A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment

***

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

RULE 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. . . . A lawyer is not bound, however, to press for every advantage that might be realized for a client. . . . The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

***
RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

* * *

* * *

MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6.

(d) The provisions of Rule 8.3(a) shall not apply to lawyers who obtain such knowledge or evidence while acting as Ethics Counsel or as a member, investigator, agent, employee, or as a designee of the Oklahoma Bar Association’s Lawyers Helping Lawyers Committee, Judges Helping Judges, or Management Assistance Program in the course of assisting another lawyer or judge. Any such knowledge or evidence received by lawyers acting in such capacity shall enjoy the same confidence as information protected by the attorney-client privilege under applicable law and Rule 1.6.
Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

***

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

***

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.
RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;
(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. . . .

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

* * *
* * *

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.
¶0 In this disciplinary proceeding against a lawyer, the complainant alleges in four counts numerous instances of unprofessional conduct deemed to warrant disciplinary sanctions. A trial panel of the Professional Responsibility Tribunal found that respondent's actions constitute grounds for professional discipline and recommended a private reprimand with an assessment of the costs of the investigation, record and proceeding. Upon de novo review of the evidentiary material presented to the trial panel and this court's acceptance of the parties' stipulations,

RESPONDENT'S LICENSE TO PRACTICE LAW STANDS SUSPENDED FOR THIRTY (30) DAYS AND HE IS DIRECTED TO PAY THE COSTS OF THE INVESTIGATION, RECORD AND PROCEEDING IN THE AMOUNT OF $571.03, WHICH SHALL BECOME DUE NOT LATER THAN THIRTY (30) DAYS AFTER THIS OPINION BECOMES FINAL.

OPALA, J.

¶1 In this disciplinary proceeding against a lawyer, the issues to be decided are: [1] Does the record submitted for our examination provide sufficient evidence for a meaningful de novo consideration of the complaint and of its disposition? and [2] Is a license suspension for thirty (30) days an appropriate disciplinary sanction for respondent's breach of professional ethics? We answer both questions in the affirmative.

I

INTRODUCTION TO THE RECORD

¶2 On 26 January 2001 the Oklahoma Bar Association [Bar] commenced this disciplinary proceeding against Fred M. Schraeder [Schraeder or respondent], a licensed lawyer, by filing a formal complaint in accordance with the provisions of Rule 6 of the Rules Governing Disciplinary Proceedings [RGDP]. The complaint alleges in four counts multiple violations of the Oklahoma Rules of Professional Conduct [ORPC] and of the RGDP. The charges include two grievances advanced by separate clients and respondent's failure to respond to the Bar's investigative inquiries in both matters. The Bar has since withdrawn its reliance on ORPC Rules 1.1, 1.2, 1.3, 3.2 and 8.4(c) in Count I (the McMinn grievance); ORPC Rules 1.1, 1.3, 1.5, 1.16(b)(2), (d), 3.2 and 8.4(c) in Count II (the Parsons grievance); and on ORPC Rule 8.4(c) in Counts II and IV (for respondent's failure timely to respond to the Bar's inquiries). The Bar now rests the four counts solely on: (1) ORPC Rules 1.4, 1.5, 1.15(b), 1.16(b)2, (d), 3.2, 8.4(a) and RGDP Rule 1.3 in Count I; (2) ORPC Rules 1.4, 1.15(b), 8.4(a) and RGDP Rule 1.3 in Count III; and (3) ORPC Rules 8.1(b), 8.4(a) and RGDP Rules 1.3 and 5.2 in Counts II and IV.

¶3 At the commencement of its hearing on 16 May 2001 a trial panel of the Professional Responsibility Tribunal [panel or PRT] recognized for the record the admission of the parties' stipulations of fact, conclusions of law and an agreed disciplinary recommendation. As for
mitigation, the parties agreed that respondent had never before been disciplined (by the
Professional Responsibility Commission or by this court) or been the subject of a formal
investigation by the Bar's counsel. The parties submit professional burnout syndrome4 as a factor
to be considered in mitigation of respondent's culpability.

¶4 Upon completion of the hearing and consideration of the stipulations and testimony on file,
the trial panel issued its report (which incorporates the parties' stipulations). The panel
recommended that respondent receive a private reprimand and be directed to pay the costs of this
proceeding.

II

THE RECORD BEFORE THE COURT PROVIDES SUFFICIENT
EVIDENCE FOR A MEANINGFUL DE NOVO CONSIDERATION
OF ALL FACTS RELEVANT TO THIS PROCEEDING

¶5 In a bar disciplinary proceeding the court functions as an adjudicative licensing authority that
exercises exclusive original cognizance. The court's jurisdiction rests on the court's
constitutionally vested, nondelegable power to regulate the practice of law, including the
licensure, ethics, and discipline of this State's legal practitioners. In deciding whether discipline
is warranted and what sanction, if any, is to be imposed for the misconduct charged, the court
conducts a full-scale, nondeferential, de novo examination of all relevant facts, in which the
findings, conclusions and recommendations of the trial panel are neither binding nor persuasive.
In its task, the court is not guided by the scope-of-review rules that govern corrective relief on
appeal or in certiorari proceedings in which another tribunal's findings of fact may have to be left
undisturbed by adherence to some law-imposed standards of deference.

¶6 The court's duty can be discharged only if the trial panel submits a complete record of the
proceedings. Our initial task is to ascertain whether the tendered record is sufficient to permit (a)
an independent on-the-record determination of the critical facts and (b) the crafting of an
appropriate discipline. The latter is that which (1) is consistent with the discipline imposed upon
other lawyers who have committed similar acts of professional misconduct and (2) avoids the
vice of visiting disparate treatment of an offending lawyer.

¶7 Having carefully scrutinized the record submitted, we conclude that it is adequate for de novo
consideration of the respondent's alleged professional misconduct and of the discipline to be
imposed.

III

FACTS ADMITTED BY STIPULATION

¶8 The parties have tendered their stipulations by which respondent admits the facts which serve
as the basis of the charges against him. A stipulation of fact is an agreement by the parties that a

4 For a discussion of professional burnout syndrome, see infra note 40.
particular fact (or facts) in controversy stands admitted. It serves as an evidentiary substitute that dispenses with a need for proof of facts that are conceded by the parties' agreement. Stipulations are subject to the approval of the court in which they are entered. Respondent's stipulations of facts (a) have been made voluntarily and with knowledge of their meaning and legal effect and (b) are not inconsistent with any facts otherwise established by the record. We hence approve and adopt the parties' tendered stipulations.

A

Count I – The McMinn Grievance

¶9 Count one is predicated upon a grievance by Perry A. McMinn [McMinn]. McMinn hired respondent to assist in a criminal appeal filed in the United States District Court for the Northern District of Oklahoma. He paid respondent on 4 September 1997 the sum of $2,000 by cashier's check as part of the agreed fee of $10,000 and gave Schraeder an additional $800 on 21 January 1998.

¶10 After writing McMinn in February, March and May of 1998, respondent ceased communicating with his client and failed to file any motions or briefs in his appeal. Following respondent's inactivity, McMinn filed a motion on his own behalf and wrote respondent a letter, dated 5 May 1999, asking him to review and revise the document. When respondent failed to reply, McMinn wrote him again on 2 June 1999 and enclosed copies of several cases that he wanted him to review. Respondent did not answer the June 2 letter; he claims that he never received the letter or the enclosed cases. By letter dated 27 September 1999 McMinn requested a detailed accounting of all costs and legal services expended on his behalf and a refund of the unearned portion of the $2,800 fee. Respondent failed to answer the September 27 letter.

¶11 Schraeder insists (1) that he filed no briefs or pleadings in the McMinn case because he was waiting to receive pertinent information from McMinn's family to proceed with the appeal and claims (2) that he neither responded to the September 27 letter nor provided the requested accounting because he believed that he had earned the $2,800 fee by (a) researching the various issues in the McMinn appeal, (b) speaking on several occasions to members of McMinn's family and (c) traveling twice to visit McMinn at the Adult Detention Center in Tulsa, Oklahoma.

¶12 The Bar and respondent agree that the latter's misconduct violates the mandatory provisions of ORPC Rules 1.4 (failure promptly to communicate with his client's request for information), 1.5 (a) A lawyer's fee shall be reasonable. ** (failure to charge reasonable fees), 1.15(b) (failure to account for and return any unearned fees), 1.16(b)(2) and (d) (failure promptly to notify McMinn of his withdrawal from the appeal), 8.4(a) (misconduct) and RGDP Rule 1.3 (bringing discredit upon the legal profession). Upon de novo review of the record, we hold the charges are supported by clear and convincing proof that respondent's conduct warrants the imposition of discipline.
B

Count III – The Parsons Grievance

¶13 In Count three of the complaint the Bar charged respondent with failure to communicate with a client and to perform the work for which he was hired. Around 13 February 1999 Loretta Parsons [Parsons] retained Schraeder to represent her grandchildren's interest in her deceased daughter's estate. He was also to represent another granddaughter in both a criminal and a domestic matter. Parsons paid him $1,500.00. She also delivered to him several documents relevant to the estate as well as to possible civil litigation pertaining to her daughter's death. Respondent claims that Parsons paid him the fee to represent two of Parsons' adult children in three legal matters but that he never agreed to represent her in any wrongful death or other civil action. He insists that he completed the criminal and domestic matters for one granddaughter and performed work in the probate case.

¶14 The record is replete with letters from Parsons to respondent in which she insists that her efforts to communicate with respondent and to retrieve from him personal documents relating to a wrongful death suit proved unsuccessful. Schraeder takes the position that he terminated all communications with Parsons because his representation ended after the conclusion of the estate matters for her grandchildren and another family member's criminal case and annulment.

¶15 A constant flow of communication between an attorney and client constitutes a vital part of a lawyer's professional undertaking. When a client seeks information from one who is retained for representation, prompt responsive action should be forthcoming. Prolonged and willful silence by the lawyer's failure to return calls or answer letters is the very kind of neglect that destroys the public's confidence in the lawyer's integrity.

¶16 Both the Bar and respondent agree that the latter's actions violate the mandatory provisions of ORPC Rules 1.4, 1.15(b), and 8.4(a) and RGDP Rule 1.3 and constitute grounds for the imposition of professional discipline. On de novo review of the record, we hold there is clear and convincing probative support in the record for a breach of professional ethics and that the imposition of discipline is warranted.

C

COUNTS II AND IV – Failure Timely to Respond to the Bar's Investigative Inquiries into the McMinn and Parsons Grievances

¶17 Counts II and IV address respondent's delay in filing his response to the Bar's investigative inquiries in the McMinn and Parsons grievances. Respondent failed timely to respond to the Bar's three written requests and promptly to take action with respect to statements he made on two occasions to the Bar's investigator.

22 Eakin, supra note 5, at ¶9, at 648; Bolton, supra note 5, at ¶16, at 345; State ex rel. Okla. Bar Ass'n v. Perceful, 1990 OK 72, ¶5, 796 P.2d 627, 630.
The McMinn Grievance

¶18 The Bar notified respondent by letter dated 16 February 2000 that the McMinn grievance was being opened for formal investigation, invoking the requirement that Schraeder provide a complete response within a twenty-day (20) period. On March 14 the Bar notified Schraeder by certified mail containing a warning that failure to respond would result in the issuance of a subpoena duces tecum and require his testimony at the Bar Center. Respondent offered an explanation in a belated letter to the Bar (dated March 13 and postmarked March 16). He claimed that McMinn failed to provide critical information in a timely fashion and that any delay was caused by the lack of information he needed to proceed with the McMinn appeal.

¶19 The Bar's assigned investigator, Ray Page [Page or investigator] met with Schraeder concerning the McMinn and Parsons grievances. Schraeder assured Page that he would attempt to resolve with McMinn the dispute over the unearned portion of fees. Respondent's undated letter to the Bar, received 22 November 2000, shows that he wrote McMinn asking what portion of the fee he desired to have returned to him. McMinn's November 28 letter to respondent requested a refund of the entire $2,800.

¶20 By a 16 December 2000 facsimile transmission, respondent advised Page of his letter to McMinn and of McMinn's November 28 response. Contrary to respondent's statement that he would send Page a copy of his response to McMinn's November 28 request, the Bar received a December 26 letter from McMinn advising that he had not received a response to his November 28 letter. Respondent concedes that he did not promptly respond to McMinn's November 28 refund request, but claims that the delay was caused by the closing of his private practice and the moving of his law office. Respondent eventually provided McMinn with a full accounting of legal services and has refunded approximately $1,195.00 of the $2,800 fee. The respondent's conduct violates the mandatory provisions of ORPC Rules 8.1(b) and [51 P.3d 577] 8.4(a) and RGDP Rules 1.3 and 5.2 and warrants the imposition of discipline.

The Parsons Grievance

¶21 By letter of 10 May 2000 the Bar advised respondent of Parsons' complaint and directed him to communicate with her within two weeks. Respondent wrote to Parsons and was informed by her letter of May 23 which items she wanted him to return. Because respondent neither returned the requested documents nor responded to her letter, the Bar demanded (by letter of June 5) that respondent return the items to her by June 13 or at least offer an explanation as to why it would have been impossible for him to do so. Respondent was advised by the Bar's letter that failure timely to respond would be grounds for discipline and result in a formal investigation.

¶22 One 14 June 2000 the Bar received a letter from Parsons stating that respondent had neither communicated with her nor returned the requested items. Two days later the Bar received a letter from respondent, dated June 12 and post-marked June 15, which advised that he had previously forwarded all documents to Parsons and that he could find no additional items in his office.

¶23 The Bar notified Schraeder by letter of 10 July 2000 that it was opening the Parsons matter for formal investigation, again invoking the requirement of a written response within twenty
days. On August 1 Parsons notified Page, the Bar’s investigator, that she had entrusted certain documents to respondent when she retained him to file a wrongful death action. She explained that the documents were needed so that a lawsuit could be filed by another lawyer before it became time barred. Page’s August 11 letter to respondent requested that he again search for the items, stressing that a response was needed within 10 days to prevent the statute of limitations from running out. No reply was forthcoming from Schraeder.

¶24 After being advised by Parsons on August 22 that respondent had not contacted her about the missing documents, Page called respondent, leaving a message on his machine to return his call. Schraeder failed to respond.

¶25 Page finally met with respondent at his Drumright office on 7 November 2000. Respondent assured him that he would contact his former secretary to see if she could help him locate Parsons’ missing documents. The following day respondent telephoned Parsons, advising her of his plan to enlist the aid of his former secretary. On December 14 respondent advised Page that he had located the missing documents and would mail them to Parsons the next day, as well as send the Bar a copy of the returned mail receipt. Respondent confirmed these plans by December 16 facsimile transmission to Page. The record indicates respondent did not return the remainder of Parsons’ files until on or about 21 March 2001. Respondent insists that the delay was due to activity in closing his private practice.

¶26 The terms of RGDP Rule 5.2 provide that the failure of a lawyer to answer the Bar’s request for information shall be grounds for discipline. A lawyer’s obligation to respond to a Bar complaint is mandatory and leaves no room for interpretation about the proper form or time for filing a response. Respondent admits that he violated the mandatory provisions of ORPC [51 P.3d 578] Rules 8.1(b), 8.4(a) and RGDP Rules 1.3, 5.2 and that his misconduct constitutes grounds for the imposition of professional discipline. We agree. The only question remaining here is the proper disciplinary measure to be imposed for respondent’s breach of professional ethics.

IV

FACTORS TO BE CONSIDERED IN MITIGATION OF DISCIPLINE

¶27 Mitigating circumstances may be considered in the process of assessing the appropriate quantum of discipline. Respondent has raised several factors in mitigation.

¶28 Respondent submits medical proof that he suffered from occupational burnout diagnosed by his physician during the time of the breach. When the condition is tendered as a mitigating factor in mitigation of discipline, it must be demonstrated that the interference with the lawyer’s professional judgment was caused by the disease or condition. See State ex rel. Okla. Bar Ass’n v. Colston, 1989 OK 74, 777 P.2d 920; see also Raskin, supra note 5 at 267.

¶29 Another mitigating factor submitted by respondent is his poor health which has required the necessity for surgery. See State ex rel. Okla. Bar Ass’n v. Wolfe, 1996 OK 75, 919 P.2d 427 (lawyer’s license to practice law was suspended for two years and one day despite the use of burnout as a defense); In re Conduct of Loew, 642 P.2d 1171 (Ore. 1982).
factor for assessment of one's culpability there must be a causal relationship between a medical condition and the professional misconduct charged.\textsuperscript{41} \textit{Yet emotional or psychological disability, though it may serve to reduce the actor's ethical culpability, does not immunize one from imposition of disciplinary measures that are necessary to protect the public.}\textsuperscript{42} The record provides a sufficient causal connection between respondent's ethical lapses and his professional burnout syndrome. His condition is now believed by his physician to have been arrested. Respondent continues to be seen once a week as part of an ongoing counseling program.

court's recognition of burnout as mitigating factor for neglect of a legal matter and for misrepresentation to a client); In re Ontell, 593 A.2d 1038, 1042 (D.C. 1991) (a lawyer's license was suspended for thirty days for two instances of neglect of legal matters coupled with misrepresentation to clients despite the court's recognition of burnout as a mitigating factor). In \textit{Loew, supra}, at 1173, the respondent's psychiatrist described the condition as follows:

"A number of things occur when somebody has reached this so-called burn out point. They feel fatigue all the time, they have difficulty sleeping, they feel drained, may have an array of physical ailments which occur which are quite real, maybe hospitalized as you were, have memory lapses, impaired concentration, frequently miss deadlines, backlog of work, financial problems, begin to view patients or clients or whatever people you're working with, or you begin to view your work as the enemy and 'Oh, my God, here comes another patient, another client,' and so on. Rather than someone who is a team member, it's an opponent."

In Judith L. Maute, \textit{Balanced Lives in a Stressful Profession: an Impossible Dream?}, 21 Cap. U. L. Rev. 797, 812 n. 54 (1992), the author observes that in many discipline cases evidence of burnout results in neglect, citing in footnote 54:


In Charles J. Ogletree, Jr. \textit{Beyond Justifications: Seeking Motivations to Sustain Public Defenders}, 106 Harv. L. Rev. 1239, 1241 n.9 (1993), the author states:

Burnout has been studied empirically in various contexts. \textit{See, e.g.}, Deborah L. Arron, Running from the Law: Why Good Lawyers Are Getting Out of the Legal Profession 2-3 (1989); Barry A. Farber, Crisis in Education: Stress and Burnout in the American Teacher 24 (1991) ("Burnout is a work related syndrome that stems from an individual's perceptions of a significant discrepancy between effort (input) and reward (output) . . . . It occurs most often in those who work face to face with troubled or needy clients. . . . ") (emphasis omitted)); Paul Ligda, \textit{Work Overload and Defender Burnout}, 35 NLADA Briefcase 5, 5 (1977) (noting the effects of working environment on public defender performance). . . .

\textsuperscript{41} "When alcoholism is tendered as a mitigating factor there must be some causal relationship between one's alcoholic affliction and the professional misconduct charged." \textit{State ex rel. Okla. Bar Ass'n v. Giger, 2001 OK 96, }\textbf{¶}15, 37 P.3d 856, 863 n.31 (quoting \textit{Donnelly, supra} note 5, at }\textbf{¶}17, n.21, at 548 n.21).
¶29 Shortly after he became aware of his inability fully to serve his clients respondent sought to correct certain deficiencies in the way his office was managed by closing out his private practice and joining an assemblage of practitioners who can assist him.

¶30 Respondent has been a member of the bar for over 19 years and his professional record reflects neither previous blemishes nor a pattern of misconduct. He has acknowledged and accepted responsibility for his professional derelictions. The record shows that respondent's actions caused no grave economic harm. We note that respondent's dealings with the Bar, albeit dilatory during the initial investigative stages, were characterized by candor and cooperation during the latter stages and in the PRT proceedings.

¶31 We have taken these matters into account in fashioning the appropriate measure of discipline.

V

RESPONDENT'S MISCONDUCT WARRANTS A LICENSE SUSPENSION FOR THIRTY (30) DAYS TOGETHER WITH PAYMENT OF THE COSTS OF THIS PROCEEDING

¶32 A bar disciplinary process, including that for imposition of a disciplinary sanction, is designed not to punish the delinquent lawyer, but to safeguard the interests of the public, of the judiciary, and of the legal profession. Neglect of a lawyer's responsibilities compromises the independence of the profession and the public interest which that independence serves. A license to practice law is not conferred for the benefit of an individual, but for that of the public. The disciplinary measure imposed upon an offending lawyer should be consistent with the discipline imposed upon other practitioners for similar acts of professional misconduct.

¶33 A lawyer's failure to respond to the bar's investigative inquiries is a serious offense. This court in *State ex rel. Oklahoma Bar Association v. Robb* imposed a suspension of two years and one day for a lawyer's *failure to respond* to three client grievances or *appear* for depositions in response to subpoenas and for *failure to respond* to the disciplinary complaint.

¶34 The trial panel recommends a private reprimand as a fit discipline for respondent's breach of professional ethics. After a review of the record and the court's acceptance of the tendered mitigating factors, we hold that the appropriate disciplinary measure to be imposed is a thirty-day suspension of license to practice law. Today's decision is based upon the cumulative [51 P.3d 580] effect of the following factors: (1) respondent's utter failure *promptly* to respond to the bar's investigative inquiries, (2) his lack of concern for a client's economic interest by *refusal promptly* to account for and restore the unearned portion of fees for nearly a three-year period and (3) his *disregard* for a client's right to know the status of her case. Although we take note that upon his own initiative respondent sought to determine if there was an underlying cause for

---


45 See Preamble to the Oklahoma Rules of Professional Conduct, 5 O.S.2001, Ch. 1, App. 3-A.
his apathy and lost sense of career satisfaction and now seeks professional counseling on a continual basis, the standards to be followed are those that best protect the public and not those that shield the offending lawyer.

VI

SUMMARY

¶35 In sum, the record bears clear and convincing proof that respondent's participation in several episodes of unprofessional conduct violates the rules governing professional ethics. After a thorough review of the record and recognition of the tendered mitigating factors,

RESPONDENT'S LICENSE TO PRACTICE LAW STANDS ORDERED SUSPENDED FOR THIRTY (30) DAYS AND HE IS DIRECTED TO PAY THE COSTS OF THE INVESTIGATION, RECORD AND PROCEEDING IN THE AMOUNT OF $571.03, WHICH SHALL BECOME DUE NOT LATER THAN THIRTY (30) DAYS AFTER THIS OPINION BECOMES FINAL.

¶36 HARGRAVE, C.J., OPALA, KAUGER, SUMMERS, BOUDREAU and WINCHESTER, J.J., concur;

¶37 WATT, V.C.J., HODGES and LAVENDER, J.J., concur in part and dissent in part.

LAVENDER, J., with whom WATT, V.C.J., and HODGES, J., join, concurring in part and dissenting in part.

¶1 I would administer a public reprimand. [51 P.3d 581]
EDMONDSON, J.

¶1 The complainant, Oklahoma Bar Association (Bar), instituted a disciplinary action against the respondent, Tracy Smith, a.k.a. Tracy Smith Zahl, pursuant to Rule 6, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2001, Ch. 1., App. 1-A, alleging two counts of professional misconduct in violation of the Oklahoma Rules of Professional Conduct (ORPC) 5, O.S. Supp. 2008, Ch. 1, App. 3-A.

COUNT I

¶2 The complainant alleged that on March 17, 2008, Dr. Mike Seikel received a call from Belle Isle Pharmacy concerning a suspicious prescription bearing his assigned DEA number. Dr. Seikel telephoned the Oklahoma City Police Department (OCPD) and reported that a prescription pad had been stolen from his office. On June 10, 2008, respondent telephoned a CVS Pharmacy to fill a prescription for the drug Tussionex, a controlled substance containing the narcotic hydrocodone. Respondent advised the pharmacy employee that Dr. Seikel had prescribed the medication and that she would pick it up later that day. CVS contacted Dr. Seikel's office to verify the prescription and was advised that the prescription was forged on the prescription sheet stolen from his office.

¶3 CVS contacted the OCPD and alerted them to the situation. OCPD officers were dispatched to CVS to wait for anyone attempting to pick up the forged prescription. The respondent arrived at the CVS drive-through window and requested the alleged prescription from Dr Seikel. Respondent was intercepted by OCPD officers who placed her under arrest for the felony crime of Attempting to Obtain a Controlled Dangerous Substance by Forgery or Fraud in violation of 63 O.S. §2-407. CVS informed OCPD that it had filled six (6) alleged prescriptions for the respondent between April 22 and May 28, 2008. Three of the alleged prescriptions were for hydrocodone and three were for Tussionex.

COUNT II

¶4 On June 11, 2008, the respondent entered Valley Hope Association drug treatment program located in Cushing, Oklahoma, as an inpatient. On June 19, 2008, complainant received a letter from the respondent in which she advised the Bar of her arrest and her treatment at Valley Hope. Respondent extended her apologies for her actions. The respondent was discharged from Valley Hope on July 11, 2008, with a recommendation for a continuing care treatment plan which called for the respondent to enroll and participate in a relapse prevention program offered by Valley Hope's Oklahoma City branch. Respondent enrolled in the relapse prevention program the same day she was discharged. On December 2, 2008, the respondent admitted to her counselor that during a visit with her family in Texas she took several diet pills from a family member and used...
them to "get high." The respondent also admitted that on February 25, 2009, she smoked marijuana during a visit to Texas. The respondent admitted that she used marijuana on another trip in June of 2009.

¶5 The Oklahoma County District Attorney declined to file criminal charges against the respondent. Following the district attorney's decision not to charge her, the complainant scheduled a meeting with the respondent on October 2, 2009, to discuss its disciplinary investigation and the status of her criminal charges. At that meeting, the respondent advised that she had been sober and had abstained from using controlled substances since her last relapse. She expressed remorse for her actions and agreed to submit to random drug tests to prove her sobriety and her commitment to remaining sober. Respondent submitted to a hair follicle test on October 2, 2009; the test results were negative for any controlled substances.

¶6 The respondent has continued counseling with her therapist and attending AA meetings. She continues to submit to random drug tests and has not tested positive for any controlled substances. Respondent's supervising attorney at her law firm continues to monitor her and has advised the complainant that no clients were ever harmed as a result of her drug use and that her work continues to be competent and up to ethical standards. The Bar has received no grievances whatsoever regarding the respondent's work, ethics or abilities from any client, judge or opposing counsel.

¶7 The complainant alleges that the respondent's conduct violates the mandatory provisions of Rule 8.4(a),(b) and (c) ORPC and Rule 1.3 RGDP and warrants the imposition of professional discipline. Rule 8.4 ORPC provides that it is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct . . . ;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

* * *

Rule 1.3 RGDP provides that the commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. Conviction in a criminal proceeding is not a condition precedent to the imposition of discipline.

¶8 The respondent admitted the material allegations of the complaint in her response. The matter proceeded before a trial panel of the Professional Responsibility Tribunal (PRT) as an uncontested proceeding. At the hearing on April 20, 2010, testimony was taken from the respondent, from the Bar's investigator, from respondent's drug abuse counselor and from the managing partner of the law firm where the respondent is employed. Fifty-six (56) exhibits were admitted into evidence, including affidavits from a supervising attorney and an office manager at
respondent's law firm. Reports from respondent's counselor, from Valley Hope, of her AA and NA attendance and from her drug testing were submitted. The PRT recommends the professional discipline of public reprimand and a deferred suspension of one year. Additionally, the PRT recommends that ten probationary conditions recommended by the complainant and the respondent be imposed for the one year of deferred suspension. The Bar agrees with the recommendation of discipline made by the PRT. The respondent agrees with the PRT's recommendation of a one-year deferred suspension and compliance with the probationary conditions, but suggests that mitigating factors warrant a private rather than public reprimand.

STANDARD OF REVIEW

¶9 Our review of the proceedings before the PRT is de novo. State ex rel. Oklahoma Bar Ass'n v. Kinsey, 2009 OK 31 ¶12, 212 P.3d 1186. We examine the record and assess the weight and credibility of the evidence. Id. We are bound neither by the parties' admissions or stipulations nor by the PRT's findings of fact or recommendation of discipline. Id. We find that the record before us is sufficient for our de novo review.

¶10 At the time of the hearing, respondent had been sober for approximately ten months. The respondent has admitted the conduct described in the complaint and has admitted violation of the ORPC and RGDP. The respondent adopted the findings of fact of the PRT: The respondent was licensed to practice law in Texas in 2002. Her substance abuse began while practicing in Texas following use of prescription pain medications for various illnesses. This resulted in her intermittent recreational use of those substances. In 2006, the respondent became licensed to practice law in Oklahoma, moved to Oklahoma and got married. Her drug use escalated from intermittent to regular, until it reached the point that she became a self-described "binge user." She obtained pain medications for recreational use through an internet service until it was shut-down, then through "doctor shopping" and from friends who gave medications to her. She continued the behavior and usage without treatment until January 2008, after her husband's discovery of her problem, when she began to research counseling services and treatment. The respondent began individual counseling with Beverly Rapp, a psychotherapist/licensed drug and alcohol counselor, in February 2008. Her counselor directed respondent to attend AA and gave her names of women to contact for support. In April or May of that year, the respondent disclosed to her counselor that she could not stop her drug abuse on her own. Respondent and her counselor devised a treatment plan that entailed inpatient treatment at Valley Hope in Cushing, Oklahoma. The respondent scheduled inpatient treatment to begin on June 14, 2008 at Valley Hope. She advised representatives of her law firm that she was entering a month-long inpatient treatment program for her addiction and the law firm approved her leave for that purpose. The inpatient treatment was scheduled and her law firm was informed before the respondent was arrested.

¶11 Following the arrangements for inpatient treatment and leave from her law firm, the respondent decided to have a last "party" on June 10, 2008. Her thoughts were that she was going to stop using drugs as of June 14 and she wanted one last "good time." She called in a refill of the forged prescription, was arrested by OCPD while at the pharmacy and was booked into jail.
¶12 The respondent entered Valley Hope the following day. She had last used drugs some four to ten days before. While at Valley Hope the respondent followed the 12-step program. She reported her arrest and her entry into rehabilitation by letter to the Bar and expressed remorse for her conduct. Upon completion of the inpatient program, respondent enrolled in an outpatient relapse program, continued individual counseling with her previous counselor, attended AA and NA meetings and began working with a female sponsor who is an attorney in Dallas. Respondent's efforts to maintain her sobriety are ongoing and she participates in random drug tests and shares the results with the Bar. The respondent had three relapses after her inpatient treatment, as set out in Count II. Her last relapse was in June 2009 when her husband left her and she smoked marijuana. The respondent reported her relapses to her family, her counselor and the Bar. The counselor testified that relapses are a part of the recovery process. The respondent and her counselor treated the relapses as serious, but still believed that her recovery program was working. The respondent has been drug-free since June 2009 and random testing supports this.

¶13 The Bar proceeded under Rule 6 rather than Rule 10 of the Rules Governing Disciplinary Procedure because there was never any suggestion or indication that the respondent was incapable of practicing law and there was no evidence that the respondent was or is mentally or physically incapacitated or unable to practice law. Because no such evidence was offered, the proceeding was properly commenced pursuant to Rule 6 RGDP.

¶14 The respondent has admitted the conduct and has admitted violation of Rule 8.4(a)(b)(c) ORPC and Rule 1.3 RGDP. Clear and convincing evidence supports the findings of fact by the PRT and we adopt their findings. It remains for us to determine the appropriate discipline to be imposed on the respondent. In determining the appropriate discipline, we look to similar cases.

¶15 State ex rel. Oklahoma Bar Ass'n v. Willis, 1993 OK 138, 863 P.2d 1211, was instituted under Rule 7 RGDP, a summary disciplinary procedure based upon criminal conviction of, or certain plea agreements to, a crime which demonstrates a lawyer's unfitness to practice law. Willis was convicted after a guilty plea to a felony of obtaining a Schedule II controlled substance by misrepresentation and was sentenced to probation for a term of three years, with special conditions attached. Willis was summarily suspended from the practice of law under the provisions of Rule 7 and we referred the matter to the PRT for a hearing to determine final discipline. Willis argued that he should not be given any term of suspension because he had been addicted to painkillers and had been successfully rehabilitated and because no clients were harmed. Willis referred to his actions as mere "subterfuge," rather than misrepresentation or fraud, in an attempt to avoid suspension. We said that Willis was not convicted or suspended because of addiction to drugs, but because of his conviction of a felony that involved deception and dishonesty. His conviction of the felony of obtaining a controlled substance by misrepresentation stood as conclusive evidence of the commission of that crime under Rule 7. Although evidence was presented of other instances in which Willis obtained drugs by unauthorized prescriptions, in addition to the two incidents for which he was convicted, we based our order of discipline solely upon his conviction and did not consider other acts for which he was not charged. We suspended Willis from the practice of law for a period of fifteen (15) months commencing from the date of the order of interim suspension.
¶16 In State ex rel. Oklahoma Bar Ass'n v. Garrett, 2005 OK 91, 127 P.3d 600, Garrett was arrested for felonious sexual battery while intoxicated and pled guilty to misdemeanor battery. Garrett had allegations of prior sexual batteries and had been charged with previous alcohol-related traffic violations, but had never before been disciplined for professional misconduct. Garrett's problems stemmed from his abuse of alcohol and did not involve client relationships. We found that the respondent's actions violated Rule 8.4(a) (b) ORPC and Rule 1.3 RGDP because he committed a criminal act that reflected adversely on the his honesty, trustworthiness or fitness as a lawyer and brought discredit upon the legal profession. We took into account Garrett's actions after his arrest which showed serious commitment to maintaining sobriety. Garrett fully cooperated with the district court and the Bar and did not contest the allegations of the complaint. Garrett did not stop drinking, however, until criminal charges were filed against him and his law license was placed in jeopardy. We determined that public censure and probation for one year was the appropriate discipline. We said that the stipulated conditions to be met during probation were appropriate for encouraging a permanent change of lifestyle.

¶17 In State ex rel. Oklahoma Bar Ass'n v. McBride, 2007 OK 91, 175 P.3d 379, the attorney was convicted of driving under the influence of alcohol after numerous other vehicle and alcohol-related violations. McBride's conduct did not involve the representation of clients and he actively sought treatment for his alcoholism after his arrest. Discipline was sought to be imposed pursuant to Rule 6 was for violations of Rule 8.4(b) and (d) ORPC and Rule 1.3 RGDP. McBride stipulated to alcohol-related offenses covering a time period of more than ten years. We imposed discipline of public censure coupled with a deferred suspension of two years and one-day, with probationary conditions. We noted that McBride's problems stemmed from his abuse of alcohol and that if he continued to abstain, he would not pose a threat.

¶18 Leniency has been given to lawyers who confront their addiction and take steps to make amends and obtain treatment before disciplinary action is instituted. In State ex rel. Oklahoma Bar Ass'n v. Donnelly, 1992 OK 164, 848 P.2d 543, Donnelly was charged with lack of diligence and promptness in representing a client, not keeping the client informed, deceiving the client and for not revealing his alcoholism in a previous disciplinary proceeding. We considered Donnelly's alcoholism as a mitigating factor in fashioning the suitable Rule 6 discipline because Donnelly, on his own, informed his client of his misconduct, recognized that he had a problem with alcohol and sought treatment for his addiction, all before disciplinary proceedings were brought against him. We distinguished Donnelly's conduct from that of a lawyer who seeks treatment after disciplinary proceedings have been instituted. We observed that mitigation under the circumstances affords an incentive for other lawyers to seek help before misconduct arises or progresses to a more serious stage. Donnelly was publicly reprimanded.

¶19 While discipline should be administered fairly and evenhandedly, the terms will vary since each situation must be decided case by case, each involving different offenses and different mitigating circumstances. State ex rel. Oklahoma Bar Ass'n v. Burns, 2006 OK 75 ¶26, 145 P.3d 1088. Because of these differences, the range of discipline imposed in substance-related disciplinary matters has been quite wide. In the cases discussed above, public censure plus probation was deemed appropriate discipline for misconduct where the attorney's ability to practice law was not impaired, no clients were harmed, no allegations of fraud or misrepresentation were made and the lawyer maintained a strong commitment to sobriety.
¶20 We must fashion discipline that will sufficiently deter the respondent and other members of the bar from similar misconduct. The respondent in the case at bar committed the criminal offense of attempting to obtain a controlled dangerous substance by forgery or fraud. This is serious misconduct and it is not to be taken lightly. The respondent also had obtained drugs by forged prescription in the weeks prior to her arrest. The respondent has not been charged with or convicted of any crime nor has she any previous disciplinary history. Counsel for the Bar admitted that the Bar might never have learned of respondent's conduct if she had not reported herself. Thus, the respondent put herself in the position of being investigated by the Bar and subjecting herself to professional discipline when she might have avoided it by being less forthright.

¶21 Counsel for the Bar told the PRT that the respondent cooperated fully and frankly with the Bar and had done everything she could do to address her problem and facilitate her recovery. No clients were involved or harmed. We agree with the Bar that the evidence overwhelmingly demonstrates that respondent's problems were a result of her addiction to highly addictive pain medication. The respondent's conduct in confronting her addiction and seeking treatment, her self-reporting to the Bar and her forthrightness and cooperation throughout the disciplinary process serves as an example to other lawyers who are addicted. As in Donnelly, this Court will, where appropriate, look favorably on those who are self-motivated to confront their addictions, exhibit a sincere commitment to rehabilitation, openly admit their conduct and seek help before disciplinary charges are filed.

¶22 Respondent has agreed to a one-year deferred suspension and compliance with ten probationary conditions. Based on the particular facts and circumstances of this case, we determine that public censure coupled with a deferred suspension of one year, subject to the agreed probationary conditions, is appropriate to serve as a deterrent and to encourage a permanent change of lifestyle. Accordingly, the respondent stands publicly reprimanded and is placed under deferred suspension with probationary conditions for one year from the date of this opinion.

¶23 At the hearing before the PRT, the parties requested that the exhibits be filed under seal, but no order was entered sealing the exhibits. No motion has been filed with this Court asking that the exhibits be sealed.

¶24 On June 9, 2010, the complainant filed its application to assess costs against the respondent in the sum of $1,121.15, pursuant to Rule 6.16, RGDP. The respondent has filed no objection to the assessment of costs. The respondent is directed to pay the costs of the proceeding within ninety (90) days of the date this opinion becomes final.

¶25 COLBERT, V.C.J., KAUGER, WATT, WINCHESTER, EDMONDSON, REIF, COMBS, JJ. - Concur

¶26 TAYLOR, C.J. - Dissents - "The Suspension should not be deferred."
FOOTNOTES

1. Respondent shall continue psychotherapy and/or counseling with her current counselor, or one approved by the Office of the General Counsel, for one year from the date of the Court's opinion;

2. Respondent shall refrain from taking any illegal substances or prescription medications unless validly prescribed by a licensed medical physician who has been notified verbally and in writing of respondent's narcotics addiction. A copy of the written notification will be provided to the General Counsel within seventy-two hours;

3. Respondent shall refrain from abusing any intoxicant or substance;

4. Respondent shall regularly attend and participate in AA and NA, including continued application of the 12 Step Program, at least twice a week;

5. Respondent shall report her attendance at AA/NA meetings to the General Counsel, and provide documentation thereof, by the 15th of every month;

6. Respondent shall not violate the Oklahoma Rules of Professional Conduct or the Rules Governing Disciplinary Proceedings;

7. Respondent shall not violate the law in any state and will immediately report any such violation in writing to the General Counsel within 48 hours;

8. Respondent shall continue to be monitored and supervised by the partners in her law firm, who shall be required to report any violation of any term or condition of this agreement;

9. Respondent shall continue to submit to random drug testing (either urinalysis or hair follicle testing), at her own cost, at the request of the General Counsel and results will be sent directly from the testing facility to the OBA;

10. Respondent shall abide by and comply with any additional probationary terms and conditions ordered by the Oklahoma Supreme Court.