

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-225
	)	
JEREMIAH SCANNELL,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and Jeremiah J. Scannell on May 3, 1996 is hereby approved upon the terms set forth therein. The Accused shall be suspended from the practice of law for thirty (30) days for violation of DR 7-104(A)(1) and DR 7-106(A) commencing on the date of this order.

DATED this 9th day of May, 1996.

\_\_\_\_\_/s/  
Todd A. Bradley  
State Disciplinary Board Chairperson

\_\_\_\_\_/s/  
Arminda J. Brown, Esq., Region 3  
Disciplinary Board Chairperson

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	)	DISCIPLINE
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Jeremiah J. Scannell, attorney at law (hereinafter, "the Accused"), and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused is, and except as noted herein, was an attorney at law duly admitted by the Oregon Supreme Court to the practice of law in this state and a member of the Oregon State Bar, maintaining his office and place of business in the County of Josephine, State of Oregon.

3.

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

4.

At its March 18, 1995, meeting, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused alleging violation of DR 7-104(A)(1) and DR 7-106(A) of the Code of Professional Responsibility.

5.

The Bar filed its Formal Complaint which was served, together with a Notice to Answer upon the Accused. The Accused admits that his conduct violated DR 7-104(A)(1) and DR 7-106(A) of the Code of Professional Responsibility.

6.

The Accused represented the seller of certain real property. The purchaser failed to make payments and the Accused initiated foreclosure proceedings. Thereafter, the purchaser (hereinafter "purchaser" or "debtor"), filed a Chapter 13 Petition for Relief in the United States Bankruptcy Court. The debtor subsequently converted the case from a Chapter 13 to a Chapter 7 case. Because it appeared that there could be a debtor's exempt equity from the sale of the real property, the Bankruptcy Court modified the automatic stay to grant limited relief to permit the debtor to sell the property within six months, with distribution to the

seller to be later determined. The amount of the seller's secured status and amount of claim was disputed. The seller appealed the court's denial of a motion to dismiss and order modifying the automatic stay to the U.S. District Court.

On August 10, 1993, the Accused, on behalf of the seller, obtained in the state court an amended judgment of foreclosure which included provisions for money judgment, surrender of the property and deficiency judgment by execution. The Accused also arranged to schedule a sheriff's sale of the property.

On September 20, 1993, the debtor filed an adversary proceeding against the seller in the Bankruptcy Court seeking injunctive relief, reimposition of the automatic stay, determination of the seller's secured status and value of lien, among other relief. The debtor also sought a temporary restraining order (hereinafter "TRO"), to prevent a sheriff's sale of the property scheduled for September 23, 1993. The Bankruptcy Court granted the motion and entered a TRO with the debtor's attorney, and the Accused participating in the hearing, and ordered further hearing on September 28, 1993. After further hearing, the Bankruptcy Court determined that the TRO should be dissolved, but also ordered that further proceedings between the parties stayed until resolution of the appeal pending in the U.S. District Court. Copies of the October 4, 1993, orders are attached hereto as Exhibit "1", and by this reference made a part hereof. The intention and effect of the Bankruptcy Court's orders was to stay further action in the foreclosure case. The Bankruptcy Court deemed determination of the appeal to be crucial to the issues remaining in both the main case and the adversary proceeding.

In spite of the stay imposed by the Bankruptcy Court's October 4, 1993 orders, the real property was sold at sheriff's sale on October 14, 1993, and on October 28, 1993, the Accused submitted a motion for order confirming sale in the state court. The debtor's attorney filed objections based on the Bankruptcy Court's October 4, 1993 orders which had stayed the foreclosure proceedings. The state court held a hearing on the Accused's motion and the debtor's objections on December 7, 1993. Because of the Accused's interpretation of the Bankruptcy Court's October 4, 1993 orders and although the state court was of the view that the Bankruptcy Court intended all proceedings between the parties to be stayed, the state court delayed decision on the Accused's motion to confirm sale intending to maintain the status quo for 30 days to allow inquiry with the Bankruptcy Court. On December 7, 1993, the state court judge and the Accused wrote letters to the Bankruptcy Court requesting advice concerning the intent of the October 4, 1993 orders. On December 15, 1993, before receiving response from the Bankruptcy Court, the Accused served the debtor through the sheriff's office with a letter demanding possession of the property and giving three days notice to vacate. A copy of the letter is attached hereto as Exhibit "2," and by this reference made a part hereof. The Accused did not obtain the permission of the state or bankruptcy courts to proceed in the foreclosure case or against the debtor. The Accused did not obtain the permission of the debtor's attorney to communicate with

the debtor, nor did he send a copy of the letter to the debtor's attorney.

As a result of these actions, the Accused communicated or caused another to communicate on the subject of the representation, or on directly related subjects without the consent of the debtor's attorney in violation of DR 7-104(A)(1). The Accused also disregarded the state and Bankruptcy Court's orders made in the course of proceedings in violation of DR 7-106(A).

#### SANCTION

##### 7.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards from Imposing Lawyer's Sanctions (hereinafter, "Standards"), and Oregon case law should be considered. The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. Duty. In violating DR 7-104(A)(1) and DR 7-106(A), the Accused violated duties owed to the legal system. Standards, §§ 6.2, 6.3.

B. State of Mind. The Accused failed to heed a substantial risk that circumstances existed or that a result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in a situation. Standards, p. 7.

C. Injury. The Accused caused injury or potential injury to a party and potential interference with legal proceedings by disregarding the bankruptcy and trial courts' orders and communicating directly with the party whom he knew to be represented by an attorney, without the attorney's permission or knowledge to make such contact. The Accused's conduct placed an additional and unnecessary burden on the state and bankruptcy courts as well as the opposing party.

D. Aggravating Factors. Aggravating factors to be considered include:

1. The Accused has a prior disciplinary record consisting of a 60-day suspension in 1980 for violation of DR 5-104, and a public reprimand for violation of DR 4-101(B) and DR 5-105(C) in 1994. See, In re Scannell, 289 Or 699, 617 P2d 256 (1980); In re Scannell, 8 DB Rptr 99 (1994). Standards, § 9.22(a).
2. The Accused has violated multiple disciplinary rules. Standards, § 9.22(d).
3. The Accused has substantial experience in the practice of law, having been admitted to practice in 1957. Standards, § 9.22(i).

E. Mitigating Factors. Mitigating factors to be considered include:

1. The Accused did not act with dishonest or selfish motive. Standards, § 9.32(b).
2. The Accused acknowledges the wrongfulness of his

- conduct and is sorry for it. Standards § 9.32(1).
3. The Accused has discontinued the active practice of law and prior to the filing of this formal proceeding, the Accused retired and transferred to an inactive status, effective January 31, 1995. The Accused does not have any present intention to again become an active member of the Bar. Standards, § 9.32(h).

8.

The Standards provide that suspension is appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding. Standards, § 6.32. Suspension is also appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. Standards, § 6.22. Oregon case law is in accord. In re Starr, O S Ct No S41967 (1995); In re Weidner, 320 Or 336, 883 P2d 1293 (1994); In re Williams, 314 Or 530, 852 P2d 1280 (1992); In re Burrows, 291 Or 135, 629 P2d 1229 (1984).

9.

The Accused agrees to accept a 30-day suspension from the practice of law which shall commence upon entry of an Order Approving Stipulation for Discipline.

10.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and is subject to approval of the Disciplinary Board pursuant to BR 3.6.

EXECUTED this 3rd day of May, 1996.

\_\_\_\_\_/s/  
Jeremiah J. Scannell, Esq.

EXECUTED this 8th day of May, 1996.

\_\_\_\_\_/s/  
Jane E. Angus  
Assistant Disciplinary Counsel  
Oregon State Bar