to the WCB.⁴ This is alleged to be unreasonable because the brief submitted by Respondent was nine pages long and cited only three cases, all of which had already been cited by the ALJ, SAIF or both.
- c. Following the submission of his response brief on January 7, 2022, Respondent claimed he spent an additional 24 hours reviewing medical records. This is alleged to be unreasonable because his brief was submitted, and again, the record before the WCB was less than 100 pages long.
- d. From January 21, 2022 to January 27, 2022, Respondent claimed he spent 32 hours “Reading and Reviewing” SAIF’s reply brief. This is alleged to be unreasonable because SAIF’s reply brief was less than three pages long.
- e. From January 31, 2022 to February 6, 2022, Respondent claimed he spent 37 hours researching issues related to recovery of his attorney fee and eight hours drafting a motion to bifurcate the issue of attorney fees. This is alleged to be unreasonable because the motion to bifurcate cited one administrative rule and was one page long.
- f. In February of 2022, Respondent claimed he spent 43 hours on research and preparation for “Supreme Court Appeal by either side,” “second reply brief,” and “Supreme Court final appeal.” This is alleged to be unreasonable because the WCB had not yet issued its decision and no appeal had been made to the Oregon Court of Appeals or to the Oregon Supreme Court.
- g. In March and April of 2022, Respondent claimed he spent 54.5 hours on an “extensive file review” and “medical literature review.” This is alleged to be unreasonable because the briefing had been completed.

Following the submission of SAIF’s response detailing its objections the WCB issued a decision on September 6, 2022. The order denied any award of fees stating, “[the request for attorney fees] has been submitted by an individual that is not qualified to practice law. Under such circumstances, we deny the request for a determination of a reasonable attorney fee award.”

On August 19, 2022, DCO sent correspondence to Respondent inquiring into the events surrounding his request for an award of attorney fees before the WCB. The letter was sent to the address and the email address that Respondent had on record with the Bar. Neither were returned as undelivered. Respondent failed to respond and subsequently was suspended pursuant to BR 7.1.

⁴ The Bar noted that Respondent billed eight hours on January 7, 2022 for “submission” of the brief.

Charges

a. Respondent charged a clearly excessive fee.

RPC 1.5(a) provides:

“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.”

Respondent’s attorney fee request submitted to the WCB is considered “charged” under this rule regardless of whether it was ultimately billed or collected. *In re McGraw*, 362 Or 667, 680, 414 P3d 841 (2018) (submitting request to adjudicatory body considered “charged” even if denied).

The Bar notes that RPC 1.5(b) states “[a] fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.” Respondent’s fee is alleged to be excessive, and we agree. We find that no reasonable attorney could conclude that the fee charged was reasonable. The fact that Respondent billed an average of 10 hours of attorney time per page “reading and reviewing” a document to which no response was required alone demonstrates a clearly excessive fee. We find that Respondent violated RPC 1.5(a).

b. Respondent engaged in the unauthorized practice of law.

Respondent’s records demonstrate again that he practiced law while suspended in violation of RPC 5.5(a).

c. Respondent practiced while not an active member of the bar.

Respondent again violated ORS 9.160(1) when he practiced while suspended.

d. Respondent did not withdraw from representation even though the representation resulted in violation of an RPC.

RPC 1.16(a)(1) states:

“Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if ... the representation will result in violation of the Rules of Professional Conduct or other law.”

Respondent failed to cooperate with DCO’s investigation in the Trust Account Matter (discussed above), resulting in his suspension pursuant to BR 7.1. When he received SAIF’s notice of appeal of the ALJ’s decision, he could have responded to DCO’s requests in order to have the suspension lifted and proceed to lawfully represent his client before the WCB. He never has done so.

Respondent should have withdrawn from the representation to avoid practicing while suspended in violation of RPC 5.5(a). He failed to withdraw, and continued to practice before the WCB for several months without an active law license, in violation of RPC 5.5(a) (discussed above). Accordingly, Respondent also violated RPC 1.16(a)(1).

e. Respondent again failed to respond to disciplinary inquiries.

On August 19, 2022, DCO sent correspondence to Respondent inquiring into the events surrounding his request for an award of attorney fees before the WCB. The letter was sent to

the address and the email address that Respondent had on record with the Bar. Respondent failed to respond. As discussed above, this is a violation of RPC 8.1(a)(2).

The Willhite Matter (Case No. 22-102) – Tenth and Eleventh Causes of Complaint

Facts

In December 2018, Nancy Willhite (Willhite) engaged Respondent to pursue a personal injury claim on her behalf. ¶ 61. On May 18, 2020, Respondent filed a complaint in Multnomah County Circuit Court. The defendants' insurance company promptly engaged counsel, who sent Respondent an ORCP 69 notice of intent to appear on May 27, 2020. The defendants were served on or about June 18, 2020. ¶ 62.

The court issued a notice to Respondent on August 26, 2020, noting that a proof of service had been filed, 91 days had elapsed since the filing of the complaint and that the matter would be dismissed unless an order for default was applied for, an affidavit indicating why there is good cause to continue the case was filed or the defendant appeared, within the next 28 days. ¶ 63.

Respondent received a request for production of documents from defendants in June of 2020 and requested several extensions before providing documents in September of 2020. The same day he produced the documents, he sent a demand for settlement. Defense counsel expressed at the time that the settlement proposal could not be substantively responded to because the documents provided were incomplete. The parties then proceeded with additional discovery and a deposition of Willhite was noticed for October 29, 2020. ¶ 64.

Just prior to the beginning of the deposition, Respondent notified defendants' counsel that Willhite was deaf and could not participate in the remote deposition without accommodations being made. At this time, Respondent represented to his client that he would work on scheduling a deposition that would accommodate her disability. ¶ 65.

On November 13, 2020, the court dismissed Willhite's case based on Respondent's failure to prosecute the matter. That day, Respondent contacted counsel for the defendants, asking them to file an answer. ¶ 66.

On November 17, 2020, defendants' counsel attempted to file an answer, but the court rejected the filing because the case had been dismissed. Defense counsel told Respondent, who stated he would file a motion to reinstate the case. ¶ 67.

Defense counsel again spoke with Respondent on March 12, 2021, when Respondent stated he would file the motion within the next week. Over the next seven months, defense counsel reached out to Respondent three more times for an update on the motion to reinstate. Respondent did not respond and never filed a motion to reinstate. ¶ 68.

From October of 2020 to November of 2021, Willhite received no communication from Respondent. ¶ 71. On November 8, 2021, Willhite received a message from Respondent stating that he was having personal problems and had relocated his office to southern Oregon. Respondent did not disclose that he had been suspended from the practice of law. This information was material to the representation of his client and Respondent knew it was material. ¶ 72.

In February of 2022, Respondent sent an email to Willhite stating her case was still active. This statement was false, Respondent knew it was false, and made the statement knowing it was material to Willhite. In this communication, Respondent also again failed to

disclose his suspended status. This information was material to the representation of his client and Respondent knew it was material. ¶ 73.

Over the next six months, Willhite tried to contact Respondent several times for an update on her case. She received no response. She then contacted defense counsel directly and was told her case had been dismissed in November of 2020. ¶ 74.

On August 24, 2022, DCO sent correspondence to Respondent inquiring into the events surrounding his representation of Willhite. The letter was sent to the address and the email address that Respondent had on record with the Bar. Neither were returned as undelivered. Respondent failed to respond. ¶ 75.

Charges

a. Respondent neglected Willhite's case.

RPC 1.3 states:

“A lawyer shall not neglect a legal matter entrusted to the lawyer.”

A course of neglectful conduct or an extended period of neglect is a violation of the rule. *In re Jackson*, 347 Or 426, 435, 223 P3d 387, 393 (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). For example, the court has declared that a lawyer violated the rule when he repeatedly forgot to publish a notice of foreclosure in a client's case. *In re Ramirez*, 362 Or 370, 375-76, 408 P3d 1065 (2018). An extended period of neglect has been found when a lawyer failed to act during a time when action was required. For example, an attorney rendered some initial services to a domestic relations client, but neglected his client's legal matter when, during a two-month period, he failed to prepare for his client's temporary restraining order hearing. *In re Meyer*, 328 Or 220, 225, 970 P2d 647(1999).

Here, Respondent neglected to perform specific tasks for an extended period of time. Upon receiving the court's notice of pending dismissal for failure to prosecute the case, Respondent should have sent a notice of intent to take default to defense counsel, and, if an answer was not filed, sought entry of default. Instead, Respondent's failure to act resulted in dismissal of his client's case. It was only then that he asked defense counsel to file an answer. Following the rejection of the answer, Respondent should have promptly moved to reinstate the case within a reasonable period of time as required by ORCP 71(B)(1). He failed to take any substantive action for two years. He failed to do so despite his representations to his client that he would.

We find that Respondent violated RPC 1.3.

b. Respondent failed to keep his client reasonably informed about the status of a matter and failed to promptly comply with reasonable requests for information.

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.”

We discussed the factors we consider in determining whether a violation of RPC 1.4 occurred in the Sylvester matter, above.

In this matter, Respondent never told his client that her case had been dismissed. She only discovered the dismissal by contacting defense counsel. Further, she repeatedly tried to get in touch with Respondent from February of 2022 to August of 2022 and received minimal response. A reasonable attorney would foresee that delay in communicating such a critical case event would result in prejudice to their client. Respondent violated RPC 1.4(a).

c. Respondent breached his duty to sufficiently explain a legal matter.

Along with the duties set forth in RPC 1.4(a), RPC 1.4(b) goes on to provide:

“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 notify his client that her case was dismissed and that he was suspended. Lacking that information, Willhite was in no position to determine how to proceed with her case. Willhite was under the mistaken impression that Respondent was prosecuting an active case. He was not. Respondent violated RPC 1.4(b).

d. Respondent engaged in misrepresentation reflecting adversely on his fitness to practice.

RPC 8.4(a)(3) states:

“It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.”

We discussed the elements of this charge in analyzing the Konoloff case, above. Here, Respondent represented to Willhite in February 2022 that her case was still active. Respondent knew the case was not active. The statement was clearly material to his client.

Accordingly, we find that Respondent violated RPC 8.4(a)(3) when he affirmatively and falsely represented to his client that her case was still active in February 2022.

Respondent also misled his client when he failed to disclose the dismissal of her case when it occurred in November of 2020. He also failed to disclose this fact over the subsequent 15 months, a period in which Willhite made several attempts to contact Respondent. Misrepresentation by omission is also a violation of the rule. *In re Weidner*, 310 Or 757, 762, 801 P.2d 828 (1990) (misrepresentation is a broad term encompassing nondisclosure of a material fact); *In re Obert*, 336 Or 640, 649, 89 P3d 1173 (2004).

Respondent also violated RPC 8.4(a)(3) when he failed to disclose to Willhite that her case had been dismissed.

e. Respondent failed to respond to disciplinary inquiries.

On August 19, 2022, DCO sent correspondence to Respondent asking for his comments and insight regarding his representation of Willhite. Respondent has never responded in any way despite his receipt of DCO’s inquiries. Respondent again violated RPC 8.1(a)(2).

Respondent's Criminal Matter (Case No. 22-107) – Twelfth Cause of Complaint⁵

Facts

Respondent's former landlord filed a complaint on August 8, 2021 seeking possession of real property (the Residence) occupied by Respondent after the termination of his lease. The case went to trial in Tillamook County Circuit Court. Respondent participated in the trial. The court entered a general judgment granting possession of the Residence to the landlord effective October 10, 2021. Subsequently, the court issued a writ of execution ordering Respondent to vacate the Residence and granting local law enforcement the authority to remove Respondent from the Residence if he had not vacated by 11:59 p.m. on October 17, 2021. ¶ 78.

Notice of the court's directive was posted at the Residence on October 13, 2021. The notice stated, "[t]he Court has ordered you to move out of the property. You must move out no later than 11:59 p.m. on the Move Out Date." The Move Out Date listed on the notice was October 17, 2021. The order to move out is an obligation under the rules of a tribunal. ¶ 79.

Respondent made several telephone calls call to the Tillamook County Sherriff's office after entry of the judgment threatening that he was going to make it difficult for law enforcement to remove him from the Residence and that, if an attempt to remove him was made, he would "put up a fight" and livestream the incident on Facebook. ¶ 80.

On the afternoon of October 22, 2021, six law enforcement officers arrived at the Residence to remove Respondent. They were told by the Residence's owner that Respondent was not present, he had removed most of his belongings, the locks had been changed, and the writ of execution had been posted on the front and garage doors. ¶ 81.

The next day, at approximately 4:30 a.m., the Manzanita Department of Public Safety arrived at the Residence after receiving a call about a possible robbery. The owner informed law enforcement that they could hear an intruder moving around on the lower floor. ¶ 82.

When Officer John Garcia's (Garcia) arrived Respondent walked out of the Residence and stated that he was aware of the eviction and he was there to remove his remaining belongings. Respondent explained he was able to gain access to the Residence using his garage door opener. At this point, Garcia told Respondent he was being detained. Respondent disregarded the officer's statement, shook his head in a "no" manner, and began to walk back to the Residence. ¶ 83.

Fearing that Respondent's reentry into the Residence would create a risk of harm to the homeowners, Garcia grabbed Respondent from behind to stop him, but Respondent managed to get back into the Residence. Garcia stated in his report:

"I kept telling Marcanti to stop, but Marcanti was actively resisting trying to get away. I took Marcanti to the ground and was able to get [sic] one hand behind his back. Marcanti continued pulling away with his arms ..." ¶ 84.

Once Garcia handcuffed Respondent, Respondent was escorted to a patrol car and read his rights. Garcia asked Respondent why he was at the Residence when he knew he was not

⁵ This Bar notes that this cause was mistakenly identified as the Eleventh Cause of Complaint in the Second Amended Formal Complaint.

supposed to be there. In response, Respondent claimed he did not know he was not supposed to be there. Respondent was then transported to the Tillamook County Jail. ¶ 85.

Following Respondent's arrest, the Tillamook County District Attorney charged Respondent with criminal trespass in violation of ORS 164.255, and resisting arrest in violation of ORS 162.315, both misdemeanors. ¶ 86.

Respondent knew of his obligation to timely vacate the Residence. ¶ 87.

One is guilty of resisting arrest if, "the person intentionally resists a person known by the person to be a peace officer." ORS 162.315(1). "Resist," as used in the statute means, "the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person and includes, but is not limited to, behavior intended to prevent being taken into custody by overcoming the actions of the arresting officer." ORS 162.315(2)(c).

Charges

a. Respondent knowingly disobeyed an obligation under the rules of a tribunal.

RPC 3.4(c) states:

"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."

On October 12, 2021, the trial court issued a Notice of Restitution directed to Respondent. That notice stated, "[t]he Court has ordered you to move out of the property. You must move out no later than 11:59 p.m. on the Move Out Date." The Move Out Date listed on the notice was October 17, 2021. The order to move out is an obligation under the rules of a tribunal.

Respondent knowingly failed to vacate the Residence by the date and time indicated in the Notice of Restitution. He asserted no open refusal challenging that a valid obligation existed. He merely disobeyed the order. In doing so, Respondent violated RPC 3.4(c).

b. Respondent committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer.

RPC 8.4(a)(2) states:

"It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

Garcia's account of Respondent's arrest confirms that Respondent used physical force trying to overcome Garcia's attempts to subdue him. Respondent ignored Garcia's statement that Respondent was being detained. This resulted in Garcia having to wrestle Respondent to the ground in order to secure him with handcuffs. Respondent's actions created a substantial risk of physical injury to himself, Garcia, and the Residence's owner, who was inside the home at the time. Respondent's actions constitute resisting arrest in violation of ORS 162.315(1).

The Bar does not have to allege or prove that a lawyer has actually been convicted of the crime at issue in order to establish a violation of this rule. The Bar must merely demonstrate

that the conduct at issue constitutes a crime. See *In re Kirkman*, 313 Or 181, 184, 830 P2d 206 (1992). The Bar has done so here.

Commission of a criminal act, however, does not automatically violate the rule. The rule is only implicated if the crime reflects adversely on a respondent's fitness as a lawyer. In order to reach such a conclusion, "there must be some rational connection between the conduct and the actor's fitness to practice law." *In re White*, 311 Or 573, 589, 815 P2d 1257 (1991).

The court in *White* identified factors to consider when establishing that rational connection. They are, "[t]he 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 the presence or absence of a pattern of misconduct." *Id.* Three of the four *White* factors are present here, the only one lacking being a pattern of misconduct.

First, Respondent's knowing mental state is established by his calls to law enforcement that followed the order evicting him from the Residence. Respondent stated he would make law enforcement's removal of him from the Residence difficult and he followed through on that threat.

Second, Respondent's threats and actions demonstrate disrespect for both the legal order that he vacate the Residence and disrespect for the officer enforcing it. Respondent's threats and actual physical resistance to law enforcement created a heightened risk of injury to all concerned.

The Bar points us to *In re Jaffee*, 331 Or 398, 15 P3d 533 (2000). There the lawyer interfered with the arrest of a third party. The lawyer approached law enforcement in a threatening manner and caused the officers to become concerned for their own safety. *Id.* at 406. The court determined the conduct reflected poorly on his fitness to practice law in violation of the predecessor rule to RPC 8.4(a)(2), stating the lawyer's conduct, "threatened to turn an unpleasant but peaceful act of law enforcement into a violent confrontation with the officers as potential victims." The court continued, "lawyers are supposed to respect and vindicate the traditional process of reviewing the propriety of police actions in court, not attempt to circumvent those processes by initiating confrontations in the street." *Id.*

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

SANCTION

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

ABA Standards

The ABA Standards establish an analytical framework for determining the appropriate sanction in discipline cases using three factors: the duty violated; the lawyer's mental state; and the actual or potential injury caused by the conduct. Once these factors are analyzed, we make a preliminary determination of sanction, after which we may adjust the sanction based on the existence of recognized aggravating or mitigating circumstances. See *In re Nisley*, 365 Or 793, 815, 453 P3d 529 (2019).

Duty Violated

The most important ethical duties a lawyer owes are to their clients. ABA Standard at 4. In the Sylvester and Willhite matters Respondent violated the duty he owed to his clients to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate and provide an accounting upon request. ABA Standard 4.4. In the Trust Account matter, Respondent violated his duty to preserve client property when he failed to segregate client funds from his own. ABA Standard 4.1. In the Konoloff and Sylvester matters, Respondent violated his duty of candor to his clients when he failed to disclose that he had been suspended from practicing law and, in the Willhite matter, when he misrepresented the status of his client's case. ABA Standard 4.6.

Respondent violated his duty to the public when he committed a criminal act that reflects adversely on his fitness as a lawyer. ABA Standard 5.0.

Respondent violated his duty to the legal system when he made a false statement of material fact in the Ashford matter as well as when he refused to comply with a court order to vacate his former residence. ABA Standard 6.0

Respondent also violated the duties he owes as a professional. In the Workers' Compensation matter, Respondent violated his duty to refrain from charging an excessive fee. ABA Standard 7.0. In the Konoloff, Sylvester, Ashford, Rodriguez, and Workers' Compensation matters, Respondent violated the duty he owed to not engage in the unauthorized practice of law. ABA Standard 7.0. In the Trust Account, Ashford, Workers' Compensation, Willhite, and criminal matters, Respondent violated his duty to cooperate with disciplinary authorities. ABA Standard 7.0. In communicating with DCO, Respondent again violated his duty of candor when he represented that he was unaware of his suspension, when the evidence is to the contrary. ABA Standard 7.0. Finally, Respondent violated his duty to the legal profession when he failed to withdraw from representing his client in the Workers' Compensation matter when he was suspended after failing to respond to DCO inquiries. ABA Standard 7.0.

Mental State

The ABA Standards recognize three mental states: intent, knowledge, and negligence. "Intent" is when a lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* "Negligence" is the failure to be aware of a substantial risk that circumstances exist or that a result will follow, which failure deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

In each and every case, Respondent acted intentionally or knowingly. In the Workers' Compensation matter, Respondent acted intentionally when he charged an excessive fee. In the Willhite matter, Respondent acted knowingly when he failed to pursue his client's case and failed to adequately communicate with his client. He acted intentionally when he misrepresented the status of her case.

In his Trust Account violations, Respondent acted intentionally when he deposited his own funds into his trust account in order to avoid overdrawing the account. Respondent acted at least knowingly when he commingled his own funds with client funds and used his trust account to pay his personal expenses.

In the criminal proceeding, Respondent intentionally disobeyed the court's order to vacate his former residence and intentionally resisted arrest.

In communicating with DCO, Respondent intentionally misrepresented his knowledge of his status with the Bar when he stated he was unaware of his suspension although he made explicit references to his suspended status more than 8 months prior.

Respondent intentionally practiced law when he knew he was suspended. Despite repeated letters from DCO and BR 7.1 suspensions, Respondent has intentionally refused to substantively respond to DCO.

Extent of Actual or Potential Injury

For purposes of determining an appropriate disciplinary sanction, we may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). "Injury" is harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. "Potential injury" is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct.

Respondent's clients, the public, the legal profession, and the Bar have all sustained actual injury as a result of Respondent's misconduct. A client sustains actual injury when an attorney fails to actively pursue his client's case. *See e.g. In re Parker*, 330 Or 541, 546-47, 9 P3d 107 (2000). Respondent's lack of communication and neglect caused his clients to experience stress, frustration, and anxiety. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426-27, 939 P2d 39 (1997). "Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules." *In re Snyder*, 348 Or at 321.

Client Willhite suffered actual injury when Respondent's lack of diligence resulted in the dismissal of her lawsuit. Client Sylvester continues to suffer actual injury due to Respondent's refusal to provide her with an explanation where the \$25,000 he held for her benefit is.

Respondent's failure to cooperate with DCO's investigations in four separate matters also caused actual injury to the legal profession, the public, and the Bar. *In re Schaffner, supra*; *In re Miles*, 324 Or at 221-22; *In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993) (lawyer's failure to respond to the Bar's inquiries prejudices the Bar was prejudiced because it had to investigate in a more time-consuming way, and threatened public respect for the Bar when the Bar could not provide a timely and informed response to complaints). When Respondent made material misrepresentations to a court, to his clients, and to DCO, the legal profession was injured because a lawyer's dishonesty undermines public trust in the profession. *In re Worth*, 336 Or at 277. The unauthorized practice of law also inherently carries the potential to injure the legal system. *In re Devers* 328 Or 230, 242, 974 P2d 191 (1999).

Finally, Respondent's former landlord and law enforcement suffered potential injury when Respondent created a situation with a high risk of violence when he resisted arrest.

Preliminary Sanction

The following ABA Standards apply here:

Disbarment is generally appropriate when a lawyer engages in 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 and causes serious or potentially serious injury to a client, the public or the legal system. ABA Standard 7.1.

Suspension is generally appropriate when a lawyer 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 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 Standards 4.42(a), (b). Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. ABA Standard 7.2.

Aggravating and Mitigating Circumstances

The following factors recognized as aggravating under the ABA Standards are present here:

1. A dishonest or selfish motive. ABA Standard 9.22(b). Most, if not all, of Respondent's misconduct was selfishly motivated.
2. A pattern of misconduct. ABA Standard 9.22(c). "[A] pattern of misconduct does not necessarily require proof of a prior sanction. Rather, that aggravating factor bears on whether the violation is a one-time mistake, which may call for a lesser sanction, or part of a larger pattern, which may reflect a more serious ethical problem." *In re Bertoni*, 363 Or 614, 644, 426 P3d 64, 81 (2018). Here we find that Respondent's disregard of his ethical obligations across numerous matters and years, as well as his refusal to cooperate in the Bar's investigation of multiple complaints warrants application of this factor.
3. Multiple offenses. ABA Standard 9.22(d). We have found Respondent committed 28 separate violations of the Rules of Professional Conduct.
4. Deceptive practices during the disciplinary process. ABA Standard 9.22(f). Respondent knowingly made at least one false statement to DCO when he claimed he was unaware of his suspension.
5. Indifference to making restitution. ABA Standard 9.22(j). Respondent has chosen to ignore this proceeding and, thus, demonstrates an indifference to making restitution.

In mitigation, Respondent has offered nothing, having chosen to not appear and defend his conduct. The Bar points out that the record before us demonstrates:

1. Absence of a prior record of discipline. ABA Standard 9.32(a).
2. Personal or emotional problems. ABA Standard 9.32(c). Respondent claimed that personal problems, including COVID-19, negatively affected his wellbeing in the period of time relevant to these proceedings. We can give little weight to this factor, however, given Respondent's failure to engage with the disciplinary process and produce actual evidence of such.

Oregon Case Law

The Bar notes that Oregon cases support disbarment. A lawyer who engages in multiple instances of misconduct and fails to cooperate with disciplinary authorities is recognized as a threat to the profession and the public. *In re Bourcier* (II), 325 Or 429, 436, 939 P2d 604 (1997).

The Supreme Court has disbarred lawyers where the lawyers' collective misconduct demonstrates an intentional disregard for their clients, their professional obligations, and the disciplinary rules. The Bar cites to *In re Paulson*, 346 Or 676, 216 P3d 859 (2009). There the court order the respondent's disbarment, stating, "[t]his case distinguishes itself from those in which we have ordered long suspensions because of the multiple different matters in which the accused committed the violations." *Id.* (finding the lawyer had committed 11 violations in six separate matters). Here, Respondent has committed 28 violations over nine distinct sets of facts.

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

Here, Respondent's conduct implicates a wide variety of the Rules of Professional Conduct and demonstrates a persistent disregard for the duties that he owed to his clients, the public, and the legal profession. We order that Respondent be disbarred.

CONCLUSION

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

We find that the only sanction that adequately serve these goals is disbarment. We order that Respondent is hereby disbarred effective the date this decision becomes final.

Respectfully submitted this 17th day of May 2022.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Faith M. Morse

Faith M. Morse, Attorney Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
 MATTHEW T. PARKS, Bar No. 000895) Case No. 23-113
)
 Respondent.)

Counsel for the Bar:	Alison F. Wilkinson
Counsel for the Respondent:	David J. Elkanich
Disciplinary Board:	None
Disposition:	Violation of RPC 3.3(a)(1) and RPC 8.4(a)(4). Stipulation for Discipline. 60-day suspension.
Effective Date of Order:	May 25, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the stipulation for discipline entered into by Matthew T. Parks (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 May 25, 2023, or effective the date of this Order if signed after May 25, 2023, for violations of RPC 3.3(a)(1) and RPC 8.4(a)(4).

DATED this 25th day of May, 2023.

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

STIPULATION FOR DISCIPLINE

Matthew T. Parks, 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 26, 2000, and has been a member of the Bar continuously since that time, having his office and place of business in Klamath County, Oregon.

3.

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

4.

On April 29, 2023, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 3.3(a)(1) and RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Donald Collins Alexander (the decedent) and Elizabeth Barber (Barber) divorced pursuant to a general judgment of dissolution of marriage and money award dated March 31, 2015, in Klamath County (general judgment). Respondent represented the decedent in this matter. Under the general judgment, the court ordered that the decedent pay spousal support to Barber.

6.

On November 2, 2018, Respondent moved to terminate the decedent's spousal support obligations because of the decedent's advanced dementia. The court held a hearing on the motion on August 8, 2019 and issued an August 12, 2019 letter opinion, terminating spousal support retroactive to the date the motion was filed.

7.

Respondent prepared a supplemental judgment of dissolution of marriage and money award (supplemental judgment). However, Respondent mistakenly indicated that the spousal support obligation would terminate on September 1, 2017, rather than November 2, 2018. This was a negligent and material misstatement of fact. Although Respondent sent the supplemental judgment to Barber at the address on file with the court, Barber asserts that she did not receive it prior to its entry and so did not object. The court signed the supplemental judgment on October 28, 2019.

8.

When Barber subsequently became aware of the supplemental judgment, she submitted a letter to the court, dated November 8, 2019, in which she noted that Respondent used the wrong date for termination of spousal support. Respondent did not receive a copy from Barber; Respondent obtained a copy of the letter on November 19 and filed a response on November 21, 2019, but did not address the erroneous termination date. Respondent engaged in settlement communications with Barber in or around December 10, 2019, in which Barber again described the erroneous termination date, but Respondent did not correct the supplemental judgment. Respondent was instead focused on an urgent threat of foreclosure and the need to cure a default trust obligation for certain real property.

9.

On November 21, November 26, and December 13, 2019, Respondent filed motions seeking to have Barber accept \$17,982.56 for past-due spousal support obligations, again identifying the concern for the forfeiture of the interest in the real property which would result in economic loss to both Barber and Alexander. Respondent based this number in part on the knowingly erroneous September 1, 2017, termination date.

10.

On December 12, 2019, the decedent died.

11.

On January 8, 2020, Barber moved to correct the supplemental judgment. The court set a hearing on the motion for February 3, 2020. Barber did not appear. Respondent moved to dismiss for want of prosecution on February 5, 2020. The court signed an order granting the dismissal on February 19, 2020.

12.

Respondent subsequently represented the personal representative of the decedent's estate, Sherry Parent (Parent). On behalf of Parent, Respondent petitioned for administration of intestate estate and appointment of personal representative for decedent's estate in Klamath County on February 14, 2020.

13.

On June 5, and June 12, 2020, Respondent sought a court order determining that Barber was owed \$16,565.56, which was based in part on the knowingly erroneous spousal support termination date, as full satisfaction of spousal support, or to appear and show she was entitled to a different amount. Separately, on June 5, 2020, Respondent sought an order of the court to sale the real property that was subject to foreclosure and impound all sale proceeds until a determination could be made on the total amount of spousal support owed to Barber. The probate court signed the order requiring Barber to appear on June 16, 2020. On July 15, 2020, Respondent filed a notice of intent to take default against Barber based on the knowingly erroneous total as she failed to appear. Barber later stipulated to the order to sale the real property with the sale proceedings being impounded until a subsequent hearing could determine the support arrearage.

14.

Through her attorney, Barber filed an objection to the amended motion. The court held a hearing on the matter and a number of other factual and legal issues on January 20, 2022, and issued a letter opinion on January 28, 2022. By order dated February 25, 2021, the court corrected the supplemental order, terminating spousal support effective to the date of service on Barber. As a result of Respondent's failure to correct the supplemental judgment, Barber had to pay for an attorney to, in part, establish the correct termination date, which was an issue that had been clearly decided, in addition to other unrelated factual and legal issues. It took additional pleadings, hearings, and an additional two and a half years for the supplemental judgment to be corrected and the court's August 12, 2019 letter opinion be effectuated.

Violations

15.

Respondent admits that, by making a false statement of fact or law to a tribunal or failing to correct a false statement of material fact or law previously made to the tribunal, despite knowing of its falsity, he violated RPC 3.3(a)(1). Respondent further admits that using the erroneous effective date for the termination of spousal support was an improper act, that occurred during the course of several judicial proceedings, and that caused harm to the procedural functioning of the court and to the substantive interests of Barber, in violation of RPC 8.4(a)(4).

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 his duty to maintain the integrity of the legal system, to avoid false statements and misrepresentation, and to avoid prejudicing the administration of justice. ABA Standard 6.1.
- b. **Mental State.** The ABA Standards recognize three mental states. "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 correct the materially false supplemental judgment, and knowingly when he relied on the knowingly erroneous supplemental judgment when filing additional documents with the court.

- c. **Injury.** 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 5. For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

Respondent caused actual injury by violating the integrity of the legal process and failing to fulfill his duty of candor to the dissolution court and the probate

court. *In re Hedrick II*, 312 Or 442, 450, 822 P2d 1187 (1991). Further, his conduct injured the profession as it reflects poorly on lawyers and diminishes the public's trust in the justice system. Finally, his actions caused injury to the procedural functioning of the court in the form of wasted time and resources of the court and the parties.

- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. Multiple offenses. ABA Standard 9.22(d).
 2. Vulnerability of victim. ABA Standard 9.22(h). For the majority of Respondent's relevant interactions with Barber, including the entirety of the time she was attempting to correct the supplemental judgment in the dissolution case, she was unrepresented.
 3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice law in Oregon in 2000.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a prior record of discipline. ABA Standard 9.32(a).
 2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).

17.

Based upon Oregon case law, a suspension of 60 days is appropriate, particularly given the imbalance in aggravating and mitigating factors. *See, e.g., In re Tantilillo*, 34 DB Rptr 75 (2020) (stipulated 60 day suspension for multiple rule violations, including RPC 3.3(a)(1), when respondent knowingly misrepresented that he had been admitted to appear *pro hac vice*, and failed to promptly correct his false statement or take other remedial action); *In re Greene*, 290 Or 291, 620 P2d 1379 (1980) (court suspended attorney for 60 days after he presented to the court two *ex parte* petitions seeking approval for a conservator to purchase and improve real property for the benefit of the minor wards, but failed to disclose that the real property belonged to the conservator who was also the attorney's wife. The court emphasized that judges must be able to rely upon the integrity of the lawyer, and stated, the "necessity for complete candor when dealing with the court ... cannot be overemphasized." The court found the lawyer's conduct constituted a misrepresentation which, in turn, adversely reflected on his fitness to practice law and was prejudicial to the administration of justice.); *In re Famulary*, 34 DB Rptr 85 (2020) (30-day stipulated suspension when respondent filed a probate petition stating decedent died intestate and respondent made reasonable efforts to locate all of decedent's heirs when respondent knew these statements were false, and failed to correct these misrepresentations; respondent had only one aggravating circumstance and two mitigating).

18.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violations of RPC 3.3(a)(1) and RPC 8.4(a)(4), the sanction to be effective May 25, 2023, or the date of the Order.

19.

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 Nathan Ratliff, Parks & Ratliff PC, 620 Main St., Klamath Falls, Oregon, 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. Ratliff has agreed to accept this responsibility.

20.

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.

21.

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.

22.

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.

23.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 29, 2023. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 24th day of May, 2023.

/s/ Matthew T. Parks

Matthew T. Parks, OSB No. 000895

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich

David J. Elkanich, OSB No. 992558

Cite as *In re Parks*, 37 DB Rptr 84 (2023)

EXECUTED this 24th day of May, 2023.

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)	
)	
MARK W. POTTER, Bar No. 924299	)	Case Nos. 22-115 & 23-64
)	
Respondent.)	

Counsel for the Bar:	Alison F. Wilkinson
Counsel for the Respondent:	Wayne Mackeson
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b). Stipulation for Discipline. 60-day suspension.
Effective Date of Order:	May 25, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Mark W. Potter (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 July 1, 2023, for violations of RPC 1.3, RPC 1.4(a), and RPC 1.4(b).

DATED this 25th day of May, 2023.

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

STIPULATION FOR DISCIPLINE

Mark W. Potter, 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, 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 advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On April 5, 2023, an amended formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 1.3, RPC 1.4(a), and RPC 1.4(b) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

Case No. 22-115 - Uyseugi Matter

5.

On October 25, 2016, Diana and Kenneth Uyesugi (individually and together, the Uyesugis) hired Respondent to pursue a claim for damages related to an automobile accident. Respondent filed a complaint for money damages with the Multnomah County Circuit Court on September 11, 2017, the day before the applicable statute of limitations was set to expire.

6.

The defendants were served with the complaint and Respondent received a proof of service on November 17, 2017. On November 27, 2017, the court issued an electronic notice to Respondent indicating that his clients' case would be dismissed for want of prosecution 28 days from the mailing of the notice because the proof of service had not been filed unless corrective action was taken. Respondent did not access the court's link.

7.

On January 3, 2018, the court dismissed the Uyesugis' case based on Respondent's failure to file a proof of service within the requisite period. Respondent did not access the court's link.

8.

In December 2017, defense counsel served Respondent with the defendants' first set of requests for production, with responses due January 22, 2018. Between February 7, 2018, and March 22, 2018, defense counsel followed up with Respondent four times to schedule the Uyesugis' depositions, and two times on the overdue requests for production. Respondent's office did not respond until March 22, 2018. Upon additional follow-up from defense counsel, Respondent sent the response to the requests for production on May 17, 2018, without consulting with his clients about the content of the response. On or around January 8, 2018, defense counsel's office sent a request to Respondent to schedule the Uyesugis' deposition. The deposition was scheduled, and then canceled. Respondent did not inform his clients of the deposition or its cancellation.

9.

Between December 21, 2017 and August 1, 2018, Respondent had no contact with the Uyesugis, other than a brief email exchange in April 2018 about discovery, and to schedule a phone call with his clients that Respondent ultimately did not show up for. On August 1, 2018, in response to an email from the Uyesugis, Respondent emailed them stating that he would send them the discovery responses he served on the defendants. He did not.

10.

From August 2018 until October 2019, Respondent performed no substantive work on behalf of the Uyesugis. Although the Uyesugis contacted the Respondent multiple times in this time period, Respondent did not directly communicate with them until October 2019. In preparing for an in-person meeting with his clients on October 30, 2019, Respondent discovered the case had been dismissed in January of 2018, and disclosed this to his clients.

Case No. 23-64 - OSB Matter

11.

In March 2012, Richard C. Smith (Smith) suffered an injury while working as an emergency medical technician for Envision Healthcare Corporation (Envision). Smith filed a claim with the Washington Department of Labor and Industries (Department), received treatment, and the Department closed his claim in August 2016.

12.

In December 2017, Smith suffered an injury while splitting and stacking wood and, in March 2018, filed to reopen his claim. The Department granted the claim and issued an order requiring Envision to pay Smith time-loss compensation benefits. Envision appealed both orders in October 2018. Smith retained Respondent on March 17, 2019.

13.

The Washington Board of Industrial Insurance Appeals (Board) set Respondent's deadline to take and file depositions of October 2, 2019. The Board scheduled Smith's hearing date for August 30, 2019.

14.

Respondent struck the hearing, without consultation with Smith, on August 29, 2019, resulting in no witness testimony presented.

15.

Respondent filed a Motion for Continuance on September 28, 2019, requesting that the Board extend the deposition deadline to November 20, 2019, because of difficulty in scheduling Smith's doctor's deposition, Dr. Paul Puziss (Puziss). Respondent did not communicate with Smith about this motion or that he had been unable to secure the deposition within the deadline imposed by the scheduling order. By text to Respondent, Smith expressed the importance of taking Puziss's deposition, but Respondent did not respond.

16.

On October 4, 2019, Industrial Appeals Judge Anna Woods granted a deposition continuance until only October 30, 2019. Respondent sought interlocutory review of this order, requesting that the deposition deadline be extended to November 21, 2019. On review, the Board of Industrial Insurance Appeals directed Judge Woods to extend the deposition deadline to November 21, 2019, which she did. Respondent did not secure Puziss's deposition for a date on or before November 21, 2019.

17.

Respondent filed a motion for a continuance on January 6, 2020, contending that by the time the appeals judge granted the request for interlocutory review, Puziss was no longer available for the November 21, 2019 deposition. Envision opposed the motion for continuance, and Respondent replied. Respondent did not provide a copy of any of the pleadings to his client or otherwise inform him of them.

18.

On January 24, 2020, Judge Woods denied Respondent's motion for continuance. Respondent did not provide a copy of the denial to his client or otherwise inform him of it. On January 31, 2020, without input from his client, Respondent filed for interlocutory review, which was denied on February 5, 2020. Respondent did not provide a copy of the denial to his client or otherwise inform him of it.

19.

On March 27, 2020, Judge Woods issued a proposed decision and order, reversing the earlier Department orders to reopen Smith's claim and provide time-loss compensation, due to Smith's failure to put on any evidence. Respondent did not share the proposed decision with his client or otherwise inform him about it. He did not inform his client of statute of limitations deadlines triggered by the decision.

20.

On April 3, 2020, Smith filed a petition for review on his own behalf, seeking additional consideration for his claim based upon Respondent's failure to adequately represent him. On May 19, 2020, the Board vacated the proposed decision and order and remanded the appeal to the hearing process on the basis that Respondent failed to adequately represent his client. Smith terminated Respondent in June 2020.

Violations

21.

Respondent admits that, in the Uyesugi matter, by neglecting a legal matter entrusted to him; by failing to keep his clients reasonably informed about the status of a matter and promptly complying with reasonable requests for information; and by failing to explain a matter to the extent reasonably necessary to permit his clients to make informed decisions regarding the representation, he violated RPC 1.3, RPC 1.4(a), and RPC 1.4(b).

22.

Respondent admits that, in the Smith matter, by failing to keep his client reasonably informed about the status of a matter and promptly complying with reasonable requests for information; and by failing to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation, he violated RPC 1.4(a) and RPC 1.4(b).

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.** 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 the Uyesugi matter, Respondent also violated his duty to his clients by failing to diligently attend to the matter. ABA Standard 4.4.
- b. **Mental State.** "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. ABA 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.*

Respondent acted knowingly in his failures to communicate with Smith. He acted negligently in missing the statute of limitations in the Uyesugi matter, and knowingly in his failures to communicate with the Uyesugis and move the case forward diligently.

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

Smith was harmed, or had the potential to be harmed, as a result of Respondent's failure to communicate. Respondent cancelled the August hearing without consulting with his client, did not inform Smith of the difficulties in securing depositions, did not inform him of the continued delay in his case as a result, did not inform him of his decision to appeal the court's denial of the extension for discovery, and did not inform him that his claim had been dismissed. Given that Smith was no longer receiving needed coverage for his medical expenses, he may have wished to move forward without continued delay. He may also have wished to put on evidence to support his claim, but was given no opportunity to do so. This ultimately led to the dismissal of his claim. While Smith did become aware of the dismissal of his claim, this was

not because of Respondent's communications. Respondent's failure to communicate the dismissal created the potential of prejudice for Smith, particularly given the short turnaround time for appeals before the Board (20 days).

The Uyesugis suffered actual harm as a result of Respondent's failure to act diligently. Respondent failed to file the proof of service in the claim he brought on behalf of the Uyesugis, resulting in the loss of all claims. *See In re Parker*, 330 Or 541, 546-47, 9 P3d 107 (2000) (holding that there is actual injury to a client when an attorney fails to complete the case).

The Uyesugis were also harmed by Respondent's failure to communicate with them for extensive periods of time throughout their case, including failing to notify them that their case had been dismissed, failing to discuss their discovery responses before sending them to defense counsel, failing to notify them that their depositions had been scheduled and then canceled, failing to provide his clients with copies of discovery responses despite repeated requests for them and assurances he would do so, failing to respond to requests for updates in any way for approximately five months, and failing to provide regular status updates throughout the course of the representation. The Uyesugis were unaware of Respondent's many missteps throughout the case because of this lack of information. Had they known, they could have both saved their claim from being dismissed and secured new counsel.

- d. **Aggravating Circumstances.** Aggravating circumstances include:
1. A pattern of misconduct. ABA Standard 9.22(c). A pattern of misconduct can arise "when the accused lawyer engaged in similar misconduct in the past, the lawyer's conduct violated multiple disciplinary rules, or the lawyer neglected the legal matters of multiple clients." *In re Redden*, 342 Or 393, 397 (2007). Respondent engaged in similar misconduct in the Smith and Uyesugi matters and violated multiple disciplinary rules.
 2. Multiple offenses. ABA Standard 9.22(d).
 3. Substantial experience in the practice of law. ABA Standard 9.22(j). Respondent was licensed to practice in Oregon in 1992.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
1. Absence of a prior disciplinary record. ABA Standard 9.32(a).
 2. Absence of a dishonest or selfish motive. ABA Standard 9.32(b)
 3. Personal or emotional problems. ABA Standard 9.32(c). Respondent faced mental health problems during the relevant time period, and has been receiving treatment for these problems since May 2020.
 4. Timely good faith effort to make restitution or to rectify consequences of misconduct. ABA Standard 9.32(d). Respondent sought assistance from the PLF in June 2020, and has continued to meet with the PLF every two weeks since, focusing on improving his practice and avoiding future ethical issues. No ethical complaints regarding Respondent have come to DCO's attention involving his conduct from June 2020 onward.

5. Full and free disclosure to disciplinary board or cooperative attitude toward the proceedings. ABA Standard 9.32(e).
6. Remorse. ABA Standard 9.32(l).

24.

A suspension of 60 days for violations of RPC 1.3, RPC 1.4(a), and RPC 1.4(b) is consistent with case law. *See 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 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). *See also 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).

While given the multiple violations a higher period of suspension would generally be warranted (*see Knappenberger*, 337 Or at 33), Respondent's mitigating factors substantially outweigh the aggravating factors, counseling in favor of a lesser sanction. In addition, Respondent has undertaken significant efforts, on his own volition, since May of 2020 to improve his mental health and his practice, regularly receiving mental health treatment and meeting with the PLF.

25.

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, RPC 1.4(a), and RPC 1.4(b), the sanction to be effective July 1, 2023.

26.

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 John Oswald, 6420 S. Macadam, Ste. 214, Portland, Oregon 97239, 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. Oswald has agreed to accept this responsibility.

27.

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.

28.

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.

29.

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, The US District Court for the District of Oregon, and the US District Court for the Western District of Washington.

30.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 29, 2023. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 22nd day of May, 2023.

/s/ Mark W. Potter

Mark W. Potter, OSB No. 924299

APPROVED AS TO FORM AND CONTENT:

/s/ Wayne Mackeson

Wayne Mackeson, OSB No. 823269

EXECUTED this 23rd day of May, 2023.

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)	
)	
BRIAN M. SOLODKY, Bar No. 975232	)	Case No. 22-42
)	
Respondent.)	

Counsel for the Bar:	Eric J. Collins
Counsel for the Respondent:	David J. Elkanich
Disciplinary Board:	None
Disposition:	Violation of RPC 3.3(a)(1). Stipulation for Discipline. 30-day suspension.
Effective Date of Order:	May 31, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Brian M. Solodky (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 5, 2023, for violation of RPC 3.3(a)(1).

DATED this 31st day of May 2023.

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 29, 1997, 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(h).

4.

On September 30, 2022, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 3.3(a)(1) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

At all material times, Respondent represented insurer TRISTAR in a worker's compensation case involving claimant Robin Beaudry (Beaudry).

6.

On or about July 5, 2021, Beaudry received a notice from TRISTAR notifying him that he had been scheduled for his third independent medical examination (IME) on July 16, 2021. The notice advised Beaudry to inform the insurer before the IME if he was unable to attend.

7.

On or about July 9, 2021, Beaudry's attorney's office emailed Respondent and informed him that Beaudry could not attend the IME because he was scheduled for surgery that week. The email requested that TRISTAR cancel Beaudry's IME and reschedule if necessary. Respondent read the email but did not respond to it, and TRISTAR neither cancelled nor rescheduled Beaudry's IME. Beaudry subsequently did not attend the IME.

8.

On or about July 21, 2021, Respondent filed a Request to Suspend Benefits, and a Request for Penalty with the Oregon Workers' Compensation Division Sanctions Unit (Sanctions Unit) regarding Beaudry's non-appearance at the IME. In the Request to Suspend Benefits, Respondent represented under the heading "Reasons given by the worker for failing to comply," that "Claimant has not provided any explanation for his failure to attend the examination." Respondent made a similar statement in the Request for Sanctions: "Claimant has not provided any explanation for his failure to attend the examination. ... Claimant's failure to attend the [IME] was therefore without justification, and constituted a failure on the part of the claimant to submit to a reasonably requested IME."

9.

When Respondent filed the Request to Suspend Benefits and Request for Penalty, he knew that Beaudry had in fact provided notice prior to the scheduled IME that he would not attend the examination for a specific reason. However, Respondent did not believe that the reason Beaudry provided for why he could not attend the IME was legally valid, and therefore Respondent affirmatively stated in the Request to Suspend Benefits and Request for Penalty

that Beaudry had not provided any explanation, which Respondent knew was false and material to the issues pending before the Sanctions Unit.

10.

On or about July 26, 2021, Beaudry's attorney filed a response to the Request to Suspend Benefits and Request for Penalty. The response explained that Beaudry had provided notice and had provided an explanation to Respondent regarding Beaudry missing the scheduled IME.

11.

Respondent never corrected the false information he included in the requests he filed with the Sanctions Unit or took any other remedial action.

Violations

12.

Respondent admits that, by engaging in the conduct described above, he knowingly made false statements of fact to a tribunal in violation of RPC 3.3(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 to the legal system to refrain from making false statements to a tribunal. ABA Standard 6.1.
- b. **Mental State.** Respondent acted knowingly, *i.e.*, with the conscious awareness of the nature or attendant circumstances of his conduct, but without the conscious objective to accomplish a particular result. ABA Standards at 9.
- c. **Injury.** Respondent's misconduct posed the potential for injury to both Beaudry, who could have lost benefits and paid a fine, and the Sanctions Unit, which could have rendered a decision based on false information.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice in Oregon in 1997.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. Absence of a prior record of discipline. ABA Standard 9.32(a).
 2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).

3. Character or reputation. ABA Standard 9.32(g).
4. Remorse. ABA Standard 9.32(l).

14.

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

15.

Oregon cases confirm that some period of suspension is warranted where lawyers have made false statements to a tribunal. *In re Billman*, 27 DB Rptr 126 (2013) (lawyer suspended for 30 days for representing to the court that his client had approved the terms of a settlement when she had not); *In re Gifford*, 29 DB Rptr 299 (2015) (lawyer suspended for 60 days for, in part, revising portions of probate court documents his client had previously signed, which, by their alteration, represented falsely there were only four heirs when there were actually six heirs of the decedent, and then filing the altered documents containing the misrepresentations with the probate court); *In re Greene*, 290 Or 291, 620 P2d 1379 (1980) (court suspended attorney for 60 days after he presented to the court two *ex parte* petitions seeking approval for a conservator to purchase and improve real property for the benefit of the minor wards, but failed to disclose that the real property belonged to the conservator who was also the attorney's wife).

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 3.3(a)(1), the sanction to be effective August 5, 2023.

17.

In addition, on or before July 1, 2023, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$547.85, incurred for his deposition. Should Respondent fail to pay \$547.85 in full by July 1, 2023, the Bar may thereafter, without further notice to him, obtain a judgment against Respondent for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

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 has arranged for Shawna Fruin, an active member of the Bar with a business address of 10260 SW Greenburg Road, Suite 1250, Portland, Oregon 97223, 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 Shawna Fruin has agreed to accept this responsibility.

19.

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.

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. 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, 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.

22.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 29, 2023. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 26th day of May, 2023.

/s/ Brian M. Solodky
Brian M. Solodky, OSB No. 975232

APPROVED AS TO FORM AND CONTENT:

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

EXECUTED this 30th day of May, 2023.

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)	
)	
DOUG HAGEMAN, Bar No. 173654	)	Case Nos. 22-27, 22-169, & 23-05
)	
Respondent.)	

Counsel for the Bar:	Alison F. Wilkinson
Counsel for the Respondent:	None
Disciplinary Board:	Mark A. Turner, Adjudicator Andrew M. Schpak Michael J. Patterson, Public Member
Disposition:	Violation of RPC 1.3 (3 counts); RPC 1.4(a) (3 counts); RPC 1.4(b) (3 counts); RPC 1.15-1(d); RPC 1.16(c) (2 counts); RPC 1.16(d) (3 counts); RPC 8.1(a)(2) (3 counts); RPC 8.4(a)(3); and RPC 8.4(a)(4). Trial Panel Opinion. 4-year suspension.
Effective Date of Opinion:	August 18, 2023

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged Respondent Doug Hageman with 22 violations of eight different Rules of Professional Conduct in seven client matters. The Bar alleges that Respondent has engaged in an ongoing pattern of: 1) neglect and failure to communicate; 2) withdrawing improperly from his representation of clients; 3) failing to safeguard his clients' interests upon termination of representation; 4) failing to promptly return client funds; 5) engaging in conduct prejudicial to the administration of justice; and 6) failing to cooperate in the disciplinary process. The Bar asks us to suspend Respondent for a period of two to four years.

Respondent is in default for failure to file an answer. In a default case we take the Bar's factual allegations to be true. *See* BR 5.8(a); *In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004). We analyze whether those allegations support the charges made. If we conclude that the allegations support the alleged rule violations 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).

We find that the Bar has properly alleged the elements of each charge. We suspend Respondent for a period of four years.

PROCEDURAL POSTURE

On February 9, 2023, the Bar filed a formal complaint against Respondent. Respondent was personally served with the complaint and notice to answer on February 21, 2023. Respondent failed to answer the complaint by March 7, 2023, as required by Bar Rule of Procedure (BR) 4.3. The Bar notified Respondent on March 8, 2023 that it intended to seek default in the event Respondent failed to file an answer by March 21, 2023. Respondent filed no answer by that deadline and the Bar moved for default on March 21, 2023. The Adjudicator granted the motion on March 24, 2023.

As noted above, we take the allegations in the complaint to be true and assess whether they support the rule violations alleged. In making this determination, we are limited to the facts actually alleged in the complaint. We may not consider extrinsic evidence. If we find that the rule violations are supported by the facts alleged we determine the appropriate sanction. In assessing the proper sanction we may consider evidence outside the four corners of the complaint.

We analyze the numerous charges in the order in which the Bar presents them in its memorandum regarding sanctions.

ANALYSIS OF THE CHARGES

FIRST CAUSE OF COMPLAINT

Andrea Newton (Case No. 22-27)

A. Facts

In December 2020, Andrea Newton's landlord notified her that he had sold the house she rented and told her that she needed to move out. ¶ 4.¹ Newton hired Respondent to assist her with the eviction. ¶ 5.

On December 24, 2020, Respondent sent the landlord a demand letter. Landlord's lawyer, Damon Petticord, responded to Respondent by letter on January 5, 2021. Petticord wrote that he interpreted Respondent's demand letter as a revocation of Newton's acceptance of an earlier \$5,000 "cash for keys" offer by the landlord if she vacated by January 15, 2021. Respondent did not answer Petticord's letter or do any further material work on the case. Newton vacated the premises on February 17, 2021. ¶ 6.

On March 12, 2021, Petticord returned Newton's security deposit to Respondent by check made out to Newton in the amount of \$950. ¶ 7. Respondent did not tell Newton that he received the check. Newton did not know her landlord refunded her deposit until almost a year later when her new lawyer, Dan Russell, told her. Newton had difficulty finding a new place to live without the \$950 to put toward a new deposit. *Id.*

Newton only received three calls from Respondent throughout his year-long representation of her. She tried to call him 10 to 15 times. Newton called his office every week in May and June of 2021, but Respondent did not respond. ¶ 8.

In July 2021, Respondent left his law firm, Oxbow Law Group (Oxbow), to join the Commons Law Center (the Commons). ¶ 3. Respondent did not take Newton with him as a

¹ Paragraph references are to the formal complaint.

client. Respondent failed to tell Newton that he was planning to leave Oxbow or that he had in fact left. He did not return any papers or property to her, including the \$950 check made out to her. ¶ 9.

On December 28, 2021, Newton’s new lawyer, Russell, filed a complaint for wrongful eviction against the landlord in Multnomah County Circuit Court. In late January 2022, Newton accepted defendant’s offer of judgment for \$2,501 in damages, plus attorney fees and costs. ¶ 11.

B. Charged Violations

1. Respondent neglected his client’s case.

RPC 1.3 states: “A lawyer shall not neglect a legal matter entrusted to the lawyer.” Neglect is the failure to act or the failure to act diligently over a period of time when action is required. Determining attorney neglect is a fact-specific inquiry. *In re Magar*, 335 Or at 319. A lawyer’s conduct must be viewed over time, rather than as discrete, isolated events. *Id.* at 321; *In re Jackson*, 347 Or 426, 435, 223 P3d 387 (2009).

Respondent’s neglect of Newton’s case was not an isolated incident. Respondent performed no work on Newton’s case other than sending a demand letter to the landlord at the beginning of the engagement. When Newton tried to contact him multiple times over many months, he ignored her calls. A year after hiring Respondent, Newton had to hire a new lawyer to take over the case. Respondent effectively abandoned Newton.

On these facts we find that Respondent violated RPC 1.3.

2. Respondent failed to adequately communicate with his client.

RPC 1.4(a) and 1.4(b) state as follows:

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

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

In deciding whether a lawyer’s failure to communicate violated RPC 1.4(a) we 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. *In re Graeff*, 368 Or 18, 26, 485 P3d 258 (2021); *In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011). We may infer Respondent’s state of mind from the evidence or, in this case, from the allegations. *In re Phelps*, 306 Or 508, 513, 760 P2d 1331 (1988).

Respondent’s treatment of Newton exhibits each of these factors. Respondent failed to communicate at all with his client over a lengthy period of time. He did not tell Newton about the letter he received in January 2021 regarding the \$5,000 offer. Respondent did not tell her that he received her \$950 deposit return check in March 2021. Newton tried to contact Respondent for updates multiple times, including on a weekly basis in May and June 2021. Respondent never responded to her. Respondent did not tell her that he was planning to leave his firm, or that he left his firm when he did. Respondent did not give her his updated contact information.

Respondent's failure to communicate left Newton without information she needed in order to make informed decisions about her case. Had Newton known that Respondent had not made, and would not make, efforts to resolve her case, she could have found a new lawyer much earlier than she did nearly a year later with no progress on her case. Once she retained a new lawyer, her case was resolved in approximately one month. During the period that her case was neglected Newton was deprived of both actual funds (her rental deposit) and potential funds (damages). This affected her ability to find a new place to live.

A reasonable lawyer would know, and we can infer from the facts that Respondent knew, that failing to communicate with Newton about her case would prejudice her.

Respondent violated both RPC 1.4(a) and RPC 1.4(b).

3. Respondent failed to notify his client of, and failed to deliver to her, funds to which she was entitled.

RPC 1.15-1(d) states:

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

Landlord's attorney mailed Respondent a check for \$950 in March of 2021. The check was made out to Newton. The money belonged to her. Respondent never sent the check to Newton, nor did he even tell her he had received it. Respondent failed to promptly notify his client of, and failed to promptly deliver to his client, funds to which she was entitled in violation of RPC 1.15-1(d).

4. Respondent failed to protect his client's interests upon termination.

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."

Respondent ceased to represent Newton at the very least when he left his law firm without arranging for her to continue as his client. Respondent took no steps to protect her interests. He gave her no notice. He delivered no money to her. He even failed to tell her he had left his firm. Respondent failed to protect his client's interests upon termination in violation of RPC 1.16(d).

THIRD CAUSE OF COMPLAINT

Christopher Schricker (Case No. 22-169)

A. Facts

Respondent represented Christopher Schricker in a landlord-tenant case. The landlord was Kurt Clark. ¶ 23. Schricker lost his case in a court-mandated arbitration in January 2020. Respondent requested a trial de novo on February 6, 2020. *Id.* The court set trial for November 23, 2021. ¶ 24.

Respondent and Schricker spoke for the last time in June 2021. Respondent never told Schricker that he was leaving his law firm and joining another in July 2021. He never told Schricker he would need to find a new lawyer, nor did he inform him of the upcoming November trial date. ¶ 25.

The court sent a trial readiness notice to counsel of record on October 11, 2021, requesting that counsel complete and return it within 10 days. Clark's counsel responded on October 21, 2021. Respondent remained silent. ¶ 26.

In November 2021, Respondent's former law partner, Mike Sargetakis, contacted the Professional Liability Fund (PLF) because he was concerned over his inability to contact Respondent. The PLF tried to contact Respondent, but had no luck. ¶ 27. The PLF then searched Respondent's open court cases and found him listed as the attorney of record in Schricker's case. It also learned that there was a November trial date. In the lead-up to that date, Respondent did not respond to attempts to contact him made by the court, his former law partner, the PLF attorney, and opposing counsel. *Id.*

Sargetakis contacted Schricker and told him of the upcoming trial date. Schricker was living in Texas. He flew to Portland to appear on his own behalf. Sargetakis, Schricker, Clark, Clark's attorney, and the PLF attorney all appeared for the trial date. Respondent did not. ¶ 28.

The court cancelled the scheduled jury trial due to Respondent's absence. *Id.* Clark's lawyer had prepared for trial on the scheduled date. The delay of the trial because of Respondent's absence caused Clark to incur additional attorneys' fees, wasted his time, and delayed resolution of the case. ¶ 29. Respondent's failure to notify anyone that he would not appear for trial caused the court to waste a two-day trial setting. The court was unable to fill the slot. This occurred during a time of unusual backlog stemming from returning to court post-COVID restrictions. It caused the court further harm and frustration. ¶ 28. The court scheduled a status hearing for January 4, 2022. Respondent again failed to appear. *Id.*

Respondent never sought the court's permission to terminate his representation of Schricker. He failed to file the appropriate notice required by ORS 9.380 and UTCR 3.140(1). He also failed to notify opposing counsel or his own client. ¶ 31.

B. Charged Violations

1. Respondent neglected his client's case.

We identified the relevant analysis to find a RPC 1.3 violation in discussion of the Newton matter, above. Respondent's failures to act when necessary in Schricker's case are on a par with his treatment of Newton. We find that Respondent neglected Schricker's matter in violation of RPC 1.3.

2. Respondent failed to adequately communicate with his client.

The relevant analysis regarding violation of RPC 1.4(a) and (b) is also set forth above. Again, Respondent's failure to adequately communicate with Schricker is as bad as, if not more egregious than, his conduct toward Newton. We find that Respondent violated RPC 1.4(a) and 1.4(b) in this instance as well.

3. Respondent failed to give proper notice to the tribunal when terminating representation of his client.

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."

Respondent was Schricker's attorney of record. He was required to give notice of his withdrawal to the court pursuant to ORS 9380 but did not do so.

UTCR 3.140 also specifies what information must be contained in an application to withdraw: "An application to resign, a notice of termination, or a substitution made pursuant to ORS 9.380 must contain the court contact information under UTCR 1.110 of the party and of the new attorney, if one is being substituted, and the date of any scheduled trial or hearing. . . ." The rule also requires service of the notice on the party and the opposing party's attorney, and that the notice be promptly filed with the court. *Id.* "[The application] must be served on [the] party and the opposing party's attorney. . . . A notice of withdrawal, termination, or substitution of attorney must be promptly filed." *Id.*

Respondent failed to file the required notice or application. Respondent's failure to properly withdraw led to a waste of court resources and time. It also led to delay and extra cost for Schricker and for opposing counsel and his client. We find that Respondent violated RPC 1.16(c).

4. Respondent failed to protect his client's interests upon termination.

The requirements of RPC 1.16(d) are set forth above. Respondent gave Schricker no notice when he ceased representing him, and took no steps to protect his interests. Respondent's failure to take any steps to protect his client's interests violated RPC 1.16(d).

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

RPC 8.4(a)(4) provides: "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." To establish a violation of this rule the Bar must allege that Respondent did something he should not do, or failed to do something he 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. *In re Ard*, 369 Or 180, 193-94, 501 P3d 1036 (2021). "Administration of justice" includes the procedural functioning of the court and the substantive interests of the parties. *In re Hartfield*, 349 Or 108, 115-16, 239 P3d 992 (2010).

Respondent here committed several improper acts, and failed to act when required to, in the course of a judicial proceeding. He failed to notify his client, opposing counsel, or the

court that he would no longer be representing his client in the case. He failed to appear for a two-day trial and thereby wasted two unfilled court dates. These acts harmed the court, Schricker, and the opposing party.

Respondent's failure to appear harmed his client by putting him in a vulnerable position in his case, and caused him to pay for a flight from Texas to Oregon to appear, not knowing that there would be no trial.

Respondent's failure to appear harmed the landlord, who paid his lawyer to prepare for the trial. It also wasted the time of landlord's attorney, the PLF attorney, and court staff.

We find that Respondent's conduct was prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

FIFTH CAUSE OF COMPLAINT

Sascha Fix (Case No. 23-05)

A. Facts

In 2021, Respondent began representing Sascha Fix in a lawsuit against her landlord, Diana Kightlinger, in Multnomah County Circuit Court. Respondent filed a complaint on June 25, 2021. ¶ 41.

Respondent wrote to Fix on June 28, 2021 and told her he planned to serve Kightlinger in Montana. This was the last Fix heard from Respondent. Respondent did not tell her about leaving his firm and moving to a new one. He did not tell her that he would no longer be working on her case or that she needed to find a new lawyer. ¶ 42.

On July 16, 2021, Fix wrote Respondent asking whether he was able to serve Kightlinger. Respondent did not respond. He never served Kightlinger. Respondent also ignored subsequent calls, texts, and emails from his client. ¶ 43.

The court sent a 28-day notice of dismissal for want of prosecution on September 7, 2021. Respondent took no action in response to the notice and did not notify his client. ¶ 44.

On October 13, 2021, Fix emailed Respondent asking if his phone number had changed, and described her multiple attempts to contact him by phone and email. Fix asked that he let her know if he could no longer work on her case and whether Kightlinger was successfully served. Respondent did not respond to the email. ¶ 45.

On October 29, 2021, the court dismissed the case for want of prosecution because defendant had not been served. Respondent did not tell Fix of the dismissal. ¶ 46.

B. Charged Violations

1. Respondent neglected his client's case.

Respondent neglected Fix's case for more than four months when action was required on his part. He stopped pursuing the case soon after filing it but never told his client. Fix last heard from Respondent on June 28, 2021, when he told her he planned to serve Kightlinger. After that, however, he never served Kightlinger. He ignored all of his client's attempts to contact him. He ignored the court's notice that the case would be dismissed and failed to tell

his client when that occurred. Applying the same analysis we used in the first two matters discussed above, we find Respondent also violated RPC 1.3 here.

2. Respondent failed to adequately communicate with his client.

Respondent failed to communicate with his client for at least four months. He never answered her reasonable requests for information. He did not tell her that he was leaving his law firm and moving to a different employer and would not be taking her case with him. He did not tell her that her case would be dismissed if action were not taken, or that her case was dismissed because of his inaction.

These failures to communicate deprived Fix of the information she needed to make informed decisions about the representation. A reasonable lawyer would have foreseen that these communication failures would prejudice his client, especially because they involved time sensitive issues.

We find that Respondent violated RPC 1.4(a) and RPC 1.4(b).

3. Respondent failed to protect his client's interests upon termination.

Respondent effectively terminated his representation of Fix when he stopped pursuing her case. He had a duty at that time to take reasonable steps to protect his client's interests. At the least he should have filed a notice of withdrawal so that he was no longer attorney of record. His client, or a new lawyer on her behalf, would have received the court notice of pending dismissal and acted to prevent it. He should have told his client of his decision to end the representation, informed her of any upcoming due dates and deadlines, forwarded court notices to her, and given her adequate time to find new counsel. He did not. Respondent took no steps to protect his client's interests. This failure to act violated RPC 1.16(d).

SECOND, FOURTH, AND SIXTH CAUSES OF COMPLAINT

Failure to Respond to DCO re: Newton, Clark, and Fix

A. Facts

After the Bar began investigating Respondent's conduct, Respondent failed to respond to DCO's repeated requests for information in the Newton, Clark, and Fix matters. ¶¶ 14-19, 34-46, 48-50. Respondent's failure to respond resulted in three separate administrative suspensions pursuant to BR 7.1. ¶¶ 20, 36, 51.

B. Charged Violations

1. Respondent failed to respond to DCO inquiries.

RPC 8.1(a)(2) provides:

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

DCO is a disciplinary authority. This rule requires lawyers to cooperate when DCO investigates disciplinary matters and includes an obligation to respond to DCO's inquiries.

DCO made multiple requests for information from Respondent. Respondent received and failed to respond to three inquiries about his conduct from DCO. Each of these failures resulted in his suspension from practice pursuant to 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 has no tolerance for 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 find that Respondent's knowing failure to respond to lawful demands for information from DCO violated RPC 8.1(a)(2).

SEVENTH CAUSE OF COMPLAINT

Four Additional Cases

A. Facts

The Bar discovered four additional cases in which Respondent had appeared as attorney of record and then failed to respond to court inquiries and failed to properly withdraw. ¶ 54.

In *Renn v. Reid*, Yamhill County Circuit Court Case No. 18CV34505, *Haussman, et al. v. Reyes, et al.*, Washington County Circuit Court Case No. 19CV36748, *Contreras v. City of Cornelius, et al.*, Washington County Circuit Court Case No. 20CV24065, and *Ritter, et al. v. Harp*, Multnomah County Circuit Court Case No. 21CV13106, Respondent was counsel of record for a party. In each of these cases, Respondent abandoned his client prior to completion of the case. And in each of these cases, Respondent did not request permission from the court to withdraw or file the proper notice of withdrawal as required by ORS 9.380 and UTCR 3.140(a). ¶ 55.

B. Charged Violations

1. Respondent failed to give proper notice to the tribunal when he terminated his representation in these matters.

Respondent was the attorney of record on these four matters. He stopped representing his clients without notifying the court of the change in representation. As discussed above, he was required to file notice with the court and to give notice to the parties pursuant to ORS 9.380(1)(a) and UTCR 3.140. Respondent violated RPC 1.16(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 sanctions for lawyer misconduct.

ABA Standards

The ABA Standards establish an analytical framework for determining the appropriate sanction in discipline cases using three factors: the duty violated; the lawyer's mental state; and the actual or potential injury caused by the conduct. Once these factors are analyzed, we make a preliminary determination of the appropriate sanction. After that we may adjust the sanction in light of recognized aggravating or mitigating circumstances.

Duties Violated

Respondent violated his duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. ABA Standard 4.4.

Respondent violated his duty to properly handle client property. ABA Standard 4.1.

Respondent violated his duty owed to the legal system to avoid conduct prejudicial to the administration of justice and to obey obligations under the rules of a tribunal. ABA Standard 6.0; ABA Standard 6.2.

Respondent violated his duty as a professional when he failed to timely and fully respond to inquiries from a disciplinary authority. ABA Standard 7.0.

Mental State

The ABA Standards recognize three mental states. "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 quit working on Newton's, Schricker's, and Fix's cases. Respondent acted knowingly when he failed to take steps to safeguard his clients' interests. Respondent acted knowingly when he stopped communicating with his clients despite their repeated attempts to contact him, and despite the occurrence of critical events in their cases.

Respondent acted knowingly when he failed to return Newton's rent deposit check to her.

Respondent acted knowingly when he failed to properly terminate his representation of his clients with the court, and when he failed to appear for trial in the Schricker matter.

Respondent acted knowingly when he failed to respond to DCO's inquiries in the Newton, Schricker, and Fix matters.

Extent of Actual or Potential Injury

Actual 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 harm that is reasonably foreseeable at the time of the misconduct, and which, but for some intervening factor, would probably have resulted from the lawyer's misconduct. ABA Standards at 5. For the purposes

of determining an appropriate disciplinary sanction we may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

Newton

Respondent caused actual and potential harm to Newton. A client sustains actual injury when an attorney fails to actively pursue the client's case. *See In re Parker*, 330 Or at 546-47. Newton suffered additional harm from Respondent's neglect because she was forced to hire another lawyer to finish her case almost a year after hiring Respondent. Respondent's neglect and lack of communication also presumptively caused his client stress, frustration, and anxiety. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426-27, 939 P2d 39 (1997).

Respondent's failure to deliver Newton's security deposit to her directly impacted her ability to find a new apartment. Respondent's failure to act also interfered with the resolution of her case, causing additional delay before she was able to achieve resolution and obtain monetary damages.

By failing to properly withdraw from her case, Respondent caused additional harm, prolonging the case.

Schricker

Schricker suffered actual harm from Respondent's neglect of his case, and actual harm from the resulting frustration and anxiety. *In re Parker*, 331 Or at 546-47; *In re Cohen*, 300 Or at 496. Schricker suffered actual injury by Respondent's failure to properly withdraw and his failure to notify his client despite the pending two-day trial. Respondent's failure to appear caused actual harm to Schricker's substantive interests by putting him in a vulnerable position in his case. It also caused him to pay for a flight from Texas to Oregon to appear at a trial that did not occur.

Respondent caused actual harm to the court, which lost two days of trial time. He also caused actual harm to opposing counsel, the PLF attorney, court staff, and Clark, who wasted time and resources preparing for a trial that did not occur.

Fix

Fix suffered actual harm from Respondent's neglect, lack of communication, and failure to take steps to protect her interests upon withdrawal. Her case was dismissed for lack of prosecution, resulting in the loss of her claims. Fix suffered additional actual harm from Respondent's neglect due to the resulting frustration and anxiety. *In re Parker*, 331 Or at 546-47; *In re Cohen*, 300 Or at 496.

Additional Cases

In Renn v. Reid; *Haussman v. Reyes*; *Contreas v. City of Cornelius*; and *Ritter v. Harp*, Respondent failed to properly withdraw. This resulted in potential or actual injury to his clients, including the dismissal of several of his clients' cases. In addition, the failure to appear wasted judicial resources and at least potentially injured opposing counsel.

Failure to respond to DCO inquiries

Respondent's failure to respond to the Bar caused actual injury to the Bar and the public. *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).

Preliminary Sanction

Absent aggravating or mitigating circumstances, we find the following ABA Standards apply to assess a preliminary sanction:

Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or when a lawyer engages in a pattern of neglect that causes injury or potential injury to a client. ABA Standard 4.42.

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 knows that he is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. ABA Standard 6.22.

Suspension is generally appropriate when a lawyer 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 prolonged and repeated misconduct involving multiple clients requires a significant suspension.

Aggravating and Mitigating Circumstances

The following aggravating factors under the ABA Standards are present in this case:

1. A pattern of misconduct. ABA Standard 9.22(c). A pattern of misconduct can arise "when the accused lawyer engaged in similar misconduct in the past, the lawyer's conduct violated multiple disciplinary rules, or the lawyer neglected the legal matter of multiple clients." *In re Redden*, 342 Or 393, 397, 153 P3d 113 (2007). Respondent's conduct presents all three of these factors.
2. Multiple offenses. ABA Standard 9.22(d).
3. Refusal to acknowledge wrongful nature of conduct. ABA Standard 9.22(g). Respondent has provided no response to the Bar or made any acknowledgment of the wrongfulness of his conduct.
4. Vulnerability of victim. ABA Standard 9.22(h). Newton lost her home and experienced difficulty finding a new place to live while Respondent neglected her case and failed to return her security deposit.
5. Indifference to making restitution. ABA Standard 9.22(j). Respondent made no effort to return Newton's rental deposit check to her. He took no remedial actions on behalf of Fix, despite the loss of her claims due to his inaction.

In mitigation, we agree with the Bar that the following factors apply:

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

2. Inexperience in the practice of law. ABA Standard 9.32(f). Respondent was admitted to the practice of law in Oregon in 2017. These violations occurred when Respondent had been practicing for less than five years.

Oregon Case Law

Oregon cases justify a substantial suspension for Respondent's cumulative misconduct. The Bar was unable to point us to any cases involving the identical set of rule violations found here. Case law involving the same violations, however, even if not all present at the same time, can tell us what the court generally considers a proper sanction for these types of violations. In any event, the court has noted that "case-matching is an inexact science" in disciplinary matters. *In re Stauffer*, 327 Or 44, 70, 956 P2d 967 (1998).

The Bar argues that neglect of a client's legal matter should result in a presumptive 60-day suspension. *See In re Redden*, 342 Or at 401-02 (court so concluded after reviewing similar cases). However, 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 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).

The Bar also notes that the 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'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).

When neglect and failure to communicate are combined with other rule violations, such as RPC 1.15-1(d), RPC 1.16(c), or RPC 1.16(d), the suspension is usually longer. *See, e.g., In re Koch*, 345 Or 444, 459, 198 P3d 910 (2008) (attorney suspended for 120 days where she failed to advise her client that another lawyer would prepare a qualified domestic relations order for the client, and thereafter failed to communicate with the client and that second lawyer when they needed information and assistance from attorney to complete the case; and failed to provide an accounting in another matter); *In re Bertoni*, 363 Or 614, 646, 426 P3d 64 (2018) (18-month suspension when attorney improperly handled client funds and failed to return client funds in addition to violations of RPC 1.4(a) and RPC 1.4(b)); *See also In re Parks*, 35 DB Rptr 86 (2021) (eight-month suspension for violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), among others including RPC 1.16(d)); *In re Sheasby*, 29 DB Rptr 41 (2015) (four-year suspension by trial panel for violations of RPC 1.3, 1.4(a), along with violations of 1.15-1(a), (c), and (d), and RPC 8.1(a)(2)).

Conduct prejudicial to the administration of justice involving missed court hearings has also resulted in suspensions. *See 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 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 that warrants additional time of suspension on its own. Respondent provided no response to DCO at any point. This complete failure to communicate with disciplinary authorities, standing alone, has warranted suspensions of 60 days or more per violation. The Bar cites the Disciplinary Board's statement from the case of *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, 279 (2022) (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)).

The Bar argues that Respondent's violations, when added together, warrant up to a four-year suspension. The Bar's reasoning is based on a presumptive sanction of six-months suspension for each of Respondent's three violations of RPC 1.3; a presumptive sanction of six-months suspension for each of Respondent's three violations of RPC 1.4(a) and RPC 1.4(b); and at least six-months suspension for Respondent's three violations of RPC 8.1(a)(2). The Bar further argues that the precedents cited justify an additional six-month suspension for the remaining ten charges.

The Bar points to two cases for additional guidance here: *In re Parker*, 330 Or 541, 9 P3d 107 (2000) and *In re Sheasby*, 29 DB Rptr 41 (2015).

In *Parker*, complaints against the attorney arose from his neglect of his practice for approximately 15 months involving four different client matters. During this time, he repeatedly failed to respond to client messages or take appropriate actions on their behalf. The attorney then failed to respond to most of the Bar's inquiries. When he did respond, he made several misrepresentations to the Bar.² The court suspended the attorney for four years.

In *Sheasby*, the attorney was hired to secure a patent. The client paid him a retainer. The attorney then briefly reviewed information and sent one email. He then stopped all work for the client and failed to refund the remainder of the retainer for five months. In a second matter, the attorney agreed to represent the client, but failed to take any steps to achieve the

² The Bar concedes that the present case does not involve allegations of intentional misrepresentations.

client's goals. He stopped communicating with his client. The attorney did not answer the complaint and did not otherwise participate in disciplinary proceedings. The trial panel suspended him for four years.

Similar to these cases, Respondent here failed to represent and to communicate with three clients over an extended period of time. He abandoned his clients without any efforts to mitigate the harm caused by his departure or even to alert his clients he was leaving. We have enumerated above the many adverse consequences that flowed from his inaction, affecting his clients, opposing counsel, opposing parties, and the court system. This case provides substantial justification for a lengthy suspension.

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*, *id.* We find that the purposes of attorney discipline will be appropriately served by a four-year suspension. We recognize as well that a suspension of this length will require Respondent to go through the formal reinstatement process governed by BR 8.1 if he wishes to practice law again. This requirement provides further protection for the public.

CONCLUSION

Accordingly, we order that Respondent be suspended for a period of four years, effective on the date on which this opinion becomes final.

Respectfully submitted this 17th day of July, 2023.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Andrew M. Schpak

Andrew M. Schpak, Attorney Panel Member

/s/ Michael Patterson

Michael Patterson, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)
)
CHRISTOPHER W. BROWN,)
Bar No. 022615) Case No. 22-36
)
Respondent.)

Counsel for the Bar: Eric J. Collins
Counsel for the Respondent: None
Disciplinary Board: None
Disposition: Violation of RPC 1.15-1(a), RPC 5.3(a), and RPC
8.1(a)(2). Stipulation for Discipline. 90-day suspension.
Effective Date of Order: July 28, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Brown is suspended for 90 days, effective October 1, 2023, for violation of RPC 1.15-1(a), RPC 5.3(a), and RPC 8.1(a)(2).

DATED this 28th day of July 2023.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Christopher W. Brown, 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 30, 2002, 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 opportunity to seek advice from counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On October 27, 2022, a 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) [failure to segregate client funds and maintain complete records of client funds in trust account], RPC 5.3(a) [duty to supervise non-lawyer personnel], and RPC 8.1(a)(2) [failure to respond to lawful demands for information from disciplinary authority] of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

At all relevant times herein, Respondent had custody and control over his firm's lawyer trust account, Kinney & Brown PC OR IOLTA Account, maintained at Wells Fargo Bank, account ending 5837 ("trust account"), as specified and required by the Oregon Rules of Professional Conduct for the deposit and maintenance of client funds in the course of his practice of law. At all relevant times herein, Respondent also had direct supervisory authority over a bookkeeper who had access to the firm's trust account and executed all of the day-to-day transactions on that account ("the bookkeeper").

The Wells Fargo overdraft

6.

Between approximately 2013 and 2022, Respondent had been providing "pass through" escrow payments to a former client. Under the payment arrangement, the opposing party sent settlement payments of approximately \$1,036 to Respondent's firm, his firm would deposit those payments into the trust account, and then Respondent would issue a check from the trust account to the former client. Respondent regularly received the checks from the opposing party mid-month, and he would issue a check to the former client toward the end of each month. That changed in approximately June 2021, when Respondent's staff waited to receive two months of payments before depositing the checks simultaneously and then would issue two checks to the former client at the end of every other month.

7.

On or about November 11, 2021, the former client contacted the firm regarding her payments and stated that she believed she was missing a payment and was owed an additional check. Respondent's staff issued the former client two checks without verifying a payment had been missed; in actuality, the firm had not missed a payment. When the former client's two checks were issued, Respondent had not yet received the November 2021 mid-month check from the opposing party. Respondent thereafter failed to deposit the November 2021 and December 2021 checks from the opposing party.

8.

On January 5, 2022, Disciplinary Counsel's Office (DCO) received a notice from Wells Fargo Bank about an overdraft on the trust account (the "NSF Notice"). When the former client had deposited both checks received from Respondent, the check representing pass-through funds for November 2021 was presented for payment against insufficient funds in Respondent's trust account, which had a balance of \$0.65. The bank did not honor the check.

9.

After Respondent learned of the overdraft, he deposited the November 2021 and December 2021 settlement checks from the opposing party into the trust account and provided the former client with a new check for the month of November 2021 that cleared the account a few days later.

10.

As a result of the overdraft, Respondent conducted an internal audit of the firm's bookkeeping records and uncovered numerous unresolved IOLTA ledger issues spanning several years. For example, Respondent found multiple client matters showing a positive trust balance on the firm's trust ledger while simultaneously showing an outstanding balance on client billing statements. This indicated the firm had commingled its own earned funds with unearned client funds in trust on multiple occasions. Respondent also determined that the bookkeeper had not been performing a three-way reconciliation of the individual client ledgers, the overall trust account ledger, and the trust account bank statements.

11.

During the time period relevant herein, Respondent failed to supervise the activity of the bookkeeper sufficiently to discover that she had failed to keep accurate records of client funds in the firm's trust account and that she had failed to keep the clients' funds separate from those of the firm.

Violations

12.

Respondent admits that his failure to segregate client funds as described above and failure to keep complete records of client funds in the firm's trust account violated RPC 1.15-1(a). Further, Respondent admits that his failure to make reasonable efforts to ensure that the bookkeeper's conduct was compatible with Respondent's professional obligations violated RPC 5.3(a).

Failure to respond to Disciplinary Counsel's Office

13.

By letter dated January 19, 2022, in addition to requesting Respondent's explanation of the NSF Notice, Disciplinary Counsel's Office (DCO) requested that Respondent provide supporting documentation, including his three-way reconciliation records, to wit: (1) Respondent's trust account ledger or journal showing entries that related to the overdraft; and (2) the individual client ledger for any client with money held in trust at the time of the overdraft.

14.

On February 1, 2022, Respondent responded by email and requested an additional 30 days to respond to DCO's letter. An extension was granted until March 11, 2022. Thereafter, Respondent or his wife, Ameshia Brown (Ameshia), who acts as a paralegal for Respondent's firm, requested additional extensions of time to respond.

15.

After receiving no substantive response or responsive documents from Respondent or Ameshia, on May 18, 2022, DCO filed a BR 7.1 Petition seeking Respondent's administrative suspension. Between approximately May 25, 2022, and June 13, 2022, Respondent and Ameshia communicated with the Adjudicator by email. Respondent provided a detailed explanation regarding the circumstances that led to the overdraft and the firm's bookkeeping issues and some of the bank records requested by DCO but never provided the remaining documentation. Specifically, DCO did not receive the three-way reconciliation documentation, including the trust account ledger showing entries that related to the overdraft, the individual client ledger for any client with money held in trust at the time of the overdraft, nor the results of the firm's internal bookkeeping audit. After June 13, 2022, neither DCO nor the Adjudicator received any further response from Respondent or Ameshia.

16.

On July 14, 2022, the Adjudicator signed the BR 7.1 order, which suspended Respondent from the practice of law until such time as he adequately responded to DCO's requests for information.

17.

Respondent did not provide records fully responsive to DCO's request until December 2022, approximately 11 months after DCO made its initial request.

Violations

18.

Respondent admits that his knowing failure to respond to lawful demands for information from his disciplinary authority violated RPC 8.1(a)(2).

Sanction

19.

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

- a. **Duty Violated.** Respondent violated a duty owed to clients to segregate client funds and maintain accurate and complete lawyer trust account records. ABA Standard 4.1. Respondent violated his duty as a professional to properly supervise his non-lawyer staff. ABA Standard 7.0. In failing to cooperate with

DCO's investigation, Respondent violated his duty to the legal profession to fully respond to inquiries from disciplinary authorities and his duty to the public because the disciplinary process serves to protect the public. ABA Standards 7.0, 5.0.

- b. **Mental State.** The ABA Standards recognize three mental states: "Intent" is the conscious objective or purpose to accomplish a particular result. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. ABA Standards at 7. Respondent acted negligently regarding the management of his trust account records and his oversight of the bookkeeper's work. Respondent knowingly failed to cooperate with the Bar's inquiry.
- c. **Injury.** Injury can be potential or actual. ABA Standard 3.0; ABA Standards at 9; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Respondent's failure to maintain proper oversight of his trust account records caused actual injury to his former client, who did not immediately receive the funds she was entitled to as a result of the overdraft. Similarly, Respondent's failure to maintain complete and accurate trust account records caused potential injury to his clients by creating a risk that the clients' funds would not be timely paid out to the appropriate persons in the correct amounts. Respondent's failure to respond to DCO's inquiries caused actual injury to the Bar and the legal profession by requiring the Bar to expend additional time and resources unnecessarily to obtain Respondent's cooperation.
- 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 practice in Oregon in 2002.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 - 1. Absence of a prior disciplinary record. ABA Standard 9.32(a).
 - 2. Remorse. ABA Standard 9.32(l).

20.

Under the ABA Standards, suspension is generally appropriate when a lawyer should know that he is dealing improperly with client property and causes injury or potential injury to a client. ABA Standard 4.12. Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. ABA Standard 4.13.

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.

21.

Oregon cases confirm that a suspension is warranted. Failure to respond to and cooperate with a disciplinary investigation, standing alone, is a serious ethical violation. *In re Parker*, 330 Or 541, 551, 9 P3d 107 (2000). In the case of *In re Schaffner*, 323 Or 472, 479-81, 918 P2d 803 (1996), the court imposed a 60-day suspension for violation of the former rule regarding the lawyer's failure to respond to disciplinary inquiries. In the case of *In re Miles*, 324 Or 218, 222-23, 923 P2d 1219 (1996), the court imposed a 120-day suspension for failure to respond to the Bar in two separate matters.

Some period of suspension is also warranted for experienced lawyers who mishandle client funds. *See, e.g., In re Peterson*, 348 Or 325, 232 P3d 940 (2010) and *In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (court imposed 60-day suspensions on experienced lawyers for conduct including mistaken removal of funds from trust or poor record-keeping).

22.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 90 days for violation of RPC 1.15-1(a), RPC 5.3(a), and RPC 8.1(a)(2), the sanction to be effective on October 1, 2023.

23.

In addition, on or before December 1, 2023, Respondent shall pay to the Bar \$822.90 constituting its reasonable and necessary costs incurred for Respondent's deposition. Should Respondent fail to pay \$822.90 in full by December 1, 2023, the Bar may thereafter, without further notice to him, obtain a judgment against Respondent for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

24.

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 Kevin Kinney, an active member of the Bar with a business address of 2913 Portland Road, Newberg, Oregon 97132, 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 Kevin Kinney has agreed to accept this responsibility.

25.

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.

26.

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.

27.

Respondent represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Respondent is admitted: California.

28.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 19, 2023. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 26th day of July, 2023.

/s/ Christopher W. Brown
Christopher W. Brown, OSB No. 022615

EXECUTED this 26th day of July, 2023.

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)	
)	
LEILA LOUISE HALE, Bar No. 142084	)	Case No. 23-70
)	
Respondent.)	

Counsel for the Bar:	Susan R. Cournoyer
Counsel for the Respondent:	Amber Bevacqua-Lynott David J. Elkanich
Disciplinary Board:	Mark A. Turner, Adjudicator
Disposition:	Violation of RPC 1.15-1(a) and RPC 1.16(d). Order granting BR 3.5 petition for reciprocal discipline. Public reprimand.
Effective Date of Order:	August 11, 2023

ORDER GRANTING BR 3.5 PETITION FOR RECIPROCAL DISCIPLINE

This matter is before me on the Oregon State Bar’s (Bar) Petition for Reciprocal Discipline pursuant to BR 3.5. Respondent was disciplined in Nevada in February of this year for violations of Nevada Rule of Professional Conduct (NRPC) 1.15(a) (safekeeping property) and NRPC 1.16(d) (declining or terminating representation) for negligently taking her attorney fees from a client’s settlement proceeds and failing to promptly disburse the remaining funds, holding them even after the client terminated the representation. The Nevada Supreme Court issued a letter of reprimand, rejecting the State Bar of Nevada’s request for a suspension.

The Bar here asks for a 30-day suspension for Respondent’s violation of Oregon Rules of Professional Conduct (RPC) 1.15-1(a) (safekeeping property) and (d) (prompt delivery of funds to client) and 1.16(d) (duties upon termination of representation). Respondent answered the Petition, arguing that no more than the equivalent sanction, a public reprimand, be imposed. For the following reasons, I find that a public reprimand is the appropriate sanction here and issue such an order.

DISCUSSION

Respondent does not challenge the imposition of reciprocal discipline, only the increased severity of the sanction urged by the Bar.¹ BR 3.5(b) provides: “There is a rebuttable

¹ When challenging whether reciprocal discipline itself is appropriate the rule provides three enumerated defenses: whether the procedure employed in the other jurisdiction “was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process,” (BR 3.5(c)(1)); whether the conduct for which the attorney was disciplined in the other jurisdiction should subject the attorney to discipline in Oregon (BR 3.5(c)(2)); or

presumption that the sanction to be imposed shall be equivalent, to the extent reasonably practicable, to the sanction imposed in the other jurisdiction.” The Bar has the burden of overcoming that presumption and demonstrating why a 30-day suspension is merited.

BR 3.5(d) states that the Adjudicator, in his or her discretion, may decide the question of imposition of reciprocal discipline on the record submitted, or may take testimony “solely on the issues set forth in the answer pertaining to” the three defenses listed in footnote 1. If testimony is taken a trial panel must be appointed. Here, however, none of the enumerated defenses are asserted. Accordingly I must decide the matter based on the record before me.

The Bar acknowledges that the presumptive sanction under the ABA’s *Standards for Imposing Lawyer Sanctions* is a public reprimand. *Petition for Reciprocal Discipline* at 6. The Bar argues that two factors justify suspension: 1) Respondent’s history of prior discipline and 2) the extent of actual injury to Respondent’s client.

Respondent’s history shows two prior instances where discipline was imposed in Nevada. The first was issued in 2016. Respondent received a letter of reprimand for violation of NRPC 3.3(a)(1) (failing to correct a false statement of material fact or law previously made to a tribunal); NRPC 1.2(c) (limiting scope of representation without client’s informed consent); NRPC 1.3 (failing to act with reasonable diligence and promptness); and NRPC 1.4(a) and (b) (failing to adequately communicate with client). A letter of reprimand in Nevada is akin to an admonition under our rules. It differs from an admonition in that it is considered a public disciplinary sanction and it is published on the State Bar of Nevada website’s attorney directory and with notices of discipline in the Nevada Lawyer magazine. In Oregon admonitions are not considered to be discipline and admonitions are not made public on the Bar’s website or in the Oregon State Bar Bulletin.

The second instance where discipline was imposed issued in 2020. Respondent was publicly reprimanded for violations of NRPC 1.5 (fees) and NRPC 5.3 (responsibilities regarding non-lawyer assistants). That Nevada discipline also resulted in reciprocal discipline in Oregon: *In re Hale*, 35 DB Rptr 48 (2021) (public reprimand for violations of RPC 1.5(a), RPC 5.3(a), and RPC 5.3(b)).

In the current case both the hearing panel and the Nevada Supreme Court considered Respondent’s prior disciplinary history as an aggravating factor. *Ex. 1 to Petition* at 3. On the question of the extent of the harm caused by the misconduct, the hearing panel and the court disagreed.

The hearing panel concluded that Respondent’s conduct had caused “little to no actual or potential harm.” In contrast, the Nevada Supreme Court stated that Respondent “caused actual injury with the potential for further injury because her misconduct deprived her client of access to and use of funds to which the client was entitled for more than two years.” *Id* at 3-4 (citing as an example *In re Obert*, 282 P3d 825, 842-3 (Or. 2012)).

Thus the Nevada Supreme Court expressly considered the two factors that the Bar argues here warrant a suspension. The Nevada court declined to suspend Respondent. In the

whether the imposition of a sanction equivalent to that imposed in the other jurisdiction would result in grave injustice or be offensive to public policy,” (BR 3.5(c)(3)).

court's view, Respondent's disciplinary history and the harm she caused her client did not warrant a sanction beyond a public reprimand. .

If the Bar seeks imposition of a sanction greater than that imposed in the other jurisdiction it must "provide legal authority to support its position." BR 3.5(a). The Bar cites four Disciplinary Board decisions in the petition. In two of those, *In re Snee*, 35 DB Rptr 42 (2021) and *In re Morgan*, 31 DB Rptr 28 (2017), a public reprimand was issued for misconduct involving the mishandling of the lawyers' trust accounts and the lawyers' duties upon termination of the client relationship. The other two involved 30-day suspensions for violation of multiple court rules, *In re Ledesma*, 35 DB Rptr 188 (2021) and *In re Redden*, 32 DB Rptr 302 (2018). *Snee*, *Morgan*, and *Redden* all were stipulated discipline while *Ledesma* was a default opinion.

Respondent argues that these authorities are not persuasive. Respondent first cites *In re Renshaw*, 353 Or 411, 427 n. 12, 298 P3d 1216 (2013), where the court stated that "a stipulation for discipline [in an attorney disciplinary proceeding] has no precedential value," citing *In re Murdock*, 328 Or 18, 24 n.1, 968 P2d 1270 (1998). Respondent also notes that in a default case the respondent could not have challenged whether a suspension was an appropriate sanction. Respondent also notes that the Oregon Supreme Court has stated that, "although disciplinary panel opinions may be persuasive, they have no precedential value in this court." *In re Newell*, 348 Or 396, 412 n.5, 234 P3d 967 (2010).

Respondent then cites three reciprocal discipline cases in which the Oregon Supreme Court issued public reprimands for knowing and negligent conduct involving client matters or client funds: *In re Pierson*, SC S061044, OSB Case No. 13-01 (2013), *In re Eckley*, SC S065537, OSB Case No. 17-15 (2018), and *In re Sione*, 355 Or 600, 601, 330 P3d 588 (2014).

The Oregon Supreme Court acknowledges that "case-matching is an inexact science" when considering sanctions in disciplinary matters. *In re Stauffer*, 327 Or 44, 70, 956 P2d 967 (1998). Imposing a suspension based upon Respondent's misconduct here would not be unreasonable, but the authorities cited do not rebut the presumption that equivalent discipline should be imposed.

Respondent also objects to the Bar asserting a violation of RPC 1.15-1(d) when the Nevada authorities did not charge a violation of the identically-worded rule in Nevada. I do not have to decide whether the Bar can assert a charge that was not made in the other jurisdiction because even if I factored in a violation of that rule I would still find that a public reprimand is the appropriate sanction.

Accordingly, based on the submissions of the parties, and being otherwise fully advised,

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

DATED this 11th day of August, 2023.

/s/ Mark A Turner

Mark A. Turner, Adjudicator

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)	
)	
DWIGHT L. FAULHABER,)	
Bar No. 710584	)	Case No. 22-48
)	
Respondent.)	

Counsel for the Bar:	Alison F. Wilkinson
Counsel for the Respondent:	None
Disciplinary Board:	Mark A. Turner, Adjudicator Bryan Boender Mitchell P. Rogers, Public Member
Disposition:	Violation of RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2). Trial Panel Opinion. 90-day suspension.
Effective Date of Opinion:	September 15, 2023

TRIAL PANEL OPINION

The Oregon State Bar (Bar) charged Respondent Dwight L. Faulhaber with violations of RPC 1.4(a) (failure to communicate); RPC 1.15-1(d) (failure to promptly return client funds or provide an accounting), and RPC 8.1(a)(2) (failure to cooperate with the disciplinary investigation of his conduct). The Bar asks that we suspend Respondent for 90-120 days.

Respondent is in default for failure to obey an order issued by the Adjudicator that he file an answer that complied with the requirements of BR 4.3(c).¹ In a default case we assume the facts pleaded in the formal complaint are true. We then determine whether those facts support the charged violations. If we so conclude, we determine the appropriate sanction.

As explained below, we find that the facts pleaded support the charged violations. We order that Respondent be suspended for 90 days.

PROCEDURAL POSTURE

The Bar filed a formal complaint against Respondent on January 5, 2023. Respondent accepted service on January 22, 2023. The Bar served notice on February 17, 2023 that it would apply for an order of default if Respondent did not file an answer by close of business on

¹ The rule states in relevant part: “The respondent’s answer shall be responsive to the formal complaint filed. General denials are not allowed. The answer shall be substantially in the form set forth in BR 13.3 and shall be supported by a declaration under penalty of perjury by the respondent.”

February 27, 2023. Despite this notice, no motion for default had been filed when Respondent filed an answer dated March 8, 2023.

The answer did not comply with the requirements of BR 4.3(c). The Bar filed a motion to require that Respondent file an answer that met those requirements. An order to that effect was issued on April 5, 2023. The order required Respondent to file a proper answer by April 19, 2023.

Respondent failed to comply with the order. On May 5, 2023 the Bar filed a motion for an order of default for failure to obey the April 5 order. Respondent filed no opposition to the motion and an order of default was granted on May 10, 2023.

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). As noted above, we first determine whether the facts deemed true support a finding that the disciplinary rule violations occurred. If we so conclude, we 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).

FACTS AND VIOLATIONS

A. Facts

a. Client Erik Wiklund

On March 25, 2021, Erik Wiklund hired Respondent to help him get a divorce from his wife, Leslie Olson, and paid him a \$3,000 retainer. ¶ 3.² On May 3, 2021, Respondent filed a petition for dissolution. Respondent notified Wiklund on May 5, 2021, that he filed the petition. *Id.*

From early May until mid-June 2021, Respondent engaged in sporadic email communications with Wiklund regarding service of the petition. Respondent attempted to serve Olson at her believed place of residence, at her former place of employment, and at her parents' address, but was unsuccessful. ¶ 4.

Respondent did not communicate further with Wiklund from June 17, 2021 until November 2021, which prejudiced Wiklund, who wanted a speedy divorce. ¶¶ 5, 7. Wiklund emailed Respondent twice in August 2021, requesting an update. Respondent did not reply. Wiklund emailed again on September 9, 2021, stating: "I really need an update on the process of the divorce. I have questions I need answers to. I've called many times and sent several unanswered emails. I need you to get back to me." ¶ 5. Respondent again did not answer his client's question. Wiklund called Respondent's office every other day for most of September without success in reaching him. Wiklund also went to Respondent's office twice, but the office was empty. *Id.*

Wiklund hired new counsel, Morgan Diment, in November 2021. Only after Wiklund retained Diment did Respondent contact Wiklund to "discuss next steps." ¶ 6. Respondent was aware that Diment represented Wiklund in November 2021 but, despite repeated requests, Respondent failed to transfer the unearned balance of Wiklund's retainer and provide an

² All paragraph references are to the formal complaint.

accounting until late March 2022, after Wiklund complained to the Bar about Respondent's conduct. *Id.*

b. Respondent's communications with the Bar

By letter to Respondent of May 10, 2022, Disciplinary Counsel's Office (DCO) requested his response to Wiklund's allegations by June 1, 2022. ¶ 10. Respondent acknowledged receipt of the letter and asked for additional time to respond. *Id.*

DCO had received nothing more from Respondent by June 14, 2022. DCO sent Respondent an email that day asking him to respond by the close of business on June 15, 2022. ¶ 11. DCO received no response by that deadline. *Id.* DCO again requested Respondent's response by letter dated June 16, 2022, this time setting a deadline of the morning of June 23, 2022. ¶ 12. Respondent acknowledged receipt of this letter and asked to have until 5:00 p.m. on June 23, 2022 to respond. He stated that he was "compiling a fairly lengthy response," but still needed to gather his documentation. *Id.*

On June 23, 2022, Respondent emailed DCO that he could not meet the new deadline because he lost the seven-page response he drafted and could not recover it. ¶ 13. DCO replied by email and instructed him to submit whatever he could re-create by 5:00 p.m., and to then provide a supplemental response on Monday, June 27, 2022. *Id.* On June 23, 2022, at 6:03 pm, Respondent submitted a partial draft letter. He said he would provide a supplemental response on Monday, June 27, 2022, but he did not. ¶ 14.

DCO filed a petition on July 5, 2022 seeking Respondent's immediate suspension under BR 7.1 for failure to respond adequately to DCO's inquiries. ¶ 15.

On July 14, 2022, Respondent submitted another incomplete letter he identified as a "draft" addressing several of the Bar's requests for information. That letter did not provide the full accounting and supporting documentation, or the requested dates, means, and documentation of communications he contended he had with Wiklund. ¶ 16.

On July 22, 2022, the Disciplinary Board granted DCO's BR 7.1 petition and suspended Respondent. ¶ 17.

B. Charged Violations

a. Respondent failed to adequately communicate with Wiklund.

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 violated this rule 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. *In re Graeff*, 368 Or 18, 26, 485 P3d 258 (2021); *In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011). We may infer Respondent's state of mind from the evidence or, in this case, the allegations in the formal complaint. *In re Phelps*, 306 Or 508, 513, 760 P2d 1331 (1988).

Respondent's conduct satisfies the court's three factor analysis. From June 17, 2021, through November 2021, a period of roughly five months, Respondent did not contact Wiklund, despite Wiklund's numerous attempts to contact Respondent by phone, email, and in person. Respondent was aware that Wiklund's objective was to obtain a divorce as quickly

as possible. Respondent knew that his failure to communicate with Wiklund during this five month period would prejudice Wiklund's stated goal of a speedy divorce.

Respondent violated RPC 1.4(a).

b. Respondent failed to provide Wiklund with funds to which he was entitled.

RPC 1.15-1(d) provides:

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

On March 25, 2021, Wiklund paid Respondent a \$3,000 retainer. By no later than November 2021 Respondent knew he no longer represented Wiklund because he knew Wiklund had hired a new lawyer. Respondent did not provide an accounting or transfer the unearned balance of Wiklund's retainer to him until late March 2022, despite requests, and only after the Bar became involved.

Respondent failed to promptly deliver funds to Wiklund that he was entitled to receive in violation of RPC 1.15-1(d). *See In re Simms*, 29 DB Rptr 133 (2015) (trial panel found that delay of three months in forwarding settlement funds to client violated RPC 1.15-1(d)); *see also In re Celuch*, 35 DB Rptr 28 (2021) (stipulating that failure to refund client's unearned retainer for five months was a violation of RPC 1.15-1(d)); *In re Steves*, 26 DB Rptr 283 (2012) (stipulating that failure to provide an accounting for five months was a violation of RPC 1.15-1(d)).

c. Respondent failed to respond to DCO inquiries.

RPC 8.1(a)(2) states in relevant part:

"* * *[A] lawyer in connection with * * * a disciplinary matter, shall not * * * knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6."

The rule requires Oregon lawyers to cooperate when DCO, a disciplinary authority, investigates disciplinary matters. Oregon lawyers are obligated to respond to DCO's inquiries.

DCO made multiple written requests to Respondent for information. Respondent was administratively suspended under BR 7.1 for failing to respond to these requests. He never cured that failure.

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 has no tolerance for 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 failure to cooperate with the Bar).

The requests by DCO for information were lawful. Respondent's failure to respond was knowing. We find that Respondent violated RPC 8.1(a)(2). *In re Miles*, 324 Or at 221; *In re Obert*, 352 Or 231, 248-49, 282 P3d 825 (2012).

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 make a preliminary determination of sanctions, after which we may adjust the sanction based on the existence of recognized aggravating or mitigating circumstances.

Duty Violated

In violating RPC 1.4(a), Respondent violated his duty to act with reasonable diligence and promptness. ABA Standard 4.4. In violating RPC 1.15-1(d), Respondent violated his duty to properly handle client property. ABA Standard 4.1. In violating RPC 8.1(a)(2), Respondent violated his duty as a professional. ABA Standard 7.0.

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 communicate with Wiklund for five months. Wiklund repeatedly contacted him about the status of his matter in August and September 2021. Respondent ignored him. Respondent was aware of his obligation to communicate with his client but chose not to do so.

Respondent acted knowingly when he failed to promptly return Wiklund's unearned fees. He knew that he had a duty to return the funds, and Diment asked that he do so. Respondent withheld the funds from November 2021 until late March 2022, after a Bar complaint was made.

Respondent also acted knowingly when he failed to respond to DCO's repeated requests for information. Respondent's course of conduct reflects that he knew he had an obligation to respond, but continually failed to do so.

Extent of Actual or Potential Injury

Actual 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 harm that is reasonably foreseeable at the time of the misconduct, and which, but for some intervening factor, would probably have resulted from the lawyer's misconduct. ABA Standards at 5. For purposes of determining an appropriate sanction, we may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

Respondent's conduct caused his client stress, frustration, and anxiety. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426-27, 939 P2d 39 (1997). Respondent's conduct also forced Wiklund to hire a second lawyer to finish his case.

Respondent also caused actual injury to Wiklund by failing to provide him with an accounting or return his funds for approximately four months.

Respondent's failure to respond to the Bar caused actual injury to the Bar and the public. *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).

Preliminary Sanction

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

Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. ABA Standard 4.42.

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 as a professional and causes injury or potential injury to a client, the public, or the legal system. ABA Standard 7.2.

Aggravating and Mitigating Circumstances

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

1. A prior record of discipline. ABA Standard 9.22(a). Respondent has two prior disciplinary suspensions. In 1993, Respondent received a 120-day suspension, 60 days stayed, with one-year probation for a violation of former DR 2-110(B)(2) (failure to withdraw when continued employment will result in violation of disciplinary rules). *In re Faulhaber*, S039959 (Faulhaber I). The charges in Faulhaber I stemmed from Respondent's personal feelings and conduct toward a female personal injury client. In 2017, Respondent received a 30-day suspension for violations of RPC 1.5(c)(3) (charging or collecting a fee denominated as earned on receipt without written fee agreement with required disclosures), RPC 1.9(a) (former client conflict), and 1.15-1(c) (duty to deposit

client funds into trust), in two separate matters. *In re Faulhaber*, 31 DB Rptr 52 (2017) (Faulhaber II).

In determining what weight to give prior discipline, we consider the following: (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).

Faulhaber I involved serious misconduct with a lengthy resulting sanction, but it was not similar to the conduct at issue here and occurred roughly 30 years before this matter arose.

The conduct at issue in Faulhaber II is more recent, occurring roughly eight years prior to the current matter. The misconduct then was also not similar to the current matter.

Respondent was sanctioned for the first two prior offenses before he engaged in the misconduct at issue here, which shows that he had “both warning and knowledge of the disciplinary process” when he represented Wiklund. *In re Jones*, 326 Or at 201. That this is Respondent’s third time before the Disciplinary Board also deserves weight.

In all we give Respondent’s prior offenses moderate weight. *In re Jones*, 326 Or at 201.

2. Multiple offenses. ABA Standard 9.22(d).
3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice in 1971.

The Bar acknowledges the following mitigating factor:

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

Oregon Case Law

The Bar points out that 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 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).

A 30-day suspension is also appropriate when an attorney fails to promptly return client funds or perform an accounting. See *In re Snyder*, 348 Or 307, 314, 232 P3d 952 (2010) (60-day suspension for violations of RPC 1.4(a), RPC 1.4(b), and RPC 1.15-1(d)); *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)).

A 60-day suspension is generally the lower limit for an attorney’s failure to cooperate with a DCO investigation. See *In re Miles*, 324 Or at 225 (120-day suspension for two violations of predecessor to RPC 8.1(a)(2)). As the Disciplinary Board explained 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).

We do recognize that “case-matching is an inexact science” when considering sanctions in disciplinary matters. *In re Stauffer*, 327 Or 44, 70, 956 P2d 967 (1998). We also recognize that a significant suspension is warranted to protect the public and to deter misconduct of this type in the future. We believe a 90-day suspension will accomplish these objectives in this case. We order that Respondent be suspended for 90 days, effective on the date this decision becomes final.

CONCLUSION

Sanctions in disciplinary matters are not intended to penalize the accused lawyer, but instead are intended to protect the public and the integrity of the profession. *In re Stauffer*, 327 Or 44, 66, 956 P2d 967 (1998). Appropriate discipline deters unethical conduct. *In re Kirkman*, 313 Or 181, 830 P2d 206 (1992). Accordingly, we find that Respondent should be suspended for a period of 90 days, effective on the date on which this opinion becomes final.

Respectfully submitted this 15th day of August, 2023.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Bryan Boender

Bryan Boender, Attorney Panel Member

/s/ Mitchell Rogers

Mitchell Rogers, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)	
)	
CURTIS CHARLES CALDWELL,)	
Bar No. 113470	)	Case No. 22-86
)	
Respondent.)	

Counsel for the Bar:	Matthew S. Coombs
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.
Effective Date of Order:	August 22, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 60-days, effective September 1, 2023, for violation of RPC 1.3 and RPC 1.4(a).

DATED this 22nd day of August, 2023.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Curtis Charles Caldwell, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 6, 2011, and has been a member of the Bar continuously since that time, having his office and place of business in Marion County, Oregon.

3.

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

4.

On April 12, 2023, a Formal Complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.3 and RPC 1.4(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 August 2018, Catherine and Travis Kephart (the Kepharts) retained Respondent to file a Chapter 13 bankruptcy petition on their behalf. After filing, the bankruptcy trustee established a repayment plan requiring the Kepharts to pay \$1,200 per month toward their debt obligations. Per the repayment plan schedule, the Kepharts' monthly payment would increase to \$3,000 in September 2021.

6.

In January of 2021, Catherine was forced to decrease her working hours due to illness, resulting in a substantial income decrease. Soon after, the Kepharts welcomed a new child, putting added pressure on their financial situation.

7.

In early February 2021, the Kepharts contacted Respondent. They asked Respondent to advise them how to dispose of a totaled automobile to resolve the associated monthly payment obligations. Second, they asked him to obtain a repayment plan payoff quote from the bankruptcy trustee. Lastly, the Kepharts asked Respondent to file a request to modify their repayment plan based on their changed financial circumstances. Regarding the final inquiry, Respondent indicated a modification was possible.

8.

In August and September of 2021, Respondent assured the Kepharts that he was submitting a plan modification to the bankruptcy trustee. Based on these representations, the Kepharts made a \$1,200 bankruptcy plan payment in September instead of the \$3,000 that the plan called for. Respondent failed to provide the promised plan modification for review and failed to file any request with the bankruptcy court.

9.

In November of 2021, the Kepharts asked Respondent if they should continue making \$1,200 payments each month. He told them to do so and that he would have a modified plan done within the week. Respondent did not submit a modified plan.

10.

In January of 2022, the bankruptcy trustee moved to dismiss the Kepharts' bankruptcy case based on insufficient plan payments and missing tax information. The Kepharts promptly produced the requested tax information. Respondent did not forward the information to the trustee.

11.

Respondent received the trustee's motion to dismiss, but failed to file a response prior to the 30-day deadline. Respondent filed a response after he received notice of a potential default.

12.

Respondent notified the bankruptcy trustee that he was planning to submit a modified plan by the end of February. Respondent failed to do so.

13.

The bankruptcy court held a hearing on the trustee's motion to dismiss in March of 2022. During the hearing, Respondent admitted to missing the response deadline, and admitted to failing to provide the trustee with the Kepharts' tax information despite knowing that it was outstanding. At the end of the hearing, the court dismissed the Kepharts' bankruptcy proceeding.

14.

At the time of the dismissal, Respondent had still not provided his clients with substantive guidance on the disposal of their inoperable vehicle, nor had he obtained a bankruptcy payoff quote from the bankruptcy trustee.

Violations

15.

Respondent admits that, by failing to prepare and file a request for a bankruptcy repayment plan modification and substantively address his clients' inquiries for approximately one year, he violated RPC 1.3 and RPC 1.4(a).

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.** The most important ethical duties a lawyer owes are to his clients. ABA Standards at 4. Respondent violated his duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. 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.*

Here, Respondent acted knowingly by failing to follow through with his professional obligations to his clients. He was aware that he needed to take certain actions in shepherding his clients’ bankruptcy case and told his clients he would take those actions. He also acted knowingly in failing to respond to their communication attempts.

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

Respondent’s misconduct caused multiple injuries to his clients. The Kepharts’ bankruptcy case was dismissed after Respondent failed to move for a plan modification for over a year and failed to provide documentation in his possession. The delay in reliable legal advice resulted in his clients being forced to commit badly needed funds to monthly obligations related to an inoperable vehicle that they no longer wanted. Additionally, Respondent’s failure to act decreased the Kephart’s creditworthiness, depriving them of the ability to refinance their mortgage at historically low interest rates. The foregoing also contributed to significant uncertainty, anxiety, and aggravation. “Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules.” *In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010).

- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Prior disciplinary offenses. ABA Standard 9.22(a). Respondent received a public reprimand for a single violation of RPC 4.4(a)[using methods of obtaining evidence that violated the legal rights of a third person] in 2016.
 2. Multiple offenses. ABA Standard 9.22(d).
 3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to the Oregon State Bar in 2011.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
 1. Absence of a dishonest or selfish motive. ABA Standard 9.32(b).

2. Personal or emotional problems. ABA Standard 9.32(c). Respondent reported that the pandemic resulted in a steep decrease in business, forcing him to lay off his staff and take a full-time, non-legal job in order to support his family. Respondent also reported anxiety and depression during the period of time relevant to this proceeding.
3. Remorse. ABA Standard 9.32(l).

17.

Pursuant to ABA Standard 4.42, 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 (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.”

18.

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).

19.

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).

20.

Considering that 60-day suspensions are typical for violations of the rules alleged in this matter and Respondent’s mitigating and aggravating factors offset each other, a 60-day suspension is appropriate.

21.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 60 days for violation of RPC 1.3 and 1.4(a), the sanction to be effective September 1, 2023.

22.

In addition, on or before September 1, 2023, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$55.90, incurred for personal service of the formal complaint. Should Respondent fail to pay \$55.90 in full by September 1, 2023, the Bar may thereafter, without further notice to him, obtain a judgment against Respondent for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

23.

Respondent acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. In this regard, Respondent has arranged for Kevin Rank, 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 Kevin Rank has agreed to accept this responsibility.

24.

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

25.

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

26.

Respondent represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Respondent is admitted: none.

27.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on June 10, 2023. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 18th day of August, 2023.

/s/ Curtis Charles Caldwell
Curtis Charles Caldwell, OSB No. 114370

EXECUTED this 21st day of August, 2023.

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)	
)	
THOMAS JOHNSON, Bar No. 953126	)	Case No. 22-39 and 22-124
)	
Respondent.)	

Counsel for the Bar:	Eric J. Collins
Counsel for the Respondent:	None
Disciplinary Board:	Mark A. Turner, Adjudicator Andrew M. Cole Cynthia V. Lopez, Public Member
Disposition:	Violation of RPC 8.1(a)(2), RPC 8.4(a)(2), and RPC 8.4(a)(3). Trial Panel Opinion. Disbarred.
Effective Date of Opinion:	October 10, 2023

TRIAL PANEL OPINION

The Oregon State Bar (Bar) asks us to disbar Respondent Thomas Johnson for theft and knowing conversion of funds from a non-profit organization while serving as its treasurer. He is also accused of obstructing the Bar's efforts to investigate his misconduct by failing to respond to its inquiries in this and another, separate grievance.

Respondent is in default for failing to file an answer. 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). We first determine whether the facts deemed true support a finding that the alleged disciplinary rule violations occurred. If we so conclude, we 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. In Oregon, the presumptive sanction for a lawyer who converts funds belonging to another is disbarment. *See In re Webb*, 363 Or 42, 43, 418 P3d 2 (2018). There is nothing in the record here to overcome that presumption. Accordingly, we order that Respondent be disbarred on the date this decision becomes final.

PROCEDURAL POSTURE

The Bar filed a formal complaint against Respondent on December 15, 2022. The Bar was unable to personally serve Respondent with the formal complaint and notice to answer so it moved for an order allowing alternative service. That motion was granted on January 11,

2023. Service of the formal complaint and notice to answer was accomplished by email and USPS certified mail on January 11, 2023.

On February 3, 2023, the Bar notified Respondent of its intent to take default if Respondent did not file an answer. On February 27, 2023, the Bar filed a motion for order of default, which the Adjudicator granted on March 7, 2023.

FACTS AND VIOLATIONS

Facts

1. Grievance from board members of the Oregon Association of Collaborative Professionals (OACP)– Case No. 22-39

Respondent served as treasurer of OACP, a non-profit organization. While in that position Respondent knowingly converted approximately \$20,270.85 of OACP’s funds, either for his own use or for other purposes. ¶¶ 3, 12.¹ A review of the OACP account showed that between approximately 2017 and 2019, Respondent wrote 21 checks totaling \$19,510.85 in OACP funds for payment to himself or his law firm, d/b/a “Divorce Shoppe”. ¶ 6.

On three of the checks, totaling \$2,960.85, Respondent indicated on the memo line that the checks were for unspecified “CLE Expenses.” *Id.* On the other 18 checks, Respondent identified no purpose for the payments. *Id.* The OACP board also discovered that Respondent made eight ATM withdrawals in 2019 worth \$760 in total. *Id.* The board never authorized these transactions. ¶ 7.

The unauthorized transactions only came to light after the board requested Respondent’s resignation as treasurer, a role he had occupied for approximately 10 years. ¶ 3. Respondent resigned in April 2021. The board later discovered that Respondent made several deposits in May 2021 from his firm account into an OACP bank account, totaling \$14,785.74. ¶¶ 3, 4. Respondent did not tell the board when or why he made those deposits. *Id.* The board also discovered that some of Respondent’s past treasurer reports did not match the balances shown on OACP account statements for the corresponding time period. ¶ 4.

The board asked Respondent, in a letter dated July 7, 2021, to deliver all OACP financial records and copies of all past treasurer reports he previously had submitted to the board. *Id.* The board also asked for an accounting of all fund transfers made from OACP accounts to Respondent’s personal or business accounts and the reason for those transfers. *Id.*

On July 14, 2021, Respondent emailed a response to then-OACP president Kate Hall stating that he had previously opened an online interest-bearing account with Synchrony Bank and “occasionally” transferred OACP funds into the account. ¶ 5. Respondent claimed that his intent was to generate interest income for OACP. He also stated that when he resigned as treasurer, he returned all funds back to the OACP account, but did so indirectly, first moving the funds into one of his business accounts and then transferring the money into the OACP account. Respondent also told Hall that he had no OACP-related data to provide the board since he had “wiped” his hard drive on one computer as part of closing his office and “wiped and recycled” another computer that might have contained such material. *Id.* Prior to his email to Hall, Respondent had never told the board that he had transferred funds from the OACP

¹ Paragraph references are to the formal complaint.

account in the manner described above nor had he sought the board's authorization to make such transfers. ¶ 7.

When Hall attempted to get information about the purported online interest-bearing Synchrony Bank account, Synchrony was unable to locate any account associated with OACP or OACP's federal tax identification number. ¶ 8. Respondent had previously told Hall that he had closed the Synchrony account after his resignation and was unable to access the account himself. *Id.*

On January 11, 2022, OACP demanded payment of \$4,725.11 from Respondent, the difference between the amount Respondent paid himself from OACP funds less the amount Respondent returned after his resignation. ¶ 9. Respondent did not respond. *Id.*

On October 20, 2021, Disciplinary Counsel's Office (DCO) received a grievance from several OACP board members regarding Respondent's conduct. ¶ 15. By letter dated April 18, 2022, DCO requested additional information from Respondent regarding the grievance. The letter was addressed to Respondent at Post Office Box 1012, Wilsonville, Oregon 97070, the address then on record with the Bar (record address) and was sent by first class mail. DCO also emailed the letter to tom@divorceshoppe.com, the email address then on record with the Bar (record email address). The letter and email were not returned undelivered, but Respondent did not respond. *Id.*

By letter dated May 6, 2022, DCO again requested a response to the questions posed in the April 18, 2022 letter ¶16. The letter was sent to Respondent at the record address by both first-class mail and certified mail, return receipt requested. The letter was also sent to the record email address. The certified mail was returned undelivered. Respondent; however, emailed DCO on or about May 13, 2022, requesting an extension of time to respond with a new deadline of May 31, 2022. *Id.*

Respondent sent a letter to DCO on May 31, 2022, that was not responsive to the questions asked by DCO in the April 18, 2022 letter. ¶ 17. Respondent also asked for more time to respond. He had not submitted any additional information by June 10, 2022, so DCO sent Respondent another letter requesting his complete response to the questions in the April 18, 2022 letter no later than June 17, 2022. ¶ 18. The letter was sent to Respondent at the record address by both first-class mail and certified mail, return receipt requested. The letter was also sent to the record email address. The certified mail was again returned undelivered, but the email was not. *Id.*

On August 12, 2022, DCO filed a petition pursuant to BR 7.1 seeking Respondent's immediate suspension for his failure to respond to DCO. The petition was sent by first class mail to the record address and by email to the record email address. The letter and email were not returned undelivered, but Respondent did not file any response to the petition. ¶ 19. On August 29, 2022, the Adjudicator issued an order suspending Respondent pursuant to BR 7.1. ¶ 20. Respondent has never responded to the questions posed by DCO in its April 18, 2022 letter. ¶ 21.

2. Separate grievance from Jean Hamilton – Case No. 22-124

On May 5, 2022, DCO received a grievance from Jean Hamilton about Respondent, separate and distinct from the OACP complaint. ¶24. DCO wrote to Respondent on July 7, 2022, asking for his response to the grievance. DCO set a deadline of July 28, 2022. The letter

was addressed to Respondent at the record address and was sent by first class mail. *Id.* The letter was also sent to the record email address. The letter and email were not returned undelivered, but Respondent did not respond. *Id.*

By letter dated August 15, 2022, DCO again asked Respondent to provide a response to Hamilton’s grievance no later than August 22, 2022. ¶ 25. The letter was addressed to Respondent at the record address and was sent by both first-class mail and certified mail, return receipt requested. The letter was also sent to the record email address. The certified mail was returned undelivered, but the email was not. *Id.*

DCO filed another petition to suspend Respondent pursuant to BR 7.1 on September 22, 2022, for his continued refusal to respond. The petition was sent by first class mail to the record address and by email to the record email address. The letter and email were not returned undelivered. Respondent did not file any response to the petition. ¶ 26. The Adjudicator issued an order on October 11, 2022, suspending Respondent. Respondent has never provided a response to the questions posed by DCO in its July 7, 2022 letter regarding Hamilton’s grievance. ¶ 28.

Charged Violations

1. Respondent violated RPC 8.4(a)(2) when he committed the criminal act of theft of OACP funds.

RPC 8.4(a)(2) provides: “It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” To establish a violation of RPC 8.4(a)(2) in a default case, the Bar must plead facts showing that a 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.

The facts pleaded establish that Respondent committed the crime of theft in the first degree. A person commits theft “when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person takes, appropriates, obtains or withholds such property from an owner thereof.” ORS 164.015(1). “With intent” means that “a person acts with a conscious objective to cause the result or to engage in the conduct so described.” ORS 161.085(7). The value of the property stolen determines whether the crime is a felony or a misdemeanor. Theft in the first degree occurs when the amount taken is \$1,000 or more. It is a Class C felony. ORS 164.055. Theft in the third degree occurs when the amount taken is less than \$100. It is a Class C misdemeanor. ORS 164.043.

The facts in this case are very much like those in *In re Phinney*, 354 Or 329, 311 P3d 517 (2013). In *Phinney*, the court found that a lawyer committed theft and violated RPC 8.4(a)(2) when he stole \$32,600 from the Yale Alumni Association of Oregon while acting as its treasurer. The lawyer in *Phinney* withdrew funds from the association’s bank accounts by writing checks payable to himself or cash and then deposited the proceeds into his personal account to pay his own and his family’s expenses over a 17-month period. *Id.* at 330-331. By

the time the theft was discovered, he had deposited \$18,070 back into the association's account. *Id.*

The court found the respondent had committed theft by appropriation under ORS 164.015(1). *Id.* at 335. The court noted that the statutory definition of "appropriate" or "appropriate property of another to oneself" means to "[d]ispose of the property of another for the benefit of oneself or a third person." *Id.* at 334. The court held that the plain meaning of the term "dispose of" in the statute is "to transfer into new hands or to the control of someone else." *Id.* (citing *Webster's Third New Int'l Dictionary* 654 (2002)). The court concluded that the lawyer had personally taken control of the association's funds and acted with an intent to dispose of the funds to benefit himself and his family. The court stated, "Thus he committed theft by appropriation each time he withdrew and personally disposed of association funds." *Id.* Repayment of some of the funds "does not negate his demonstrated intent to appropriate the funds under ORS 164.015(1)." *Id.* at 335. The court also found that the theft reflected adversely on the lawyer's honesty and trustworthiness. *Id.*

In the case before us, Respondent appropriated \$20,270.85 of OACP's funds between 2017 and 2019 without authorization while acting as the organization's treasurer. \$19,510.85 of that money was appropriated through the 21 checks made out to Respondent or his firm. Respondent secretly returned \$14,785.74 after his resignation but, as in *Phinney*, Respondent's return of some of the stolen funds does not negate his intent to deprive OACP of the money. In fact, secretly returning some of the stolen money is evidence of consciousness of guilt. In the end, Respondent neither returned nor accounted for all the stolen funds and OACP has been unable to recover the amount he had not paid back, \$4,725.11.

We also find that Respondent took the money intentionally. repeatedly withdrew funds without authorization from OACP's bank account. He intended that money to be used for his own purposes, not those of OACP. He had been doing this for several years before he tried to cover his tracks, and he only did this after he was caught and the board asked him to resign as treasurer. We also find, as in *Phinney*, that this conduct reflects adversely on Respondent's honesty and trustworthiness. Respondent violated RPC 8.4(a)(2).

2. Respondent also violated RPC 8.4(a)(3) when he converted OACP's funds.

RPC 8.4(a)(3) states: "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law." Dishonesty is conduct evidencing a disposition to lie, cheat, or defraud as well as a lack of trustworthiness or integrity. *In re Kluge*, 335 Or 326, 340, 66 P3d 492 (2003); *In re Claussen*, 331 Or 252, 260, 14 P3d 586 (2000). Dishonesty under the rule includes "theft or knowing conversion of client property, such as client funds." *In re Peterson*, 348 Or 325, 334-35, 232 P3d 940 (2010), quoting *In re Eakin*, 334 Or 238, 248, 48 P3d 147 (2002). "Knowing" is defined as actual knowledge of the fact in question, and knowledge can be inferred from the circumstances. RPC 1.0(h).

Dishonest conduct that occurs outside a lawyer's professional capacity can still violate the rule. See *In re Stodd*, 279 Or 565, 567-68, 568 P2d 665 (1977) (lawyer who was president of a non-profit disciplined for converting the association's funds to his own use, with the court noting: "Nothing less than the most scrupulous probity in dealing with the funds of others is compatible with admission to the practice of law. This is a standard that does not permit drawing a line between an attorney's professional and his non-professional roles."); see also

In re Gregg, 252 Or 174, 446 P2d 123 (1968) (lawyer who was treasurer of an organization disciplined for embezzling funds).

The court in *Phinney* also found that the lawyer there violated RPC 8.4(a)(3). 354 Or at 335. The court stated:

“The accused’s theft of association funds for the accused’s personal use over an extensive period of time is flatly inconsistent with adherence to the basic standard of honesty that an attorney must follow in the practice of law. Moreover, the record indicates that the accused gave regular reports about bank account activity and balances to the president and membership of the association from late 2008 through the end of 2010, without disclosing the withdrawals. Thus, the accused, in his role as treasurer, engaged in deceit and also misrepresented the financial position of the association to its membership for over two years.” *Id.*

Respondent did the same thing here. He stole the money and then submitted falsified treasurer reports to hide his withdrawals. When the board requested an accounting of all fund transfers from OACP to Respondent’s personal or business accounts and the reasons for those transfers, Respondent falsely claimed that he had “occasionally” transferred OACP funds into an online interest-bearing account at Synchrony Bank to generate interest income for the non-profit. He falsely claimed that after his resignation he returned all funds back to OACP.

He also falsely claimed that he moved the funds from Synchrony into one of his business accounts before transferring the funds back to OACP without any explanation of why he followed such a procedure. He further claimed he had no data he could provide OACP about the withdrawals and maintained he could no longer access the Synchrony account. The board later discovered that Synchrony had no record of any account associated with OACP or the organization’s federal tax identification number.

Respondent demonstrated dishonesty by first knowingly converting the funds. He continued his dishonest conduct when he lied to the board about how and why he handled the account the way he did. We find that Respondent violated RPC 8.4(a)(3).

3. Respondent violated RPC 8.1(a)(2) when he knowingly failed to respond to the Bar’s investigation.

RPC 8.1(a)(2) states in relevant part:

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

The rule requires Oregon lawyers to cooperate when DCO, a disciplinary authority, investigates disciplinary matters. Oregon lawyers are obligated to respond to DCO’s inquiries.

DCO here sought Respondent’s answers to questions relating to two unrelated complaints about his conduct. Respondent never responded to additional questions posed by DCO regarding the withdrawals of OACP funds. We know that Respondent received the inquiries because he specifically asked for more time to respond. Despite the additional time granted to

him, Respondent chose not to provide a response, leading to his administrative suspension under BR 7.1.

DCO also sent Respondent questions regarding the separate grievance from Jean Hamilton. The correspondence was sent to the same postal and email addresses used by the Bar in its investigation of the OACP matter, yet Respondent never provided any response. This too led to his administrative suspension.

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 has no tolerance for 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 failure to cooperate with the Bar).

The requests by DCO for information were lawful. Respondent’s failure to respond was knowing. We find that Respondent violated RPC 8.1(a)(2). *In re Miles*, 324 Or at 221; *In re Obert*, 352 Or 231, 248-49, 282 P3d 825 (2012).

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 make a preliminary determination of sanctions, after which we may adjust the sanction based on the existence of recognized aggravating or mitigating circumstances.

Duty Violated

Respondent’s violations of RPC 8.4(a)(2) and (3) breached duties that he owed to the public. ABA Standard 5.0. Respondent also violated his duty to maintain his personal integrity. ABA Standard 5.1.

Respondent violated his duty to the legal profession when he failed to cooperate with DCO’s investigations. ABA Standard 7.0. Respondent also violated his duty to the public because the disciplinary process serves to protect the public. ABA Standard 5.0.

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 intentionally when he converted OACP's funds. His conscious objective was to take funds that were not his and use them for himself and his personal interests. He issued 21 checks and made eight ATM withdrawals over a number of years. He probably would have continued this misconduct, but for the fact that he was caught. His proffered explanation to the OACP board was demonstrably false. When the Bar pressed for further details, Respondent chose to stop responding at all.

Respondent also acted intentionally when he refused to cooperate with the Bar's investigation of his conduct. Although he initially communicated with DCO, he soon stopped as the investigation pressed on. He chose to stop communicating with regulatory authorities to stymie the investigation. His intransigence gained him nothing, however, other than an additional charge for violating RPC 8.1(a)(2).

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).

OACP, the public, the legal profession, and the Bar all sustained actual injury as a result of Respondent's misconduct. Respondent harmed the non-profit by stealing more than \$20,000 from the organization's bank accounts, making those funds unavailable to use. *Phinney*, 354 Or at 336.

Respondent's failure to cooperate with DCO's investigation caused harm to the legal profession, the public, and the Bar. *Miles*, 324 Or at 222. Respondent's failure to cooperate impeded the Bar's effort to determine what Respondent did with the converted funds and the extent of his misconduct. Respondent's failure to cooperate also prevented the Bar from determining whether Respondent engaged in the misconduct Hamilton alleged.

Preliminary Sanction

Absent aggravating or mitigating circumstances, 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).

The presumptive sanction here is disbarment.

Aggravating and Mitigating Circumstances

The following aggravating factors recognized under the Standards are present here:

1. A prior record of discipline. ABA Standard 9.22(a). In 2020, Respondent was suspended for 150 days for neglect of a legal matter and then repeatedly misrepresented the status of the work to his client over a period of approximately five months. *In re Johnson II*, 34 DB Rptr 190 (2020).

In 2005, Respondent was suspended for 90 days when he neglected a client's matter for approximately seven months and then made false representations to the client about his health and the status of the matter. *In re Johnson I*, 19 DB Rptr 324 (2005).

When assessing the significance of a lawyer's prior discipline, we 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).

Respondent's prior discipline involves dishonesty and misrepresentation just as the current case does. The prior offenses were serious. The prior discipline also confirms that Respondent was aware of the disciplinary process and the requirement that he cooperate in it.

2. A dishonest or selfish motive. ABA Standard 9.22(b). Respondent converted OACP's funds to benefit himself. The acts of theft and conversion were prompted by dishonest and selfish motives.
3. A pattern of misconduct. ABA Standard 9.22(c). "[A] pattern of misconduct does not necessarily require proof of a prior sanction. Rather, that aggravating factor bears on whether the violation is a one-time mistake, which may call for a lesser sanction, or part of a larger pattern, which may reflect a more serious ethical problem." *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018). Respondent converted OACP's funds over several years in at least 29 transactions. He also tried to hide his misconduct after he was caught, by trying to secretly repay funds and by lying to the OACP board, conduct which again involves dishonesty and misrepresentation.
4. Multiple offenses. ABA Standard 9.22(d). Respondent violated four rules of professional conduct in two disciplinary matters.
5. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to the Oregon State Bar on September 22, 1995.

We find no recognized mitigating factors here.

Oregon Case Law

Oregon cases confirm that disbarment is warranted. The Oregon Supreme Court has often stated 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, supra*, 363 Or at 53). In *Webb* the trial panel imposed a suspension, rather than disbarment, on a lawyer who intentionally converted client funds. The trial panel had found the respondent's mental condition served as a mitigating factor sufficient to lessen the sanction from disbarment. The court rejected that conclusion and disbarred the respondent. The court stated that it is theoretically possible that a respondent could demonstrate mitigating factors sufficient to justify a sanction less than disbarment, but the respondent there did not do so. 363 Or at 56.

Neither could Respondent have done so here when we have no mitigating factors at all to consider to overcome the presumptive sanction.

The Bar cites us to a number of cases where lawyers were disbarred for wrongfully taking money that did not belong to them. We do not need to review them here. We have already discussed one, *In re Phinney*, where the lawyer's misconduct, which was arguably indistinguishable from Respondent's here, resulted in disbarment. Whether the money is stolen from a client, a third party, or the lawyer's law firm, disbarment results. There is nothing in the record here that would lead to a different conclusion. We order that Respondent be disbarred, effective on the date this decision becomes final.

CONCLUSION

Sanctions in disciplinary matters are not intended to penalize the accused lawyer, but instead are intended to protect the public and the integrity of the profession. *In re Stauffer*, 327 Or 44, 66, 956 P2d 967 (1998). Appropriate discipline deters unethical conduct. *In re Kirkman*, 313 Or 181, 830 P2d 206 (1992). Accordingly, we order that Respondent be disbarred effective on the date on which this opinion becomes final.

Respectfully submitted this 8th day of September 2023.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Andrew Cole

Andrew Cole, Attorney Panel Member

/s/ Vanessa Lopez

Vanessa Lopez, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)	
)	
NICHOLAS JOHANN SLINDE,)	
Bar No. 003900	)	Case No. 20-16
)	
Respondent.)	

Counsel for the Bar:	Matthew S. Coombs
Counsel for the Respondent:	David J. Elkanich
Disciplinary Board:	None
Disposition:	Violation of RPC 1.7(a)(2). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	September 27, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Nicholas Johann Slinde (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)(2).

DATED this 27th day of September, 2023.

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

STIPULATION FOR DISCIPLINE

Nicholas Johann Slinde, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 4, 2000, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On November 11, 2022, 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)(2) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In the fall of 2013, Private Capital, LLC (IPC), engaged the law firm, Slinde Nelson Stanford (SNS), to advise IPC on real estate investment matters. Respondent was a partner of SNS. IPC served as general partner of and operated several real estate investment funds, one of which was Iris Capital Fund IV, LP (the Iris Fund). IPC was a single member LLC managed by Shane Kniss (Kniss).

6.

The Iris Fund and a company owned by Sean Keys (Keys), co-owned PDX Portfolio, LLC (PDX Portfolio). PDX Portfolio was organized to acquire, develop, lease, hold, and sell real property for investment purposes.

7.

Respondent began advising IPC directly in or around the spring of 2014.

8.

In August of 2014, Kniss and Respondent agreed that Respondent, through a company Respondent owned in part, would receive an ownership interest in Kniss' new business venture, unrelated to IPC or the Iris Fund, in exchange for Respondent's management services as well as a credit for legal services to that new business venture, to be supplied by SNS. The new business venture would ultimately be called Terwilliger Partners (TP).

9.

When respondent took the interest in TP, he went through a deliberate process to ensure that he disclosed to Kniss the conflict regarding his acquisition of an interest in TP, and the terms of the transaction. On August 11, 2014, Kniss gave his informed consent to Respondent's self-interest conflict in the proposed business transaction by signing a waiver letter on behalf of IPC. The waiver letter complied with RPC 1.8(a), including a recommendation that Kniss consult independent counsel as to whether he should enter the business transaction with Respondent and whether he should consent to Respondent's future representation of TP after the transaction.

10.

In the latter half of September of 2014 and the first week of October, Kniss voiced to Respondent his hesitancy on relying on Keys in connection with TP. During this time, Kniss also expressed concern over IPC's (Kniss' solely owned holding entity) ability to pay its bills.

11.

Also during this time, SNS was working on securing a refinance loan secured by properties owned by PDX Portfolio. Kniss indicated to Respondent that funds from the refinance may be used to fund TP, a business with no financial connection to PDX Portfolio. Respondent was not aware of the extent to which Kniss's entity, IPC, as General Partner, was entitled to a portion of those funds in line with its management fee because IPC had other counsel advising on distributions related to IPC and the Funds. Nonetheless, Kniss recognized he had a need for those funds to go to the real estate investors.

12.

In the fall of 2014, Respondent aided Kniss in documenting a series of separate agreements and settlements related to IPC, the Iris Fund, PDX Portfolio and TP. Due to the various agreements having common decision makers among the parties, a risk arose that TP, a company in which Respondent owned a personal interest, could benefit to the detriment of IPC or the Iris Fund, entities in which Respondent held no personal interest. That risk never manifested into a material limitation on his representation of either client. Otherwise, Respondent provided competent and diligent representation to both clients.

13.

On behalf of IPC, Respondent was asked to memorialize and negotiate a Member Interest Transfer Agreement ("MITA") between the Iris Fund and Key's separate company, which would result in Keys transferring his company's 49% ownership interest in PDX Portfolio to the Iris Fund, and in Key's company abandoning its monthly management fee, close to \$50,000 per month. Based on a \$2.3 million valuation at the time, this resulted in approximately \$1.1 million in value going directly to the Iris Fund investors. Moreover, Respondent ensured that the MITA did not contain sweeping release language, thereby retaining any potential claims against the company owned by Keys. On behalf of TP, Respondent was asked to memorialize the terms of funding with Keys; Respondent thereafter improved the terms and documented those transactions.

14.

In or around February 2015, Kniss disclosed that several high value assets purchased by IPC, Kniss' solely owned holdings entity, would be assigned to TP and elicited advice on how to facilitate the transfer. No documentation transferring the assets was ever created or executed, nor did IPC receive any consideration for the assets. Soon thereafter, the assets appeared on TP's balance sheet.

15.

Throughout 2015, Respondent acted as attorney for TP on a variety of matters, in several instances, dealing with raising capital for TP and conferring with investors.

16.

Respondent's representation of both IPC and TP described above constituted a current conflict of interest because there was a significant risk that the representation of TP materially limited Respondent's responsibilities to IPC.

17.

For the same reasons, Respondent's representation of both IPC and TP in the period described above constituted a current client conflict of interest because there was a significant risk that Respondent's personal interest in TP materially limited Respondent's responsibilities to IPC.

18.

Respondent failed to obtain additional written informed consent from either TP or IPC when risk of material limitation within the representation arose.

Violations

19.

Respondent admits that, by failing to obtain his clients' written informed consent after the risk of material limitation in his representation arose, he engaged in a conflict of interest in violation of RPC 1.7(a)(2).

Sanction

20.

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 avoid a conflict of interest. ABA Standards 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. *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.*

When determining a lawyer's knowledge of a conflict of interest, the rules state that, "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). Kniss revealed information to Respondent that created a substantial risk that repre-

sensation IPC may be materially limited by the representation of TP. Respondent, however, believed that by obtaining informed consent at the outset of the business relationship with Kniss, he had met his ethical obligation regarding the possibility of a conflict-of-interest arising in the future. By not withdrawing from representation of IPC and TP when knowledge of the risk of material limitation arose, Respondent acted negligently.

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

IPC and the Iris Fund suffered potential injury in that they may have obtained independent counsel when the risk of material limitation arose and may have received advice resulting in better outcomes. Neither, however, suffered actual injury.

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

1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to the Oregon State Bar in 2000.

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

1. Absence of a prior record of discipline. ABA Standard 9.32(a).
2. Cooperative attitude toward proceedings. ABA Standard 9.32(e).
3. Character or Reputation. ABA Standard 9.32(g).
4. Delay in disciplinary proceedings. ABA Standard 9.32(j). The misconduct at issue in this matter occurred nearly eight years ago.

21.

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

Under ABA Standard 4.32, suspension is generally appropriate when: “a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.”

22.

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 Supreme Court has indicated that violations of conflict-of-interest rules will typically warrant a 30-day suspension. *In re Hockett*, 303 Or 150, 164, 734 P.2d 877 (1987)/ *see also*, *In re Maurer*, 364 Or 190, 431 P.3 410 (2018) (respondent suspended for 30 days for knowing violation of a conflict rule and determination that aggravating and mitigating circumstances offset).

In the past, the Supreme Court has decreased the standard 30-day suspension to a public reprimand when client injury cannot be proven and when circumstances favor mitigation. *See*

In re Cohen, 316 Or 657, 853 P2d 286 (1993) (respondent publicly reprimanded for knowingly representing clients with conflicting interests when no actual injury resulted and mitigation outweighed aggravation).

Here, there is no evidence that Respondent's conflict-of-interest involved dishonesty, was intentional, or caused actual injury. Respondent's mitigating factors outweigh the aggravating factors. Based on this, a public reprimand is appropriate for Respondent's misconduct.

23.

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)(2), the sanction to be effective upon approval of this stipulation by the Adjudicator.

24.

In addition, on or before December 1, 2023, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$907.95, incurred for Respondent's deposition. Should Respondent fail to pay \$907.95 in full by December 1, 2023, the Bar may thereafter, without further notice to him, obtain a judgment against Respondent for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

25.

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

26.

Respondent represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Respondent is admitted: Washington.

27.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 9, 2023. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 25th day of September, 2023.

/s/ Nicholas Johann Slinde
Nicholas Johann Slinde, OSB No. 003900

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich

David J. Elkanich, OSB No. 992558

EXECUTED this 25th day of September, 2023.

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)	
)	
DUANE CRAIG MIKKELSEN,)	
Bar No. 823355	)	Case No. 23-54
)	
Respondent.)	

Counsel for the Bar:	Matthew S. Coombs
Counsel for the Respondent:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3, RPC 1.4(a), and RPC 8.4(a)(4). Stipulation for Discipline. 90-day suspension.
Effective Date of Order:	September 27, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Duane Craig Mikkelsen (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 90 days, effective October 1, 2023 for violation of RPC 1.3, RPC 1.4(a), and RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct.

DATED this 27th day of September, 2023.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Duane Craig Mikkelsen, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

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

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1992, 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 from counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On July 22, 2023, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.3, RPC 1.4(a), and RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In 2013, Respondent drafted a simple will for Sharlene Fay Smouse (Smouse). Smouse died in January 2020, and Douglas Marshall (Marshall) hired Respondent to probate his mother's estate, with Marshall acting as the personal representative. On March 4, 2020, Respondent filed a petition to probate Smouse's estate.

6.

Over the next two and a half years, Respondent missed several deadlines to file estate documents. Respondent's failure to file documents caused the court to issue six show cause notices, only to have the show cause hearings cancelled within days of the hearing when Respondent would file the outstanding documents.

7.

Despite numerous efforts to reach Respondent, Marshall did not have any contact with Respondent between February 2021 and November 2022. At the end of November 2022, Respondent called Marshall and left a message promising to call him back in two days. Respondent never called Marshall back. In December of 2022, Marshall terminated representation and hired attorney Michael McNichols (McNichols).

8.

After being retained by Marshall, McNichols was unable to reach Respondent until February of 2023. McNichols closed the estate in March 2023.

Violations

9.

Respondent admits that, by missing several court deadlines over a period in excess of two years and failing to maintain communication with Marshall over a period of approximately

18 months, he neglected a legal matter entrusted to him in violation of RPC 1.3, failed to keep his client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of RPC 1.4(a), and engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

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 diligently represent his client when he neglected the Smouse Estate and failed to communicate with Marshall. ABA Standard 4.4. Respondent violated his duty owed to the legal system by engaging in conduct prejudicial to the administration of justice. ABA Standard 6.0.

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

Respondent acted with a "knowing" mental state in regard to the RPC 1.3 violation because he was repeatedly reminded to submit court documents timely.

Respondent was negligent in failing to communicate with Marshall. Although Respondent did not realize that Marshall was trying to get in touch with him, he should have been proactive in his communication.

Based on reported chronic anxiety, Respondent was negligent in failing to meet court deadlines in violation of RPC 8.4(a)(4).

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Actual injury is harm to client, public, legal system, or profession as a result of misconduct, ranging from "serious" injury to "little or no" injury; and potential injury is harm that is reasonably foreseeable at the time of the misconduct and probably would have resulted if not for some intervening factor or event. ABA Standards at 7.

Actual injury can take the form of frustration, stress, or anxiety, and Marshall reported being emotionally distraught for months at a time due to not knowing what was happening with his mother's estate. *See In re Cohen*, 330 Or 489, 496,

8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426-27, 939 P2d 39 (1997). Furthermore, a client sustains actual injury when an attorney fails to actively pursue the client's case. See *In re Parker*, 330 Or 541, 546-47, 9 P3d 107 (2000). Marshall also suffered potential injury, when he had to wait a significant period of time in order to take legal possession of the property that was willed to him; for example Marshall would not have been able to rent, sell, or borrow against the property. Likewise, the court had to expend time and resources to generate notices, schedule hearings, and then cancel those hearings as a result of Respondent's repeated missed deadlines.

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

1. A prior record of discipline. ABA Standard 9.22(a). Respondent was previously disciplined. *In re Mikkelsen*, 17 DB Rptr 237 (2003). The following factors are considered in applying an attorney's prior discipline as an aggravating factor: (1) the relative seriousness of the prior offense and resulting sanction; (2) the similarity of the prior offense to the offense in the case at bar; (3) the number of prior offenses; (4) the relative recency of the prior offense; and (5) the timing of the current offense in relation to the prior offense and resulting sanction, specifically, whether the accused lawyer had been sanctioned for the prior offense before engaging in the offense in the case at bar. *In re Cohen*, 330 Or 489, 499, 8 P3d 953, (2000).

In applying the *Cohen* factors, it is clear that Respondent's prior discipline should be counted as an aggravating factor. First, his prior offense was quite serious and resulted in a one year suspension (all but 90 days stayed) and a three year probation. Second, his prior offense was similar to his current offense, in that it involved neglect and a failure to communicate. As to the third factor, Respondent had one prior case resulting in three violations. The fourth factor weighs in Respondent's favor, as his prior discipline occurred 20 years ago, and the underlying conduct leading to his discipline occurred in the late 1990's. However, the final factor shows that Respondent has been disciplined for a similar offense prior to engaging in his current misconduct.

2. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been licensed to practice law since 1982.

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

1. Absences 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 promptly signed and filed a waiver of his fees in the case.
3. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).

11.

Under the ABA Standards, suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and/or fails to communicate with a client, and causes injury or potential injury to a client. ABA Standard 4.42.

Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes interference with a legal proceeding. ABA Standard 6.23.

12.

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

Oregon case law calls for a suspension for lawyers who knowingly neglect a legal matter or fail to keep clients informed. *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); 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). Oregon lawyers who engage in conduct that is prejudicial to the administration of justice generally receive a reprimand or short suspension (see *In re Carini*, 354 Or 47, 59, 308 P3d 197, (2013)). Based on Respondent's prior history of discipline, a 90-day suspension is appropriate.

13.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 90-days for violation of RPC 1.3, RPC 1.4(a), and RPC 8.4(a)(4), the sanction to be effective October 1, 2023.

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. In this regard, Respondent has arranged for Steven Scharfstein, 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 Steven Scharfstein has agreed to accept this responsibility.

15.

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

16.

Respondent acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in

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

17.

Respondent represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Respondent is admitted: Wisconsin.

18.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on July 22, 2023. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 19th day of September, 2023.

/s/ Duane Craig Mikkelsen
Duane Craig Mikkelsen, OSB No. 823355

EXECUTED this 25th day of September, 2023.

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)	
)	
KALAB A. HONEY, Bar No. 182072	)	Case No. 23-81
)	
Respondent.)	

Counsel for the Bar:	Susan R. Cournoyer
Counsel for the Respondent:	Nellie Q. Barnard
Disciplinary Board:	None
Disposition:	Violation of RPC 8.4(a)(2). BR. 3.5 petition for reciprocal discipline. 1-year suspension, all stayed, 1-year probation.
Effective Date of Order:	September 29, 2023

ORDER GRANTING BR 3.5 PETITION FOR RECIPROCAL DISCIPLINE

This matter is before me on the Oregon State Bar’s (Bar) Petition for Reciprocal Discipline pursuant to BR 3.5. Respondent stipulated to discipline in California in December of 2022. He agreed to a one-year suspension, fully stayed for a one-year probation and payment of costs. The discipline arose from two misdemeanor criminal convictions, one for driving under the influence in 2008 and the second for possessing a weapon in a public building in 2021.

The California discipline arose from California State Bar Rule of Procedure, Standard 3.4, which states:

“Final conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime’s commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.”

The two convictions did not involve crimes of moral turpitude, but Respondent stipulated that they did involve “other misconduct warranting discipline.” *Exhibit 2* to the Petition (“Stipulation re Facts, Conclusions of Law and Disposition and Order Approving Stayed Suspension”) at 10.

The Bar argues that reciprocal discipline is warranted because Respondent’s criminal conduct violated Oregon Rule of Professional Conduct (RPC) 8.4(a)(2). That rule provides that it is professional misconduct when a lawyer “commit[s] a criminal act that reflects adversely

on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." The criminal acts here do not reflect adversely on Respondent's honesty or trustworthiness, but the Bar argues that they reflect adversely on Respondent's "fitness as a lawyer in other respects."¹

The Bar asks for a sanction substantially equivalent to that imposed in California; a one-year suspension, all stayed pending completion of a one-year probation requiring Respondent to successfully complete his California criminal and disciplinary probations, to obey all state and federal laws and rules of professional conduct, and to attend Oregon Ethics School. There is a rebuttable presumption that the sanction imposed in a reciprocal discipline proceeding "shall be equivalent, to the extent reasonably practicable, to the sanction imposed in the other jurisdiction." BR 3.5(b).

For the reasons discussed below, I grant the Bar's petition, finding that reciprocal discipline is warranted here, and suspend Respondent for one year, all stayed pending completion of a one-year probation per the terms recited above. Respondent can satisfy the Ethics School requirement by reviewing a video replay of a qualifying ethics presentation or by participating in a live presentation by remote means.

BR 3.5 PROCEDURE

In answer to a BR 3.5 petition, a respondent can challenge the imposition of reciprocal discipline by addressing whether:

- "(1) The procedure in the jurisdiction which disciplined the attorney was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (2) The conduct for which the attorney was disciplined in the other jurisdiction is conduct that should subject the attorney to discipline in Oregon; and
- (3) The imposition of a sanction equivalent to the sanction imposed in the other jurisdiction would result in grave injustice or be offensive to public policy."

BR 3.5(c). If an answer is filed we are guided by BR 3.5(d), which states:

"If an answer is timely filed that asserts a defense pursuant to BR 3.5(c)(1), (2), or (3), the Adjudicator, in his or her discretion, based upon a review of the petition, answer, and any supporting documents filed by either the Bar or the attorney, may either determine on the basis of the record whether the attorney should be disciplined in Oregon for misconduct in another jurisdiction and if so, in what manner, or may determine that testimony will be taken solely on the issues set forth in the answer pertaining to BR 3.5(c)(1), (2), and (3)."

If testimony is taken a trial panel is appointed. BR 3.5(d).

I find the record before me to be sufficient and will decide the matter without the need to appoint a trial panel. The record in this case includes the Bar's petition, Respondent's answer, a reply in support of the petition (which I requested from the Bar), and a sur-reply in opposition to the petition (which Respondent requested he be allowed to file).

¹ The Bar originally argued that Respondent's conduct also violated RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) but has withdrawn that charge.

ANALYSIS

Respondent does not claim that he was denied due process in California. He does argue that the conduct involved here would not result in discipline in Oregon because it does not reflect adversely on his fitness as a lawyer. Respondent also contends that imposition of discipline in Oregon equivalent to that imposed in California would result in grave injustice.

1. Respondent's Conduct Violated RPC 8.4(a)(2).

Reciprocal discipline proceedings are not an opportunity for a respondent to re-litigate the findings established in the other jurisdiction that imposed discipline. *In re Skagen*, 367 Or 236, 250, 476 P3d 942 (2020); *see also In re Sanai*, 360 Or 497, 500, 383 P3d 821 (2016) (lawyers subject to reciprocal discipline may not re-litigate issues already decided in the original jurisdiction).

Here the material facts are established by Respondent's disciplinary stipulation in California. The stipulated facts recited regarding the driving under the influence conviction are:

"On October 3, 2004, respondent was arrested for his involvement in an altercation at a bar in Santa Monica where he struck a bar patron causing serious bodily injury.

On May 19, 2005, respondent pled nolo contendere and was convicted of violation of Penal Code section 243(D) (battery with serious bodily injury), a felony. The court sentenced him to terms and conditions which included that he obey all laws.

Respondent disclosed his May 19, 2005 conviction for violation of Penal Code section 243(D) (battery with serious bodily injury) to the Committee of Bar Examiners prior to his admission to the practice of law in California on June 5, 2007.

On April 17, 2008, following his admission to the California bar, respondent went to a bar after work and consumed several beers. At midnight, respondent left the bar and drove his car towards his home travelling east bound on Washington Blvd.

As he was driving home, respondent drove 55 miles per hour in a 35 mile per hour zone and straddled traffic lines separating east/west traffic. Two Los Angeles Police Department ("LAPD") Officers observed respondent's vehicle traveling in a concerning manner and stopped his vehicle. One of the officers instructed respondent to step out and walk to the sidewalk. Respondent's eyes were bloodshot, and his speech was slurred. A standardized field sobriety test was then administered. Respondent was unable to perform the field sobriety test as demonstrated.

On April 18, 2008, respondent was arrested for violation of Vehicle Code section 23152(a) (driving under the influence).

At the time of his arrest for driving under the influence on April 18, 2008, respondent was on criminal probation for the May 19, 2005 conviction for

violation of Penal Code section 243(D) (battery with serious bodily injury), a felony, which had required him to obey all laws.” *Exhibit 2* at 8-9.

Respondent pled nolo contendere to and was convicted of misdemeanor driving under the influence in 2008.

On the gun charge the stipulated facts are:

“On January 25, 2019, respondent brought a briefcase containing a semi-automatic Ruger handgun and a loaded magazine to Orange County Superior Court Central Justice Center. At approximately 8:10 a.m., when respondent submitted his briefcase for required metal detector screening to enter the courthouse, a sheriff’s deputy identified a handgun contained within respondent’s briefcase on a screening monitor. Upon physical inspection of the inside of the briefcase by the deputy, the main compartment contained the handgun and a loaded magazine was located in the front pocket.

Respondent did not have a permit to carry a concealed weapon and was not otherwise authorized to carry a concealed weapon when he entered Orange County Superior Court Central Justice Center on January 25, 2019.

On January 25, 2019, respondent was arrested for violation of Penal Code section 171b(a) (possession of weapon in a public building).” *Id.* at 9.

Respondent pleaded guilty to the gun charge. Neither of the crimes involved moral turpitude, but Respondent stipulated that they did involve “other misconduct warranting discipline.” *Id.* at 10.

In Oregon, the mere fact that a lawyer has been convicted of a crime is not enough to show a violation of RPC 8.4(a)(2). The Bar must also establish “some rational connection other than the criminality of the act between the conduct and the actor’s fitness to practice law.” *In re Conduct of White*, 311 Or 573, 589 (1991) (emphasis added). When making such a determination the Oregon Supreme Court considers “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 the presence or absence of a pattern of criminal conduct.” *Id.*

Respondent argues that these crimes have “no connection to the practice of law” so there is no connection between the conduct and Respondent’s fitness to practice other than the criminality of the acts themselves. *Response to Petition* at 6. If true, Respondent would not be subject to discipline under the Oregon rule. Respondent’s stipulation in the California proceeding, however, substantiates the conclusion that the offenses were connected to his fitness as a lawyer.

As noted earlier, under the rule applied to Respondent in California it is misconduct when the crime does not involve moral turpitude but “does *involve other misconduct warranting discipline*.” *California State Bar Rule of Procedure*, Standard 3.4 (emphasis added). As also noted earlier, the stipulation in California specifically recites that the facts and circumstances surrounding respondent’s 2008 and 2021 convictions “do not involve moral turpitude but do involve other misconduct warranting discipline.” *Exhibit 2* at 10.

The California Supreme Court discussed what “other misconduct warranting discipline” means in the case of *In re Rohan*, 21 Cal 3d 195, 145 Cal Rptr 855, 578 P2d 102 (1978). There the court disciplined an attorney who willfully failed to file income tax returns. The court acknowledged that the crime did not involve moral turpitude but held that the crime constituted “other misconduct warranting discipline.” The court explained: “An attorney as an officer of the court and counselor at law occupies a unique position in society. His refusal to obey the law, and the bar’s failure to discipline him for such refusal, will not only demean the integrity of the profession but will encourage disrespect for and further violations of the law.” *In re Rohan*, at 203.

The court further explained:

“It is manifest that particular violations of the law by an attorney, even certain violations for willful failures to file income tax returns, may not warrant the imposition of discipline for an oath violation. *Discipline is warranted, however, in such instances when the violation demeans the integrity of the legal profession and constitutes a breach of the attorney’s responsibility to society.*” *Id.* at 204 (emphasis added).

Thus, when Respondent stipulated that his criminal acts were “other misconduct warranting discipline,” he agreed that the violations demeaned the integrity of the legal profession and constituted a breach of his responsibility to society as a lawyer.

That admission appears to me to be the equivalent of admitting that there is “some rational connection other than the criminality of the act between the conduct and the actor’s fitness to practice law.” Moreover, besides stipulating that his acts were “other misconduct warranting discipline,” Respondent also stipulated that his “repeated failure to conform his conduct to the requirements of the criminal law and his violation of criminal probation when he was arrested for the driving under the influence in 2008, not only reflects poor judgment, but *calls into question his integrity as an officer of the court and his fitness to represent clients.*” *Exhibit 2* at 11 (emphasis added.). Respondent is bound by his stipulation, and I find that the stipulated conclusions establish the “connection” required by *In re White*.

Respondent also argues that his conduct on the gun charge would not be a crime under Oregon law so he cannot be subject to discipline under RPC 8.4(a)(2). He contends that the California crime is one of strict liability whereas “in Oregon, analogous provisions of the criminal code require proof beyond a reasonable doubt that the conduct was intentional.” *Response to Petition* at 10. Respondent then asserts that bringing the gun to the courthouse was an inadvertent mistake. The Bar notes that this “fact” is not included in the California stipulation. The Bar then asserts that Respondent’s conduct was intentional because, “It is not credible that an attorney would have a handgun and loaded magazine in his briefcase on his way to court and not know such items were there.” *OSB Reply* at 6.

These arguments miss the point. Although BR 3.5 requires the Bar to show that a respondent in a reciprocal discipline case violated an Oregon rule of professional conduct, the rule of professional conduct, RPC 8.4(a)(2), requires only a showing that a crime has been committed, not that a crime under Oregon law has been committed. The purpose of the disciplinary rule is to sanction criminal behavior and encourage lawyers to obey the law. What is or is not a crime is dictated by the law of the jurisdiction where the act occurred. Lawyers are expected to conform their conduct to the law wherever they may be. Respondent happened to

be practicing in a jurisdiction where intent was not an element of this particular crime, but he did in fact violate a criminal law, which in turn reflects adversely on his fitness to practice.

To further confirm this conclusion, Oregon lawyers have been disciplined for violation of RPC 8.4(a)(2) when the crime committed was purely a federal offense, not one under Oregon law. *See, e.g., In re Steves*, 26 DB Rptr 283 (2012) (stipulated one year suspension for multiple rule violations, one of which was RPC 8.4(a)(2) based on the respondent's violation of 26 USC §7203, willful failure to file federal income tax returns and pay income tax due). Respondent here cannot avoid discipline by arguing that he only committed a crime under California law. He still committed a crime.

2. Imposition of an Equivalent Sanction Is Not a Grave Injustice.

When reciprocal discipline is imposed in Oregon there is a rebuttable presumption that “the sanction to be imposed shall be equivalent, to the extent reasonably practicable, to the sanction imposed in the other jurisdiction.” BR 3.5(b). Respondent argues that imposition of an equivalent sanction here would result in a grave injustice.

Respondent cites authorities from various jurisdictions discussing the meaning of “grave injustice” in disciplinary matters. He cites *Chaganti v Matal*, 695 Fed Appx 545, 549 (Fed Cir 2017) for the proposition that a grave injustice is present unless “the discipline that the practitioner received ‘was within the appropriate range of sanctions’ for the conduct in question.” He also cites a 9th Circuit opinion, *In re Kramer*, 282 F3d 721, 727 (9th Cir 2002), which states that in analyzing a claim of grave injustice “we inquire only whether the punishment imposed by [the first] court was so ill-fitted to an attorney’s adjudicated misconduct that reciprocal [discipline] would result in grave injustice.”

Case-matching in disciplinary matters is an “inexact science.” *In re Hostetter*, 348 Or 574, 603, 238 P3d 13 (2010). Both sides here acknowledge that they have found no case squarely on point to the present one. They also cite multiple cases with varying degrees of discipline for conduct they analogize to Respondent’s here. If our task was to select an appropriate sanction for Respondent’s misconduct the range of reasonable choices is wide. That is not our task, however. Here Respondent should be subject to equivalent discipline unless it is outside the “appropriate range of sanctions” or “ill-fitted” to his conduct.

Regardless of what Respondent now says about the propriety of the sanction imposed in California, he did stipulate to it. I consider Respondent’s stipulation to the sanction to implicitly, if not expressly, show that the sanction is within “the appropriate range of sanctions” and is not “ill-fitted” to Respondent’s misconduct. The stipulation prevents Respondent from rebutting the presumption that an equivalent sanction should be imposed.

ORDER

Accordingly, having reviewed the submissions of the parties and being otherwise fully advised,

IT IS HEREBY ORDERED that the Petition for Reciprocal Discipline is GRANTED and Respondent is suspended for one year beginning on the date this decision becomes final, all of which is stayed pending completion of a one-year probation requiring that Respondent successfully complete his California criminal and disciplinary probations, obey all state and federal laws and rules of professional conduct, and attend Oregon Ethics School. Respondent

Cite as *In re Honey*, 37 DB Rptr 166 (2023)

can satisfy the Ethics School requirement by reviewing a video replay of a qualifying ethics presentation or by participating in a live presentation by remote means.

DATED this 29th day of September 2023.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 26, 1977, and has been a member of the Bar continuously since that time, having his office and place of business in Marion 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 BR 3.6(h).

4.

On March 23, 2023, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.3, RPC 1.4(a), and RPC 1.5(a). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In September 2017, Kelsey Dangaran (Dangaran) sought advice from Respondent regarding the effect of a prior criminal conviction on obtaining a nursing license. Dangaran agreed to pay Respondent a flat fee to research the issue and determine if an expungement was possible.

6.

After Respondent's fee was paid in November of 2017, Respondent failed to provide legal services as agreed.

7.

After completing nursing school in June 2021, Dangaran tried to contact Respondent multiple times regarding the work that he agreed to perform. Dangaran was unable to reach Respondent until after making a Bar complaint.

Violations

8.

Respondent admits that, by neglecting a legal matter entrusted to him; failing to keep his client reasonably informed about the status of the matter and promptly comply with the client's reasonable requests for information; and charging or collecting a clearly excessive fee, he violated RPC 1.3, RPC 1.4(a), and RPC 1.5(a).

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 failing to complete the work that he was hired to perform, and by failing to communicate with his client, Respondent violated his duty of diligence. ABA Standard 4.4. By collecting a fee for work that he did not perform, Respondent violated his duty as a professional. 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 knew he had been paid, and knew that he failed to provide the services for which he was hired and maintain communication with his client. 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 Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Respondent caused financial harm to his client by taking her money and not performing work. Furthermore, a client sustains actual injury when an attorney fails to actively pursue the client’s case. See, e.g., *In re Parker*, 330 Or 541, 546-47, 9 P3d 107 (2000).
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been a licensed attorney for 45 years.
- 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. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. ABA Standard 9.32(e).
 4. Remorse. ABA Standard 9.32(l).

10.

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

11.

A suspension of 60 days is appropriate here. Oregon cases that deal with misconduct related to inadequate communication and neglect often result in a 60-day suspension. See *In re Knappenberger*, 337 Or 15, 32–33, 90 P3d 614 (2004) (court stated that it has generally imposed a 60-day suspension as appropriate for neglectful conduct, including failing to adequately communicate with clients); *In re Redden*, 342 Or 393 (2007) (60-day suspension imposed for single serious neglect despite an inexperienced lawyer with no prior discipline).

Likewise, lawyers who fail to promptly refund fees for work that they did not perform generally receive a short suspension. See, e.g., *In re Fadeley*, 342 Or 403, 414, 153 P3d 682 (2007) (30-day suspension for failing to return unearned fees, and related violations stemming from a single course of conduct); *In re Hedges*, 313 Or 618, 621, 836 P2d 119 (1992) (63-day suspension for a lawyer who collected an advance fee but then neglected his client’s case and did not promptly refund the fee).

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, the parties agree that Respondent shall be suspended for 60 days for violations of RPC 1.3, RPC 1.4(a), and RPC 1.5(a), with all but 30 days of the suspension stayed, pending Respondent’s successful completion of a 1-year term of probation. The sanction shall be effective September 30, 2023, (“effective date”).

14.

Respondent’s license to practice law shall be suspended for a period of 30 days beginning on the effective date, or as otherwise directed by the Disciplinary Board (“actual suspension”), assuming all conditions have been met. 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.

15.

Probation shall commence upon the date Respondent is reinstated to active membership status and shall continue for a period of one year, ending on the day prior to the first 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 has been represented in this proceeding by David Elkanich (Counsel). Respondent and Counsel hereby authorize direct communication between Respondent and DCO after the date this Stipulation for Discipline is signed by both parties, for the purposes of administering this agreement and monitoring Respondent's compliance with his probationary terms.
- c) Respondent shall comply with all provisions of this Stipulation for Discipline, the Rules of Professional Conduct applicable to Oregon lawyers, and ORS Chapter 9.
- d) During the period of probation, Respondent shall attend not less than three MCLE accredited programs, for a total of nine 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 and Trust Accounting School requirements do not count towards the nine hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of his period of probation, Respondent shall submit an Affidavit of Compliance to DCO.
- e) Throughout the period of probation, Respondent shall diligently attend to client matters and adequately communicate with clients regarding their cases.
- f) 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.
- g) Martin Carl Habekost, OSB No. 902863, shall serve as Respondent's probation supervisor (Supervisor). Respondent shall cooperate and comply with all reasonable requests made by his Supervisor that Supervisor, in their sole discretion, determines are designed to achieve the purpose of the probation and the protection of 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.
- h) Respondent and Supervisor agree and understand that Supervisor is providing his/her services voluntarily and cannot accept payment for providing supervision pursuant to this Stipulation for Discipline.
- i) 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, and taking reasonably practicable steps to protect his clients' interests upon the termination of employment.

- j) 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.
- k) 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.
- l) 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.
- m) 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.
- n) 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 on or before within six months after the initial meeting.
- o) 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:
 - 2) The dates and purpose of Respondent's meetings with his Supervisor.
 - 3) The number of Respondent's active cases and percentage reviewed in the monthly audit with Supervisor and the results thereof.
 - 4) Whether Respondent has completed the other provisions recommended by his Supervisor, if applicable.

- 5) 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.
- p) Respondent is responsible for any costs required under the terms of this stipulation and the terms of probation.
- q) A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to DCO on or before its due date.
- r) 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.
- s) 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.
- t) 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.

16.

In addition, on or before December 1, 2023, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$336.45, incurred for Respondent's deposition. Should Respondent fail to pay \$336.45 in full by December 1, 2023, the Bar may thereafter, without further notice to him, obtain a judgment against Respondent for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

17.

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 Martin Carl Habekost, OSB No. 902863, 344 Norway Street NE, Salem, OR 97301, 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. Habekost has agreed to accept this responsibility.

18.

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.

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: none.

21.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on August 31, 2023. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 28th day of September, 2023.

/s/ Richard L. Cowan

Richard L. Cowan, OSB No. 771467

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich

Daivd J. Elkanich, OSB No. 992558

EXECUTED this 28th day of September, 2023.

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)
)
MELISSA A. RIDDELL, Bar No. 044033) Case Nos. 23-259 and 23-260
)
Respondent.)

Counsel for the Bar: Matthew S. Coombs
Counsel for the Respondent: David J. Elkanich
Disciplinary Board: None
Disposition: Violation of RPC 8.4(a)(2). Stipulation for Discipline.
60-day suspension.
Effective Date of Order: November 8, 2023

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Melissa A. Riddell (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 9, 2023 for violation of RPC 8.4(a)(2).

DATED this 8th day of November, 2023.

/s/ Mark A Turner

Mark A. Turner

Adjudicator, Disciplinary Board

STIPULATION FOR DISCIPLINE

Melissa A. Riddell, 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 28, 2004, and has been a member of the Bar continuously since that time, having her office and place of business in Linn County, Oregon.

3.

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

4.

On October 21, 2023, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 8.4(a)(2) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

At all times relevant to this stipulation, Respondent was the administrator of the Linn County Juvenile Defense Corporation (LCJDC). In her role as administrator, Respondent was responsible for filing taxes on behalf of the corporation.

6.

Respondent failed to file tax returns on behalf of LCJDC for tax years 2016 through 2020 despite being required by federal law to do so.

7.

Respondent failed to file business tax returns on behalf of her business entity, Melissa A. Riddell, P.C., for tax years 2016 through 2020 despite being required by federal law to do so.

Respondent failed to file her personal tax returns for tax years 2016 through 2020 despite being required by federal law to do so.

8.

Under federal law, a person required to file a federal tax return who willfully fails to do so is guilty of a misdemeanor. 26 USC §7203.

Violations

9.

Respondent admits that failing to file business and personal tax returns are acts that reflect adversely on her fitness to practice law, in violation of RPC 8.4(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 her duty to maintain her personal integrity by complying with the law. 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 failed to file tax returns with a knowing mental state.

- c. **Injury.** For the purposes of determining an appropriate disciplinary sanction, the trial panel may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Respondent’s failure to file income tax returns caused actual injury by hindering the taxing authorities in their administration of the taxing and revenue-collection process. It also caused potential injury to LCJDC.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
 1. A pattern of misconduct. ABA Standard 9.22(c). Respondent failed to file tax returns for two entities and herself over a four-year period.
 2. Multiple offenses. ABA Standard 9.22(d).
 3. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been practicing law since 2004.
- 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. Character or reputation. ABA Standard 9.32(g).
 5. Remorse. ABA Standard 9.32(l).

11.

Under the ABA Standards, suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that does not contain the elements of intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft. ABA Standard 5.12.

12.

In the matter of *In re Lawrence*, 332 Or 502, 31 P3d 1078 (2001), the Supreme Court opined that an attorney’s willful failure to file tax returns warrants a significant suspension

from the practice of law, and that a repeated failure to do so could justify a six-month suspension under certain circumstances. However, because the mitigating factors in that case (including a five-year delay in the proceedings and unblemished disciplinary record in the interim) outweighed aggravating circumstances, the court imposed a 60-day suspension. *Lawrence*, 332 Or at 517.

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 8.4(a)(2), the sanction to be effective November 9, 2023.

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 has arranged for Judah Danger Largent, OSB No. 175850, Riddell & Largent PC, 129 NW 4th Street, Suite 100, Corvallis, OR 97330, 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 her suspension. Respondent represents that Mr. Largent has agreed to accept this responsibility.

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 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: none.

18.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 21, 2023. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 3rd day of November, 2023.

/s/ Melissa A. Riddell

Melissa A. Riddell, OSB No. 044033

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich

David J. Elkanich, OSB No. 992558

EXECUTED this 6th day of November, 2023.

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)	
)	
KEVIN ELLIOTT PARKS,)	
Bar No. 096728	)	Case Nos. 20-48, 21-15, & 23-38
)	
Respondent.)	

Counsel for the Bar:	Eric J. Collins
Counsel for the Respondent:	None
Disciplinary Board:	Mark A. Turner, Adjudicator Willa B. Perlmutter Melanie Timmins, Public Member
Disposition:	Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.16(c), RPC 1.16(d), and RPC 8.1(a)(2). Trial Panel Opinion. Disbarment.
Effective Date of Opinion:	January 9, 2024

TRIAL PANEL OPINION

The Oregon State Bar (Bar) asks us to disbar Respondent Kevin Elliott Parks. He is charged with one violation of RPC 1.3 (neglect), two violations of RPC 1.4(a) and (b) (failure to communicate), one violation of RPC 1.16(c) (improper termination of representation), RPC 1.16(d) (protecting client's interests upon termination), and three violations of RPC 8.1(a)(2) (knowing failure to respond to lawful demand for information from a disciplinary authority) in three separate matters. Respondent is in default for failing to answer the complaint against him. 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).

As explained below, we find that the facts pleaded support the charged violations. At first blush, disbarment might appear to be too harsh a sanction for the violations here. Respondent's misconduct, however, coupled with his disciplinary history and the presence of other aggravating factors, compel us to conclude that disbarment is the appropriate sanction.

PROCEDURAL POSTURE

On April 25, 2023, the Bar filed a formal complaint against Respondent. The formal complaint was served by email on July 31, 2023.

On August 11, 2023, the Bar notified Respondent of its intent to take default if Respondent did not file an answer. On August 22, 2023, the Bar filed a motion for order of default. The Adjudicator granted the motion on August 29, 2023.

FACTS

Rogers Matter – Case No. 20-48

Courtney Rogers retained Respondent in December 2019 to represent her in several landlord/tenant disputes involving a Hillsboro property she rented out. ¶ 3.¹ She paid Respondent a \$4,500 retainer, and Respondent attempted to settle the matters with Rogers's consent. ¶¶ 3, 22. However, between January 2020 and May 2020, Respondent provided no information to Rogers regarding the status of negotiations despite her efforts to obtain updates. ¶ 15.

In January 2020 Respondent accepted service of the summons, amended complaint and request for production on behalf of Rogers in the case of *Sarah Bord v. Courtney Rogers*, Washington County Circuit Court Case No. 19CV39385 (Bord lawsuit). ¶ 4. Respondent thereafter failed to appear on behalf of Rogers. *Id.* Opposing counsel, Troy Austin Pickard, filed a notice of intent to seek default on February 18, 2020, and then filed a motion for an order of default on March 20, 2020. ¶ 5. Pickard mailed copies of both the notice and the motion to Respondent's office. *Id.* Respondent never told his client about these events. ¶ 15.

Pickard also represented the plaintiff in a separate but related case, *Robin Demoski v. Courtney Rogers*, Multnomah County Circuit Court Case No. 20CV12783 (Demoski lawsuit). ¶ 7. Pickard filed the complaint on March 17, 2020, and Rogers was personally served on April 29, 2020. After she was served she tried to reach Respondent by phone and email. ¶¶ 7, 8, 16. Respondent emailed Rogers on May 4, 2020, stating he was out of town but would contact her "as soon as possible" once he returned to his office. ¶ 16. In the meantime, Rogers reviewed court records on her own and emailed Respondent, asking for an explanation regarding the status of the Bord lawsuit. Respondent never responded. ¶ 17.

On June 5, 2020, the court granted the default motion in the Bord lawsuit and entered a general judgment against Rogers that included a money award to the plaintiff in the amount of \$2,900. ¶ 6. Pickard then filed a statement of attorney fees and served a copy by mail on Respondent. *Id.* On July 24, 2020, the court entered a supplemental judgment awarding the plaintiff \$4,092.30 for attorney's fees and costs. *Id.* Respondent never told Rogers about these events. ¶ 18.

Pickard also filed a notice of intent to seek default in the Demoski lawsuit on June 16, 2020, and mailed a copy to Respondent. ¶ 9. Pickard mailed Respondent a copy of a motion for an order of default on July 10, 2020. *Id.* Pickard filed the motion on August 11, 2020. The court granted it on October 2, 2020. ¶ 10. Respondent never told Rogers about these developments either. ¶ 18.

While these events were occurring in the Bord and Demoski lawsuits, Disciplinary Counsel's Office (DCO) received a grievance in June 2020 and began investigating Respondent's conduct in representing Rogers. ¶ 22. Respondent failed to respond to two letters sent

¹ Paragraph citations are to the formal complaint.

by DCO requesting his response. DCO then filed a petition pursuant to BR 7.1 seeking Respondent's immediate suspension until he responded to DCO's requests for information. Before the Disciplinary Board Adjudicator took any action on the petition Respondent provided responses, and DCO withdrew its petition. *Id.* In response to DCO's request for an accounting of the \$4,500 retainer paid by Rogers, Respondent wrote: "No costs have been expended in any of the matters, and to-date I've yet to calculate billable time or submit any fee bill." *Id.*

DCO sent Respondent another letter on October 20, 2020, requesting his response to additional questions, including a request for copies of monthly bank statements from the bank account in which Respondent had deposited Rogers's \$4,500 retainer. ¶ 23. Respondent failed to provide a response so DCO resent the request by letter on November 3, 2020. Respondent still failed to provide a response so DCO filed another BR 7.1 petition on November 12, 2020. *Id.* On November 23, 2020, Respondent provided a partial response to DCO's requests for information but did not provide copies of the requested monthly bank statements. ¶ 24. DCO reiterated its request for the bank records in an email, but Respondent still did not provide them. *Id.* On December 11, 2020, the Disciplinary Board Adjudicator suspended Respondent pursuant to BR 7.1. ¶ 25. Respondent has never provided the requested bank records. ¶ 26.

In the partial responses Respondent provided in November 2020, he indicated that he had not withdrawn from representing Rogers. ¶ 29. However, thereafter, Respondent never communicated with Rogers regarding the two lawsuits and gave no notice to her that he intended to take no further action on her behalf and/or intended to withdraw from the representation. *Id.* Respondent also failed to provide Rogers with her client file or refund any of her retainer that had not been earned or incurred for costs and expenses. *Id.*

In the Demoski lawsuit, on December 14, 2020, Pickard filed a statement of attorney fees and mailed a copy to Respondent's office. ¶ 10. On January 21, 2021, after previously granting the plaintiff's default motion, the court entered a general judgment and money award to the plaintiff in the amount of \$3,300. *Id.* On February 23, 2021, the court entered a supplemental judgment awarding the plaintiff \$3,318.55 for attorney's fees and costs. *Id.*

In March 2021, a different lawyer assisting Rogers tried unsuccessfully to obtain Rogers's client file from Respondent. ¶ 33. Rogers then retained another lawyer, Tim L. Eblen, who subsequently negotiated a settlement that included setting aside the judgments previously entered in the Bord and Demoski lawsuits and dismissing those cases.

Nybakken Matter – Case No. 21-15

On June 8, 2020, DCO received a grievance from Phillip Nybakken (Nybakken) about Respondent's conduct. ¶ 36. Nybakken hired Respondent in December 2019 to handle a collection matter for which he paid Respondent a flat fee. He then heard nothing from Respondent about the status of the matter despite his attempts to reach Respondent by phone and in person. *Id.* DCO requested additional information from Nybakken regarding this grievance, but he provided no response. *Id.*

DCO requested Respondent's response to Nybakken's grievance by a letter dated January 15, 2021. *Id.* The letter was addressed to Respondent at Parks Law Offices, LLC, 534 SW 3rd Avenue, Suite 310, Portland, Oregon 97204, the address on record with the Bar (record

address) and was sent by first-class mail.² The letter was also sent to Parks at kevin@parks-law-offices.com, the email address on record with the Bar (record email address). Neither the email nor the letter were returned undelivered, yet Respondent did not respond. *Id.*

On February 9, 2021, DCO resent the letter to Respondent. ¶ 38. The letter was again addressed to Respondent at the record address and was sent by both first-class and by certified mail, return receipt requested. The letter was also sent to the record email address. *Id.* The first-class mail and certified mail letters were returned undelivered, but DCO received no notification that the email was not delivered. *Id.*

DCO filed a BR 7.1 petition on February 24, 2021, seeking Respondent's immediate suspension until he responded to DCO's requests for information regarding Nybakken's grievance. ¶ 39. Respondent did not respond to the petition and the Adjudicator suspended Respondent on March 10, 2021. ¶¶ 39-40. Respondent has still not provided any response to DCO's inquiries regarding Nybakken's grievance. ¶ 41.

Sims Grievance – Case No. 23-38

In July 2019, Respondent agreed to represent Scott Kneeland, who was named as a defendant in a landlord/tenant lawsuit in Multnomah County Circuit Court, Case No. 19CV17068 (the case). ¶ 44. The plaintiff was represented by attorney Shannon Dale Sims. In September 2019, Respondent filed an answer and counterclaims on behalf of Kneeland. *Id.* Respondent remained in touch with Kneeland about the status of the case up to December 2019. Thereafter, Respondent failed to respond to his client's requests for information over the next two years, from January 2020 to January 2022. ¶¶ 45-46.

During those two years the case remained open and active with court hearings scheduled periodically for setting trial dates. These hearings were repeatedly set over during the COVID-19 pandemic. ¶ 46. Sims, the plaintiff's lawyer, submitted a grievance with the Bar on July 14, 2021. He complained that he had been unable to communicate with Respondent for more than a year despite his need to confer with him on scheduling and motions in the case. ¶ 57.

Sims filed a motion to amend the complaint on November 1, 2021. He then filed a motion to strike the pleadings filed on Kneeland's behalf. ¶¶ 47-48. In the motion to strike Sims argued that Respondent was suspended from practice but had not withdrawn from the case, unduly delaying the matter and prejudicing Sims' client. ¶ 48.

For the two years from January 2020 to January 2022, Kneeland sent approximately six emails to Respondent seeking information about the status of the case, but Respondent never responded. ¶ 46. Respondent did not tell Kneeland about the plaintiff's motions or otherwise take any action in response to them. ¶ 49. Respondent also failed to provide any notice to his client that he did not intend to perform any further work on Kneeland's behalf or that he was withdrawing from the representation. ¶ 46. Respondent was attorney of record for Kneeland in the case, but he never filed a motion for leave to withdraw or any notice of termination of the attorney-client relationship. ¶ 54. Respondent filed nothing with the court

² Subject to certain exemptions that do not apply here, the Bar Rules require all lawyers to provide the Bar with a current business address and telephone number and a current email address. Further, "It is the duty of all attorneys promptly to notify the Bar in writing of any change in his or her contact information. A new designation is not effective until actually received by the Bar." BR 1.11(d).

giving notice that he no longer represented Kneeland. *Id.* Kneeland eventually retained a new attorney in January of 2022, who filed a notice of representation in the case and filed responses to the plaintiff's motions. ¶ 50.

DCO sent Respondent a letter on January 9, 2023, that requested Respondent's response to the grievance submitted by Sims. ¶¶ 57-58. The letter was addressed to Respondent at the record address and was sent by first-class mail. The letter was also sent to Respondent at the record email address. Both the email and letter were returned undelivered. ¶ 56.

On January 11, 2023, DCO Investigator Lynn Bey phoned Respondent. ¶ 59. Bey left a voicemail in which she asked Respondent to return her call and provide his current contact information. *Id.* She called him at a telephone number that Respondent had provided the Bar in a voicemail he left in the fall of 2022 regarding an unrelated matter, but Respondent did not return Bey's call. *Id.*

On January 31, 2023, DCO sent a second letter to Respondent regarding Sims's grievance. ¶ 60. The letter was addressed to Respondent at the record address and was sent by both first-class and certified mail, return receipt requested. The letter was also sent to the record email address, as well as another email address that Respondent had used in prior communication with the Bar, kevin.e.parks@gmail.com (Gmail address). The email sent to the record email address was returned undelivered, but the email sent to the Gmail address did not bounce back as undelivered. Both the first-class mail letter and the certified mail letter were returned undelivered. *Id.*

On February 2, 2023, Bey again called the telephone number she had called in January. ¶ 61. Respondent did not answer the call, but Bey was unable to leave a voicemail because the voicemail message informed her that the voicemail was full. *Id.*

On February 17, 2023, DCO filed another BR 7.1 petition seeking Respondent's immediate suspension. ¶ 62. Respondent again made no response to the petition. On March 3, 2023, the Disciplinary Board Adjudicator issued another order suspending Respondent. Respondent has still not responded to DCO's requests for information regarding Sims's grievance. ¶ 64.

VIOLATIONS

1. Respondent violated RPC 1.3 in the Rogers matter.

RPC 1.3 states: "A lawyer shall not neglect a legal matter entrusted to the lawyer." To prove a violation of the rule, the Bar must show that the lawyer engaged in a course of neglectful conduct or an extended period of neglect rather than an isolated act of ordinary negligence. *In re Jackson*, 347 Or 426, 435, 223 P3d 387 (2009) citing *In re Koch*, 345 Or 444, 452, 198 P3d 910 (2008). Neglect can occur over a short period of time if a matter requires urgent action. See *In re Meyer (II)*, 328 Or 220, 225, 970 P2d 647 (1999) (attorney violated rule by failing to act for two months when the case required immediate action).

Here, Respondent neglected Rogers's cases over a nine-month period in 2020. During this time, he failed to take substantive action on behalf of Rogers. When he accepted service of the summons and amended complaint in the Bord lawsuit in January of 2020 he took no action to avoid entry of a default order against his client. He also took no action to prevent

entry of a general judgment and money award in favor of the plaintiff and also failed to act when a supplemental judgment awarding plaintiff's attorney fees was filed in July 2020.

Respondent again filed no response in the Demoski lawsuit even though his client told him she had been served in late April 2020. Respondent also took no action to avoid entry of a default order in this case as well.

We find that Respondent violated RPC 1.3.

2. Respondent also violated RPC 1.4(a) and (b) in the Rogers and Sims matters.

RPC 1.4(a) states: "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." RPC 1.4(b) then provides: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." A lawyer must be timely and responsive in communications with a client and must also ensure that the client has enough information to support his or her decisions.

When considering whether these rules have been violated the Oregon Supreme Court instructs us to consider multiple factors. These may include the length of time between the lawyer receiving information and the lawyer communicating it to the client; whether the lawyer failed to respond promptly to the client's reasonable requests for information; and whether the lawyer knew, or a reasonable lawyer would have foreseen, that delay in communication would prejudice the client. *In re Graeff*, 368 Or 18, 24-25, 485 P3d 258 (2021) citing *In re Groom*, 350 Or 113, 124, 249 P3d 976 (2011). A lawyer may be required to communicate information immediately to keep a client reasonably informed. *Id.* In many circumstances, RPC 1.4 places the responsibility on the lawyer to initiate the communication. *Id.*

What we have here is a failure to communicate. Respondent failed to keep Rogers reasonably informed about the status of settlement negotiations in the Bord case between January 2020 and May 2020, despite repeated attempts by Rogers to get information from Respondent. She finally got a response from him on May 4, 2020, after she had been served with the Demoski suit. Even then, Respondent's email to her did not provide any substantive information. All he told her was that he would contact her "as soon as possible" when he returned to his office, and then failed to do so.

In the Bord lawsuit, Respondent never told Rogers about the entry of the default order, the entry of a general judgment and money award against her, and the subsequent entry of a supplemental judgment awarding plaintiff her attorney fees. In the Demoski lawsuit, Respondent failed to advise Rogers that opposing counsel had provided notice of intent to seek default or that she had been found in default in that case.

With litigation pending, Rogers's requests for updates were reasonable, while Respondent's silence for months was not. We are persuaded that a reasonable lawyer would have foreseen that this failure to communicate would prejudice Rogers. In fact, it led the court to enter two default judgments against her and awarded the plaintiffs thousands of dollars.

Respondent was responsible for telling Rogers what his plans were, if any, to defend the pending lawsuits so that she could have made informed decisions about how to proceed, including whether she should retain other counsel. Respondent was also obligated to explain the status and consequences of the default orders. He did neither.

As for the Sims' grievance, Respondent failed to keep his client, Kneeland, apprised of the status of the litigation for approximately two years. This was in spite of numerous attempts by Kneeland to get the information from Respondent. Kneeland's requests for information were reasonable. We also agree with the Bar that a reasonable lawyer would have foreseen that such a delay in communication would prejudice Kneeland and would prevent him from making informed decisions throughout the case. Respondent simply abandoned his client.

Respondent violated RPC 1.4(a) and RPC 1.4(b) in both the Rogers matter and the Sims grievance.

3. Respondent violated RPC 1.16(c) in the Sims grievance.

RPC 1.16(c) states:

"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 Bar tells us that there are no Oregon Supreme Court decisions that analyze this rule, but also points us to ORS 9.380(a) and Uniform Trial Court Rule (UTCRR) 3.140 for guidance. They set forth a lawyer's obligations to promptly notify the court of their withdrawal.

ORS 9.380 is entitled "Changing attorneys and terminating attorney-client relationship." It provides:

"(1) The attorney in an action or proceeding may be changed, or the relationship of attorney and client terminated, as follows:

(a) Before judgment or final determination, upon the consent of the attorney filed with the clerk or entered in the appropriate record of the court; or

(b) At any time, upon the order of the court, based on the application of the client or the attorney, for good and sufficient cause."

UTCRR 3.140 is entitled "Resignation of Attorneys," and states:

"(1) An application to resign, a notice of termination, or a notice of substitution made pursuant to ORS 9.380 must contain the court contact information under UTCRR 1.110 of the party and of the new attorney, if one is being substituted, and the date of any scheduled trial or hearing. It must be served on that party and the opposing party's attorney. If no attorney has appeared for the opposing party, the application must be served on the opposing party. A notice of withdrawal, termination, or substitution of attorney must be promptly filed.

(2) The attorney who files the initial appearance for a party, or who personally appears for a party at arraignment on an offense, is deemed to be that party's attorney-of-record, unless at that time the attorney otherwise notifies the court and opposing party in open court or complies with subsection (1).

(3) When an attorney is employed or appointed to appear in an already pending case, the attorney must immediately notify the court and the opposing party in

writing or in open court. That attorney shall be deemed to be the attorney-of-record unless that attorney otherwise notifies the court.”

Respondent submitted no motion to allow his withdrawal or notice of termination in Kneeland’s case. He simply stopped performing any work and stopped communicating with his client, opposing counsel, and the court. He did nothing to comply with the applicable statute or court rule.

We find that Respondent violated RPC 1.16(c).

4. Respondent violated RPC 1.16(d) in the Rogers matter.

RPC 1.16(d) sets forth the steps a lawyer must take to protect a client when representation is terminated. It 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.”

In one of his few communications with DCO, Respondent stated in November 2020 that he had not withdrawn from representation of Rogers. Respondent, however, took no further action on her behalf in the Bord or Demoski lawsuits and never communicated with her again. We agree that Respondent abandoned the representation and that doing so violated RPC 1.16(d). *See In re Biggs*, 318 Or 281, 291, 295, 864 P2d 1310 (1994).

Respondent had a duty to give Rogers reasonable notice when he abandoned her case. Respondent’s failure to do so meant Rogers was effectively unrepresented at a critical time in the Demoski lawsuit. In that case, between December 2020 and February 2021, the plaintiff obtained a default judgment as well as an award of attorney fees and costs.

Respondent also had a duty to provide Rogers with her client file, which she requested unsuccessfully through an attorney in March 2021. And he had a duty to return any unearned portion of the \$4,500 retainer she paid him. There is no evidence that he provided an accounting or returned any funds to Rogers.

By failing to take reasonable steps to protect his client’s interests and by failing to return her client file or refund any unearned funds from her retainer, Respondent violated RPC 1.16(d).

5. Respondent violated RPC 8.1(a)(2) in all three matters.

RPC 8.1(a)(2) provides in relevant part that:

“...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.”

Lawyers are required to provide **full** cooperation when they are subject to a disciplinary investigation. *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). Neither do we.

To establish a violation of this rule the Bar must show that a lawyer “knowingly” failed to respond to the Bar’s demand for information. The lawyer must have actual knowledge of the facts, but knowledge can be inferred from circumstances. RPC 1.0(h). The facts alleged in the complaint may be used to establish the mental state of an accused lawyer. *Kluge*, 332 Or at 262.

Here, Respondent’s initial incomplete responses to DCO show that he acted knowingly in failing to fully respond, or to respond at all, to the Bar’s inquiries. Respondent clearly knew of DCO’s inquiries since Respondent actually provided a partial response to DCO in November 2020. After that insufficient reply, however, Respondent stopped communicating with DCO at all.

Respondent also failed to respond to any of DCO’s requests for information in the Nybakken matter. DCO attempted to contact Respondent in winter 2021, using his record mail and email addresses. Although Respondent appears to have refused delivery of mailed correspondence in this matter, DCO received no notification that the emails sent were not delivered. The letters were sent only a few weeks after Respondent stopped communicating with DCO regarding Rogers. We can confidently infer Respondent was knowingly ignoring the Bar’s letters. Respondent was again administratively suspended for his failure to respond. At this point Respondent has never answered a single question about Nybakken.

Respondent also violated the rule in the Sims matter. DCO sent letters about the Sims matter to Respondent’s Bar record address and record email address. This time both methods went undelivered. The Bar then tried to contact Respondent at a telephone number he had provided the Bar in 2022, but again Respondent did not respond. The Bar finally sent additional correspondence to a Gmail address used by Respondent in the past. The email did not bounce back as undelivered. Respondent, however, failed to respond to the Bar again. We are again convinced that Respondent knew the Bar was trying to reach him and he chose to ignore the investigation, leading to his third administrative suspension.

We find that Respondent knowingly failed to respond to DCO’s requests for information in violation of RPC 8.1(a)(2) in each of the three matters.

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 that lawyers owe to their clients. ABA Standards at 5. During his representation of Rogers and Kneeland, Respondent violated his duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. ABA Standard 4.4. Respondent also violated his duty to properly handle client property when he failed to provide Rogers with her client file and to return any unused funds from her retainer. ABA Standard 4.1.

Respondent violated his duty to the legal profession by failing to cooperate with three separate DCO investigations. ABA Standard 7.0; *see In re Gastineau*, 317 Or 545, 556, 857 P2d 136 (1993) (finding such conduct as a violation of the duty to the legal profession). Respondent also violated his duty to the public because the disciplinary process serves to protect the public. ABA Standard 5.0; *see Kluge*, 335 Or at 349 (describing a lawyer's failure to respond to a Bar investigation as a violation of this duty).

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 acted knowingly when he failed to communicate with Rogers and Kneeland about their cases despite their repeated attempts to obtain status updates, and despite his knowledge of significant events occurring in their cases. Respondent also acted at least knowingly in failing to completely respond to DCO's investigation into his alleged misconduct. Although he initially communicated with DCO in the Rogers matter, he never provided requested bank records that would have shown what happened to her retainer. The Bar informs us that it was prevented from serving a subpoena for bank records because Respondent refused to accept service of the subpoena and could not be personally served because his whereabouts were (and are) unknown. Respondent's conduct implies that he failed to properly handle those funds, but DCO never confirmed this, and no such charge was brought. We note that if knowing misappropriation of client funds were established here, the presumptive sanction would be disbarment.

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.

Rogers sustained actual injury when Respondent's allowed default judgments and money awards to be entered against her because of his neglect. These ultimately totaled

\$13,610.85. Rogers was forced to pay new counsel to get the judgments set aside and reach a settlement with the plaintiffs.

Rogers also sustained actual injury when Respondent failed to return or account for any portion of her \$4,500 retainer. Rogers sought reimbursement for that loss from the OSB Client Security Fund (CSF), which, after a roughly 17-month review, ultimately approved her request.³

Kneeland suffered actual injury when Respondent abandoned his case without telling him. This forced this client to also hire new counsel. Respondent also caused actual injury to the plaintiff in that case, whose attorney complained that Respondent's lack of communication had unduly delayed the matter and prejudiced the plaintiff.

Rogers and Kneeland suffered uncertainty, anxiety and aggravation when Respondent ignored their requests for status updates for significant periods of time during active litigation. "Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules." *In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010) (citations omitted).

Respondent's failure to cooperate with DCO's investigation caused harm to both the legal profession and the public. *Miles*, 324 Or at 222. Respondent's failure to cooperate prevented the Bar from determining whether he properly charged against Rogers's retainer. It also prevented the Bar from determining whether Respondent engaged in any of the misconduct alleged by Nybakken in his grievance. Respondent's failure to cooperate in the Sims grievance further required the Bar to unnecessarily expend additional resources in its investigation. The Bar's investigations were also significantly delayed by Respondent's failure to respond.

Preliminary Sanction

The following ABA Standards apply in identifying an appropriate sanction:

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).

Disbarment is generally appropriate when a lawyer has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. ABA Standard 8.1(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 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.

³ The Bar did not request that we order Respondent to pay restitution to the CSF.

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 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:

A prior record of discipline. ABA Standard 9.22(a). In 2021, Respondent was suspended for 240 days for violating 14 Rules of Professional Conduct involving three separate client matters. *In re Parks*, 35 DB Rptr 86 (2021). Respondent was found in default in that case for refusing to comply with an order compelling production of discovery. Respondent filed no opposition to the Bar's motion to compel or motion for order of default.

The earlier misconduct occurred between 2018 and 2020. The violations included neglect and failure to communicate in each client matter and, variously, mishandling of client funds, failure to properly withdraw, and providing knowingly false statements to regulatory authorities. The litany of misconduct is almost identical to the rule violations before us in this case.

When assessing the significance of a lawyer's prior discipline as an aggravating factor, the court instructs us 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).

The prior offenses and sanctions were serious. The prior offenses were similar to those before us now and those violations preceded the misconduct at issue here. The Bar concedes that Respondent was not sanctioned for the prior misconduct until 2021, when Respondent had already committed some of the offenses before us. The Bar argues that this overlap should not lessen the sanction because Respondent was aware of the disciplinary process and the need for him to participate in it. Despite this knowledge Respondent refused to cooperate with DCO's investigation and failed to even answer the complaint. We find that Respondent's prior discipline is a serious aggravating factor that weighs heavily in favor of enhancement of the sanction we should impose.

A pattern of misconduct. ABA Standard 9.22(c). "[A] pattern of misconduct does not necessarily require proof of a prior sanction. Rather, that aggravating factor bears on whether the violation is a one-time mistake, which may call for a lesser sanction, or part of a larger pattern, which may reflect a more serious ethical problem." *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018). Respondent's current violations were not the result of a one-time mistake, but instead show a pattern of neglecting clients and failing to protect them when he terminated representation.

Multiple offenses. ABA Standard 9.22(d). Respondent violated 10 rules of professional conduct in three separate client matters.

Bad faith obstruction of the disciplinary proceeding. ABA Standard 9.22(e). Respondent knowingly failed to fully respond to the disciplinary investigation in the Rogers matter. Respondent simply stopped responding to DCO, regardless of the imposition of administrative suspensions under BR 7.1. He also never updated his contact information with the Bar so that DCO could locate him. Respondent also failed to participate in this proceeding after being served with the formal complaint. This course of conduct amounts to bad faith obstruction of the disciplinary process by knowingly failing to comply with rules of the disciplinary authority.

Refusal to acknowledge wrongful nature of conduct. ABA Standard 9.22(g). When a lawyer refuses to cooperate with disciplinary authorities and refuses to engage in disciplinary proceedings we can only infer that the lawyer also refuses to acknowledge the wrongful nature of the lawyer's conduct.

Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has substantial experience in the practice of law. He was admitted to the Oregon State Bar on December 10, 2009.

We find no mitigating factors to apply in this case.

The aggravating factors justify a significant enhancement of the presumptive sanction, which leads us to conclude that disbarment is warranted.

Oregon Case Law

Disbarment here is consistent with Oregon case law. The Oregon Supreme Court has disbarred lawyers where the lawyers' collective misconduct demonstrates an intentional disregard for their clients, their professional obligations, and the disciplinary rules. The court has "ordered disbarment for conduct that otherwise would justify a long suspension when the accused has a history of misconduct that has resulted in prior disciplinary sanctions." *In re Skagen*, 367 Or 236, 255, 476 P3d 942 (2020), citing *In re Paulson*, 346 Or 676, 722, 216 P3d 859 (2009), *adh'd to as modified on recons*, 347 Or 529, 225 P3d 41 (2010).

The Bar cites multiple cases to support the requested sanction. The first is *In re Bourcier (II)*, 325 Or 429, 939 P2d 604 (1997). There the court disbarred a lawyer who neglected client cases and refused to cooperate with regulatory authorities after having been disciplined for similar conduct. The court's words are equally applicable here: "We conclude that a lawyer who neglects clients' cases and fails to cooperate with the disciplinary authorities is a threat to the profession and the public and that that conduct warrants a significant sanction." *Id.* at 437.

The second is *In re Sousa*, 323 Or 137, 915 P2d 408 (1996). The court there disbarred the respondent after finding that he committed 16 rule violations in four separate cases. "The accused engaged in a continuous pattern of misrepresentations, neglect, failure to act on behalf of his clients, and failure to acknowledge his ethical obligations, and respond to the Bar's investigation, thereby causing injury to his clients. That course of conduct mandates that the accused be disbarred from the practice of law." *Id.* at 147.

The last is *In re Spies*, 316 Or 530, 852 P2d 831 (1993). There the court disbarred the respondent, who committed 17 violations in seven separate matters. Even though the lawyer in *Spies* had no prior discipline, the court ordered disbarment based on the actual injury that the attorney caused her clients along with numerous aggravating factors, including a pattern of

misconduct, multiple offenses, bad faith obstruction of disciplinary proceedings, refusal to acknowledge the wrongful nature of her conduct, substantial experience in the practice of law, and a dishonest or selfish motive. *Id.* at 541.

Respondent's collective misconduct between 2018 and 2023 demonstrates a knowing disregard of his clients, his professional obligations, and the Rules of Professional Conduct. Over the course of this five-year period Respondent violated 24 disciplinary rules in six client matters. Respondent truly represents a threat to the profession. Accordingly, we order that Respondent be disbarred, effective on the date this decision becomes final.

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 disbarred effective on the date this decision becomes final.

Respectfully submitted this 7th day of December, 2023.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Willa Perlmutter

Willa Perlmutter, Attorney Panel Member

/s/ Melanie Timmins

Melanie Timmins, Public Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re: the Conduct of)	
)	
REX KYLE DAINES, Bar No. 952442	)	Case No. 23-27
)	
Respondent.)	

Counsel for the Bar:	Eric J. Collins
Counsel for the Respondent:	David J. Elkanich
Disciplinary Board:	Mark A. Turner, Adjudicator Yvonne A. Tamayo Paul M. Gehlar, Public Member
Disposition:	Violation of RPC 1.3 and RPC 1.4(b). Trial Panel Opinion. Public reprimand.
Effective Date of Opinion:	January 19, 2024

TRIAL PANEL OPINION

The Oregon State Bar (Bar) has charged Respondent with neglect of a legal matter entrusted to him and failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Oregon Rules of Professional Conduct (RPC) 1.3 and 1.4(b). The Bar asks that we suspend Respondent for a period of at least 60 days.

The Bar contends that Respondent engaged in a course of neglectful conduct while representing the tenant in a commercial eviction proceeding filed during the COVID-19 pandemic. Respondent first decided, without advising his client, that he would not appear at a court hearing. This led to the entry of a default judgment. Respondent then declined the court's invitation to brief the effect on the case of COVID-19-related eviction moratorium legislation, again without advising his client. Respondent delayed telling his client about the default judgment and he failed to notify his client about an attorney fee petition and the entry of a supplemental judgment against his client for the landlord's attorney fees and costs. When the client learned of these events, he was angry and frustrated.

Respondent argued that his representation was limited to attempting to negotiate a resolution of the matter. He chose not to appear at the court hearing because he believed it would be futile since his client had no viable defense against the eviction action. He declined to brief the eviction moratorium issue because he believed the statute did not apply to the case. Respondent further claimed that timely reporting of events to his client would not have changed the outcome.

Trial was held November 7 and 8, 2023 before a trial panel consisting of the Adjudicator, Mark A. Turner, attorney member Yvonne A. Tamayo, and public member Paul M. Gehlar. As explained below, we find that the Bar proved that Respondent violated the specified rules. We decline to suspend Respondent, however. Sanctions in disciplinary matters are not intended to penalize the respondent but instead are intended to protect the public and the integrity of the profession. *In re Stauffer*, 327 Or 44, 66, 956 P2d 967 (1998). Appropriate discipline deters unethical conduct. *In re Kirkman*, 313 Or 181, 188, 830 P2d 206 (1992). In our view, the purposes of attorney discipline are accomplished here by imposition of the minimum sanction available to us, a public reprimand.

FACTS

Respondent had represented Gordon Aram twice before the engagement at issue here. Each case involved Respondent negotiating a quick resolution of the matters, the first regarding a judgment debt Aram owed and the second involving, among other things, a claim for elder abuse, which Respondent persuaded the plaintiff to dismiss without Aram paying any money. Tr. at 20, 183-84.

Aram ran a company called “The A-Team Racing, LLC” (A-Team). A-Team and Aram, individually, had leased commercial property in Bend, Oregon since 2013. On April 1, 2020, Aram’s landlord filed an eviction action against Aram and A-Team in Deschutes County Circuit Court (eviction case) based on failure to pay rent.¹ Ex. 2. Aram was served on April 2, 2020. The same day the landlord filed a separate action for breach of commercial lease against Aram and A-Team seeking recovery of, among other things, past-due base rent, late fees and additional rent through March of 2020 in the amount of \$30,667.72. Ex. 202.

On May 1, 2020, just before the time to appear in the eviction case had run, Aram met with Respondent. He paid Respondent \$1,500 to represent the defendants in the eviction case. \$500 of that amount was intended to pay the first-appearance fee with the filing of defendants’ answer, with the remainder to apply to attorney fees. Ex. 24; Ex. 30. The parties did not enter into a written fee agreement, nor was there an engagement letter. Respondent did not have a written agreement or engagement letter with Aram in the two prior engagements either. Tr. at 211-12.

Respondent testified that he and Aram orally agreed that his representation would be limited to attempting to negotiate a settlement, as he had done in the two prior matters, because Aram had no viable defense to the eviction case. Tr. at 188. Respondent believed Aram understood the limited scope of the representation. Tr. at 191. Aram acknowledged that Respondent told him in their first meeting that he had no defenses and would lose the eviction case unless the parties reached a settlement. Tr. at 138.

Due to the large amount owed on the lease, Respondent told Aram that any settlement offer to the landlord would have to involve a substantial initial cash payment. Tr. at 190. He testified that he told Aram in the May 1 meeting to come back to see him when he was able to pay the current rent due and “whatever you can come up with” to offer as payment for past-due amounts. Tr. at 188.

¹ Although there are two clients involved here, Aram and his company, their interests were identical in the eviction case, and we generally refer to Aram in the singular as the “client.”

On May 4, 2023, Respondent filed an answer. Ex. 4. Respondent then did nothing on the case until early June because he was waiting for Aram to get back to him with a cash offer. Tr. at 191. In early June Respondent communicated with plaintiff's counsel, J. Christian Malone, via multiple emails². Ex. 5 (email string between June 2 and June 5, 2020). Respondent confirmed, in response to Malone's questions, that he represented both defendants and that the defendants were contesting possession of the premises. *Id.*

Respondent testified that he called Aram on June 5 to tell him he needed to get money for a settlement offer and Aram said he would call Respondent on Monday, June 8, to tell him what he could offer. Tr. at 191-92. This recollection is corroborated by an email Respondent sent to Malone telling him that defendants would submit a settlement offer on June 8, 2020. *Id.*

Aram did not call Respondent on June 8 and no settlement offer was conveyed to Malone. Aram testified that he spoke to Respondent only once in the month of June 2020. Tr. at 104. Respondent testified, however, that he called Aram multiple times after June 8, and was finally able to speak with him on June 18 to reiterate the need for a settlement offer. Tr. at 193. More time passed without Aram being able to make a settlement offer, so Respondent called him again on June 30 to tell him that this was his "last chance" to come up with money to settle the case. Tr. at 195. Aram said he had no money to offer, and Respondent testified he told him that he and his company would be evicted as a result. *Id.*; Tr. at 30.

The court file shows that an original first appearance hearing was set for June 1 and was apparently then reset by the court. Ex. 1. A new notice of a first appearance hearing was issued on June 17 for a telephone hearing on July 1, 2020. Ex. 6. Respondent did not tell Aram about the hearing being scheduled. Respondent also decided not to appear at the hearing because he believed it would make no difference to the outcome of the case. Tr. at 25-26. Respondent did not tell Aram about this decision. When no one appeared on behalf of the defendants at the hearing the court found them in default and signed a Residential Eviction General Judgment awarding plaintiff possession of the premises, costs, attorney fees, and a prevailing party fee. Ex. 7. When asked at trial about his decision, Respondent testified that in hindsight he should have appeared at the hearing. Tr. at 197.

Respondent did not tell Aram about the default judgment when it was entered. He testified that he was waiting to see how things "would resolve." Tr. at 198-99. The plaintiff then filed a proposed Notice of Restitution on July 6, 2020. Ex. 8. Respondent received a copy of the proposed notice but again did not tell Aram about it. Ex. 36 (Depo. Tr., 87:1-25; 88:9-23; 89:7-15).

The day after plaintiff filed the proposed Notice of Restitution, July 7, the court wrote to the parties asking whether they wished to file briefs addressing whether HB 4213, recently passed legislation that restricted landlords from evicting commercial tenants for non-payment of rent during a specified COVID-19 emergency period, applied to the case. Ex. 9. Respondent did not tell his client of the court's request. Ex. 30.

² Aram told Respondent he did not want to use email to communicate so Respondent neither copied him on emails to plaintiff's counsel nor did Respondent advise Aram by email about subsequent developments in the case. Tr. at 212-13.

Respondent decided not to respond to the court's letter because he concluded that the legislation did not apply to the case. Tr. at 199. The moratorium only applied to cases involving missed rent payments during the period from April 1 to September 30 of 2020, and Aram's case was based only on failure to pay amounts due prior to April 1, 2020. Tr. at 202. Respondent did not tell Aram about his decision not to respond. Ex. 30.

The court signed a Notice of Restitution on July 15, 2020, which set the move-out date for July 19, 2020. Ex. 11. Respondent testified that he called Aram after he received a copy of the signed Notice (on either July 15 or 16) and told him that the sheriff could show up to evict him as early as July 19. Tr. at 203. He said Aram authorized him to offer the plaintiff \$2,000 to allow him to stay on the premises until July 31 and he conveyed that offer on July 16 by email to Malone. *Id.*; Ex. 14. Aram testified that he did not recall such a phone conversation with Respondent in which he authorized the \$2,000 offer. Tr. at 107-08.

Plaintiff filed a Statement of Attorney Fees on July 15 as well, seeking an award of \$5,740. Ex. 12. Respondent did not tell Aram of this filing, nor did he send a copy to Aram. Respondent advised the Bar during its investigation that the parties were involved in negotiations at the time regarding defendants vacating the premises, and he believed "the issue of whether Mr. Aram now owes them \$50,000 or \$55,000 was not pertinent to what was going on at that moment." Ex. 30 (Question No. 14).

On July 16, 2020, plaintiff's counsel emailed Respondent a proposed Supplemental Judgment and Money Award against defendants for attorney fees in the amount of \$5,740. Ex. 14. The court signed the supplemental judgment. Ex. 16. Respondent did not tell Aram about the supplemental judgment or send him a copy of it. Ex. 30 (Question No. 15).

On July 23, 2020, the court signed a Writ of Execution of Judgment of Restitution. Ex. 17. On July 28, 2020, Deschutes County Sheriff's deputies forcibly removed defendants from the premises. Ex. 18, Ex. 20.

Respondent communicated with plaintiff's counsel by multiple emails from July 28 to August 13 regarding a time for Aram to retrieve property from the premises and the procedures to be followed. Ex. 20. The parties could not reach an agreement. Aram ended up hiring a new attorney in August 2020 to assist him with property retrieval. Ex. 22; Ex. 23.

ANALYSIS OF THE CHARGES

A. Respondent failed to act diligently in his representation of Aram.

RPC 1.3 states: "A lawyer shall not neglect a legal matter entrusted to the lawyer." Under this rule, neglect is the failure to act or the failure to act diligently over a period of time when action is required. *In re Magar*, 335 Or 306, 321, 66 P3d 1014 (2003). Neglect ranges from "virtual abandonment of the client to procrastination." *Id.* at 320 (citation omitted). Determining whether an attorney has violated this rule requires a fact-specific inquiry. *Id.* at 319. When assessing whether a lawyer engaged in neglect, the lawyer's conduct must be viewed over time. *Id.* at 321. A single act of negligence is not sufficient to establish a violation; a course of neglectful conduct or an extended period of neglect must be proved. *In re Jackson*, 347 Or 426, 435, 223 P3d 387 (2009). When a matter is urgent, however, neglect may be found if the lawyer fails to act over a relatively short period of time. *In re Meyer*, 328 Or 220, 225-26, 970 P2d 647 (1999) (failure to act over a two-month period constituted neglect when the case required immediate action).

Respondent argued at trial that the outcome of the case would have been no different if he had attended the first appearance hearing or had done the other things the Bar argued he failed to do. For purposes of determining whether a lawyer neglected a legal matter, however, the merits of the client's claim or position are irrelevant. *Magar*, 335 Or at 319-20 ("the outcome of a matter in which a lawyer has acted incompetently or neglectfully is not a pertinent consideration") (emphasis in original).

The Bar points us to *In re Jackson*, 347 Or 426, 223 P3d 387 (2009). There the court found that a lawyer engaged in a course of neglectful conduct during several months when the lawyer was not prepared for a settlement conference the lawyer had requested, the lawyer failed to send in his calendar of available dates after receiving notice of the appointment of an arbitrator, the lawyer failed to respond to two voice messages reminding him to send in his available dates, and the lawyer took no steps to pursue the arbitration after the court again referred the matter to the arbitrator. *Id.* at 435-36. The Oregon Supreme Court stated: "Any of those enumerated events can – and will – occur on occasion, but having all of them occur in the same case and in the serial manner in which they occurred is sufficient to constitute neglect." *Id.*

In this case Respondent filed the answer on behalf of defendants on May 4, 2020. Thereafter Respondent neglected to do the following things he should have done:

1. He did not attend the first appearance hearing or tell Aram that he had decided not to attend;
2. He did not alert Aram to the court's letter requesting briefing on the COVID-19 emergency legislation, nor did he respond to the court's letter;
3. He did not tell Aram about the eviction judgment for two weeks after it was entered, and finally told him only three days before the move-out date in the Notice of Restitution, July 19, 2020;
4. He did not tell Aram that plaintiff had filed a Statement of Attorney Fees, nor did he discuss with Aram his options for responding to the request for fees;
5. He did nothing in response to the request for fees; and
6. He did not tell Aram when the court entered the supplemental judgment awarding plaintiff's attorney fees.

Although these events occurred over a relatively short period of time, many of them required prompt consultation with the client and prompt action if the client so instructed. We find that this course of conduct amounts to neglect in violation of RPC 1.3.

B. Respondent failed to tell Aram about significant events in the case which denied Aram the ability to make informed decisions regarding the representation.

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." A lawyer may be required to communicate information immediately to keep a client reasonably informed. *In re Graeff* 368 Or 18, 24-25, 485 P3d 258 (2021). In many circumstances, the rule puts the

responsibility to initiate the communication on the lawyer. *Id.* A lawyer must communicate bad news as well as good news to the client, and failing to do so in a timely manner is a violation of the rule. *In re Coyner*, 342 Or 104, 108, 149 P3d 1118 (2006); *In re Geurts*, 290 Or 241, 246 n. 6, 620 P2d 1373 (1980).

As we noted above with regard to the neglect charge, a lawyer has an obligation to keep a client reasonably informed regardless of the merits of the client's case or whether the failure to communicate will prejudice the client. *In re Groom*, 350 Or 113, 124–25, 249 P3d 976 (2011). The *Groom* court stated: “If a client's claim or position lacks merit, that lack, and not the lawyer's failure to communicate, ordinarily will be the cause of the client's lack of success and any resulting prejudice. In such a circumstance, the fact that a lawyer's failure to communicate does not prejudice the client does not relieve the lawyer of the ethical duty to communicate.” *Id.*

We find that Respondent had a duty to timely inform Aram that he did not plan to attend and then did not attend the first appearance hearing. He had a duty to timely inform Aram of the entry of a default judgment. He had a duty to timely tell Aram about the court's letter regarding the eviction moratorium legislation and a duty to discuss Aram's options as to whether and how he could respond to the court. He had a duty to timely inform Aram about the plaintiff's request for attorney fees and his options as to whether and how he could respond to the request. Lastly, he had a duty to timely inform Aram about the supplemental judgment awarding those attorney fees.

Respondent failed to explain the significance of those developments to Aram so that Aram could decide how to proceed. Aram testified, for example, that if Respondent had told him he was not going to attend the first appearance hearing he would have fired Respondent and hired another attorney. Tr. at 116-17. Aram should have had the opportunity to hear about multiple events in the case and decide how to respond. Aram should have also had the opportunity to hear and consider Respondent's advice on those issues. Instead, Respondent made decisions without consulting his client. We find that Respondent violated RPC 1.4(b).

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 make a preliminary determination of the proper sanction, after which we may adjust the sanction based on the existence of recognized 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 act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. ABA Standard 4.4.

Mental State

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

We find that Respondent acted knowingly. He consciously decided not to appear in court and not to apprise Aram of material developments in the case. Respondent’s knowing mental state, however, is tempered by the fact that he believed he was acting in his client’s interest by avoiding futile actions and additional attorney fee expense to Aram.

Extent of Actual or Potential Injury

For purposes of determining an appropriate sanction, we may take into account both actual and potential injury. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). Injury is defined as harm to a client, the public, the legal system, or the profession that results from a lawyer’s misconduct. Potential injury is the harm that is reasonably foreseeable at the time of the misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. ABA Standards at 9.

Respondent caused Aram actual injury in the form of frustration when Aram learned that Respondent had failed to act as he would have expected and failed to tell Aram about significant events in the eviction case. Aram testified that when the sheriff arrived to evict him, he “came unglued” and “was pissed.” Tr. at 104. “Client anguish, uncertainty, anxiety, and aggravation are actual injury under the disciplinary rules.” *In re Snyder*, 348 Or 307, 321, 232 P3d 952 (2010) (citations omitted).

As discussed above, the fact that Aram was ultimately going to be evicted regardless of Respondent’s failures to act or communicate does not shield Respondent from culpability for the charged rule violations. We do believe, however, that it is relevant to our assessment of actual or potential injury to the client attributable to the misconduct. Aram’s eviction was not caused by Respondent’s misconduct.

Preliminary Sanction

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).

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.

By strict application of the ABA Standards, a suspension appears to be the appropriate preliminary sanction before we consider aggravating and mitigating factors and look at applicable Oregon case law.

Aggravating and Mitigating Circumstances

The only aggravating factor under the ABA Standards we find here is substantial experience in the practice of law. ABA Standard 9.22(i). Respondent has been licensed to practice law in Oregon since 1995.

The Bar argued that three additional aggravating factors also apply here. We disagree. The Bar first contends that Respondent acted with a dishonest or selfish motive. ABA Standard 9.22(b). It argued that Respondent sought to avoid the embarrassment of explaining his inaction and the resulting default judgment to his client. We do not consider this to be the kind of dishonest or selfish motive envisioned by the Standard.

The Bar also asks us to find that the case involves multiple offenses, an aggravating factor under ABA Standard 9.22(d). This case involves a single client matter. The facts supporting each charge overlap considerably. Most, if not all, of the neglect supporting the RPC 1.3 charge involves failures to communicate that also support the RPC 1.4(b) charge.

The Disciplinary Rules that preceded the current RPCs contained nothing equivalent to RPC 1.4(b), so charges relying on failure to adequately explain matters alleged violation of former DR 6-101(B), which stated exactly what RPC 1.3 now does, “A lawyer shall not neglect a legal matter entrusted to the lawyer.” *See Oregon Rules of Professional Conduct Annotated*, Vol. 1 at p. 211 (2021 Edition). Neglect of Aram’s case is the crux of this disciplinary proceeding. The fact that Respondent’s misconduct now involves two rules rather than one does not justify application of this aggravating factor.

The Bar also asks to find that Respondent has refused to acknowledge the wrongful nature of his conduct under ABA Standard 9.22(g). “[A]ccused lawyers have the right to vigorously defend themselves against all charges and may refuse to concede the Bar’s factual allegations without reprisal for doing so.” *In re Maurer*, 364 Or. 190, 204, 431 P.3d 410 (2018) (citing *In re McGraw*, 362 Or. 667, 695-96, 414 P.3d 841 (2018); *In re Davenport*, 334 Or. 298, 321, 49 P.3d 91 (2002) (lawyer’s refusal to admit Bar’s factual allegations is not an aggravating factor). The *Maurer* court stated that “[a] lawyer does not refuse to acknowledge the wrongfulness of his or her conduct when he or she makes a plausible legal argument that the admitted conduct does not violate the disciplinary rules.” *Maurer*, 364 Or. at 205. Moreover, Respondent expressed remorse at the hearing for his decision not to attend the first court appearance.

The Bar acknowledges the absence of a prior disciplinary record as a mitigating factor under ABA Standard 9.32(a). We also find that Respondent established at trial his character and reputation as a mitigating factor as well. ABA Standard 9.32(g). Respondent’s character witnesses support our view that this particular episode is an aberration, and not the norm, for Respondent’s practice.

Oregon Case Law

At the outset, we acknowledge that “case-matching is an inexact science” when considering sanctions in disciplinary matters. *In re Stauffer*, 327 Or 44, 70, 956 P2d 967 (1998). Our goal is to impose a sanction that accomplishes the purposes of lawyer discipline—protecting the public and the integrity of the profession and deterring misconduct.

The Bar argues that a significant suspension is warranted. It cites two cases where respondents who engaged in neglect received suspensions of 60 days: *In re Redden*, 342 Or 393, 153 P3d 113 (2007) and *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003). In *Redden* the lawyer took no action on his client's case for at least nine months. The court there cited *LaBahn* in support of its 60-day suspension, but *LaBahn* involved three aggravating factors along with three mitigating factors. The Bar also cites *In re Knappenberger*, 337 Or 15, 90 P3d 614 (2004), where the court determined a 60-day suspension was warranted for a single neglect violation where the lawyer failed to respond to correspondence regarding significant developments in a case and failed to check on the case's status despite numerous inquiries from his client over several months.

The Bar also cites *In re Gatti*, 356 Or 32, 57, 333 P3d 994 (2014) (citing *In re Snyder*, 348 Or 307, 323-24, 232 P3d 952 (2010)), where the court found that a 30-day suspension was justified when the lawyer failed to explain a legal matter to permit a client to make informed decisions in violation of 1.4(b).

In turn, Respondent cites us to two cases in which a reprimand was imposed where neglect was found: *In re Cohen*, 330 Or. 489, 8 P.3d 953 (2000) (public reprimand appropriate for neglect, even though lawyer had prior discipline and had been admonished twice for neglect); *In re Rudie*, 290 Or. 471, 622 P.2d 1098 (1981) (public reprimand for neglect of client's dissolution action, resulting in opposing party taking a default decree).

Respondent also points us to numerous stipulations where a public reprimand was imposed in cases involving similar violations. Although stipulations are not considered to be precedent, they do show circumstances in which the Bar and the Disciplinary Board are in agreement that a public reprimand fulfills the goals of attorney discipline in cases similar to this one. Respondent first cites *In re Coleman*, 35 DB Rptr. 63 (2021). Respondent and the Bar agreed to a public reprimand for violation of both RPC 1.3 and 1.4(a). The respondent failed to provide his client's tax returns to the trustee in a bankruptcy matter over multiple years until prompted to do so by the trustee's filing of multiple motions to dismiss because of the failure. Respondent did not inform his client about at least one of the bankruptcy trustee's motions or the withdrawal of that motion after the respondent provided the required return. He also failed to tell his client about other events and actions in the case.

Respondent also notes *In re Bruce*, 32 DB Rptr. 290 (2018). The parties agreed to a public reprimand for violations of RPC 1.1, RPC 1.3, RPC 1.4(a) and RPC 1.4(b) when, in representing a proposed fiduciary in two related guardianship proceedings, the respondent failed to prosecute the case or thereafter to timely or properly file documents as instructed by the court. This led to the dismissal of one of the proceedings. In the second proceeding, respondent failed to obey the court's instruction that she re-file an order that the court rejected for nonpayment of certain fees.

Respondent cites two additional stipulations: *In re Castle*, 31 DB Rptr. 254 (2017) (public reprimand after failing to take any steps to complete or file the annual report in a protective proceeding; after the court subsequently sent respondent notice of a hearing regarding the failure to file an annual report, respondent failed to inform his client of the hearing and did not appear himself, or thereafter respond to the court's follow-up letter; in another case, respondent failed to draft a stipulated judgment and timely submit it the court); and *In re Pizzo*, 30 DB Rptr. 371 (2016) (respondent, who had a prior admonition for neglect, received a public

reprimand where he failed to timely draft and file a response to a show cause order to modify parenting time, despite numerous messages from the client, and a telephone call in which the respondent assured the client that he would follow through).³

A public reprimand is certainly within the realm of reasonable sanctions for these violations. We are persuaded that a public reprimand in this case is sufficient to accomplish the purposes of attorney discipline.

CONCLUSION

For the foregoing reasons, we find that the Bar proved by clear and convincing evidence that Respondent violated RPC 1.3 and 1.4(b) and order that Respondent be publicly reprimanded.

Respectfully submitted this 19th day of December, 2023.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Yvonne A. Tamayo

Yvonne Tamayo, Attorney Panel Member

/s/ Paul M. Gehlar

Paul M. Gehlar, Public Panel Member

³ For further examples, the *Bruce* stipulation also included the following recitation: “The Bar has stipulated to a reprimand in similar circumstances. See e.g., *In re May*, 27 DB Rptr 200 (2013) (attorney reprimanded for violations of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 1.5(a) for filing a divorce in the wrong county, failing to properly serve the opposing party, failing to respond to client inquiries, failing to notify the client of the change in the location of their office, and charging the client for services that were of no benefit to her); *In re O’Rourke*, 24 DB Rptr 227 (2010) (attorney unfamiliar with the proper method of representing an incapacitated person in a personal injury case was reprimanded for preparing documents for and allowing client’s mother to sign as guardian ad litem, when she had not been so appointed); *In re McDonough*, 21 DB Rptr 289 (2007) (attorney appointed to represent client in two criminal matters over a two-year period was reprimanded for failing to pursue the defense of the matters, and making little or no efforts to investigate the matters); *In re Stevens*, 20 DB Rptr 53 (2006) (attorney reprimanded for repeatedly failing to submit timely reports to the court in conservatorship and for filing documents which were deficient in substance and format); *In re Breckon*, 18 DB Rptr 220 (2004) (attorney without previous experience in dissolutions involving significant real property issues was reprimanded when he failed to obtain an appraisal for trial or elicit evidence in support of client’s position regarding property value); *In re Maloney*, 24 DB Rptr 194 (2010) (although attorney took some action on behalf of her criminal appellate client, she was reprimanded for failing to communicate with the client despite numerous inquiries asking about the status of his legal matter and actual decisions being made in the case).” 32 DB Rptr at 294.

