IN THE SUPREME COURT OF THE STATE OF OREGON

In re:	
Complaint as to the Conduct of	OSB Case No. 11-52
MICHAEL L. SPENCER,	SC S060977
Accused.	

OREGON STATE BAR'S RESPONDENT'S BRIEF

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Accused

May 2013

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I. STATEMENT OF THE CASE

The Bar supplements the Accused's Statement of the Case as follows:

A. Nature of the Proceeding.

The Bar filed a Formal Complaint against the Accused, Michael L. Spencer, on July 28, 2011. He answered on August 8, 2011.

A trial panel heard the matter on August 14 and 15, 2012, and filed its Opinion on December 19, 2012, finding the Accused guilty of both violations charged by the Bar – RPC 1.7(a)(2) and RPC 1.8(a). The panel imposed a 60-day suspension.

The Accused timely sought review by this Court pursuant to BR 10.1 and BR 10.3. The record of proceeding was filed with the State Court Administrator on February 6, 2013. BR 10.4.

B. Nature of Judgment Sought to be Reviewed.

The Accused asserts that the trial panel erred by finding him guilty of the charges alleged in the Formal Complaint.

C. Statutory Basis for Appellate Jurisdiction.

This matter comes before the Supreme Court pursuant to ORS 9.536(1), BR 10.1, and BR 10.3. Pursuant to ORS 9.536(2) and BR 10.6, the court shall consider this matter *de novo* on the record.

II. RESPONSE TO ACCUSED'S QUESTIONS PRESENTED ON REVIEW

A. Whether the Accused engaged in a personal interest conflict in violation of RPC 1.7(a)(2).

Response: The trial panel correctly found that the Accused violated RPC 1.7(a)(2).

B. Whether the Accused engaged in a business transaction with his client in violation of RPC 1.8(a).

Response: The trial panel correctly found that the Accused violated RPC 1.8(a).

C. Whether RPC 1.7(a)(2) and RPC 1.8(a), as applied by the trial panel, violate Article I, Section 20, of the Oregon Constitution.

Response: The trial panel correctly rejected the Accused's constitutional argument.

D. Whether the trial panel erred by admitting into evidence a judgment entered against the Accused in the United States Bankruptcy Court.

Response: The bankruptcy judgment was relevant to the issue of damages and was correctly admitted.

III. BAR'S ADDITIONAL QUESTION ON REVIEW

A. Whether the Accused's conduct warrants the 60-day suspension imposed by the trial panel.

A 60-day suspension is an appropriate sanction.

IV. STATEMENT OF FACTS

The Accused practices law in Klamath Falls, Oregon. He is also a licensed real estate broker. (Tr. 77-78.)

On March 3, 2008, Smith-Canfield (hereinafter, "Smith-Canfield") paid the Accused $50 for a bankruptcy consultation. (Tr. 12, 84.) Although her salary disqualified her from filing Chapter 7, he told her she was eligible to file a Chapter 13 bankruptcy. (Tr. 14.) She was anticipating the receipt of approximately $30,000 from the sale of a house in Tennessee; the Accused advised her to use that cash to purchase a home and claim a homestead exemption. (Tr. 13-14.) When Smith-Canfield questioned whether she could qualify for a conventional loan, the Accused told her that he was a real estate broker and could help her find an owner-financed property. (Tr. 15, 88.)

Smith-Canfield hired the Accused to represent her in the bankruptcy (Exs. 2 and 3). He promptly began looking for a suitable property for her to purchase. (Tr. 91.)

Around this time, the Accused learned that a prospective client, Bill (hereinafter, " , was thinking of foreclosing on a house located at James Martin Court in Klamath Falls. (Tr. 94, 95.) said that the owner might want to sell the property to avoid foreclosure and himself might be willing to finance the purchase. (Tr. 95.)

On April 2, 2008, Smith-Canfield and the Accused viewed the James Martin Court property. (Tr. 97.) She claims that this was the only property he showed her and there was no discussion concerning price. (Tr. 20, 27.) The Accused advised her to offer $225,000, with 25 percent down, with the remaining $200,000 privately financed (by at 8 percent interest over a term of 30 years. (Tr. 27-28.)

Smith-Canfield submitted such an offer – prepared by the Accused – that same day (April 2, 2008). (Ex. 5, p. 1.) The document (hereinafter, "sales agreement") identified the Accused as the buyer's agent, through

Help-U-Sell Spencer Realty (Ex. 5; Tr. 100), and described the only contingency to the purchase: "seller to rebuild retaining wall along Old Fort Road, remove all junk from house, and have the carpets cleaned. If the stains on the carpet in the basement do not clean out, Seller to give Buyer a $1,000 carpet allowance to replace carpet." (Ex. 5, page 2.)

Despite this contingency, the document expressly waived Smith-Canfield's right to have the property inspected prior to closing. (Tr. 111; Ex. 5, p. 3.) The Accused told Smith-Canfield that she did not need an inspector because the house was new. (Tr. 31.)

The Accused did not advise Smith-Canfield that the commission he would receive for the sale of the house might affect his professional judgment as a lawyer, or that she should get independent advice about whether he should act as her broker. (Tr. 139-40.)

Before closing, the Accused and Smith-Canfield did a final walk through of the property. (Tr. 34.) Smith-Canfield testified that the carpets had been cleaned and looked fine and that the stone along the wall of Old Fort Road had been restacked. (Tr. 34, 35.) The sale closed and Smith-Canfield moved into the house in April 2008. (Tr. 38.) The Accused received a broker's commission of more than $5,000 directly from escrow. (Tr. 114, 153.)

After Smith-Canfield paid the Accused a partial retainer, he filed her Chapter 13 bankruptcy petition and accompanying documents on May 16, 2008. (Ex. 10.) The Debtor's Attorney's Disclosure of Compensation (Ex. 11) stated that she had paid the Accused $1,000 toward his total fee of $4,000 and would pay the remainder through her Chapter 13 plan as funds became available. (Exs. 11 and 12.)

Very shortly thereafter, Smith-Canfield received a letter dated May 23, 2008, from the City of Klamath Falls. It said that her new property

(specifically, the slope above the stone wall and the wall itself) violated the City Code and had to be brought into compliance. (Ex. 13; Tr. 42.) Smith-Canfield immediately called the Accused, who promised to investigate. (Tr. 42- 43, 120.)

On June 4, 2008, the Accused wrote to the seller, threatening litigation for misrepresenting its condition if the seller did not agree to bring the property into compliance within 30 days. (Ex. 15.) The seller did not respond. (Exs. 16-19.)

On September 3, 2008, the Accused wrote to the City's planning director asking that Smith-Canfield be allowed additional time to address the code violation. (Ex. 17.) The City granted a one-year extension, to September 1, 2009. (Ex. 19.) That same day (September 3, 2008), the Accused advised the bankruptcy trustee about the compliance problem and the seller's apparent inability or unwillingness to fix it; the Accused's letter did not mention that he himself had brokered the purchase by Smith-Canfield. (Ex. 18; Tr. 126.)

After sending these September 3, 2008 letters, the Accused did nothing further until, on July 23, 2009, he received an email from attorney Wilson Muhlheim (hereinafter, "Muhlheim"), to whom Smith-Canfield had mentioned her real estate problems. (Tr. 134; Ex. 20.) Muhlheim wrote:

> "Apparently you were one of the brokers involved in the real estate transaction. Can you shed any light on the builder's failure to work through this problem? Is he still around to do the work? Do you have any ideas about how to fix the problem?" (Ex. 20.)

The Accused responded:

> "Are you representing her? She has not contacted me in over a year so I don't know if the City is doing anything or not. The builder has

> moved out of state, has lost his other properties, and would likely file bankruptcy if any action was brought against him." (Ex. 20.)

After sending this email, the Accused resumed doing nothing on Smith-Canfield's matter, even as the City's September 1, 2009 compliance deadline came and went. (Ex. 19, Tr. 133-36.) He did not speak with the City, help Smith-Canfield find an engineer to determine how to fix the problem, or recommend that she consult with an attorney either about the code violation or about suing the seller or the brokers. (Tr. 45, 137-38.)

On October 5, 2009, Muhlheim – now officially representing Smith-Canfield – emailed the Accused again. (Ex. 21.) Muhlheim pointed out that "the earnest money agreement provides for rebuilding the retaining wall (and) the seller represented that there were no defects," and asked: "do you have any idea how this slipped by the closer?" (Ex. 21.)

The Accused responded that "your email appears to be raising a potential claim against me" and that he was therefore referring the matter to the PLF and withdrawing from Smith-Canfield's bankruptcy representation. (Exs. 21 and 22.) The bankruptcy court granted the Accused's motion to withdraw in October 2009. (Ex. 22.)

Smith-Canfield paid an engineer to investigate the cause of the code violation. (Tr. 48, 52.) He advised that the retaining wall had to be engineered and structured with rebar, at an estimated cost of $30,000 to $45,000. (Tr. 48-49.) Smith-Canfield could not afford these repairs and had to relinquish the house to the secured lender, thereby losing the entire amount of her down payment and three years of payments at $1,400 per month. (Tr. 72.)

On December 23, 2009, on Smith-Canfield's behalf in the bankruptcy case, Muhlheim filed an adversary action alleging that the

Accused had breached his fiduciary obligation to disclose conflicts of interest as well as his professional duty of care with respect to the sale (by allowing it to go forward despite the problems with the retaining wall). (Ex. 24.)

On May 17, 2011, the bankruptcy court entered judgment against the Accused, ordering him to pay Smith-Canfield compensatory damages of $5,266.30 (the amount she had paid the engineer) and to disgorge the $4,000 in fees he had received for representing Smith-Canfield in her bankruptcy. (Ex. 38.) Despite this judgment, Smith-Canfield never recovered any monetary amount from the Accused. (Tr. 66, 75.)

V. ARGUMENTS

A. The Accused violated RPC 1.7(a)(2), by advising his client to enter a transaction from which he would receive a broker's commission, without obtaining her informed consent.

RPC 1.7(a)(2) prohibits lawyers from representing clients if the representation involves a current client conflict of interest. Such a conflict exists if "there is a significant risk that the representation will be materially limited by ... a personal interest of the lawyer."

Such personal interest conflicts can be waived if the lawyer reasonably believes that he can competently and diligently represent the client [RPC 1.7(b)(1)]; the representation is not prohibited by law [RPC 1.7(b)(2)]; and the client gives informed consent, confirmed in writing [RPC 1.7(b)(4)].

The trial panel found that the Accused's representation of Smith-Canfield in a real property transaction in which he acted as broker and stood to earn a realtor's commission involved a personal conflict of

interest. Because he did not obtain her informed consent, he violated RPC 1.7(a)(2).

The panel's finding is correct. The Accused, as Smith-Canfield's bankruptcy lawyer, advised her that purchasing a house would allow her to take advantage of the homestead exemption. He then found her a house and a private lender. He told her what she should offer. He advised her against bargaining, to limit the contingencies she placed on her offer, and to waive a professional inspection before the purchase – all because she was, essentially, desperate. He took no steps to ensure that the seller satisfied her stated condition of rebuilding the broken retaining wall.

Smith-Canfield hired the Accused because she needed a lawyer. When, on his recommendation, she purchased a house, she expected him to protect her legal interests. But he had a competing interest in completing the sale. If she bought this particular house – that is, a house that he had found for her – he would receive a portion of the broker's commission, a sum that would exceed the legal fee Smith-Canfield was paying him in the bankruptcy matter. He never disclosed to her that it was possible his legal advice might be compromised by this personal interest.

Soon after she moved into her new house and the Accused filed her bankruptcy petition, Smith-Canfield learned that the slope and the retaining wall violated City code and had to be fixed. Again, she asked the Accused for legal help. He did not refuse – he wrote a couple of letters and obtained an extension for her to comply – but his pursuit of a remedy was half-hearted and soon abandoned. His personal interest in avoiding or minimizing his own potential liability as lawyer and/or real estate broker for this purchase unavoidably inhibited his ability to

advocate on Smith-Canfield's behalf. A disinterested attorney (like Muhlheim, eventually) would have questioned whether Smith-Canfield's predicament was attributable to the neglect or incompetence of her advisors. The Accused, as one of those advisors, was uncomfortably positioned to ask that question and he did not. He did not advise Smith-Canfield that he was potentially liable or that she should add a claim against him as an asset in the bankruptcy.

The Accused admits that he made no conflicts disclosures and failed to advise Smith-Canfield to obtain independent counsel. He therefore violated RPC 1.7(a)(2). *See,* Oregon State Bar *Formal Ethics Opinion* No. 2006-176 [attorney wishing to represent a client in a real estate transaction and also act as a real estate agent or broker is required by RPC 1.7 and RPC 1.8 to obtain informed consent in a writing signed by the client.][1] (ER 1.)

B. The Accused violated RPC 1.8(a) by entering into a business transaction with Smith-Canfield.

RPC 1.8(a) states that:

> "A lawyer shall not enter into a business transaction with a client . . . unless: (1) the transaction and the terms on which the lawyer acquires the interest or fair and reasonable to the client and are fully disclosed and transmitted in a writing in a manner that can be reasonably

[1] Oregon's analysis of this issue is not unique. *See* State Bar of California *Formal Ethics Opinion* No. 1982-69 [lawyer who functions as both attorney and licensed broker in the same transaction must conform to the ethical standards of both professions]; Kentucky Bar Association *Formal Ethics Opinion* No. KBA E-408 (July 1999) [lawyer may not serve as both lawyer and real estate sales agent for same client in same transaction; lawyer's own interest in consummating the sale and obtaining the commission conflicts with his responsibility to protect client's interests, including advising client against consummating sale]; New York State Bar Association Committee on *Professional Ethics Opinion* No. 919 (April 2012) [unethical to serve as both a broker and lawyer for one client in same transaction because of conflict between lawyer's interests and client's].

> understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction."

RPC 1.0(g) defines the term "informed consent" to mean:

> "The agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given."

The trial panel found that by agreeing to act as Smith-Canfield's real estate broker, he entered into a business transaction with her. Because he failed to make the necessary disclosures, he violated RPC 1.8(a).

The panel's finding is correct. When Smith-Canfield signed the Final Agency Acknowledgment on April 2, 2008 (Ex. 5, p. 1), she agreed that the Accused, her lawyer, would also be her agent with respect to the James Martin Court property. This meant that if, but only if, the sale closed, he would receive a share of the commission. This was a business transaction within the meaning of RPC 1.8(a). *See* Oregon State Bar *Formal Ethics Opinion* No. 2006-176.

The Accused met none of the disclosure requirements required by RPC 1.8(a)(2) or RPC 1.8(a)(3). He did not advise Smith-Canfield in writing of the desirability of seeking, and give her a reasonable

opportunity to seek, the advice of independent legal counsel. Likewise, the Accused did not obtain Smith-Canfield's informed written consent as that term is defined in RPC 1.0(g). He therefore violated RPC 1.8(a).

C. The trial panel correctly dismissed the Accused's constitutional defense.

The Accused argues that RPC 1.7(a)(2) and RPC 1.8(a) violate Article I, Section 20, of the Oregon Constitution – the equal privileges clause.[2] He claims that if an attorney's interest in collecting an attorneys fee is not considered to create a personal conflict of interest or constitute a business transaction with a client, it is unfair and therefore unconstitutional to presume that a real estate agent's interest in a commission creates such a conflict or constitutes such a transaction. Such a presumption (he argues) demonstrates a clear bias in favor of the legal profession and against other professions.

The panel rejected this argument, noting that nothing deprives the Accused of the right to earn a living as a real estate broker and engage in real estate transactions. However, when he acts as a lawyer – as he did with Smith-Canfield while he brokered her purchase of the James Martin Court property – he must comply with the Rules of Professional Conduct.

The panel's finding is correct. The Bar does not contend that brokers are inherently more likely than lawyers to subordinate clients' interest to their own interest in earning a fee. The Bar's position is that clients have a right to expect that their lawyers will not be distracted by the prospect of earning a fee unrelated to the practice of law; thus, if the

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[2] No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."

prospect of such a fee arises, the lawyer may not pursue it without the client's informed consent. Such a requirement is neither unreasonable nor unique. The *Ethics and Standards of Practice of the National Association of Realtors* imposes a parallel obligation on realtors: "Article 7: In a transaction, Realtors shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the realtor's client or clients." (Ex. 4B, p. 3.)

D. The trial panel did not err by admitting Exhibit 38, the bankruptcy court's judgment in the adversary action.

The Accused argues that the trial panel erred in admitting Exhibit 38, the bankruptcy court's judgment ordering him to disgorge fees and pay damages.

The panel admitted this exhibit after stating explicitly that it recognized the judgment could have no *res judicata* effect in this disciplinary action. (Tr. 65.)

BR 5.1(a) allows trial panels to admit and give effect to evidence that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.

The resolution of the adversary action was relevant to sanctions: specifically, whether and the extent to which Smith-Canfield was ultimately injured by the Accused's conduct. And even if the judgment was irrelevant, the Accused has not argued that the trial panel was in any way misled by it.

BR 5.1(b) provides that:

> "No error in procedure, in admitting or in excluded evidence, or in ruling on evidentiary or discovery questions shall invalidate a finding or decision unless upon review of the record as a whole, determination is made that a denial of the

fair hearing to either the Bar or the Accused has occurred."

VI. SANCTION—The facts and circumstances of this case support the 60-day suspension imposed by the trial panel.

This 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 the appropriate sanction in discipline cases using three factors: the duty violated; the lawyer's mental state; and the actual or potential injury caused by the conduct. After analyzing these factors, the court makes a preliminary determination of sanctions, after which it adjusts the sanction, if appropriate, based on the existence of aggravating or mitigating circumstances.

1. Duties Violated.

The trial panel found that the Accused violated his duty to his client to avoid conflicts of interest. *Standards* § 4.3.

2. Mental State.

The trial panel found that the Accused intentionally engaged in the conflict of interest. Conduct is intentional under the *Standards* if it demonstrates the conscious objective or purpose to accomplish a particular result. *Standards* at 7.

At the very least, the Accused's conduct was knowing – that is, it demonstrated 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; *In re Schenck*, 345 Or 350, 369, 194 P3d 804 (2008) [lawyer acts knowingly when he is

consciously aware of the essential facts that give rise to the violation, even if the lawyer does not think his conduct violates any rule].

3. Actual or Potential Injury.

For the purposes of determining an appropriate disciplinary sanction, the court may consider both actual and potential injury. *Standards*, p. 6; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

The trial panel found that the Accused caused actual and potential injury to Smith-Canfield. On his advice, she invested substantial sums of money in a personal residence to maximize her homestead exemption. On his advice, she purchased the only property shown to her, a property seriously in violation of the City's development ordinance and (unknown to her) capable of being remedied only at considerable expense that she could not afford. Because of his advice, she lost her home and her entire investment in it, as well as having to pay an engineer and new bankruptcy counsel. The trial panel did not find – but it is a fact – that in an attempt to recover some of her losses, she suffered the aggravation of pursuing an adversary action against the Accused. Ultimately, and despite obtaining a judgment against the Accused, she recovered nothing from him.

4. Preliminary Sanction.

Absent aggravating or mitigating circumstances, the following *Standards* appear to apply:

Disbarment is generally appropriate when a lawyer, without the informed consent of a client, engages in representation of the client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client. *Standards* § 4.31(a).

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes the client injury or potential injury. *Standards* § 4.32.

Thus, before applying aggravating and mitigating factors, the preliminary sanction would be a suspension.

5. Aggravating Circumstances.

The panel correctly found the following aggravating factors:

(a) Prior disciplinary offenses [*Standards* § 9.22(a)]. In 2002, the Accused was suspended for 60 days after being found guilty of misconduct in two separate matters. In the first, he helped a California resident dishonestly register a motor home in Oregon, in violation of former DR 1-102(A)(3). In the second, he failed to return documents to a prospective bankruptcy client in violation of former DR 9-101(C)(4). *In re Spencer*, 335 Or 71, 58 P3d 228 (2002).[3]

(b) Dishonest or selfish motive [*Standards* § 9.22(b)]. The Accused had a selfish interest in earning a broker's commission.

(c) Vulnerability of victim [*Standards* § 9.22(h)]. Smith-Canfield was unsophisticated in bankruptcy matters, new to the Klamath Falls area, and facing a desperate financial situation when the Accused engaged in the misconduct.

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[3] In determining the weight of prior disciplinary offenses, the court considers: (1) the relative seriousness of the prior offense and resulting sanction; (2) the similarity of the prior offense to the offense in the case at bar; (3) the number of prior offenses; (4) the relative recency of the prior offenses; and (5) the timing of the current offense in relation to the prior offense and resulting sanction and whether the lawyer was sanctioned for the prior offense before engaging in the offense in the case at bar. *In re Jones*, 326 Or 195, 951 P2d 149 (1997).

(d) Substantial experience in the practice of law [*Standards* § 9.22(i)]. The Accused had practiced law for almost 25 years when he engaged in this conflict of interest.

6. Mitigating Circumstances.

The panel correctly found no mitigating factors. *Standards* § 9.32(k) (imposition of other penalties or sanctions) might have applied if the Accused had actually paid the $5,266.30 in compensatory fees and $4,000 in attorney fees ordered by the bankruptcy court. However, he did not.

Thus, in light of the preliminary sanction, the several aggravating factors, and the absence of mitigating factors, the *ABA Standards* suggest that disbarment or a significant suspension is the appropriate sanction.

B. Case Law.

Oregon case law supports the imposition of a suspension. This court has repeatedly stated that the presumptive sanction for engaging in a "patent" conflict of interest is a 30-day suspension. *See, In re Knappenberger*, 337 Or 15, 32-33, 90 P3d 614 (2004) [citing *In re Hockett,* 303 Or 150, 164, 734 P2d 877 (1987)].

The court has imposed longer suspensions where, as here, the conflict involved self-interest and caused injury. In *In re Wittemyer*, 328 Or 448, 980 P2d 148 (1999), a lawyer who persuaded his client, a widow, to loan substantial sums to the struggling business for which he was general counsel, was suspended for 4 months. In *In re Gildea*, 325 Or 281, 936 P2d 975 (1997), a lawyer who failed to account for client property and engaged in a self-interest conflict and a business transaction with a client, was suspended for 4 months. In *In re Whipple*,

296 Or 105, 673 P2d 172 (1983), a lawyer who borrowed money from a client without disclosing his financial problems, giving security, or making adequate disclosures was suspended for 3 months. In *In re Bartlett*, 283 Or 487, 584 P2d 296 (1978), a lawyer who sold his client an interest in a highly speculative business venture and real property that had undisclosed title and lien issues was suspended for 6 months. Finally (and most similar on its facts), in *In re Baer*, 298 Or 29, 688 P2d 1324 (1984), a lawyer who represented, to their detriment, the sellers of a house that he himself purchased, was suspended for 60 days.

VII. CONCLUSION

The Accused engaged in patent and undisclosed conflicts of interest, benefiting himself to the actual detriment of his client. The panel correctly found that his misconduct warrants a 60-day suspension.

DATED this 21st day of May, 2013.

OREGON STATE BAR

By:
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I e-filed the foregoing OREGON STATE BAR'S RESPONDENT'S BRIEF on the 21st day of May, 2013, by submitting the electronic form in Portable Document Format (PDF) that allows text searching and allows copying and pasting text into another document to:

http://appellate.courts.oregon.gov

I further certify I served the foregoing OREGON STATE BAR'S RESPONDENT'S BRIEF on the 21st day of May, 2013, by mailing two certified true copies by first class mail with postage prepaid through the United States Postal Service to:

Michael L. Spencer
403 Main Street
Klamath Falls, OR 97601

DATED this 21st day of May, 2013.

OREGON STATE BAR

Mary A. Cooper, OSB No. 910013

CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 4,524 words.

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

Mary A. Cooper, OSB No. 910013