

**ORIGINAL**

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State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar RIZAMARI C. SITTON DEPUTY TRIAL COUNSEL 1149 SOUTH HILL STREET LOS ANGELES, CALIFORNIA 90015 TELEPHONE: 213.765.1364  Bar #            138319	Case number(s)  05-J-04095  <div style="text-align: center; font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	(for Court's use)  <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em; font-weight: bold;">MAR 20 2006</div> <div style="text-align: center; font-size: 0.8em; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent ROBERT DANIEL SIMCOE 242 NW "E" STREET GRANTS PASS, OREGON 97526 2031  TELEPHONE: (541)474-1162 Bar #            96696	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge  <b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</b>  <b>REPROVAL    <input type="checkbox"/> PRIVATE            <input checked="" type="checkbox"/> PUBLIC</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of  ROBERT DANIEL SIMCOE  Bar #            96696  A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

### A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 23, 1980  
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 28 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." See Attachment 1
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law." See Attachment 2
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority." See Attachment 3
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(Do not write above this line.)

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- (a)  costs added to membership fee for calendar year following effective date of discipline (public reproof)
- (b)  case ineligible for costs (private reproof)
- (c)  costs to be paid in equal amounts for the following membership years:  
\_\_\_\_\_ (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- (d)  costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- (e)  costs entirely waived

(9) The parties understand that:

- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts Supporting Aggravating Circumstances are required.**

- (1)  Prior record of discipline [see standard 1.2(f)] See Attachment 4 "Prior Discipline in other jurisdictions"
- (a)  State Bar Court case # of prior case \_\_\_\_\_
  - (b)  Date prior discipline effective \_\_\_\_\_
  - (c)  Rules of Professional Conduct/ State Bar Act violations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - (d)  Degree of prior discipline \_\_\_\_\_

(Do not write above this line.)

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- (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline".
- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7)  **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8)  No aggravating circumstances are involved.

Additional aggravating circumstances:

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

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- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances are involved.**

Additional mitigating circumstances:

(Do not write above this line.)

**D. Discipline:**

- (1)  Private reproof (check applicable conditions, if any, below)
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2)  Public reproof (check applicable conditions, if any, below)

**E. Conditions Attached to Reproof:**

- (1)  Respondent must comply with the conditions attached to the reproof for a period of one (1) year
- (2)  During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within 30 days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next following quarter date and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.

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- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproval.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- No Ethics School ordered. Reason: Respondent resides and practices law in Oregon only.
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Office of Probation.
- (10)  Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproval.
- No MPRE ordered. Reason: Respondent is required to take 6 hours of continuing legal education (CLE) courses in legal ethics.
- (11)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

#### F. Other Conditions Negotiated by the Parties:

- [1] Respondent shall comply with all terms and conditions, if any, imposed in the underlying disciplinary orders of the Supreme Court of the State of Oregon in Case No. 99-29 (issued on 05/23/00) and Case No. 05-97 (issued on 08/26/05). Certified copies of the orders are attached as Exhibits 1 and 3. Respondent shall declare his compliance under penalty of perjury in conjunction with any reporting to the Probation Unit of the State Bar of California.
- [2] Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Probation Unit (formerly known as Office of Probation) satisfactory proof of attendance and completion of at least six (6) hours of continuing legal education (CLE) in legal ethics in Oregon.



authorization from his client and a copy of the death certificate for his client's deceased husband. The letter from NEAP was stamped with a telephone number and the statement "PLEASE CALL THE OFFICE AT YOUR EARLIEST CONVENIENCE TO DISCUSS THIS MATTER."

6. In February 2003, the client provided Respondent a copy of her husband's death certificate.
7. Respondent took no further action to collect the NEAP annuity after February 2003.
8. In June 2003, Respondent delivered an Accidental Death Benefits claim form to his client with instructions to complete the form and return the form to Respondent. The client immediately returned the form to Respondent with a request that Respondent complete the form on her behalf.
9. After June 2003, Respondent took no further action to assure that the Accidental Death Benefits claim form was completed and submitted to the insurer.
10. Respondent's services were terminated in May 2004.

**ATTACHMENT 2: CONCLUSIONS OF LAW**

IN THE MATTER OF:                      Robert Daniel Simcoe, California Bar no. 96696

CASE NUMBER(S):                      05-J-04095

**CONCLUSIONS OF LAW**

Respondent admits that he is culpable of violations of the following statutes and/or Rules of Professional Conduct.

1.     By not pursuing his client's claim on an annuity account from the National Electrical Annuity Plan and by not pursuing her claim for accidental death insurance benefits from Southern Oregon Credit Union, Respondent repeatedly failed to perform the legal services for which he was hired. By repeatedly failing to perform the legal services for which he was hired, Respondent wilfully violated California Rules of Professional Conduct, rule 3-110(A).

**FURTHER STIPULATED CONCLUSIONS PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6049.1.**

2.     A certified copy of a final order made by any court authorized by law or by rule of court to conduct disciplinary proceedings against attorneys of the United States, determining that a member of the California State Bar committed professional misconduct in such other jurisdiction, shall be conclusive evidence that the member is culpable of professional misconduct in this state. *California Business and Professions Code section 6049.1(a).*
3.     Respondent's culpability determined in the disciplinary proceedings in *In re: Complaint as to the Conduct of Daniel Simcoe*, Case no. 05-97, in the Supreme Court of the State of Oregon, warrants the imposition of discipline in the State of California under the laws or rules in effect in this State at the time the misconduct was committed. *California Business and Professions Code section 6049.1(b)(2).*
4.     The proceedings in the other jurisdiction provided respondent with fundamental constitutional protection. *California Business and Professions Code section 6049.1(b)(3).*

**ATTACHMENT 3: SUPPORTING AUTHORITY**

IN THE MATTER OF:                      Robert Daniel Simcoe, California Bar no. 96696

CASE NUMBER(S):                      05-J-04095

**SUPPORTING AUTHORITY**

1.     Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client. *Standards for Attorney Sanctions for Professional Misconduct, Standard 2.4(b).*<sup>1</sup>
  
2.     If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust. *Standard 1.7(a).*
  
3.     "Prior record of discipline" is a previous imposition or recommendation of discipline of the member as defined by rule 216, Rules of Procedure of the State Bar. *Standard 1.2(f).* A prior record of discipline may include records from any jurisdiction stated in Business and Professions Code section 6049.1. *Rules of Procedure of the State Bar of California, rule 216(a).*
  
4.     California Rules of Professional Conduct shall govern the activities of members in and outside of California. *California Rules of Professional Conduct, rule 1-100(D)(1).*

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<sup>1</sup>All references to "Standards" are references to the *Standards for Attorney Sanctions for Professional Misconduct in the Rules of Procedure of the State Bar of California.*

**ATTACHMENT 4: PRIOR DISCIPLINE**

IN THE MATTER OF:                      Robert Daniel Simcoe, California Bar no. 96696  
CASE NUMBER(S):                        05-J-04095

**PRIOR RECORD OF DISCIPLINE IN OTHER JURISDICTION**

1.     On May 23, 2000, the Supreme Court of the State of Oregon issued an order in its Case no. 99-79, imposing attorney discipline of public reprimand on Respondent. Specifically, the Court found that Respondent "violated a duty owed to his client to properly handle her property", and "also violated a duty to his client to refrain from situations involving conflicts of interest." Its findings were based on a stipulation between Respondent and the Oregon State Bar. A certified copy of the order is attached as Exhibit 3.
  
2.     The facts and circumstances that supported the discipline in Respondent's prior record of discipline in Oregon are as follows.

In 1997, Respondent represented the owner ("Client") of a dance studio in legal matters, including the preparation of contracts with student dance teachers. The contracts had a non-competition clause.

A parent ("Adverse Party") of one of the student dance teachers telephoned Respondent to discuss the implications of the non-competition clause. The Adverse Party asked Respondent whether the clause was legal. Respondent informed the Adverse Party that he represented the owner of the studio, and that he could not say anything about the contract itself. However, Respondent also informed the Adverse Party that any contract signed by a minor is voidable.

The Adverse Party's interests were, or had a reasonable possibility of being, in conflict with the interests of the Client. Respondent's statement about the voidability of minor contracts constituted advice to an unrepresented person whose interests were, or had a reasonable possibility of being, in conflict with the interests of the Client.

Respondent's employment terminated in December 1997 or early 1998. In April 1998, the client asked Respondent for the release of the unexecuted wills that Respondent had prepared for her. Respondent did not release the documents to the client.

1 IN THE SUPREME COURT  
2 OF THE STATE OF OREGON

RECEIVED  
AUG 31 2005

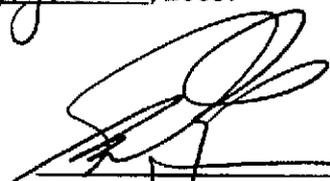
3 In re: )  
4 Complaint as to the Conduct of ) Case No. 05-97  
5 DANIEL SIMCOE, ) ORDER APPROVING STIPULATION  
6 Accused. ) FOR DISCIPLINE  
7 \_\_\_\_\_ )

DISCIPLINARY COUNSEL

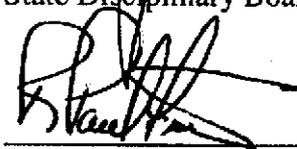
8 This matter having been heard upon the Stipulation for Discipline entered into by the  
9 Accused and the Oregon State Bar, and good cause appearing,

10 IT IS HEREBY ORDERED that the stipulation between the parties is approved and the  
11 Accused is publicly reprimanded, for violation of DR 6-101(B).

12 DATED this 26 day of August, 2005.

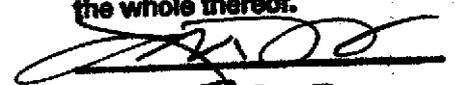
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15 Michael C. Zusman, Esq.  
16 State Disciplinary Board Chairperson

17 

18 R. Paul Frasier, Esq., Region 3  
19 Disciplinary Board Chairperson

20  
21  
22 I certify that this document is  
23 a true copy of the original and  
24 the whole thereof.

25   
OSB # 03272



1 Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant  
2 facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

3  
4 **Facts**

5 5.

6 On August 21, 2002, the Accused undertook to represent a wife in claiming various  
7 benefits due to her following her husband's death. The client's claims included a claim on an  
8 annuity account from the National Electrical Annuity Plan (NEAP) and accidental death  
9 insurance benefits from Southern Oregon Credit Union (SOCU). On August 22, 2002, using  
10 account information supplied by his client, the Accused sent letters to NEAP and SOCU  
11 requesting claim forms to collect benefits due to the client.

12 6.

13 On or about October 7, 2002, the Accused received a letter from NEAP requesting a  
14 signed authorization from his client and a copy of the death certificate for his client's deceased  
15 husband. The letter from NEAP was stamped with a telephone number and the statement  
16 "PLEASE CALL THE OFFICE AT YOUR CONVENIENCE TO DISCUSS THIS MATTER".  
17 Thereafter, in February 2003, the client provided a copy of her husband's death certificate to the  
18 Accused. The Accused took no further action to collect the NEAP annuity between that date and  
19 the termination of his representation in May 2004.

20 7.

21 On or about June 3, 2003, the Accused delivered an Accidental Death Benefits Claim  
22 Form to his client with instructions to complete the form and return the form to the Accused.  
23 The Accused's client immediately returned the form to the Accused with a request that the  
24 Accused complete the form. The Accused took no further action to assure that the form was  
25

1 completed and submitted to the insurer between that date and the termination of his  
2 representation in May 2004.

3  
4 **Violations**

5 8.

6 The Accused admits that, by engaging in the conduct described in this stipulation, he  
7 violated DR 6-101(B) of the Code of Professional Responsibility.

8  
9 **Sanction**

10 9.

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

17 a. **Duty Violated.** The Accused violated his duty to diligently represent his client.  
18 Standards § 4.4

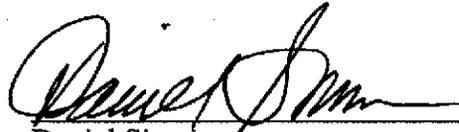
19 b. **Mental State.** The Accused negligently confused his client's claim to a NEAP  
20 annuity with another pension claim which had been denied and the Accused  
21 negligently believed that his client possessed but failed to complete the insurance  
22 claim form.

23 c. **Injury.** The Accused's client suffered actual injury since the resolution of her  
24 claims and collection of benefits were substantially delayed.



1 the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for  
2 consideration pursuant to the terms of BR 3.6.

3  
4 EXECUTED this 17 day of August, 2005.

5  
6   
7 Daniel Simcoe  
8 OSB No. 81024

9 EXECUTED this 22nd day of AUGUST, 2005.

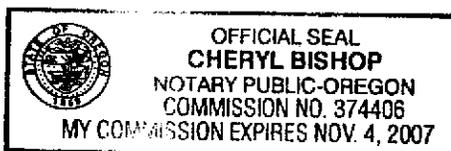
10 OREGON STATE BAR

11  
12 By:   
13 Linn D. Davis  
14 OSB No. 03222  
Assistant Disciplinary Counsel

15 I, Daniel Simcoe, being first duly sworn, say that I am the Accused in the above-entitled  
16 proceeding and that I attest that the statements contained in the stipulation are true and correct as  
I verily believe.

17  
18   
19 Daniel Simcoe

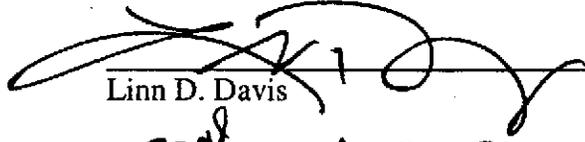
20 Subscribed and sworn to before me this 17<sup>th</sup> day of August, 2005.



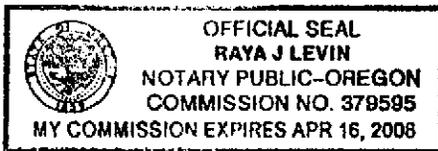
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Notary Public for Oregon  
My commission expires: 11/4/07

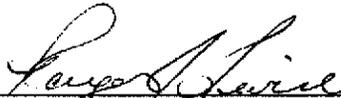
1 I, Linn D. Davis, being first duly sworn, say that I am Assistant Disciplinary Counsel for  
2 the Oregon State Bar and that I attest that I have reviewed the foregoing Stipulation for  
3 Discipline and that the sanction was approved by the SPRB for submission to the Disciplinary  
4 Board on the 16th day of July, 2005.

5   
Linn D. Davis

6 Subscribed and sworn to before me this 22<sup>nd</sup> day of AUGUST, 2005.



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Notary Public for Oregon  
My commission expires: 9-16-08

**DR 5-110 Sexual Relations with Clients**

- (A) A lawyer shall not have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them before the lawyer/client relationship commenced.
- (B) A lawyer shall not have sexual relations with a representative of a current client of the lawyer if the sexual relations would, or would likely, damage or prejudice the client in the representation.
- (C) For purposes of DR 5-110 "sexual relations" means:
- (1) Sexual intercourse; or
  - (2) Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party.
- (D) For purposes of DR 5-110 "lawyer" means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.

Disciplinary Rule 6  
Competence and Diligence

**DR 6-101 Competence and Diligence**

- (A) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- (B) A lawyer shall not neglect a legal matter entrusted to the lawyer.

**DR 6-102 Limiting Liability to Client**

- (A) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.
- (B) A lawyer shall not enter into any agreement with a client regarding arbitration of malpractice claims without full disclosure.

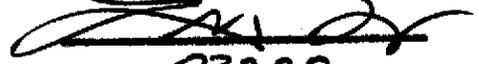
Disciplinary Rule 7  
Zealously Representing Clients within the Bounds of the Law

**DR 7-101 Representing a Client Zealously**

- (A) A lawyer shall not intentionally:
- (1) Fail to seek the lawful objectives of the lawyer's client through reasonably available means permitted by law and these disciplinary rules except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the lawyer's client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.
  - (2) Fail to carry out a contract of employment entered into with a client for professional services but the lawyer may withdraw as permitted under DR 2-110, DR 5-102 and DR 5-105.
  - (3) Prejudice or damage the lawyer's client during the course of the professional relationship except as required under DR 7-102(B).
- (B) In the lawyer's representation of a client, a lawyer may:
- (1) Where permissible, exercise the lawyer's professional judgment to waive or fail to assert a right or position of the lawyer's client.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

I certify that this document is  
a true copy of the original and  
the whole thereof.

  
OSB # 03222

In Re: )  
)  
Complaint as to the Conduct of ) Case No. 99-79  
)  
DANIEL SIMCOE, ) ORDER APPROVING STIPULATION  
) FOR DISCIPLINE  
Accused. )  
\_\_\_\_\_ )

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

IT IS HEREBY ORDERED that the terms of the stipulation between the parties are approved. The Accused is publicly reprimanded for violation of DR 7-104(A)(2) and DR 9-101(C)(4).

DATED this 23 day of May, 2000.

  
Derek C. Johnson  
State Disciplinary Board Chairperson

 5/18/2000  
Paul E. Meyer, Region 3  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-79
	)	
DANIEL SIMCOE,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
_____	)	

Daniel Simcoe, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State 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.

The Accused, Daniel Simcoe, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 13, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Josephine County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On January 15, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 7-104(A)(2) and DR 9-101(C)(4) of the Code of Professional Responsibility. 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.

The Accused represented the owner of a dance studio ("the client"). The Accused's son took lessons from the client's studio in exchange for the Accused's legal services. A dispute arose in the dance studio between the client and a choreographer who worked for her. The latter was fired and threatened to set up a competing business. Concerned about competition, the client drafted contracts to be signed by her student dance teachers that included non-competition clauses. The father of one of these student teachers was concerned about the implications of the non-competition clause and called the Accused to ask whether the clause was legal. The father advised the Accused that he had told his daughter she would not sign the contract. The Accused informed the father that he represented he client and could not say anything about the contract itself. However, the Accused then informed the father that any contract signed by a minor is voidable.

6.

The father's interests were, or had a reasonable possibility of being, in conflict with the interests of the Accused's client. The Accused's statement about the voidability of contracts signed by minors constituted advice to an unrepresented person whose interests were, or had a reasonable possibility of being, in conflict with the interests of the client.

7.

The Accused's representation of the client terminated in December 1997 or early 1998. In April 1998, the client asked the Accused to return unexecuted wills he had prepared for her and her husband. The Accused failed to do so promptly.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 7-104(A)(2) and DR 9-101(C)(4).

Sanction

9.

The Accused 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* (hereinafter, "*Standards*"). The *Standards* require that the Accused'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 Accused violated a duty owed to his client to properly handle her property. *Standards* § 4.1. He also violated a duty to his client to refrain from situations involving conflicts of interest. *Standards* § 4.3.

b. **Mental State.** The Accused's mental state was negligent, in that he failed to heed a substantial risk that circumstances existed or that a result would follow, which failure was a

deviation from the standard of care that a reasonable lawyer would have exercised under the circumstances. See *ABA Standards* at 17.

c. **Injury.** The client was potentially injured when the Accused gave legal advice to someone whose interests were adverse to her own. She was also inconvenienced by the Accused's failure to turn over her documents promptly.

d. **Aggravating Factors.** Aggravating factors to be considered include:

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

e. **Mitigating Factors.** Mitigating factors include:

1. Absence of a prior disciplinary record (*Standards* § 9.32(a));

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

3. Cooperative attitude toward the disciplinary process (*Standards* § 9.32(e)).

10.

In the following cases, attorneys were publicly reprimanded for failing to return client files promptly: *In re Brownlee*, 9 DB Rptr. 85 (1995); *In re Melkonian*, 12 DB Rptr. 224 (1998).

11.

There is very little case law applying DR 7-104(A)(2). In *In re Jeffery*, 321 Or 360, 898 P2d 752 (1995), an attorney who violated this rule by giving legal advice to his client's girlfriend (who was also a criminal informant against his client) was held to violate DR 7-104(A)(2). However, Jeffery was also charged with (and found to have violated) several other disciplinary rules, including multiple client conflicts of interest, conflicts of interest involving his own self-interest, and conduct prejudicial to the administration of justice. Jeffery was suspended for nine months.

DR 7-104(A)(2) is analogous, however, to the ethical rule prohibiting multiple client conflicts of interest, in that it is meant to insure undivided loyalty to the client. Cases involving violations of DR 5-105(E) that resulted in public reprimands include the following: *In re Cohen*, 316 Or 657, 853 P2d 286 (1993); *In re Taub*, 7 DB Rptr 77 (1993); *In re Vaughn*, 12 DB Rptr. 179 (1998).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 7-104(A)(2) and DR 9-101(C)(4).

13.

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

EXECUTED this 11 day of May, 2000.

  
Daniel Simcoe, OSB No. 81024

EXECUTED this 15<sup>th</sup> day of May, 2000.

OREGON STATE BAR

By:   
Mary A. Cooper, OSB No. 91001  
Assistant Disciplinary Counsel

I, Daniel Simcoe, being first duly sworn, say that I am the Accused in the above-entitled proceeding and that I attest that the statements contained in the stipulation are true and correct as I verily believe.

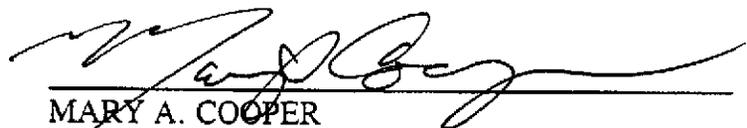
  
DANIEL SIMCOE

Subscribed and sworn to before me this 11 day of May, 2000.



  
Notary Public for Oregon  
My commission expires: 9-4-2001

I, Mary A. Cooper, being first duly sworn, say that I am Assistant Disciplinary Counsel for the Oregon State Bar and that I attest that I have reviewed the foregoing Stipulation for Discipline and that the sanction was approved by the SPRB for submission to the Disciplinary Board on the 15th day of January, 2000.

  
MARY A. COOPER

Subscribed and sworn to before me this 15 day of May, 2000.



  
Notary Public for Oregon  
My commission expires: 2/22/2003

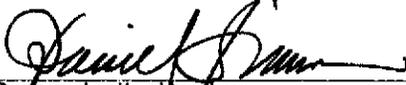
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In the Matter of Robert Daniel Simcoe	Case number(s): 05-J-04095
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### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

2/20/06  
Date

  
Respondent's signature

Robert Daniel Simcoe  
Print name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Respondent's Counsel's signature

NONE  
Print name

2/23/06  
Date

  
Deputy Trial Counsel's signature

Rizamari C. Sitton  
Print name

(Do not write above this line.)

In the Matter of Robert Daniel Simcoe	Case number(s): 05-J-04095
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### ORDER

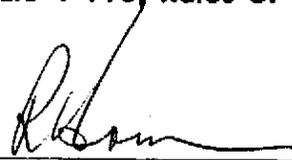
Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reprovial, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or futher modifies the approved stipulation. (See rule 125(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reprovial may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

3/20/06  
Date

  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**  
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 20, 2006, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING**

in a sealed envelope for collection and mailing on that date as follows:

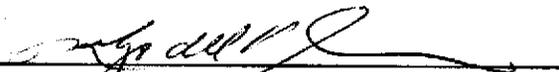
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ROBERT DANIEL SIMCOE  
242 NW "E" ST  
GRANTS PASS, OR 97526 2031**

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**Rizamari Sitton, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **March 20, 2006**.

  
**Milagro del R. Salmeron**  
Case Administrator  
State Bar Court