

**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

IN THE MATTER OF	§	
LAWRENCE P. CULLEN	§	CAUSE NO. 46724
STATE BAR CARD NO. 05208700	§	

THIRTEENTH AMENDED PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline, brings this action against Respondent, Lawrence P. Cullen (hereinafter called "Respondent"), showing as follows:

1. Pursuant to Rules 190.1 and 190.3, Texas Rules of Civil Procedure (TRCP), Petitioner intends discovery in this case to be conducted under the Level II Discovery Control Plan.
2. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.
3. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Thirteenth Amended Petition for Reciprocal Discipline at 4725 SE Division Street, Portland, Oregon 97206.
4. On or about October 9, 2009, a Stipulation for Discipline (Exhibit 1) was entered in the Supreme Court of the State of Oregon in a matter styled: *In Re: Complaint as to the Conduct of LAWRENCE P. CULLEN, Accused*, Case Nos. 08-117,09-01.

5. On or about November 24, 2009, an Order Accepting Stipulation for Discipline (Exhibit 2) was entered in the Supreme Court of the State of Oregon in a matter styled: *In Re: Complaint as to the Conduct of LAWRENCE P. CULLEN, OSB Bar #920468, Accused, Oregon State Bar 08117,0901, S057995*, that states in pertinent part as follows:

...The court accepts the Stipulation for Discipline. The accused is suspended from the practice of law in the State of Oregon for a period of nine months, effective December 1, 2009.....

Certified copies of the Stipulation for Discipline and Order Accepting Stipulation for Discipline are attached hereto as Petitioner's Exhibits 1 and 2, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. In the Order, the Court found that in one matter, the "Wolf & Shaer Matter," Respondent neglected the client's case in violation of Oregon Rule of Professional Conduct ("RPC") 1.3, failed to communicate with the client in violation of RPC 1.4(a), and failed to promptly provide client's new counsel with client's property in violation of RPC 1.15-1(d). In another matter, the "Velasquez Matter," Respondent neglected his client's case in violation of RPC 1.3, failed to respond to his client's reasonable requests for information in violation of RPC 1.4(a), and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of RPC 1.4(b). Also in the Velasquez Matter, it was found that Respondent misrepresented to his clients the status of their case, constituting conduct involving misrepresentation reflecting adversely on his fitness to practice law, in violation of RPC 8.4(a)(3). Finally, the Court found in the Velasquez Matter that Respondent failed to respond to lawful demands for information from disciplinary entities, in violation of RPC 8.1(a)(2).

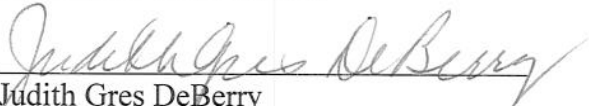
6. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an

order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enter a judgment imposing discipline identical with that imposed by the Supreme Court of the State of Oregon and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

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**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chairperson.
- (c) “Classification” is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE (“TRDP”) 2.10 by the Chief Disciplinary Counsel (“CDC”) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “Clerk” is the executive director or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “Executive Director” is the executive director of BODA.
- (f) “Panel” is any three-member grouping of BODA.
- (g) “Party” is a complainant, respondent, or the CDC.

Rule 1.02 General Powers

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE (“TRCP”), TEXAS RULES OF APPELLATE PROCEDURE (“TRAP”), and TEXAS RULES OF EVIDENCE (“TRE”) apply to all disciplinary matters before BODA, except appeals from classification decisions, which are governed by Section 3 of these Internal Rules.

Rule 1.04 Appointment of Panels

- (a) BODA may consider any matter or motion through appointment of a panel, except as specified in subpart (b) of this Rule. The chair may delegate appointment of panels for any BODA action to the executive director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing

contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as respondent shall be considered by BODA sitting *en banc*.

Rule 1.05 Record Retention

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

Rule 1.06 Trial Briefs

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

Rule 1.07 Service

In any disciplinary proceeding before BODA initiated by service of a petition upon the respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to respondent as addressee only, or in any other manner permitted by applicable rule(s) and authorized by BODA that is reasonably calculated under all the circumstances to apprise the respondent of the proceeding and to give him or her reasonable time to appear and answer. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the respondent's signature.

Rule 1.08 Publication

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and notify each respondent in a compulsory discipline, reciprocal discipline, revocation of probation, or disability matter filed with BODA where these rules are available.

Rule 1.09 Photocopying Costs

The clerk of BODA may charge to the requestor a reasonable amount for the reproduction of non-confidential documents filed with BODA. BODA may set a fee for the reproduction of documents. The fee shall include compensation for staff and recovery of actual production costs.

Rule 1.10 Abstracts

BODA may, in its sole discretion, periodically prepare abstracts of inquiries, grievances, or disciplinary proceedings for publication pursuant to Texas Gov't Code § 81.072(b)(3) and Part VI of the TRDP.

Rule 1.11 Hearing Setting and Notice

(a) **Original Petitions.** For any compulsory case, reciprocal case, revocation of probation, or other matter initiated by the CDC filing a petition with BODA, the CDC may contact the BODA clerk for the next regular available hearing date before filing the original petition. The CDC may then include in the petition a hearing notice specifying the date, time, and place of the hearing. The hearing date must be at least thirty (30) days from the date that the petition is served on the respondent, except in the case of a petition to revoke probation.

(b) **Filing without notice.** The CDC may file any matter with BODA without first obtaining a hearing date so long as it thereafter serves notice on the respondent of the date, time, and place of the hearing in accordance with TRCP 21a (or other applicable TRCP) at least thirty (30) days before the hearing date, except in the case of a petition to revoke probation.

(c) **Expedited settings.** If a party desires a hearing on a matter on a date other than the next regular available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. The expedited hearing setting must be at least thirty (30) days from the date of service of the petition, motion or other pleading, except in the case of a petition to revoke probation. BODA may grant or deny a request for an expedited hearing date in its sole discretion.

(d) **Setting notices.** BODA shall notify the parties by first class mail of any hearing date, other than a hearing set on the next regularly available hearing date as noticed in an original petition or motion.

(e) **Announcement docket.** Attorneys and parties appearing before BODA shall check in with the BODA clerk in the courtroom immediately prior to the time docket call is scheduled to begin. The chair will call an announcement docket immediately following the call to order of BODA hearings. Attorneys for each party with a matter on the docket shall appear at that time to give their announcement of readiness, a time estimate for the hearing, and any preliminary motions or matters. The chair will set and announce the order of cases to be heard following the docket announcements.

Rule 1.12 Time to Answer

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.13 Facsimile and Electronic Filing

(a) Any document required to be filed with BODA may be filed by facsimile transmission with a copy to the BODA clerk by first class mail. A document filed by facsimile will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by facsimile after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day.

(b) Any document required to be filed with BODA may be filed by emailing a copy of the document file to the email address designated by BODA for that purpose with a copy sent to the BODA clerk by first class mail. A document filed by email will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by email after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day. The date and time of receipt shall be determined by the date and time shown on the BODA clerk's email.

(c) It is the responsibility of the party filing a document by facsimile or email to obtain the correct telephone number or email address for BODA and confirm that the document was received by BODA in legible form. Any document which is illegible or which cannot be opened as part of an email attachment by BODA will not be considered received or filed. Parties using facsimile or email filing must still comply with TRCP requirements for signatures.

(d) Papers will not be deemed filed if sent to any individual BODA member or other office or address.

Rule 1.14 Hearing Exhibits

Counsel should provide an original and twelve copies of any document, pleading, exhibit, or other material which the attorney intends to offer or otherwise make available to the BODA members at a hearing and not already filed with BODA prior to the hearing.

Rule 1.15 BODA Work Product and Drafts

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.

Rule 1.16 BODA Opinions

(a) BODA may render judgment with or without written opinion in any disciplinary matter. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and shall be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this Rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this Rule and may be issued without a written opinion.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters And Legal Malpractice Cases

(a) No current member of BODA shall represent a party with respect to any disciplinary action or proceeding. No current member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a party in any disciplinary action or proceeding.

(b) No current BODA member may serve as an expert witness providing opinions regarding the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

(a) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose matters discussed in conference concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any disciplinary proceeding, including depositions, a member of BODA shall promptly notify the chair of BODA and the CDC.

Rule 2.03 Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal respectively as provided in TRCP 18b.

(b) BODA members may, in addition to recusals pursuant to (a) above, voluntarily recuse themselves from any discussion and voting for any other reason.

(c) Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party in any disciplinary proceeding or before BODA.

Rule 2.04 Communications with BODA

Correspondence or other communications relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Appeal

(a) If the grievance filed by the complainant is not classified as a complaint, the CDC shall notify the complainant of his or her rights to appeal as set out in TRDP 2.10 or other applicable rule.

(b) To facilitate the potential filing of an appeal, the CDC shall send the complainant an Appeal Notice form with the classification disposition which shall include, but is not limited to, the docket number of the matter, the time deadline for appealing as set out in TRDP 2.10 or other applicable provision, and information for mailing or faxing the Appeal Notice to BODA.

Rule 3.02 Complaint on Appeal

BODA shall review only the original grievance on appeals from classification decisions. The CDC shall forward a copy of the complete grievance to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental information which was not reviewed as part of the original screening and classification decision.

Rule 3.03 Notice of Disposition

BODA shall mail complainant, respondent, and the CDC written notice of the decision of the appeal by first class mail to the addresses provided BODA by the CDC in the appeal transmittal.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Signing, Filing, and Service

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, email address, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Number of Copies.** Each party shall file an original and two (2) copies of all briefs and motions with the clerk. Only one copy of the clerk's record and reporter's record shall be filed.

(c) **Service.** Copies of all papers other than the record filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 4.02 Computation of Time

(a) **Beginnings of Periods.** The date the chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.21.

(b) **TRAP Followed.** Computation of time for purposes of this section shall follow TRAP 4.1 and 9.2(b).

Rule 4.03 Record on Appeal

(a) **Contents.** The record on appeal shall consist of a clerk's record and where necessary to the appeal, a reporter's record.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and reporter's record to be included in the record on appeal by written stipulation filed with the custodian of records of the evidentiary panel.

(c) **Responsibility for Filing Record.** The custodian of records of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record if a notice of appeal has been filed. The court reporter is responsible for timely filing the reporter's record if a notice of appeal has been filed, the appellant has requested that the reporter's record be prepared, and the party responsible for initiating the appeal has paid the reporter's fee or has made satisfactory arrangements with the reporter. The party initiating the appeal shall pay the cost of preparing the record.

(d) **Clerk's Record.**

- (1) Unless otherwise stipulated by the parties, the clerk's record on appeal shall include all papers on file with the evidentiary panel, including, but not limited to, the election letter, all pleadings upon which the hearing was held, the docket sheet, the evidentiary panel's charge, the final hearing order with attachments or exhibits, any findings of fact and conclusions of law, all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.
- (2) Upon receipt of a copy of the notice of appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the clerk's record to BODA. If the CDC is unable for any reason to prepare and transmit the clerk's record by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the clerk's record can be filed.
- (3) The clerk's record should be in the following form:
 - (i) contain a detailed index identifying each document included in the record, the date of filing, and the page where it first appears;

- (ii) arranged in ascending chronological order by document by date of filing or occurrence;
- (iii) tabbed with heavy index tabs to show the beginning of each document;
- (iv) consecutively numbered in the bottom right-hand corner of the pages;
- (v) bound together so that the record will lie flat when opened; and
- (vi) contain the custodian's certification that the documents contained in the clerk's record are true and correct copies and are all the documents required to be filed.

(e) **Reporter's Record.** The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter for the reporter's record, designating the portion of the evidence and other proceedings to be included. A copy of such request shall be filed with the evidentiary panel and BODA and be served on the appellee. The reporter's record shall be certified by the official court reporter.

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. In appeals to BODA, the non-stenographic recording must be transcribed and the transcription filed as the reporter's record.

(g) **Other Requests.** At any time before the clerk's record is prepared or within ten (10) days after service of a copy of appellant's request for the reporter's record, any party may request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the reporter's record shall be submitted by BODA to the evidentiary panel for resolution and to conform the reporter's record.

Rule 4.04 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to apply presumptions against the appellant.

(b) **If No Record Filed.**

- (1) If the clerk's record or reporter's record has not been timely filed, the BODA clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and the evidentiary panel.
- (2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:
 - (i) the appellant failed to request a reporter's record; or
 - (ii)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and
 - (b) the appellant is not entitled to proceed without payment of costs.

(c) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record BODA may, upon written motion of a party or upon its own motion, direct a supplemental record to be certified and transmitted by the CDC or the official court reporter.

Rule 4.05 Copies of the Record

The record shall not be withdrawn from the custody of the BODA clerk. Any party may obtain a copy of the record or any designated part thereof by making written request to the clerk and paying copying charges.

Rule 4.06 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within thirty (30) days after the later of the date on which the clerk's record or the reporter's record was timely filed.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within thirty (30) days after the filing of appellant's brief.

(c) **Contents.** Briefs shall contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are

cited. The subject matter of each point or group of points shall be indicated in the table of contents;

- (3) a brief general statement of the nature of the cause or offense and the result;
- (4) a statement of the points upon which an appeal is predicated or the issues presented for review;
- (5) a brief of the argument;
- (6) prayer for relief; and,
- (7) an appendix consisting of copies of pertinent parts of the record upon which the party relies.

(d) **Length of Briefs.** Briefs shall be typewritten or otherwise legibly printed on letter-size (8½" x 11") paper and shall not exceed fifty (50) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda or appendix containing statutes, rules, regulations, etc., except upon leave of BODA.

(e) **Amendment or Supplementation.** Briefs may be amended or supplemented upon leave of BODA.

(f) **Failure to File a Brief.** If the appellant fails to timely file a brief, BODA may:

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief; or
- (2) decline to dismiss the appeal and give further direction to the case as it considers proper.

Rule 4.07 Oral Argument

(a) **Request.** A party desiring oral argument before BODA shall request same in writing and include the request in the notice of appeal or on the front cover of that party's first brief. BODA may grant or deny the request in its sole discretion. If oral argument is granted, the clerk shall notify the parties of the time and place for submission. BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case. The parties may agree to submit the case without argument after requesting same.

(b) **Time Allowed.** Each party shall have twenty (20) minutes in which to argue. BODA may, upon request of a party or in its discretion, extend or shorten the time allowed for oral argument.

Rule 4.08 Motions Generally

An application for an order or other relief shall be made by filing a motion with the BODA clerk for same supported by sufficient cause with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other papers shall be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. BODA may determine a motion before a response is filed.

Rule 4.09 Motions for Extension of Time

(a) **When due.** Any request for extension of time other than to file a brief must be filed with the BODA clerk no later than fifteen (15) days after the last day allowed for filing the item in question.

(b) **Contents.** All motions for extension of time shall be in writing, comply with BODA Internal Procedural Rule 4.08, and specify the following:

- (1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (2) if the appeal has been perfected, the date when the appeal was perfected;
- (3) the original deadline for filing the item in question;
- (4) the length of time requested for the extension;
- (5) the number of extensions of time which have been granted previously regarding the item in question; and,
- (6) the facts relied upon to reasonably explain the need for an extension.

(c) **For Filing Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied upon to reasonably explain the need for an extension must be supported by an affidavit of the court reporter, which shall include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

Rule 4.10 Decision and Judgment

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

- (1) the panel that entered the finding(s); or,

- (2) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(c) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

Rule 4.11 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, the CDC shall contact the BODA clerk to confirm whether the next regular available hearing date will comply with the thirty-day requirement of TRDP. The chair may designate a three-member panel to hear the motion, if necessary, to meet the thirty-day requirement of TRDP 2.23.

(b) Upon filing of the motion, the CDC shall serve the respondent in accordance with TRDP 2.23 with the motion and supporting documents, if any, in accordance with the TRCP and these rules. The CDC shall notify BODA of the date service is obtained on the respondent.

Rule 5.02 Hearing

Within thirty (30) days of service of the motion on the respondent, BODA shall docket and set the matter for a hearing and notify the parties of the time and place for the hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE MATTERS

Rule 6.01 Initiation of Proceeding

Pursuant to TRDP 8.03, the CDC shall file a petition for compulsory discipline with BODA and serve the respondent in accordance with the TRDP and Rule 1.07 above.

Rule 6.02 Notice of Decision

The BODA clerk shall mail a copy of the judgment to the parties within ten (10) days from the date the decision is signed by the chair. Transmittal of the judgment shall include all information required by the TRDP and the Supreme Court.

SECTION 7: RECIPROCAL DISCIPLINE MATTERS

Rule 7.01 Initiation of Proceeding

(a) Pursuant to TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction.

(b) The petition shall request that the respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction including a copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

Rule 7.02 Order to Show Cause

Upon the filing of the petition with BODA, the chair shall immediately issue a show cause order including a hearing setting notice and forward it to the CDC, who shall serve the order on the respondent. The CDC shall notify BODA of the date service is obtained.

Rule 7.03 Attorney's Response

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer but thereafter appears at the hearing, BODA may, at the discretion of the chair, receive testimony from the respondent relating to the merits of the petition for reciprocal discipline.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds pursuant to TRDP 2.17P(2) or the CDC believes pursuant to TRDP 2.14C that a respondent is suffering from a disability, the rules in this section shall apply to the District Disability Committee *de novo* proceeding held pursuant to TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's report that an attorney is believed to be suffering from a disability, the BODA chair shall appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. The BODA clerk shall notify the CDC and respondent that a committee has been appointed and notify the respondent where the procedural rules governing disability proceedings are available.

(c) A respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing in writing and enter into an agreed judgment of indefinite disability suspension or probated suspension, provided that the respondent is competent to so waive the hearing. If the respondent is not represented, the waiver shall include a statement by the respondent that he has been advised of his right to have counsel appointed for him and that he waives that right.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee shall be filed with the BODA clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA chair may appoint a substitute member.

Rule 8.02 Hearing Order

(a) Upon being notified that the District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the BODA clerk and then serve upon the respondent either in person or by certified mail, return receipt requested with delivery restricted to the respondent as addressee with a copy by first class mail, a proposed hearing order containing a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. If service is by certified mail, the return receipt with the respondent's signature must be filed with the BODA clerk.

(b) The respondent shall, within twenty (20) days after receiving the CDC's proposed hearing order, file with the BODA clerk and serve the CDC by certified mail a proposed hearing order including a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.

(c) The District Disability Committee chair may adopt either the CDC's proposed hearing order, the respondent's proposed hearing order, or an order of his or her own. The BODA clerk shall prepare the final hearing order at the instruction of the District Disability Committee chair and send to the parties by first class mail. The BODA clerk shall set the final hearing date at the instruction of the chair. The adopted order shall be the final hearing order and shall contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the respondent.

(d) Requests for an extension of time to file the proposed hearing order by either party must be by written motion filed with the BODA clerk.

Rule 8.03 Provisions for Physical or Mental Examinations

(a) Upon motion by the CDC or upon its own motion, the District Disability Committee may order the respondent to submit to a physical and/or mental examination by a qualified health care or mental health care professional. The respondent shall be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination. Any objections(s) to the motion for an exam and request for a hearing shall be filed with the BODA clerk within fifteen (15) days of receipt of the motion.

(b) The examining professional shall file with the BODA clerk his detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, and deliver a copy to the CDC and to the respondent.

(c) Nothing contained herein shall be construed to limit the respondent's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 8.04 Ability to Compel Attendance

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

(a) The notice to the respondent that a District Disability Committee has been appointed and the notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

(b) If the respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be filed with the BODA clerk within sixty (60) days of the date respondent receives the CDC's proposed hearing order. Any request for appointment of counsel after sixty (60) days from the date of receipt of the proposed hearing order must show good cause for the failure to do so timely and that the request is not sought for delay only.

Rule 8.06 Limited Discovery

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the BODA clerk a verified written request for discovery showing good cause and substantial need with the proposed hearing order.

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the final hearing order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may not be based upon the granting or denial of a discovery request without a showing of material unfairness or substantial harm.

Rule 8.07 Hearing

(a) The party seeking to establish the disability must prove by a preponderance of the evidence that the respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

(b) Such proceedings shall begin and conclude no earlier than thirty (30) days from the date the respondent receives the CDC's proposed hearing order nor later than ninety (90) days from that date; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act. Nothing herein shall be construed to limit the parties' right to request a continuance of the hearing for good cause.

(c) If the Committee is unable for any reason to hold a hearing within ninety (90) days of the date the respondent receives the proposed hearing order, BODA may appoint a new committee to handle the case.

Rule 8.08 Notice of Decision

The District Disability Committee shall certify its finding and any recommendations to BODA which shall issue the final judgment in the matter.

Rule 8.09 Confidentiality

All proceedings before the District Disability Committee are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.

(b) The petition shall set forth the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition shall affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may seal all or any part of the record of the proceeding.

Rule 9.02 Discovery

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

Rule 9.03 Physical or Mental Examinations

(a) BODA may order the petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC or its own motion. The petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The petitioner shall be given reasonable notice of the examination by written order specifying the name, address and telephone number of the person conducting the examination.

(c) The examining professional shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing contained herein shall be construed to limit the petitioner's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include such other orders as protecting the public and the petitioner's potential clients may require.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT

Rule 10.01 Docketing by the Clerk

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations on compulsory discipline, reciprocal discipline, revocations of probation, and disability suspensions will be docketed by the clerk of the Supreme Court in the same manner as petitions for review.

(b) No fee shall be charged by the clerk for filing any appeal from BODA decisions.

(c) The notice of appeal must be filed directly with the clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within thirty (30) days thereafter.

(d) The BODA clerk shall include the information contained in subpart (c) above with transmittal of each final determination to the parties.

Rule 10.02 Appellate Rules to Apply

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, revocations of probation, and disability suspension cases will be announced on the Court's orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.

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

OSB#

990280

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:

Complaint as to the Conduct of
LAWRENCE P. CULLEN,
Accused.

Case Nos. 08-117 & 09-01
STIPULATION FOR
DISCIPLINE

Lawrence P. Cullen, attorney at law (hereinafter "Accused"), and the Oregon State Bar (hereinafter "Bar") hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1992, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On September 18, 2009, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter, "SPRB"), alleging violations of RPC 1.3 [neglect of a legal matter]; RPC 1.4(a) [failure to keep a client

1 reasonably informed or respond to requests for information]; RPC 1.4(b) [failure to explain a
2 matter to the extent reasonably necessary to permit a client to make informed decisions regarding
3 the representation]; RPC 1.15-1(d) [failure to promptly provide client property]; RPC 8.1(a)(2)
4 [failures to respond to lawful demands for information from disciplinary authorities in
5 connection with a disciplinary matter]; and RPC 8.4(a)(3) [conduct involving misrepresentation
6 reflecting adversely on fitness to practice law]. The parties intend that this Stipulation for
7 Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final
8 disposition of the proceeding.

9
10 **Wolf & Shaer Matter**
Case No. 08-117

11 **Facts**

12 5.

13 Prior to November 2004, the Accused undertook to represent Salman Shaer ("Shaer") in a
14 potential injury claim. From November 2004 through March 2005, the Accused periodically
15 forwarded documentation to Shaer's insurer to facilitate payment of some of Shaer's medical
16 expenses and to enable Shaer to receive payments for lost wages.

17 6.

18 Between March 2005 and late April 2006, when the Accused requested a copy of the
19 payment ledger from Shaer's insurer, the Accused did not make a demand on any potentially
20 responsible party or take any other substantive action on Shaer's claim for reasons known only to
21 the Accused.

22 7.

23 On May 25, 2006, the Accused filed a lawsuit on behalf of Shaer against the personal
24 injury defendant.

1 8.

2 From May 25, 2006 through April 2, 2007, the Accused took no substantive action on
3 Shaer's case. In particular, the Accused failed to ensure that a proof of service was filed with the
4 court. Shaer's case was dismissed by the court on December 11, 2006, for lack of prosecution.
5 The Accused did not advise Shaer or defense counsel of the dismissal or otherwise take any
6 action to verify or address the dismissal.

7 9.

8 On April 2, 2007, opposing counsel took Shaer's deposition. At or shortly after the
9 deposition, opposing counsel requested that the Accused check into the status of the trial date in
10 the case. The Accused did not verify the status of the case and did not notify opposing counsel
11 that the case had been dismissed.

12 10.

13 Following Shaer's deposition, the Accused did not communicate with Shaer or respond to
14 Shaer's attempts to communicate with him. Shaer contacted another lawyer ('successor counsel')
15 for assistance.

16 11.

17 Successor counsel made multiple requests that the Accused provide him with Shaer's
18 complete file for review. The Accused initially provided some documents, but thereafter failed to
19 respond to successor counsel or provide the remaining requested file materials until two months
20 after successor counsel complained to the Bar.

21
22 **Violations**

23 12.

24 The Accused admits that although he initially attended to Shaer's claim, he subsequently
25 neglected Shaer's case, failed to keep Shaer reasonably informed about his legal matter, and

1 failed to respond to Shaer's reasonable requests for information, in violation of RPC 1.3 and RPC
2 1.4(a). The Accused further admits that his failure to promptly provide successor counsel with all
3 of the property to which his client was entitled violated RPC 1.15-1(d).

4
5 **Velazquez Matter**
Case No. 09-01

6 **Facts**

7 13.

8 On June 1, 2004, the Accused undertook to represent Abidan Velazquez (Velazquez) to
9 pursue a claim for injuries that Velazquez and other members of his family had received in an
10 automobile accident in May 2004.

11 14.

12 Between June 1, 2004 and May 15, 2006, the Accused did not take any substantive action
13 on Velazquez's claim.

14 15.

15 On May 16, 2006, the Accused filed a lawsuit on behalf of Velazquez and one or more of
16 his family members. The Accused did not provide Velazquez a copy of the complaint or notify
17 him that the complaint had been filed.

18 16.

19 The defendant was served with the complaint on July 13, 2006. On September 11, 2006,
20 the court notified the Accused of its intent to dismiss the case for lack of prosecution. The Accused
21 did not notify Velazquez of the court's intent to dismiss his case, explain its significance, or take
22 any action in response to the notice from the court.

23 17.

24 On October 31, 2006, Velazquez's case was dismissed by the court for lack of
25 prosecution. On or about November 14, 2006, the court sent the Accused a Notice of Entry of

1 Judgment of dismissal. The Accused did not notify Velazquez of the dismissal, explain its
2 significance, or take any action in response to it.

3 18.

4 Between July 13, 2006 and April 2007, the Accused took no substantive action on
5 Velazquez's case. During this same time, the Accused failed to respond to numerous attempts by
6 Velazquez and his wife to communicate with him. When Velazquez did speak to the Accused,
7 the Accused never informed him about the status of his case.

8 19.

9 On April 17, 2007, defense counsel in the case notified the Accused that the complaint had
10 been dismissed. The Accused did not then notify Velazquez of the dismissal, explain its
11 significance, or take any action in response to it.

12 20.

13 Between November 1, 2007 and May 1, 2008, the Accused was suspended from the practice
14 of law as the result of an earlier disciplinary proceeding. The Accused did not notify Velazquez of
15 his suspension or explain its significance. The Accused did not assure that Velazquez had other
16 counsel or take any other action to protect Velazquez's rights or claim during the period of the
17 Accused's suspension.

18 21.

19 In July 2008, the Accused spoke with Velazquez by telephone, but did not inform him that
20 his case had been dismissed. Instead, the Accused told Velazquez that he was trying to determine
21 the status of the case. This statement by the Accused was both false and misleading, and the
22 Accused knew that it was false and misleading when he made it.

23 22.

24 Between April 17, 2007 and August 2008, the Accused did not take any substantive
25 action on Velazquez's claim.

23.

On August 6, 2008, Velazquez complained to the Oregon State Bar regarding the Accused's handling of his claim. On September 19, 2008, Disciplinary Counsel's Office ('DCO') requested that the Accused respond to Velazquez's allegations on or before October 10, 2008. After he obtained an additional two weeks to respond, the Accused transmitted to DCO a copy of a letter which he had previously provided to the Bar's Client Assistance Office. This letter did not fully address Velazquez's concerns.

24.

On November 6, 2008, DCO requested that the Accused respond to specific inquiries by November 20, 2008. The Accused did not respond. On December 11, 2008, DCO reminded the Accused that he had not responded to its November 6, 2008 request and further requested that the Accused acknowledge receipt of its correspondence and suggest a reasonable time in which he would respond to DCO's requests for information. The Accused did not respond. Accordingly, on January 7, 2009, the matter was referred to the Multnomah County Local Professional Responsibility Committee ('LPRC') for additional investigation.

25.

On February 10, 2009, the LPRC investigators issued a subpoena *duces tecum* requiring the Accused to produce documents related to the Velazquez matter on or before February 24, 2009. The Accused did not respond.

26.

On April 9, 2009, the Accused first spoke with an LPRC investigator and agreed to provide the subpoenaed documents. The Accused failed to provide all of the subpoenaed documents, despite an additional request from the LPRC on April 23, 2009 that he do so.

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28.

Finally, the Accused admits that his failures to respond to lawful demands for information from both DCO and the LPRC in connection with his disciplinary investigation violated RPC 8.1(a)(2).

28.

a. **Duty Violated.** The Accused violated his duties of diligence and candor to his clients, as well as his duty to safeguard and properly handle client property. *Standards* §§ 4.1; 4.4; 4.6. The *Standards* assume that the most important ethical duties are those

1 obligations which a lawyer owes to clients. *Standards* at 5. The Accused also violated his
2 duty as a professional to cooperate in disciplinary investigations. *Standards* § 7.0.

3 b. **Mental State.** Knowledge is defined as the conscious awareness of the
4 nature or attendant circumstances of the conduct but without the conscious objective or
5 purpose to accomplish a particular result. *Standards* at 9. The Accused knowingly failed
6 to attend to Shaer's and Velazquez's matters and knowingly failed to respond to their
7 requests for information. Although for only a relatively short period of time, the Accused
8 knowingly failed to provide Shaer's remaining file materials to successor counsel. The
9 Accused knowingly misrepresented the status of Velazquez's case, and knowingly failed
10 to fully comply with the LPRC's requests.

11 c. **Injury.** "Because the purpose of professional discipline is to protect the
12 public, an injury need not be actual, but only potential, in order to support the imposition
13 of a sanction." *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). In this case, the
14 Accused caused actual injury to both Shaer and Velazquez. There is actual injury to a
15 client where an attorney fails to actively pursue his or her case. *See, e.g., In re Parker*,
16 330 Or 541, 547, 9 P3d 107 (2000). In addition, the Accused's failure to communicate
17 caused actual injury in the form of client anxiety and frustration. *See In re Cohen III*, 330
18 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of the attorney
19 neglect can constitute actual injury under the *Standards*); *In re Schaffner II*, 325 Or 421,
20 426-27, 939 P2d 39 (1997); *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989).

21 The Accused's failure to cooperate with the bar's investigation of his conduct also
22 caused actual harm to both the legal profession and to the public because he delayed the
23 bar's investigation and, consequently, the resolution of the complaints against him. *In re*
24 *Schaffner II, supra*, 325 Or at 427; *In re Miles, supra*, 324 Or 218, 222, 923 P2d 1219
25 (1996); *In re Haws*, 310 Or 741, 753, 801 P2d 818 (1990).

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

2 1. *A prior record of discipline. Standards §9.22(a).* This aggravating factor
3 refers to offenses that have been adjudicated prior to imposition of the sanction in the
4 current case. *In re Jones II*, 326 Or 195, 200, 951 P2d 149 (1997). The Accused has been
5 previously suspended for six months for similar misconduct regarding four client matters.
6 *In re Cullen*, 21 DB Rptr 272 (2007). However, some of the conduct that led to the
7 Accused's prior discipline occurred within the same time period as the two cases at issue
8 here. To the extent that the conduct in these cases predates the imposition of the prior
9 discipline, the prior discipline is given little weight as an aggravating factor. *Jones*,
10 *supra*, 326 Or at 200. However, the Accused's misrepresentation to Velazquez and his
11 continued neglect of Velazquez's matter, as well as his failure to cooperate with the
12 LPRC, occurred after the Accused had served his suspension in the first matter, so those
13 violations are substantially aggravated by the Accused's prior discipline. *Id.*

14 2. *A dishonest or selfish motive. Standards § 9.22(b).*

15 3. *A pattern of misconduct. Standards § 9.22(c).* The Accused's
16 transgressions have occurred over a substantial period of time. *See In re Schaffner*, 323
17 Or 472, 480, 918 P2d 803 (1996).

18 4. *Multiple offenses. Standards § 9.22(d).*

19 5. *Substantial experience in the practice of law. Standards §9.22(i).* The
20 Accused was admitted to practice in Oregon in 1992 and in Texas in 1984.

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

22 1. *Personal or emotional problems. Standards § 9.32(c).* The Accused was
23 suffering from personal and emotional problems during a portion of the relevant time
24 period due to ongoing disputes stemming from his dissolution of marriage in December
25 2002 and due to the loss of his mother in October 2004.

1 sanction determination, the court imposed a one-year suspension, citing two aggravating factors.
2 First, like the Accused, Butler had substantial experience in the practice of law when he
3 committed the acts of professional misconduct. Second, the misconduct occurred when the
4 accused knew that he was under investigation in an unrelated matter for violating the same
5 disciplinary rules. This is also true for a least a portion of the Accused's misconduct. Unlike
6 Butler, however, the Accused has some applicable mitigating factors which justify a sanction of
7 less than the year imposed in *Butler*.

8 31.

9 Consistent with the *Standards* and Oregon case law, the parties agree that the Accused
10 shall be suspended for nine months for violations of RPC 1.3; RPC 1.4(a);
11 RPC 1.4(b); RPC 1.15-1(d); RPC 8.1(a)(2); and RPC 8.4(a)(3), the sanction to be effective
12 December 1, 2009 or seven days after the stipulation is approved by the court, whichever is later.

13 32.

14 In addition, on or before June 30, 2010, the Accused shall pay to the Oregon State Bar its
15 reasonable and necessary costs in the amount of \$303.20, incurred for conducting his deposition
16 in Case No. 08-117. Should the Accused fail to pay \$303.20 in full by June 30, 2010, the Bar
17 may thereafter, without further notice to the Accused, apply for entry of a judgment against the
18 Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the
19 judgment is signed until paid in full.

20 33.

21 The Accused acknowledges that he has certain duties and responsibilities under the Rules
22 of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable
23 prejudice to his clients during the term of his suspension. In this regard, the Accused represents
24 that he has arranged for all active clients to either take possession of or have on-going access to
25 their client files during the term of the Accused's suspension.

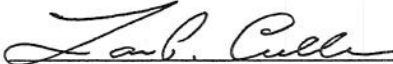
34.

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

35.

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

EXECUTED this 9th day of October, 2009.


Lawrence P. Cullen
OSB No. 920468

EXECUTED this 9th day of October, 2009.

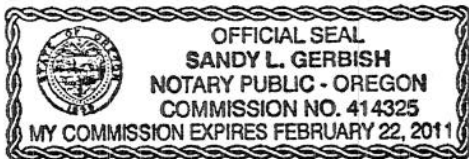
OREGON STATE BAR

By: 
Amber Bevacqua-Lynott
OSB No. 990280
Assistant Disciplinary Counsel

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

4 Lawrence P. Cullen
Lawrence P. Cullen

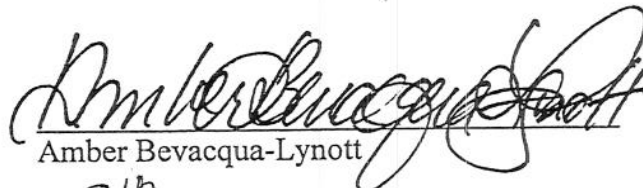
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6 Subscribed and sworn to before me this 9th day of October, 2009.



Sandy L. Gerbish
Notary Public for Oregon
My commission expires: 2/22/2011

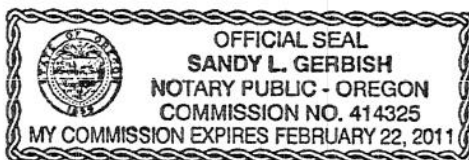
10 I, Amber Bevacqua-Lynott, being first duly sworn, say that I am Assistant Disciplinary
11 Counsel for the Oregon State Bar and that I attest that I have reviewed the foregoing Stipulation
12 for Discipline and that the sanction was approved by the SPRB for submission to the Supreme
13 Court on the 17th day of August, 2009.

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Amber Bevacqua-Lynott

Subscribed and sworn to before me this 9th day of October, 2009.



Sandy L. Gerbish
Notary Public for Oregon
My commission expires: 2/22/2011

IN THE SUPREME COURT OF THE STATE OF OREGON

RECEIVED

NOV 30 2009

DISCIPLINARY
COUNSEL

In re:

Complaint as to the Conduct of

LAWRENCE P. CULLEN, OSB Bar #920468,
Accused.

Oregon State Bar
08117, 0901

S057995

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

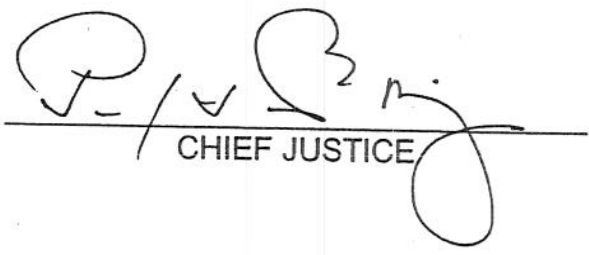
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ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. The accused is suspended from the practice of law in the State of Oregon for a period of nine months, effective December 1, 2009.

November 24, 2009
DATE


CHIEF JUSTICE

c: Lawrence P Cullen
Amber L Bevacqua-Lynott

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ORDER ACCEPTING STIPULATION FOR DISCIPLINE

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

Page 1 of 1

Exhibit

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