

**State Bar Court of California
Hearing Department
Los Angeles
REPROVAL**

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Todd R. Means Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1077</p> <p>Bar # 300259</p>	<p>Case Number(s): 17-J-07350</p>	<p>For Court use only</p> <p>FILED MAY 15 2018 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Nicholas Melzer Holland & Knight LLP 400 South Hope Street, 8th Floor Los Angeles, CA 90017 (213) 896-2496</p> <p>Bar # 246356</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: STEPHEN RAY RASMUSSEN</p> <p>Bar # 115176</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 3, 1984.**
- (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 consists of **13** pages, not including the order.

kwiktag® 026 803 389



*SRM
4/1/16*

(Do not write above this line.)

- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (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.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
 - Case ineligible for costs (private reproof).
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are 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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (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

- (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7) **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.
- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 9.**
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. 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 likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigation and proceedings.

(Do not write above this line.)

- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (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 with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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 subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Prefiling Stipulation, see page 10.
No Prior Record of Discipline, see page 10.
Good Character, see page 10.

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 Reproval:

- (1) Respondent must comply with the conditions attached to the reproof for a period of **one (1) year**.

(Do not write above this line.)

- (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 of the State Bar 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 thirty (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 reproof. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the reproof conditions period, 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 30 (thirty) 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 reproof with the probation monitor to establish a manner and schedule of compliance. During the reproof conditions period, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (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 reproof.
- (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 at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: **Respondent resides in another jurisdiction and completed a live, in-person ethics program presented by the Oregon State Bar on November 17, 2017, in satisfaction of his discipline in that jurisdiction. (See rule 5.135(B), Rules Proc. Of State Bar [attorney who resides in another jurisdiction may, with authorization, attend comparable remedial course offered through a certified provider in the other jurisdiction].).**
- (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 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 reproof.

(Do not write above this line.)

No MPRE recommended. Reason:

(11) The following conditions are attached hereto and incorporated:

Substance Abuse Conditions

Law Office Management Conditions

Medical Conditions

Financial Conditions

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: STEPHEN RAY RASMUSSEN
CASE NUMBER: 17-J-07350

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 17-J-07350 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. Respondent was admitted to the practice law in the State of Oregon on September 22, 1987.
2. On August 10, 2017, respondent entered into a Stipulation for Discipline (“stipulation”) with the Oregon State Bar in case no. 15-129 admitting that respondent had committed a violation of Oregon Rules of Professional Conduct, rule 8.4(a)(4). (See Exhibits 1 and 2 attached hereto, 18 and 2 pages, respectively.)
3. On September 5, 2017, the Supreme Court of the State of Oregon issued an Order Approving Stipulation for Discipline (“Order”) in case no. 15-129 and ordered that respondent be suspended from the practice of law for six (6) months with all but the first sixty (60) days of that suspension stayed, pending successful completion of a two (2) year term of probation. The Order thereafter became final. (See Exhibit 3 attached hereto, 1 page.)
4. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

5. In 2006, after her child was born with birth asphyxia, J.P. retained attorney Richard Rogers (“Rogers”) to pursue a \$35 million medical malpractice claim against the hospital and her obstetrician, Dr. R.
6. In May 2006, Rogers sent a request for all of J.P.’s medical records directly to Dr. R. Dr. R, without assistance of counsel, responded to the request by producing his medical chart, but some of J.P.’s records in his possession which were not a part of the medical chart were not produced. J.S., Dr. R.’s office manager, signed a certificate stating that she was providing “the complete, cover-to-cover chart, including but not limited to all notes, records, reports and correspondence for the above listed patient at your office(s).”
7. Beginning in August 2007, Dr. R.’s malpractice insurer retained Michael D. Hoffman (“Hoffman”) and his firm, Hoffman Hart & Wagner (“HHW”), to represent Dr. R.

8. On August 16, 2007, J.S. faxed Hoffman certain typewritten notes (“typewritten notes”) taken by Dr. R.. These typewritten notes were eventually placed in more than one of the sub-files within Dr. R.’s client file at HHW.

9. Respondent later learned that Hoffman had prepared a Summary of Conference memorandum related to Dr. R. The memorandum referenced and attached the typewritten notes.

10. On October 10, 2007, Rogers served Dr. R. through HHW with a request for production in the J.P. malpractice matter (“Rogers Request for Production”) which sought, among other things, “all records of any kind, [including] documents which contain details of J.P.’s or her newborn’s care and all statements made by [J.P.] regarding the subject matter of [the] complaint.”

11. On October 12, 2007, another HHW associate had the Rogers Request for Production forwarded to Dr. R. and instructed Dr. R. to provide all responsive documentation without additional explanation or clarification as to his rights or obligations under the discovery rules.

12. After the associate tasked with assisting on this matter left HHW, respondent, a senior associate with HHW, became responsible for responding to the Rogers Request for Production.

13. On November 9, 2007, respondent prepared a response to the Rogers Request for Production, producing a complete copy of J.P.’s medical chart. Respondent, however, did not disclose the existence of or produce Dr. R.’s typewritten notes or raise any objection or claim of privilege to its production. At that time, respondent, believed that all responsive, non-privileged documents were produced.

14. By February 2008, Dr. R.’s typewritten notes came to respondent’s attention and he and Hoffman discussed whether they should be produced in response to Rogers’ Request for Production.

15. On February 18, 2008, respondent reminded Hoffman that they had not produced Dr. R.’s typewritten notes and suggested that they inform Rogers of their existence and, while they could object to their production, they could agree to submit them to the court for *in camera* inspection.

16. Respondent understands that at some point in or around June 25, 2008, Hoffman informed Rogers that typewritten notes from Dr. R. existed and a determination would be made regarding whether the notes were discoverable.

17. Between July 28, 2008 and August 8, 2008, Rogers sent four letters to HHW, demanding production of the typewritten notes. Then being in trial, Hoffman did not produce the notes until August 8, 2008, one business day in advance of the first deposition related to the J.P. case. In doing so, Hoffman sent a copy of the typewritten notes to Rogers electing to omit the fax transmission report at the top of each page identifying Dr. R. as the sender and the time and date of its transmission on August 16, 2007.

18. When Dr. R. was deposed on September 3, 2008, he was extensively questioned by Rogers’s co-counsel regarding why he had failed to produce the notes until August 2008. Dr. R. did not recall when he had given the notes to HHW, and Hoffman did not assist him in remembering. Respondent was not present at the deposition.

19. When Dr. R.'s deposition resumed on March 12, 2009, he was accused of not only failing to turn over the typewritten notes until August 2008, but also of lying at the September 2008 deposition. Hoffman would not allow Dr. R. to answer as to when he had given the typewritten notes to Hoffman. Respondent was not present at the deposition.

20. On April 2, 2009, Rogers filed a Motion for Sanctions for Discovery Violation against Dr. R., alleging that Dr. R. had intentionally withheld the typewritten notes until June of 2008 and that he had lied about having other notes. Rogers sought to strike Dr. R.'s answer so that a default judgment would be entered against him in the pending lawsuit.

21. Respondent assisted in drafting the response to Rogers' Motion for Sanctions for Discovery Violations. Prior to filing the response, respondent did not review the file to determine when the typewritten notes had been received. For that reason, respondent did not disclose that HHW had possessed the typewritten notes since August 16, 2007 (even before the lawsuit was filed). Respondent was not present and did not participate in the hearing on Rogers' Motion for Sanctions for Discovery Violations.

22. As a result of Rogers' Motion for Sanctions for Discovery Violations which alleged that Dr. R. had willfully obstructed discovery, served false discovery and testified perjurally during his deposition, Dr. R.'s malpractice insurer advised Dr. R. that it reserved the right to deny insurance coverage. The insurer also advised Dr. R. to retain his own attorney at his own cost. In spring 2009, Dr. R. hired attorney, Kelley Andersen ("Andersen").

23. On or about May 18, 2009, respondent reviewed Dr. R.'s file and was reminded that HHW received the typewritten notes in August 2007. HHW prepared a supplemental Affidavit of Michael D. Hoffman in Support of Dr. R.'s response to plaintiff's motion for sanctions that stated: "the delay which occurred prior to the June 25, 2008 notification to plaintiff's counsel of the existence of the four pages of [Dr. R.'s] personal notes, which were produced on August 8, 2008, is the sole responsibility of [Dr. R.'s] attorneys, Hoffman, Hart & Wagner, and not of [Dr. R.]." However, HHW did not notify Rogers when they had received the documents from Dr. R. After Andersen conveyed to Rogers that HHW had received the documents from Dr. R. in August 2007, Rogers subsequently dismissed his motion for sanctions.

CONCLUSIONS OF LAW:

24. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in the Supreme Court of the State of Oregon warrants the imposition of discipline under the laws and rules binding upon respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

AGGRAVATING CIRCUMSTANCES.

Significant Harm to Client (Std. 1.5(j)): Respondent's conduct subjected Dr. R. to a potential default judgment and forced him to hire additional counsel and pay out of pocket. (*In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126 [additional attorney's costs incurred for an attorney's misconduct constitute significant harm].)

MITIGATING CIRCUMSTANCES.

Prefiling Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

No Prior Record of Discipline: Respondent is entitled to mitigation for 33 years of discipline-free practice. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal State Bar Ct. Rptr. 41 [attorney's many years in practice with no prior discipline considered mitigating even when misconduct at issue was serious]; *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant mitigation]; *Friedman v. State Bar* (1990), 50 Cal. 3d 235, 245 [20 years is "highly significant" mitigation].)

Good Character: Respondent provided good character evidence to the State Bar in the form of letters from six individuals who have known respondent for several years. Of the six letters, four are from attorneys who have worked with respondent in some capacity, one is from a business associate, and one is from a friend. The authors of the letters have known respondent from approximately 5 to 15 years and indicate that they have read respondent's stipulation to discipline from his Oregon disciplinary proceedings, including the stipulation to facts. They further indicate that they are aware that the State Bar of California is pursuing reciprocal discipline, and still do not hesitate to attest to respondent's honesty, trustworthiness, loyalty, diligence, and integrity.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the

member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, respondent's misconduct in the other jurisdiction demonstrates a violation of the California Rules of Professional Conduct, rule 3-110(A).

Standard 2.7(c) applies to violations of rule 3-110(A) and provides that "[s]uspension or reproof is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time." The degree of sanction for a violation of rule 3-110(A) under Standard 2.7(c) "depends on the extent of the misconduct and the degree of harm to the client or clients."

Respondent admitted facts and conclusions of law in the Supreme Court of Oregon that provide clear and convincing evidence of a violation of rule 3-110(A). Respondent was in possession of non-privileged information that was responsive to Rogers' request for production but did not produce it. Respondent was unaware of the notes because he had not adequately reviewed the file. Respondent had numerous opportunities to inform opposing counsel that Dr. R had transmitted the notes to HHW on August 16, 2007, but failed to do so. Respondent's lack of care caused Dr. R. substantial harm by subjecting him to additional attorney's fees and the risk of a default judgment. Respondent did not intentionally withhold the information, but his failures to review Dr. R.'s file and correct his previous errors were both reckless and repeated.

Respondent's misconduct harmed a client and is related to the practice of law, and therefore discipline is appropriate. However, the extent of respondent's misconduct is limited. While the misconduct took place over the course of several months, the harm that was caused is more attributable to Hoffman's actions than respondent's and is limited to a single client matter. Additionally, respondent's misconduct is mitigated by over 30 years of discipline-free practice, pre-filing stipulation, and good character. Therefore, a public reproof will achieve the purposes of discipline set forth in Standard 1.1, including protection of the public, maintenance of high professional standards, and preservation of public confidence in the legal profession.

This result is consistent with case law. In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, a criminal defense attorney failed to act competently, violated multiple court orders, and failed to report the imposition of sanctions. A partner at the attorney's law firm encouraged the attorney to apply for appointment on an automatic appeal from a capital sentence. The attorney was appointed to such an appeal but did not file an opening brief for a two-year period, despite two court orders instructing the attorney to submit the brief. In mitigation, the court gave significant weight to the attorney's 17 years of discipline-free practice, diminished weight to his four good character witnesses, and some weight for agreeing to a factual stipulation. In aggravation, the court gave little weight to respondent's multiple acts of misconduct and some weight to the harm caused to the administration of justice. Accordingly, the court imposed six months of stayed suspension with one year of probation.

Respondent's misconduct is similar to that of the attorney's in *Riordan* in that it arose out of inaction. Had respondent simply opened the file, reviewed the typewritten notes, and informed opposing counsel that HHW was in possession of the notes since August 2007, Dr. R. would have avoided the risk of sanctions entirely. In contrast, respondent has nearly double the length of discipline-free practice as that of the attorney in *Riordan*. Unlike the attorney in *Riordan*, respondent's misconduct did not involve multiple acts of misconduct. Given respondent's significant mitigation, and the limited duration of his

misconduct, the discipline set forth herein is appropriate and will adequately fulfil the purposes of attorney discipline set forth in Standard 1.1.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of April 3, 2018, the discipline costs in this matter are approximately \$3,215. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION (“MCLE”) CREDIT




Respondent may not receive MCLE credit for completion of State Bar Ethics School and/or any other continuing legal educational course(s) taken in lieu of Ethics School ordered as a condition of this discipline. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: STEPHEN RAY RASMUSSEN	Case number(s): 17-J-07350
--	-------------------------------

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.

<u>May 2, 2018</u> Date	<u></u> Respondent's Signature	<u>Stephen Ray Rasmussen</u> Print Name
<u>5/2/18</u> Date	<u></u> Respondent's Counsel Signature	<u>Nicholas Melzer</u> Print Name
<u>5/7/18</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Todd R. Means</u> Print Name

(Do not write above this line.)

In the Matter of: STEPHEN RAY RASMUSSEN	Case Number(s): 17-J-07350
--	-------------------------------

REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 further modifies the approved stipulation. (See rule 5.58(E) & (F), 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 reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

May 15, 2018
Date

Cynthia Valenzuela
CYNTHIA VALENZUELA
Judge of the State Bar Court

1
2
3
4
5
6
7

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:
Complaint as to the Conduct of
STEPHEN R. RASMUSSEN,
Accused.

Case No. 15-129
STIPULATION FOR DISCIPLINE

8 Stephen R. Rasmussen, attorney at law ("Rasmussen"), and the Oregon State Bar ("Bar")
9 hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

10 1.

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

14 2.

15 Rasmussen was admitted by the Oregon Supreme Court to the practice of law in Oregon
16 on September 22, 1987, and has been a member of the Bar continuously since that time, having
17 his office and place of business in Multnomah County, Oregon.

18 3.

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

22 4.

23 On May 17, 2016, a Formal Complaint was filed against Rasmussen pursuant to the
24 authorization of the State Professional Responsibility Board ("SPRB"), alleging violation of a
25 RPC 1.7(a)(2) [lawyer's self-interest conflict]; RPC 3.3(a)(1) [knowing false statement of law or

1 fact to a tribunal]; RPC 3.4(d) [knowing failure to make reasonably diligent efforts to comply with
2 a proper discovery request]; RPC 8.4(a)(3) [conduct involving dishonesty or misrepresentation];
3 and RPC 8.4(a)(4) [conduct prejudicial to the administration of justice]. The parties intend that
4 this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction
5 as a final disposition of the proceeding.

6

7

Facts

8

5.

9 In 2006, after her child was born with birth asphyxia, Jennifer Penney ("Penney") retained
10 attorney Richard Rogers ("Rogers") to pursue a \$35 million medical malpractice claim against the
11 hospital and her obstetrician, Dr. Michael Rulon ("Dr. Rulon").

12

6.

13 In May 2006, Rogers sent a request for all Penney medical records directly to Dr. Rulon.
14 Dr. Rulon, without assistance of counsel, responded to the request by producing his medical
15 chart, but not some of the other records in his possession which were not a part of the medical
16 chart. Judy Smith ("Smith"), Dr. Rulon's office manager, signed a certificate stating that she was
17 providing "the complete, cover-to-cover chart, including but not limited to all notes, records,
18 reports and correspondence for the above listed patient at your office(s)."

19

7.

20 Beginning in August 2007, Dr. Rulon's malpractice insurer, MedPro, retained Michael D.
21 Hoffman ("Hoffman") and his firm, Hoffman Hart & Wagner ("HHW"), to represent Dr. Rulon.

22

8.

23 On August 16, 2007, Smith faxed Hoffman certain typewritten notes ("typewritten notes")
24 taken by Dr. Rulon. These typewritten notes were eventually placed in more than one of the sub-
25 files within Dr. Rulon's client file.

PAGE 2 – STIPULATION FOR DISCIPLINE – STEPHEN R. RASMUSSEN

1

9.

2 Rasmussen later learned that Hoffman had prepared a "Summary of Conference with
3 Defendant Michael Rulon, M.D." memorandum. The memorandum referenced and attached the
4 typewritten notes.

5

10.

6 On October 10, 2007, Rogers served Dr. Rulon through HHW with a request for production
7 in the Penney malpractice matter ("Rogers Request for Production") which sought, among other
8 things, "all records of any kind, [including] documents which contain details of Penney's or her
9 newborn's care and all statements made by [Penney] regarding the subject matter of [the]
10 complaint."

11

11.

12 On October 12, 2007, another HHW associate had the Rogers Request for Production
13 forwarded to Dr. Rulon and instructed Dr. Rulon to provide all responsive documentation without
14 additional explanation or clarification as to his rights or obligations under the discovery rules.

15

12.

16 After the associate tasked with assisting on this matter left HHW, Rasmussen, a senior
17 associate with HHW, became responsible for responding to the Rogers Request for Production.

18

13.

19 On November 9, 2007, Rasmussen prepared a response to the Rogers Request for
20 Production, producing a complete copy of Penney's medical chart. Rasmussen, however, was not
21 aware that Dr. Rulon had previously provided the typewritten notes to HHW and thus, did not
22 disclose the existence of or produce Dr. Rulon's typewritten notes or raise any objection or claim
23 of privilege to its production. At that time, Rasmussen believed that all responsive, non-privileged
24 documents were produced.

25

PAGE 3 -- STIPULATION FOR DISCIPLINE -- STEPHEN R. RASMUSSEN

1

14.

2 By February 2008, Dr. Rulon's typewritten notes came to Rasmussen's attention and he
3 and Hoffman discussed whether they should be produced in response to Rogers' Request for
4 Production.

5

15.

6 On February 18, 2008, Rasmussen reminded Hoffman that they had not produced Dr.
7 Rulon's typewritten notes and suggested that they inform Rogers of their existence and, while
8 they could object to their production, they could agree to submit them to the court for *in camera*
9 inspection.

10

16.

11 Rasmussen understands that at some point in or around June 25, 2008, Hoffman informed
12 Rogers that typewritten notes from Dr. Rulon existed and a determination would be made
13 regarding whether the notes were discoverable.

14

17.

15 Between July 28 and August 8, 2008, Rogers sent four letters to HHW, demanding
16 production of the typewritten notes. Then being in trial, Hoffman did not produce the notes until
17 August 8, 2008, one business day in advance of the first deposition related to Penney case. In
18 doing so, Hoffman sent a copy of the typewritten notes to Rogers electing to omit the fax
19 transmission report at the top of each page identifying Dr. Rulon as the sender and the time and
20 date of its transmission on August 16, 2007.

21

18.

22 When Dr. Rulon was deposed on September 3, 2008, he was extensively questioned by
23 Rogers's co-counsel regarding why he had failed to produce the notes until August 2008. Dr.
24 Rulon did not recall when he had given the notes to HHW, and Hoffman did not assist him in
25 remembering. Rasmussen was not present at the deposition.

1

19.

2 When Dr. Rulon's deposition resumed on March 12, 2009, he was accused of not only
3 falling to turn over the typewritten notes until August 2008, but also of lying at the September
4 2008 deposition. Hoffman would not allow Dr. Rulon to answer as to when he had given the
5 typewritten notes to Hoffman. Rasmussen was not present at the deposition.

6

20.

7 On April 2, 2009, Rogers filed a Motion for Sanctions for Discovery Violations against Dr.
8 Rulon, alleging that Dr. Rulon had intentionally withheld the typewritten notes until June of 2008
9 and that he had lied about having other notes. Rogers sought to strike Dr. Rulon's Answer so that
10 a default judgment would be entered against him in the pending lawsuit.

11

21.

12 Rasmussen participated in drafting and signed the response to Rogers' Motion for
13 Sanctions for Discovery Violations. Prior to filing the response, Rasmussen did not review the file
14 to determine when the typewritten notes had been received. For that reason, Rasmussen did not
15 disclose that HHW had possessed the typewritten notes since August 16, 2007 (even before the
16 lawsuit was filed). Rasmussen was not present and did not participate in the hearing on Rogers'
17 Motion for Sanctions for Discovery Violations.

18

22.

19 As a result of Rogers' Motion for Sanctions for Discovery Violations which alleged that Dr.
20 Rulon had willfully obstructed discovery, served false discovery responses and testified
21 perjurally during his deposition, MedPro advised Dr. Rulon that it reserved the right to deny
22 insurance coverage. MedPro also advised Dr. Rulon to retain his own attorney at his own cost. In
23 spring 2009, Dr. Rulon hired attorney, Kelly Andersen ("Andersen").

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

23.

On or about May 18, 2009, Rasmussen reviewed the file and was reminded that HHW received the typewritten notes in August 2007. HHW then prepared a Supplemental Affidavit of Michael D. Hoffman In Support of the Rulon Defendants' Response to Plaintiff's Motion for Sanctions that stated: "the delay which occurred prior to the June 25, 2008 notification to plaintiffs' counsel of the existence of the four pages of Dr. Rulon's personal notes, which were produced on August 8, 2008, is the sole responsibility of Dr. Rulon's attorneys, Hoffman, Hart & Wagner, and not of Dr. Rulon." However, HHW did not notify Rogers when they had received the documents from Dr. Rulon. After Andersen conveyed to Rogers that HHW had received the documents from Dr. Rulon in August 2007, Rogers subsequently dismissed his Motion for Sanctions.

Violations

24.

Rasmussen admits that, not addressing Dr. Rulon's typewritten notes in the response to the Rogers Request for Production, as well as in the response to Rogers's Motion for Sanctions, which failed to reveal Dr. Rulon's earlier delivery of the typewritten notes, constitutes conduct prejudicial to the administration of justice, in violation of RPC 8.4(a)(4).

25.

Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 1.7(a)(2); RPC 3.3(a)(1); RPC 3.4(d); and RPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Sanction

26.

Rasmussen and the Bar agree that, in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* ("Standards"). The Standards require that Rasmussen'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.** Rasmussen violated his duty to the legal system to avoid abuse of the legal process. *Standards* § 6.2.
- b. **Mental State.** 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.* Rasmussen acted both negligently and knowingly.
- c. **Injury.** An injury need not be actual, but only potential, to support the imposition of a sanction. *Standards* at 6; *In re Williams*, 314 Or 530 (1992). In this matter, there was actual injury to Dr. Rulon in terms of fear, anxiety, and unnecessary damage to his reputation. There was also some actual injury in that the court was not provided with complete information. There was also significant potential injury to the extent that sanctions may have been imposed against Dr. Rulon and/or he would have lost coverage from MedPro if the source of the delay in producing the typewritten notes had not been disclosed or if HHW's response to Rogers' Motion for Sanctions for Discovery Violations had been left unchallenged.
- d. **Aggravating Circumstances.** Aggravating circumstances include:

- 1 1. In his circumstance and given his dependency on his lawyers to be aware
- 2 and forthright with what he had provided to them, Dr. Rulon was a
- 3 vulnerable victim. *Standards* § 9.22(h).
- 4 2. Rasmussen has substantial experience in the practice of law, having been
- 5 admitted in Oregon in 1987. *Standards* § 9.22(i).
- 6 e. **Mitigating Circumstances.** Mitigating circumstances include:
- 7 1. Absence of a prior disciplinary record. *Standards* § 9.32(a).
- 8 2. Full and free disclosure and cooperation in the disciplinary proceedings.
- 9 *Standards* § 9.32(e).
- 10 3. Character and reputation. *Standards* § 9.32(f). Rasmussen provided
- 11 multiple letters of support from attorneys in the legal community attesting
- 12 to his good character and fitness as a lawyer.
- 13 4. Remorse. *Standards* § 9.32(j).

27.

Under the ABA *Standards*, a suspension is generally appropriate when a lawyer knows, as contemplated by the *Standards*, that he is violating a rule of the court and causes interference or potential interference with a legal proceeding. *Standards* § 6.22. Taking into account all of the considerations under the *Standards*, a suspension is appropriate for Rasmussen's misconduct in this matter.

28.

Oregon cases have likewise imposed some period of suspension where lawyers have engaged in a pattern of conduct that has adversely impacted the procedural functioning of the court or a matter. *See, e.g., In re Krueger*, 29 DB Rptr 273 (2015) (Respondent was suspended for 6 months, partially stayed, when he prematurely removed a portion of his client's settlement funds from trust for his anticipated attorney fees prior to obtaining the statutorily required court

1 approval. Respondent's handling of the settlement funds, as well as his subsequent
2 misstatements and omissions to the court and the Bar about his handling of the funds, were acts
3 that potentially harmed the administration of Justice.); *In re Kinney*, 28 DB Rptr 59 (2014)
4 (Respondent was suspended for one year, partially stayed, when he allowed his personal
5 bankruptcy petition to be filed containing incomplete and inaccurate information and thereafter
6 affirmed the accuracy of the information under oath, without having thoroughly reviewed the
7 documents and without having verified the that information was correct.); *In re Tank*, 28 DB Rptr
8 35 (2014) (Respondent suspended for 90 days where she represented a corporation on matters
9 related to its corporate records. Because the corporation did not have complete records, some
10 were drafted by an associate in respondent's firm and purported to memorialize corporate
11 records, events and actions dating back 20 years. In litigation a few months later, where an issue
12 was ownership and control of the corporation, respondent stated or implied in open court that
13 the corporate records were prepared well before the litigation began, and failed to explain or
14 clarify that representation); *In re Hudson*, 27 DB Rptr 226 (2013) (In connection with a bar
15 investigation, fee arbitration, and civil proceedings brought by his former client, respondent
16 separately submitted documents and made statements that materially misrepresented the true
17 facts regarding the client's claims and their timing with respect to the attorney-client
18 relationship, intending that these false statements and documentation be relied upon by the bar,
19 the arbitrator, and the court in their respective evaluations of his former client's claims.
20 Respondent was suspended for two years, partially stayed); *In re Hall*, 27 DB Rptr 93 (2013)
21 (Respondent was suspended for 150 days where he failed to file accountings, notwithstanding
22 court notices, or respond to a citation for removal. When he failed to appear for the show cause
23 hearing, his personal representative client was removed from her husband's estate. Respondent
24 thereafter failed to respond to numerous attempts to contact him by the replacement personal
25 representative. Respondent's actions burdened the court to issue unnecessary orders and hold

PAGE 9 – STIPULATION FOR DISCIPLINE – STEPHEN R. RASMUSSEN

1 unnecessary hearings.); *In re Daum*, 24 DB Rptr 199 (2010) (Respondent suspended for 120 days
2 where he failed to file a client's bankruptcy petition timely, failed to correct errors in the petition
3 and schedules called to his attention by the client, and incorrectly dealt with a student stipend
4 and debt reaffirmation. He also instructed the client to sign the signature page of the petition for
5 herself and her husband, under penalty of perjury, without reviewing the petition or its schedules
6 and inflated the amount of monthly expenses claimed in the petition to ensure the clients would
7 qualify for a Chapter 7 discharge.); *In re Trunnell*, 22 DB Rptr 150 (2008) (While representing a
8 bankruptcy trustee, attorney failed to pursue or pursue timely numerous claims against debtors
9 in contested bankruptcy matters, resulting in diminished value to the estates. Attorney's delays
10 required the court to issue various notices and schedule hearings that would not have otherwise
11 been necessary, and resulted in 4-month suspension.); *In re Sunderland*, 21 DB Rptr 257 (2007)
12 (Respondent was suspended for one year for his representation of a client in a dissolution while
13 the client's bankruptcy proceeding was simultaneously pending. Attorney obtained an *ex parte*
14 judgment in the dissolution case awarding to attorney's client funds that attorney knew had not
15 been disclosed in the bankruptcy petition. Thereafter, attorney attempted to collect the funds
16 without disclosing to the state court the circumstances of the bankruptcy. Nor did attorney
17 disclose the existence of these funds to the bankruptcy court or trustee. In another matter,
18 attorney learned after filing a bankruptcy petition for his clients that they would be receiving tax
19 refunds that had not been disclosed in the petition. Through an associate, attorney advised his
20 clients not to appear for the first meeting of creditors, which attorney surmised would lead to
21 the dismissal of the bankruptcy and permit his clients to spend the refunds without disclosure to
22 the court.).

23
24 29.

25 BR 6.2 recognizes that probation can be appropriate and permits a suspension to be
stayed pending the successful completion of a probation. See also, *Standards* § 2.7 (probation

PAGE 10 – STIPULATION FOR DISCIPLINE – STEPHEN R. RASMUSSEN

1 can be imposed alone or with a suspension and is an appropriate sanction for conduct which may
2 be corrected). In addition to a period of suspension, a period of probation designed to ensure the
3 adoption and continuation of better practices will best serve the purpose of protecting clients,
4 the public, and the legal system.

5

30.

6 Consistent with the *Standards* and Oregon case law, the parties agree that Rasmussen
7 shall be suspended for six (6) months for his violation of RPC 8.4(a)(4), with all but sixty (60) days
8 of the suspension stayed, pending Rasmussen's successful completion of a two (2)-year term of
9 probation. The sanction shall be effective September 1, 2017, or as otherwise directed by the
10 Disciplinary Board.

11

31.

12 Rasmussen's license to practice law shall be suspended for a period of sixty (60) days
13 beginning September 1, 2017, or as otherwise directed by the Disciplinary Board ("actual
14 suspension"), assuming all conditions have been met. Rasmussen understands that
15 reinstatement is not automatic and that he cannot resume the practice of law until he has taken
16 all steps necessary to re-attain active membership status with the Bar. During the period of actual
17 suspension, and continuing through the date upon which Rasmussen re-attains his active
18 membership status with the Bar, Rasmussen shall not practice law or represent that he is
19 qualified to practice law; shall not hold himself out as a lawyer; and shall not charge or collect
20 fees for the delivery of legal services as an attorney other than for work performed and
21 completed prior to the period of active suspension.

22

32.

23 Probation shall commence upon the date Rasmussen is reinstated to active membership
24 status and shall continue for a period of two (2) years, ending on the day prior to the second (2nd)
25

1 year anniversary of the commencement date (the "period of probation"). During the period of
2 probation, Rasmussen shall abide by the following conditions:

3 (a) Rasmussen shall comply with all provisions of this Stipulation for Discipline, the
4 Rules of Professional Conduct applicable to Oregon lawyers, and ORS Chapter 9.

5 (b) Within seven (7) days of his reinstatement date, Rasmussen shall contact the
6 Professional Liability Fund (PLF) and schedule an appointment on the soonest date
7 available to consult with PLF practice management advisors in order to obtain
8 practice management advice and notify the Bar of the time and date of the
9 appointment.

10 (c) Rasmussen shall attend the appointment with a PLF practice management advisor
11 and seek advice and assistance regarding procedures for diligently pursuing client
12 matters, communicating with clients, effectively managing a client caseload and
13 taking reasonable steps to protect clients upon the termination of his
14 employment. No later than thirty (30) days after recommendations are made by
15 the PLF, Rasmussen shall adopt and implement those recommendations.

16 (d) No later than sixty (60) days after recommendations are made by the PLF,
17 Rasmussen shall provide a copy of the Office Practice Assessment from the PLF
18 and file a report with Disciplinary Counsel's Office stating the date of his
19 consultation(s) with the PLF; identifying the recommendations that he has
20 adopted and implemented; and identifying the specific recommendations he has
21 not implemented and explaining why he has not adopted and implemented those
22 recommendations.

23 (e) At least six (6) months and no later than nine (9) months after Rasmussen's
24 appointment with a PLF practice management advisor, Rasmussen shall arrange
25 for and attend a follow-up appointment with a PLF practice management advisor

1 to review the Office Practice Assessment and modify the assessment as necessary
2 to reflect additional or different recommendations regarding procedures for
3 diligently pursuing client matters, communicating with clients, effectively
4 managing a client caseload and taking reasonable steps to protect clients upon
5 the termination of his employment. No later than thirty (30) days after the follow-
6 up recommendations are made by the PLF, Rasmussen shall adopt and implement
7 those recommendations.

8 (f) No later than sixty (60) days after any follow-up recommendations are made by
9 the PLF, Rasmussen shall provide a copy of the revised Office Practice Assessment
10 from the PLF and file a report with Disciplinary Counsel's Office stating the date of
11 his follow-up consultation(s) with the PLF; identifying the recommendations that
12 he has adopted and implemented; and identifying the specific recommendations
13 he has not implemented and explaining why he has not adopted and implemented
14 those recommendations.

15 (g) Matthew George Ukishima shall serve as Rasmussen's probation supervisor
16 ("Supervisor"). Rasmussen shall cooperate and comply with all reasonable
17 requests made by Supervisor that Supervisor, in his or her sole discretion,
18 determines are designed to achieve the purpose of the probation and the
19 protection of Rasmussen's clients, the profession, the legal system, and the public.
20 Beginning with the first month of the period of probation, Rasmussen shall meet
21 with Supervisor in person at least once a month for the purpose of reviewing the
22 status of Rasmussen's law practice and his performance of legal services on the
23 behalf of clients. Each month during the period of probation, Supervisor shall
24 conduct a random audit of ten (10) files or ten percent (10%) of his active files,
25 whichever is greater, to determine whether Rasmussen is timely, competently,

- 1 diligently, and ethically attending to matters, properly identifying and addressing
2 conflicts of interest, adequately communicating with clients, and taking
3 reasonably practicable steps to protect his clients' interests upon the termination
4 of employment.
- 5 (h) During the period of probation, Rasmussen shall attend not less than eight (8)
6 MCLE accredited programs, for a total of twenty-four (24) hours, which shall
7 emphasize law practice management, time management, conflicts of interest,
8 discovery and trial skills, and client communications. These credit hours shall be
9 in addition to those MCLE credit hours required of Rasmussen for his normal MCLE
10 reporting period. The Ethics School requirement does not count towards the
11 twenty-four (24) hours needed.
- 12 (i) Upon completion of the MCLE programs described in paragraph 34(h), and no
13 later than ten (10) days before the end of the period of probation, Rasmussen shall
14 submit an Affidavit of Compliance to Disciplinary Counsel's Office.
- 15 (j) On a quarterly basis, on dates to be established by Disciplinary Counsel beginning
16 no later than ninety (90) days after his reinstatement to active membership status,
17 Rasmussen shall submit to Disciplinary Counsel's Office a written "Compliance
18 Report," approved as to substance by Supervisor, advising whether Rasmussen is
19 in compliance with the terms of this agreement. In the event that Rasmussen has
20 not complied with any term of the agreement, the Compliance Report shall
21 describe the non-compliance and the reason for it.
- 22 (k) Rasmussen authorizes Supervisor to communicate with Disciplinary Counsel
23 regarding his compliance or non-compliance with the terms of this agreement,
24 and to release to Disciplinary Counsel any information necessary to permit
25 Disciplinary Counsel to assess Rasmussen's compliance.

1 (l) Rasmussen is responsible for any costs required under the terms of this stipulation
2 and the terms of probation.

3 (m) Rasmussen's failure to comply with any term of this agreement, including
4 conditions of timely and truthfully reporting to Disciplinary Counsel's Office, or
5 with any reasonable request of Supervisor, shall constitute a basis for the
6 revocation of probation and imposition of the stayed portion of the suspension.

7 (n) A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to
8 Disciplinary Counsel on or before its due date.

9 (o) The SPRB's decision to bring a formal complaint against Rasmussen for unethical
10 conduct not addressed in this stipulation shall also constitute a basis for
11 revocation of the probation and imposition of the stayed portion of the
12 suspension.

13 33.

14 Rasmussen acknowledges that he has certain duties and responsibilities under the Rules
15 of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable
16 prejudice to his clients during the term of his suspension. In this regard, Rasmussen has arranged
17 for Matthew Ukishima, Bruce Gilbert, Ryan McLellan and Cliff Wilson, active members of the Bar,
18 to either take possession of or have ongoing access to Rasmussen's client files and serve as the
19 contact person for clients in need of the files during the term of his suspension. Rasmussen
20 represents that these individuals have agreed to accept this responsibility.

21 34.

22 Rasmussen acknowledges that reinstatement is not automatic on expiration of the period
23 of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules
24 of Procedure. Rasmussen also acknowledges that he cannot hold himself out as an active
25

1 member of the Bar or provide legal services or advice until he is notified that his license to
2 practice has been reinstated.

3
4 35.

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

10 36.

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

16 37.

17 This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Bar and
18 to approval by the SPRB. If approved by the SPRB, the parties agree the stipulation is to be
19 submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

20 EXECUTED this 10th day of August, 2017.

21

22

23

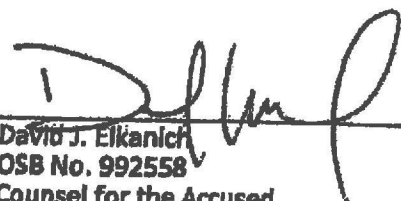
24

25


Stephen R. Rasmussen
OSB No. 871480

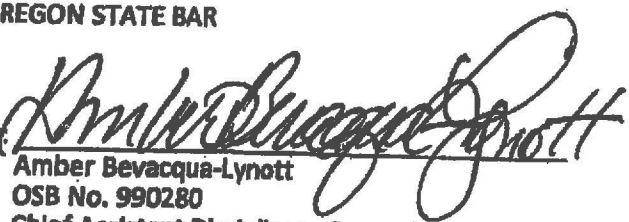
APPROVED AS TO FORM AND CONTENT:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



David J. Elkanich
OSB No. 992558
Counsel for the Accused

EXECUTED this 15th day of August, 2017.

OREGON STATE BAR
By: 

Amber Bevacqua-Lynott
OSB No. 990280
Chief Assistant Disciplinary Counsel

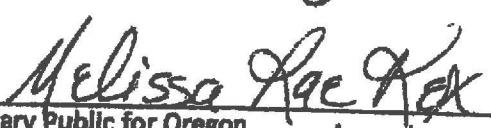
I, Stephen R. Rasmussen, being first duly sworn, say that I am the Accused in the above-entitled proceeding and that I attest that the statements contained in the stipulation are true and correct as I verily believe.



Stephen R. Rasmussen

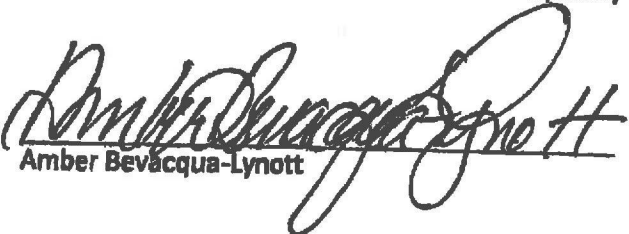
Subscribed and sworn to before me this 10th day of August, 2017.





Notary Public for Oregon
My commission expires: 04/03/2021

I, Amber Bevacqua-Lynott, being first duly sworn, say that I am the Chief Assistant Disciplinary Counsel for the 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 3rd day of May, 2017.



Amber Bevacqua-Lynott

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Subscribed and sworn to before me this 15th day of August, 2017.



Emily M. Schwartz
Notary Public for Oregon
My commission expires: Jan. 15, 2018

ORPC 8.4

This document is current through January 1, 2018

Oregon Court Rules > OREGON STATE BAR RULES > OREGON RULES OF PROFESSIONAL CONDUCT > MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4. Misconduct

(a) It is professional misconduct for a lawyer to:

- (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;**
- (2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;**
- (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;**
- (4) engage in conduct that is prejudicial to the administration of justice; or**
- (5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law, or**
- (6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.**
- (7) in the course of representing a client, knowingly intimidate or harass a person because of that person's race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.**

(b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct. "Covert activity," as used in this rule, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. "Covert activity" may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.

History

Adopted 01/01/05

ORPC 8.4

Amended 12/01/06:

Paragraph (a)(5) added.

Amended 02/19/15:

Paragraphs (a)(7) and (c) added.

Defined Terms (see Rule 1.0):

Comparison to Oregon Code

This rule is essentially the same as DR 1-102(A).

Paragraph (b) retains DR 1-102(D).

Comparison to ABA Model Rule

Paragraphs (b) and (d) have no counterpart in the Model Rule.

OREGON COURT RULES

End of Document

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

William G. Blair

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
Complaint as to the Conduct of)
STEPHEN R. RASMUSSEN,)
Accused.)

Case No. 15-129
ORDER APPROVING STIPULATION
FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Stephen R. Rasmussen is suspended for 6 months, all but 60 days of the suspension stayed, pending successful completion of a 2-year term of probation, for violation of RPC 8.4(a)(4), effective:

- ~~September 1, 2017, or~~
- September 5, 2017

DATED this 5th day of September, 2017.

William G. Blair

William G. Blair
State Disciplinary Board Chairperson

Ronald W. Atwood

Ronald W. Atwood, Region 5
Disciplinary Board Chairperson

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 May 15, 2018, 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:

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

**NICHOLAS B. MELZER
HOLLAND & KNIGHT LLP
400 S HOPE ST FL 8
LOS ANGELES, CA 90071 - 2809**

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

SHERELL N. McFARLANE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 15, 2018.



Paul Barona
Court Specialist
State Bar Court