Filed: July 29, 2021

IN THE SUPREME COURT OF THE STATE OF OREGON

In re:

Complaint as to the Conduct of

ANDREW LONG
OSB No. 033808,

Respondent.

(OSB 1779, 1786, 1787, 1788, 1809, 1831, 1832, 1833,
1864, 1875, 1876, 1877, 1886, 1887, 1888, 18129, 18170)
(SC S067095)

En Banc

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

Argued and submitted March 16, 2021.

Andrew Long, Portland, argued the cause and filed the briefs on behalf of himself.

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

PER CURIAM

Respondent is disbarred, effective 60 days from the date of this decision.

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 to:

PER CURIAM

In this lawyer discipline case, a trial panel of the Disciplinary Board found, by clear and convincing evidence, that respondent had committed 50 violations of the Rules of Professional Conduct (RPC) by, among other things, intentionally converting client funds, failing to communicate with clients, neglecting matters, failing to refund unearned fees, and failing to cooperate with the Oregon State Bar's investigations. The trial panel concluded that respondent should be disbarred. On review in this court, respondent challenges the trial panel's conclusions and contends that disbarment is not appropriate. We agree with the findings and conclusions of the trial panel, subject to exceptions noted below, and order that respondent is disbarred from the practice of law.

I. BACKGROUND

Respondent graduated from law school and became a member of the Oregon State Bar in 2003. He worked for a small law firm in Roseburg until leaving Oregon in 2004 to begin graduate legal studies. After completing his graduate degree and clerking, respondent worked as a law professor specializing in environmental law. In 2015, respondent moved back to Oregon to begin practicing law. He started at a small firm in November 2015 and then opened a solo practice in January 2016. At around the same time, respondent was going through a difficult divorce and custody dispute with his wife, who resided in Florida with their children.

The Bar has brought two disciplinary proceedings against respondent. The Bar initiated the first disciplinary proceeding in November 2017. As part of that proceeding, the Bar sought respondent's immediate temporary suspension, which this

court granted in December 2017 after reviewing the filings submitted by the Bar and respondent. A special master then held an evidentiary hearing in February 2018 and drafted a report, which concluded that respondent's continued practice of law represented a threat to the public and recommended that this court continue respondent's suspension during the pendency of that disciplinary proceeding. The court agreed with that recommendation and, in May 2018, ordered respondent's continuing suspension. That first disciplinary proceeding has not yet been resolved.[1]

The matter now before this court is a review of the trial panel opinion in the second disciplinary proceeding brought by the Bar. The Bar filed its initial complaint in that proceeding in March 2018 and amended the complaint twice. In the final amended complaint, the Bar alleged that respondent had committed 64 violations of the Rules of Professional Conduct related to his representation of numerous clients. Following an evidentiary hearing and arguments from the Bar and respondent, the trial panel issued a written opinion concluding that the Bar had established, by clear and convincing evidence, that respondent had committed 50 of the charged violations. Based on those violations, the trial panel concluded that respondent should be disbarred.

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[1] At the trial panel hearing in the first disciplinary proceeding, the Disciplinary Board's adjudicator concluded that respondent had defaulted after failing to appear. The trial panel denied respondent's motion to set aside the default. As a result, the trial panel assumed all the allegations in the complaint as true and ordered respondent's disbarment. This court held that the trial panel had erred in denying respondent's motion for relief from default, vacated the trial panel opinion without reaching the merits, and remanded to the trial panel for retrial. *In re Long*, 366 Or 194, 458 P3d 688 (2020).

II. ANALYSIS

Respondent seeks review of the trial panel opinion. *See* ORS 9.536(1) ("The Oregon State Bar or the accused may seek review of the [trial panel] decision by the Supreme Court."). He contends that he committed no rule violations and that disbarment is not warranted. The Bar does not seek review of the charged violations that the trial panel found unproven. As a result, we limit our review to the 50 violations found by the trial panel in its written opinion and determining an appropriate sanction. We review the trial panel's findings *de novo*, ORS 9.536(2); Bar Rule of Procedure (BR) 10.6, to assess whether the Bar has proved the violations by clear and convincing evidence, BR 5.2.

A. *Additional Background and Preliminary Arguments*

Because many separate matters are at issue, it is helpful to discuss some of the common themes that run through them and, to the extent possible, resolve arguments relevant to multiple matters.

Respondent operated as a solo practitioner from January 2016 until his suspension in December 2017. Respondent admits that he lacked well-developed practice management skills. He attributes that deficiency to his inexperience, his Attention Deficient and Hyperactivity Disorder, and his limited financial resources, which necessitated hiring assistants with little experience working within a legal practice.

Respondent's limited financial resources also led to his extensive use of fee agreements that allowed him to access advance fees before completing the promised services. Generally, in the absence of appropriate written designation and disclosure,

advance fees paid to a lawyer remain client property that must be kept in a lawyer trust account, separate from the lawyer's own property. RPC 1.15-1(a). In those instances, the advance fees may be removed from the lawyer trust account and become the lawyer's property only after the lawyer has performed the promised services.

The Rules of Professional Conduct allow for alternative fee agreements, under which advance fees become the lawyer's property at the time the fees are received -- that is, before the lawyer has performed the promised services. RPC 1.5(c)(3). In those instances, the advance fees are not placed in the lawyer's trust account and are sometimes referred to as "earned on receipt." Fees may be "earned on receipt" only pursuant to a written fee agreement disclosing that "the funds will not be deposited into the lawyer trust account" and that "the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed." *Id.*

According to respondent, because he frequently had pressing personal and business costs, he would not have been able to operate his legal practice if he could access a client's fees only after he completed the promised services. Respondent testified that, as a result of his financial circumstances, he used "earned on receipt" agreements in all of his matters, except the few matters that he took on a contingent fee basis. Although evidence in the record indicates that respondent did not always enter into "earned on receipt" agreements, it is true that, in many of the matters at issue in this proceeding, respondent entered into a written fee agreement properly designating advance fees as "earned on receipt" and then billed the client against those advance fees at an hourly rate.

Respondent therefore was able to make immediate use of the funds subject to those agreements, which he used to pay rent, staff, and other personal and business expenses.

Although respondent's handling of those advance fees did not itself violate a Rule of Professional Conduct, it nevertheless left respondent's clients vulnerable. "Earned on receipt" fee agreements shift the risk of loss to the client. If the client relationship ends before the lawyer has performed the services needed to keep the advance fees, then the lawyer is required to return the fees for the uncompleted work. If the lawyer has already spent the advance fees and has no other financial resources upon which to draw, then the lawyer may be unable to provide the client with the required refund.

That is what happened to many of respondent's clients. The client provided respondent with advance fees that were designated as "earned on receipt." The client then terminated respondent's service before respondent performed the services needed to permit him to retain the advance fees. And respondent failed to provide the required refund of the advance fees that respondent had not, in fact, earned by performing legal services. For that conduct, the Bar alleged that respondent repeatedly violated RPC 1.5(a) (charging excessive fee) and RPC 1.16(d) (failing to refund unearned fees).

Respondent presents various arguments in response to those allegations. In some cases, respondent disputes how much money was received in advance. In others, he contends that he did, in fact, perform the promised services. Those are fact issues that we address below. When those arguments are unavailable, respondent argues that, but for this court's December 2017 suspension order, he would have either completed the

promised services or been able to earn additional income from other matters that he could have used to refund the clients. That argument is not a defense to the alleged violations. The charged violations are established by facts demonstrating that respondent failed to return unearned fees.[2] Although the reasons for a lawyer's failure to return unearned fees may be relevant to assessing an appropriate sanction, those reasons are not relevant to assessing whether a violation has occurred in the first place.[3]

The record in this case reveals that respondent had disputes with clients about returning unearned fees beginning in October 2016. Those disputes increased in the months leading up to his suspension in December 2017, as respondent allowed problems in his personal life to affect his ability to provide his clients with promised services. In September 2017, respondent's roommate alleged that he had struck her. That allegation led respondent's landlord to initiate eviction proceedings. In October 2017,

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[2] Respondent presents no legal argument attempting to distinguish the appropriate grounds on which the Bar may separately establish violations of the rule prohibiting excessive fees, RPC 1.5(a), and the rule requiring the refund of unearned fees, RPC 1.16(d). We therefore do not consider the scope of those provisions, which would not, in any event, affect the outcome or the sanction in this case.

[3] That conclusion is consistent with this court's decision in *In re Bertoni*, 363 Or 614, 426 P3d 64 (2018). In that case, the respondent was hired on hourly fee agreements to defend a client in a civil matter and to file a petition for post-conviction relief for the same client. As part of those fee agreements, he received advance-fee retainers. As he provided the client with services, he charged against the retainers using his hourly rate. He was suspended by this court and then terminated by his client before he could complete each matter. But the Bar failed to prove that he had performed insufficient work on each matter before his suspension and termination to earn each of the advance-fee retainers. As a result, the court concluded that the Bar had failed to establish that fees were excessive. *Id.* at 634-35.

respondent's former assistant, who was acquainted with his roommate and a witness in the eviction proceedings, obtained a stalking protective order against respondent. The Bar sought respondent's immediate suspension in November 2017. And respondent was arrested for violating the stalking protective order in December 2017, before this court ordered respondent's suspension later that month. Those events provide context for respondent's evident financial desperation at that time, leading to the trial panel's most serious finding: that respondent intentionally converted funds belonging to his client, Williams. That matter is addressed further below.

Finally, as part of its investigation into respondent's alleged misconduct, the Bar sent respondent multiple letters seeking his response to the allegations. Those letters frequently demanded respondent's version of the events in question, an accounting of any funds that respondent received in the matter, and copies of billing records. The trial panel concluded that respondent failed to respond to those letters in 11 different matters.

Under RPC 8.1(a)(2), "[a] lawyer * * * in connection with a disciplinary matter[] shall not * * * knowingly fail to respond to a lawful demand for information from a[] * * * disciplinary authority * * *." Respondent acknowledges that he failed to respond to the Bar's demands for information. He maintains, however, that his failure did not violate RPC 8.1(a)(2) because he believed that the Bar's inquiries were not a "lawful demand for information." According to respondent, he believed in good faith that the Bar's inquiries "exceeded the Bar's authority and/or [were] being used to advance illegal and unethical conduct."

There is no merit to respondent's defense. A Bar inquiry is lawful if it is

based on "an arguable complaint of misconduct, one that the Bar [has] legal authority to investigate." *In re Paulson*, 346 Or 676, 689, 216 P3d 859 (2009), *opinion adh'd to as modified on recons*, 347 Or 529, 225 P3d 41 (2010); *see also* ORS 9.542(1) (authorizing rules governing "the investigation of the conduct of attorneys"); BR 2.2(b)(1) (describing Disciplinary Counsel's authority to investigate allegations or instances of alleged misconduct); BR 2.5(b)(2) (describing process for Client Assistance Office to refer complaints to Disciplinary Counsel). We find no support in the record for respondent's contention that the Bar was investigating alleged rule violations, most of which stemmed from complaints by clients or third parties, for reasons other than the Bar's legitimate regulatory purpose.[4] We therefore conclude that respondent's failures to respond to the Bar's requests for information establish violations of RPC 8.1(a)(2), as noted in each matter below.

Because respondent failed to respond to those investigatory demands, the record is incomplete as to several of the matters discussed below relating to whether respondent performed sufficient services to earn the advance fees that he kept. In some instances discussed below, the lack of a complete record meant that the Bar was unable to carry its burden to prove, by clear and convincing evidence, that respondent failed to earn the advance fees that he kept. *See* BR 5.2 ("The Bar has the burden of establishing

[4] Respondent claims that misconduct by the Bar's Disciplinary Counsel's Office establishes equal protection and due process violations. We find no evidentiary support for those claims. We similarly find no evidentiary support for respondent's claim that the adjudicator was biased against him. As a result, we reject those claims.

misconduct by clear and convincing evidence."). Nevertheless, failing to cooperate with the Bar's investigation is not a viable strategy for avoiding sanction. Not only is failing to cooperate its own violation of the Rules of Professional Conduct, RPC 8.1(a)(2), but, in appropriate cases, such conduct may establish an aggravating circumstance justifying an upward departure from a presumptive sanction, *see* American Bar Association, *Standards for Imposing Lawyer Sanctions* 9.22(e) (1991) (amended in 1992) (identifying "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency" as an aggravating circumstance).

B. *Matters and Violations*

We review the matters in largely chronological order.

1. *Richman matter*

The Richmans hired respondent in August 2016 to work on three matters: an insurance claim and two juvenile court matters. The Richmans provided respondent with advance fees and costs. Respondent did no work on two of the matters, and he made two court appearances on one of the juvenile court matters. Work on that juvenile court matter was billed at an hourly rate. At the second appearance, in October 2016, the trial judge said that respondent appeared intoxicated and reset the matter. Although respondent denied being intoxicated, the Richmans fired respondent the next day. They asked for an accounting of the work that he had performed and a return of any unearned advance fees and costs.

Respondent never performed an accounting. Instead, he told the Richmans that he wanted to avoid the accounting by refunding them the entire amount that they had

paid him in advance fees and costs. Mrs. Richman told respondent that they had paid him $2,000 in advance fees and $500 in advance costs. Respondent replied that his records showed that the Richmans had paid him only $1,000 in advance fees and $500 in advance costs. Respondent then decided not to provide a full refund, claiming that he had earned $500, which he would keep. He therefore sent the Richmans a check for $1,000 without an accounting demonstrating the grounds for the money that he kept.

Mrs. Richman emailed documents to respondent purporting to show the additional $1,000 in advance payments. Although those documents are not in the record, she testified to the additional payments under oath at respondent's suspension hearing in February 2018. And that testimony is in accord with the record of the parties' documented communications. After receiving the emailed documents, respondent admitted that his previous assistant had made numerous recordkeeping mistakes that needed correcting. He said that he would review the matter and get back to them "presumably with more money." Respondent never did get back to them and ignored Mrs. Richman's later emails inquiring about the additional payments. We therefore conclude that respondent failed to refund the Richmans $1,000 in unearned fees.

We agree with the trial panel's conclusion that respondent violated RPC 1.5(a) (charging excessive fee), RPC 1.15-1(d) (failing to provide an accounting), and RPC 1.16(d) (failing to refund unearned fees).

2. *Charpentier matter*

Charpentier hired respondent in early November 2016 on an hourly rate agreement to remedy the unlawful sale of her deceased mother's home. She paid

respondent $600 in advance fees. Respondent did not place the funds into his lawyer trust account. Although respondent claims that the $600 was paid pursuant to a written fee agreement designating the money as earned on receipt, that agreement does not appear in the record. Respondent first told Bar investigators that he had sent Charpentier a fee agreement, which she had failed to return. He later told the trial panel that Charpentier had signed and returned the fee agreement but blamed his former assistant for misplacing it. Charpentier, who lives in Washington and never met respondent in person, testified that she neither received nor signed a written fee agreement from respondent. According to Charpentier, if she had received and signed the fee agreement, she would have retained a copy of it and would have documented that fact in the notebook that she used to contemporaneously record her interactions with respondent.

Charpentier additionally testified that respondent had failed to respond to numerous phone messages, even though she expected the work to be done promptly. Charpentier fired respondent in late November or early December after learning that the house had been sold again. At the time of his termination, respondent had billed 2.1 hours to the matter, most of which was for time spent on telephone calls with Charpentier. Respondent disputed Charpentier's version of events. He maintained that he had reviewed her file and determined that her case had no merit, and that she had become upset when he told her that.

The trial panel found Charpentier's testimony to be more credible and concluded that respondent had violated RPC 1.15-1(a) (failing to hold client property in trust account), RPC 1.15-1(c) (failing to keep unearned fees in trust account), and RPC

1.3 (neglecting a client matter).[5] We agree with that conclusion.

3. *Mitchell matter*

The Mitchells hired respondent in April 2016 to pursue a claim against Mr. Mitchell's former employer and, in early 2017, hired respondent to pursue an appeal from a decision of the Workers' Compensation Board. Respondent collected at least $18,500, based on hourly rate agreements, from the Mitchells over the course of the two matters.

In the action against Mr. Mitchell's former employer, respondent filed a complaint in August 2016 and then failed to follow up with opposing counsel, who was interested in settling. After no settlement was reached by January 2017, opposing counsel moved to dismiss the complaint or to make the complaint more definite and certain, raising numerous defects in the complaint. The trial court granted the motion in part and allowed for an amended complaint, which respondent drafted and filed. Ultimately, the opposing party offered another settlement, but the Mitchells maintain that respondent did not fully explain the terms of the settlement. The Mitchells fired respondent in August 2017, and hired a new attorney, Hennagin, who testified that respondent's work was so deficient that he had to start over and file a new complaint. After respondent was discharged by the Mitchells, they agreed to a settlement with Mr. Mitchell's former employer. Respondent had collected about $9,200 in fees related to that action.

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[5] Neglect may be found from a failure to act during a short period of time if the matter is urgent. *See In re Conduct of Meyer*, 328 Or 220, 224-25, 970 P2d 647 (1999) (finding neglect where respondent failed to act over a two-month period).

The trial panel determined that the services respondent provided to the Mitchells in that case were not worth the $9,200 that he had collected and concluded, as a result, that respondent had violated RPC 1.5(a) (charging excessive fees). We do not agree that clear and convincing evidence in the record supports that conclusion. There is no allegation that respondent did not work the hours needed to justify $9,200 at a reasonable hourly rate. Respondent's work set up the case for settlement, even though respondent failed to follow through on the settlement offers proposed by the opposing party. Respondent's failings, if any, appear related to his failure to effectively communicate with the Mitchells, and the Bar alleged no violations related to that conduct.

In the workers' compensation matter, respondent filed a brief in the Court of Appeals. That work was done in the spring of 2017. The Court of Appeals affirmed without opinion. Respondent collected $9,300 in that matter. Hennagin, whom the trial panel found credible, testified that those fees were charged and collected without the approval of the Workers' Compensation Board or the court, as required by ORS 656.388(1). *See, e.g., Shearer's Foods v. Hoffnagle*, 363 Or 147, 149, 420 P3d 625 (2018) ("Attorneys representing workers' compensation claimants may not recover a fee for legal services performed on appeal unless the court approves the fee[.]"). In his briefing before this court, respondent does not assert that he received approval.

Based on those facts, the trial panel concluded that respondent again had violated RPC 1.5(a) (collecting illegal fees). We agree with the trial panel's conclusion. Collecting legal fees in violation of ORS 656.388(1) constitutes collecting illegal fees

under RPC 1.5(a). *See In re Knappenberger*, 344 Or 559, 564, 186 P3d 272 (2008) (concluding that lawyer charged an "illegal fee" under DR 2–106(A), the predecessor to RPC 1.5(a), by charging fees in connection with a client's Social Security disability claim without prior approval of the Social Security Administration, as required under federal law). Finally, respondent failed to respond to the Bar's investigative inquiries, in violation of RPC 8.1(a)(2).

4. *Avila-Chulim/Greene matter*

Avila-Chulim and his girlfriend Greene contacted respondent through the Bar's Modest Means Program, which is intended to help low- and moderate-income clients find affordable legal services. On May 26, 2017, Avila-Chulim and Greene hired respondent to pursue a modification of Avila-Chulim's parenting plan -- a matter that they considered urgent. In fact, Greene testified that they could have filled out the necessary forms themselves, but they wanted to hire a lawyer to complete the proceeding more quickly. They paid respondent $2,000 in advance fees through an hourly rate agreement designating the money as earned on receipt.[6] On June 8, 2017, after not hearing anything further from respondent and learning that respondent had not promptly obtained the court documents necessary to begin Avila-Chulim's petition, Avila-Chulim and Greene terminated respondent and demanded an accounting and a refund.

Greene estimated that she contacted respondent 15 to 20 times over the

[6] The hourly rate that respondent charged under that agreement appears to violate the terms of the Modest Means Program. The Bar did not charge that conduct as a separate violation.

months that followed seeking the accounting and refund. Respondent ultimately sent Avila-Chulim and Green an invoice in September 2017, showing $360 worth of work, but he did not refund the $1,640 in unearned fees that he had collected. Greene followed up in October, November, and December 2017. Each time she was told that the refund check would be sent shortly. But respondent never refunded the $1,640 in unearned fees that he had collected, and he failed to cooperate with the Bar's investigation into the matter. At the trial panel hearing, Long did not deny that he owed a refund to Avila-Chulim and Greene but stated that he did not have sufficient funds to pay it.

We agree with the trial panel's conclusion that respondent violated RPC 1.5(a) (charging excessive fees); RPC 1.16(d) (failing to refund unearned fees); and RPC 8.1(a)(2) (failing to cooperate with Bar disciplinary investigation). And, based on respondent's conduct following his termination in June 2017, we agree with the trial panel's conclusion that respondent violated RPC 1.4(a) (failing to keep client informed) and RPC 1.4(b) (failing to explain matter so client can make informed decisions).

5. *Butler matter*

Butler hired respondent on June 30, 2017, to research a family trust issue and provided respondent with $2,500 in advance fees on an hourly rate agreement designating the money as earned on receipt. About a week later, Butler terminated respondent after concluding that respondent's experience was not sufficiently related to the issue in dispute. Butler asked respondent to return any unearned fees promptly. Respondent did not dispute that he owed Butler a refund but did not return the unearned fees. Butler filed a small claims action against respondent on August 4. On September

26, 2017, during a mediation in that action, respondent agreed to provide Butler with a full refund, which respondent paid at a later date to Butler's apparent satisfaction.

We agree with the trial panel's conclusion that, by refusing to pay an undisputed refund until sued by his client, respondent violated RPC 1.16(d) (failing to refund unearned fees after termination).

6. *Grotz matter*

Grotz hired respondent in December 2016 on an hourly rate agreement to work on a dispute that Grotz had with his neighbor. Respondent filed a complaint in that matter in February 2017. Although it is unclear what other work respondent did on the matter after filing the complaint, the record establishes that, by June 2017, Grotz had become frustrated that respondent was not being more proactive in his case and that respondent was not responding to Grotz's emails seeking updates. That frustration continued through November 2017. At one point, toward the end of November, respondent informed Grotz that a previously scheduled hearing was coming up in his case. Grotz was upset that respondent had not told him about the hearing sooner and that respondent did not otherwise explain to him the purpose of the hearing.

Grotz received an invoice from respondent in November 2017 showing that he owed respondent almost $1,000 for services that respondent had performed. Shortly thereafter, Grotz paid respondent $2,500. Some of that money constituted advance fees. Grotz then fired respondent in December 2017, after reading about respondent's legal troubles in the newspaper. At that time, Grotz asked for a refund of any unearned fees. Respondent never provided a refund and did not cooperate with the Bar's investigation

into the matter.

Grotz did not testify at the trial panel hearing. Respondent and Glick, who worked as respondent's assistant in December 2017, testified that Grotz had reversed his final $2,500 payment through his credit card company. Communications between Grotz and the Bar suggest that Grotz might have disputed the $2,500 payment through his credit card company. Without Grotz's testimony or additional financial documents, the record fails to establish how that dispute was resolved.

Based largely on respondent's acceptance of the $2,500 shortly before his termination and his failure to return any unearned portion of that money, the trial panel concluded that respondent violated RPC 1.5(a) (charging excessive fee) and RPC 1.16(d) (failing to refund unearned fees). We do not agree with those conclusions. The Bar did not establish, by clear and convincing evidence, that respondent had retained the $2,500 payment and therefore did not establish that respondent had collected money from Grotz for more than the value of the services that he provided. We agree, however, with the trial panel's remaining conclusions that respondent violated RPC 1.4(a) (failing to keep client informed); RPC 1.4(b) (failing to explain matters so client can make informed decisions); and RPC 8.1(a)(2) (failing to cooperate with Bar disciplinary investigation).

7. *Agero matter*

Agero, who lives in Spain, hired respondent in December 2016 on an hourly rate agreement to pursue a claim against a septic tank inspection company. Respondent filed and served a complaint against the inspection company in July 2017. Respondent was never very responsive to Agero's emails. He became even less

responsive beginning in October 2017. At that time, the trial court hearing Agero's matter sent respondent a notice of intent to dismiss for want of prosecution. Respondent did not respond to that notice. The trial court then dismissed the case in November 2017. Respondent did not tell Agero about the dismissal. In December 2017, when he was suspended from continuing her representation, respondent failed to tell Agero of his suspension. Later that month, because respondent had not been responding to Agero's communications, Agero checked the internet and found out about respondent's suspension. Respondent did not respond to the Bar's attempt to investigate that matter.

We agree with the trial panel's conclusion that respondent violated RPC 1.3 (neglecting client matters) and RPC 8.1(a)(2) (failing to cooperate with Bar disciplinary investigation).

8. *Beutler matter*

Beutler hired respondent in July 2017 on an hourly rate agreement to handle a property dispute and provided respondent with $1,200 in advance fees designated as earned on receipt. Beutler called respondent throughout August 2017 but was unable to reach him. He spoke with respondent's assistant several times in October, but never spoke with respondent. By December 2017, when respondent was suspended, Beutler had no information about any work that respondent had performed on his matter. Respondent did not tell Beutler that he was suspended. Beutler later learned about the suspension from the Bar. Respondent did not refund any of the $1,200 that Beutler had paid him. Respondent also did not cooperate with the Bar's effort to investigate the matter.

Respondent maintains that he earned the $1,200 because, according to respondent, at the time of his suspension, he had completed the research necessary to advise Beutler even though he had not yet memorialized that advice in written work product. Respondent provided no evidence of that research. Without such evidence, and given respondent's documented history of ignoring Beutler's matter, respondent's testimony is not credible.

We therefore agree with the trial panel's conclusion that respondent violated RPC 1.4(a) (failing to keep client informed); RPC 1.4(b) (failing to explain matter so client can make informed decisions); RPC 1.5(a) (charging excessive fees); RPC 1.16(d) (failing to return unearned fees); and RPC 8.1(a)(2) (failing to cooperate with Bar disciplinary investigation).

9. *Gehrke-Harris matter*

On November 9, 2017, Gehrke-Harris hired respondent on an hourly rate agreement to seek a visitation order so that her husband could see his son. She provided respondent with $400 in advance fees that were designated as earned upon receipt. Five days later, she asked respondent for an update. Respondent said he was not feeling well. Gehrke-Harris terminated respondent on November 27, after learning about respondent's legal troubles in the newspaper. She asked respondent for a refund at that time. Respondent said that he would provide her with a refund as soon as possible, but he failed to provide her with the refund. He also failed to cooperate with the Bar's effort to investigate the matter.

We agree with the trial panel's conclusion that respondent violated RPC

1.5(a) (charging excessive fees); RPC 1.16(d) (failing to refund unearned fees); and RPC 8.1(a)(2) (failing to cooperate with Bar disciplinary investigation).

10. *Stone matter*

In September 2017, Stone hired respondent on an hourly rate agreement to represent him in a custody modification proceeding. From September to November 2017, Stone paid respondent $1,500 in advance fees designated as earned on receipt. Respondent never filed the petition. According to respondent, he started the petition but "did not get very far." Respondent does not maintain that he performed $1,500 worth of services to Stone before his December 2017 suspension. Respondent did not notify respondent that he was suspended and did not cooperate in the Bar's investigation into the matter.

We agree with the trial panel's conclusion that respondent violated RPC 1.4(a) (failing to keep client informed); RPC 1.4(b) (failing to explain matters so client can make informed decisions); RPC 1.5(a) (charging excessive fees); RPC 1.16(d) (failing to return unearned fees); and RPC 8.1(a)(2) (failing to cooperate with Bar disciplinary investigation).

11. *Taffese matter*

Taffese hired respondent in June 2017 on an hourly rate agreement to pursue claims against a home repair contractor. Taffese provided respondent with $5,000 in advance fees designated as earned on receipt. After respondent filed a complaint, the defendant filed a motion to dismiss in October 2017, which remained unresolved at the time of respondent's suspension in December 2017. Respondent did not tell Taffese

about the motion to dismiss or his suspension and did not provide a refund. Respondent also failed to cooperate with the Bar's efforts to investigate the matter.

The trial panel concluded that respondent had violated RPC 1.5(a) (charging excessive fee) and RPC 1.16(d) (failing to refund unearned fees). We do not agree with those conclusions. Respondent provided legal services to Taffese. The record does not contain evidence of the extent or value of those legal services. Thus, the Bar has failed to establish, by clear and convincing evidence, that respondent charged an excessive fee or retained unearned fees. Nevertheless, we agree with the trial panel's remaining conclusions that respondent violated RPC 1.4(a) (failing to keep client informed); RPC 1.4(b) (failing to explain matters so client can make informed decision); and RPC 8.1(a)(2) (failing to cooperate with Bar disciplinary investigation).

12. *Frackowiak matter*

Frackowiak hired respondent in July 2017 on an hourly rate agreement to represent him in several different matters. At least one matter related to a commercial lease dispute. Frackowiak provided respondent with $1,200 in advance fees that were designated as earned on receipt. Respondent performed research and sent two letters advancing Frackowiak's interests with regard to the commercial lease dispute. In December 2017, not long before his suspension, respondent appeared at Frackowiak's home one evening and asked for $2,500, which Frackowiak gave him. Frackowiak, who is currently incarcerated for theft and securities fraud, testified at the trial panel hearing that he believed that the $2,500 constituted additional advance fees. Respondent testified that he had already performed substantially more work than was covered by the original

$1,200 in advance fees and the $2,500 was for work that he had already performed. Respondent never sent Frackowiak an invoice, and his billing records are not part of the record in this proceeding. Frackowiak learned of respondent's suspension from the media coverage. Respondent failed to cooperate with the Bar's efforts to investigate this matter.

The trial panel concluded that respondent had violated RPC 1.5(a) (charging excessive fee) and RPC 1.16(d) (failing to refund unearned fees). We do not agree with those conclusions. As with other some of the other clients whose representation is at issue here, respondent provided Frackowiak with legal services. The record does not contain evidence of the extent or value of those legal services. Thus, the Bar has failed to establish, by clear and convincing evidence, that respondent charged excessive fees or retained unearned fees. We agree with the trial panel's remaining conclusions that respondent violated RPC 1.4(a) (failing to keep client informed); RPC 1.4(b) (failing to explain matters so client can make informed decision); and RPC 8.1(a)(2) (failing to cooperate with Bar disciplinary investigation).

13. *Williams matter*

The most serious single set of allegations against respondent relates to his representation of Williams and his handling of her money. Williams was referred to respondent by a former client, Wilson. Williams hired respondent in April 2017 on an hourly rate agreement to resolve a dispute with a homeowners' association (HOA). Respondent started work in July 2017 and had some communications with the HOA's lawyer. The HOA's lawyer sent respondent a check for $31,689.29, made payable to Williams, to resolve one component of the dispute. Respondent received that check on or

around August 22, 2017.

Respondent promptly texted Williams to tell her that he had her money and asked how he should convey the money to her. She did not immediately respond to that text or his follow-up texts. On August 25, he deposited the check into his lawyer trust account. On August 26, respondent sent Williams an email saying that he was going to deduct $640 from the total, representing the outstanding balance that she owed him for his work on the matter to date.

Williams eventually responded in early September, stating that she had just obtained a new phone and had only received his last text message indicating that respondent had over $30,000 waiting for her but needed direction on how to distribute the funds. Williams replied but did not provide that direction. Instead, Williams and respondent discussed whether to proceed with additional claims against the HOA.

In October, respondent began making withdrawals from his lawyer trust account, frequently transferring money to his personal account. At that time, nearly all the money in the trust account belonged to Williams. By the end of October, respondent had withdrawn more than half of Williams's money. One of the withdrawals that respondent made was in the amount of $4,000. Respondent gave that money to Wilson to bail someone else out of jail, someone known to Williams. Respondent released the funds to Wilson without authorization from Williams.

In November, respondent drafted a letter to the HOA regarding additional claims that Williams might pursue. Williams provided input on that letter, although it is unclear whether respondent ever sent the letter to the HOA.

On December 1, Williams texted respondent, asking how she could get her money because she wanted to buy a house. She received no response from respondent, who had been continuing to make withdrawals from his trust account. Then on December 4, she texted again, asking what was going on. Respondent said that he had technological problems but would follow up on December 5. When respondent did not follow up by December 6, Williams texted, "I need to pick up my money!!!!!!!" Respondent did not respond. So, on December 11, Williams texted, "I want my money." Respondent replied that he was having difficulty texting so he wanted to meet in person. On December 13, Williams told Wilson that she wanted to pick up her papers and money from respondent and get a new lawyer. A few days later, respondent told Williams that he had spoken with her acquaintance, Wilson, and could have his assistant bring Williams $1,000. Williams told respondent that she needed "the entire amount" and asked when she could stop by to pick it up. Williams also texted Wilson to say that it was "weird" that respondent was offering her $1,000 of her money. The two then discussed having Wilson pick up Williams's papers and money from respondent.

By December 20, 2017, the day that this court issued its order immediately suspending respondent, respondent had transferred all of Williams's money out of his lawyer trust account. That same day, Wilson went to respondent's office to pick up Williams's case file and money. Respondent gave Wilson Williams's papers and $200 cash for Williams. After leaving respondent's office, Wilson met with Williams. Williams testified that, at that meeting, Wilson had told her that respondent had admitted to spending all of her money but that respondent could pay her back if she did not talk to

the Bar and if he won a case he was working on. Two days later, respondent texted Williams, "I talked to [Wilson]. Thank you for understanding." He also asked her to confirm whether she wanted the Bar to take over her file. Williams did not respond.

Two months later, in February 2018, Williams texted respondent, "im getting concerned about my money u spent probably cause haven't gotten any type confirmation from u telling me what ur plan is .... can u do that??" Respondent replied that they should meet in person.

At the trial panel hearing, Williams testified that she never received any of the money that the HOA had sent to respondent and that she did not authorize respondent to transfer the money to anyone else, including to himself. Respondent disputed that testimony and presented an entirely different version of events. Although respondent admits that he gave Wilson $4,000 of the trust money without Williams's authorization, he denies misappropriating the remainder of the money. He maintains that he transferred about $12,000 to himself as payment for legal services, although the only work that he did for Williams after receiving the funds was drafting a short demand letter to the HOA. Respondent further testified that he had given Williams the remaining money, about $15,000, in small cash payments over time. According to respondent, Williams would repeatedly stop by his office unannounced and ask for some of her money in cash, which respondent provided to her from his personal funds. Respondent testified that, following those visits, he would transfer Williams's money from his lawyer trust account into his personal account to make up for the money that he had provided to Williams.

The trial panel did not find respondent's testimony credible, and neither do

we. Unlike respondent's version of the events, Williams's version of the events is in accord with the record documenting the communications between respondent and Williams. Respondent repeatedly attempted to avoid Williams's inquiries about her money. When he did respond, his responses were not consistent with someone who had already satisfied his financial obligations to Williams. Instead, he studiously avoided comment on the money and instead suggested that they meet in person.

Based on those facts, we agree with the trial panel's conclusion that respondent violated RPC 8.4(a)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice law); RPC 8.4(a)(2) (committing a crime -- first-degree theft under ORS 164.055 -- that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer)[7]; RPC 1.15-1(a) (failing to hold client funds in trust); and RPC 1.15-1(d) (failing to deliver funds or surrender property).

14. *Heubner and Leatham matters*

The trial panel found that respondent had failed to cooperate with the Bar's investigation into two additional matters, involving separate complaints made by Heubner and Leatham. We agree that the Bar proved those allegations by clear and convincing evidence and that, as to each matter, respondent violated RPC 8.1(a)(2)

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[7] Respondent has not been prosecuted for theft in a criminal proceeding. But the lack of an underlying criminal prosecution is "not dispositive" of claims under RPC 8.4(a)(2). *In re Walton*, 352 Or 548, 554, 287 P3d 1098 (2012); *see also In re Kimmell*, 332 Or 480, 485, 31 P3d 414 (2001) ("[T]his court has held that proof that an accused lawyer was convicted for such an act is not required to find a violation of [the predecessor to RPC 8.4(a)(2)].").

(failing to cooperate with Bar disciplinary investigation).

C. *Sanction*

We proceed to consider the appropriate sanction for respondent's misconduct. In so doing, we refer to the American Bar Association's *Standards for Imposing Lawyer Sanctions* to determine a preliminary sanction by considering the ethical duties violated, respondent's mental state at the time of the misconduct, and the potential or actual injury caused by respondent's misconduct. We also consider any aggravating or mitigating circumstances that may justify either an increase or a decrease in the presumptive sanction. Finally, we consider the appropriate sanction in light of this court's case law. *In re Graeff*, 368 Or 18, 27, 485 P3d 258 (2021).

We need not engage in an extended analysis to conclude that the presumptive sanction is disbarment. "[T]his court often has stated that even a single act of intentional conversion of client funds presumptively warrants disbarment." *In re Webb*, 363 Or 42, 53, 418 P3d 2 (2018); *see also* ABA Standards 4.11 ("Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client."). In this case, respondent intentionally converted Williams's funds, causing her financial injury. Therefore, the presumptive sanction is disbarment.

And, beyond the four violations related to his intentional conversion of Williams's funds, we have determined that respondent committed 40 other violations related to 14 other matters that involved failing to refund unearned fees, collecting illegal fees, failing to communicate with clients, neglecting client matters, and failing to

cooperate with the Bar's investigations into that conduct. In doing so, he violated duties owed to his clients (ABA Standards 4.0), duties owed to the public (ABA Standards 5.0), and other duties as a professional (ABA Standards 7.0). Those violations are a variety of intentional, knowing, and negligent conduct.

Respondent's misconduct caused extensive injuries, which were not merely financial. Many of respondent's clients had limited financial means and needed their advance fees returned before they could afford to hire new attorneys. When respondent failed to return those advance fees, some clients simply went without legal representation. Stone, for example, is a painting subcontractor who saved up money during his busy season of the year to hire a lawyer so that he could see his son again. At that time, his son was about to start high school. When respondent took Stone's money without providing him any legal services, Stone's effort to see his son was set back another year.

Other clients reported emotional distress from respondent's neglect and failure to keep them informed. Charpentier testified that, between not hearing back from respondent during the engagement and then having to repeatedly follow up with respondent to get her money back, "[i]t was two months of just pure hell." Grotz, who for months tried unsuccessfully to get substantive responses from respondent on the status of his case, reported health problems as the result of anxiety from not knowing whether his legal interests were being protected.

Having determined that the presumptive sanction is disbarment, we consider whether the balance of aggravating and mitigating circumstances justifies a departure from that presumptive sanction. We find the following aggravating

circumstances: dishonest or selfish motive; pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceeding; refusal to acknowledge the wrongful nature of his conduct; vulnerability of victims; indifference to making restitution; and illegal conduct. ABA Standard 9.22(b), (c), (d), (e), (g), (h), (j), (k). And we find the following mitigating circumstances: absence of a prior disciplinary record and personal or emotional problems. ABA Standard 9.32 (a), (c).

We conclude that the aggravating circumstances substantially outweigh the mitigating circumstances. Respondent repeatedly put his own interests ahead of his clients, to their financial and emotional detriment. And his failure to accept responsibility for any of his conduct is, to put it bluntly, incredible, particularly because, as to some matters, he concedes the facts establishing the violations. He nevertheless persists in deflecting responsibility by arguing that his actions were the product of circumstances created by his ex-wife, his administrative assistants, his clients, and the Bar attorneys investigating the complaints. Respondent sees himself as the victim and fails to fully acknowledge the harm that he has caused to his clients and the profession. That perspective, apparent in one representation after another, demonstrates respondent's unfitness to represent future clients. We therefore conclude, after considering the aggravating and mitigating factors set out above, that the sanction of disbarment is appropriate.

That conclusion is supported by our case law. The most relevant case to respondent's conversion misconduct is *In re Phinney*, 354 Or 329, 311 P3d 517 (2013), which resulted in disbarment. In that case, the respondent served as the treasurer of an

alumni association, a position that was unrelated to his legal practice. Over the course of about two and half years, he withdrew $32,600 from the association's bank accounts without authorization and deposited that money into his personal account to pay expenses for himself and his family. The respondent maintained that he withdrew the money because he had experienced serious personal financial difficulties and always intended to pay back the association. In fact, by the time that the theft was discovered, the respondent had already deposited $18,070 back into the association's account. *Id.* at 330-31.

This court concluded that the respondent's conduct constituted theft by appropriation under ORS 164.015(1), establishing a violation of RPC 8.4(a)(2) (committing crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer). *Id.* at 333-34. The court also concluded that the respondent's conduct violated RPC 8.4(a)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice law). *Id.* at 334-35.

Based on those violations, the court determined that the presumptive sanction was disbarment. *Id.* at 337. The court then concluded that the balance of the aggravating and mitigating circumstances did not justify a departure from that presumptive sanction. The court reached that conclusion even though, like respondent in this case, the respondent in *Phinney* had no prior disciplinary record and had experienced personal and emotional problems, and, unlike respondent in this case, the respondent had fully cooperated with the Bar's investigative process and had repaid a substantial amount

of the money that he improperly took. *Id.* at 337-38. The respondent in *Phinney* further did not have the litany of additional offenses and victims that respondent has in this case. As a result, we conclude that our case law supports the sanction of disbarment.

Respondent is disbarred, effective 60 days from the date of this decision.

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 17-79, 17-86, 17-87, 17-88, 18-09,
	)	18-31, 18-32, 18-33, 18-64, 18-75, 18-76,
	)	18-77, 18-86, 18-87, 18-88, 18-129, 18-170
ANDREW LONG,	)	
	)	**TRIAL PANEL OPINION**
Respondent.	)	
	)	

In this disciplinary proceeding, the Oregon State Bar ("Bar") alleged that respondent, Andrew Long, engaged in a pattern of conduct resulting in multiple violations of the Rules of Professional Conduct ("RPC"). These violations involve more than a dozen clients. The Bar contends that respondent's misconduct included knowing conversion of client money and dishonesty, mishandling of client funds, excessive fees, failure to communicate and neglect. In most instances, the Bar asserts, respondent also failed to respond to requests for information from disciplinary authorities, another violation of the rules.

In the most significant matter, respondent stole client funds and sought to explain the disappearance of the money by claiming that he had actually disbursed the bulk of the funds in cash to his client, in piecemeal amounts without documentation, at her request. For the other matters, the Bar describes respondent's conduct as generally involving a pattern of: (1) accepting retainers identified as "earned-on-receipt" but failing to perform the legal work for which he was paid; (2) failing to return unearned fees even when his own records showed a refund was owed; and 3) failing to cooperate in the investigation of the grievances.

The case was tried beginning on June 12, 2019 and concluding on June 18. The trial panel consisted of the Adjudicator, Mark A. Turner, the Attorney Member, Craig A. Crispin, and the Public Member, JoAnn Jackson.

The trial panel unanimously concludes that the Bar proved the majority of the charges, including the most significant charge of theft of client funds, by clear and convincing evidence. Disbarment is the presumptive sanction here. As discussed below, we agree and order that respondent be disbarred.

PROCEDURAL HISTORY

On March 29, 2018, Disciplinary Counsel's Office ("DCO") filed the Bar's Formal Complaint. A First Amended Formal Complaint was filed on May 14, 2018. Respondent filed an Answer to the First Amended Formal Complaint on June 19, 2018.

On September 19, 2018, the Bar requested the appointment of a trial panel. On October 19, 2018, respondent challenged the appointment of the Adjudicator for cause. On November 5, 2018, Region 5 Chairperson, Ronald W. Atwood, issued a decision denying respondent's challenge. On November 7, 2018, respondent filed a Motion to Reconsider Challenge for Cause. On November 8, 2018, Atwood denied the Motion to Reconsider.

On that same date the Bar filed its Second Amended Formal Complaint. On November 30, 2018, respondent filed his Answer to the Second Amended Complaint. Although he had already filed an answer, on December 21, 2018, respondent filed a motion titled "Respondent's Challenge to the Jurisdiction of the OSB." On January 7, 2019, the Adjudicator entered an Order Denying Challenge to the Jurisdiction of the Oregon State Bar, and a week later, the Disciplinary Board Clerk notified the parties of the June 12, 2019 trial setting.

On March 1, 2019, the Bar filed a Petition for Suspension During Pendency of Disciplinary Proceedings pursuant to BR 3.1. On March 7, 2019, respondent filed a Response to BR 3.1 Petition. On March 13, 2019, the Disciplinary Board Clerk notified the parties that a hearing on the BR 3.1 Petition was scheduled for April 23 and 24, 2019. The next day, March 14, 2019, respondent filed a Motion to Dismiss BR 3.1 Petition. On April 1, 2019, the Adjudicator issued an Order Denying Respondent's Motion to Dismiss BR 3.1 Petition.

On April 8, 2019, respondent filed a Motion to Continue BR 3.1 Hearing. On April 12, 2019, respondent filed an Emergency Petition to Stay BR-3.1 Proceeding & Petition for Interlocutory Review of Order Re: BR 3.1 with the Oregon Supreme Court. On April 15, 2019, the Court entered an Order Granting Emergency Motion to Stay. The BR 3.1 hearing was cancelled.

On May 23, 2019, the Court entered an Order Denying Petition for Interlocutory Review and Lifting Stay. At the request of the Bar, the BR 3.1 Petition was consolidated for hearing with the trial of these cases. The decision on the BR 3.1 Petition is for the Adjudicator. As discussed in the separate order issued at the same time as this opinion, the BR 3.1 Petition is granted and respondent is suspended from practice immediately until further order of the Adjudicator or the Oregon Supreme Court.

Also germane to some of the charges herein is the fact that respondent was subject to prosecution in a separate set of cases in 2018 ("Long I"). In Long I, the Oregon Supreme Court issued an immediate order suspending respondent from practice in December 2017. That suspension is relevant to charges in this case insofar as it was material information to existing clients that respondent failed to disclose.

STATEMENT OF FACTS

The Bar divided respondent's conduct into four general categories in its presentation and our analysis will follow suit as the most efficient and logical approach. They are: (1) theft and/or conversion; (2) failure to communicate and/or to perform work, accompanied by a refusal to return unearned fees; (3) trust account irregularities; and (4) failure to cooperate with disciplinary authorities.[1] The individual cases are considered below in the order in which they were presented in the Bar's trial memorandum, beginning with the most serious charge—theft of client funds.

[1] Our adoption of the Bar's organizational structure does not suggest anything other than that the Bar's structure is appropriate for analysis. It does not indicate our carte blanche acceptance of the Bar's position.

A. Theft and/or Conversion

Twenty Fourth Cause of Complaint: OSB (CSF Williams) Matter – Case No. 18-129

Shannon L. Williams retained respondent on April 28, 2017, to obtain money belonging to her from a property sale. The money was held by attorney Peter McCord. Williams also hired respondent to evaluate claims against a disaster clean-up company known as Serv-Pro, and against Williams' Homeowners' Association, relating to damage to the property.

The parties entered into a written hourly, earned-on-receipt, fee agreement in which Williams agreed to pay $800 up front and was to be billed at a rate of $400/hour. Ex 302.

Following a few communications between respondent and McCord, McCord sent respondent a check on August 25, 2017, for $31,689.29, made out to Williams. These were the net proceeds from the property sale. Respondent deposited the check into his lawyer trust account ("IOLTA") the same day without getting his client's endorsement. Ex 5 (trust account records), p. 36; Ex 316. Respondent then transferred $800 into his checking account on September 25, 2017. Ex 5, p. 44.

Prior to that deposit, respondent's IOLTA balance was $4.03. Ex 5, p. 36. Thereafter, respondent withdrew the rest of the $31,689.29 sum through multiple cash withdrawals, transfers to his business checking account, and transfers to third parties. Ex 5, pp. 36, 44, 47, 52, & 55. Williams testified that she had no notice of any of these withdrawals and that none of them were authorized by her. None of the withdrawals appeared to benefit Williams, nor did they relate to her legal matters. As of December 12, 2017, respondent's IOLTA balance was $7.32. Ex 5, p. 55.

Respondent testified at trial that many of these withdrawals were made in order to distribute the funds to Williams in small cash amounts at her request. He also testified that other

withdrawals were to cover attorney fees that he had earned for actual work performed. Respondent claimed that Williams had in fact been paid in full and that he owed her nothing.[2]

Williams emphatically denied that she had ever received any cash payments from respondent. Respondent was unable to produce records of actual work performed and was unable to account for the handling of the funds. When asked why he could produce no receipts for the cash disbursements to his client, respondent testified that this was done at her request. He stated that she did not want to be bothered with documentation. She was not interested in "details." Tr., p. 469. He said that he offered her receipts, but she refused them. Tr., 469-70.

In assessing the credibility of these competing versions of events, we found that Williams presented as a credible witness. Her demeanor was forthright. Her testimony was delivered naturally and did not appear rehearsed or manufactured. She was composed and assured while being cross-examined.

Her version of events was also objectively credible. Williams said that she intended to use the sale proceeds to purchase a house. On December 1, 2017, Williams texted respondent: "Hey, I need to get my money today. I found a place to buy." (1:15 a.m.) "This is most important that it happens today." (1:17 a.m.) "Hello need to get my money today." (11:15 a.m.) Ex. 329. Hearing nothing, on December 4 at 4:15 p.m. she texted "What is going on!!!!!?????" Respondent replied at 9:15 p.m.: "Ran into tech problems. Will be with you tomorrow." Not hearing from him on the 5th, Williams texted on the 6th at 1:44 p.m.: "I need to pick up my money!!!!!!" Ex. 330.

On December 16 respondent texted at 9:15 p.m. that he could have his assistant, Heidi Glick, bring Williams "$1,000 pretty much any time, so let me know." Ex. 332.

[2] Respondent also withdrew $4,400 in cash on October 3, 2017 and gave it to one Bryan Wilson, a friend of Williams who had introduced her to respondent. $4.000 of the money was to pay bail for a woman named Chelsie Neffendorf. Wilson had asked Williams for the bail money and she had told him no. Tr., pp. 54-55. Wilson told respondent that Williams had approved his request, and according to respondent's testimony, Wilson showed him a text message purportedly from Williams approving the withdrawal. Respondent never communicated with Williams to determine whether she actually authorized the payment of Neffendorf's bail. Respondent was unable to explain the other $400.

Bryan Wilson was also texting with Williams about the money at the same time. She texted him: "Weird he's offering me 1000 of my money." Ex. 333A.

Wilson eventually met with Williams and told her that respondent had spent her money, but "that [respondent] would, if I didn't talk with the Bar, he would. he would compensate me when he won this case that he was doing." Tr., p. 65. Williams refrained from making a complaint at that time.

Respondent's testimony at trial was that, when Williams asked for her money because she was ready to purchase a house, "I didn't know what she was talking about." Tr., pp. 480-81. He never told her that she had already been paid in full, the expected response if his version of events was truthful. Respondent did not return any portion of the $31,689.29 to his former client.

On July 6, 2018, respondent produced to DCO an invoice dated August 2017, that purportedly reflected legal services he performed for Williams between April 28, 2017, and August 24, 2017, totaling $1,440 (leaving a balance owing by Williams of $640 after deduction of her $800 initial payment). Ex 340, p. 6. Respondent also offered an account of additional services he claimed to have performed (but did not document in any billing or time record) and payments he claimed he made to Williams. Ex 340. pp. 2-5. Beyond emailing McCord prior to receiving the $31,689.29 check, respondent did little work, failing to send a single demand letter on Williams's behalf regarding the property damage claim with ServPro and the HOA. In addition, respondent concluded his explanation to the Bar by writing:

> "The remaining approximately $700 was then deducted pursuant to agreed fees or earned on receipt pre-payment of fees (I honestly do not recall because I did not handle it) on or about December 8, 2018. By that time, it seemed likely to me that I would be suspended and, therefore, I was **glad to have nearly depleted the account**." Ex 340, pp. 2-5 (emphasis added).

Williams also testified that she was visited by Heidi Glick shortly before she was to testify at trial. Glick "wanted me not to come here today. Said that if I didn't come here today, Mr. Long would win the case." Tr., p. 69.

B. Failure to Communicate, Perform Useful Work, Return Unearned Fees

1. Fifth Cause of Complaint: Roger Hennagin Matter – Case No. 18-31

On April 6, 2016, Harold Mitchell hired respondent to pursue claims against his former employer. Their written fee agreement provided that respondent was to be paid at $250/hour, and that an initial $1,500 payment was earned-on-receipt. Ex 93. Although respondent prepared and filed a complaint and an amended complaint in the case, the pleadings were defective. Exs 98, 108 & 111.

Despite the quality of the work, respondent charged his client more than $19,000 in fees and collected at least $18,500. Exs 94A-F, 95, 96, 99, 100, 105, 105A 107, & 111. None of this money was deposited into respondent's IOLTA.

Respondent also pursued an appeal of a decision from the Workers' Compensation Board ("WCB") on behalf of Mitchell. Those fees were included in the above total. Respondent charged $9,300, at $300/hour, for the appeal, but the fees were charged and collected without the WCB approval required by ORS 656.388(1). Respondent's only counter to this point was to claim that he had received approval from the WCB to pursue the appeal. Tr., p. 416. That fact does not address the propriety of collecting the unapproved fee.

In August 2017, Mitchell fired respondent. Mitchell hired Roger Hennagin as new counsel. Hennagin demanded a full refund of fees paid to respondent, but respondent did not respond. He has never refunded any of Mitchell's fees.

2. Tenth Cause of Complaint: David Grotz Matter – Case No. 18-64

In January 2017, David Grotz ("Grotz") hired respondent to resolve a property dispute with his neighbors. Respondent did not have a signed fee agreement. Respondent charged Grotz an initial fee of $2,500 and later collected between $10,000 and $20,000 from him. Much of this

money was unearned at the time of receipt. None of it was deposited into respondent's trust account.[3]

Respondent did file a lawsuit on February 26, 2017. Yet respondent subsequently failed to respond to numerous requests from Grotz for information on the status of the case and about what, if any, action respondent taken.

On October 11, 2017, the trial court notified respondent that a status hearing was set for December 18, 2017. The notice advised respondent that failure to appear could result in an order or judgment against his client. Respondent waited to tell his client about the hearing for approximately five weeks. When he finally did so, respondent did not give Grotz any information or explanation about the hearing. Ex 173.

In the course of the representation, respondent sent statements that showed time and expenses totaling $6,951 on Grotz's behalf. Exs 161, 162 & 163. This is substantially less than the approximately $12,500 that the evidence showed was collected by respondent.

The last bill to Grotz showed $992.50 owing on November 20, 2017. Ex 167. Grotz had paid respondent $2,500 on November 28, 2017. That money was not deposited into the trust account. Grotz fired respondent on December 8, 2017. Respondent has not refunded the approximately $1,500 remaining after payment of the $992.50.

When Grotz fired respondent he demanded an accounting, a refund, and a complete copy his file. Respondent acknowledged the demands, but failed to comply with any of them.

3. Twentieth Cause of Complaint: OSB (CSF Avila-Chulim) Matter – Case No. 18-87

[3] Respondent contended that his written fee agreements, which acknowledged an initial payment by the client that was earned-on-receipt, also made any future payments earned-on-receipt so that he was never required to put money into trust. We do not read the agreements that way. When future payments are mentioned they are discussed in the context of hourly billings and are never referred to as earned-on-receipt. Thus, unless supported by billings for actual work done, any future payments respondent received from these clients should have been deposited in his trust account.

On May 26, 2017, with the assistance of his girlfriend, Shanna Green, Miguel Avila-Chulim hired respondent pursuant to a written hourly, earned-on-receipt, fee agreement to file a petition for a modification of his parenting plan. Ex 265. The agreement set an hourly rate of $250.[4] On or before May 26, 2017, respondent received a $2,000 retainer on the case. Ex 266. Respondent never filed the modification petition.

On June 8, 2017, Avila-Chulim terminated respondent, demanded an accounting and a refund. Ex 269. Respondent's staff acknowledged the request and that a refund was due. Ex 270. On September 8, 2017, Avila-Chulim received his only invoice from respondent, showing a total of 1.8 hours work, $360 in total, for "research" and to "[b]egin drafting petition." Ex 271.

Between June 28, 2017, and January 3, 2018, Avila-Chulim and Green sent respondent multiple demands for a refund of the unearned portion of the retainer in the amount of at least $1,640. Ex 270. Respondent did not refund any money to this client.

4. Fourteenth Cause of Complaint: Jeffrey Stone Matter – Case No. 18-76

On September 22, 2017, Jeffrey A. Stone discussed representation in a custody modification proceeding with respondent and the terms thereof. At respondent's request, Stone left his only copies of his file documents.

At a second meeting five days later, respondent and Stone entered into a superseding arrangement, referred to in respondent's handwritten notes as a "$2,500 flat fee agreement." Ex 220. The "$2,500 flat fee agreement" required respondent to prepare and file a modification petition and appear for any hearings on the petition. No written fee agreement was signed by the client memorializing a "flat fee" arrangement. Respondent also failed to give his client written

[4] Green and Avila-Chulim were paired with respondent through the Bar's Modest Means program. The fee was not to exceed $80 per hour. Respondent told them and testified at trial that he believed the fee cap was only a suggestion and that he was free to negotiate a higher rate. He told the clients that $80 was "ridiculous." He said his normal rate was $400 per hour, but he would discount it to $250 per hour in their case. Although not the subject of any charge, we find this conduct to be reprehensible. Respondent pulled a bait-and-switch on his vulnerable clients. Green explained that she was willing to agree to the higher fee because they needed the work done quickly. She thought they could get the work done for a total amount they could afford even with the increased rate. The fact that the clients agreed to the higher rate, however, does not make respondent's abuse of the program acceptable. Instead, it demonstrates a pattern of intent to benefit respondent at the expense of his clients.

explanation that the funds he paid would not be deposited into respondent's IOLTA and failed to tell the client that he might be entitled to a refund if respondent did not complete the engagement.

Stone paid respondent $1,000 in cash on September 27, 2017, and $500 in cash on November 3, 2017. This was done with the understanding that respondent required at least half of the $2,500 fee to begin working on the modification. Ex 222. Neither of these payments went into the IOLTA.

Respondent never filed the petition. No evidence suggests that he provided any legal services of value. Respondent failed to respond to multiple requests for updates from his client.

Respondent did not tell Stone that he was suspended by the Oregon Supreme Court on December 20, 2017. He never responded to Stone's demands for a refund. He has not refunded any money. He has also never returned the original file materials to his client.

5. **Eighteenth Cause of Complaint:** OSB (CSF Beutler) Matter – Case No. 18-86

On July 12, 2017, Stuart J. Beutler retained respondent to handle a real property dispute pursuant to a written hourly, earned-on-receipt, fee agreement. Ex 249. Beutler paid a $1,200 retainer and was to be billed at a rate of $400/hour.

Respondent failed to respond to multiple requests for case updates, failed to provide Beutler with legal services of value, failed to notify Beutler that he was suspended by the Oregon Supreme Court, failed to respond to Beutler's demands for a refund, failed to make any refund to Beutler, and failed to return his file. Exs 249 & 252.

6. **Sixteenth Cause of Complaint:** Aster Taffese Matter – Case No. 18-77

Aster A. Taffese ("Taffese") retained respondent on June 2, 2017, to file a complaint against a home repair contractor. English is not Taffese's first language. Respondent knew this. Taffese paid an initial earned-on-receipt fee of $5,000, to be billed at the "reduced" rate of $300/hour, in referenced consideration of her low income. Ex 238.

Respondent met with his client approximately seven times. Respondent did not explain matters sufficient for her to understand what was occurring in her case. Ex 244.

Respondent's first complaint filed on Taffese's behalf was rejected by the court because the caption failed to include the required "not subject to mandatory arbitration" statement in the caption. Ex 240. Respondent corrected and refiled it. Defendant then filed an ORCP 21 Motion to Dismiss. Ex 247. The motion was not resolved before respondent was suspended in December 2017.

Respondent never told Taffese that he was suspended. He never responded to her demands for a refund. He did not return her file. Taffese only obtained her file and notice of the suspension when the Bar was granted custodianship over respondent's files. Ex 245.

7. **Twenty Second Cause of Complaint:** James Frackowiak Matter – Case No. 18-77

In July 2017, James Frackowiak retained respondent at a designated "reduced" rate of $300/hour to research potential claims in connection with his businesses.[5] The written agreement indicated that $300 was earned on receipt. Ex 279. There were no other written fee agreements. In July 2017, Frackowiak paid respondent $900. Ex 279. None of this money was deposited into the IOLTA.

In December 2017, Frackowiak paid an additional $2,500 for respondent to file suit against his commercial landlords for recovery of deposits.

Again respondent failed to respond to his client's requests for case updates and failed to take action needed to meet the client's objectives. Respondent did draft and send two letters to the landlord, but he did not follow up on the letters or commence litigation. Ex 290. Respondent made no refund to Frackowiak.

[5] Frackowiak testified by telephone. He is currently incarcerated based on guilty pleas to multiple counts of aggravated theft and securities fraud, unrelated to the matters at issue here.

8. **Twenty Sixth Cause of Complaint:** Richman Matter – Case No. 18-77

On August 16, 2016, T.J. and Nicole Richman hired respondent, pursuant to a written hourly, earned-on-receipt, fee agreement, to represent T.J. Richman in connection with a juvenile court matter. Ex 354. That day, the Richmans paid a $1,000 retainer to be billed at a rate of $200/hour, and paid another $1,000 shortly thereafter. Ex 367, pp. 37 & 53.

Ten days later the Richmans retained respondent to represent them in an insurance claim for a contingent fee. Ex 356. Even though the fee was contingent, in late August the Richmans paid $500 "which may be applied to costs incurred or function similarly to a traditional Attorney retainer" that was "earned on receipt" to be billed at a rate of $300/hour. Ex 356. Respondent did not deposit these advance costs or fees into his IOLTA. Ex 4, pp. 33 & 39.

The Richmans paid respondent $2,500 in total for the two matters. Ex 367, p. 37. Respondent completed neither one. The only evidence of actual legal work performed was the filing of an initial notice of appearance in the juvenile proceeding and a single court appearance.

On October 25, 2016, respondent appeared at the Columbia County Courthouse on behalf of the Richmans in the juvenile matter. The judge believed respondent was under the influence of intoxicants. Ex 367, pp. 38-45. The hearing was reset and the Richmans drove respondent to a local hotel to "sleep it off." Ex 367, p. 45.[6]

On October 27, 2016, Nicole Richman sent respondent a written demand for an accounting and a refund for both matters. Ex 357.

Respondent ignored the demand. On October 31, 2016, Nicole Richman repeated the demand for an accounting and refund. Ex. 358. In response, respondent agreed to make a complete refund, but said he would "skip the accounting." Ex 359. In mid-November respondent refunded $1,000 of the $2,500 paid to him. Ex 364.

[6] The incident led to a referral of respondent to the State Lawyers Assistance Committee ("SLAC"). Respondent entered into an agreement with SLAC regarding substance abuse but promptly rejected it, resulting in a charged violation of RPC 8.1(c)(4) in the Long I matter.

9. **Third Cause of Complaint:** Brandi Gehrke-Harris Matter – Case No. 18-09

On November 9, 2017, Brandy Gehrke-Harris hired respondent to seek an order of visitation for her husband with his son. Gehrke-Harris agreed to pay a $1,200 retainer, with an initial payment of $400, and monthly payments of $200 thereafter. Ex 79.

On November 9, 2017, Gehrke-Harris paid the $400 by PayPal. That same day, respondent sent Gehrke-Harris a bill showing that another $200 was due immediately.

On November 14, 2017, Gehrke-Harris requested a status update from respondent by email. Respondent replied that he was "not feeling well" and did not yet have an update on the case. Ex 79.

During this engagement respondent performed no legal services on the case. On November 27, 2017, Gehrke-Harris fired respondent after learning from the news that respondent was facing "severe legal issues." Gehrke-Harris demanded a refund and gave respondent until December 5, 2017 to pay. Ex 79.

On January 22, 2018, respondent said that he would refund the retainer. Ex 81. That has never happened.

10. **Second Cause of Complaint:** Robert M. Butler Matter – Case Nos. 17-79 & 17-86

Robert M. Butler retained respondent on June 30, 2017 to advise him on a possible appeal in a family trust dispute. There was a written hourly, earned-on-receipt, fee agreement that required the payment of $2,500. Butler wrote a $2,500 check for the retainer. He did not give respondent any documents or other materials to review at that time.

The agreement stated, as most of respondent's written fee agreements did: "Nonetheless, the funds will either be applied to costs incurred or earned on an hourly basis as set forth in the following paragraph. The client may discharge the attorney at any time and, in that event, will be entitled to a refund of any portion of the fee that the Attorney has neither applied to costs nor

earned." (Emphasis in original.) The agreement identified an hourly billing rate of $400. Respondent did not deposit the retainer into his IOLTA. Ex 5, pp. 28 & 33.

On July 6, 2017, Butler hand-delivered a letter to respondent's office terminating the engagement and asking for a refund. On August 4, 2017, Butler filed a small claims action against respondent to recover his retainer.

A mediation agreement was reached in the small claims case on September 26, 2017. Ex 44. Up to that point respondent had paid no money back to Butler.

11. Seventh Cause of Complaint: Maria Agero Matter – Case No. 17-79 & 17-86

On December 6, 2016, Maria Teresa Agero hired respondent to file suit against a septic tank inspection company. She paid him a $3,000 cash retainer. Ex 130. Respondent produced no written fee agreement. Agero, who lives in Spain, did not recall one. Respondent testified that he had a written fee agreement but did not know where it was. Tr., pp. 443-44. Respondent did not deposit any of the $3.000 into his IOLTA.

Twenty-four days later Agero paid respondent an additional $900 via PayPal. Ex 130. He put none of this money into his IOLTA either.

In July of 2017 respondent filed a complaint on Agero's behalf alleging a single cause of action for negligent misrepresentation against defendant Ed's Septic Tank Cleaning Service, LLC. Ex 127. For some reason respondent filed an Amended Complaint identical to the original complaint the next day. Ex 128. Respondent served defendant, but thereafter did nothing on the case.

On October 18, 2017, the court sent respondent a notice of intent to dismiss for want of prosecution in 28 days under Uniform Trial Court Rule 7.020(3). Respondent did nothing. On November 17, 2017, the court entered a general judgment of dismissal, with notice to respondent, and closed the case. Respondent never told his client of the dismissal. He took no steps to either revive the lawsuit or appeal the dismissal. The only communication respondent

had with Agero was an invoice dated August 1, 2017. This was eight months after her initial payments.

Agero complained to the Bar in January 2018. She had learned of respondent's suspension from practice in December 2017 through an internet search. She was looking for another lawyer to "check the status of [her] complaint and go forward with it if possible." Ex 134. Agero was not aware that her case had already been dismissed.

C. Trust Account Irregularities

First Cause of Complaint: Charpentier Matter--Case Nos. 17-87 & 17-88

On November 3, 2016, Debra Charpentier hired respondent to help her recover funds from the sale of her deceased mother's home. There was no written fee agreement. The next day Charpentier paid a $600 retainer, and respondent told her orally that her initial payment would be earned upon receipt. Respondent did not deposit the money into his IOLTA.

After their one phone conference, Charpentier never heard from respondent again. The record reflects that, at best, respondent made two calls to a title company pertaining to the case. Respondent performed no other legal services on behalf of his client.

Between November 2016 and February 2017, Charpentier made multiple phone calls to ask about the status of her case. Respondent did not respond to her requests in any substantive way.

In early February 2017, Charpentier terminated respondent and requested a refund of all her money. Respondent claimed that he had earned part of the retainer. Charpentier asked for an accounting.

Respondent provided no accounting. Instead, respondent wrote Charpentier a check for $285 from his IOLTA against a balance of $2.08. Ex 5, p. 9; Ex 65. The check bounced.

On February 9, 2017, the bank charged the IOLTA a $35 NSF fee, which left a balance of $-32.92. Ex 5, p. 9. Respondent then deposited $40 and another $100 of personal funds into the IOLTA to cover the negative balance.

In mid-February 2017, respondent sent Charpentier a cashier's check for $300.

D. Failure to Cooperate with Disciplinary Authorities

The evidence showed that respondent failed to respond to multiple requests for information from DCO in eleven matters. The requests were sent by first-class mail and email to both his mailing address and email address of record. Respondent's only argument in opposition to these charges was to claim that the investigations were improper.

Sixth Cause of Complaint: Hennagin Matter – Case No. 18-31: Respondent ignored requests on January 16, 2018, January 19, 2018, January 31, 2018, and February 8 2018. He did not respond when the Bar filed a petition for suspension under BR 7.1.

Eleventh Cause of Complaint: Grotz Matter – Case No. 18-64: He made no response to requests on December 15, 2017, and January 8, 2018.

Twenty First Cause of Complaint: OSB (CSF Chulim) Matter – Case No. 18-87: He failed to respond to requests on April 4, 2018, and May 4, 2018, and again failed to respond to the BR 7.1 petition filed by the Bar.

Fifteenth Cause of Complaint: Stone Matter – Case No. 18-76: He failed to respond to requests on March 26, 2018, and April 19, 2018. and again ignored a BR 7.1 petition.

Nineteenth Cause of Complaint: OSB (CSF Beutler) Matter – Case No. 18-86: Respondent acknowledged receipt of an April 13, 2018 request from DCO, but replied that this and other complaints were not "pressing matters" for him and that he would only respond to complaints that he considered "legitimate." Ex 253. He made no substantive response to a subsequent request on May 7, 2018, and he ignored a BR 7.1 petition.

Seventeenth Cause of Complaint: Taffese Matter – Case No. 18-77: He ignored requests for information on March 1, 2018. and March 23, 2018, and he was silent as to another BR 7.1 petition.

Twenty Third Cause of Complaint: OSB (CSF Frackowiak) Matter – Case No. 18-88: He failed to answer requests on April 13, 2018, and May 7, 2018 and a BR 7.1 petition.

Fourth Cause of Complaint: Gehrke-Harris Matter – Case No. 18-09: He failed to respond to requests on January 2, 2018, January 22, 2018, and January 31, 2018 and to a BR 7.1 petition.

Eighth Cause of Complaint: Agero Matter – Case No. 18-32: He ignored requests on January 24, 2018, January 31, 2018, and February 15, 2018 and a BR 7.1 petition.

Thirteenth Cause of Complaint: Huebner Matter – Case No. 18-75: He failed to answer requests on March 26, 2018, April 16, 2018, and April 19, 2018 and a BR 7.1 petition.

Ninth Cause of Complaint: Leatham Matter – Case No. 18-33: He failed to respond to requests on January 24, 2018, January 31, 2018, and February 15, 2018 and a BR 7.1 petition.

ANALYSIS OF CHARGES

A. Respondent's handling of Williams' $31,689.29 constituted a failure to appropriately maintain client funds in trust; a criminal act that reflects adversely on his honesty or trustworthiness as a lawyer; and conduct involving dishonesty, in violation of RPC 1.15-1(a), RPC 1.15-1(d), RPC 8.4(a)(2), and RPC 8.4(a)(3).

The rules involved here are:

RPC 1.15-1(a): "A lawyer shall hold property of clients that is in a lawyer's possession separate from the lawyer's own property."

RPC 1.15-1(d): "A lawyer shall promptly deliver to a client any funds or other property that the client is entitled to receive and, upon request by the client, shall promptly render a full accounting regarding such property."

RPC 8.4(a)(2): "It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

RPC 8.4(a)(3): "It is professional misconduct for a lawyer to engage in conduct involving dishonesty that reflects adversely on the lawyer's fitness to practice law."

It was undisputed that respondent received Williams' $31,689.29, and that he deposited the funds into his IOLTA. There was little other money in the account. The records confirm that respondent withdrew the money in piecemeal fashion over time. We are persuaded by the testimony of Williams, and the inherently incredible explanation given by respondent, that Williams received none of the money. Respondent retained it for his own purposes and benefit.

Conversion is the "intentional exercise of dominion or control over a chattel which so seriously interferes with the rights of another to control it that the actor may justly be required to pay the other the full value of the chattel." *In re Martin*, 328 Or 177, 184, 970 P2d 638 (1998), *quoting* Restatement (Second) of Torts (1965). When an attorney knowingly or intentionally converts client funds, the attorney acts dishonestly, in violation of RPC 8.4(a)(3). *Id* at 185-86.

Respondent never told his client about the withdrawals, and she never approved of them. The pattern and frequency of these acts demonstrate clearly and convincingly that they were not inadvertent or the result of mistakes. These acts were knowing and intentional. Moreover, respondent's apparent acknowledgment to Wilson that Williams was entitled to these funds when she demanded them—in exchange for not complaining to the Bar--further belies any claim on his part that he had paid her in full.

We must conclude that respondent committed intentional conversion of his client's money in violation of RPC 8.4(a)(3). *See In re Martin, supra.*; *In re Maroney*, 324 Or 457, 927 P2d 90 (1996) (endorsing client's name on settlement check to use funds violated dishonesty rule); *In re Phelps*, 306 Or 508, 760 P2d 1331 (1988) (misappropriation of funds held by respondent in escrow was knowing conversion which violated dishonesty rule and resulted in disbarment). This conversion constituted a criminal act as well, theft in the first degree. ORS 164.055. Respondent thus violated RPC 8.4(a)(2) as well.

Respondent has no documents showing delivery of any funds to his client. His claim that she eschewed documentation is not credible. There is no evidence that respondent performed any legal services of significance either.

As noted earlier, the most telling evidence is the client's December texts to respondent demanding her money to buy a house and his reaction to them. She believed respondent had her money and she wanted it immediately. Nowhere does she note receipt of any money thus far, nor does respondent ever tell her that she has been paid anything, much less in full.

Respondent's misappropriation of the money is also clear and convincing evidence that he failed to hold the funds in trust, in violation of RPC 1.15-1(a). *See In re Webb,* 363 Or 42, 418 P3d 2 (2018) (attorney violated rule when she distributed settlement funds of two clients to other clients or for her own obligations, without permission); *In re Obert,* 352 Or 231, 282 P3d 825 (2012) (rule violated when respondent deposited credit card payment from client directly into his business account without written agreement allowing him to do so and before fee was earned).

Respondent also violated RPC 1.15-1(d) when he failed to deliver the money promptly to his client when requested. *See In re Lopez,* 350 Or 192, 252 P3d 312 (2011) (respondent violated rule when he failed to distribute settlement proceeds to clients and to pay medical liens for substantial periods of time).

B. Respondent violated RPC 1.3 (neglect), RPC 1.4(a) (keep client informed), RPC 1.4(b) (adequate explanation), RPC 1.5(a) (illegal or excessive fee), and RPC 1.16(d) (refund or return after termination) in multiple cases.

The rules involved here are:

RPC 1.3: "A lawyer shall not neglect a legal matter entrusted to the lawyer."

RPC 1.4(a): "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

RPC 1.4(b): "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

RPC 1.5(a): "A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses."

RPC 1.16(d): "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as refunding any advance payment of fee or expense that has not been earned or incurred."

Neglect under RPC 1.3 is found when a lawyer ignores a matter over an extended period, or when a lawyer engages in a repeated pattern of negligence. *See, In re Purvis*, 306 Or 522, 760 P2d 254 (1988); *In re Bourcier*, 322 Or 561, 909 P2d 1234 (1996). The amount of neglect required to violate the rule is determined on a case-by-case basis. Neglect may be found from a failure to act over a short period if the matter is urgent. *See, In re Meyer*, 328 Or 220, 970 P2d 647 (1999) (attorney violated rule by failing to act over two-month period when case required immediate action).

Under RPC 1.4, factors to consider when evaluating a lack of communication include: the length of time between a lawyer's decision and communication of that decision to the client; whether the lawyer failed to respond promptly to the client's reasonable requests for information; and whether the lawyer knew (or a reasonable lawyer would have foreseen) that a delay in communication would prejudice the client. *In re Groom*, 350 Or 113, 249 P3d 976 (2011).

The Bar has charged violations of RPC 1.3, neglect, in the Charpentier and Agero matters. In Charpentier, respondent failed to take any action to recover his client's funds from the sale of real property. Since the sale had already occurred, timely action was expected, but respondent did nothing before being terminated in February 2017.

In the Agero matter, respondent took seven months to draft a complaint on a single claim for relief. He then allowed the case to be dismissed. He had notice of the pending dismissal, but he did nothing.[7]

We find that respondent's delay and inaction in both matters constituted violations of RPC 1.3. *See In re Ramirez*, 362 Or 370, 408 P3d 1065 (2018) (respondent hired for debt

[7] Respondent is also charged with dishonesty in violation of RPC 8.4(a)(3) during his representation of Agero. Although respondent may have misled his client about the status of the case, either through misrepresentation or omission, we find that the Bar did not establish the requisite level of intent by clear and convincing evidence.

collection engaged in "a course of neglectful conduct" and failed to act to protect his client's interests).

Although the following cases do not involve charged violations of RPC 1.3, respondent's failure to perform the agreed work in each case resulted in other rule violations.

- Williams Matter—Case No. 18-129

In the Williams matter, on top of theft and dishonesty, respondent's failure to pay his client the property proceeds violated RPC 1.15-1(d) (failure to surrender client property).

- Hennagin (Mitchell) Matter—Case No. 18-31

In the Hennagin matter, a number of months after being hired, respondent filed a complaint on his client's behalf, but then failed to communicate with or respond to opposing counsel. This failure to act resulted in additional filings that increased the expense to the client and caused the matter to drag out over the next year. It also resulted in the need for respondent to file an amended complaint, for which he billed the client. However, Hennagin (whose testimony we find wholly credible based on demeanor and content) testified that the amended complaint was so deficient that he had to start from scratch when he substituted in on the case. Respondent's billing for these useless services leads us to find by clear and convincing evidence a violation of RPC 1.5(a). *See In re Gastineau*, 317 Or 545, 857 P2d 136 (1993) (court noted that one of the factors used to determine whether a fee is excessive is a consideration of the "results obtained.").

As well, respondent charged his client $9,300 for representation in the Workers' Compensation Board appeal without Board approval. This fee violated ORS 656.388(1), which makes any fee charged invalid unless approved by the Board. This failure on respondent's part makes that portion of the fee illegal, and he violated RPC 1.5(a) on that basis as well. *See In re Sassor*, 299 Or 570, 704 P2d 506 (1985) (attorney disciplined for charging and collecting fee in workers' compensation matter without statutory approval from the board or a referee). Respondent has never refunded any of these fees.

- Grotz Matter—Case No. 18-64

Pursuant to the initial fee agreement, respondent charged Grotz an advance fee of $2,500 to assist him in a property dispute with his neighbors. In the subsequent 23 months, respondent collected more than $15,000 in additional funds from his client. The only invoices for the matter, however, total just $6,951. Ex 158; Exs 161-164. Respondent made no refund. On the evidence presented, respondent's retention of unearned fees violates both RPC 1.5(a) (excessive fee) and RPC 1.16(d) (failure to return client property following termination of representation). *See In re Sousa*, 323 Or 137, 915 P2d 408 (1996) (violations of prior rules where respondent collected non-refundable retainer and then failed to take any action or return any of retainer).

Respondent failed to notify his client of the December 18, 2017 hearing in a timely fashion. He waited several weeks before doing so. Exs 175 & 185. When he did tell his client of the hearing, respondent failed to provide any meaningful information about the purpose of the hearing, the need to appear, or the positions they would take on the issues. This lack of substantive information prevented the client from understanding the status of his case and evaluating how to proceed. Respondent violated both RPC 1.4(a) and RPC 1.4(b) in this matter. *See In re Snyder*, 348 Or 307, 232 P3d 952 (2010) (discussing the kind of information that a client needs to make informed decisions about a case).

- Avila-Chulim, Stone & Beutler Matters—Case Nos. 18-87 & 18-76 & 18-86

In the Avila-Chulim and Stone matters, respondent failed to file either of their respective modification petitions, which was the one thing he was hired to do. In the Beutler matter, respondent took no action on the property dispute after receiving his $1,200 retainer.

Respondent failed to provide these clients with updates on their matters, and failed to respond to their requests for billing and refunds. Respondent further failed to advise these clients of his December 2017 suspension. This lack of communication violated RPC 1.4(a) and RPC 1.4(b) in each instance.

Respondent's failure to refund the fees paid for the work that was not performed constituted charging and collecting an excessive fee in violation of RPC 1.5(a) and failure to return client property after termination in violation of RPC 1.16(d).

- Taffese Matter—Case No. 18-77

In the Taffese matter, respondent collected a $5,000 earned-on-receipt retainer. It was unclear how much of the arrangement the client actually understood. The complaint was filed incorrectly the first time. The complaint arguably did not state a claim and an ORCP 21 motion to dismiss was filed. Respondent filed no opposition to the motion, nor did he do anything else for his client before being suspended in December 2017. The fee agreement stated that the client would "be entitled to a refund of any portion of the fee that the Attorney has neither applied to costs nor earned." Ex. 228. Respondent has made no accounting and has returned none of the money. No evidence shows respondent was entitled to retain any of the funds. He thus violated both RPC 1.5(a) (excessive fee) and RPC 1.16(d) (failure to return client property following termination of representation).

The client's testimony confirmed that respondent failed to ensure that she understood the status of her case. She also was never told of respondent's suspension. This failure to communicate violated RPC 1.4(a) and RPC 1.4(b). *See In re Snyder,* 348 Or 307, 232 P3d 952 (2010); *In re Koch*, 345 Or 444, 198 P3d 910 (2008) (attorney violated both rules when she failed to advise client that another lawyer would prepare qualified domestic relations order and thereafter failed to communicate with client and second lawyer when they needed information and assistance to complete the matter).

- Frackowiak Matter—Case No. 18-88

In this case, after accepting a $2,500 retainer, not earned-on-receipt, respondent apparently took no action beyond the initial demand letters to pursue the client's claims against his commercial landlords. Respondent acknowledged to his client that he owed him a refund, but respondent never followed through by refunding any money. In this engagement respondent

violated both RPC 1.5(a) (excessive fee) and RPC 1.16(d) (failure to return client property following termination of representation). Respondent also failed to tell this client that he was suspended in December 2017, and thus also violated RPC 1.4(b).[8]

- Richman Matters—Case No. 18-170

In this engagement, respondent neither advanced his clients' interests on the juvenile matter nor took any action on their insurance claim before they fired him. They had paid at least $500 with respect to each of the two children involved in the juvenile matter, and another $500 in advance costs for the insurance claim. Respondent refunded only $1,000. Exs 357-364.

Respondent's failure to provide the requested accounting is a violation of RPC 1.15-1(d) (failure to account for client funds, upon request). In addition, under these circumstances, collecting and failing to refund any portion of the earned-on-receipt flat fee made the fee clearly excessive because the work was not completed, so RPC 1.5(a) was violated here as well.

Respondent's failure to refund the fee also violated RPC 1.16(d) (failure to return client property following termination of representation).

- Gehrke (Harris) Matter—Case No. 18-09

In the Gehrke matter, respondent never commenced the husband's visitation case. Ex 79. He charged an advance fee of $400 but did nothing. Ex 84. The clients received no benefit or advice. Charging and collecting $400 for no legal service is an excessive fee, particularly when respondent acknowledged that a refund was due, but still failed to pay any money back. Respondent violated RPC 1.5(a) and RPC 1.16(d) in this matter.

- Butler Matters—Case Nos. 17-79 & 17-86

In the Butler matters, respondent failed again to refund unearned fees. Within a week of being hired by Butler on June 30, 2017, to provide legal advice on "trustee activities," Butler terminated respondent. He asked for a prompt return of his advanced fees. Ex 31.

[8] The Bar withdrew its charge under RPC 1.4(a) as to this client.

Respondent charged Butler $880 for their initial meeting and an additional portion of an hour of "file review" and legal research. Ex 38. Respondent's file consisted of three pages of his hand-written notes taken at the initial meeting. Ex 26, pp. 3-6. Butler had given him no documents, pleadings or records to review, so it is not credible that any "file review" occurred as respondent charged. The file also contains no evidence of legal research. Other than their introductory meeting, respondent and his client had no substantive communications regarding the "trustee activities" legal matter.

Respondent's $400 hourly rate was arguably high for an attorney with no experience in probate or trust work. Regardless of the reasonableness of the rate, however, the client received no benefit or advice. Respondent collected full payment in advance. We find that charging $880 for a single meeting where the information shared amounted to only three pages of notes and for less than one hour of research is arguably excessive and could violate RPC 1.5(a). However, this conclusion is speculative on the record before us. This charge was not proved by clear and convincing evidence.

It is not disputed that respondent owed his client a refund when he was fired. He refused to pay it until brought to court in a small claims case. This conduct did violate RPC 1.16(d).

C. Respondent's failure to abide by the rules governing handling of client funds violated RPC 1.15-1(a) and RPC 1.15-1(c).

RPC 1.15-1(a) states: "A lawyer shall hold property of clients in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the lawyer's office is situated. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation."

RPC 1.15-1(c) states: "A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned

or expenses incurred, unless the fee is denominated as "earned on receipt," "nonrefundable" or similar terms and complies with Rule 1.5(c)(3)."

Respondent claims that the fee he collected from Charpentier was earned-on-receipt. Yet respondent produced no written fee agreement.[9] Charpentier testified she was confident she had never received a written agreement because, if she had, she would have a copy and it would be reflected in a notebook she kept. Without a written agreement, respondent was required to deposit the advance fee into his trust account until he earned it. *See In re Obert,* 352 Or 231, 282 P3d 825 (2012) (without a written agreement in compliance with RPC 1.5(c)(3), attorney was not permitted to deposit credit card payment from a client directly into his business account before the fee was earned). His failure to do so violated RPC 1.15-1(a) and RPC 1.15-1(c). *See, e.g., In re Webb,* 363 Or 42, 418 P3d 2 (2018) (respondent violated by both rules when mishandled the settlement funds of two clients, distributing them to other clients or to her own outstanding personal and business obligations when she was not entitled to do so).

D. Respondent failed to respond to numerous lawful demands from a disciplinary authority in violation of RPC 8.1(a)(2).

RPC 8.1(a)(2) provides: "A lawyer in connection with a disciplinary matter, shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6."

It is not disputed that respondent ignored multiple written requests for information in the investigation of eleven different matters previously identified. In each case, with the exception of Grotz (Case No. 18-64), the Bar successfully petitioned for suspensions for non-cooperation under BR 7.1. Respondent did not respond to any of the Bar petitions.

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[9] RPC 1.5(c)(3) provides that a lawyer shall not enter into an arrangement for, charge or collect a fee denominated as "earned on receipt," "nonrefundable" or in similar terms unless it is pursuant to a written agreement signed by the client which explains that:

(i) the funds will not be deposited into the lawyer trust account, and

(ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.

Respondent's only proffered excuse is that he did not believe the investigations were undertaken in good faith. The Oregon Supreme Court has rejected an attorney's deliberate disregard of his obligations to fully cooperate with DCO investigations based on a belief that no violation occurred. *See In re Schenck*, 345 Or 350, 367, 194 P3d 804 (2008), *adhered to on recons.*, 345 Or 652, 202 P3d 165 (2009) (the lawfulness of the Bar's request for information does not depend on the Bar being correct that there was a violation). The Bar has authority to investigate when it has been presented with factual allegations that raise "an arguable complaint of misconduct." *See* ORS 9.542); *see also, In re Paulson*, 346 Or 676, 216 P3d 859 (2009), *adh'd to as modified on recons.*, 347 Or 529, 225 P3d 41 (2010) (respondent's argument that underlying complaint was without merit, as shown by its ultimate dismissal after investigation, was no defense to charge of failure to respond during the investigation). The evidence was clear and convincing that respondent's failure to substantively respond to DCO violated RPC 8.1(a)(2) with respect to each of the eleven identified matters.

SANCTION

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.

A. ABA *Standards*.

The *Standards* establish an analytical framework for determining an appropriate sanction in discipline cases. The framework uses three considerations: the duty violated; the lawyer's mental state; and the actual or potential injury caused by the conduct. Once we have assessed these factors we make a preliminary determination of the appropriate sanction. We may then adjust the sanction based on the presence of aggravating or mitigating circumstances.

B. Duty Violated.

Most of respondent's conduct here violated his duties to his clients to diligently attend to their matters and to properly safeguard their property. *Standards* §§ 4.1; 4.4. The *Standards*

presume that the most important ethical duties are those that attorneys owe to their clients. *Standards* at 5. Respondent also violated his duty to the public to maintain personal integrity. *Standards* § 5.1. When he refused to cooperate with the Bar's investigations he violated his duty to uphold the reputation of the profession and his duty to the profession to respond to DCO's inquiries about his professional conduct. *Standards* § 7.0. *See In re Gastineau*, 317 Or 545, 556, 857 P2d 136 (1993).

C. Mental State.

The *Standards* recognize three mental states. The most culpable is that of "intent," when a lawyer acts with the conscious objective or purpose to accomplish a particular result. *Standards* at 9. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. *Standards* at 7. The Bar urges us to find that respondent has acted knowingly and/or intentionally in all respects. For the charges we have sustained, we believe this is so.

D. Extent of Actual or Potential Injury.

In considering an appropriate sanction we may take into account both actual and potential injury. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992); *Standards* at 6. "The term 'injury' is broadly defined to encompass 'harm to a client, the public, the legal system or the profession which results from a lawyer's misconduct.'" *In re Sanai*, 360 Or 497, 539, 383 P3d 821 (2016); *Standards* at 7.

Respondent's clients have been actually injured to the extent that they paid for services not performed, for fees not permitted to be charged without statutory approvals, or for services that provided them with no benefit. We also recognize that anxiety and frustration caused by respondent's inaction, delay, and failure to communicate constitute actual injury. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000); *In re Schaffner*, 325 Or 421, 426-27, 939 P2d 39 (1997).

Respondent's multiple failures to respond to the Bar also caused actual injury to the Bar and the public. *See In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993) (Bar is prejudiced when lawyer fails to cooperate in investigations because Bar must investigate in a more time-consuming way, and public respect for ar is diminished because Bar cannot provide timely and informed responses to complaints).[10]

E. Presumptive Sanction.

Absent aggravating or mitigating factors, the following are the presumptive sanctions in this matter.

Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. *Standards* § 4.11.

Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. *Standards* § 4.12.

Disbarment is generally appropriate when:

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client. *Standards* § 4.41.

Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

[10]*See also, In re Paulson*, 346 Or 676, 216 P3d 859 (2009), *adh'd to as modified on recons.*, 347 Or 529, 225 P3d 41 (2010) ("a lawyer's failure to cooperate with the Bar's investigatory efforts, when that failure is persistent and intentional, as it was in these matters, poses *potential serious* injury to the profession and to the public as well. When a lawyer intentionally evades the procedures by which the Bar can determine if the lawyer is one who has not discharged, will not discharge, or is unlikely to properly discharge his or her professional duties, the interests of clients, the public, the legal system, and the legal profession... may be *seriously* injured." (emphasis in original)).

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* § 4.42.

Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, [or] misrepresentation... or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. *Standards* § 5.11.

Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard* 5.11 and that seriously adversely reflects on the lawyer's fitness to practice. *Standards* § 5.12.

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system. *Standards* § 7.1.

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards* § 7.2.

We have no doubt that the presumptive sanction here is disbarment.

F. Aggravating and Mitigating Circumstances.

The following recognized aggravating factors under the *Standards* are present here:

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

Almost all of respondent's misconduct here was self-serving. The most serious offense involved dishonesty. Respondent also took unearned money from his clients and did not subsequently earn it. He has refused to return it.

Respondent's refusal to cooperate with the Bar was also a self-serving effort to delay or avoid the consequences of his misconduct. *See In re Paulson*, 346 Or 676, 216 P3d 859 (2009), *adh'd to as modified on recons.*, 347 Or 529, 225 P3d 41 (2010) (attorney failed to cooperate with the Bar's investigation in an effort to either avoid or delay facing the consequences of his misconduct).

2. A pattern of misconduct. *Standards* § 9.22(c). Over the course of the nearly two years of his solo law practice, respondent repeatedly neglected client matters, failed to adequately communicate with clients and took and/or kept money to which he was not entitled. *See In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996).

3. Multiple offenses. *Standards* § 9.22(d). This factor is self-evident.

4. Refusal to acknowledge wrongful nature of conduct. *Standards* § 9.22(g).

Respondent has a right to vigorously defend himself against disciplinary charges. *In re Davenport*, 334 Or 298, 321, 49 P3d 91 (2002). However, when, as here, respondent has "acknowledged the factual accuracy of the Bar's complaint in nearly all material respects, but... claimed (and still claims) that that conduct was not blameworthy...[he] has failed to acknowledge the wrongful nature of his conduct." *In re Strickland,* 339 Or 595, 605, n 9, 124 P3d 1225 (2005).

Respondent maintains that his acknowledged conduct was not unethical in any respect. At times he has blamed the Bar, opposing counsel, his former wife, his former assistants, and various other people, organizations and groups for everything that has befallen him. He has accepted no responsibility for his actions.

5. Vulnerability of victims. *Standards* § 9.22(h). Some of respondent's clients were financially unable to obtain subsequent legal counsel to complete their legal matters for which respondent had already been paid.

6. Indifference to making restitution. *Standards* § 9.22(j).

Respondent has not repaid his clients, even where he has acknowledged that he owes them refunds.[11]

Respondent has not addressed the question of whether mitigating factors exist here. During trial he alluded to certain personal or emotional problems, which can be a mitigating factor under *Standards* § 9.32 (c).

Respondent claimed that he suffers from ADHD and that the condition impaired his ability to produce documents and to prepare for trial. For the condition to be a mitigating factor, however, respondent must show a causal connection between the event, condition or impairment, and the conduct at issue. *See Commentary, Standards* § 9.3. The record contains no medical records that document the claimed diagnosis, nor did respondent present any testimony regarding the required causal connection between his condition and the misconduct.

We have previously indicated that the presumptive sanction here is disbarment. The presence of numerous aggravating factors, and the absence of any mitigating ones, confirm that disbarment is the appropriate sanction. *Standards* § 9.21.

G. Oregon Case Law

We are persuaded that Oregon case law supports disbarment in this case as well.

Knowing Conversion

The Oregon Supreme Court has consistently held that the knowing conversion of funds held by or accessible to a lawyer while serving in a fiduciary capacity warrants disbarment. The Bar cites a litany of cases: *In re Herman*, 357 Or 273, 293-94, 348 P3d 1125 (2015)

[11] The Bar urged us to find bad faith obstruction of the disciplinary process, citing obstreperous conduct during discovery. No evidence was offered at trial on this issue beyond the fact that respondent failed to answer inquiries, for which he is being sanctioned. We decline to consider this an aggravating factor here.

(respondent's taking of corporate business assets from business partners resulted in his disbarment); *In re Phinney*, 354 Or 329, 311 P3d 517 (2013) (lawyer was disbarred when, in his capacity as treasurer for the Yale Alumni Association of Oregon, respondent repeatedly took association funds for his personal use for over a two-year period); *In re Renshaw*, 353 Or 411, 427, 297 P3d 1266 (2013) (lawyer's taking of funds from his other firm members resulted in disbarment); *In re Murdock*, 328 Or 18, 968 P2d 1270 (1998) (attorney disbarred for embezzling from his law firm; court rejected plea for leniency based on attorney's alleged alcoholism and chemical dependency).[12]

[12] The Bar also notes that this is particularly true where converted funds belonged to the respondent's client, citing:

- *In re Webb*, 363 Or 42, 53, 418 P3d 2 (2018) ("even a single act of intentional conversion of client funds presumptively warrants disbarment");
- *In re Barrett*, 332 Or 422, 29 P3d 1137 (2001) (attorney disbarred for, among other things, converting an unearned fee and falsely informing a client that certain legal work had been performed);
- *In re Martin*, 328 Or 177, 970 P2d 638 (1998) (attorney spent client money on personal expenses knowing the money was not yet earned; in disbarring the attorney, the court rejected defenses that the attorney was unaware of the applicable disciplinary rule, that the attorney's mental condition negated any intent to convert the funds, or that the money was ultimately earned);
- *In re Taub*, 326 Or 325, 951 P2d 720 (1998) (attorney who fabricated documents regarding his trust account and converted client funds was disbarred, despite his claim that because of depression he lacked the cognitive ability to appreciate the wrongfulness of his acts);
- *In re Maroney*, 324 Or 457, 927 P2d 90 (1996) (attorney endorsed his client's name on a settlement check in order to be able to use the funds: even in the absence of prior discipline, court held that intentional conversion of client funds to attorney's own use warranted disbarment);
- *In re Binns*, 322 Or 584, 910 P2d 382 (1996) (after receiving a settlement on behalf of clients and paying a portion of proceeds to associated attorney without clients' authority, attorney lied to his clients about the reasonableness of the fee paid to associated attorney and represented to the bar that his clients had authorized the disbursement; even though attorney had no prior discipline, court held that conversion of client funds and making false statements to clients and bar's investigators warranted disbarment);
- *In re Dickerson*, 322 Or 316, 905 P2d 1140 (1995) (attorney disbarred for collective misconduct including lying to clients, and converting client funds);
- *In re Whipple*, 320 Or 476, 886 P2d 7 (1994) (respondent disbarred for intentionally appropriating funds to his own use on two occasions, when he knew that he had not yet earned the funds as fees);
- *In re Biggs*, 318 Or 281, 864 P2d 1310 (1994) (attorney's removal of clients' funds from trust account before fees earned constituted conversion and dishonest conduct that warranted disbarment);
- *In re Benjamin*, 312 Or 515, 823 P2d 413 (1991) (lawyer disbarred for failing to promptly pay money to clients and using client money for personal expenses);
- *In re Phelps*, 306 Or 508, 520, 760 P2d 1331 (1988) (despite mitigating circumstances, where an attorney "steals funds from a client, the sanction is disbarment");
- *In re Pierson*, 280 Or 513, 518, 571 P2d 907 (1977) ("a single conversion by a lawyer to his own use of his client's funds will result in permanent disbarment").

Dishonest Conduct—Illegal/Excessive Fees

Even in the absence knowing conversion, respondent's pattern of taking fees pursuant to earned-on-receipt agreements, failing to complete the work, and failing to refund the fees merits disbarment. *See, e.g., In re Sousa*, 323 Or 137, 915 P2d 408 (1996) (attorney disbarred for collecting non-refundable retainer and then failing to take any action on matter or to return any portion of retainer); *In re Miller*, 303 Or 253, 735 P2d 591 (1987) (attorney was disbarred for, among other things, billing client for work not performed and charging client for expenses not incurred); *In re Barber,* 322 Or 194, 904 P2d 620 (1995) (respondent disbarred for altering fee agreements, resulting in excessive fees, misrepresenting time and expenses, and engaging in a conflict of interest).

Excessive fee cases usually involve a suspension of between 60 days and six months. *See, e.g., In re Obert,* 352 Or 231, 2825 P3d 825 (2012) (attorney suspended for 6 months where he took a flat fee to represent a client, but when, prior to commencing any work on the matter, the client was released from jail at the state's election the attorney refused to make a refund of the fee despite the fact that he had not taken any substantial steps toward completing work on the matter); *In re Campbell,* 345 Or 670, 202 P3d 871 (2009) (attorney suspended for 60 days when he billed a client for late fees in excess of the legal rate of interest without obtaining the client's written agreement); *In re Balocca,* 342 Or 279, 151 P3d 154 (2007) (attorney who agreed to perform specified legal services for a flat fee, failed to complete the work, and then claimed that the fee was earned based on an hourly computation of time spent on the matter was suspended for 90 days for keeping the fee without completing the work); *In re Wyllie,* 331 Or 606, 19 P3d 338 (2001) (attorney who billed and collected an amount in excess of his agreed-upon hourly rate for time spent advising multiple clients was suspended for 4 months); *In re Benett,* 331 Or 270, 14 P3d 66 (2000) (respondent who billed clients for time he spent on their fee dispute with him was suspended for 180 days; court found that respondent was representing his own interests in the fee dispute and could not properly bill the clients for time spent doing so).

Illegal fees, as here, often justify longer suspensions. *See, e.g., In re Knappenberger,* 344 Or 559, 186 P3d 272 (2008) (court suspended attorney for two years where he charged a client an attorney fee in a social security disability claim without the approval, required by law, of the Social Security Administration and, in another matter, charged a client for time spent preparing an affidavit in defense of the client's challenge to his attorney's fee); *In re Altstatt,* 321 Or 324, 897 P2d 1164 (1995) (attorney who collected attorney fees from an estate in probate without prior court approval was suspended for one year by the court); *In re Sassor*, 299 Or 570, 704 P2d 506 (1985) (attorney suspended for one year for charging and collecting a fee in a workers' compensation matter without statutory approval from the workers' compensation board or a referee).

Neglect and Failure to Communicate

The Oregon Supreme Court typically imposes at least a 60-day suspension for simple neglect violations. *See In re Schaffner,* 323 Or 472, 918 P2d 803 (1996) (60-day suspension was appropriate for each of attorney's neglect and his failure to cooperate with the Bar); *see also, In re Redden*, 342 Or 393, 153 P3d 113 (2007) (60-day suspension imposed for single serious neglect despite fact that young, inexperienced lawyer had no prior discipline); *In re Worth*, 337 Or 167, 952 P3d 721 (2004) (attorney who failed to move a client's case forward, despite several warnings from the court and a court directive to schedule arbitration by a date certain, was suspended for 120 days, where his neglect resulted in the court granting the opposing party's motion to dismiss); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (60-day suspension for neglect of tort claim and subsequent failure to notify client where aggravating and mitigating factors were in balance).

Sanctions for lapses in communication are not as predictable, although they generally involve a period of suspension. *See, e.g., In re Snyder,* 348 Or 307, 232 P3d 952 (2010) (attorney's failure to respond to his client's status inquiries, failure to inform the client of communications with the other side, and failure to explain the strategy attorney decided upon

regarding settlement negotiations, resulted in 30-day suspension); *In re Koch*, 345 Or 444, 198 P3d 910 (2008) (attorney suspended for 120 days where she failed to advise her client that another lawyer would prepare a qualified domestic relations order for the client, and thereafter failed to communicate with the client and that second lawyer when they needed information and assistance from attorney to complete the legal matter); *In re Coyner*, 342 Or 104, 149 P3d 1118 (2006) (three-month suspension, plus formal reinstatement, was appropriate for attorney appointed to handle a client's appeal, who took no action and failed to disclose the ultimate dismissal to the client); *In re Knappenberger*, 337 Or 15, 90 P3d 614 (2004) (90-day suspension for attorney who appealed a spousal support determination, failed to keep the client informed of the status of the appeal, did not respond to the client's inquiries, and essentially abandoned the client after oral argument).

Failure to Provide Client Property

The Oregon Supreme Court has a dim view of failing to remit client funds. In cases where the failure was knowing, substantial suspensions or disbarments have been imposed. *See, e.g., In re Webb,* 363 Or 42, 418 P3d 2 (2018) (respondent disbarred when, in representing several clients on claims involving personal injury and medical malpractice, she received and deposited into trust settlement proceeds belonging to these clients, but quickly depleted the clients' funds to pay net settlements to other clients whose settlement proceeds she had previously converted; *In re Roller,* 361 Or 234, 390 P3d 1045 (2017) (attorney suspended for four years for conduct including failing to notify client of, and promptly deliver, funds received in which the client had an interest); *In re Lopez,* 350 Or 192, 252 P3d 312 (2011) (attorney suspended for nine months, where, after settling personal injury matters, he failed to distribute proceeds to his clients and pay medical liens for substantial periods of time); *In re Bennett*, 331 Or 270, 14 P3d 66 (2000) (attorney suspended for 180 days when he refused to return funds to his former clients that were indisputably theirs).

Failure to Respond to a Disciplinary Authority

The Oregon Supreme Court has held more than once that "failure to cooperate with a disciplinary investigation, standing alone, is a serious ethical violation." *In re Parker*, 330 Or 541, 551, 9 P3d 107 (2000); *In re Bourcier*, 325 Or 429, 434, 939 P2d 604 (1997). We are urged to have no patience for violations of this rule. *In re Miles*, 324 Or 218, 222-23, 923 P2d 1219 (1996) (although no substantive charges were brought, attorney was suspended for 120 days for non-cooperation with the Bar). *See also, In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (attorney suspended for 120 days; 60 each for his neglect and his failure to cooperate with the Bar); *In re Arbuckle*, 308 Or 135, 775 P2d 832 (1989) (two year suspension where attorney with no prior discipline failed to return client property or respond to the Bar). *See also, In re Mark G. Obert*, 352 Or 231, 282 P3d 825 (2012) (attorney who failed to respond to numerous requests from the bar about an ethics complaint until subpoenaed to do so was suspended for six months); *In re Goff*, 352 Or 104, 280 P3d 984 (2012) (respondent was suspended for 18 months, in part for twice failing to respond to the Bar).

Collective Misconduct & Effect of Aggravation

Over approximately two years of practice, respondent generated two disciplinary proceedings addressing more than twenty separate complaints of misconduct meriting disciplinary sanction.

Considered as a whole, respondent's pattern of misconduct demonstrates that he has not conformed his conduct to the basic rules governing the profession. It is not likely that he will conform his conduct to these rules in the future. We believe that any sanction short of disbarment will be insufficient to protect the public and the integrity of the profession.

A CLOSING NOTE ON EARNED-ON-RECEIPT FEE ARRANGEMENTS

Respondent chose to use "earned-on-receipt" fee agreements because of economic necessity. He claimed that it was the only way he could finance his practice since he had no funds on hand to support himself while the fees were being earned under a traditional model.

Respondent then blamed the Bar for his failure to refund fees to his clients. He argued that his immediate suspension by the Oregon Supreme Court in December of 2017 cut off his income stream. Since he had already spent the money paid by his clients, he had no way to reimburse them, even if he never did the work he had already been paid for. The only way he could comply with his obligations, he said, was if he had been allowed to continue practicing so he could collect money from other clients for work yet to be performed and use that to pay back the dissatisfied ones.

Respondent chose to put his business interests ahead of his professional obligations. Even if earned-on-receipt agreements are allowed, that does not relieve an attorney of responsibility for obeying the Rules of Professional Conduct. If the rules require that a client be given a refund, a lawyer's business model cannot serve as a justification for non-compliance. This particular excuse highlights the danger of lawyers treating the practice of law as a mere business.

CONCLUSION

Respondent is disbarred effective immediately. Respondent is ordered to comply with the provisions of BR 6.3(a), (b) and (c). Disciplinary Counsel may seek a contempt proceeding and appropriate sanctions before the Supreme Court for failure to comply. BR 6.3(d).

Dated this 19 day of September, 2019.

Mark A. Turner, Adjudicator

Craig A. Crispin, Attorney Panel Member

JoAnn Jackson, Public Panel Member

IN THE SUPREME COURT OF THE STATE OF OREGON

In Re:

Complaint as to the Conduct of

ANDREW LONG, OSB Bar #033808,

Respondent.

Oregon State Bar
1779, 1786, 1787, 1788, 1809, 1831, 1832, 1833, 1864,
1875, 1876, 1877, 1886, 1887, 1888, 18129, 18170

S067095

ORDER GRANTING MOTION TO ACCEPT AMENDED PETITION FOR RECONSIDERATION AND DENYING AMENDED PETITION FOR RECONSIDERATION

Upon consideration by the court.

The motion to accept the amended petition for reconsideration is granted. The court has considered the amended petition for reconsideration and orders that it be denied.

MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
9/22/2021 2:06 PM

c: Susan R Cournoyer
Andrew Long

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