

(Do not write above this line.)

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

<p>Counsel For The State Bar</p> <p>Miho Murai, Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015-2299 213-765-1219</p> <p>Bar # 235178</p>	<p>Case Number (s) 06-J-10663</p>	<p>(for Court's use)</p> <p align="center">FILED</p> <p align="center">APR 17 2007 <i>Yic</i></p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p align="center">PUBLIC MATTER</p>
<p>In Pro Per Respondent</p> <p>Dawna Scott Andersen 2850 SW Cedar Hills Blvd. #134 Beaverton, OR 97005 (503) 793-3461</p> <p>Bar # 186874</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: DAWNA SCOTT ANDERSEN</p> <p>Bar # 186874</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 17, 1996**.
- (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 **18** pages, not including the order.
- (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."



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- (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):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: **for the two (2) billing cycles following effective date of the Supreme Court Order**
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

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)]
- (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.
- (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. **See Attachment Page 5**
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

Respondent has a prior record of discipline in the State of Oregon.

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. **See Attachment Page 5**
- (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

See Attachment Page 5

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one (1) year**.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of **ninety (90) days**.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, 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 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 period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (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 to the monitor 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 probation 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 probation conditions.
- (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 outside of California.**
- (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) The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** 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 during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

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- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:

- (5) **Other Conditions: See Attachment Pages 6 & 7**

(Do not write above this line.)

Attachment language begins here (if any):

SEE ATTACHMENT PAGES 1 THROUGH 7

In the Matter of
DAWNA SCOTT ANDERSEN

Case number(s):
06-J-10663

A Member of the State Bar

Law Office Management Conditions

- a. Within **90** days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within days/ months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.
- d. Once the law office management plan required by section a above has been approved by the Office of Probation, Respondent must comply with the law office management plan and the procedures herein. Further, in each quarterly report, as required as a condition of discipline imposed as a result of this stipulation, Respondent must verify, under penalty of perjury, that she has complied with the law office management/organization plan, required by section a above and approved by the Office of Probation, during the applicable quarter.

In the Matter of
DAWNA SCOTT ANDERSEN

Case number(s):
06-J-10663

A Member of the State Bar

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAWNA SCOTT ANDERSEN

CASE NUMBER: 06-J-10663

FACTS AND CONCLUSIONS OF LAW

Dawna Scott Andersen ("Respondent") admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

FACTS

JURISDICTION

1. Respondent was admitted to the practice of law in the State of California on December 17, 1996, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

PROFESSIONAL MISCONDUCT IN A FOREIGN JURISDICTION

2. Respondent was admitted to the practice of law in the State of Oregon on September 15, 1997, was a member at all times pertinent to these charges, and is currently a member of the Oregon State Bar.

3. On January 23, 2006, Respondent and the Oregon State Professional Responsibility Board ("OSPRB") stipulated that Respondent had violated DR 9-101(A) [failure to deposit or maintain client funds in a trust account]. Specifically, Respondent, at the conclusion of client Richard Martinez's ("Mr. Martinez") case, reimbursed herself for costs which she had neither advanced nor paid to a court reporter service for appearance fees and transcripts. Because Respondent failed to maintain complete and accurate records, in violation of DR 9-101(C)(3) [failure to maintain complete records of all funds, securities, and other property of a client], she did not discover this problem until the court reporter sought its funds. These stipulated violations correspond with rules 4-100(A) and 4-100(B)(3) of the California Rules of Professional Conduct.

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4. With respect to these charges, the Oregon Stipulation stated that Respondent "acted negligently, knowingly and intentionally," adding however that, "the Bar does not allege that the Accused intentionally took funds knowing that she was not entitled to them."

5. Respondent and the OSPRB also stipulated that she violated DR 1-103(C) [disclosure of information to authorities; duty to cooperate], by failing to appear for a deposition and produce documents within the time provided, and by making misleading statements to the Oregon Bar (for example, she claimed to be too sick to appear for a deposition, but did go to work for a few hours on the same day). With regards to her failure to timely produce documents, the stipulation stated, "the Accused acted knowingly, or with a conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result." This rule violation corresponds with a violation of section 6068(i) of the California Business and Professions Code.

6. As a result of the Oregon Stipulation, on February 1, 2006, in case number 04-123, the Supreme Court of the State of Oregon issued an order imposing six (6) months actual suspension on Respondent for violations of DR 1-103(C), DR 9-101(A), and DR 9-101(C)(3). Pursuant to the disciplinary order, Respondent is required to make a formal application for reinstatement. The order became effective on or around February 4, 2006. A true and correct copy of the Supreme Court's Order Approving Stipulation for Discipline, dated January 30, 2006, is attached hereto as Exhibit 1 and is incorporated by reference.

7. The OSPRB Stipulation for Discipline is attached hereto as Exhibit 2 and is incorporated by reference.

CONCLUSIONS OF LAW

By withdrawing client's funds from her attorney trust account for reimbursement for costs advanced when she had not advanced or paid the amount, Respondent failed to maintain client funds in an attorney trust account and violated DR 9-101(A) of Oregon's Code of Professional Responsibility. This misconduct also constituted a violation of rule 4-100(A) of the California Rules of Professional Conduct.

By failing to maintain complete and accurate records of clients' funds, Respondent violated DR 9-101(C)(3) of Oregon's Code of Professional Responsibility. This misconduct also constituted a violation of rule 4-100(B)(3) of the California Rules of Professional Conduct.

By failing to appear for a deposition and to timely produce documents, and by making statements to the Oregon Bar which they considered misleading, Respondent violated DR 1-103(C) of Oregon's Code of Professional Responsibility. This misconduct also constituted a violation of section 6068(i) of California's Business and Professions Code.

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A.(7), was March 5, 2007.

AGREEMENTS AND WAIVERS PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6049.1

Respondent acknowledges that her culpability determined in the disciplinary proceeding in Oregon, case number 04-123, would warrant 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; and

Respondent acknowledges that the proceeding in the above jurisdiction provided Respondent with fundamental constitutional protection.

SUPPORTING AUTHORITY

In Oregon, Respondent received a six-month actual suspension, with the requirement that she apply for formal reinstatement once she becomes eligible to seek reinstatement¹. The Oregon Stipulation also required Respondent to pay the Oregon Bar for the costs of the court reporter and witness fee associated with Respondent's depositions and subpoena to compel her appearance.

The three-month actual suspension agreed to by the parties herein is less than that imposed by the Oregon Bar. In determining the propriety of this lesser discipline, the first parameter is Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California (hereinafter "Standards"); that is, whether the disposition comports with the primary purposes of disciplinary proceedings, "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession."

Here, the requested discipline complies with Standard 1.3.

Another consideration is Standard 1.6(a), which provides that where "two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable standards."

¹ In reaching its stipulated disposition of six months actual suspension, the Oregon Bar noted as an aggravating factor, Respondent's prior record of discipline. Respondent does not have a prior in California.

The Supreme Court gives the Standards "great weight," and will reject a recommendation consistent with the Standards only where the Court entertains "grave doubts" as to its propriety. *In re Naney* (1990) 51 Cal. 3d 186, 190; *see also In re Silvertown* (2005) 36 Cal. 4th 81, 91, 92. Further, although the Standards are not mandatory, it is well established that the Standards may be deviated from only when there is compelling, well-defined reason to do so. *See Aronin v. State Bar* (1990) 52 Cal. 3d 276, 291; *see also Bates v. State Bar* (1990) 52 Cal. 3d 1056, 1060, fn. 2.

The State Bar recognizes that the Standards should not be applied in a talismanic fashion. *Gary v. State Bar* (1988) 44 Cal. 3d 820, 828. However, Respondent bears the burden to demonstrate that the State Bar should deviate from the Standards.

In the case at bar, the stipulated disposition of three months actual suspension is not inappropriate, considering the Standards in conjunction with case law and the facts and finding of the Oregon Bar. Although it is true that Respondent unilaterally reimbursed herself for an amount that she had not actually advanced, it appears to have been primarily because of her poor accounting. The court in Oregon denominated her conduct as knowing (and thus a violation), but negligent, without the conscious objective to take funds to which she was not entitled. Oregon thus tempers the finding as to the handling of the money.

Under Standard 2.2(b) of California's Standards, a low-level client trust account violation would ordinarily result in at least a three-month period of actual suspension. Case law also supports this level of discipline. In *Brockway v. State Bar* (1991) 53 Cal. 3d 51, the Supreme Court only imposed a three-month actual suspension, even though Standard 2.2(a) required a one-year actual suspension. There, the attorney had misappropriated \$500.00 of client funds, failed to pay out client funds promptly upon request, and improperly acquired an adverse interest to his client. Although aggravating factors were also present, the Court focused on the mitigating factors and determined that "the minimum one-year period suggested by Standard 2.2(a) would be unduly harsh" under all of the circumstances. *Id.* at 66.

The Oregon Bar also found that Respondent's failure to appear for a deposition in the disciplinary matter and her statements to the Oregon Bar that she was too sick to attend, though she went to work, were misleading, but it did *not* find her culpable of misrepresentation or moral turpitude, but rather a violation more closely analogous to California Business and Professions Code section 6068(i), a failure to cooperate. Pursuant to Standard 2.6, a violation of one of the sections under 6068 of the California Business and Professions Code "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3."

If, as in *Brockway*, the Supreme Court believed that the purposes of discipline were served in imposing a three-month actual suspension where the Standards required more, a

similar case can be made here. Respondent is under a heavy stricture in Oregon where she presently resides and has been practicing, including having to petition for reinstatement. The discipline in California coupled with the result in Oregon adequately protects the public. For purposes of this stipulation, more discipline would be unduly harsh given the particular facts of this case.

AGGRAVATING CIRCUMSTANCES

The current misconduct acknowledged by the member evidences multiple acts of wrongdoing.

MITIGATING CIRCUMSTANCES

In Oregon, the parties stipulated that Respondent is remorseful.

Respondent has been an attorney for over nine (9) years with no prior record of discipline in the State of California.

Respondent has been candid and cooperative with the California State Bar throughout the processing of this disciplinary matter.

By August 2004, Respondent made restitution to the court reporter service for the money that she withdrew from her attorney trust account as advanced costs for their services.

RECOMMENDED LEVEL OF DISCIPLINE

The Office of the Chief Trial Counsel ("OCTC") and Respondent have stipulated that the appropriate level of discipline for this particular case is one (1) year stayed suspension and two (2) years probation with conditions, including ninety (90) days of actual suspension. The stipulated discipline is within the range of discipline prescribed by the Standards as set forth above. Standard 2.6 would call for suspension or disbarment, depending on the gravity of the offense and the harm, if any, to the victim. Standard 2.2(b) calls for at least three months of actual suspension, irrespective of mitigating circumstances.

In light of the facts that Respondent has no prior record of discipline in the State of California, is remorseful, and the client trust account violations arose from Respondent's poor accounting, rather than an intentional or knowing taking of client funds, the stipulated discipline is appropriate under the circumstances. Moreover, the public, the courts, and the legal profession would be adequately protected by the imposition of the stipulated discipline.

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STATE BAR ETHICS SCHOOL EXCLUSION

Respondent resides outside California and is unable to attend State Bar Ethics School. As an alternative to State Bar Ethics School, the parties agree that Respondent will complete the following courses:

Within six (6) months of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than six (6) hours of live Minimum Continuing Legal Education ("MCLE") approved courses in Legal Ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses. (Rule 3201, Rules of Procedure of the State Bar.)

STATE BAR CLIENT TRUST ACCOUNTING SCHOOL EXCLUSION

Respondent resides outside California and is unable to attend State Bar Client Trust Accounting School. As an alternative to State Bar Client Trust Accounting School, the parties agree that Respondent will complete the following course:

Within nine (9) months of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than three (3) hours of live Minimum Continuing Legal Education approved courses in Client Trust Accounting. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses. (Rule 3201, Rules of Procedure of the State Bar.)

LAW OFFICE MANAGEMENT CONDITIONS

Respondent will comply with the Law Office Management Conditions as specified in the Attachment attached hereto as "Law Office Management Conditions."

FINANCIAL CONDITIONS

Respondent will comply with the Financial Conditions as specified in the Attachment attached hereto as "Financial Conditions - c. Client Funds Certificate."

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 5, 2007, the estimated prosecution costs in this matter are approximately \$1,983.00. Respondent acknowledges that this figure is an estimate only and that

it does not include State Bar Court costs which will be included in any final cost assessment. 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.

(Do not write above this line.)

In the Matter of DAWNA SCOTT ANDERSEN	Case number(s): 06-J-10663
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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 Fact, Conclusions of Law and Disposition.

<u>3-13-07</u> Date	<u><i>Dawna Scott Andersen</i></u> Respondent's Signature	<u>Dawna Scott Andersen</u> Print Name
<u> / / </u> Date	<u> </u> Respondent's Counsel Signature	<u>N/A</u> Print Name
<u>3/19/07</u> Date	<u><i>Miho Murai</i></u> Deputy Trial Counsel's Signature	<u>Miho Murai</u> Print Name

(Do not write above this line.)

In the Matter Of DAWNA SCOTT ANDERSEN	Case Number(s): 06-J-10663
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ORDER

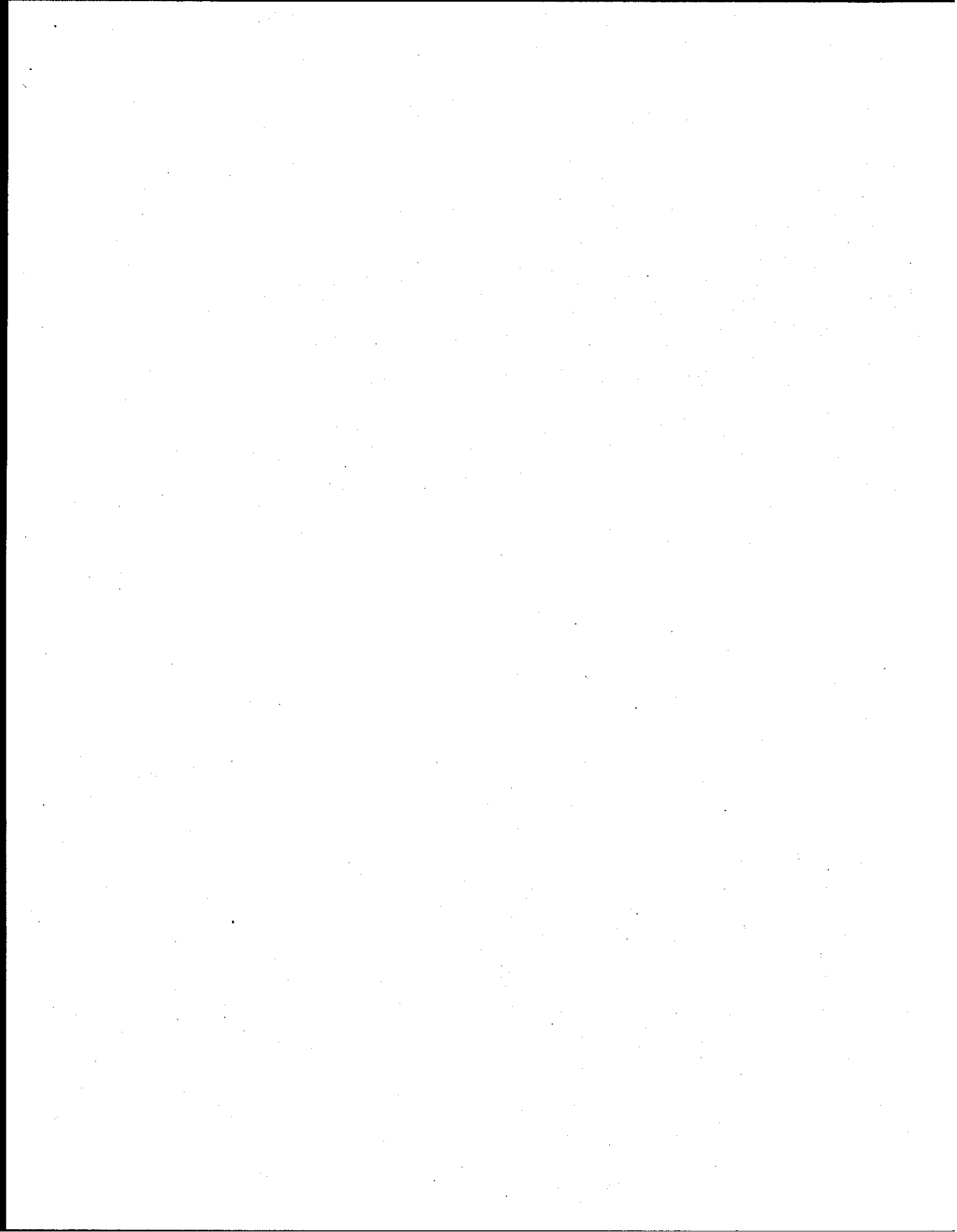
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates 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 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

4/13/07
Date


Judge of the State Bar Court



COPY
RECEIVED

IN THE SUPREME COURT
OF THE STATE OF OREGON

FEB 01 2006

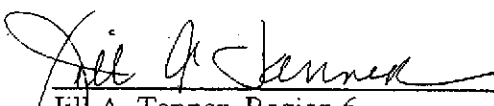
DISCIPLINARY COUNSEL

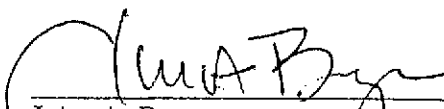
1 In re:)
2)
3 Complaint as to the Conduct of) Case No. 04-123
4)
5 DAWNA F. SCOTT,) ORDER APPROVING STIPULATION
6 Accused.) FOR DISCIPLINE
7 _____)

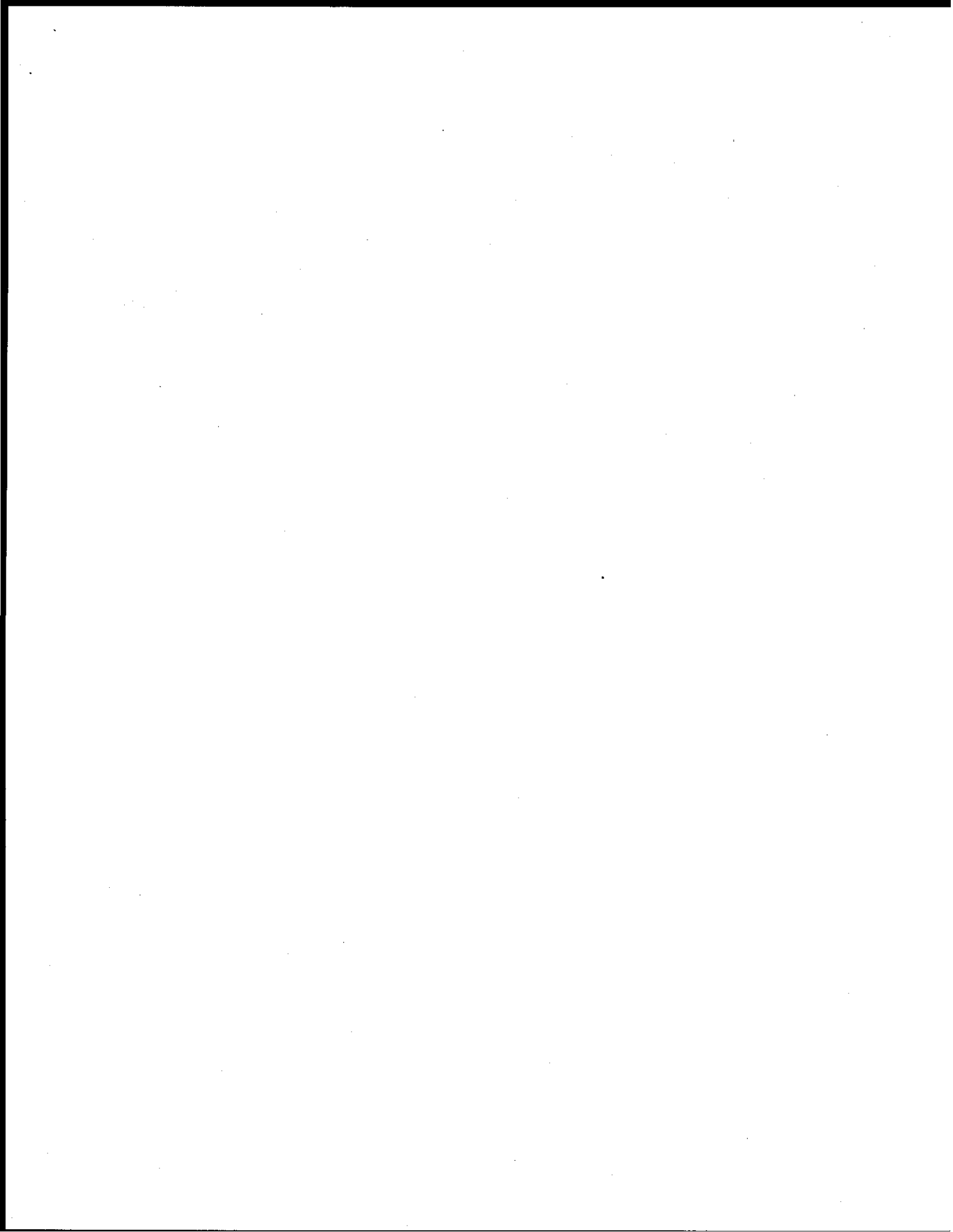
8 This matter having been heard upon the Stipulation for Discipline entered into by Dawna
9 F. Scott (hereinafter, "Accused") and the Oregon State Bar, and good cause appearing, it is
10 hereby

11 ORDERED that the stipulation between the parties is approved. The Accused is
12 suspended from the practice of law for six (6) months for violation of DR 1-103(C), DR 9-
13 101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility, effective three (3) days
14 after the date of this order. The Accused shall also be required to make formal application for
15 reinstatement pursuant to BR 8.1.

16 DATED this 30 day of JAN., 2006.

17
18 
19 Jill A. Tanner, Region 6
Disciplinary Board Chairperson

20
21 
22 John A. Berge
State Disciplinary Board Chairperson



1 IN THE SUPREME COURT
2 OF THE STATE OF OREGON

3 In re:)
4 Complaint as to the Conduct of) Case No. 04-123
5 DAWNA F. SCOTT,) STIPULATION FOR
6 Accused.) DISCIPLINE
7 _____)
8

9 Dawna F. Scott, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar
10 (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar
11 Rule of Procedure 3.6(c).

12 1.

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

16 2.

17 The Accused was admitted by the Oregon Supreme Court to the practice of law in
18 Oregon on September 15, 1997, and has been a member of the Oregon State Bar continuously
19 since that time. At all material times, the Accused maintained her office and place of business in
20 Clackamas County, Oregon.

21 3.

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

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4.

On October 15, 2004, the State Professional Responsibility Board (hereinafter, "SPRB") authorized a formal disciplinary proceeding against the Accused for violation of DR 9-101(A) of the Code of Professional Responsibility. On May 14, 2005, the SPRB directed that the Accused also be charged with violating DR 1-103(C) and DR 9-101(C)(3) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

FACTS AND VIOLATIONS

5.

On or about April 3, 2001, the Accused undertook to represent Richard Martinez (hereinafter, "Martinez") in connection with Martinez's civil claims against his former employer, Levitz Furniture Company (hereinafter, "Levitz"). Pursuant to a written fee agreement, the Accused agreed to advance costs (other than filing and process serving fees) on Martinez's behalf and to be reimbursed for costs advanced out of settlement or judgment proceeds.

6.

On or about September 2001, the Accused filed a civil complaint on behalf of Martinez against Levitz and other persons. In November 2002, the case proceeded to jury trial, which resulted in an award against Levitz and in favor of Martinez. The court entered judgment for Martinez against Levitz in March 2003, and in April 2003, the Accused served a writ of garnishment on Levitz's bank to collect the judgment entered in favor of Martinez. In response to the writ of garnishment, the Accused recovered funds to satisfy the judgment. The Accused deposited these client funds into her lawyer trust account.

7.

On or about April 28, 2003, the Accused filed a notice of claim of attorney lien for attorney's fees and for costs incurred on behalf of Martinez. Included in the costs were charges

1 by Schmitt & Lehmann Court Reporters for the following invoices: June 3, 2002 for \$729.00 for
2 appearance fees for depositions and an original deposition transcript; and September 19, 2002 for
3 \$1,116.00 for an original deposition transcript.

4 8.

5 At the time the Accused filed the notice of attorney lien, the Accused had not paid the
6 Schmitt & Lehmann invoices or advanced those costs for or on behalf of Martinez. In July 2003,
7 Martinez, acting through his attorney in fact, authorized the Accused to apply the garnishment
8 proceeds held in her trust account to satisfy her attorney lien. On or about July 23, 2003, the
9 Accused disbursed funds to herself from her lawyer trust account to satisfy her attorney lien,
10 which included costs the Accused claimed for the Schmitt & Lehmann invoices. At the time, the
11 Accused had not paid the amounts owing to Schmitt & Lehmann. The Accused did not pay or
12 apply any of the funds she disbursed to herself for costs to satisfy the outstanding Schmitt &
13 Lehmann invoices.

14 9.

15 By withdrawing the client's funds from her lawyer trust account for the Schmitt &
16 Lehmann invoices as reimbursement for costs advanced when she had not advanced or paid the
17 amount, the Accused disbursed funds to herself that she was not entitled to receive and failed to
18 maintain client funds in her lawyer trust account.

19 10.

20 The Accused closed her private practice of law in or about October 2003. The Accused
21 failed to maintain complete and accurate records of costs incurred and payments made for those
22 costs on behalf of Martinez, and failed to maintain complete records, including bank and other
23 records, reflecting the Accused's deposit and disbursement of clients' funds coming into her
24 possession.

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PAGE 3 – STIPULATION FOR DISCIPLINE – DAWNA F. SCOTT

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11.

On January 21, 2005, the Bar asked the Accused to propose dates for her deposition in the above entitled disciplinary proceeding. On January 30, 2005, the Accused notified the Bar that its representatives should select and notify her of the deposition date. On February 1, 2005, the Bar served the Accused by mail with a notice to take the Accused's deposition on February 24, 2005. The Bar also served the Accused with a request for production of documents that required the Accused to produce the documents described by February 21, 2005. The Accused failed to produce documents in response to the Bar's request, and without notice to the Bar failed to appear for her deposition on February 24, 2005.

12.

On February 24, 2005, the Bar served the Accused by mail with a second notice to take the Accused's deposition on March 15, 2005. The Bar also served the Accused with a second request for production of documents, which required the Accused to produce the documents described in the Bar's requests by March 10, 2005. On February 25, 2005, the Accused contacted the Bar and asked that her deposition be scheduled for March 25, 2005. The Bar accommodated the Accused's request and rescheduled the deposition for that date.

13.

Between January 21 and March 25, 2005, the Accused did not produce any documents responsive to the Bar's requests for production of document.

14.

On March 24, 2005, the Accused telephoned the Bar and left a message at about 5:30 a.m. The Accused represented that she was ill and could not appear for the deposition scheduled for March 25, 2005, and that she was going to get some sleep and did not know if she would answer the telephone if the Bar tried to call her.

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SANCTION

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The Accused did not again contact the Bar on March 24 or on March 25, 2005; did not appear for her deposition on March 25, 2005; and through March 25, 2005, did not produce any documents in response to the Bar's requests for production of documents. Without notice to the Bar, the Accused reported to work at her place of employment at the regular morning hour and worked the entire day on March 24 and March 25, 2005.

On March 25, 2005, the Bar prepared a subpoena directing the Accused to appear for deposition and to produce documents responsive to the Bar's requests for production of documents. Representatives of the Bar attempted to serve the Accused at her home, but she was not at that location. Representatives of the Bar then located the Accused at her place of employment. The Accused refused to meet with the Bar's representative to accept service of the subpoena, but eventually authorized another member of her office to accept service of the subpoena on her behalf. The Accused appeared on April 4, 2005 for deposition pursuant to the Bar's subpoena. The Accused produced some, but not all of the documents requested by the Bar at the time of her deposition.

The Accused admits that the aforementioned conduct constitutes violation of DR 1-103(C), DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter, "*Standards*") are considered. The *Standards* require that the Accused's conduct be analyzed by considering the following

1 factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential
2 injury; and (4) the existence of aggravating and mitigating circumstances. *Standards*, §3.0.

3 a. **Duty Violated.** By failing to maintain client funds in trust, and failing to maintain
4 complete and accurate records of clients' funds, the Accused violated her duty to
5 her clients. *Standards*, §4.1. By failing to appear for deposition, failing to produce
6 documents in response to the Bar's discovery requests within the time provided,
7 and making misleading statements to the Bar, the Accused violated her duties to
8 the public, the legal system and the profession. *Standards*, §§ 5.1, 6.0, 7.0.

9 b. **Mental State.** The Accused acted negligently, knowingly, and intentionally. By
10 withdrawing a client's funds from trust and disbursing those funds to herself when
11 she was not entitled to them, and failing to maintain complete and accurate
12 records of client funds and expenses she claimed to have incurred on behalf of her
13 client, the Accused acted negligently, which is a deviation from the standard of
14 care that a reasonable lawyer would exercise in the situation. The Bar does not
15 allege that the Accused intentionally took funds knowing that she was not entitled
16 to them. By failing to produce documents requested by the Bar, the Accused acted
17 knowingly, or with a conscious awareness of the nature or attendant circumstances
18 of the conduct, but without the conscious objective or purpose to accomplish a
19 particular result. In violating DR 1-103(C), the Accused acted with intent, or the
20 conscious objective to cause a particular result. *Standards*, p. 7.

21 c. **Injury.** The Accused caused actual injury as a result of her conduct. Schmitt &
22 Lehmann and the Accused's client were injured. The Accused disbursed client
23 funds to herself when she was not entitled to them. Schmitt & Lehman was denied
24 timely payment of funds due for services that they had provided at the Accused's
25 request. Between June 2002 and June 2004, Schmitt & Lehmann attempted to

1 collect the amount due from the Accused. As a result of Schmitt & Lehmann's
2 pursuit, the Accused eventually commenced making monthly payments in
3 November 2003 and satisfied the amount due in August 2004. The Accused's
4 failure to appear for deposition and failure to comply with the Bar's requests for
5 production of documents caused actual injury to the Bar and the court reporter.
6 The Accused delayed the Bar's discovery. The Bar incurred unnecessary expense
7 for the court reporter and was required to serve a subpoena to compel her
8 appearance and production of documents. The court reporter scheduled time for
9 the Accused's deposition, which could have been used for other matters.

10 d. **Aggravating Factors.** The Accused has a prior record of discipline for violation
11 of DR 1-103(C), DR 9-101(A), DR 9-101(C)(3) and DR 9-101(C)(4). *In re Scott*,
12 17 DB Rptr 118 (2003). *Standards*, §9.22(a). There is a pattern of misconduct and
13 multiple disciplinary offenses. *Standards* §9.22(c), (d). The Accused also delayed
14 and obstructed the disciplinary proceeding because she failed to comply and
15 timely comply with the Bar's discovery requests and made misleading statements
16 to the Bar to avoid appearing for her deposition. *Standards*, §9.22(e), (g).

17 e. **Mitigating Factors.** The Accused represents that she is remorseful. *Standards*
18 §9.32(j).

19 19.

20 The *Standards* provide that suspension is generally appropriate when a lawyer knows or
21 should know that he or she is dealing improperly with client funds and causes injury or potential
22 injury to a client. *Standards*, §4.1. Suspension is generally appropriate when a lawyer knows that
23 he or she is violating a court order or rule, and causes injury or potential injury to a client or a party,
24 or causes interference or potential interference with a legal proceeding. *Standards*, §6.22.
25 Suspension is also appropriate when a lawyer knowingly engages in conduct that is a violation of

PAGE 7 – STIPULATION FOR DISCIPLINE – DAWNA F. SCOTT

1 a duty owed as a professional, and causes injury or potential injury to a client, the public, or the
2 legal system. *Standards*, §7.2.

3 20.

4 Case law is in accord with the *Standards*. See, e.g., *In re Eakin*, 334 Or 238, 259, 48 P3d
5 147 (2002) (60-day suspension for violation of DR 9-101(A) and DR 9-101(C)(3) when lawyer
6 had no prior record of discipline); *In re Schaffner*, 325 Or 421, 939 Pd 39 (1997) (lawyer
7 suspended for 2 years after having been previously disciplined for DR 1-103(C) and other rules);
8 *In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (120-day suspension for violation of DR 1-103(C)
9 alone when lawyer had no prior record of discipline).

10 21.

11 Consistent with the *Standards* and Oregon case law, the parties agree that the Accused
12 shall be suspended from the practice of law for six (6) months for violation of DR 1-103(C),
13 DR 9-101(A), and DR 9-101(C)(3), the sanction to be effective three (3) days after this
14 stipulation is approved. The parties further agree that the Accused shall be required to seek
15 formal reinstatement pursuant to BR 8.1, at such time as she is eligible to seek reinstatement.

16 22.

17 In addition, the Accused shall pay \$232.20 to the Bar for the costs of the court reporter
18 and witness fee associated with the Accused's depositions and the subpoena to compel her
19 appearance. The Bar shall be entitled to entry of a judgment against the Accused for these costs,
20 plus interest thereon at the legal rate to accrue from the date the judgment until paid. The
21 Accused shall not be eligible to apply for reinstatement as an active member of the Bar until the
22 amount of the judgment is paid in full.

23 23.

24 The Accused acknowledges that, at the expiration of the term of suspension, she will be
25 required to apply for reinstatement pursuant to Bar Rule 8.1.

PAGE 8 – STIPULATION FOR DISCIPLINE – DAWNA F. SCOTT

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the sanction was approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 23rd day of January, 2006.

Dawna Scott

DAWNA F. SCOTT, OSB No. 97393

OREGON STATE BAR

By: *Jane E. Argus*
Jane E. Argus, OSB No. 73014
Assistant Disciplinary Counsel

1 I, Dawna F. Scott, being first duly sworn, say that I am the Accused in the above-entitled
2 proceeding and that I attest that the statements contained in the stipulation are true and correct as
3 I verily believe.

4 Dawna Scott
5 Dawna F. Scott

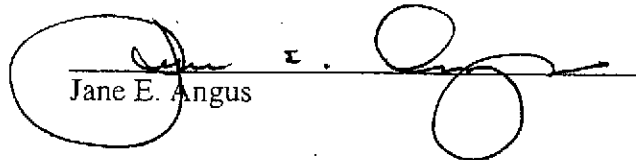
6 Subscribed and sworn to before me this 23rd day of January, 2006.



10
11 Karen L. Duncan
12 Notary Public for Oregon
13 My commission expires: Nov. 24, 2006

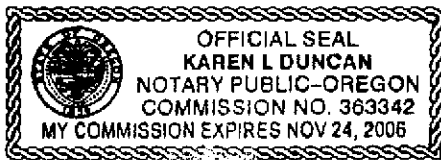
14 I, Jane E. Angus, being first duly sworn, say that I am Assistant Disciplinary Counsel for
15 the Oregon State Bar and that I attest that I have reviewed the foregoing Stipulation for
16 Discipline and that the sanction was approved by the SPRB for submission to the Disciplinary
17 Board on the 9th day of September, 2005.

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21



Jane E. Angus

22 Subscribed and sworn to before me this 23rd day of January, 2006.



26 Karen L. Duncan
27 Notary Public for Oregon
28 My commission expires: Nov. 24, 2006

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 April 17, 2007, I deposited a true copy of the following document(s):

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

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:

**DAWNA SCOTT ANDERSEN
2850 SW CEDAR HILLS BLVD STE 134
BEAVERTON, OR 97005**

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

MIHO MURAI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 17, 2007.



Tammy R. Cleaver
Case Administrator
State Bar Court