Appendix A

Filed: November 19, 2020

IN THE SUPREME COURT OF THE STATE OF OREGON

In Re:

Complaint as to the Conduct of

CHRISTOPHER K. SKAGEN, OSB No. 911020,

Respondent.

(OSB 18149) (SC S066706)

En Banc

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

Argued and submitted on September 16, 2020.

Christopher K. Skagen, Wellington, New Zealand, argued the cause and filed the brief on behalf of respondent.

Susan R. Cournoyer, Assistant Disciplinary Counsel, Tigard, argued the cause and filed the briefs on behalf of the Oregon State Bar.

PER CURIAM

Respondent is disbarred.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Oregon State Bar

[ ] No costs allowed.
[X] Costs allowed, payable by: Respondent.
[ ] Costs allowed, to abide the outcome on remand, payable by:

PER CURIAM

This is a reciprocal discipline review proceeding conducted under Oregon State Bar Rule of Procedure (BR) 3.5. Respondent, Christopher K. Skagen, was licensed to practice law in New Zealand and in Oregon during the years relevant to this proceeding. He was struck from New Zealand's Roll of Barristers and Solicitors by the High Court of New Zealand Wellington Registry (High Court) in August 2016 based on misconduct respecting two clients and his significant disciplinary history. That action was the equivalent of disbarment in Oregon. The Oregon State Bar (the Bar) then petitioned the Bar's Disciplinary Board for reciprocal disbarment, alleging that respondent's misconduct in New Zealand constituted multiple violations of the Oregon Rules of Professional Conduct (RPC). A trial panel of the Disciplinary Board was convened, and the matter went to a hearing in January 2019. The trial panel issued an opinion, concluding that respondent should be reciprocally disbarred in Oregon as a result of his misconduct in New Zealand. Respondent now appeals that decision, which we review *de novo*. ORS 9.536(2); BR 10.6. For the reasons set out below, we agree with the trial panel's decision that respondent should now be disbarred in Oregon.

I. FACTS

A. *Oregon Bar Admission and Prior Oregon Discipline*

On *de novo* review, the court finds the following facts. Respondent went to law school in New Zealand but moved to Oregon shortly after graduating. He was admitted to practice law in Oregon in 1991. In the years following, respondent was subject to disciplinary proceedings twice in Oregon. In 2006, he was suspended from the

practice of law for one year for failing to maintain unearned fees in trust, failing to account for client funds in his possession, failing to maintain an interest-bearing trust account, engaging in conduct prejudicial to the administration of justice, and failing to cooperate with the Bar's investigation into his conduct.[1] *In re Skagen*, 342 Or 183, 149 P3d 1171 (2006). In 2008, a trial panel in Oregon found that respondent had committed 22 client trust fund violations in 20 different client matters over a one-year period; the violations were based on his failures to deposit and maintain in trust unearned fees paid in advance. The trial panel suspended respondent from the practice of law for 18 months for that misconduct.[2] *In re Skagen*, 22 DB Rptr 292 (2008).

B. *Reciprocal Discipline in New Zealand*

Respondent moved to New Zealand during the pendency of the second Oregon disciplinary proceeding. In 2008, respondent was subject to reciprocal censure in New Zealand based on the 2006 Oregon discipline matter, and the New Zealand Law Society (equivalent to the Bar in the United States) ordered him to pay approximately NZ$8,000 in costs. In 2010, respondent applied to renew his membership in the Law Society. Because he had not paid the cost award, he was required to enter into an agreement to make payments on that obligation in the amount of NZ$150 per month as a condition of his license renewal. He then began practicing law in New Zealand. He

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[1] The misconduct leading to the 2006 discipline took place from 2000 to 2002.

[2] The misconduct leading to the 2008 discipline took place in 2005, before this court's decision in the earlier matter, which factored into the trial panel's sanction determination.

made only one of the required monthly payments, but he continued to practice law.

C. *Licensing and Client Representation in New Zealand*

Respondent practiced as a barrister in New Zealand from 2010 to 2011. In February 2011, respondent was retained by client E to represent him in a divorce proceeding. Respondent met with E and advised E that he would charge a lump sum for the work and that E would need to see a solicitor -- known as an instructing solicitor -- before signing the retainer contract.[3] Following that meeting, respondent sent E an invoice and his terms of engagement. The invoice set out the scope of the work to be performed and required an initial payment in the amount of NZ$4,100, which was to be half the total fee ultimately due. E paid that amount, and respondent deposited it in his private account. The terms of engagement specified that the instructing solicitor would be Kevin Smith. When respondent and E met with Smith, however, they learned that Smith had already discussed the matter with E's wife and, therefore, could not act as E's instructing solicitor. Respondent and E dispute what happened next. E averred that respondent did not answer his emails after that meeting, while respondent claimed that he explained to E that he would have to find a new instructing solicitor before respondent could perform any legal services for him and then did not hear from E again. In any case, E hired another firm to represent him in the matter and, in March 2011, E's new lawyer sent respondent a letter advising respondent that E wished to terminate the representation.

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[3] In New Zealand, a barrister may not represent a client without an instruction -- or referral -- from a solicitor.

That letter also demanded that respondent release E's file, provide an itemized bill for costs and work performed, and refund the unearned part of the fee that E had paid him. Respondent initially promised to repay the fee in full but ultimately informed E that he could not do so because of his precarious financial position. He did not refund the unearned fee.

In April 2011, the New Zealand Law Society Lawyers Complaint Service sent respondent a letter reminding him that he had not fulfilled his obligation to make monthly payments on the 2008 costs award as a condition of his license renewal. The letter noted that licenses must be renewed by July 1, and it warned respondent that, under New Zealand's disciplinary rules, the Law Society may take into account a lawyer's failure to pay when determining whether a lawyer is a "fit and proper person" to hold a license. The letter demanded payment of the entire amount due by May 5, 2011. Respondent did not respond.

In a second letter, dated June 23, 2011, the New Zealand Law Society Fitness for Practice Committee informed respondent that it provisionally had concluded that his failure to respond or to pay constituted "reasonable grounds for declining to renew" his license; it invited him to submit a response.

On June 29, 2011, respondent submitted a response claiming not to have received the first letter and asserting that he had failed to pay the amount he owed because he had decided "to place business growth above [his] responsibility to pay [the amount owed] and did not consult the Law Society about that decision." He further explained that he did not believe that nonpayment rendered him unfit as a practitioner and

that a finding of unfitness would devastate his prospects for continuing his life as a lawyer. He offered to begin paying NZ$300 per month beginning in July 2011.

The Fitness Committee responded that it would need to be provided with further financial information, such as bank statements, to satisfy itself that respondent would be able to pay NZ$300 monthly. Respondent refused to provide that information.

Meanwhile, in May 2011, respondent was hired by client W to represent him in an ongoing divorce proceeding. Respondent sent W the terms of engagement and an invoice for NZ$6,900, and W paid him that day. Solicitor Smith instructed respondent (that is, provided the referral). Respondent participated in a telephone conference with the court on W's case on June 9, 2011. The court ordered W to provide and serve an affidavit in the case. Respondent sent W an email on June 21 advising the client that he would need more information for an affidavit and that W would need to provide "disclosure to the other side." However, he did not inform W of the date for providing disclosure, nor did he set a time for them to discuss the matter. W provided some information to respondent by email, but he later averred that he did not know what was required of him or when the next hearing would be.

Respondent's license lapsed as of July 1, 2011. The New Zealand Law Society gave respondent until July 19 to pay the amount owed on the cost award and to apply for renewal of the license, which required payment of a fee of NZ$1,426. Respondent submitted a renewal application, but he did not pay any of the fees or costs.[4]

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[4] In August 2011, the New Zealand Law Society informed respondent that it

Respondent did not inform W that his license had lapsed. He did, however, inform Solicitor Smith of that fact in mid-July. Respondent also told Smith that he had prepared the affidavit required by the court and due before a July 21 hearing. Smith refused to permit respondent to file the affidavit. Instead, Smith asked respondent to immediately return all outstanding client files to him, which respondent did. Smith reported to the court and opposing counsel on July 20 that respondent's license had lapsed and that W would need time to obtain alternative counsel. The court conducted a telephone conference on July 21, at the conclusion of which the court ordered W to pay costs of NZ$800 for the failure to timely file the affidavit. The court advised W to seek to recover that cost award from respondent. Thereafter, W spoke to respondent by telephone; respondent told W that he could not pay the NZ$800 or refund even part of the NZ$6,900 advance fee, because he was "broke."

D. *New Zealand Disciplinary Proceedings*

1. Investigation and charges by the New Zealand standards committee

Clients E and W complained to the New Zealand Law Society about respondent's conduct, and the Wellington Branch Standards Committee (Standards Committee) was charged with investigating the complaints and deciding whether to bring formal charges. Respondent was informed of and participated in the investigation. The Standards Committee investigator requested documents relevant to the complaints,

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had declined to renew his license, stating that it found his nonpayment of costs "disgraceful and dishonourable," which is grounds for discipline in New Zealand.

including, among other things, various financial records. Respondent provided some of the requested documents, but he declined to provide his financial records. The Standards Committee invited respondent to submit any materials he wanted the committee to consider in deciding whether the case should be forwarded to the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (Disciplinary Tribunal or tribunal).

In June 2013, the Standards Committee charged respondent with 12 rule violations related to the two client complaints and to his failure to cooperate with the Standards Committee investigation.[5] The charges were accompanied by five affidavits, including affidavits from clients E and W and the investigator, as well as a "Bundle of Documents" -- documents relevant to the investigation -- which included, among other things, correspondence between respondent and E and W and their new lawyers, respondent's written responses to the complaints and to the investigator, notices of hearings before the Standards Committee, and notices of determinations of the Standards Committee.

Respondent had returned to the United States in February 2013 without updating his contact information. As a result, the authorities could not find or serve him with the charges and supporting documents. In October 2013, respondent was served by substitute electronic service (by email). Respondent acknowledged receiving that substitute service and filed a response in November 2014. The matter then came before the Disciplinary Tribunal.

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[5] One of the charges was later dismissed.

2. *Proceedings before the New Zealand Disciplinary Tribunal*

In January 2014, the Disciplinary Tribunal conducted a telephone conference to discuss procedures for the hearing. Respondent stated that he would not be returning to New Zealand and, therefore, would not be able to participate in person at the hearing. The chair of the Disciplinary Tribunal informed respondent that he would be required to appear personally if he wished to participate in the hearing and that the hearing would go forward without him if he were not present. The Disciplinary Tribunal's counsel then proposed that the parties proceed on the written record because there did not appear to be any material facts in dispute or credibility determinations to be made. As the tribunal's counsel later testified in the Oregon disciplinary proceeding, respondent seemed receptive to that idea, and the chair set the matter for hearing on that basis. Respondent did not file a motion or application for permission to appear remotely, nor did he request to reschedule the hearing until a time when he could be present. Respondent and the Standards Committee each provided written submissions, and the Disciplinary Tribunal conducted a brief hearing in November 2014. The Disciplinary Tribunal considered the charges against respondent and both parties' submissions under a "balance of probabilities" standard of proof. New Zealand Lawyers and Conveyancers Act (NZLCA) 2006, § 241. On December 9, 2014, it issued an opinion finding that the Standards Committee had proved all the charged disciplinary rule violations, and it struck respondent from the Roll.

3. *Appeal to the New Zealand High Court*

Respondent appealed the Disciplinary Tribunal decision to the High Court

in January 2015. Under the applicable statute, the High Court hears appeals in disciplinary proceedings as a rehearing; parties are permitted to introduce new evidence and make new arguments. NZLCA § 253(3). The High Court reaches its own decision on the merits and owes no deference to the Disciplinary Tribunal's findings. It may confirm, reverse, or modify the Disciplinary Tribunal's decision. NZLCA § 253(4).

Respondent submitted multiple pleadings to the High Court addressing various issues. He also submitted new evidence, including affidavits concerning, among other things, his health, residency, and financial condition. During the pendency of the appeal, respondent returned to New Zealand.

In January 2016, the parties submitted briefs on the merits. In his written submissions, respondent challenged the Disciplinary Tribunal's conclusion that his conduct violated the disciplinary rules. In addition, he claimed that the Disciplinary Tribunal had deprived him of "natural justice" -- which, the parties agree, is essentially equivalent to due process in this country -- in three ways: (1) by denying him the opportunity to appear at the hearing by telephone; (2) by failing to consider his challenge to one of the Disciplinary Tribunal panel members; and (3) by considering the issue of the appropriate sanction notwithstanding that he had not briefed that matter in his written submissions. At a substantive hearing on respondent's appeal, at which respondent was present and participated, the High Court discussed respondent's natural justice arguments and later permitted the parties to submit further affidavits. Both respondent and the Standards Committee availed themselves of that option.

The High Court issued its decision in August 2016. It considered the entire

record, including the additional evidence that respondent had submitted on appeal, and it addressed respondent's natural justice arguments. The High Court dismissed five of the charges against respondent but found him guilty on the remaining six charges (the 12th having earlier been dismissed). Specifically, the High Court determined that respondent had violated the New Zealand disciplinary rules with respect to client E by accepting instructions directly from the client and not from an instructing solicitor, by failing to act in a timely and competent manner, and by failing to repay monies due the client at the termination of representation. With respect to client W, the High Court determined that respondent violated the New Zealand disciplinary rules by failing to act in a timely and competent manner, and by failing to repay monies due the client at the termination of representation. In addition, the High Court determined that respondent violated the New Zealand disciplinary rules by failing to allow a Law Society investigator to examine his financial accounts during the investigation into his misconduct.[6] Based on those violations and respondent's disciplinary record,[7] the High Court affirmed the sanction that

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[6] In the client E matter, the High Court found that respondent committed one violation of Rule 14.4 of the NZLCA (Conduct and Client Care Rules) 2008 (prohibiting barrister sole from accepting instructions to act for another person other than from a person licensed to act as a barrister and solicitor) and two violations of Rule 3 of the NZLCA (Conduct and Client Care Rules) (requiring lawyer to act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care). In the client W matter, the High Court found that respondent had committed two violations of Rule 3. In the ensuing investigation into respondent's misconduct, the High Court also found that respondent violated Regulation 34(a) of the NZLCA (Trust Account) Regulations 2008, which requires a lawyer to permit an investigator to examine records and accounts.

[7] The High Court considered the two Oregon disciplinary proceedings

respondent should be stricken from the Roll.

The High Court also rejected respondent's natural justice arguments. As an initial matter, it concluded that the parties' written submissions did not demonstrate that there had been a need for the Disciplinary Tribunal to conduct an evidentiary hearing; they did not identify any evidentiary issues that were disputed in that tribunal. And, in any case, respondent had not challenged the proposal to submit evidence on the written record and argue the law in written submissions.

Turning to the specifics of respondent's three natural justice claims, the High Court first found that the Disciplinary Tribunal should have exercised its discretion to allow respondent to appear at the hearing telephonically, due to his financial condition. However, the High Court also found that respondent was given an opportunity to have that matter reviewed after filing his written submissions with the tribunal, but he did not raise the issue again and, instead, acquiesced to and participated in the process that the tribunal had established. For that reason, the High Court concluded, respondent suffered no violation of his right to be heard.

The High Court also rejected respondent's argument that he had been denied natural justice when the Disciplinary Tribunal failed to consider his challenge to the impartiality of one of the panel members. The High Court noted that, while

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discussed above, as well as a third disciplinary proceeding in New Zealand in 2012. That matter arose out of respondent's failure to complete discovery in a proper manner in a matter in 2011. For that misconduct, respondent was censured, required to reduce his fee, and ordered to pay compensation and costs.

respondent had stated in an email that he was "uncomfortable" with one member of the panel, he had never filed a motion challenging that member's participation or otherwise pursued that concern before the Disciplinary Tribunal, and he did not identify the failure to address his discomfort with the panel member as a ground for appeal.

Finally, the High Court agreed with respondent that the Disciplinary Tribunal should not have considered the issue of the appropriate sanction without permitting respondent to file further submissions on that subject after it found him guilty of misconduct. Nevertheless, the High Court rejected respondent's argument that he was therefore deprived of natural justice, because respondent had had a full opportunity to present evidence and arguments respecting the appropriate sanction on appeal. As noted, respondent submitted to the High Court, among other things, detailed medical evidence and arguments relating to the earlier Oregon disciplinary decisions. The High Court observed that those were the matters that respondent had argued that he would have put forward to the Disciplinary Tribunal on the question of the appropriate sanction. And, the High Court continued, it had considered all of the new evidence and arguments that respondent had submitted to it and, notwithstanding that evidence, it concluded that "the essential concerns about [respondent's] conduct [were] covered by the charges [that] were upheld * * * [and that the] Tribunal was correct to find that overall [respondent's] conduct was dishonourable." The High Court, therefore, found that it was appropriate to strike respondent from the Roll.

Respondent thereafter filed two separate applications for recall of the High Court's judgment. The High Court dismissed the applications.

E. *Current Oregon Disciplinary Proceedings*

As discussed, the Bar was made aware of the imposition of discipline in New Zealand and initiated a reciprocal discipline proceeding in Oregon. Based on the High Court's findings of violations of the New Zealand disciplinary rules, the Bar alleged that respondent's misconduct violated the following Rules of Professional Conduct: RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter); RPC 1.4(b) (failure to explain a matter to the extent necessary to permit a client to make informed decisions about the representation); RPC 1.5(a) (charging or collecting an excessive fee); RPC 1.15-1(d) (failure to account for or return client funds in his possession); RPC 1.16(d) (failure to fulfill duties upon termination of representation); RPC 5.5(a) (practicing law in violation of the regulations of the profession); RPC 8.1(a)(4) (failure to respond to inquiries by a disciplinary authority); and RPC 8.4(a)(4) (engaging in conduct prejudicial to the administration of justice).[8]

As noted, a trial panel of the Disciplinary Board was convened, and the matter went to a hearing in January 2019. The trial panel issued an opinion, rejecting respondent's arguments that he was not afforded due process in the New Zealand proceeding and concluding that respondent should be reciprocally disbarred in Oregon as a result of his misconduct in New Zealand. Respondent now seeks review of the trial

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[8] The Bar also initially alleged that respondent's misconduct in New Zealand violated ORS 9.160(1), but it has abandoned that argument in this court.

panel's decision.

II. ANALYSIS

A. *Applicability of BR 3.5*

As a preliminary matter, respondent contends that this court does not have authority under BR 3.5 to impose reciprocal discipline, because a foreign country is not a "jurisdiction" within the meaning of that word in BR 3.5(a) and, therefore, the New Zealand decision striking him from the Roll is not a "judgment, order, or determination of discipline" within the meaning of that phrase in BR 3.5(a) and (b). We therefore begin with that issue before turning to consider respondent's challenges to the trial panel's decision.

BR 3.5 provides, in part:

> "(a) Petition; Notice to Answer. Upon learning that an attorney has been disciplined for misconduct in another jurisdiction not predicated upon a prior discipline of the attorney pursuant to these rules, Disciplinary Counsel shall file with the Disciplinary Board Clerk a petition seeking reciprocal discipline of the attorney. The petition shall include a copy of the judgment, order, or determination of discipline in the other jurisdiction; may be supported by other documents or affidavits; and shall contain a recommendation as to the imposition of discipline in Oregon, based on the discipline in the jurisdiction whose action is reported, and such other information as the Bar deems appropriate. * * *
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> "(b) Order of Judgment; Sufficient Evidence of Misconduct; Rebuttable Presumption. A copy of the judgment, order, or determination of discipline shall be sufficient evidence for the purposes of this rule that the attorney committed the misconduct on which the other jurisdiction's discipline was based. There is a rebuttable presumption that the sanction to be imposed shall be equivalent, to the extent reasonably practicable, to the sanction imposed in the other jurisdiction."

In support of his argument that the New Zealand judgment striking him

from the Roll cannot be a basis for discipline in Oregon, respondent points to two cases: *Small v. United States*, 544 US 385, 125 S Ct 1752, 161 L Ed 2d 651 (2005), and *In re Wilde*, 68 A3d 749 (DC 2013). Respondent argues that, under those cases, the plain meaning of "jurisdiction" refers only to domestic state and federal jurisdictions, and if the Bar Rules of Procedure were intended to apply to disciplinary judgments from foreign jurisdictions, the rules would say so explicitly. That argument is unpersuasive.

BR 3.5 applies to discipline for misconduct in "another jurisdiction" and requires the Bar to provide a copy of the determination of discipline from the "other jurisdiction." The Bar Rules do not define or limit the scope of the word "jurisdiction" in BR 3.5 to only those jurisdictions within the United States. Moreover, respondent points to nothing in the text, the context, or the history of the adoption of BR 3.5 that suggests any reason to interpret that rule to apply only to judgments issued by American courts.

In addition, the cases that respondent cites are inapposite and do not assist him. Both cases involve underlying criminal convictions entered against persons outside the United States. In *Small*, the United States Supreme Court considered whether a conviction in a foreign country can be a predicate crime for a felon in possession of a firearm charge under a federal criminal statute. The Court considered the meaning of the phrase "convicted in any court" in 18 USC § 922(g)(1), which makes it a crime for a person who has been "convicted in any court of a crime punishable by imprisonment for a term exceeding one year" to possess any firearm. The Court held that, for purposes of that criminal statute, the phrase "convicted in any court" encompasses only domestic, not foreign, convictions. *Small,* 544 US at 386. Similarly, in *In re Wilde*, the District of

Columbia Court of Appeals considered the meaning of the phrase "conviction of a crime" in a District of Columbia disciplinary rule that provided for disbarment of lawyers convicted of crimes of moral turpitude. The court interpreted the word "conviction" to apply only to domestic convictions, because foreign convictions differ from domestic convictions in such important ways that it was appropriate to assume that if the rule were intended to apply to foreign convictions it would say so. 68 A3d at 758.

Respondent argues that, notwithstanding the fact that neither case was concerned with the meaning of the word "jurisdiction" in a disciplinary rules context or addressed reciprocal discipline, they nonetheless are instructive because "disciplinary proceedings in a foreign country * * * bring characteristics of criminal convictions in the same manner that criminal convictions in Oregon can result in disbarment." That argument is not well taken. First, as this court has stated, lawyer discipline proceedings are not criminal prosecutions, *In re Sanai*, 360 Or 497, 530, 383 P3d 821 (2016) (so stating); *see also* ORS 9.529 (bar proceedings are sui generis; they are within this court's inherent power to control, and they are neither civil nor criminal in nature), and neither disbarment nor any other sanction is criminal punishment. *In re Sassor*, 299 Or 720, 728, 705 P2d 736 (1985) ("Suspension or permanent disbarment for violations of the Disciplinary Rules is not a form of punishment for criminal conduct or moral turpitude. Its purpose is to protect the public from incompetent, dishonest, or irresponsible professional behavior."). Second, in both *Small* and *Wilde*, the decisions turned at least in part on the courts' concern that foreign convictions may be based on conduct that our domestic laws would permit or punish less severely or that would be inconsistent with an

American understanding of fairness. *Small*, 544 US at 389-90; *Wilde*, 68 A3d at 756. No such concern exists in reciprocal discipline proceedings, because BR 3.5 ensures that the conduct for which the lawyer was disciplined in the other jurisdiction was conduct that would subject a lawyer to discipline in Oregon. BR 3.5(c)(2). Moreover, under BR 3.5, reciprocal discipline can be imposed only if the lawyer was afforded due process in the other jurisdiction. BR 3.5(c)(1). For those reasons, we conclude that the Oregon Rules of Professional Conduct provide for reciprocal discipline based on a determination of discipline against an Oregon lawyer who has committed professional misconduct in another jurisdiction, whether that other jurisdiction is foreign or domestic, so long as the requirements for reciprocal discipline are met.

B. *Regulatory Framework*

We turn now to a brief description of those requirements and our process for determining whether to impose reciprocal discipline. In a reciprocal discipline proceeding, the order of discipline is "sufficient evidence * * * that the attorney committed the misconduct on which the other jurisdiction's discipline was based." BR 3.5(b). For that reason, the Oregon disciplinary proceeding may not be used to challenge the factual findings of the foreign jurisdiction. *Sanai*, 360 Or at 500. Instead, this court's decision whether to impose reciprocal discipline turns on three questions: (1) whether the procedure in the jurisdiction that disciplined the lawyer "was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process," (2) whether the conduct for which the lawyer was disciplined in the other jurisdiction is conduct that should subject the lawyer to discipline here in Oregon, and (3) whether imposing the

same sanction that the other jurisdiction imposed would result in "grave injustice or be offensive to public policy." BR 3.5(c). It is the lawyer's burden to prove that due process was not afforded him or her in the other jurisdiction. BR 3.5(e).

C. *Respondent's Due Process Arguments*

Respondent argues that he was denied due process in the New Zealand proceeding in seven ways. Several of those arguments pertain to events that occurred before the Disciplinary Tribunal. As we have discussed, respondent appealed the decision of the Disciplinary Tribunal to the High Court. Respondent participated fully in the proceedings before the High Court. Further, the High Court permitted the parties to submit additional evidence and arguments, and it considered the matter *de novo*.[9] Therefore, any deficiencies in the process before the Disciplinary Tribunal were cured by the subsequent proceeding before the High Court, and respondent does not dispute that he

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[9] The High Court also observed that certain of respondent's "natural justice" arguments pertaining to events before the Disciplinary Tribunal were unpreserved or asserted alleged violations of his clients' rights and not his own. In addition, we note that one of respondent's claimed due process violations is based on his contention that he was not given adequate notice that his license would not be renewed. We reject that contention. As recounted above, when respondent renewed his license in 2010, he did so subject to the condition that he make monthly payments on the costs assessed in 2008. Despite that condition, respondent made only one payment. Then, in April and June 2011, the Law Society sent respondent letters reminding him that all licenses had to be renewed by July 1 and that it could take his failure to make the payments into account when determining whether to renew his license. Nevertheless, respondent still did not make the payments. He allowed his license to lapse on July 1. The Law Society told respondent that, in order to renew his license, he would need to pay the overdue cost award and the renewal fee. Although respondent submitted a renewal application, he failed to pay both the cost award and the renewal fee. We conclude that respondent had more than sufficient notice of what he needed to do to renew his license.

received a full rehearing, with the opportunity to present additional evidence and argument, in that court. For that reason, we reject those arguments without discussion.

Respondent makes two arguments that merit brief examination. As we shall explain, however, neither argument is well taken.

First, respondent argues that he was deprived of due process in the New Zealand proceeding because the New Zealand courts use a "balance of probabilities" standard of proof, whereas Oregon courts use the higher "clear and convincing" evidence standard of proof. At oral argument in this matter, however, respondent conceded that Oregon courts are under no constitutional mandate to use a clear and convincing evidence standard of proof as opposed to any lesser standard of proof. And, in fact, this court routinely imposes reciprocal discipline in cases where the other jurisdiction sanctioned a lawyer based on a standard less than clear and convincing evidence.[10]

Second, respondent argues that the New Zealand rules of professional responsibility are unreasonably vague, insofar as, for example, they permit discipline on a finding of misconduct, which is defined as conduct "that would reasonably be regarded

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[10] For example, in *Sanai*, this court imposed reciprocal discipline on a lawyer whom the Washington Supreme Court had disbarred. *Sanai*, 360 Or at 543. In Washington, lawyer misconduct must be proved by "a clear preponderance of the evidence." Washington State Court Rules, Rule for Enforcement of Lawyer Conduct 10.14(b). Likewise, this court imposed a reciprocal suspension on a lawyer who had entered into a stipulation for discipline in Washington in *In re Page*, 326 Or 572, 955 P2d 239 (1998). And in *In re Devers*, 317 Or 261, 263, 855 P2d 617 (1993), the court reciprocally suspended a lawyer after he was suspended for unethical conduct in Michigan. In Michigan, lawyer misconduct must be established by a preponderance of the evidence. Michigan Court Rule 9.115(J)(3).

by lawyers of good standing as disgraceful or dishonourable." Lawyers and Conveyancers Act 2006, § 7(1)(a)(i). Respondent's argument ignores the fact that the High Court found that respondent committed six violations of the New Zealand Lawyers and Conveyancers Act, involving three separate and specific provisions of that law, which the High Court quoted and discussed in its opinion, and it imposed discipline on that basis. Therefore, the fact that the New Zealand disciplinary rules include some terms that, on their face, may appear vague, does not persuade us that, as a whole, the New Zealand attorney discipline system does not provide lawyers with notice of what is expected.

As is evident from the foregoing, we conclude that respondent has not met his burden to establish that he was deprived of due process in the New Zealand proceedings leading to his disbarment.

D. *The Oregon Charges and the Appropriate Sanction*

As we have explained, the High Court found that respondent violated the New Zealand rules of professional conduct by commencing work for client E without proper authority and, in both the client E and the client W matters, by failing to complete the representation and then refusing to return unearned fees. The High Court also found that respondent failed to cooperate with disciplinary authorities in the investigation into his misconduct. The Bar alleged and the trial panel found that that misconduct in New Zealand also violated the following Oregon Rules of Professional conduct: RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter); RPC 1.4(b) (failure to explain a matter to permit client to make

informed decisions regarding the representation); RPC 1.5(a) (charging an excessive fee); RPC 1.15-1(d) (failure to account for client funds); RPC 1.16(d) (failure upon termination to take steps to protect client interests, including refunding unearned portions of fees paid in advance); RPC 5.5(a) (practicing law in violation of the regulations of the profession); RPC 8.1(a)(2) (knowing failure to respond to lawful demand for information from a disciplinary authority); and RPC 8.4(a)(4) (engaging in conduct prejudicial to the administration of justice).

Respondent asserts, without elaboration, that his misconduct in New Zealand violated only two Oregon disciplinary rules, RPC 1.4(a) and RPC 8.1(a)(2), and that those two violations are insufficient to justify disbarring him in Oregon. We agree with the Bar and the trial panel that respondent's conduct in New Zealand would violate the Rules of Professional Conduct as set out above. We turn, therefore, to consider the appropriate sanction for respondent's misconduct. In so doing, we keep in mind the final consideration required by BR 3.5: whether imposing the same sanction that the other jurisdiction imposed would result in "grave injustice or be offensive to public policy." BR 3.5(c)(3).

In reciprocal discipline cases, this court has an independent obligation to determine the appropriate sanction based on this state's disciplinary rules. *Sanai*, 360 Or at 538. In so doing, we refer first to the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1991) (amended 1992) (ABA Standards) for guidance. *In re Walton*, 352 Or 548, 555, 287 P3d 1098 (2012). Under the framework established by the ABA Standards, we first consider the duty violated, the accused's mental state, and the

actual or potential injury caused by the accused's misconduct. ABA Standard 3.0. Next, we consider any aggravating and mitigating circumstances. *Sanai*, 360 Or at 538. Finally, we consider the appropriate sanction in light of this court's case law. *Id.*

Respondent violated his duties of diligence and competence to both clients E and W. By collecting fees for work he did not perform, practicing law in violation of New Zealand law and regulations, and failing to cooperate with the Standards Committee investigation, respondent violated duties owed to the legal profession. Further, the record of the New Zealand proceeding demonstrates that respondent acted knowingly or intentionally with respect to each of the violations. And respondent's conduct resulted in actual injury to both client E and client W, who were never refunded the advance fees they paid for services that respondent did not perform. Client W also was forced to pay a NZ$800 cost assessment arising out of respondent's failure to submit a required affidavit.

Based on the disciplinary violations that we have found and our conclusions respecting the duties violated, respondent's mental state, and the injuries caused by respondent's misconduct, the presumptive sanction under the ABA Standards is disbarment. That is, disbarment is generally appropriate when a lawyer either knowingly fails to perform services for a client and causes serious or potentially serious injury, or engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury. ABA Standard 4.41(b), (c). In addition, disbarment is generally appropriate when a lawyer has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

ABA Standard 8.1(b).

We next consider the existence of aggravating or mitigating circumstances that may affect our sanction determination.

We find several aggravating circumstances that are relevant to our determination. First, respondent has a significant history of similar disciplinary offenses. ABA Standard 9.22(a). As discussed, respondent was suspended in 2006 for one year for failing to deposit and maintain client funds in trust, failing to maintain complete records of client funds in his possession and to render appropriate accountings of those funds, failing to maintain an interest-bearing trust account, engaging in conduct prejudicial to the administration of justice, and failing to respond fully and truthfully to inquiries from, and comply with reasonable requests of, an investigatory authority. *Skagen*, 342 Or 183. Again in 2008, respondent was suspended for 18 months by a Disciplinary Board trial panel for failing to keep sufficient records of client funds in his possession and failing to deposit and maintain in trust unearned fees paid in advance. *Skagen*, 22 DB Rptr 292. And in 2012, respondent was subject to discipline in New Zealand; he was censured, required to reduce his fee, and ordered to pay compensation and costs for failure to complete discovery in a proper manner in a matter.

In addition we find that, in failing to return unearned fees to clients E and W, respondent acted with a selfish motive. ABA Standard 9.22(b). And we find that respondent has engaged in a pattern of misconduct, ABA Standard 9.22(c), and that he has committed multiple offenses, ABA Standard 9.22(d).

We also find that respondent has refused to acknowledge the wrongfulness

of his conduct. ABA Standard 9.22(g). For one example, in the New Zealand proceeding, after initially admitting that he was required to repay client E the fees he had paid in advance, he later argued to the Disciplinary Tribunal that E had breached the retainer agreement and therefore repayment was not required. The High Court found that taking such a position was "disingenuous and dishonest," and, in the terms used in the applicable statute, "disgraceful and dishonourable." And in this proceeding, respondent has refused to concede that his misconduct in New Zealand violated several similar Oregon disciplinary rules, and he continues to maintain that he is and always has been entitled to disobey requests from disciplinary authorities for his financial records.

Finally, respondent has substantial experience in the practice of law. ABA Standard 9.22(i).

The record reflects only one mitigating factor: respondent's disbarment in New Zealand constitutes the imposition of another sanction for the misconduct. ABA Standard 9.32(k). On balance, the aggravating factors outweigh the sole mitigating factor and support a determination to disbar respondent.

Turning to Oregon case law, we observe that this court has disbarred lawyers whose collective misconduct demonstrated disregard for clients, professional obligations, and the disciplinary rules. It has "ordered disbarment for conduct that otherwise would justify a long suspension when the accused has a history of misconduct that has resulted in prior disciplinary sanctions." *In re Paulson*, 346 Or 676, 722, 216 P3d 859 (2009), *adh'd to as modified on recons*, 349 Or 529, 255 P3d 41 (2010). The court has disbarred lawyers for engaging in a pattern of misrepresentation, neglect, and

failure to act on behalf of clients. *E.g.*, *In re Sousa*, 323 Or 137, 146-47, 915 P2d 408 (1996). And it has disbarred lawyers who neglect clients' cases and refuse to cooperate with regulatory authorities after already having been disciplined for the same or similar misconduct. *In re Bourcier*, 325 Or 429, 436-37, 939 P2d 604 (1997). Those cases also support a determination to disbar respondent.

After considering the ABA Standards and our case law, we conclude that the misconduct for which respondent was struck from the Roll in New Zealand warrants disbarment in Oregon. We also find nothing in the record to suggest that disbarring respondent "would result in grave injustice or be offensive to public policy." BR 3.5(c)(3). We therefore hold that respondent should be disbarred as a reciprocal sanction for his misconduct in New Zealand.

Respondent is disbarred.

Appendix B
Received DB Clerk
04/10/2019

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 18-149
	)	
CHRISTOPHER SKAGEN,	)	Trial Panel Opinion
	)	
Respondent.	)	
	)	

In this reciprocal disciplinary proceeding pursuant to BR 3.5 the Oregon State Bar ("Bar") seeks an order disbarring respondent Christopher K. Skagen based on the fact that he was struck from the Roll of Barristers and Solicitors in New Zealand, the equivalent of disbarment in that country. The High Court of New Zealand, Wellington Registry ("High Court") struck respondent from the Roll based on respondent's multiple disciplinary rule violations and significant disciplinary history.

The hearing was held on January 29, 2019 at the offices of the Bar. The Bar appeared by and through counsel, Courtney Dippel. Respondent appeared via video and represented himself. The trial panel consisted of the Adjudicator, Mark Turner, the Attorney Panel Member, Michael McGrath, and the Public Panel Member, Charles Martin. The panel heard evidence and argument and also considered post-hearing briefing on certain issues.

For the reasons discussed below, we conclude that respondent was afforded due process in connection with the imposition of discipline in New Zealand. Respondent participated in the disciplinary proceeding, received notice of the charges, had repeated opportunities to be heard, and was fully heard before the disciplinary violations were found and he was stricken from the Roll.

We find that the presumptive sanction of disbarment is warranted here. Respondent's conduct would merit the same sanction under Oregon law. The sanction does not result in grave

injustice, nor is it offensive to public policy. *See* BR 3.5(a). We order that respondent is hereby disbarred in this state.

PROCEDURE EMPLOYED

The process for reciprocal discipline is set forth in BR 3.5. Reciprocal discipline proceedings are limited proceedings. BR 3.5(c) identifies the three issues that can be addressed by respondent in his answer. They are: 1) Whether the procedure involved in the imposition of discipline lacked notice and opportunity to be heard such that due process was denied; 2) Whether the conduct involved is conduct that should subject respondent to discipline in this state; and 3) Whether imposition of an equivalent sanction would result in grave injustice or be offensive to public policy. This proceeding is not to be used to challenge the factual findings of the foreign jurisdiction. *In re Sanai*, 360 Or 497, 500, 383 P3d 821 (2016) (citing *In re Devers*, 317 Or 230, 264-65, 855 P2d 617 (1999)).

The rules further state that, "a copy of the judgment, order, or determination of discipline shall be sufficient evidence for the purposes of this rule that the attorney committed the misconduct on which the other jurisdiction's discipline was based. There is a rebuttable presumption that the sanction imposed shall be equivalent, to the extent reasonably practicable, to the sanction imposed in the other jurisdiction." BR 3.5(b).

Respondent has the burden of proving that due process of law was not afforded to him in New Zealand. BR 3.5(e). The hearing was conducted in accordance with BR 5.1 and 5.3, as dictated by BR 3.5(g).

THE NEW ZEALAND PROCEEDINGS

New Zealand's disciplinary system is similar to ours. The proceedings first were before the New Zealand Lawyers and Conveyances Disciplinary Tribunal ("Tribunal") and then before the High Court on appeal.

A. The Tribunal Proceeding

When complaints against respondent were made they were investigated by the Standards Committee of the Wellington Branch of the New Zealand Law Society ("Standards Committee"). The Standards Committee was charged with investigating the complaints and deciding whether formal charges should be filed against respondent. Respondent was told of and participated in the investigation.

Respondent was notified of the complaints and he provided a response, similar to the procedures employed in Oregon. The Standards Committee appointed an investigator and the investigator met with respondent. He provided the investigator with some documents, but declined to provide others that had been requested. The Standards Committee told respondent when it would consider the complaints and invited him to submit any materials he wanted the Standards Committee to consider in deciding whether the case should be forwarded to the Tribunal.

On June 19, 2013, the Standards Committee filed charges against respondent alleging twelve rule violations relating to two client complaints as well as to respondent's failure to cooperate with the Standards Committee.[1] The charges were accompanied by five affidavits, which were given by the two clients, the instructing solicitor who had instructed respondent,[2] the investigator, and a Legal Standards Officer for the New Zealand Law Society Lawyers Complaint Service.[3]

The charges were accompanied by a "Bundle of Documents." It consisted of twenty-seven separate items. They included, among other things, correspondence between respondent, his clients, and his clients' subsequent legal representatives; the complaints filed with the Law Society; respondent's written responses to the complaints during the investigation; respondent's

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[1] Ex. 1.

[2] Barristers who practice in court often need to receive their instructions from an instructing solicitor rather than from the client directly.

[3] Ex. 2.

written responses to the investigator; the investigator's report to the Standards Committee; Notices of Hearings before the Standards Committee; and Notices of Determination by the Standards Committee.[4] Respondent had adequate notice of the charges against him.

Sometime in 2013, respondent left New Zealand and returned to the United States. The authorities found it difficult to find and serve him with the documents that started the formal proceeding before the Tribunal, but on October 1, 2013, the charges, affidavits, and Bundle of Documents were ultimately served by substitute electronic service.[5] On November 6, 2013, respondent filed a response to the charges along with an affidavit explaining why he did not believe he violated any rules.[6]

On January 31, 2014, the Tribunal held a conference call with the parties. They discussed the procedure for the hearing.[7] During the call, respondent stated that he would not return to New Zealand to appear in person at the hearing.[8] The judge told respondent that a personal appearance was required if he wished to participate in the hearing and that the hearing would proceed even if he were not present.[9]

As an accommodation, it appears that counsel for the Standards Committee, Timothy McKenzie, proposed that the parties proceed based on written submissions. He reasoned that there did not appear to be any material facts in dispute or credibility determinations to be made.[10] He also noted that the response to the charges presented only legal questions.[11] McKenzie testified at this hearing that respondent seemed receptive to his proposal to proceed on written submissions and the judge set the matter for further hearings.[12]

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[4] Ex. 3.
[5] Exs. 2-3; Ex. 35.
[6] Exs. 6-7; Ex. 35.
[7] Exs. 35, 36, 37, 39.
[8] Ex. 39.
[9] Ex. 39.
[10] Ex. 39.
[11] Ex. 39.
[12] Ex. 39.

The Standards Committee filed its written submissions on February 25, 2014.[13] On March 30, 2014, respondent asked for an extension of time to file his submissions, which was granted.[14] On May 13, 2014, respondent asked for another extension of time.[15] On November 5, 2014, the hearing on the merits was set for November 28, 2014.[16] Respondent filed his submissions two days before, on November 26, 2014. He did not raise the possibility of a video or telephone appearance at that time.[17] In fact, he did not broach the subject between the January 31, 2014 conference call and the November 28, 2014 hearing. He also made no request to reschedule or adjourn the hearing to allow him to attend in person.[18]

The hearing took place on November 28, 2014.[19] The Tribunal consisted of five members: a retired judge, two lawyers, and two public members. Respondent did not appear. In his absence, the Tribunal proceeded to a formal proof hearing. The Standards Committee had to prove the charges to New Zealand's standard of proof, which is a balance of probabilities.[20] The Tribunal conducted a short hearing, considered both parties' submissions, and on December 9, 2014, issued an opinion striking respondent from the Roll of Barristers and Solicitors.[21]

B. The High Court Proceeding

Respondent appealed the decision to the High Court on January 22, 2015.[22] During 2015 respondent filed multiple pleadings with the High Court addressing various issues, including security for costs on appeal, several amended notices of appeal, leave to file new evidence, and

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[13] Ex. 8.
[14] Ex. 35.
[15] Ex. 35.
[16] Ex. 35.
[17] Exs. 9, 40.
[18] Exs. 35, 40.
[19] Ex. 10
[20] Respondent mentioned, without elaboration, possible due process concerns resulting from an evidentiary standard in New Zealand that is less than our clear and convincing standard. The issue is irrelevant here, however, since there were no disputed issues of fact where the standard of proof would come into play.
[21] Exs. 8, 10.
[22] Ex. 11.

supporting affidavits.[23] Respondent's affidavits also addressed his health, residency, and financial condition.[24] During the course of the appeal, respondent returned to New Zealand.

In January of 2016, the parties filed submissions on the merits.[25] Respondent raised due process arguments. He claimed he had been deprived of "natural justice," the New Zealand equivalent of due process, when he was not allowed to appear by telephone at the Tribunal's hearing. He also argued that he was denied natural justice when the Tribunal considered the issue of sanction even though he had not addressed that issue in his written submissions.[26]

On February 5, 2016, the High Court held a substantive hearing on the appeal. Respondent was present and participated. The High Court and the parties discussed respondent's natural justice argument about the denial of a telephone appearance at the Tribunal hearing.[27] Four days later the High Court issued a Minute Order asking respondent if he accepted statements by McKenzie as an accurate summary of the January 31, 2014 conference call. If not, the High Court invited the parties to submit further affidavits.[28] Respondent filed an affidavit on February 18, 2016, and the Standards Committee filed an affidavit from McKenzie on February 22, 2016.[29]

The High Court heard the appeal as a rehearing. It could have confirmed, reversed, or modified the Tribunal's decision.[30] The High Court was required to reach its own decision on the merits. It owed no deference to the Tribunal's findings.[31]

The High Court issued its decision on August 1, 2016. In considering the entire record, including the additional evidence respondent submitted on appeal, as well as respondent's

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[23] Exs. 12- 20, 27-28.
[24] Exs. 14, 15, 17, 18, 19, 20, 28, 33, 37.
[25] Exs. 32-34.
[26] Ex. 32.
[27] Ex. 36.
[28] Ex. 36.
[29] Exs. 37-39.
[30] Exs. 31, 34.
[31] Ex. 34.

natural justice arguments, the High Court dismissed five of the charges, but confirmed the guilty findings on the other six. It also affirmed the penalty of striking respondent from the Roll.[32]

As to the Tribunal hearing, the High Court found that the parties' written submissions did not show a need for a hearing on evidentiary matters, "nor did they point to any evidential issues that were in dispute."[33] The High Court further found that McKenzie's proposal to accept the evidence and then argue the law on written submissions was not challenged by respondent.[34]

As to the natural justice arguments, the High Court found that the Tribunal should have exercised discretion to allow respondent to participate in its hearing by telephone due to his financial condition. However, the High Court further concluded: "Mr. Skagen was given the opportunity to have this matter reviewed following the filing of submissions. He did not raise the matter again pursuant to that opportunity. He proceeded on the basis the [Standards Committee] had proposed. In these circumstances no breach of his right to be heard occurred in this respect."[35]

As to the sanction, the High Court found that the Tribunal should have allowed respondent to file further submissions on the question after it found him guilty of misconduct. It again concluded, however, that, "Mr. Skagen had a full opportunity to present evidence and submissions in respect of penalty on this appeal. He has filed detailed medical evidence as well as the decisions in Oregon concerning the disciplinary matters he faced in that jurisdiction. These are the matters he would like to have put before the Tribunal."[36]

The High Court considered all of respondent's new evidence on the issue of sanction. The High Court said that it was, "[s]atisfied that the essential concerns about Mr. Skagen's

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[32] Ex. 40. The Standards Committee originally filed twelve charges. It voluntarily dismissed an excessive fee charge at the November 28, 2014 hearing. *See* Ex. 10.
[33] Ex. 40.
[34] Ex. 40.
[35] Ex. 40.
[36] Ex. 40.

conduct are covered by the charges which were upheld. The matters were serious.... His conduct was poor and fell well below that expected of a barrister. The Tribunal was correct to find that overall his conduct was dishonourable." Considering all relevant factors, the High Court was, "[u]nable to accept Mr. Skagen's submission that he should have been subject to a penalty less than being struck off the Roll." The High Court held that the penalty was appropriate.[37]

On August 5, 2016, respondent filed an affidavit in support of an Application for Recall of the High Court's August 2, 2016 Judgment.[38] Respondent filed submissions in support of his request on October 7, 2016. A hearing was held on the Application for Recall on October 18, 2016.[39] The High Court dismissed the Application for Recall on November 22, 2016.[40] Respondent did not appeal the High Court's judgments to the New Zealand Court of Appeal.

ANALYSIS

Respondent has the burden of proving that he was denied due process in the New Zealand disciplinary action. BR 3.5(e).

"The essential elements of due process in the context of a lawyer discipline proceeding are notice and an opportunity to be heard and defend in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction of the cause." *In re Devers*, 328 Or at 232; (quoting *In re Farris*, 229 Or 209, 214, 367 P2d 381 (1961)); *In re Sanai*, 360 Or at 527 (quoting *In re Devers, supra*).[41] This is the yardstick by which we measured the New Zealand process.

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[37] Ex. 40.
[38] Ex. 41.
[39] Ex. 42.
[40] Ex. 43.
[41] The Bar argues that the Oregon Supreme Court has rarely found a due process violation in disciplinary proceedings. It cites a number of cases: *In re Sanai*, 360 Or at 517-35 (no denial of due process based on: challenge to the impartiality of Washington Supreme Court where lawyer showed no personal interest by any justice; argument that regional chair, not state chair, appointed trial panel members in violation of procedural rule; or panel's denial of respondent's motion to have his lawyer/brother admitted *pro hac vice* to represent respondent mere days before the hearing.); *In re Devers*, 328 Or at 235 (no due process violations where panel denied respondent's motions to have counsel appointed to represent him, to reschedule the hearing, or to disqualify a panel member filed six months after the hearing;); *In re Paulson*, 341 Or 542, 546, 145 P3d 171 (2006) (no denial of due process based on appointment of disciplinary board members); *In re Harris*, 334 Or 353, 364, 49 P3d 778 (2002) (no denial of due process for failing to provide counsel to a respondent); *In re Lenske*, 269 Or 146, 163, 523 P2d 1262 (1974) (no due

A. Respondent Was Afforded Due Process in New Zealand

We find that respondent received due process of law, or natural justice, in the New Zealand proceeding. Respondent had notice of the charges against him and opportunities to be heard before the Tribunal and the High Court. Before the Tribunal, respondent filed a response to the charges, a supporting affidavit, and his own written submissions regarding why his conduct did not violate any of the specified rules. The High Court found that respondent had agreed with the Standards Committee's proposal to accept the evidence and argue the law by written submissions. The Tribunal considered all of respondent's arguments before making its decision. Nothing further was required.

The High Court also held that respondent could have moved to participate at the hearing by telephone or moved to adjourn the proceeding to a time when he returned to New Zealand (which he did do during his appeal), but he failed to do so. He filed multiple pleadings between January 31, 2014, and the Tribunal's hearing on November 28, 2014, and could have made such motions then. The Tribunal's insistence on a personal appearance did not deprive respondent of due process. Moreover, he appeared in person at the re-hearing before the High Court and was able to make all of the arguments he would have made before the Tribunal.

Respondent was not denied due process when the Tribunal considered the issue of sanction without affording respondent a chance to address the issue in writing. The High Court found that respondent was able to fully brief the issue on appeal. Respondent did present all the evidence to the High Court that he would have presented to the Tribunal on the question.

The High Court's standard of review was equivalent to the *de novo* review used by the Oregon Supreme Court. The High Court independently considered all of the evidence and

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process violation where lawyer was not allowed to explain prior inconsistent testimony before complaint was filed because he had full opportunity to do so before trial committee). The general trend is not without an exception however. *See In re Hendrick*, 346 Or 98, 105, 208 P3d 488 (2009) (board chair erred in denying peremptory challenge to second appointed panel after first panel was dismissed).

arguments, including that which respondent said had not been considered by the Tribunal. On that complete record, and after dismissing certain of the charges, the High Court still concluded that the penalty imposed was appropriate. Even if one could find some fault with the Tribunal's proceedings, it was remedied completely when respondent was able to present his entire case to the High Court.

Although he did not discuss this issue at the hearing before this panel, respondent had argued in New Zealand that he was denied natural justice because the Tribunal did not consider his challenge to a panel member. We agree with the High Court that such a claim is without merit. Respondent mentioned the issue in his appeal, but the High Court found that he did not identify it as a grounds for appeal. It also noted that he did not pursue it before the Tribunal. He never filed any motion or other pleading challenging any of the Tribunal's members based on allegations of bias. Respondent apparently sent an email saying he was "uncomfortable" with a panelist, but he never moved to strike him from the panel. This argument was unpreserved before the High Court and we find that respondent did not take any steps that would make it possible for us to consider the issue here. Any objection to the alleged impartiality of a panel member must be made at least by the time of trial in order to be preserved for consideration. *In re Devers*, 328 Or at 235 (respondent's motion to disqualify a panel member six months after completion of hearing was untimely and thus unpreserved). Proceeding before the panel as constituted was not a denial of due process.

B. Respondent's Misconduct Would Subject Him to Disbarment in Oregon

Respondent's misconduct is set forth in the High Court's August 2016 judgment. Respondent committed multiple disciplinary violations, first against two separate clients, and then against New Zealand's regulatory authority. In both cases, respondent took flat fees for his

work, deposited the funds, failed to complete the representation, and then refused to refund the unearned portions of his fees to clients.[42]

Respondent then failed to protect his clients' interests when he learned the original instructing solicitor had a conflict and was unable to act for one of respondent's clients and when he continued practicing after learning his practicing certificate had expired.[43]

Respondent failed to keep a client reasonably informed about the status of an ongoing court proceeding and the client's discovery obligations, which caused his client to incur court costs. He failed to tell the client that his practicing certificate had expired and that he could not continue the representation.

After the clients complained, respondent failed to cooperate with the regulatory authority. He refused to provide bank statements to the Standards Committee's investigator.[44]

We agree with the Bar that this conduct would violate nine Rules of Professional Conduct and one statute in this state.[45]

Respondent also has prior disciplinary history for similar violations.[46] Given the number of instances of misconduct and the aggravating effect of his prior disciplinary history, disbarment

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[42] Tr. Ex. 40; Petition for Reciprocal Discipline, ("Petition), Ex. 45, pp. 2-6.

[43] *Id.*

[44] *Id.*

[45] RPC 1.3 [neglect]; 1.4(a) [duty to keep a client reasonably informed about the status of a matter]; 1.4(b) [duty to explain a matter to permit client to make informed decisions regarding representation], 1.5(a) [charging or collecting an excessive fee]; 1.15-1(d) [duty to render a full accounting regarding the client's funds and property]; 1.16(d) [duties upon termination of representation]; 5.5(a) [practicing law in violation of regulations of the profession]; 8.1(a)(2) [duty to respond to disciplinary counsel]; 8.4(a)(4) [conduct prejudicial to the administration of justice]; and ORS 9.160(1) [practicing law or representing that person is qualified to practice law when not an active member of the Bar].

[46] Respondent has been suspended twice by the Oregon Supreme Court and a trial panel for similar violations as those found in New Zealand, including multiple trust account violations, dishonest conduct, charging or collecting an excessive fee, engaging in conduct prejudicial to the administration of justice, failing to cooperate and respond fully and truthfully to disciplinary counsel, failing to deposit and maintain client money in lawyer trust account until earned, and failing to safeguard client property. *In re Skagen,* 342 Or 183 (2006); *In re Skagen,* 22 DB Rptr 292 (2008).

would not result in grave injustice or be offensive to public policy. On the contrary, we believe that disbarment is appropriate and warranted.

The Oregon Supreme Court refers to the ABA *Standards for Imposing Lawyer Sanctions* ("*Standards*"), in addition to its own case law, for guidance in determining the appropriate sanctions for lawyer misconduct. The most important ethical duties a lawyer owes are to his clients. *Standards* at 5. A lawyer who engages in multiple instances of misconduct and fails to cooperate with disciplinary authorities is recognized as a threat to the profession and the public. *In re Bourcier* (II), 325 Or 429, 436, 939 P2d 604 (1997).

The Oregon Supreme Court has consistently disbarred lawyers where the lawyers' collective misconduct demonstrated an intentional disregard for their clients, their professional obligations, and the disciplinary rules. While "[c]ase-matching in the context of disciplinary proceedings is an inexact science," the court has held that, "We have ordered disbarment for conduct that otherwise would justify a long suspension when the accused has a history of misconduct that has resulted in prior disciplinary sanctions." *In re Paulson*, 346 Or 676, 721-22, 216 P3d 859 (citing *In re Miller*, 310 Or 731 (1990)).

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

Failure to cooperate with the regulatory authorities after having already been disciplined has also led to disbarment. *In re Bourcier II*, 325 Or at 436. In that case the court found that the attorney's failure to cooperate with the Bar's investigation occurred after he had received the maximum sanction, short of disbarment, for similar misconduct. Continued misconduct in the face of the lawyer's own disciplinary experience, was "particularly serious." *Id.* at 436. "[T]he accused repeatedly failed to respond to inquiries from the Bar after this Court already had disciplined him, with a three year suspension, for the same misconduct." *Id.* Although the respondent there had committed only two violations, neglect and failure to cooperate in a disciplinary investigation, disbarment was warranted given the chronology of his misconduct. *Id.* at 435-36.

In the New Zealand case, respondent committed nine separate rule violations towards his clients and the regulatory authority beginning in 2011 after having been disciplined for similar misconduct in Oregon in 2006 and 2008. We are compelled to find that respondent's conduct demonstrates a persistent disregard for the Rules of Professional Conduct, the duties that he owed to his clients, to the public, and to the profession, and that disbarment is the only appropriate sanction.

C. Additional Legal Challenges Raised in Respondent's Amended Answer are Denied

Respondent also raised two additional arguments in an amended answer on the eve of trial. BR 3.5(a) provides, in relevant part, that reciprocal discipline can be sought when the Bar learns "that an attorney has been disciplined for misconduct in another jurisdiction..." Respondent contends that the term "jurisdiction" in the rule must be limited to jurisdictions in the United States. He argues that the rule must specifically state that it includes jurisdiction in foreign countries before reciprocal discipline can be imposed based upon the sanction imposed by New Zealand.

We reject this challenge. The plain language of BR 3.5 uses the term "jurisdiction" without limitation. As such, New Zealand qualifies as a "jurisdiction" under the terms of the rule. We will not add a limitation to the plain language of the rule that the drafters omitted. When the Bar has intended to limit the term "jurisdiction" in the RPCs to the United States alone, it has done so in the past. *Compare former RPC 5.5(c) and (d)* ("...admitted in another United States jurisdiction...") *and current RPC 5.5(c) and (d)* ("...admitted in another jurisdiction..."). The Bar submitted a November19, 2014 letter from Helen M. Hierschbiel, General Counsel to the Bar, to The Honorable Thomas A. Balmer, Chief Justice of the Oregon Supreme Court, in which Hierschbiel explained that the change to the term "jurisdiction" without limitation was meant to include practitioners admitted in jurisdictions outside the United States within the ambit of the rule.[47]

Respondent's argument is also premised on the assertion that disciplinary proceedings are "quasi criminal" in nature. Disciplinary proceedings in Oregon are defined as "sui generis," neither civil nor criminal. BR 1.3. Respondent's cited cases involving criminal convictions are not instructive here.

Respondent further argues that ORS Chapter 24 applies here and prevents the imposition of discipline based on a foreign judgment. Chapter 24, however, applies to money judgments, not to the imposition of discipline, even through a document titled "judgment." BR 3.5(b) authorizes the imposition of reciprocal discipline based upon a "...judgment, order, or determination of discipline..." from another jurisdiction. This proceeding is expressly allowed. Respondent's challenge is without merit.

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[47] Exhibit 1, *Declaration of Courtney C. Dippel in Support of OSB's Response to Respondent's Motion to File an Amended Answer.*

CONCLUSION

For the foregoing reasons, we conclude that respondent is disbarred in Oregon effective on the date this decision is final. Respondent was granted due process in the New Zealand proceedings. His conduct would independently merit disbarment in this state. Imposition of such a sanction is neither a grave injustice nor offensive to public policy.

Dated this 10 day of April, 2019.

Mark A. Turner, Adjudicator

Michael McGrath, Attorney Panel Member

Charles D. Martin, Public Panel Member

Appendix C

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)
	) SC S066706
Complaint as to the Conduct of	)
	)
CHRISTOPHER K. SKAGEN,	)
Accused, OSB 911020	) ACCUSED'S OPENING BRIEF
Pro se	)
	)
Oregon State Bar	)
18149	)
	)
	)

This brief is filed on behalf of Christopher Knute Skagen.

Oregon State Bar Disciplinary Adjudication, Adjudicator Mark A. Turner.

Appellant: Christopher Knute Skagen, *pro se* OSB #911020, 82 Queens Drive, #12, Lyall Bay, Wellington, New Zealand 6022 Ph: 02041242740. skagenlaw@gmail.comm

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Filed: September 2019

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	SC S066706
Complaint as to the Conduct of	)	
	)	
CHRISTOPHER K. SKAGEN,	)	
Accused, OSB 911020	)	ACCUSED'S OPENING BRIEF
Pro se	)	
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Oregon State Bar	)	
18149	)	
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RPC 5.5 25

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The New Zealand Bill of Rights Act 1990. 32, 33, 36, 43

s 40 of the *Lawyers and Conveyancers Act* 2006 14, 35, 54

Lawyers and Conveyancers Act 2006, Section 7(1)(a)(ii). 32, 33, 36, 48

Lawyers and Conveyancers Act (Disciplinary Tribunal Regulations), 2008, Section 33(c). 18, 36, 39, 46

Crimes Act 1961. 50

Geoffrey Marshall, *Due Process in England*, in Nomos XVIII, eds J. Roland Pennock & John W. Chapman, 69-92 (New York: New York University Press) 69.

John D. Orth, *Due Process of Law: A Brief History* (Lawrence, KS: 2003) 30-31. 44

STATEMENT OF THE CASE

(A) Nature and Relief Sought.

This is a disciplinary proceeding brought by the Oregon State Bar seeking reciprocal judgment from the decision by the High Court of New Zealand which struck Accused off the list of Barristers and Solicitors. The Bar is seeking disbarment. The Accused is seeking dismissal of that claim, or appropriate punishment that this Court finds necessary.

(B) Review of Judgment.

The Accused is seeking review of the Trial Opinion of the Oregon State Bar trial Adjudicator, which was a court trial.

(C) Statutory Appellate Jurisdiction.

The statutory basis of jurisdiction for the Oregon Supreme Court is Bar Rule 10.2.

(D) Entry of Opinion and Notice of Appeal. The date of entry of opinion was 10 April, 2019. The Notice of Appeal was served and filed on 7 May, 2019.

(E) Questions Presented on Appeal.

The questions presented on appeal involve:

i) Whether the Bar can ask for a reciprocal lawyer disciplinary judgment from a foreign country;

ii) Whether the High Court judgment violated due process and the First and Fourteenth Amendments of the United States Constitution;

iii) Whether the procedure in the jurisdiction which disciplined the attorney was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process

iv) Whether the Bar can use facts from overseas discipline to construct new charges, and whether the combination of comparable Oregon charges rises to the level of disbarment;

v) Whether the imposition of a sanction equivalent to the sanction imposed in New Zealand would result in grave injustice or be offensive to public policy.

(F) Summary of Arguments.

Assignment of Error 1

'Jurisdiction' is not defined in Bar rules, and it is used here for a reciprocal disciplinary judgment from a foreign country. When seeking reciprocal disciplinary enforcement it must state "a court of a foreign country." Therefore the New Zealand judgment cannot be reciprocated.

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Assignment of Error 2

The statutory standard of evidence in New Zealand is 'on the balance of probabilities.' This standard is not sufficient to allow a finding in Oregon, which requires the higher standard of 'clear and convincing evidence.' The trial panel erred in stating that such evidence standard was sufficient to uphold a disciplinary violation in Oregon. It would be violative of due process to enforce such a judgment in Oregon.

Page 27

Assignment of Error 3

The Accused invoked the substantive due process argument of vagueness which embodies the definition of misconduct in New Zealand. The statute is

autocratic, subjective and majoritarian, violating the United States and Oregon constitutional standards of substantive due process.

Page 32

Assignment of Error 4

The tribunal and the High Court used the defenses and factual and legal arguments in Accused's pleadings as a means of questioning Accused's honesty and inflaming the proceedings, marginalizing and ignoring his evidence. This was a violation of procedural due process and a violation of his substantive due process rights under the First and Fourteenth Amendments of the United States Constitution.

Page 39

Assignment of Error 5

The Law Society suspended Accused from practice without adequate notice or hearing by refusing to issue it based on a lien they claimed over it for court costs. There are no due process procedural rules regarding non-issuance of a practising certificate. Suspension from practice without notice or hearing is a violation of his right to due process.

Page 39

Assignment of Error 6

The Accused was unable to appear at the tribunal hearing by audio/video because they are prohibited by statutory authority at the main hearing and a

defendant must appear in person. He disagreed with material facts. This was a violation of procedural due process.

Page. 45

Assignment of Error 7

The Accused objected to one member of the tribunal panel, his objection was ignored, and there is no formal procedure in New Zealand for such objection. This was a violation of procedural due process.

Page. 51

Assignment of Error 8

The Accused refused production of bank statements and the entirety of client files to the investigator on the basis of client privacy and lawyer/client privilege. The investigator obtained his personal bank account details without a court order and stated that clients and lawyers have no rights in an investigation. This was a violation of procedural due process in that the investigator obtained privileged and private records without a court order.

Page. 52

Assignment of Error 9

Placing the New Zealand charges in the Oregon context is inappropriate and a violation of due process, when only two charges were close. This is a violation of procedural due process.

Page. 56

(G) Summary of Facts.

1. Accused practiced law in New Zealand as a Barrister, and was a member of the New Zealand Law Society, admitted to practice in 2002.
2. In 2006 a judgment was entered in the Oregon Supreme Court referred to as Skagen 1,[1] which suspended him from the practice of law for one year. Accused claimed privilege over presenting the entire contents and history of his trust account, based on privilege. Although the Oregon State Bar attempted to have findings made against him for dishonesty, that charge was not successful.
3. In 2006 the New Zealand Law Society succeeded in having reciprocal charges against the Accused made, and as a result he was censured, and costs in the amount of NZ$4,100 were awarded.
4. In 2008, the Oregon State Bar succeeded in a disciplinary action against Accused for Trust Account errors, Skagen 2.[2] Charges for dishonesty were not upheld. Also, as part of that case, he refused to give the Oregon State Bar copies of his entire trust account. The Oregon State Bar notified him that they had filed proceedings in Oregon Circuit Court for an Order allowing production of his trust account records, which he resisted, and the order was

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[1] *In re Skagen* 342 Or 183, 149 P3d 1171 (2006).
[2] *In re Skagen*, 22 DB Rptr 292 (2008).

granted. The trust account information was provided, and depositions were held for questions about the trust account.

5. In 2007 the New Zealand Law Society brought a disciplinary case against Accused for the 2006 Oregon 1 case and obtained a judgment for which he was censured. In 2009 they took action against the Accused and he was again censured.

6. In 2010 the Accused applied to renew his membership as a Barrister with the New Zealand Law Society. He made an agreement with the Law Society that he would make monthly payments on the 2006 costs award.[3] He ceased making payments on the costs award a few months after beginning practice again.

7. In February 2011 Accused entered into a contract with client E to represent him in a matrimonial (divorce) proceeding. The contractual agreement required the client to pay lump sum of $4,100 for half of the entire proceeding, which was paid.[4]

8. Accused and client E met at the offices of Kevin Smith, a Barrister and Solicitor of the High Court of New Zealand. In order for a Barrister to represent people in New Zealand it is necessary for a Barrister and Solicitor to appoint, or 'instruct' them as legal representative in the proceedings. It is

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[3] Board File Checklist 22, par. 5.
[4] Ex. 40, par. 14.

unlawful for a Barrister to maintain a trust account in New Zealand. At that meeting it was discovered that E's wife had contacted Kevin Smith to represent her in the matrimonial proceedings and therefore Mr. Smith was conflicted out as the 'Instructing Solicitor.' Accused informed client that he would need to find a different Instructing Solicitor.[5] Accused left a telephone message with the client reminding him that he must locate and instructing solicitor in order for him to act.[6]

9. Client found a different lawyer who demanded that Accused return the entire fee, and who later filed a complaint against Accused with the Law Society.[7]

10. In April 2011 Accused was sent a letter notifying him of his failure to make full payments on the Costs Award and demanded full payment.[8]

11. In May 2011 Accused entered into a contract to represent client W in a matrimonial matter for $6,900. Kevin Smith, a Barrister and Solicitor instructed Accused and Accused communicated extensively with W for the preparation of a Property Affidavit. The reason why W hired Accused was because his previous lawyer was unresponsive.[9]

12. Subsequent to being hired by W, Accused communicated with the client, and received email communications and Skype communications regarding

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[5] Ex. 40, par. 20.
[6] Ex. 40, par. 45, Ex. 7, par. 7.
[7] Ex. 40, par. 23.
[8] Ex. 101.
[9] Ex. 40, par. 52.

preparation of his Property Affidavit.[10] W stated in his affidavit, which the prosecutor assisted him in preparing, that Accused had not communicated with him or done anything with regard to the Property Affidavit.[11]

13. Accused appeared at a telephone conference with the Court on 9 June 2011 regarding orders to supply a Property Affidavit by W, and notified the client of the need to provide discovery. Client stated that there were no further communications with the Accused.[12] The client perjured himself, and the prosecutor assisted with that perjury.

14. Accused had communicated fully with the client regarding preparation of a detailed Property Affidavit, and prepared a property affidavit for W that he could have sworn, but the instructing solicitor refused to file it with the court.[13]

15. Accused's membership with the New Zealand Law Society was due to expire 30 June, 2011. On June 23, 2011, one week before his membership was to expire, he was notified by the Law Society that in order for his membership with the Law Society to be renewed, he would have to pay the entire amount of the Costs Award, because his failure to pay the costs order made him unfit to be allowed a practising certificate.[14]

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[10] Board File Checklist 22, par. 18.
[11] Ex. 2, pars. 12 – 14, 17.
[12] Ex. 40, par. 55.
[13] Ex. 40, par. 57, Ex. 7 par. 7.
[14] Ex. 102, Board File Checklist 22, par. 8.

16. Accused notified them on 29 June, 2011 that he was unable to pay the entire amount of the Costs Award, and requested that he be allowed to bring payments current and continue to make payments.[15]

17. Accused's practising certificate lapsed on 30 June 2011.[16]

18. The Fitness for Practice Committee met on 1 July 2011 and decided that Accused's explanations were unsatisfactory and requested financial information in the form of an affidavit by 12 July 2011 showing that he could pay the entire costs amount.[17]

19. On 15 July 2011, Accused was mailed a letter that referred to a formal application and that his practising certificate had lapsed. There was no enclosure included in, or accompanying, the letter.[18]

20. On 18 July 2011, Accused was emailed an application for renewal that required receipt and payment by 19 July 2011.[19]

21. On 19 July 2011, Accused sent an email that notified of his intention to apply for a practising certificate.[20]

22. On 20 July 2011, Accused received an email confirming that a 'renewal pack' was not mailed to him the previous week. The email stated that it was

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[15] Ex. 103, Board File Checklist 22, par. 9.
[16] Exs. 103, 104
[17] Ex. 104. Board File Checklist 22, par. 11.
[18] Ex. 105, Board File Checklist 22, par. 12.
[19] Ex. 106, Board File Checklist 22, par. 13.
[20] Ex. 107, Board File Checklist 22, par. 14.

emailed to him, but the Law Society records revealed no such email, and the Law Society admitted that it had not been sent as stated. He received the first notice at this time for maintaining his practising certificate in a retroactive manner under s 40 of the *Lawyers and Conveyancers Act* 2006.[21]

23. Accused failed to notify W that his Law Society membership had lapsed and that he would be unable to represent him in court.

24. Although the Accused had prepared a Property Affidavit that he could have signed, the Instructing Solicitor, Kevin Smith, refused to file the Property Affidavit[22] and appeared by telephone with the Accused, who notified the Court that he was unable to file the Property Affidavit, and could not 'appear' at that hearing because his Law Society membership had lapsed. The Instructing Solicitor refused to 'act' for the client. The Court awarded costs against W and Accused in the amount of $800.[23]

25. Accused received a letter from the Law Society dated 3 August 2011 declining his application for a practising certificate based on the fact of non-payment of the costs order which made him 'disgraceful and dishonourable,'[24] such finding being grounds for discipline in New Zealand.

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[21] Ex. 108, Board File Checklist 22, par. 15.
[22] Ex. 110, Ex. 17, par. 10.
[23] Ex. 40, par. 58.
[24] Ex. 109.

26. On August 29, 2011 Accused met with the Law Society investigator twice and said he would provide all information on the two complaining clients, but that records of personal bank deposits and client files were protected by privilege. He had two meetings with the Law Society investigator, who demanded that he produce all bank records and all client files for him to view. Accused stated that he would give the investigator all records of both clients, but refused to provide all bank records and client files on the basis that all client bank records and client files were protected by lawyer/client privilege.[25]

27. In October 2011, Accused emailed all client files of E and W to the investigator.[26]

28. In October 2011, Accused met with the investigator again to discuss the complaints. The investigator placed a sheet before Accused of his personal bank account records and began asking him about every deposit made into that account. The investigator informed Accused that he had obtained his bank records from his bank because he was entitled to do that without a court order. Again, Accused objected to answering questions about other clients and deposits into his account, and also objected to the investigator obtaining his account information without hearing or a court order.[27]

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[25] Ex. 40, par. 71.
[26] Board File Checklist 22.
[27] Ex. 40, par. 71.

29. Accused was not informed how the investigator obtained his bank account information, and whether he had been given authority to investigate all matters about both clients.[28] He was ". . . adamant that neither I nor my clients had any rights limiting searches by him of bank records, and that his police powers of search were absolute and untampered by any laws of restraint or objections of privilege. He stated that there was no privilege available to lawyers or clients that were the subject of a Law Society investigation."[29] The issue of the investigator's authority was raised with the High Court on appeal, and was brushed aside.[30]

30. On June 19, 2013, 2013 the Standards Committee filed charges against Accused alleging 12 rule violations relating to two client complaints in addition to Accused's failure to fully cooperate with the Standards Committee.[31]

31. Recalling that he had changed his email address with the Law Society in 2011,[32] Accused waited until he was contacted at that email address, promptly responded and accepted service by email.[33]

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[28] Ex. 17, par. 17.
[29] Ex. 17, pars. 19-20.
[30] Ex. 40, pars. 80-81.
[31] Ex. 40, par. 7.
[32] Ex. 17, par. 25.
[33] Ex. 40, par. 8.

32. In an email to the Standards Committee case officer dated 14 October 2013, Accused stated "having reviewed the panel, I would object to the inclusion of Wayne Chapman as a member, as his presence would make me uncomfortable."[34] " . . . I learned that he had been disciplined and had since taken it upon himself to campaign vigorously and unreasonably against any lawyer accused of disciplinary violations."[35] There was no response to that objection and it was not further pursued.

33. On November 6, 2013 Accused filed responses to the charges with an affidavit reciting facts in support of his denials.[36]

34. On January 31, 2014, the Tribunal held a conference call with the parties to discuss the case.[37] Accused stated that he was unable to attend the hearing in person because he could not afford to travel to New Zealand.[38] He also requested that the hearing take place by telephone, which was refused. The prosecution suggested that the hearing take place on the papers. Accused was uncertain whether there were evidential issues. It can request witnesses be called, but it did not. The Accused filed an affidavit in the High Court regarding this meeting and disagreements about evidence and the law were both raised at that meeting.

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[34] Ex. 40, par. 9.
[35] Ex. 17, par. 26.
[36] Ex. 40 par. 9, Ex. 6.
[37] Ex 35, 36, 37, 39
[38] Ex. 39

35. His application to be present was denied because a person must, according to the rules, be physically present at the substantive hearing.[39]

36. In February, 2014 Accused had an aortic aneurysm, which the doctor stated could be operable, but that it would probably kill him, so he chose to leave the aneurysm in place. A friend allowed him to stay in his home for 4 months while he was healing.[40] In June, 2014, Accused had another aortic aneurysm that was bleeding and required open chest surgery. His stepson housed him to heal and he later spent 2 weeks with a cousin. In late July he returned to the homeless shelter.[41] Accused's Oregon physician, Elis Madrigal MD, swore an affidavit and related the two aortic aneurysm events.[42]

37. The prosecution stated in its 'Submissions'[43] regarding E that Accused was disingenuous and dishonest, and that his actions were disgraceful and

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[39] *Lawyers and Conveyancers Act (Disciplinary Tribunal Regulations)*, 2008, Section 33(c):
Sittings of Disciplinary Tribunal using telephone conference or video link. The chairperson may at any time convene a sitting of the Disciplinary Tribunal by telephone conference or video link for all or any of the following purposes:

> (c) to consider any other matters involved in an inquiry or hearing, other than the substantive hearing of charges or other proceedings:

[40] Ex. 40, par. 10.
[41] Ex. 17, pars. 30-32.
[42] Ex. 18, Affidavit Madrigal.
[43] Ex. 8 par. 25.

dishonourable. Accused was not charged with being disingenuous and dishonest. The prosecution alleged that Accused had done no work for W, and that it bordered ". . .on cynical and dishonest offending . . ."[44]

38. In their judgment, the panel found that Accused's 'position' with regard to E was 'disingenuous and dishonest' and 'dishonourable and disgraceful,' agreeing with the prosecution's submissions.[45]

39. The panel also agreed with prosecution's dishonesty submissions regarding W, stating that he had behaved in a similar manner.[46]

40. Accused discovered a retirement account that had built up over the years which could be accessed if a person was disabled, cashed it in and travelled back to New Zealand.[47]

41. After his return to New Zealand, Accused filed an appeal in the New Zealand High Court against the decision of the tribunal on January, 2015.[48] It was necessary for him to travel back to New Zealand in order to appeal, because his case had to be heard in person.

42. An Application for Security for Costs was filed by the Law Society, which was granted.[49] If there is doubt that a person cannot afford to pay a 'costs

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[44] Ex. 8 par. 29.
[45] Ex. 10, par. 18.
[46] Ex. 10, par. 32.
[47] Ex. 12, par. 4.
[48] Ex. 11.
[49] Ex 12.

order' (which is opposing lawyer fees awarded if they succeed), then the court can require a person post 'security for costs' in order to continue the litigation, or it will be dismissed.

43. Accused applied to file an affidavit[50] containing further information, which was granted.

44. Accused filed an Application to Recall Judgment. In response, a hearing was held and the final judgment was issued on December 16, 2016. The reason for the application involved five issues that Judge Mallon had not considered in her previous judgment: his actions were lawful under contract law, the defense of privilege to the investigators demands was lawful, the Standards Committee had breached the law and were liable for damages, that his right to natural justice was breached in relation to sentencing, and that there were evidentiary issues.[51]

45. The High Court upheld the findings of the Disciplinary Tribunal, but did not allow costs against the Accused.[52]

46. The Accused decided that to further appeal the High Court proceedings could kill him because of his remaining aortic aneurysm. His aneurysm was surgically repaired internally by a graft successfully in 2018. Before surgery Accused decided that if he survived surgery he would file an Application for

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[50] Ex 17.
[51] Ex 1 par. 2.
[52] Ex 40.

... with the New Zealand Court of Appeals. Approximately two weeks after surgery he was served papers for reciprocal disbarment by the Oregon State Bar.[53]

47. Prior to the Bar hearing the Accused discovered an email sent to the Law Society investigator in 2011 which included several items proving that he had done a significant amount of work for W and that he had prepared a Property Affidavit based on significant communications with the client by email and using Skype.[54]

48. The affidavit of W[55] stated that Accused had not communicated with the client about the Property Affidavit, and had not worked on his case, except for a conference with the Court.

49. At the Bar hearing, the witness, Timothy MacKenzie, prosecuting lawyer, stated that he assisted W in preparing his Affidavit for Hearing, and admitted having viewed all of the evidence in possession of the investigator. He also stated that he had viewed the email and its accompanying exhibits that had been sent to, and received by the investigator.[56]

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[53] Board File Checklist, 22.
[54] Board File Checklist 22, par. 18.
[55] Ex. 2. Affidavit W.
[56] Transcript pages 109-111

50. Mr MacKenzie, in his Submissions to the Tribunal, alleged that the facts were the same surrounding E and W, that the Accused had treated both clients in the same fashion, and that, like E, he had done no work for W.

51. Mr. MacKenzie also alleged that Accused's pleadings, in stating he had done no work for W, was disingenuous, and that Accused's statements bordered on being dishonest.[57]

52. The Tribunal accepted the submissions of Mr. MacKenzie in their entirety, and stated, "We agree with counsel's submission that it borders on cynical and intentional dishonesty that Mr. Skagen, having concluded his conduct in respect of Mr. Edmeades, went on to behave in a similar manner towards Mr. Wolvetang."[58] which reflected his submissions almost exactly.

53. Subsequent to the Bar hearing, Accused filed a Motion to Amend Answer which was ignored by the Bar and the adjudicator.[59]

of the case material to determination of the appeal. The summary shall be in narrative form with references to the places in the transcript, narrative statement, audio record, record, or excerpt where such facts appear.

(11) A Motion to Abate was filed in this appeal, which was denied, and the Accused was instructed to refile it if his disciplinary case was reopened in New Zealand.

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[57] Ex. 8, Par. 9.
[58] Ex. 10, par. 32.
[59] Board File Checklist 25.

(12) Respondent's Exhibits 101 - 110, marked and introduced at trial, do not appear to have yet made it into the record.

INTRODUCTION

This is the first reciprocal disciplinary case in the United States of its kind. There was one other case, which was dismissed because it involved a criminal conviction from a foreign country. New Zealand's legal principles and modes of practice, while similar, display subtle yet remarkable differences, and there are also important factual, legal and procedural elements extant.

Throughout this process the Accused has disputed the facts as stated by the prosecution. The reason is that partiality is a subtle yet powerful influence reflected in decision making. An even greater reason is that in Bar proceedings the truthfulness of the accused is usually questioned and they are charged with dishonesty, as the Accused has in two prior Bar proceedings and these New Zealand proceedings. Bar proceedings are an inflammatory process which question the honor of the accused.

The Accused is a man who adheres to the freedoms contained in the United States Constitution and the *New Zealand Bill of Rights Act* 1990, and he has maintained a position of privacy towards his client information because that is what he is paid to maintain for the rest of his life. His disciplinary history reflects that position with consistency and he has paid a heavy price; freedom from investigations desiring to turn his practice upside down in violation of his

rights of privacy and the rights of his clients in order to see what violations they can uncover.

1. FIRST ASSIGNMENT OF ERROR

Procedure for recognition of a foreign-country judgement is governed by ORS 24.370.[60] Under subsection (1) the Bar has filed an original action, and in subsection (2) the Accused has raised as an affirmative defense. In order for a judgment to be enforced, the originating statute must state must not just state 'judgment,' as in BR 3.5(a), but it must state 'and a court of a foreign country.' Therefore the judgment from New Zealand cannot be enforced reciprocally.

(A) Preservation of Error. Amended Answer (Board File Checklist 21), page 5, Affirmative Defenses 1 and 3, such pleading being in compliance with ORS 24.370 (2). The Adjudicator stated that a letter from Bar Counsel to Chief Justice Thomas A. Balmer in 2014 resolves the issue, stating:

> "The Bar submitted a November 19, 2014 letter from Helen M. Hierschbiel, General Counsel to the Bar, to The Honorable Thomas A Balmer, Chief Justice of the Oregon Supreme Court, in which Hierschbiel explained that the change to the term "jurisdiction

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[60] ORS 24.370. Procedure for recognition of a foreign-country judgment.
(1) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.
(2) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim or affirmative defense.

without limitation was meant to include practitioners admitted in jurisdictions outside the United States within the ambit of the rule."[61]

The letter does not address foreign country disciplinary judgments or reciprocal disciplinary prosecution. Neither BR 3.5 (a), nor RPC 5.5 define jurisdiction or include a judgment from a foreign country jurisdiction, or meet the requirement of *Small v. United States*, 544 U.S. 385 (2005); cf *In re Wilde*, 68 A.3rd 749 (D.C. 2013).

RPC does not contain a definition of jurisdiction. *RPC 5.5* contains no reference to foreign jurisdictions, except as an addendum it compares the old version with: "Amended 02/XX/15: Phrase "United States" deleted from paragraphs (c) and (d), to allow foreign-licensed lawyers to engage in temporary practice as provided in the rule."

(B) Standard of Review. De novo. ORS 24.370, BR 3.5 (c) (e).

Argument

A New Zealand judgment for lawyer discipline is invalid in Oregon because, for reciprocal judgments, jurisdiction is not defined as 'jurisdiction of a foreign country.' There are cases in the United States that look at the construction of the originating statute and whether it was intended to apply to judgments of a foreign country. Although the cases deal with criminal

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[61] Post trial Exhibit 1 *Declaration of Courtney C. Dippel in Support of OSB's Response to Respondent's Motion to File an Amended Answer.* Listed in RTB as # 24.

judgments outside of the United States, and in a foreign country, it is submitted that lawyer disciplinary proceedings of a foreign country, being *sui generis* in nature as applied in the United States, bring characteristics of criminal convictions in the same manner that criminal convictions in Oregon can result in disbarment. The Accused was disbarred in a foreign country.

One case relied upon was *Small v. United States*, 544 U.S. 385 (2005). It involved charges with Federal firearms offenses, and turned on interpretation of 'any' court. It sought reciprocal conviction in the United States for conviction of firearms offenses in Japan. The Supreme Court held that if Congress had intended to include overseas jurisdictions, then it would have used the language "and a court of a foreign country."

The Adjudicator's arguments are not sufficient to overcome the judgment in *Small*. The language in the Bar Rules is simply 'judgment,' and this does not contain the required words "and a court of a foreign country," so therefore it does not comply with that requirement. Contextually the purpose of these regulations are entirely different. BR 3.5(a) is for out of state discipline and RPC 5.5 is for a lawyer to appear in an Oregon court. RPC do not include jurisdiction in 'definitions,' nor is there any reference to jurisdiction in any of the other 'disciplinary' definitions.

In re Wilde, 68 A.3rd 749 (D.C. 2013) was a disciplinary case that sought immediate suspension of a lawyer for a criminal conviction in South Korea. It

followed the same analysis as that used in *Small* to infer that if the disciplinary language had specified 'judgment of a foreign country,' then it would apply. The court considered *Small* important in its considerations because the D.C. statute did not include in its language 'courts of a foreign country.'

The plain meaning of 'jurisdiction' is intended to refer to State and Federal jurisdictions, but not the expansive rule covering jurisdictions over the entire planet. RPC *1.2*, Authority. "These "Rules of Procedure" are adopted by the Board and approved by the Supreme Court pursuant to ORS 9.005(8) and ORS 9.542, and govern exclusively the proceedings contemplated in these rules except to the extent that specific reference is made herein to other rules or statutes." There is no specific reference made to any New Zealand rules or statutes, and because any disciplinary judgment made in New Zealand is based on its own rules and statutes, New Zealand discipline cannot be considered under the Oregon rules. If the Bar Rules of Procedure had meant to include the jurisdiction of a foreign country, then it would have stated it clearly.

2. SECOND ASSIGNMENT OF ERROR

The statutory standard of evidence in New Zealand is 'on the balance of probabilities.' This standard is not sufficient to allow a finding in Oregon, which requires the higher standard of 'clear and convincing evidence.' The trial panel erred in stating that such evidence standard was sufficient to uphold a disciplinary violation in Oregon.

A. Preservation of Error. The Accused preserved this error as an Affirmative Defense in his Amended Answer at paragraph 10, (Board File Checklist 21). He also argued this in Respondent's Hearing Memorandum at pages 11-13, (Board File Checklist 23).The Adjudicator stated in footnote 20 on page 5 of his opinion regarding 'the balance of probabilities:

> "Respondent mentioned, without elaboration, possible due process concerns resulting from and evidentiary standard in New Zealand that is less than our clear and convincing standard. This issue is irrelevant here, however, since there were no disputed issues of fact where the standard of proof would come into play."

(B) Standard of Review. De novo. The Accused has the burden of proving he was denied due process because of the lower standard of evidence. Bar Rule 3.5(e).

Argument

The standard of evidence in New Zealand disciplinary matters is 'on the balance of probabilities.'

The standard of evidence required to pass judgment on a lawyer in New Zealand is 'on the balance of probabilities,' pursuant to Section 241 of the *Law Practitioners Act* 2006, whereas the standard of evidence in Oregon disciplinary proceedings, which are considered *sui generis*, is 'clear and convincing evidence.' In all of the cases involving 'clear and convincing evidence,' it is required that the prosecution not just make an inference, but that the lawyer knowingly and deliberately violated a rule without justification. Throughout,

Accused has alleged privilege as his basis and justification for refusing to divulge client information, based on arguable reasoning, and the legal fact that it is his belief that the Law Society was required to obtain a court order, and that client bank deposits and especially client files (which the investigator stated that he wanted to see by having the Accused answer questions about bank deposits) were outside of the jurisdiction of the investigator because Accused was a barrister using his personal account, and the investigator was using client deposits to look at a client's entire file.

When using the 'balance of probabilities' test it may be acceptable to make inferences regarding the Accused's state of mind, but throughout, with this charge and the others, he maintained defenses around interpretation of the statutory authority that were substantially ignored.

In *Attorney Grievance Comm'n of Md. v. Wilde*, No. 25749–M (Md.Cir.Ct. Mar. 30, 2011), the Maryland court did not recognize the foreign country judgment, but instead found that the Bar had not proved criminal behavior of the lawyer "by clear and convincing evidence." That court did not advance to consider the judgment itself. This case is significant because in a criminal case the test is 'beyond a reasonable doubt,' and South Korea does not use such an evidentiary test in criminal matters.

To accept the lower standard of evidence in Oregon inflates the proceeding in a foreign country to a rehearing in Oregon of the original matter,

in that it applies a radically different evidentiary standard to matters sought to be accepted as proven in a jurisdiction that possesses lesser standards of evidence. In addition to asking this court to accept a foreign country judgment based on a lesser standard of evidence, the Bar is seeking acceptance of their own charges, which are dissimilar, and it is asking the court to shoehorn the foreign facts into a plethora of Oregon charges, picking and choosing alleged fact from a foreign jurisdiction with radically different rules and procedures regarding lawyer discipline.

Burden of Proof – Procedural Due Process

Oregon rule 3.5(e) places the burden of proof on the Accused to show that due process was not followed in the other jurisdiction. "3(e) Burden of Proof. The attorney has the burden of proving in any hearing held pursuant to BR 3.5(e) that due process of law was not afforded the attorney in the other jurisdiction." Disciplinary decisions in Oregon have not ruled on the issue of what the burden of proof is regarding whether an attorney in the other jurisdiction was afforded due process. The prosecution's burden for proving charges is 'clear and convincing evidence.' The issue is whether there is a recognizable standard of due process in the other jurisdiction, and if there was, what is the standard of evidence required to show that it was not followed, or that there was a recognizable standard.

The standard is not according to New Zealand standards, but Oregon standards. " . . . the essential elements of due process are notice and an opportunity to be heard and to defend *in an orderly proceeding adapted to the nature of the case* before a tribunal having jurisdiction of the cause." *In re Devers*, 328 Or 230, 232, 974 P2d 191 (1999) (emphasis added)." Given the differences in disciplinary statutes and rules between Oregon and New Zealand, and the arguments contained herein, the New Zealand matter was disorderly, and cannot be adapted to the nature of this case.

The Accused's disputes over evidence in affidavits and in submissions provides a revelatory view of evidence treated under the opposing test of 'on the balance of probabilities.' The difference to the result is remarkably different, especially when viewed in hindsight over important evidence disputed by the Accused. This difference is magnified by how the tribunal and the High Court treated his pleadings, labelling them as disingenuous, dishonest, disgraceful and dishonourable. This is magnified when the accused is unable to attend a hearing, cannot cross-examine witnesses, and has new charges of arrogance, cynicism, disingenuousness and dishonesty brought without notice of charge and an opportunity to be heard. The hurdle of proof was compounded in the Accused's disfavor. The Accused asks what level of notice and orderliness is required, based on a view of accepting the New Zealand decisions in their entirety as an estoppel against his due process arguments.

The Accused had questions of most of the witnesses, in particular client W, who he knew had constructed a perjured affidavit with the assistance of the prosecutor, but his evidence was chosen over that of the Accused to show that Accused was disingenuous and dishonest in his pleadings.

Even if the question of the standard of proof required of a due process violation is 'clear and convincing,' then that standard has been exceeded with the profusion of legal and factual due process violations viewed from Oregon and Federal standards.

3. THIRD ASSIGNMENT OF ERROR.

The Accused invoked the substantive due process argument of vagueness which embodies the definition of misconduct in New Zealand. The statute, The *Lawyers and Conveyancers Act* 2006, Section 7(1)(a)(ii) definition of misconduct, is autocratic, subjective and majoritarian, violating the United States and Oregon constitutional standards of substantive due process.

(A) Preservation of Record. The Accused preserved the record in his Amended Answer (Board File Checklist 21) at f) iii) (Affirmative Defenses) where he stated:

> "New Zealand disciplinary laws contain expansive, and vague, laws allowing violation of due process standards when viewed from United States and Oregon standards."

It is also located on pages 8 – 9, # 14 – 16 and on page 6, number 4 of the Affirmative Defenses of the Amended Answer in part:

> "Allowing a judgment from New Zealand for misconduct that is based on a vague law would be a violation of the Respondent's right to due process and opportunity to be heard."

The Accused preserved the record in Respondent's Hearing Memorandum, pages 5-6. (Board File Checklist 23), stating on page 5 that:

> "The *Lawyers and Conveyancers Act* 2006, defines misconduct, in part, in Section 7(1)(a)(ii) as, "that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable."

(B) Standard of Review. De novo. The Accused has the burden of proving he was denied due process because of violations of substantive due process. Bar Rule 3.5(e).

Argument

The New Zealand meaning of 'misconduct' is unlimited in its description of human behavior, creating a vague and uncertain legal environment, allowing a disciplinary body to prosecute on a whim for anything that they decide. Allowing a judgment from New Zealand for misconduct that is based on a vague law would be a violation of the Accused's right to due process and opportunity to be heard. The *Lawyers and Conveyancers Act* 2006, defines misconduct, in part, in Section 7(1)(a)(ii) as, "that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable." This is an example of majoritarian enactments that exceed the limits of governmental authority, and its surrounding provisions are also replete with vagueness. It

cannot be enforced. A lawyer is a voice that embraces freedom of speech, or the First Amendment, and the right to practice law is a fundamental right. This law represents a compelling state interest, but must be narrowly tailored to represent that interest. These laws are prohibited in the United States, and the Bar is seeking enforcement of this law.

A case in New Zealand decided that the actions of the Accused before its decision were prohibited. The Law Society decided to punish the actions of Accused retroactively.

Charges may be brought under Section 241 of the Act. Section 242 allows for any orders to be made. The Law Society found that Accused's failure to pay a costs bill was disgraceful and dishonourable, and yet they were violating New Zealand law by demanding full payment of the Costs Order, which was a property lien on his property right to practice law, which is illegal in New Zealand and in Oregon.

The Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 extensively deal with the New Zealand equivalent of the Oregon ethical rules, are contained in the Schedule, which, in its preface, states a broad and vague addendum to the meaning of misconduct.[62] The plain meaning of

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[62] "The rules are not an exhaustive statement of the conduct expected of lawyers. They set the minimum standards that lawyers must observe and are a reference point for discipline. A charge of misconduct or unsatisfactory conduct may be brought and a conviction may be obtained despite the charge not being

misconduct is so expansive and vague that it violates the principles of substantive due process. As argued below, such use is autocratic, entirely subjective and majoritarian, relying on a select few lawyers to make the law. In other words, misconduct can be based on anything the disciplinary tribunal wants, regardless of whether there is a rule, and the Law Society can make up the rules as they go along, and construct new charges and issue judgment without due process, which is what happened in this case. The rules are vague and entitle the Law Society to prosecute a lawyer under any imaginable circumstance.

Section 152 of the *Lawyers and Conveyancers Act* 2006 requires notice of a disciplinary charge to a lawyer. Section 158 requires notice of the determination. Part 7 of the Act includes Sections 120 to 272 outlining the powers of the tribunal. *The New Zealand Bill of Rights Act* 1990 advocates due process. This state of due process in New Zealand violated Accused's right to due process and opportunity to be heard. Use of the New Zealand standards of due process in the United States or Oregon would be a violation of the Accused's right to due process and opportunity to be heard.

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based on a breach of any specific rule, nor on a breach of some other rule or regulation made under the Act."

Due Process remains undefined in the *New Zealand Bill of Rights Act.* 1990, requiring notice and hearing. The appropriate measure of due process is that contained in the Law Society rules, whether notice and hearing according to Oregon standards is contained therein, and also whether the New Zealand proceedings complied with United States and Oregon standards of due process.

Section 250 allows making their own hearing rules, and Section 252 allows its own procedures. The procedures are contained in *Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations* 2008.

A tribunal at hearing can at any time by its own motion amend or add to charges without notice.[63] The tribunal hearing should have been adjourned because it surprised the Accused and 'prejudiced the conduct of the case' in that it changed the evidentiary balance by marginalizing, and hence reducing his credibility by alleging dishonesty in him raising defenses and using acceptable legal rationale by way of explanation.[64] They found that Accused was 'cynical,' disingenuous and 'dishonest.' They used their ability to expand or

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[63] 24 Amendment of or addition to charge
(1) At the hearing of a charge, the Disciplinary Tribunal may of its own motion or on the application of any party, amend or add to the charge if the Tribunal considers it appropriate to do so.

[64] 24 (2) The Disciplinary Tribunal must adjourn the hearing if it considers that the amendment or addition would—
(a) take the person charged by surprise; or
(b) prejudice the conduct of the case.

add to charges and did it without notice or a hearing, which is their right. They had the right to dispense with requirements of due process at the hearing, and they did exactly that, but they should have adjourned the hearing. The Accused was not present to request an adjournment.

4. FOURTH ASSIGNMENT OF ERROR

The tribunal and the High Court used the defenses and factual and legal arguments in Accused's pleadings as a means of questioning Accused's honesty and inflaming the proceedings. Accused's honesty and integrity were criticized, and his evidence was marginalized and ignored. This was a violation of procedural due process and a violation of his substantive due process rights under the First and Fourteenth Amendments of the United States constitution.

(A) Preservation of Error. Amended Answer (Board File Checklist 21), pages 8-9 and Affirmative Defenses 14 - 16. Hearing Memorandum (Board File Checklist 23) pages 16-17, paragraphs 13 and 14. This was raised as Affirmative Defense 16, and pursued under BR 3.5(a), (b) and (c).

(B) Standard of Review. De novo. The Accused has the burden of proving he was denied due process because of violations of substantive due process. Bar Rule 3.5 (c) and (e).

Argument

The disciplinary Tribunal found that Accused's defense prior to, and in the proceedings were 'arrogance,' 'cynical,' 'disingenuous,' and 'dishonest,' saying it "borders on cynical and intentional dishonesty" and "We have referred to practitioner's cynical and dishonest conduct, which was sustained. We have also had regard to the practitioner's arrogance in response to the investigation." The High Court did not repeat the word 'arrogance.'

The Accused was defending his actions on factual and legal bases as a lawyer is required to defend their client interests. He was punished for speech in that the legal arguments he applied to his case in connection with his factual statements formed a new charge. The defense was respectful and did not reach any stated level needed for the tribunal or High Court to consider charges that are the equivalent of contempt. Viewed from United States and Oregon standards of due process, such findings were a violation of the Accused's right to due process and an opportunity to be heard. Although he was not charged with dishonesty, they in effect created a new charge (which they are entitled to do) and found him guilty without charge or hearing on that matter. These were due process violations of Free speech under the First, and Fourteenth Amendments of the United States Constitution. Thus far, the Accused has been unable to find any case law on restriction of speech in court or in pleadings, probably because lawyers in the United States are protected from prosecution with courtroom speech and their pleadings.

Contempt Charge, First Amendment.

As his own advocate at his trial, the tribunal judged his presentation of defenses as arrogant, dishonest and cynical. A fundamental principle of defense is the freedom to use any defenses, argue fully, and present it with decorum. To raise the Accused's defense to a level approaching contempt (cite Oregon rules of contempt), with its ability to lay new charges without notice or an opportunity to be heard, and without an ability to present sentencing arguments, is a violation of the First and Fourteenth Amendments in violation of his due process rights and an opportunity to be heard. Section 24 of the *Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations* 2008 allows amendment or addition to charges at hearing without notice.

The investigator, apparently with his authority as an officer of the court, (the Accused questioned the breadth of the investigator's appointment) issued an order that Accused produce information to him regarding his client files and bank records. The Accused refused and was prosecuted on the basis that there were no defenses to his refusal to follow this order..

5. FIFTH ASSIGNMENT OF ERROR

The Law Society suspended Accused from practice without adequate notice or hearing by refusing to issue it based on a lien they claimed over it for court costs. There are no due process procedural rules regarding non-issuance

of a practising certificate. Suspension from practice without notice or hearing is a violation of his right to due process.

(A) Preservation of Error. The Amended Answer, (Board File Checklist 21) contains an Affirmative Defense # 6 at pages 6-7, (p. 6 subject to motion) stating in part:

> "Respondent's right to due process before suspension of his practising certificate was denied. By refusing to issue a practising certificate without proper notice and a hearing, damage was caused to a client, and Respondent was unable to continue the performance of a contract of services."

Accused also argued this error in his Hearing Memorandum (Board File checklist) 23 at pages 7-9.

A) Preservation of Record. The Accused preserved the record in his Amended Answer (Board File Checklist 21), pages as Affirmative Defense and in Respondent's Hearing Memorandum (Board File Checklist 23), pages 7-9.

(B) Standard of Review. De novo. The Accused has the burden of proving he was denied due process because of violations of substantive due process. Bar Rule 3.5(e).

Argument

The Law Society suspended Accused from practice without adequate notice or a hearing. This resulted in his inability to appear for W and resulted in several alleged disciplinary violations. This was a violation of due process. The

High Court bifurcated facts surrounding his nonrenewal as a defense to charges from the resulting facts, which was also a violation of due process.

The Law Society can refuse issuance of a practising certificate without due process. There are no due process rules requiring notice and hearing prior to refusal of a lawyers Practising Certificate. The Accused was notified on April 1, 2011 that, due to non-payment on the agreed terms, the entire amount of a costs order was due. On 23 June, 2011, one week before his Law Society membership was due for renewal, the Accused was notified that his practising certificate would not be renewed unless he paid the full amount of the costs order demanded. The Accused was not sent a renewal notice until after his practising certificate had lapsed. The Accused objected that he had not been given fair notice, and that before suspending his right to practice law, he was entitled to a hearing. The details of due process over the Accused's property interest are contained in Exhibits 101-109. The Accused had a property interest in maintaining his practising certificate, and his property interest in the practice of law was suspended without notice or opportunity to be heard. Accused's right to due process before suspension of his practising certificate was denied. By refusing to issue a practising certificate without proper notice and a hearing, damage was caused to a client, and Accused was unable to continue the performance of a contract of services. Accused was unable to repay the

unearned portion of both client's fees because he was unable to maintain and pursue his property interest in being a lawyer.

There is no requirement for the Law Society to give adequate notice and a proper hearing before deciding to refuse a lawyer's property interest in his ability to practice law. The Accused's Practising Certificate was not renewed due to failure to pay a costs order from a New Zealand Disciplinary Tribunal (Law Society 1) that was a result of Skagen 1. The courts did not view suspension of the practising certificate as a disciplinary proceeding, but a decision was made to suspend Accused from the practice of law immediately prior to injury of the complaining client W, who was injured as a direct result of the nonrenewal. The High Court chose not consider the Accused's arguments and claims over due process violation of failure to renew his Practising Certificate. They bifurcated the intimately intertwined factual issues in his disfavour.

As a result of this he was unable to represent a client to file a property affidavit in a divorce matter. He had prepared an affidavit that could have been filed to prevent the costs order against the client, but the Instructing Solicitor refused to allow its filing and service on opposing counsel. The solicitor appeared at the hearing with the Accused present, explaining why the failure had happened.

The Accused spent 3 weeks attempting to renew membership and had a Property Affidavit prepared. Theoretically, this would not have happened in Oregon. It would have been a simple matter of renewing membership and then dealing with one disciplinary matter.

The Accused brought a claim for violation of this due process right (among other rights) against the Law Society, which is permitted in New Zealand, in his Second Notice of Appeal, without objection. It is comparable to 42 U.S.C. § 1983 claim in the United States.

New Zealand Due Process

Due process in New Zealand did not exist until the enactment of *New Zealand Bill of Rights Act* 1990. A year after Accused graduated from Auckland University School of Law in 1976, an English author recounted the absence of due process in English law.[65] As a child of Great Britain, New Zealand substantially inherited its laws, and its belief in parliamentary supremacy, which is reflected in the present New Zealand statute, which does not allow a court to overrule law that denies due process. The introduction of due process by statute in 1990 changed New Zealand law. This case evidences the reluctance of the New Zealand judiciary to formally embrace due process.

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[65] Geoffrey Marshall, *Due Process in England*, in Nomos XVIII, eds J. Roland Pennock & John W. Chapman, 69-92 (New York: New York University Press) 69.

There is a comparable, but different legal creature inherited, used by the Accused in the New Zealand proceedings, which is called 'natural justice,' and is used in administrative procedures.

Evidence suggests that after the Nineteenth Century the American concepts of due process and the British system of parliamentary supremacy diverged radically. It is said, ". . . the great phrases failed to retain their vitality",[66] such attribution being the rise of parliamentary supremacy and hostility to judicial review as an undemocratic foreign invention.[67] This hostility towards due process is mirrored in the actions and judgments of the tribunal and the High Court.

Despite due process (and other alleged violations, including discrimination against a United States national) being argued through the *New Zealand Bill of Rights Act* 1990, it received virtually no consideration. Most judges now sitting in New Zealand received no compulsory constitutional law education, and certainly nothing comparable to the requirements for United States lawyers. Constitutional law as Americans understand it does not hover over the entire process of law making and litigation. It is this environment which surrounded prosecution of the Accused, and which is why the facts and

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[66] John D. Orth, *Due Process of Law: A Brief History* (Lawrence, KS: 2003) 30-31.

[67] Orth, 29.

law surrounding his case might seem alien in a New Zealand court and by its necessary extension, to this Court.

Washington v Gluckberg, 521 US 702, 720 (1997) is instructive in these proceedings, as they substantially involve issues pertaining to violation of the United States Constitution, and interpretation of the constitutional safeguards presently afforded to an Oregon lawyer who was once also a New Zealand barrister and living in the New Zealand constitutional environment:

> "By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore exercise the utmost care whenever we are asked to break new ground in this field."

The constitutional issues presented in these proceedings were noted and addressed in New Zealand. This case breaks new ground.

5. SIXTH ASSIGNMENT OF ERROR

The Accused was unable to appear at the tribunal hearing by audio/video because they are prohibited at a hearing and a defendant is required to appear in person. He could not subpoena witnesses, nor are witnesses called for hearing. He was unable to confront and cross-examine witnesses. This was a violation of procedural due process. He disagreed on substantial issues of fact throughout proceedings. One witness perjured himself with the assistance of the prosecutor, which was proven by testimony of that prosecutor at the Bar hearing.

(A) Preservation of Error. The Amended Answer (Board File Checklist 21), page 8, #7 states:

> "New Zealand disciplinary regulations do not allow appearance at a hearing by telephone or video, which is a violation of due process and an opportunity to be heard. Section 33(c) of the *Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations* 2008 does not allow telephone or video at substantive hearings."

The Hearing Memorandum (Board File Checklist 23) argued this at pages 10-11.

(B) Standard of Review. De novo. The Accused has the burden of proving he was denied due process because of violations of substantive due process. Bar Rule 3.5(e).

Argument

New Zealand disciplinary regulations do not allow appearance at a hearing by telephone or video, which is a violation of due process and an opportunity to be heard. Section 33(c) of the *Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations* 2008 does not allow telephone or video at substantive disciplinary hearings. A substantive hearing does not allow telephone or video,[68] which was requested by Accused and declined.

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[68] 33 Sittings of Disciplinary Tribunal using telephone conference or video link
The chairperson may at any time convene a sitting of the Disciplinary Tribunal by telephone conference or video link for all or any of the following purposes:
(a) to consider (whether on the application of the party that laid the charge or of its own motion) the making of an interim order of suspension of a practitioner from practice under section 245 of the Act:

The notice and the hearing must "must be granted at a meaningful time and in a meaningful manner." *Armstrong v Manzo* 380 US 545, 552 (1965). The hearing was not granted in a meaningful manner. There were factual disputes over one client affidavit, and those disputes centered around whether Accused had done work on the client matter. Client W perjured himself with the knowing assistance of the prosecution.

The hearing was held in the absence of Accused, on the papers, prosecuting counsel was present, and the Accused was unable to cross-examine witnesses. The High Court only allowed a further affidavit to be filed by Accused. Due process in the United States requires that an accused be able to confront and cross-examine witnesses. This is not allowed in New Zealand, as the cases are usually conducted 'on the papers,' which include affidavits, unless the tribunal directs otherwise. Whether the New Zealand standards are/were applied is a significant question. The hearing is conducted by the use of affidavits and the person charged is not entitled to cross-examine unless the

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(b) to consider the granting of consent to employ a person under section 248 of the Act:
(c) to consider any other matters involved in an inquiry or hearing, other than the substantive hearing of charges or other proceedings:
(d) to consider any matters relating to the affairs or administration of the Tribunal.

person charged is present, and the tribunal has asked for witnesses.[69] *Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations* 2008.

Section 24 theoretically does not allow witness evidence at hearing, conflicting with the Section 25 which allows witness evidence. Hearings are allowed, but witnesses are not allowed at substantive hearings unless requested by the panel. A defendant has no right to subpoena or call witnesses.

In New Zealand, a lawyer is forbidden to speak with and assist witnesses, whereas in Oregon it is permitted. In addition, in Oregon disciplinary matters, the judge is entitled to change the proceeding in order to call witnesses, which was effected in the present case. *Goldberg v Kelley* 397 US 254, 269 (1970). The Accused has always had evidentiary disputes with the Law Society witnesses. Administrative decisions. *Greene v McElroy* 360 US 474, 496-97 (1959). If a person is able to subpoena witnesses, then they cannot complain that they were denied due process. *Richardson v Perales* 402 US 389 (1971) cf *Mathews v Eldridge* 424 US 319, 343-345 (1976).

The Accused could not obtain further evidence, but was allowed to file further affidavits from himself. The prosecutor deliberately withheld

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[69] 25 Evidence

(1)All evidence must be given by affidavit unless the Disciplinary Tribunal directs otherwise.

(2)All witnesses must be available for cross-examination if required by the Disciplinary Tribunal.

exculpatory evidence of substantial work done for a client in order to support accusations of dishonesty by the Accused. This was a violation of procedural due process.

The Accused could not obtain additional discovery, but was allowed to supplement his evidence with affidavits. One client perjured himself in his affidavit on material matters, and the prosecutor assisted affidavit preparation, and deliberately withheld substantial information that proved Accused had done substantial work for that client, which was material evidence of his honesty and integrity. This was a violation of procedural due process.

Prosecutorial misconduct with regard to the due process right of confronting witnesses is important as a consideration. In his evidence presented, the Accused always disagreed with the affidavit of client W, and the instructing lawyer, Kevin Smith. From the submissions and the supporting client affidavit, it is clear that the client perjured himself, and because the prosecutor was aware that the Accused had done substantial work from evidence given to the investigator, that the prosecutor assisted in that perjury and lied in the proceedings. The perjury related to material evidence of whether the Accused had done substantial work for the client. Through information given in the investigation, these two parties were also aware that the Accused had lost all of his emails with that client.

There is, in Oregon, no apparent sanction for disciplinary prosecution misconduct, except that this court could find a due process violation, that the trials resulted in a failure of due process, criminal charges against the client and the lawyer who assisted, and disciplinary action against the prosecutor for misleading or lying to the tribunal.

The issue is whether, in Oregon, withholding important discovery by the prosecution is governed by criminal or civil lawyer misconduct, the proceedings being *sui generis*. In a criminal matter, withholding discovery and suborning perjury of a witness is a violation of due process. ORS 162.065 Perjury. 1) A person commits the crime of perjury if the person makes a false sworn statement or a false unsworn declaration in regard to a material issue knowing it to be false. 2) Perjury is a Class C Felony. The perjury of W was material, and it was known to be false. The fact that the prosecutor helped 'make' the affidavit of W could be considered perjury. The New Zealand definition of perjury is defined in the *Crimes Act* 1961, sec. 108[70] Perjury defined is much

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[70] (1) Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his or her evidence on oath, whether the evidence is given in open court or by affidavit or otherwise, that assertion being known to the witness to be false and being intended by him or her to mislead the tribunal holding the proceeding.

(3) Every person is a witness within the meaning of this section who actually gives evidence, whether he or she is competent to be a witness or not, and whether his or her evidence is admissible or not.

broader than the Oregon definition and would appear on its face to include the prosecution.

In addition, the prosecutor misled the Tribunal by withholding exculpatory evidence, suborning the perjury of W, and referring to Accused as disingenuous and dishonest.

7. SEVENTH ASSIGNMENT OF ERROR

The Accused objected to one member of the tribunal panel, and his objection was ignored, there is no formal procedure in New Zealand for such objection.

(A) Preservation of Error. Amended Answer (BR 21), Affirmative Defense 7, page 7. Hearing Memorandum (Board File Checklist 23) page 9, #6.

(B) Standard of Review. De novo. The Accused has the burden of proving he was denied due process because of violations of substantive due process. Bar Rules 3.5 (c), (e) and (f).

Argument

The Accused objected to one member of the disciplinary panel sitting on the basis that he would not be an impartial judge. He was not directed or required to file anything as a formal objection, and in fact this objection was ignored. Because this objection to a member of the tribunal panel the Accused was denied his due process and opportunity to be heard.

8. EIGHTH ASSIGNMENT OF ERROR

The Accused refused production of bank statements and the entirety of client files to the investigator on the basis of client privacy and lawyer/client privilege. The investigator obtained his personal bank account details from the bank without a court order and stated that clients and lawyers have no rights in an investigation. This was a violation of due process in that the investigator obtained privileged and private records without a court order.

(A) Preservation of Error. Amended Answer (Board File Checklist 21), page 8, Affirmative Defense #12. Hearing Memorandum (Board File Checklist 23), page 14-16.

(B) Standard of Review. De novo. The Accused has the burden of proving he was denied due process because of violations of substantive due process. Bar Rules 3.5 (c), (e) and (f).

Argument

Disciplinary investigators in New Zealand are apparently entitled to demand and/or seize any bank account record, demand production of a source of private and privileged information, such as client files and personal bank account details, without notice or a hearing in violation of a person's right to privacy and over claims of lawyer/client privilege.

The disciplinary investigation, the evidence of Accused's personal bank account, and demands to see all bank records of payment into a personal

account, for the intended purpose of viewing client files in their entirety was a violation of Accused's due process rights and an opportunity to be heard. It was also a violation of the rights of his clients right to due process.

The investigator could have sought a court order for such documents. In Oregon 2, the Bar performed the proper procedural exercise in moving the Multnomah County Circuit Court for an order to produce all trust account records, which was allowed, and with which the Accused complied.

The Accused's privacy interests and those of his clients were ignored. Details of his personal bank account were obtained without court order, for the purpose of having access to all client files over his objection of privilege as contained in Section 271 of the Act, which states "Legal professional privilege. Nothing in this Part limits or affects legal professional privilege." This claim was made repeatedly by Accused and ignored repeatedly in all proceedings, with the rejoinder "a claim of privilege is for the client to make," removing the purpose of having a lawyer, although every disciplinary regulation in Part 7 (disciplinary) of the Act is ruled by it.

There are privacy disclosure rules in the Act that limit the information that a lawyer can share about non-complaining clients.[71] Reading this subject to

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[71] 8.2 When disclosure is required
A lawyer must disclose confidential information where—

Section 271 privilege, the Accused was acting within his rights and the rights of his clients.

An investigator was appointed to investigate under Sections 144 -147 of the *Lawyers and Conveyancers Act* 2006, and he had broad powers to investigate. The Bar does not have such extensive powers to override claims of privilege or go directly to obtain personal bank records without notice and hearing, and a court order. Under the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules* 2008, there are requirements regarding response to such inquiries with regard to client confidences,[72] and when disclosure is required.[73] These regulations in Oregon would be found

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(a) the information relates to the anticipated or proposed commission of a crime that is punishable by imprisonment for 3 years or more; or
(b) the lawyer reasonably believes that disclosure is necessary to prevent a serious risk to the health or safety of any person; or
(c) disclosure is required by rule 2.8; or
(d) disclosure is required by law, or by order of a court, or by virtue of the lawyer's duty to the court.
8.3 Where a lawyer discloses information under this rule, it must be only to an appropriate person and only to the extent reasonably necessary for the required purpose.

[72] 8.1 A lawyer's duty of confidence commences from the time a person makes a disclosure to the lawyer in relation to a proposed retainer (whether or not a retainer eventuates). The duty of confidence continues indefinitely after the person concerned has ceased to be the lawyer's client.

[73] 8.2 A lawyer must disclose confidential information where—

unconstitutional as a violation of the due process rights of the lawyer and their clients. The Tribunal described the Accused's resistance to producing non-complaining client records as 'arrogance.'[74] This description of the Accused's arguments was not repeated in the High Court. For this statement, and other permutations in this case, the Accused made a counterclaim against the Law Society for discrimination based on national origin.[75] Americans have a reputation for being 'arrogant' by New Zealanders that seems to have spawned since his arrival in 1964.

The New Zealand discipline found that Accused's claims of privacy and privilege in response to the investigator's demands did not give the Accused, as lawyer and representative of clients, the right to claim privacy and privilege in their behalf. The High Court judge and the Tribunal held that "Privilege is for

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(a) the information relates to the anticipated or proposed commission of a crime that is punishable by imprisonment for 3 years or more; or

(b) the lawyer reasonably believes that disclosure is necessary to prevent a serious risk to the health or safety of any person; or

(c) disclosure is required by rule 2.8; or

(d) disclosure is required by law, or by order of a court, or by virtue of the lawyer's duty to the court.

8.3 Where a lawyer discloses information under this rule, it must be only to an appropriate person and only to the extent reasonably necessary for the required purpose.

[74] Ex 10, par. 34.

[75] *New Zealand Bill of Rights Act,* 1990, sec. 19, based on *The Human Rights Act,* 1993.

the client to claim." This view of privacy and privilege is a violation of the Accused's clients due process and right to be heard.

9. NINTH ASSIGNMENT OF ERROR

The Bar has brought ten charges of violation of disciplinary rules, of which 9 were found violated, while there are two Oregon compatible charges that were brought and succeeded in New Zealand. To place those New Zealand charges within the Oregon context is inappropriate and a violation of due process. BR 1.2 prohibits this Court and the Bar from going beyond the rules for Oregon.

(A) Preservation of Error. Amended Answer (Board File Checklist 21), page 2 (d) – (f) as explanation and justification. Petition for Reciprocal Discipline, Ex 45 page 6, Oregon Rule Violations. Trial Panel Opinion (Board File Checklist 31) found 9 separate rule violations on page 13. BR 1.2 prohibits the Court and Bar from adopting New Zealand statutory authority.

(B) Standard of Review. De novo. Bar Rule 3.5 (c)(2) and Bar Rule 3.5(e).

Argument

Dealing with the ten charges made against Accused by the Oregon state Bar, which grew from New Zealand charges based on two violations of the disciplinary system is a stretch of art, or exercise of legal imagination. As stated

above, New Zealand is a foreign country jurisdiction possessing different rules for Barrister, and Barrister and Solicitor:

a) RPC 1.4(a) Duty to keep client reasonably informed of a legal matter. One is acting in a timely and competent manner;

b) Failure to repay client;

c) RPC 8.1(a) Failure to respond to DCO inquiries. Failure to cooperate with an investigation is an Oregon allegation that requires deeper inquiry in the Oregon context because the Accused has spent the last 17 years engaged in disciplinary defence, in large part, because of his belief in a foundation of legal representation, which is the protection of client information, which is called 'privilege.'

Also, the New Zealand violations were based 'on the balance of probabilities,' which as stated above is a lighter evidentiary step than 'clear and convincing evidence.' To dig into a plethora of Oregon charges of marked dissimilarity is an unfair exercise of prosecutorial powers in that the prosecution is asking of this tribunal that it ignore the Oregon and United States principles of due process, which is notice and a fair hearing of the charges. Of the twelve charges made against the Accused, only six charges were proven and four were dismissed by the prosecution at hearing (excessive fees). Of those six charges, only two have a roughly equivalent rule or statute in Oregon. The Amended Answer, in its responses to the charges of this tribunal contain

observations regarding response to the charges which are repeated here. Some or all of the arguments presented could apply to any one charge. Arguments regarding due process are a valid defense to any one charge.

a) RPC 1.4(a) Duty to keep client reasonably informed of a legal matter. As stated in a), and for reasons given in the affirmative defenses. I failed to inform the client that my Practising Certificate had lapsed for three weeks. Also, see RPC 1.4(b).

b) RPC 8.1(a)(2) Failure to respond to DCO inquiries. The Accused refused access to accounts and client files on the basis of client privilege. The New Zealand judgment found that there was a failure to produce accounts, and for reasons stated in the affirmative defenses, the Accused denies. Accused has also argued above that his arguments were persuasive with regard to due process.

The Oregon State Bar wishes to expand their rules to include the disciplinary rules of a foreign country jurisdiction, which is an inappropriate extension of its jurisdiction, and outside the ambit of these proceedings, except where noted. To extend its jurisdiction into that of another country would in effect allow it to bring charges in Oregon for factual issues that were uncharged overseas and extant in that jurisdiction.

It is incumbent upon this Court to inquire into whether the due process of New Zealand is comparable to Oregon and the United States, and an important question that must be answered is also whether the New Zealand Law Society followed due process in its pursuit of the Accused. As stated above, for many different reasons, legally and factually, due process according to the standards of Oregon and the United States was not followed. In addition, it is important to inquire whether each due process violation was sufficient in itself to render the New Zealand judgment incompetent, and/or whether the combination of Accused's alleged violations of due process against the Law Society render that judgment incompetent.

As argued above, the two enumerated equivalent Oregon sanctions, individually or collectively would not subject the Accused to disbarment in Oregon, considering Accused's past history of discipline. The Oregon Bar has asked that the Accused be disbarred, and according to cited cases, these violations are insufficient to establish a coherent pattern of offending, and the combination cannot rise to the level of disbarment. Also, an Oregon finding of lesser discipline would not be appropriate because not all of the current Oregon charges were considered by New Zealand in making their decision to strike the Accused off of the list of Barristers. To apply a lesser level of punishment would be to retry the New Zealand matter, and try him for matters not included

in New Zealand, which is not appropriate, as the cases state that the charges and the punishment should be concurrent with the foreign judgment.

Dated this 6th day of September, 2019

Christopher Knute Skagen OSB# 911020

COMBINED CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS, AND CERTIFICATES OF FILING AND SERVICE

(1) I certify that this brief complies with the word-count limitation in ORAP 5.05, which word count is 13,104 words.

(2) I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes.

I certify that I filed this brief with the Appellate Court Administrator on 6 September, 2019 (Oregon date). I certify that service of a copy of this brief will be accomplished on the following participants in this case by email upon SCournoyer@osbar.org.

DATED: _____

Christopher Knute Skagen OSB #911020