November 20, 2006

Peter R. Jarvis, Esq.
Hinshaw & Culbertson LLP
1000 SW Broadway Ste 1950
Portland, OR 97205

Re: Case No. 04-146—Charles H. Carreon

Dear Mr. Jarvis:

Enclosed please find the public portions of the Bar’s prosecution file in the above-referenced matter. The prosecution file consists of all correspondence and materials from the time that formal proceedings are authorized by the SPRB. I hope this information is of assistance.

Very truly yours,

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365
alyvott@osbar.org

ABL/sg
Enclosures
Charles H Carreon  
1131 Barrington Cir  
Ashland, OR 97520  

Re: OSB Bulletin Notice of Stipulation for Discipline  

Dear Mr. Carreon:  

I am writing in regard to the recent correspondence between you and Amber Bevaqua-Lynott. As it appears you are alleging a tort claim, this matter falls within my sphere of responsibility. 

While I have not reviewed the disciplinary file to ascertain the details of the negotiation leading up to your stipulation for discipline, I conclude from the plain language of the stipulation that the summary in the Bulletin accurately reflects the disposition of your case. The stipulation lists three aggravating factors, each of which is followed by a reference to a specific provision of the ABA Standards for Imposing Lawyer Sanctions. Two of the aggravating factors, that you committed multiple offenses and had substantial experience in the practice of law, are taken verbatim from Standards §§9.22(d) and (i). That is Disciplinary Counsel’s customary practice. 

The other aggravating factor, that you “utilized client funds for a personal obligation,” refers to but does not quote Standard §9.22(b) (“dishonest or selfish motive”). You claim that the different language was negotiated because you didn’t wish to admit to having a selfish motive. At the same time, however, you stipulated that your situation was aggravated by conduct addressed in Standard §9.22(b). 

In quoting the Standard rather than the language of the stipulation, the Bulletin notice merely described the same conduct in different words. The unauthorized use of client funds for your personal obligations inarguably reflects a selfish motive. That the bar was willing to use less pointed language in the stipulation does not change the fact that you agreed that a selfish motive was an aggravating factor in your case, as evidenced by the specific reference to Standard §9.22(b).  

I find no basis to conclude that the Bulletin notice is inaccurate, defamatory or otherwise requires correction. Moreover, I refer you to ORS 9.537(2), which provides that: 

The Oregon State Bar, its officers, the members of local professional responsibility committees, the state professional responsibility board, the board of bar examiners, the board of governors, the disciplinary board, and bar counsel, investigators and employees
of the bar shall be absolutely immune from civil liability in the performance of their
duties relative to proposed or pending admission, reinstatement or disciplinary
proceedings.

The publication of notices in the Bulletin is a duty relative to disciplinary proceedings
pursuant to Bar Rule of Procedure 2.4(j)(2):

Disciplinary Counsel shall have printed in the Bar Bulletin, on a periodic basis, summaries of Supreme Court
contested admission, contested reinstatement and disciplinary decisions and summaries of all Disciplinary Board
decisions not reviewed by the Supreme Court.

I hope I have addressed your concerns sufficiently. Please feel free to contact me if
you have further questions.

Sincerely,

Sylvia E. Stevens
General Counsel
Ext. 359, Fax: (503) 598-6959
Email: sstevens@osbar.org

cc: Amber Bevaqua-Lynott, Asst. Disciplinary Counsel
Jeffrey D. Sapiro, Disciplinary Counsel
Regulatory Service---Facsimile Transmission
Our FAX Number: (503)-968-4457

Date: October 4, 2005

To: Rene C. Holmes, Esq.                      Fax No.: (503) 243-3240

From: Sandy Gerbish                             Phone Ext.: 327

Enclosure: Copy of Carreon Order Approving Stipulation for Discipline and letters that will go out in the mail today to you.

Pages transmitted, including this cover sheet: 6

Sent via regular mail? yes
October 4, 2005

Tracey West
Disciplinary Board Clerk
Oregon State Bar
5200 S.W. Meadows Road
Lake Oswego, Oregon 97035

Re: Case No. 04-146 -Charles H. Carreon

Dear Tracey:

Enclosed is an Order Approving Stipulation for Discipline in the above-entitled matter.

Very truly yours,

Candace Saldivar
Legal Assistant for
Michael C. Zusman
State Disciplinary Board Chairperson

/cms
Enclosure
cc: R. Paul Frasier (Disciplinary Board Chairperson)
    Amber Bevacqua-Lynott (Assistant Disciplinary Counsel)
    Rene C. Holmes, Esq. (Counsel for Accused)
    Kary Pratt, Esq. (Bar Counsel)
October 4, 2005

John L. Barlow, Esq.
Barnhisel Willis Barlow et al
123 NW 7th St
PO Box 396
Corvallis, OR 97339

Judith H. Uherbelau, Esq.
607 Siskiyou Blvd
PO Box 640
Ashland, OR 97520

Philip Duane Paquin
1431 NW Hawthorne Ave
Grants Pass, OR 97526

faxed to (541) 757-2031

emailed to philpaquin@earthlink.net

Re: Case No. 04-146—Charles H. Carreon

Gentlemen and Ms. Uherbelau:

Please find enclosed a copy of the Order of the Disciplinary Board approving a Stipulation for Discipline in the above-referenced matter. It will not be necessary for you to preside at the scheduled hearing in this matter on October 12-13, 2005, as the order of the Disciplinary Board brings the proceeding to a close.

Thank you and the other panel members for your participation in this matter.

Very truly yours,

[Signature]

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365
alynotto@osbar.org

ABL/sg
Enclosures
cc: Michael C. Zusman, Esq., State DB Chair
R. Paul Frasier, Esq., Region 3 Chair
George A. Riemer, Esq., General Counsel
(all w/enclosure)
Kary Pratt, Esq., (Bar Counsel)
Rene C. Holmes, Esq. (Counsel for Accused)
October 4, 2005

Honorable Wallace P. Carson, Jr.
Chief Justice
Oregon Supreme Court
1163 State Street NE
Salem, OR 97301

Re: Case No. 04-146 — Charles H. Carreon

Dear Chief Justice Carson:

Please find enclosed a copy of the Order of the Disciplinary Board approving a Stipulation for Discipline and the Stipulation for Discipline in the above-referenced matter. In that the stipulation calls for a 60-day suspension, this matter was submitted to the Disciplinary Board for approval pursuant to BR 3.6(d). The Disciplinary Board approved the stipulation on September 30, 2005. Please note that the effective date of Mr. Carreon's suspension is October 24, 2005.

No action by the court is necessary. We are providing the order and stipulation to you for informational purposes only.

Very truly yours,

[signature]

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365
alynott@osbar.org

ABL/sg
Enclosures

cc: Donna Berg, c/o State Court Administrator’s Office
    Kary Pratt, Esq. (Bar Counsel)
    Rene C. Holmes, Esq. (Counsel for Accused)
    George A. Riemer, Esq., General Counsel
    (all w/enclosures)
October 4, 2005

Charles H. Carreon, Esq.
c/o Rene C. Holmes, Esq.
Hinshaw & Culbertson LLP
1000 SW Broadway Ste 1950
Portland, OR 97205

Re: Your suspension from the practice of law in Oregon

Dear Mr. Carreon:

As you are aware, you have been suspended from the practice of law in Oregon for sixty (60) days, effective October 24, 2005. The purpose of this letter is to direct your attention to certain responsibilities you have during your suspension and to assist you in meeting those responsibilities.

BR 6.3, a copy of which is enclosed, is the rule of procedure that sets forth a lawyer’s duties upon suspension. The rule does not establish a specific procedure for compliance. The proper method to comply with BR 6.3 will depend on the status of your practice at the time of suspension, the number of pending files you have, whether your clients are currently involved in litigation or administrative proceedings, whether you have partners or associates, whether you intend to seek reinstatement pursuant to BR 8.1 or BR 8.3 when your term of suspension is over, and other relevant circumstances.

Your first responsibility is to stop practicing law. While you have an obligation, as discussed below, to assist clients in the transition of their legal matters to new counsel (if appropriate), you must not render legal advice to them or act as their legal representative in any way.

The remainder of your responsibilities involve taking all reasonable steps to avoid foreseeable prejudice to your clients’ interests. This may require giving notice of your suspension to your clients, referring them to other counsel if appropriate, cooperating with the substitution of counsel in litigation or administrative proceedings, providing clients with appropriate materials concerning their legal matters, accounting to them for their funds and providing them with an itemized billing if requested. You are encouraged to provide all the information at your disposal to the lawyer who takes over a client’s matter following your suspension.
Your suspension is relatively short-term. If you do not anticipate that any activity will be necessary regarding a client’s legal matter during your term of suspension and if you reasonably believe no prejudice will result to that client’s interests, notice to the client of your suspension may not be required. Of course, nothing prevents you from notifying your clients of your suspension, and many clients may consider this relevant information to which they are entitled. If a client is unaware of your suspension and asks you to perform legal services on a pending or new matter, you must notify the client that you cannot do so because of your suspension.

During the term of your suspension, you may bill and collect for legal work performed prior to your suspension, but care should be taken to avoid the impression you are continuing to practice law. You should discontinue use of an office sign, letterhead, business cards and webpage designating you as a lawyer during the term of your suspension. Similarly, care should be taken in the manner in which you or your staff answer your office telephone. Anything that gives the impression that you are eligible to practice law during your term of suspension should be avoided.

Please feel free to contact me if you have specific questions concerning your suspension. You may also wish to read Legal Ethics Opinion 1991-24 relating to a law firm’s employment of a suspended lawyer, and the case of In re Kraus, 295 Or 743, 670 P2d 1012 (1983), in which a suspended lawyer was denied reinstatement for failing to carry out duties similar to those set forth in BR 6.3.

If you need additional information concerning the closure of your practice during the term of your suspension, contact the Professional Liability Fund’s practice management advisor service at 503-639-6911 or 1-800-452-1639. There is no charge to you for this service, and the PLF may be able to assist you in the transition of client matters.

Finally, I have enclosed information about the reinstatement process. Please note that reinstatement is not automatic following a term of disciplinary suspension. You are eligible to be reinstated only upon the filing of a compliance affidavit and payment of all applicable fees as provided in BR 8.3. You may not resume the practice of law until you comply with the requirements of BR 8.3.

If you do not plan to be reinstated immediately upon the expiration of your term of suspension, please also note that the delay may affect your eligibility to apply for reinstatement under the expedited provisions of BR 8.3. Under BR 8.3, a compliance affidavit must be filed with the Bar within six months from the date your suspension begins. If you remain suspended for a period in excess of six months, you will no longer be eligible for reinstatement under this rule. Instead, you will need to file an application for reinstatement under BR 8.1, which requires action by the Board of Governors and the Supreme Court. Because the 8.1 application process can take several months to complete prior to Supreme Court action, we urge you to file your
compliance affidavit and pay all appropriate fees as contemporaneously as possible with the expiration of your suspension term.

If you have been represented by counsel in this matter and wish to contact our office directly concerning your reinstatement, please have your counsel provide us with written notification of termination of the representation or permission for such direct communication.

If you have questions, please contact me.

Very truly yours,

[Signature]

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365
alynott@osbar.org

ABL/sg
Enclosures (BR 6.3 and BR 8.3 reinstatement packet)
cc:   Barbara Fishleder, Esq., PLF (w/enclosure)
150-02
Rule 6.3 Duties Upon Disbarment Or Suspension.

(a) Attorney to Discontinue Practice. A disbarred or suspended attorney shall not practice law after the effective date of disbarment or suspension. This rule shall not preclude a disbarred or suspended attorney from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(b) Responsibilities. It shall be the duty of a disbarred or suspended attorney to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) Contempt. Disciplinary Counsel may petition the Supreme Court to hold a disbarred or suspended attorney in contempt for failing to comply with the provisions of BR 6.3(a) or (b). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.
October 4, 2005

P.G. Kent-Snowsell  
Barrister & Solicitor  
2nd Floor 1624 Franklin Street  
Vancouver, BC  
Canada V5L 1P4

Re: Case No. 04-146 — Charles H. Carreon (Randy L. Price Complaint)

Dear Mr. Snowsell:

Please find enclosed a copy of the Stipulation for Discipline between Charles H. Carreon and the Oregon State Bar, along with the Order approving the Stipulation. This Stipulation concludes the formal disciplinary proceeding resulting from the matter you brought to our attention on behalf of your client Randy L. Price.

Thank you for bringing your concerns to our attention and for your contribution to the regulation of our profession.

Very truly yours,

[Signature]

Amber Bevacqua-Lynott  
Assistant Disciplinary Counsel  
Extension 365  
alyott@osbar.org

ABL/sq  
Enclosure  
cc: Kary Pratt, Esq. (Bar Counsel)  
Rene C. Holmes, Esq. (Counsel for Accused)
October 4, 2005

State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Charles H. Carreon, California Bar No. 127139

To Whom It May Concern:

Our records indicate that Charles Hernan Carreon, licensed to practice law in Oregon, also is a member of the State Bar of California. Enclosed for your information is a certified copy of a recent Stipulation for Discipline and Order Approving Stipulation for Discipline involving this member.

Very truly yours,

[Signature]

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365
alynott@osbar.org

ABL/sg
Enclosure
cc: Rene C. Holmes, Esq. (Counsel for Accused)

200-03
DATE: October 4, 2005
FROM: Michael C. Zusman

PLEASE DELIVER TO:
Sandy

FILE NO.
TOTAL PAGES THIS FAX
(including cover sheet): 2

FAX SIMILE NUMBER:
503-968-4457

IF ALL PAGES ARE NOT RECEIVED, CONTACT CANDACE at (503) 241-5550

MESSAGE (if any):
Per your request.

THE ORIGINAL OF THE INCLUDED TRANSMITTAL WILL BE DELIVERED TO THE ADDRESSEE BY MEANS OF:

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September 23, 2005

Michael C. Zusman, Esq.
State DB Chair
Evans & Zusman PC
5331 SW Macadam Ave #299
Portland, OR 97239

R. Paul Frasier, Esq.
Region 3 DB Chair
Coos County Courthouse
250 N Baxter St
Coquille, OR 97423

Re: Case No. 04-146—Charles H. Carreon

Gentlemen:

Pursuant to BR 3.6, Charles H. Carreon and the Oregon State Bar have entered into the enclosed Stipulation for Discipline.

Please review this stipulation and, at your earliest convenience, send us your decision with respect to its approval as required by BR 3.6(e). An order is enclosed for your convenience if you find the stipulation acceptable. The original of the order is being sent to Mr. Frasier with a request that he forward it on to Mr. Zusman for signature, date, and return to the Disciplinary Board Clerk, with a copy to me.

Thank you for your assistance in this matter.

Very truly yours,

[Signature]

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365
alynot@osbar.org

ABL/sg
Enclosure

cc: Disciplinary Board Clerk (w/original Stipulation and proposed Order)
    Rene C. Holmes, Esq. (Counsel for Accused)
    Kary Pratt, Esq. (Bar Counsel)
September 21, 2005

Amber Bevacqua-Lynott
Oregon State Bar
PO Box 1689
Lake Oswego, OR 97035-0889

Re: In re Conduct of Charles Carreon

Dear Amber:

Enclosed is the original Stipulation for Discipline signed by Charles H. Carreon.

If you have any questions regarding the enclosed document, please do not hesitate to call me.

Kind regards,

Rene Holmes
rholmes@hinshawlaw.com

RCH:hg
Enclosure
Amber Bevacqua-Lynott

From: Carrie Peeples [CPeeples@hinshawlaw.com]
Sent: Monday, September 12, 2005 12:27 PM
To: alyott@osbar.org
Subject: Stipulation in Carreon matter

Ms. Bevacqua-Lynott:

Attached please find a faxed copy of the Stipulation for Discipline signed by Charles Carreon. We anticipate receiving the original likely in tomorrow’s mail, and will immediately forward it on to you.

Please do not hesitate to call if you have any questions or concerns.

Carrie Peeples
Legal Secretary
HINSHAW & CULBERTSON LLP
1000 SW Broadway, Suite 1950
Portland, OR 97205-3078

(503) 243-3243 ext 3401
cpeeples@hinshawlaw.com

Hinshaw & Culbertson LLP is an Illinois registered limited liability partnership that has elected to be governed by the Illinois Uniform Partnership Act (1997).

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9/12/2005
9/12/05
Called Carrie Peeples
to ask where is Stip?
She says "good question!"
Will call Camron let me know. So
September 2, 2005

Rene C. Holmes, Esq.
Hinshaw & Culbertson LLP
1000 SW Broadway Ste 1950
Portland, OR 97205

Re: OSB Case No. 04-146—Charles H. Carreon

Dear Ms. Holmes:

In connection with our recent telephone conversations, please find enclosed an original Stipulation for Discipline in regard to Charles H. Carreon. Please carefully review the stipulation, and if it is acceptable to Mr. Carreon, have him sign it in the presence of a notary, and return the same to me for submission to the Disciplinary Board. If this form of stipulation does not meet your approval, please immediately advise me. I have also enclosed a red-line version of the stipulation so you can see what revisions have been made.

Thank you for your continued courtesies in this matter.

Very truly yours,

[Signature]

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365

ABL/sg
Enclosure
cc: Kary Pratt, Esq., Bar Counsel
    (w/enclosure)
August 23, 2005

Rene C. Holmes, Esq.
Hinshaw & Culbertson LLP
1000 SW Broadway Ste 1950
Portland, OR 97205

Re: OSB Case No. 04-146—Charles H. Carreon

Dear Ms. Holmes:

In connection with our recent telephone conversations, please find enclosed an original Stipulation for Discipline in regard to Charles H. Carreon. Please carefully review the stipulation, and if it is acceptable to Mr. Carreon, have him sign it in the presence of a notary, and return the same to me for submission to the Disciplinary Board. If this form of stipulation does not meet your approval, please immediately advise me.

Thank you for your continued courtesies in this matter.

Very truly yours,

[Signature]

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365

ABL/sg
Enclosure
cc: Kary Pratt, Esq., Bar Counsel
    (w/enclosure)
August 18, 2005

By Email and Regular Mail

Amber Bevacqua-Lynott
Oregon State Bar
PO Box 1689
Lake Oswego, OR 97035-0889

Re: In re Conduct of Charles Carreon

Dear Amber:

Thank you for having Jane Angus provide us with a courtesy call as to the decision of the SPRB. We have spoken with our client and are authorized to accept the Board’s offer by stipulating to a 60-day suspension for the two current allegations.

We look forward to reviewing a draft of the stipulation for discipline. If you have any questions, please do not hesitate to call me.

Kind regards,

HINSHAW & CULBERTSON LLP

[Signature]

Rene C. Holmes
rholmes@hinshawlaw.com

RCH: cp

cc: Charles Carreon
    Peter Jarvis
August 15, 2005

Rene C. Holmes, Esq.
Hinshaw & Culbertson LLP
1000 SW Broadway Ste 1950
Portland, OR 97205

Re: Case No. 04-146—Charles H. Carreon

Dear Ms. Holmes:

This letter confirms our August 12, 2005 telephone conversation wherein I advised that the State Professional Responsibility Board considered Charles Carreon’s proposal to resolve the pending proceeding by stipulation for discipline with a reprimand or, in the alternative, a 30-day suspension for violation of DR 9-101(A). The board rejected his proposal, but did authorize resolution of the case by stipulation for discipline with Mr. Carreon admitting violation of DR 9-101(A) and DR 3-101(B) and accepting a 60-day suspension from the practice of law.

Please review the matter with your client and let Amber Bevacqua-Lynott and Kary Pratt know how Mr. Carreon wishes to proceed. Amber is scheduled to return to the office this coming Thursday. In the interim, if you have any questions, please do not hesitate to contact me or Ms. Pratt.

Very truly yours,

Jane E. Angus
Assistant Disciplinary Counsel
Extension 318

cc: Kathryn M. Pratt, Esq.
TELEPHONE MEMO

TO: Carreon File
FROM: Lynn Bey-Roode
DATE: 6/22/05

Messages left: 6/20/05
Date of call: 6/21/05
Name of caller: Randy Price, owner of Sweet Entertainment
Number/s: 604/254-1404 (w); 604/616-3825 (cell)
Relationship: Former employer of Charles Carreon
Representation? ___NO  x YES  ___ n/a
Contact permission? ___NO  x YES  ___ n/a

5/20/05:
Randy Price and I agreed that I would call him tomorrow at 10 am for a conference call with Amber and Kary Pratt.

5/21/05, 10:00 am:
It was almost four years ago that Carreon started working for Sweet Entertainment. Carreon had been working on another case in their industry when Mr. Price thinks Carreon had a falling out with the owner of Sex.com. Mr. Price had heard about the success Carreon had had in that litigation, and later he met Carreon at a trade show. At that time Sweet Entertainment’s volume of legal work required full-time, in-house legal counsel. There were also difficulties in finding someone in Vancouver with internet experience.

Mr. Price was straightforward with Carreon; from the first he told Carreon they were looking for full-time, in-house legal counsel. The counsel they have now is full-time and Mr. Price is very happy with that counsel. Mr. Price allowed Carreon some time to resolve some things such as visas, work permits, and other things involving relocating. Carreon expressed an interest in working full-time and in-house but issues kept coming up such that that did not happen. Mr. Price was willing to be flexible.

Then a few things happened, and there were some challenges that came up during the time that Carreon was working for Sweet Entertainment. Carreon developed a relationship with Carreon’s partner[s?]. Mr. Price and his partners had a dispute, which created some turmoil. Carreon was divided; he was not clear which way to go, even though contractually Mr. Price was the director of the company and his partners were shareholders. All instructions came from Mr. Price. The partners were attempting to gain
more interest in the company. There were more complications involved and Mr. Price and his partners ended up in court.

Mr. Price thinks Carreon left Sweet Entertainment because of a combination of being fired and of leaving. There was a time when what Carreon was doing was up in the air, and there was an issue of insubordination.

The partnership disputes ended in a buyout resolution. Shortly after that (in March, though Mr. Price cannot remember of which year), Sweet Entertainment was raided by the Vancouver Police Department. All Sweet Entertainment’s equipment was seized, including about 100 computers, all their records, their files, “everything.” At that time Carreon “got scared” and asked, “Are you guys going to be in business?” Then Carreon withdrew. But already there was turmoil with the partners and employees. The raid added to the uncertainty. When Mr. Price needed representation most is when Carreon “bailed.” Mr. Price then got lucky with his new counsel, who pulled them through that raid and two more after that. Sweet Entertainment then sued the Vancouver Police Department and British Columbia, taking them to court in an obscenity trial that Sweet Entertainment won. This was all “precedent-setting stuff.”

Carreon had company money that was held in trust as well as company-issued equipment, namely a laptop and content from one of the court cases. Content included videos and productions from other companies Sweet Entertainment had licensed. Mr. Price thought it was “odd” for Carreon to have those things.

Sweet Entertainment had sued a company many years ago, and Carreon came in at the end of the suit and took it over. The suit was problematic. Carreon managed to finalize it. Then Mr. Price’s partners attempted to do a deal with the company Sweet Entertainment had just sued but “it went sideways.” Sweet Entertainment was given proceeds/equity in that company (the content and the servers) as a result of winning the suit. Mr. Price has companies in Canada and the United States; the US companies are “flow-throughs,” whereas the Canadian companies are where the operations occur. The suit was brought in Colorado. When Sweet Entertainment won this suit, they had the content and servers shipped to Carreon in the United States since they thought it was easier that way. Carreon expressed an interest in keeping the content for himself and/or for one of his companies. Carreon was interested in doing something with the contents for his own interest. Mr. Price had a problem with that since he did not want to be put in a conflict situation and Carreon quickly let it go. Carreon wanted this content “in lieu of payment.”

One of the issues that arose was that Carreon kept some of that content. Mr. Price is not sure how much content Carreon has and how much Sweet Entertainment has. The company Sweet Entertainment sued had stolen content from Sweet Entertainment and from others. Carreon was supposed to determine what was legal, usable, and licensed correctly. That is was Mr. Price told Carreon to do. Mr. Price told Carreon to determine whose content was legal, then to get licenses, and then to distribute the content legally. Carreon never finalized that. Carreon brought some content back to Canada but not all. Then Sweet Entertainment was raided. Mr. Price thinks the content was not being used by
Sweet Entertainment now. Carreon might still have some of it, and the police may have some. There is no real way for Mr. Price to know.

Mr. Price does not trust Carreon but cannot say when he stopped trusting him because Mr. Price had doubts about Carreon when Carreon was working for him. Mr. Price questioned Carreon's approach, and there were some interpersonal problems [involving Carreon] with the company. The big issue came when Carreon refused to sign a document Sweet Entertainment needed saying Carreon was working for Sweet Entertainment and that Carreon "sided with [Sweet Entertainment] in their dispute with the partners." Carreon was "riding on the fence, jumping back to assist ex-partners and not coming forward to represent Sweet Entertainment." This was a critical time because Sweet Entertainment was going to court on an ex parte application. There are affidavits about this partnership dispute and its resolution, which Kent-Snows will have.

The laptop was always the company's. Mr. Price gave it to Carreon because Carreon was traveling. During this "traumatic time," Mr. Price did not think about the laptop for a few weeks. Carreon did not give it back, nor did he give back the money in trust. Carreon could not have been confused about whose laptop it was because it had Sweet Entertainment's inventory tags on it. Carreon used it for personal stuff too, which he should not have done. One of the reasons for the delay in returning the laptop was that Carreon said it had his personal stuff on it, including his e-mail. Sweet Entertainment started getting Carreon's personal e-mails after Carreon had left. The company could not access those e-mails, and all e-mails to Carreon had to go to the lawyers first.

Mr. Price got the laptop back "after a long and arduous process" that involved the lawyers. Mr. Price is not sure if money was paid for the laptop. There was money in trust and Carreon withdrew funds from it for the condo that he had in Vancouver. The money in trust was supposed to go to Sweet Entertainment directly but Carreon put money through it [the trust].

Mr. Price thought they were paying Carreon "a decent salary." They also helped Carreon get a condo with the idea that Carreon would move to Vancouver full-time. Initially Mr. Price was willing to pay for the condo for a time because Carreon still had his house in Oregon. Mr. Price thought Carreon would move to Vancouver and take care of those expenses.

Mr. Price had to hire additional lawyers because Carreon was not willing to be involved and because of the partnership problems. It was "a fiasco." It was "a huge expense" to replace the hardware [that was seized]. Carreon wanted to leave Sweet Entertainment he and told Mr. Price to pay the severance [penalty] on the condo. Carreon entered into a contract on the condo individually but had tried to get Sweet Entertainment to enter into it. Mr. Price had said no. Sweet Entertainment had paid some amounts on company checks for the rent of the condo but they did not want to be on the rental contract. Also, why did Carreon not enter a month-to-month lease instead of the longer one he signed? Carreon tried to get Sweet Entertainment to pay the extra months' rent and the fee for breaking the lease.
Carreon felt that certain things were in dispute and that he was therefore entitled to get some money. Those disputed things included the money in trust and what it was for, and monies that were owed to Carreon. Mr. Price thought the money in trust was Sweet Entertainment’s; Carreon thought he had the ability to get that money.

Carreon paid some things for Carreon with company money “against his better judgment.” Some things he paid with company checks included rent. This was loosely done initially. Ultimately the landlord of the condo never came to Sweet Entertainment for the obligation on the rental agreement. The money Sweet Entertainment initially paid for Carreon’s rent was in addition to his paycheck.

Mr. Price thought Carreon was “nickel and diming” him. After every trip to Oregon, Carreon would send Mr. Price an invoice. Mr. Price tried to pull himself away from making payments to Carreon for this property [the content on the laptop and the laptop itself?]. Mr. Price told Carreon to be more aggressive with some legal issues, which would bring more money into the company. These legal issues involved outstanding copyright issues. Carreon was to litigate against other companies who had stolen from Sweet Entertainment. That would bring in additional revenue. So the money Sweet Entertainment paid Carreon was fair based on what Carreon was going to bring in.

From the start, Carreon was to work for Sweet Entertainment full-time. The issue of going in-house or not was something Carreon was negotiating. Mr. Price wanted Carreon in Vancouver for more than one week; then Carreon was going to spend two weeks in Vancouver. One of the problems with Carreon was his not being physically there in Vancouver.

Mr. Price and Carreon negotiated the issue of the rental agreement over the phone and in person. There were e-mails but those might have been seized. Also, Carreon was careful about not putting stuff into writing.

Mr. Price wanted the laptop back because they had already spent a lot of money on Carreon only to have Carreon “abandon” and “compromise” them. Now Carreon was going to keep the hardware and the money that was in trust and the money for the condo. Mr. Price thought that was enough. Mr. Price was “pissed” because what Carreon was doing was “not right.”

Mr. Price is not sure how much Carreon took from the trust; this happened over four years ago and it is so far in the back of his mind. Mr. Price would have to look at his notes.

When Carreon left, “that was it” in terms of continuing to work for Sweet Entertainment. But because of the way Carreon orchestrated things with Sweet Entertainment, there was still some stuff to be “cleaned up,” but it was “fairly minor.” Carreon sent bills to either Kent-Snowsell or to Mr. Price. Sweet Entertainment had lawyers by then who were involved in this, so probably the bills were sent on to the lawyers.
Carreon said that Sweet Entertainment would have to “pay this bill to get the laptop.” Mr. Price was “not happy” about this. The idea that Carreon had hardware that belonged to Sweet Entertainment and also had a bill “did not make it seem like goodwill.” But that was straightened out fairly quickly.

Mr. Price thinks Sweet Entertainment had money in the trust that it was owed. Carreon wanting it [the money in trust] was “adding insult to injury.” Mr. Price “reluctantly” paid Carreon’s bill.

It is Mr. Price’s opinion that when Carreon wanted the disputed funds for the condo Mr. Price said “no more.” Mr. Price gave Carreon notice of that. In Mr. Price’s view, Carreon took company money to pay for his personal expenses. Mr. Price is not sure how long before Carreon left that he [Mr. Price] gave Carreon notice. Things “slowly happened” until Mr. Price became adamant.

The engagement agreement between Sweet Entertainment and Carreon was more like something written in an e-mail. Sweet Entertainment might still have it or it might be part of what the police seized.

When Carreon was traveling back and forth, Mr. Price thought Carreon would be working for Sweet Entertainment, even while he was in Oregon. But since Carreon was not there [in the office], it was hard for Mr. Price to see if Carreon was actually working on Sweet Entertainment’s stuff. Sweet Entertainment was paying Carreon US$10,000 a month.

Regarding the lease arbitration, Mr. Price knew about it but he thinks the lawyers were dealing with that.

The bottom line for Mr. Price is that he was “unhappy about the whole thing.”

Another person who was upset with Carreon was Steve Easton, a man who runs an organization called APIC. Easton is a “radical guy,” a photographer, who tries to protect copyrighted materials of producers from those on the internet who steal their content. When Carreon first came on [to Sweet Entertainment], Mr. Price told him about wanting to try to go after all those who had stolen content. There was “lots of work in that.” Carreon was interested in that and Mr. Price taught Carreon about how this stuff works. Easton would scour the internet day and night for content theft and then go after the thieves, including hosting companies. Easton did “awesome work,” and Mr. Price thought Carreon would get in on the legal side of it. Mr. Price thinks that is what Carreon wanted to do; in fact, Carreon might be doing that right now. Carreon then tried to put Easton out of business and gave Easton “a lot of grief.” Mr. Price felt partly responsible because he had introduced them. Easton lives in Florida, and Mr. Price will get me his phone number.
July 18, 2005

Via email and regular mail

Amber Bevacqua-Lynott
Oregon State Bar
5200 S.W. Meadows Road
P.O. Box 1689
Lake Oswego, Oregon 97035

Re: In re Complaint as to the Conduct of Charles Carreon

Dear Amber:

Thank you for speaking to me about Charles Carreon and the pending complaint as to his conduct. You had suggested that we propose a sanction in hopes of a resolution to this matter, and you also identified four cases on which you were relying when you stated that the sanction should be around 60 days in length. I am writing this letter to address the cases you listed, and to discuss a possible resolution.

The cases you identified were Starr, Eakins, Wyllie, and Williams. I will first address In re Complaints as to the Conduct of James E. Williams, 314 Or 530, 840 P2d 1280 (1992). I do not believe that this case is analogous, nor truly helpful for either party in Mr. Carreon’s matter. The case is more appropriately a discussion of possible misrepresentation, or misimpression, if you will. It is not truly a discussion of a violation of a trust fund for our purposes.

The accused in Williams informed a third party that he was holding his client’s checks in his trust account, but the checks were never placed in nor held in the trust account. He never informed the third party that the checks were not, in fact, being held in his trust account. The issue was not whether he was dishonest, since at the time he made the statement he intended to keep the funds in such account. The issue, rather, was whether or not, when he knew no funds were being kept where he said they were, did he create a misimpression for the third party that he had a duty to correct. Although this case dealt with trust accounts, the real issue addressed by the court was a possible misrepresentation. You have conceded that there is no evidence of dishonesty or misrepresentations in this matter. That being the case, Williams is of little assistance for us.

You have stated that while Mr. Price swears up and down that he did not grant Mr. Carreon authority to use the trust account funds in the manner in which he did, you do not have any documentation to support Mr. Price or contradict Mr. Carreon. You do not have enough to
establish a “knowing” misuse of the trust funds. In re Complaint as to the Conduct of Margaretta Eakin, 334 Or 238, 258, 48 P3d 147, 158 (2002) analyzes the proper sanction as between a negligent improper use of a trust account and a knowing improper use. The case, citing to the American Bar Association’s Standards for Imposing Lawyer Sanctions (1991) (ABA Standards), advises that a reprimand is the appropriate sanction for a negligent misuse of client property, even when the client is injured or potentially injured.

Eakin was deemed to have knowingly engaged in the trust fund violation for the fact that she should have known it was improper to withdraw the money, and but for her bad housekeeping practices, she would have known. This is very different from our case. Mr. Carreon is able to articulate, as seen in the last letter to you, the many reasons why he reasonably believed he was authorized to engage in the contested use of funds. Although Mr. Price now disagrees, Mr. Carreon was still reasonable in his belief that he was authorized to act in the manner in which he did. Mr. Carreon acted openly in his use of the funds, and at the time of the use, received no objection from Mr. Snowsell, nor Mr. Price. He, concurrent with the payments, copied the checks for Mr. Snowsell to inform him of the payments from the trust account, and in the final accounting, the payments are specifically referenced. He acted, at worst, negligently in paying the landlord settlement amount out of the trust fund. Further, Mr. Price was not injured by this use of the funds. In fact, Mr. Price received the benefit of resolving the landlord dispute at a low cost. A reprimand, according to the ABA Standards, is appropriate.

In re Complaint as to the Conduct of Deni Starr, 326 Or 328, 952 P2d 1017 (1998) is also distinguishable from Mr. Carreon’s matter. Ms. Starr was aware that there was a dispute as to what was to be done with the funds in the trust account, and despite that knowledge, she withdrew disputed funds. There is no evidence which the Bar is able to produce, nor is there any to be found, that Mr. Carreon was aware of a dispute, and went ahead and withdrew client trust funds. Additionally, the sanction is distinguishable. Starr received a six (6) month suspension, but she had multiple violations, knowledge of her improper use, and she had two prior disciplinary matters, including violations that were similar in nature to her new violations.

In re Complaint as to the Conduct of William B. Wyllie, 331 Or 606, 19 P3d 338 (2001) is distinguishable, as well. Mr. Wyllie received a four (4) month suspension. However, Mr. Wyllie’s trust account violations were paying himself unjustifiably, not having earned the money yet. Additionally, Mr. Wyllie violated multiple rules, including charging or collecting an excessive fee and a current client conflict of interest. There were aggravating factors in Mr. Wyllie’s case, such as that he had two prior suspensions, including a one-year term and a two-year term. Also, it is important to point out that Mr. Wyllie acted selfishly in paying himself large unearned fees, unlike Mr. Carreon who was paying a third party a debt owed by Mr. Price. Clearly, Mr. Carreon’s matter is not as egregious and should not warrant a suspension even close to the four (4) months Mr. Wyllie received.

Mr. Carreon did not act with a selfish motive when he withdrew the funds from the trust account. Mr. Carreon was paying a debt to a third-party creditor, attributable to Mr. Price. It may appear
Amber Bevacqua-Lynott  
July 18, 2005  
Page 3

unusual since the third-party creditor was a landlord for Mr. Carreon; however, the sole reason Mr. Carreon had the landlord was for the benefit of the client. Mr. Carreon was only renting a Canadian apartment in order to conduct business for his client who was headquartered in Canada. Simply because Mr. Carreon received some benefit with this settlement, since he was personally named in the litigation, it does not remove the fact that the debt clearly belonged to the client. It is completely analogous to the debt incurred by a lawyer for an expert witness, or a court reporter on behalf of a client. Although the attorney retains the services, and is thus the named debtor, the debt ultimately belongs with the client; payment from client funds is not self-dealing and is entirely appropriate.

There is one further case that I believe is applicable to the sanction analysis for Mr. Carreon, although you did not mention it during our conversation. In re Complaint as to the Conduct of Howard R. Hedrick, 301 Or 750, 725 P2d 343 (1986) involved an attorney, who knew full-well that he was personally retaining fees overpaid to him, but continued to retain them. Additionally, the attorney was found to have been uncooperative with the Bar during its investigation of him. The court stated, referring to both of these violations prior to rendering its decision regarding a sanction, that

We hold that the violations by Hedrick were extremely serious. Any time an attorney withholds from a client money to which the attorney is not entitled, the integrity of the whole profession is at stake. . . . When an attorney fails to cooperate with the Bar in answering questions about a complaint, the whole process is delayed and prejudiced.

Id. at 760. Mr. Hedrick, despite the “extremely serious” nature of these violations, received a 63-day suspension. Mr. Hedrick acted knowingly and selfishly. His sanction should demonstrate the egregiousness of his conduct in comparison to what Mr. Carreon is alleged to have done.

While there is no case in Oregon, unfortunately, that appears to be on all-fours regarding Mr. Carreon’s conduct with respect to the trust account, there does not appear to be anything even close regarding the allegation of unauthorized practice of law. In fact, the only case that I could find that even remotely resembled Mr. Carreon’s alleged UPL, is In re Butler, Or S Ct No S40533 (1993). In that case the attorney was disciplined for UPL for filing an answer to a complaint in a jurisdiction in which the attorney was not licensed to practice. This is clearly more egregious than our factual situation since Mr. Carreon only practiced United States law for which he was properly licensed although he was located some of the time in Canada. He did not practice Canadian law and he did not reside and conduct all of his business out of Canada.

In many, if not most, of the United States, an attorney, although only licensed in one jurisdiction, may be located in a second jurisdiction and practice the law of the licensing jurisdiction only for clients of the licensing jurisdiction without having to obtain any permit or license to do so in the second jurisdiction. Oregon has such a rule. California has such a rule.
Mr. Carreon certainly did not knowingly engage in the unauthorized practice of law. If I correctly recall your statements on my voicemail relating to the evidence you suggest supports a UPL claim, you included the fact that in a memorandum to Mr. Price at some point, Mr. Carreon had stated that he needed to look into professional liability insurance. The professional insurance coverage question is separate and distinct from the professional licensing issue. Since Mr. Carreon was not exclusively working out of Oregon, his Oregon PLF policy would not cover all of his actions. This knowledge of insurance coverage does not equate to knowledge that another jurisdiction requires some sort of licensure to practice only United States law, for which Mr. Carreon was licensed to practice, just because Mr. Carreon was some of the time officed in that foreign jurisdiction. The two notions are distinct and knowledge of one is not evidence of knowledge of the other. Clearly, it would be a much different analysis if Mr. Carreon had been practicing Canadian law, but, in fact, he was not.

You were clear with me that the Bar was only going to be satisfied with a suspension, and therefore, implied that a reprimand would not be appropriate. Our client has authorized us to stipulate to an admission of a negligent violation of DR 9-101(A) and a 30-day suspension, but only if the SPRB is unwilling to accept a reprimand.

If you need anything further, or wish to discuss this matter, please do not hesitate to contact me.

Kind regards,

HINSHAW & CULBERTSON LLP

Rene C. Holmes
rholmes@hinshawlaw.com

RCH:cp
cc: Charles Carreon
    Peter Jarvis
TELEPHONE MEMO

TO: Carreon File
FROM: Lynn Bey-Roode
DATE: 6/6/05

Messages left: 5/20/05
Date of call: 6/2/05
Name of caller: Paul Kent-Snowsell
Number/s: 604/685-1148
Relationship: Attorney for Randy Price, owner of Sweet
Entertainment
Representation? ____NO ____YES  x  n/a
Contact permission? ____NO ____YES  x  n/a

5/20/05:
I left a message with the receptionist asking her to have Mr. Kent-Snowsell return my
call. Mr. Kent-Snowsell was out of the office in court.

6/2/05:
Mr. Kent-Snowsell did not return my call so I telephoned him again.

Mr. Kent-Snowsell recommends that I telephone Randy Price about whether or not Sweet
Entertainment was willing to pay whatever was necessary to Mr. Carreon to have him
return the laptop. Mr. Price can be reached at 604/616-3825 and Mr. Kent-Snowsell
agrees that I can talk to his client about this matter. I should also ask Mr. Price how Mr.
Carreon was paid; Mr. Kent-Snowsell thinks it was with a corporate check. Mr. Price
should have a copy of that cancelled check.

Sweet Entertainment paid Mr. Carreon because Mr. Carreon was their lawyer. They did
not pay him for the laptop; the laptop belonged to the corporation. The check was for
monies owed to Mr. Carreon. Again, I should talk to Mr. Price about this.

Mr. Kent-Snowsell thinks that Sweet Entertainment objected to Mr. Carreon using some
of the settlement money to pay himself but I should confirm that with Mr. Price. Mr.
Carreon had no authority to use that money.

When an invoice is received by the company, it is sent to the accounting department.
Bills are paid monthly.
The original letter Mr. Kent-Snowsell sent the Bar is the best source of information regarding what happened. It is "all-encompassing."

It was "not okay" for Mr. Carreon to use money from the settlement funds to pay his legal bill [for his fees].

Mr. Carreon and Sweet Entertainment/Mr. Price parted ways "not on good terms." Mr. Kent-Snowsell came in as the legal counsel after their split.

Mr. Kent-Snowsell thinks Mr. Carreon used money for which he was the trustee. That money was "in dispute" and Mr. Carreon "had no right to use it."

Mr. Carreon said he had "his kid's [or kids'] stuff on the computer" and that he had to first "clean it up."

Mr. Kent-Snowsell has just got back from court and does not have the file open as he talks to me; that is why I should look at his original letter as the best source of information. Mr. Kent-Snowsell wonders why it has taken the Bar so long to get around to this complaint but does remember that he talked to Amber and that she had been out on maternity leave. Still, it has taken us a long time to get to this matter.
June 3, 2005

Blayne & Dugan Court Reporters
201 W Main Ste 3-A
Medford, OR 97501

Re: Case No. 04-147- Charles H. Carreon

Dear Gertia:

This letter will confirm that we require court reporting services for the hearing of Charles H. Carreon on Wednesday and Thursday, October 12 and 13, 2005, beginning at 11:00 a.m. on the 12th and 9:00 a.m. on the 13th. The hearing will be held at Blayne & Dugan Court Reporters, 201 W Main Ste 3-A, Medford, OR 97501.

Thank you for your help. Should you have any questions, please let me know.

Very truly yours,

[Signature]

Tracey West
Disciplinary Board Clerk
Ext.336, Fax: 598-6936
Email twest@osbar.org

cc: Amber Bevacqua-Lynott, Assistant Disciplinary Counsel
Kathryn M. Pratt, Bar Counsel
Peter R. Jarvis, Counsel for Accused
John L. Barlow, Trial Panel Chair
Disciplinary Board Clerk Memo

Date: June 3, 2005
To: John L. Barlow, Trial Panel Chair
    Judith H. Uherbelau, Trial Panel Member
    Philip Pacquin, Trial Panel Public Member
From: OSB Disciplinary Board Clerk’s Office
Re: In re Charles H. Carreon, Case No. 04-147

We have received notice of the hearing setting in this matter:

   Hearing Date: October 12 & 13, 2005
   Time: 11:00am on Oct. 12th - 9:00am on Oct 13th
   Location: Blayne & Dugan Court Reporters
             201 W Main Ste 3-A
             Medford, OR 97501

Please note that the panel’s opinion is to be filed with this office within 28 days of the conclusion of the hearing, the settlement of the transcript as required under BR 5.3(e), or the filing of additional briefs if requested pursuant to BR 4.8, whichever is later.

The majority opinion should include specific findings of fact, conclusions and a disposition. It should be signed by the concurring panel members. A dissenting panel member may file a dissent with the majority opinion.

If additional time is required to render the panel’s opinion, you may request an extension of time by filing your written request with this office and serving copies on the State Chair, Disciplinary Counsel, Bar Counsel, and the Accused or the Accused’s Counsel before the applicable 28 day period expires. The State Chair will file a written decision on the request and notify all parties.

The trial panel is responsible for the record of all proceedings before it including the transcript and any exhibits offered and received. Those items should be filed with this office as soon as you are finished with them.

We would appreciate receiving your opinion in electronic format as well as in a hard copy. You can e-mail the opinion to twest@osbar.org or include a disk with the hard copy. Please feel free to contact Tracey West at (503) 431-6336 or (800) 452-8260, ext. 336 (within Oregon) if you have questions.

cc: R. Paul Frasier, Regional Chair
    Amber Bevacqua-Lynott, Assistant Disciplinary Counsel
    Kathryn M. Pratt, Bar Counsel
    Peter R. Jarvis, Counsel for Accused
June 1, 2005

RE: IN RE CHARLES H. CARREON
OSB DISCIPLINARY BOARD CASE NO. 04-147

Dear Counsel:

After reviewing the calendar responses that I have received, I have set the hearing date for this matter for Wednesday, October 12, 2005 at 11:00 a.m. and Thursday, October 13, 2005 at 9:00 a.m. The hearing will take place at Blayne & Dugan Court Reporters, 201 West Main, Suite 3A, Medford, Oregon. Directions to their office are enclosed.

Very truly yours,

[Signature]

John L. Barlow

Enclosure
May 24, 2005

RE: IN RE CHARLES H. CARREON  
OSB DISCIPLINARY BOARD CASE NO. 04-147

Dear Counsel:

I have now received calendar response forms from everyone on my list, except Mr. Jarvis. I enclose a master list showing the available dates as reported by everyone else.

It occurs to me that I need to ask Mr. Jarvis and Ms. Pratt whether we need to set aside two or more consecutive days for the hearing, before I set the date or dates. You should keep in mind, as suggested by Ms. Pratt, that the start time for the trial will likely be mid-morning, taking into account reasonable travel time from Portland to Jackson County.
PLEASE MARK THROUGH ANY DATES DURING THESE MONTHS THAT YOU ARE UNAVAILABLE TO PARTICIPATE IN THE HEARING

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MASTER CALENDAR (BASED ON FOUR RESPONSES THROUGH 5/25)
May 19, 2005

John L. Barlow, Esq.
Barnhisel Willis Barlow et al
123 NW 7th St
PO Box 396
Corvallis, OR 97339

Re: Case No. 04-146—Charles Carreon

Dear Mr. Barlow:

Thank you for your May 17, 2005 letter regarding setting a trial date in the above matter. Enclosed is my calendar with the dates marked that I am not available for trial.

Thank you for your assistance in this matter.

Very truly yours,

[Signature]

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365
alynott@osbar.org

ABL/sg
Enclosure
cc: Peter R. Jarvis, Esq.
    Kathryn M. Pratt, Esq.
    Judith H. Uherbelau, Esq.
    Philip Paquin
    Disciplinary Board Clerk
    (all w/enclosure)
PLEASE MARK THROUGH ANY DATES DURING THESE MONTHS THAT YOU ARE UNAVAILABLE TO PARTICIPATE IN THE HEARING

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May 17, 2005

RE: IN RE CHARLES H. CARREON
OSB DISCIPLINARY BOARD CASE NO. 04-147

Dear Counsel:

I enclose with this letter calendar response forms for each of you to fill out indicating your availability for hearing during the months of July, August, September and October, 2005. Please mark out any days in which you are unavailable and return the responses to me within the next two weeks. Once I hear from all of you, I will notify you regarding a hearing date and the location in Jackson County where the hearing will be conducted.

Very truly yours,

John L. Barlow

JLB:bp

Enclosure
May 10, 2005

Amber Bevacqua-Lynnott
Oregon State Bar
5200 SW Meadows Road
PO Box 1689
Lake Oswego, OR 97035-0889

Dear Ms. Bevacqua-Lynnott:

RE: Case No. 04-148
Charles H. Carreon Conduct Complaint


While the Formal Complaint against Mr. Carreon appears to be an internal matter of discipline with the Oregon State Bar, it does nothing to reimburse my client for the misuse of his trust monies of which he has been out for over three years now.

Can you please advise me when he might expect return of those trust funds, which were used by Mr. Carreon to retire his personal debt.

I look forward to hearing from you on this point and also on whether or not you require Mr. Price to be a witness at trial.

I remain,

Yours truly,

P.G. KENT-BROWSELL LAW CORP.

Per:

Paul G. Kent-Browsell

PKS/dj

Telephone: 604-685-1148 Mobile: 604-685-1149 Facsimile: 604-685-1215 E-mail: PKS@SHAWBIZ.CA
FACSIMILE COVER LETTER

DATE: May 11, 2005
TOTAL # OF PAGES: 2 (including cover page)
TO: Amber Bevacqua-Lynott
FIRM: Oregon State Bar
FAX NO: 1-503-968-4457
FROM: PAUL KENT-SNOWSELL
OUR FILE REF: COR027 - Charles Carreon Conduct Complaint

If you do not receive all pages clearly, please contact us immediately.

URGENT ___ CONFIDENTIAL ___ ORIGINAL TO FOLLOW BY MAIL___

MESSAGE:

Please see attached.

The information contained in this facsimile message is confidential information protected by solicitor/client privilege intended only for the use of the individuals or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please immediately telephone us and return the original message to us at the address above via regular mail. Thank you.
Disciplinary Board Clerk Memo

Date: May 10, 2005
To: John Barlow, Trial Panel Chair
From: OSB Disciplinary Board Clerk's Office
Re: In re Charles H. Carreon, Case No. 04-146

Enclosed are copies of the Formal Complaint and Answer in the referenced case.

Pursuant to BR 2.4(h), the trial panel chair should now schedule a hearing to be held not less than 63 days and not more than 182 days from your receipt of these pleadings. The hearing date notice should include the date, time, and location of the hearing. Please refer to BR 5.3 for rules regarding the location of a hearing. Court reporting services will be arranged through this office.

Notice of the hearing date should be sent to this office, to the other trial panel members, to the accused or the accused's counsel, to Disciplinary Counsel, and to Bar Counsel, if one has been appointed.

For assistance with finding a location or making other arrangements for the hearing, please contact Tracey West at (503) 431-6336 or (800) 452-8260, ext. 336 (within Oregon).

cc: Amber Bevacqua-Lynott, Assistant Disciplinary Counsel
Kathryn M. Pratt, Bar Counsel
Peter R. Jarvis, Counsel for Accused
April 27, 2005

Peter R. Jarvis.
Attorney at Law
Hinshaw and Culbertson LLP
1000 SW Broadway Suite 1950
Portland, Oregon 97205

Kathryn M. Pratt
Attorney at Law
6586 NW McGregor Terrace
Portland, Oregon 97229

Amber Bevacqua-Lynott
Assist. Disciplinary Counsel
Oregon State Bar
PO Box 1689
Lake Oswego, Oregon 97035-0889

Dwayne R. Murray
Attorney at Law
833 Alder Creek Drive Suite B
Medford, Oregon 97504

Judith H. Uherbelau
Attorney at Law
PO Box 640
Ashland, Oregon 97520

Phillip D. Paquin
1431 NW Hawthorne Avenue
Grants Pass, Oregon 97526

Mr. John Barlow
Attorney at Law
PO Box 396
Corvallis, Oregon 97339-0396

Re: Case #04-146, Charles H. Carreon

To All Concerned:

I had previously appointed Mr. Dwayne Murray to the trial panel and to also act as the chair of the panel regarding this matter. Mr. Murray has indicated to me that he believes he has a conflict in the matter as the accused is a former employee of Mr. Murray. Mr. Murray has asked that he be excused from the panel and I have allowed his request. I have received no challenges to the remainder of the panel.

As Region 3 Disciplinary Board Chair, I hereby appoint the Mr. John Barlow to the panel and ask that he act as the chair.
As the time frame for challenges as to the remaining members has passed, the only challenges at this point would be to Mr. Barlow. In this case, please address any challenges to the Disciplinary Board Clerk with a copy to me. If the Disciplinary Clerk has not received any challenges within the seven (7) day period, the Clerk will then mail a copy of the pleadings to members of the trial panel.

Sincerely,

[Signature]

R. Paul Frasier

Cc: Disciplinary Board Clerk
Disciplinary Board Clerk Memo

Date: April 22, 2005
To: Dwayne Murray, Trial Panel Chair
    Judith H. Uherbelau, Trial Panel Member
    Philip Paquin, Trial Panel Public Member
From: OSB Disciplinary Board Clerk’s Office
Re: In re Charles H. Carreon, Case No. 04-146

Enclosed are copies of the Formal Complaint and Answer in the referenced case.

Pursuant to BR 2.4(h), the trial panel chair should now schedule a hearing to be held not less than 63 days and not more than 182 days from your receipt of these pleadings. The hearing date notice should include the date, time, and location of the hearing. Please refer to BR 5.3 for rules regarding the location of a hearing. Court reporting services will be arranged through this office.

Notice of the hearing date should be sent to this office, to the other trial panel members, to the accused or the accused’s counsel, to Disciplinary Counsel, and to Bar Counsel, if one has been appointed.

For assistance with finding a location or making other arrangements for the hearing, please contact Tracey West at (503) 431-6336 or (800) 452-8260, ext. 336 (within Oregon).

cc: Amber Bevacqua-Lynott, Assistant Disciplinary Counsel
    Kathryn M. Pratt, Bar Counsel
    Peter R. Jarvis, Counsel for Accused
April 11, 2005

Peter R. Jarvis.
Attorney at Law
Hinshaw and Culbertson LLP
1000 SW Broadway Suite 1950
Portland, Oregon 97205

Dwayne R. Murray
Attorney at Law
833 Alder Creek Drive Suite B
Medford, Oregon 97504

Kathryn M. Pratt
Attorney at Law
6586 NW McGregor Terrace
Portland, Oregon 97229

Judith H. Uherbelau
Attorney at Law
PO Box 640
Ashland, Oregon 97520

Amber Bevacqua-Lynott
Assist. Disciplinary Counsel
Oregon State Bar
PO Box 1689
Lake Oswego, Oregon 97035-0889

Phillip D. Paquin
1431 NW Hawthorne Avenue
Grants Pass, Oregon 97526

Re: Case #04-146, Charles H. Carreon

To All Concerned:

As Region 3 Disciplinary Board Chair, I hereby appoint the following trial panel to hear the formal complaint against attorney Charles H. Carreon: (1) Dwayne Murray, (2) Judith H. Uherbelau, and (3) Phillip Paquin. I am asking Mr. Murray to serve as chair of the panel.

Please note that BR 2.4(g) outlines the rights and duties as to the challenges to the panel. In this case, please address any challenges to the Disciplinary Board Clerk with a copy to me. If the Disciplinary Clerk has not received any challenges within the seven (7) day period, the Clerk will then mail a copy of the pleadings to members of the trial panel.

R. Paul Frasier

Cc: Disciplinary Board Clerk
Amber Bevacqua-Lynott

From: Carrie Peeples [CPeeples@hinshawlaw.com]
Sent: Thursday, April 07, 2005 3:23 PM
To: alynott@osbar.org
Cc: Rene Holmes
Subject: Ltr from Rene Holmes re Carreon

Ms. Bevacqua-Lynott,

Attached please find correspondence from Rene Holmes concerning Charles Carreon. The original of this letter is being forwarded to you via regular mail today, as well.

Please contact us if you have any questions.

Thanks!

Carrie Peeples
Legal Secretary to Rene Holmes
HINSHAW & CULBERTSON LLP
1000 SW Broadway, Suite 1950
Portland, OR 97205-3078

(503) 243-3243 ext 3401
cpeeples@hinshawlaw.com

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The contents of this e-mail message and any attachments are intended solely for the addressee(s) named in this message. This communication is intended to be and to remain confidential and may be subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and its attachments. Do not deliver, distribute or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.
April 7, 2005

Amber Bevacqua-Lynott
Oregon State Bar
5200 S.W. Meadows Road
P.O. Box 1689
Lake Oswego, Oregon 97035

Re: In re Complaint as to the Conduct of Charles Carreon

Dear Ms. Bevacqua-Lynott:

I apologize for our delayed response to your request for discussion of the alleged dishonesty in the conduct of Mr. Charles Carreon. I hope that you have, by now, received that letter.

I, in the meantime, have received a copy of your Request for Production of Documents. In light of you not having had the opportunity to review our letter prior to your having drafted this request, let alone us being able to discuss the issue, I am now asking whether you would agree to delay the formal document discovery process until we have determined if it is possible to resolve this matter without a dishonesty charge.

Please give me a call if you wish to discuss the dishonesty issue and the formal discovery timeline. Thank you for your consideration in this matter.

Regards,

HINSHAW & CULBERTSON LLP

Rene C. Holmes
Direct dial (503) 243-7929
rholmes@hinshawlaw.com

RCH: cp
cc: Charles Carreon
    Peter Jarvis
April 7, 2005

Amber Bevacqua-Lynott  
Oregon State Bar  
5200 S.W. Meadows Road  
P.O. Box 1689  
Lake Oswego, Oregon 97035

Re: In re Complaint as to the Conduct of Charles Carreon

Dear Ms. Bevacqua-Lynott:

I apologize for our delayed response to your request for discussion of the alleged dishonesty in the conduct of Mr. Charles Carreon. I hope that you have, by now, received that letter.

I, in the meantime, have received a copy of your Request for Production of Documents. In light of you not having the opportunity to review our letter prior to your having drafted this request, let alone us being able to discuss the issue, I am now asking whether you would agree to delay the formal document discovery process until we have determined if it is possible to resolve this matter without a dishonesty charge.

Please give me a call if you wish to discuss the dishonesty issue and the formal discovery timeline. Thank you for your consideration in this matter.

Regards,

Rene C. Holmes
Direct dial (503) 243-7929
rholmes@hinshawlaw.com

RCH:cp
cc: Charles Carreon  
    Peter Jarvis
April 6, 2005

Via U.S. Mail

Amber Bevacqua-Lynott
Oregon State bar
5200 S.W. Meadows Road
P.O. Box 1689
Lake Oswego, Oregon 97035-0889

Re: Complaint as to the Conduct of Charles H. Carreon

Dear Ms. Bevacqua-Lynott:

This letter responds to your most recent inquiries concerning this matter, in an effort to make voluntary disclosures that will make a deposition unnecessary and close the door on the dishonesty issue. We submit the following to illustrate how Mr. Carreon justifiably applied the funds paid in settlement to SEG without specific prior approval to the payment of a settlement Mr. Carreon had entered into for the benefit of both Mr. Carreon and SEG.

Of the $2,000 paid to the Vancouver, British Columbia landlord per the settlement agreement, $600 were from Mr. Carreon’s own funds, and $1,400 were drawn from an $85,000 settlement of litigation against Rush Creek Solutions, a negligent shipper that damaged SEG computers. Mr. Carreon appeared pro hac vice for SEG in Seattle United States District Court, and negotiated the settlement as part of his monthly contract, which required SEG to pay Mr. Carreon $10,000 per month plus a housing allowance. The settlement with Rush Creek was related to another lawsuit Mr. Carreon handled for SEG, because the computers Rush Creek damaged, in turn, were the proceeds of settlement of a California federal copyright lawsuit entitled SEG v E-Race.

After the arrest of SEG’s employees, the Rush Creek settlement was hurriedly made, in order to obtain a necessary infusion of cash to keep the company afloat. Mr. Carreon’s timely settlement of the litigation averted a crisis for SEG, allowing it to meet payroll for employees who had recently been arrested due to the content of SEG websites. Nevertheless, the payment of the settlement with Rush Creek was drawn out, and required continued enforcement efforts by Mr. Carreon. Mr. Carreon administered the settlement of these cases, which was complex and required payment of percentage shares of the Rush Creek litigation settlement to the E-Race defendants. Ultimately, the settlement amount, of $100,000, was not fully collected, and Mr. Carreon secured a default judgment in the amount of $15,000 for SEG against Rush Creek in Seattle United States District Court.
Mr. Carreon performed all of the work necessary to conclude the Rush Creek and E-Race cases on the basis of deferred fee payments to be drawn from funds secured by enforcing the Rush Creek settlement agreement. SEG was not obliged to pay out-of-pocket for Mr. Carreon’s services, as indeed it probably could not afford to do at that time. After making final payment to all settling parties, expert witnesses and consultants, and obtaining the default judgment in the Rush Creek case, Mr. Carreon reconciled the books and gave a full accounting of all obligations between himself and SEG, and tendered return of SEG’s laptop and media content.

Mr. Carreon maintained a professional relationship with Mr. Price despite SEG’s inability to continue paying him a monthly salary and rent allowance, and despite Mr. Carreon’s moving back to Oregon, he continued to handle SEG’s U.S. litigation. The reason that Mr. Carreon communicated with Mr. Price through counsel was due to the litigation pending between Mr. Price and Mr. Price’s partners. Neither party terminated the contract of employment for any reason other than SEG’s inability to perform due to a lack of funds with which to perform. Mr. Carreon continued to provide representation for SEG on favorable terms, reducing his hourly rate and agreeing to provide the means for payment of his necessary legal work by procuring payment of the Rush Creek settlement. Thus, Mr. Carreon continued working for SEG, at a discounted rate of $150/hour, to be collected from settlement revenues. During the prior year, Mr. Carreon had done excellent work for SEG, funding his own activities by bringing approximately $100,000 in settlement revenues from litigation in Los Angeles and Seattle that was performed at a cost considerably below market rates for those services. Mr. Carreon repeatedly secured income that not only reduced SEG payments for legal services but also contributed to the bottom line for the corporation.

This profitable relationship for SEG was required by Mr. Price, a businessman who lives by the principle of “eating what you kill.” Mr. Price resolved expense issues at SEG by having the person responsible for the expense procure the money to pay for them. For example, the production department would pay for its own camera repair, sometimes by doing custom photography for third parties when not creating in-house productions. On one occasion, Mr. Carreon even procured a four-figure fee for Mr. Price to provide an expert witness affidavit in an important Los Angeles District Court case, and on another occasion, Mr. Carreon was paid for litigation representation of a third party, and forewent collecting his full salary from SEG, thus assuring that SEG could afford necessary legal services.

When the landlord’s judgment threatened, Mr. Carreon was acutely aware of his duty to mitigate his own exposure to liability from the residential landlord, particularly as that liability was a result of SEG’s conduct, whose breach of contract with Mr. Carreon compelled Mr. Carreon to vacate the apartment. This liability, formally directed against Mr. Carreon, was properly chargeable to SEG. Mr. Carreon had been obliged to vacate the apartment with an unexpired term of several months left on the lease and had no viable defense. Mr. Carreon paid the $1,400 in order to compromise this debt. The amount might have exceeded $7,200, if the full unmitigated value of the unexpired lease term had been imposed by judgment. SEG declined to defend Mr. Carreon in the arbitration due to financial stress caused by criminal prosecution of
the company and its four partners. The Rush Creek funds were directed in a manner consistent with SEG’s legitimate interest in resolving a liability that would balloon if allowed to go to judgment.

Mr. Carreon acted in the manner most consistent with containing the exposure for SEG, and utilizing SEG’s funds to accomplish that liability-mitigating purpose. In the context of past transactions, Mr. Carreon knew Mr. Price would not object to paying $1,400 to prevent future payment of a much larger amount. Although not in contact with Mr. Price directly, Mr. Carreon handled the matter in a manner that he knew Mr. Price would approve of due to past dealings—containing the liability, and paying the liability both from his own pocket, and from SEG’s available funds. Mr. Carreon, who had been entrusted with use of a corporate credit card to facilitate business travel, had routinely and reliably accounted for larger expenditures than the $2,000 lease liability.

Mr. Carreon recorded the concluding statement in a clear letter accompanied by an accurate accounting that identified the use of both the $1,400 in settlement funds from trust, and the dedication of $600 from Mr. Carreon’s private funds to make the resolving payment. Mr. Price confirmed his acceptance of the terms of the accounting through his counsel, Paul Kent-Snowsell, who “placed Mr. Carreon upon an undertaking,” to return the laptop and media content to a specified address. Mr. Kent-Snowsell correspondingly undertook to make payment to Mr. Carreon forthwith with the entire sum owed and requested. Mr. Carreon immediately sent the items of SEG property as requested. Mr. Kent-Snowsell correspondingly sent the promised payment, and thereafter confirmed in writing that both parties had fulfilled their undertakings. Five weeks later, the Bar received Mr. Price’s assertions.

SEG did not dispute its liability for the lease obligation, or for reimbursement of the $600 Mr. Carreon had paid the Vancouver landlord to make full payment of the $2,000 settlement. After Mr. Kent-Snowsell’s careful conclusion of the matter, it is hard to understand how Mr. Price, who signed the check in the exact amount requested by Mr. Carreon, barely two months later, complains that he was poorly used in the transaction. Notably, Mr. Kent-Snowsell did not author the opening complaint. As noted above, Mr. Carreon reasonably believed Mr. Price would approve and ratify his payment of a contained liability from funds Mr. Carreon had secured through his own efforts. Mr. Carreon believed that Mr. Price was opposed, not to the liability for the lease obligation, but rather to paying more legal fees, since Mr. Price was already paying very large sums to three criminal defense lawyers to defend him, his company, and his partners from prosecution. There was also some doubt in the latter part of 2002 whether Mr. Price could sign checks for attorney’s fees as a result of the lawsuit by Mr. Price’s partner Geoff Baker for control of SEG, and the subsequent order restraining Mr. Price from making expenditures on corporate funds. For these reasons, Mr. Carreon believed Mr. Price was refusing to tender a defense, but did not dispute liability. That Mr. Price did so react to Mr. Carreon’s handling of
the matter, by tendering payment and requesting return of the laptop and media content, indicates that Mr. Carreon was not only reasonable in assuming Mr. Price's approval of the transaction, he was correct.

The reasonableness of Mr. Carreon’s belief in the approval of his behavior was confirmed when he and Mr. Kent-Snowsell performed their “undertaking,” the Canadian term for an agreement, regarding Mr. Carreon’s final accounting. Without dispute as to the lease liability, Mr. Price paid Mr. Carreon the full amount requested. That full amount included the $600 Mr. Carreon paid out of personal funds to satisfy the lease obligation. Mr. Price’s counsel sought no reduction in the amount remitted corresponding to the $1,400 paid from the trust account, of which Mr. Kent-Snowsell was aware from the contemporaneous faxes at the time of payment, as well as from the final accounting documentation.

To respond to the dishonesty issue, we direct your attention to the enclosed correspondence which reflects that Mr. Carreon highlighted the use of trust account funds in his accounting and the accompanying letter.

With regard to Mr. Carreon’s situation, it is certainly true that when the lease settlement was reached, Mr. Carreon was experiencing severe personal stress. His father died in February 2002 in Phoenix, Arizona while Mr. Carreon was in Vancouver, necessitating the expense and stress of sudden international flight for himself and his wife. The arrest of SEG employees, the civil suit among its partners, and the possibility that Mr. Price and his partners might be convicted, that SEG might collapse, and that he would have to assume the lease liability alone, certainly weighed on his mind. This being said, it is important to note that if Mr. Carreon had thought that Mr. Price would object as he ultimately did almost two months after resolving the matter through his attorney, Mr. Carreon would have paid not only the $600, but the entire $2,000 amount himself.

Mr. Carreon acted justifiably and honestly handling client funds in a manner consistent with the client’s best interests, providing an accurate, full accounting, and accepting only that payment that was tendered by a fellow-attorney “engaged upon an undertaking.” Under those circumstances, Mr. Carreon was entitled to call his representation of SEG a job well done, and to accept the tendered payment as what it appeared to be -- compensation therefor. One can speculate on other scenarios: how would SEG have reacted if Mr. Carreon had had to carry credit card debt to pay the negotiated lease settlement and had then sought to charge SEG for the interest? How would Mr. Carreon have dealt with a neglect/failure of competent representation/malpractice claim if instead of settling the lease claim, he had let the matter go to judgment for the full balance on the lease of $7,200 plus interest and/or other costs. In the absence of other controlling guidance, Mr. Carreon adhered to the spirit of the statement in DR 7-101(B)(1) to the effect that lawyers sometimes have discretion when it comes to protecting their clients’ interests. If the proof of the proper exercise of discretion is preservation of the client’s legal interests, then Mr. Carreon certainly exercised his discretion properly, and substantial evidence shows he acted honestly in resolving a difficult matter for a difficult client.
I hope this letter answers your questions. I will call you in about a week to see if there are additional issues on which you would like me to provide information.

Regards,

HINSHAW & CULBERTSON LLP

Rene C. Holmes
rholmes@hinshawlaw.com

RCH:rch

Enclosures

cc: Charles Carreon
March 27, 2003

Via Fed Ex

Paul G. Kent-Snowsell
Kerr Redekop Leinburd Boswell & Kent-Snowsell
410-1333 West Broadway
Vancouver, British Columbia V6H 4C1

Re: Sweet Entertainment Group

Dear Paul:

It has been some time since we communicated concerning this client, and there have been a few developments. With respect thereto, please find enclosed the following:

- Judgment and Minute Order directing entry of judgment for $15,000 in favor of Sweet Entertainment Group in SEG v. Rush Creek, the Seattle lawsuit

- A Notice of Abandonment of the Sweet Money trademark application dated March 12, 2003, which requires a response within two months.

- A CD containing digital copies of all the work I did for SEG during my tenure as its counsel. You may find many useful forms or digital copies of documents that, but now, have begun to assume importance to you, including Trademark applications, confidentiality agreements, content contracts, and many other useful documents.

- Copies of all documents relevant to payment of the $2,000 (US) liability I incurred and settled with the landlord, Titan International, due to Sweet’s default on our agreement to pay rent on the company flat

- Statement for services rendered in connection with Rush Creek, balance $1,748.19

- A copy of my last Statement for services for your convenient reference

With regard to Rush Creek, I will have to file another document in the Orange County Federal Court to fully perform the terms of the settlement in SEG v. E-Race Technology. At that time I will need to advise the court about the disposition of all property obtained in settlement of the action.
With regard to the Sweet Money notice of abandonment, this should be responded to no later than May 11, 2003.

I currently have two items of property of SEG in my possession:

- One box of adult content (approximately forty CDs of miscellaneous adult pics)
- One Acer TravelMate 210T Laptop (700 Mhz Pentium II, with CD)

I see a substantial likelihood that shipping the first item back to SEG would result in customs problems, and unless the hard drive is reformatted before shipping, the same will be true of the laptop, but for more serious reasons. (Because of the types of email I received while working for Sweet, I would not send it across the border without deleting all content. I have stored all SEG work product on the enclosed CD, however, so the work product has been preserved.)

As a practical matter, it would probably make sense to have me retain the laptop, which has a market value of around $650 US, according to current bids on 700Mhz Acer laptops on eBay.com, and the content, which may have a few hundred dollars of retail value, and I will write off the outstanding bill for services. While I realize that Sweet did not want to stand behind the cost of paying off Titan International, the flat was leased with the specific agreement that SEG would cover the expense, and I had no alternative but to default on the lease once SEG refused to perform that promise. Similarly, I had little alternative but to settle for less than the amount of the arbitration demand once Titan International brought the matter to a hearing, and I was unable to present any defense due to Sweet’s refusal to accept the defense.

Accordingly, I believe that the latest statement accurately reflects the liabilities and credits between myself and SEG, and that my proposal to retain property in my custody in satisfaction of the bill is a fair resolution. Of course, if the company simply wants to pay off the outstanding bill and direct disposition of the property, that is a fine resolution also. Please let me know how you wish to proceed at your earliest convenience.

Yours truly,

[Signature]

Charles Carreon
Attorney at Law

CC: tlc
January 15, 2002

Ramji Sadiu
Titan International Business, Inc.
7951 Bennet Road
Richmond, BC V6Y 1 N3

Re: Arbitration Concerning #805 - 388 Drake Street

Dear Mr. Sadiu:

Please find enclosed the second and final payment of $600 US, which taken with the prior payment of $1,400 completes the settlement concerning the above matter. Thank you for resolving this lease termination for considerably less than your out-of-pocket losses.

Very truly yours,

Charles Carreon

cc: Paul Kent-Snowsell
March 27, 2003

SENT VIA FAX - 604/734-5182

Paul G. Kent-Snowsell  
Kerr, Redekop, Leinburd, Boswell & Kent-Snowsell  
410-1333 West Broadway  
Vancouver, British Columbia V6H4C1  
CANADA

STATEMENT FOR LEGAL SERVICES TO SWEET ENTERTAINMENT GROUP

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<th>TRUST ACCOUNT BALANCE (11/3/02)</th>
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<td>01/10/03</td>
<td>2nd Payment to Titan Int'l Business</td>
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PROFESSIONAL SERVICES RENDERED in SEG v. RUSH CREEK SOLUTIONS

10/29/02: Drive to Jackson County law library; Research Washington law on defaulting a non-represented corporation; drive to office (2.5)
11/02/02: Draft Default motion, using research from yesterday, research corporate status of RCS, prepare Certif of Service of Default, revise all documents, prepare for mailing, revise to final, make copies for PKS, D. Newman, court and defendant, mail off (5.0)
12/27/02: Receive default judgment and direct to file. (.2)

Total fees due: (7.7 hours @ $150/hr) $1,155.00
Copies: 80 @ .20: $16.00
Postage: 3.00
Total Costs: $19.00

TOTAL EXPENDITURES, FEES AND COSTS: $3,174.00

CREDITS

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<td>$1,400.00</td>
</tr>
<tr>
<td>03/28/03</td>
<td>Payment from Trust</td>
<td>25.81</td>
</tr>
</tbody>
</table>

TOTAL DUE AND OWING: $1,748.19
Ramji Sadiu  
Titan International Business, Inc.  
7951 Bennet Road  
Richmond, BC V6Y 1 N3

Re: Arbitration Concerning #805 - 388 Drake Street

Dear Mr. Sadiu:

Please find enclosed the first payment of $1,400 US on the $2,000 arbitration liability imposed pursuant to order dated October 10, 2002. The remainder of $600 US will be remitted on January 10, 2003.

Very truly yours,

Charles Carreon

cc: Paul Kent-Snowsell

---

CHARLES H. CARREON
CLIENT TRUST ACCOUNT  
614 E. JACKSON ST., STE. C  
MEDFORD, OR 97504  
541-245-1155

Pay to the Order of TITAN INT'L BUSINESS, INC. $1,400.00

ONE THOUSAND AND FOUR HUNDRED Dollars

Bank of America, Medford 2079  
For SEG LIABILITY

[Signature]

---

1131 BARRINGTON CIRCLE  
ASHLAND, OREGON 97520  
PH 541-482-2321  
FX 541-482-4563  
EM CCLAWYER@HOME.COM
May 7, 2003

Mr. Charles Carreon
Attorney At Law
1131 Barrington Circle
Ashland OR 97520
USA

Dear Mr. Carreon

RE: Sweet Entertainment Group

I acknowledge receipt of the Laptop Computer and CD discs. As agreed I enclose Sweet Entertainment Group’s cheque in the amount of $1,748.19 US to retire your account in respect of the Rush Creek Solutions matter.

I confirm that I have fulfilled my undertaking in this regard.

I remain,

Yours truly,

P. G. KENT & ASSOCIATES LAW CORP.

Per: ____________________________

P. G. Kent, Solicitor
Barrister
Enc.
April 11, 2003

DELIVERED VIA FACSIMILE (541) 482-4683

Charles Carreon, Esq.
Attorney At Law
1131 Barrington Circle
Ashland OR 97520 USA

Dear Mr. Carreon

RE: Sweet Entertainment Group Return of CDs and LapTop Computer

As alternately proposed in the last paragraph of your letter of March 27, 2003 I hold in hand Sweet Entertainment Group's corporate check in the amount of $1,748.19 representing retirement of your account. These funds will be forwarded to you upon completion of the following: You undertake to forthwith arrange FedEx delivery to Mr. C. Guzzardo at the address set out herein the box of adult content (approximately 40 CDs of miscellaneous adult pics) and 1 Acer TravelMate 210T Laptop (700 mhz Pentium II, with CD,) referenced in your March 27, 2003 letter. Please arrange to FedEx the materials to the attention of Mr. C. Guzzardo, 13811 84th Place North East, Kirkland, Washington, 98034, telephone (425) 820-8081. Please bill the courier charges to the Sweet Productions Inc. FedEx account 2392-1389-8.

You are placed on the further undertaking to e-mail me at ksiegel@sweetentertainment.com confirming that you have sent the FedEx courier with the aforesaid computer and materials and provide the tracking number. Upon Mr. Guzzardo's confirmation of receipt of the computer and materials above referenced I undertake to forthwith courier to you the aforesaid funds to retire your account.

I have instructed counsel here to deal with the Notice of Abandonment and the prosecution of Sweet Money Trademark. Thank you for bringing that to my attention.

Your immediate attention to the forwarding of the computer and materials would be appreciated and I thank you for your anticipated co-operation in this regard. I remain,

Yours truly,

[Signature]

[Name]

Bambar
*Law Corporation
Enc.
SWEET ENTERTAINMENT GROUP

Charles Carron

4/11/2003

1,748.19

Wells Fargo

1,748.19
April 5, 2005

Peter R. Jarvis, Esq.
Hinshaw & Culbertson LLP
1000 SW Broadway Ste 1950
Portland, OR 97205

Re: Case No. 04-146—Charles H. Carreon

Dear Mr. Jarvis:

Enclosed please find the Oregon State Bar's Request for Production of Documents in regard to the above matter.

Very truly yours,

[Signature]

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365

ABL/sg
Enclosure
cc: Kathryn Pratt, Esq., Bar Counsel
March 30, 2005

R. Paul Frasier, Esq.
Region 3 DB Chair
Coos County DA's Office
Coos County Courthouse
250 N Baxter St
Coquille, OR 97423

Re: Case No. 04-146—Charles H. Carreon

Dear Mr. Frasier:

Pursuant to BR 2.4(f)(1), I am requesting the appointment of a trial panel to hear a formal complaint against attorney Charles H. Carreon. Mr. Carreon's counsel, Peter R. Jarvis, accepted service of the Bar's Complaint on February 2, 2005 and filed his Answer with the Bar on February 22, 2005.

Copies of the Complaint and Answer are enclosed for your information. We will furnish copies to the panel members after challenges are resolved or the time for challenges expires. The time for setting the hearing in this matter begins when copies of the Complaint and Answer are received from this office by the trial panel members.

Thank you for your assistance.

Very truly yours,

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365

ABL/sg
Enclosures
cc: Kathryn M. Pratt, Esq. (Bar Counsel)
Peter R. Jarvis, Esq. (Counsel for Accused)
Michael C. Zusman, Esq. (State Disciplinary Board Chairperson)
Disciplinary Board Clerk
Amber Bevacqua-Lynott

From: Rene Holmes [RHolmes@hinshawlaw.com]
Sent: Tuesday, February 15, 2005 2:11 PM
To: alynott@osbar.org
Cc: Peter Jarvis
Subject: Charles Carreon
Importance: High

Amber,

We have a draft version out of the Answer to the Bar's Formal Complaint for our client's approval, but do not anticipate approval by tomorrow's due date. When we have received such approval, we will provide the Answer to you. We assume that this is acceptable. Please advise if you have any concerns.

Thank you,

Rene C. Holmes
Hinshaw & Culbertson LLP
1000 SW Broadway, Suite 1950
Portland, Oregon 97205
rholmes@hinshawlaw.com
office: (503) 243-7929

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2/16/2005
February 15, 2005

Peter R. Jarvis, Esq.
Hinshaw & Culbertson LLP
1000 SW Broadway Ste 1950
Portland, OR 97205

Re: Case No. 04-146—Charles H. Carreon

Dear Mr. Jarvis:

Please be advised that Kathryn M. Pratt has been appointed Bar Counsel in this disciplinary case.

Very truly yours,

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365

ABL/sg

cc: Kathryn M. Pratt, Esq.
Disciplinary Board Clerk

71-03
February 3, 2005

Peter R. Jarvis, Esq.  
Hinshaw & Culbertson LLP  
1000 SW Broadway Ste 1950  
Portland, OR 97205

Via Facsimile to:  
(503) 243-3240

Re: Case No. 04-146—Charles H. Carreon

Dear Mr. Jarvis:

Thank you for returning the Acceptance of Service.

Having now had a chance to review the case and draft the complaint in this matter, I recall why I was unable to discuss possible sanctions before. (I apologize that I could not specifically recall the reasons in our prior conversation). Although it has not been charged, the Board does have some concerns about a possible DR 1-102(A)(3) violation in connection with Mr. Carreon’s use of the settlement funds to pay his personal obligation (i.e., the judgment for his residential lease). If those concerns can be addressed, I will be in a position to approach the Board with a settlement proposal on the charges filed.

This process may be shortened considerably by an explanation from Mr. Carreon regarding his intentions and motives in utilizing his client’s settlement funds. You indicated in one response that he was short on personal funds at the time. Would you please provide additional details in this regard? Mr. Carreon also acknowledged that he did not have specific approval from his client to use the funds to pay the judgment against him, but did he try to get prior approval before disbursing them (or merely in conjunction/after disbursing them)? Was Mr. Carreon aware at the time that he used the funds that the client disputed its financial responsibility for his lease obligation? Any information you can provide to speak to these issues would be appreciated. Absent a satisfactory explanation, it will be necessary for me to proceed with discovery and arrange for Mr. Carreon’s deposition.

Please feel free to call me if you require additional direction or to discuss this matter further. I appreciate your continuing courtesies.

Very truly yours,

[A signature]

Amber Bevacqua-Lynott  
Assistant Disciplinary Counsel  
Extension 365

ABL/sg

Recycled/Recyclable
February 3, 2005

Peter R. Jarvis, Esq.
Hinshaw & Culbertson LLP
1000 SW Broadway Ste 1950
Portland, OR 97205

Via Facsimile to:
(503) 243-3240

Re: Case No. 04-146—Charles H. Carreon

Dear Mr. Jarvis:

Thank you for returning the Acceptance of Service.

Having now had a chance to review the case and draft the complaint in this matter, I recall why I was unable to discuss possible sanctions before. (I apologize that I could not specifically recall the reasons in our prior conversation). Although it has not been charged, the Board does have some concerns about a possible DR 1-102(A)(3) violation in connection with Mr. Carreon’s use of the settlement funds to pay his personal obligation (i.e., the judgment for his residential lease). If those concerns can be addressed, I will be in a position to approach the Board with a settlement proposal on the charges filed.

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February 3, 2005

Disciplinary Board Clerk
Oregon State Bar
5200 SW Meadows Road
Lake Oswego, OR 97035

Re: Case No. 04-146—Charles H. Carreon

Dear Clerk:

Please find enclosed for filing in the above-referenced matter the original Acceptance of Service signed by Mr. Carreon's counsel, Peter R. Jarvis.

Very truly yours,

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365

Enclosure

cc: Peter R. Jarvis, Esq. (Counsel for Accused)
Peter,

Sorry about the delay in responding, I was out of the office unexpectedly the first part of this week.

I received your message (below) about the complaint now having been filed and served. However, I have yet to receive your Acceptance of Service, acknowledging service. I would appreciate your efforts in getting that to me as soon as possible.

I'll be faxing a letter to you tomorrow regarding the status of the case and the Board's position on settlement. Thanks for your courtesies.

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Oregon State Bar
5200 SW Meadows Road
Lake Oswego, OR 97035
(503) 431-6365

-----Original Message-----
From: Peter Jarvis [mailto:pjarvis@hinshawlaw.com]
Sent: Friday, January 28, 2005 10:34 AM
To: Amber Bevacqua-Lynott
Cc: cclawyer@mind.net
Subject: Carreon Complaint

Amber,

When I spoke to you some weeks ago about possible early resolutions of this matter, you replied that you would not be ready to discuss this subject until you had completed and served the complaint. Since the complaint has now been completed and served, I wanted to find out from you what you had in mind as a possible stipulated sanction.

Peter

Peter R. Jarvis
Hinshaw & Culbertson LLP
1000 Broadway, Suite 1950
Portland, OR 97205-3078
pjarvis@hinshawlaw.com
office: (503) 243-7696
cell: (503) 504-8467

2/2/2005
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2/2/2005
February 2, 2005

Ms. Amber Bevacqua-Lynott
Oregon State Bar
PO Box 1689
Lake Oswego, OR 97035-00889

Re: Case No. 04-146 --- Charles H. Carreon

Dear Amber:

Enclosed please find the signed Acceptance of Service in the above-referenced matter.

Sincerely,

HINSHAW & CULBERTSON LLP

[Signature]

Peter R. Jarvis
Direct (503) 243-7696
pj Jarvis@hinshawlaw.com

PRJ/jem

Enclosure

cc: Mr. Charles Carreon
Amber Bevacqua-Lynott

From: Peter Jarvis [pjarvis@hinshawlaw.com]
Sent: Friday, January 28, 2005 10:34 AM
To: Amber Bevacqua-Lynott
Cc: cclawyer@mind.net
Subject: Carreon Complaint

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When I spoke to you some weeks ago about possible early resolutions of this matter, you replied that you would not be ready to discuss this subject until you had completed and served the complaint. Since the complaint has now been completed and served, I wanted to find out from you what you had in mind as a possible stipulated sanction.

Peter

Peter R. Jarvis
Hinshaw & Culbertson LLP
1000 Broadway, Suite 1950
Portland, OR 97205-3078
pjarvis@hinshawlaw.com
office: (503) 243-7696
cell: (503) 504-8467

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1/28/2005
January 21, 2005

P.G. Kent-Snowsell  
Barrister & Solicitor  
2nd Floor 1624 Franklin Street  
Vancouver, BC  
Canada V5L 1P4

Re: Case No. 04-146—Charles H. Carreon

Dear Mr. Kent-Snowsell:

Enclosed please find a copy of the Formal Complaint that has been filed against Charles H. Carreon in the matter your client, Randy Price, brought to our attention. We will be in touch with you in the event we need Mr. Price to be a witness at trial.

Thank you for your continued cooperation.

Very truly yours,

Amber Bevacqua-Lynott  
Assistant Disciplinary Counsel  
Extension 365

ABL/sg

Enclosure  
51-03
January 19, 2005

Peter R. Jarvis, Esq.
Hinshaw & Culbertson LLP
1000 SW Broadway Ste 1950
Portland, OR 97205

Re: Case No. 04-146—Charles H. Carreon

Dear Mr. Jarvis:

I understand that you are authorized to accept service in the above-referenced matter. Please find enclosed the following documents:

(1) Formal Complaint
(2) Notice to Answer
(3) Acceptance of Service (original and one copy)
(4) Bar Rules of Procedure
(5) Oregon State Bar Bylaws Article 18

Please execute the original acceptance of service and return it to me on or before February 2, 2005. If I do not receive the acceptance of service or if I do not hear from you on or before February 2, 2005, I will assume that personal service is necessary.

BR 4.3 requires that an answer to the formal complaint be filed within 14 days of service.

Please contact me if you have any questions. Thank you for your cooperation.

Very truly yours,

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365

ABL/sg
Enclosures
cc: Disciplinary Board Clerk (w/original Formal Complaint and Notice to Answer)
January 19, 2005

Disciplinary Board Clerk
Oregon State Bar
5200 SW Meadows Road
Lake Oswego, OR 97035

Re: Case No. 04-146—Charles H. Carreon

Dear Clerk:

Please find enclosed for filing in the above-referenced matter the Oregon State Bar’s Formal Complaint and Notice to Answer.

Very truly yours,

[Signature]

Amber Bevacqua-Lynott
Assistant Disciplinary Counsel
Extension 365

ABL/sg

Enclosure
cc: Peter R. Jarvis, Esq. (Counsel for Accused)
120-03
IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
CRIMINAL DIVISION

REGINA

v.

RANDY PRICE

REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE R. R. LOW

Counsel for the Crown:
Counsel for the Defendant:
Place of Hearing:
Dates of Hearing:
Date of Judgment:

M. Mahoney
K. Snowsell
Vancouver, B.C.
Feb 16-March 19, 2004
April 23, 2004

[1] Randy Price (Mr. Price) is charged with making, distributing and circulating nine obscene videos or alternatively possessing the same nine obscene videos plus two others, (The Eleven Videos) for the purpose of publication, distribution and circulation. Twenty such offences involving the Eleven Videos are alleged to have been committed during four overlapping periods of time between August 7 and November 7, 2002.

[2] Of the twenty counts against Mr. Price, Counts 1, 2, 3, 9, 11, 13, 15, 17 and 19 are alternative, respectively, to counts 4, 5, 6, 10, 12, 14, 16, 18 and 20.
[3] The Crown has proceeded by indictment. Mr. Price has elected trial in Provincial Court. The maximum sentence for each offence according to S. 169 of the Criminal Code is two years prison.


[6] Although Mr. Price did not testify, he called a number of witnesses including two medical Doctors who were qualified to give opinions regarding, inter alia, human sexual practices including BDSM. The Defence also played a number of videos, compact disks (CDs), material from various web sites on the Internet, and entered various magazines and books.

[7] There are a number of technical issues raised by the Defence regarding the case called by the Crown but the overriding issue is whether the contents of the Eleven Videos are obscene as defined in S. 163(8) of the Criminal Code.

[8] There are no issues concerning the credibility of the various witnesses called, although there are questions to be resolved with regards to the weight I can give to some of their evidence.

[9] The Crown objected on the grounds of relevance to most of the evidence called by the Defence. I allowed the Defence evidence on the basis that this issue could best be determined by the weight I might attribute to the evidence.

FACTS

[10] I have found the evidence called by the parties, proves beyond a reasonable doubt the following facts.

[11] Since 1995 world wide communication has been fundamentally altered by the development of people's ability to communicate with each other through their personal computers. There is now an international network of interconnected computers called the Internet. The Internet enables people to communicate instantaneously with any number of people at any time, any where in the world using a variety of communication and information retrieval systems.

[12] All these systems provide a medium, by which people can provide or access material via text, sound, pictures and moving video images. The World Wide Web is one well known system. Material is compiled on the World Wide Web at specific locations called Websites.

[13] The only requirements to access material at Websites are:

a) Access to a personal computer which has an operating system featuring a Web browser and an email program. It is rare for a personal computer not to have these systems;

b) Access to an Internet Service Provider (ISP) such as Telus. These ISPs are commonly available in Canada upon payment of a fee. People access ISPs privately or through means provided by others such as employers, universities, libraries or internet cafes.

c) Some technical knowledge in the operation of a personal computer;

d) In some cases the ability to pay a fee to enter a Website. The fee can most often be paid by credit card or in some cases by posted personal cheque or by telephone.

[14] Unlike television or radio, access to the Internet requires a person to take a number of affirmative steps and to have a limited degree of knowledge and skill in the operation of a computer.

[15] Seventy-three percent of adult Canadians have access to the Internet. I take judicial notice of the fact that Canadians under the age of 19 also have access to the Internet but I have no evidence before me as to how widespread this access is and whether this access is legally restricted in any Canadian jurisdiction.

[16] I also take judicial notice that parents have the option to control their children's access to the Internet either by way of
direction or mechanically.

[17] The Eleven Videos were made in the City of Vancouver, B.C. under the auspices of Sweet Productions Inc. (SPI). Mr. Price is the operating mind of SPI.

[18] In addition to making the Eleven Videos, SPI made them available to paying subscribers through various websites it controls on the Internet, or similar websites controlled by others but who have a contract with SPI to use their videos.

[19] SPI made the Eleven Videos solely for the purpose of making them available to any member of the public, through the Internet, upon payment of a fee. The ultimate purpose of SPI in collecting this fee is to make a profit.

[20] Any person with a valid credit card may obtain unlimited access to any material on any website controlled by SPI.

[21] There are at least seventy websites on the Internet which provide access to portrayals of BDSM activities, information about BDSM generally, information pertaining to BDSM activities such as parties and conferences plus where to obtain equipment and supplies for carrying out BDSM activities.

[22] These websites make available a vast amount of material which is at least similar and in many cases identical to the material portrayed in the Eleven Videos. Some of the material at these websites portrays even more extreme examples of BDSM activities than shown in the Eleven Videos.

[23] In addition, there is a vast amount of written material such as magazines, periodicals, newspapers and books plus video tapes or films which contain material which is at least similar and in many cases identical to the material portrayed in the Eleven Videos. The Canadian public has generous access to these materials through private vendors or lenders, public libraries, or cinemas.

[24] Various exhibits were entered by the Defence listing a large variety of books, videos and television programs which are commonly available in the City of Vancouver and throughout Canada. Excerpts from these materials were provided to the court. The material portrayed makes similar in nature to those portrayed in the Eleven Videos. However, most of this material was not as graphic as that contained in the Eleven Videos.

[25] The Defence also filed a copy of the book American Psycho and played extracts from the movie adaptation of this book. In addition, the Defence played extracts from movies such as Fetishes and Mistresses, Sick, I Spit On Your Grave, Henry Portrait of a Serial Killer, Rape Me, Irreversible and a television show Kink. All of this material is readily available to Canadians either in book stores, libraries, movie theatres, video rental shops or on cable television.

[26] Fetishes and Mistresses, Sick and Kink can be described as documentary films discussing the BDSM culture. There is a fair amount of nudity and portrayals of scenes that are similar to the Eleven Videos. With the exception of Sick none of the portrayals of BDSM scenes or the degree of nudity in the documentary videos are as extreme or graphic as in the Eleven Videos. There are some very extreme scenes and graphic nudity in Sick. In particular the principal character at one point is graphically filmed using a hammer to drive a nail through his penis, thus affixing it to a board.

[27] I Spit On Your Grave, Henry Portrait Of A Serial Killer, Rape Me, American Psycho and Irreversible are all fictional films depicting extreme sexual violence to women by men. There are repeated scenes of men raping women and treating them in a savage, barbaric manner. While the violence is extremely graphic and the sexual scenes explicit, the portrayal of genitalia and other private areas of the actor’s bodies is less graphic than that found in the Eleven Videos.

[28] Most larger urban centres in Canada have facilities where BDSM activities are regularly carried out. Adult members of the public may attend these facilities upon payment of a modest fee. Those who attend may engage in the BDSM activities or watch others performing these activities.

[29] Mr. MacDonald, a retired thirty year veteran of the Vancouver Police Department, now a licensed private investigator, starting October, 2003, attended a number of BDSM events in Vancouver and Victoria, B.C. on the instructions of Mr. Price’s counsel. He described the behaviour of those present at these events, as exemplary. The events attended by Mr. MacDonald were patrolled by Vancouver Police officers who did not interfere with any of the BDSM activities taking place. The BDSM activities Mr. MacDonald observed at these events were similar to some of those portrayed in the Eleven Videos. While nudity of both males and females of varying degrees, including full nudity, was common at these events, the
evidence is not clear whether the genitalia and other private areas of the performer's bodies were displayed as graphically as in the Eleven Videos.

[30] Ms. Sylvia Schneider, a thirty-year old hobby farmer from the lower mainland of B.C., testified that she took part in and enjoyed all manifestations of BDSM activities including those portrayed in the Eleven Videos. She had watched the Eleven Videos and enjoyed watching them. Ms. Schneider impressed me as an intelligent, well-spoken and thoughtful person. She has a teenage daughter who is generally aware of Ms. Schneider's involvement in the BDSM community. Ms. Schneider did not think it would be appropriate for her daughter to watch the Eleven Videos due to her daughter's age.

[31] Dr. Moser, who filed an extensive six page *curriculum vitae*, was qualified to give expert evidence regarding the practice of BDSM. I have accepted all of the following from his evidence.

[32] According to Doctor Moser pain and pleasure are closely associated factors in the human sexual experience. Pain giving rise to sexual pleasure is a normal sexual experience and is the basis for practising BDSM.

[33] Doctor Moser testified there are many different levels of BDSM. For example, a person biting another person on the neck during love play is an example of a low level of sadomasochism. On the other hand, the scenes portrayed in the Eleven Videos are portrayals of a high level of sadomasochism. As another example, a person may gently restrain their partner's wrists with a silk handkerchief while making love to them which is an example of a low level of bondage. Again, on the other hand, the scenes portrayed in the Eleven Videos are portrayals of a high level of bondage.

[34] Dr. Moser testified that providing all parties involved, consent, all of this is normal and appropriate sexual behaviour. Consent is the overriding ingredient of normal and appropriate sexual behaviour. For instance, the inability of a child to consent is what makes sexual relations with children abnormal and inappropriate. Although the sections were not specifically put to Dr. Moser, I am satisfied that the form of consent envisioned by him, met the definitions of consent set out in sections 265 and 273.1 of the *Criminal Code*.

[35] Doctor Moser had watched all Eleven Videos. He was of the opinion the procedures portrayed in the Eleven Videos were part of normal and appropriate human sexual behaviour.

[36] Dr. Moser testified that his best estimate was that about 10 per cent of the North American adult population "engages in or is aroused by BDSM". (Transcript March 3, 2004, p. 2, l. 28) I agree with the Crown that little weight can be given to this estimate alone. However, I am satisfied from this estimate coupled with the other evidence I heard about BDSM events taking place throughout Canada that BDSM is not an obscure practice.

[37] In particular, Mr. MacDonald, as a result of his investigation had concluded that there were a significant number of people from a wide cross section of society involved in BDSM. According to Mr. MacDonald, he was aware during his career as a police officer in *Vancouver* that the BDSM culture existed but regarded it as being on the periphery of society. Mr. MacDonald recalled that during the 1960s BDSM was not socially acceptable. As a result of his investigation he had concluded it was now socially acceptable.

[38] Although Mr. MacDonald's opinion regarding the present social acceptability of BDSM was not that of an expert, given his experience as a police officer, during which time, as he testified, he "had seen a lot", I am prepared to give a reasonable amount of weight to his opinion.

[39] According to Dr. Moser, people who engage in BDSM derive cerebral and erotic pleasure from watching material like that presented in the Eleven Videos. The cerebral pleasure is derived from their appreciation of the mechanical and artistic skill used by the dominant party in carrying out the various procedures. For instance, blows by whips are applied in a carefully systematic manner. The welts or reddening of the skin is done in a particular pattern. Similarly, needles are inserted in particular patterns. Particular colours are used in specific combinations.

[40] Participants in the BDSM culture derive erotic pleasure from watching the portrayal of BDSM procedures which are part of the appropriate sexual fantasies experienced by those participating in the BDSM culture. The subservient parties in the Eleven Videos are portrayed as being under duress to participate in the procedures. The subservient parties are not portrayed as consenting to the procedures. According to Dr. Moser, a key element for enjoyment of BDSM videos, by BDSM participants, is the knowledge that the subservient party, despite what is being portrayed, is actually consenting to the procedures. (Transcript, March 3, 2004, p. 39, l. 36)
[41] Moreover, according to Dr. Moser, BDSM procedures are not meant to be demeaning to those taking part. Both the dominant and subservient parties in BDSM procedures derive a "sense of accomplishment and feeling good and a whole variety of other emotions...." (Transcript March 3, 2004, p. 42, l. 6)

[42] Even the BDSM videos involving one person urinating on another, are not regarded as demeaning in the BDSM culture. Rather, the subservient party sees themselves as receiving the distillate of the dominant party's body. (Transcript March 3, 2004, p. 42, l. 42.) Dr. Moser testified that the scenes portrayed in the Video called Rage, (see paragraph 32 above), were part of the BDSM culture but acknowledged the video portrayed extreme violence and an uncommon BDSM fantasy. (Transcript March 3, 2004, p. 46, l. 42)

[43] Dr. Moser also pointed out that BDSM has been written about for hundreds of years. Videos similar to the Eleven Videos were available long before the advent of the Internet.

[44] According to both Dr. Moser and Dr. Fisher there is a growing body of valid scientific evidence that watching pornography, even violent pornography is not harmful to adults. While Dr. Moser alluded briefly to this, Dr. Fisher was qualified as an expert on this subject. His credentials, set out in a 36 page curriculum vitae were impressive. I have accepted the following from his evidence.

[45] Dr. Fisher had also viewed the Eleven Videos.

[46] Dr. Fisher pointed to various studies conducted by his colleagues, of countries such as West Germany, Sweden and Japan, where all forms of pornography are legally and readily available. This pornography includes portrayals of unwilling victims who are subjected to sexual and physical violence. Dr. Fisher testified that these studies concluded "pornography simply was not associated with an increase in sex crimes." (Transcript, March 9, 2004, p. 15, l. 30)

[47] Dr. Fisher, in a variety of studies, conducted by himself or in conjunction with a variety of his colleagues, has confirmed the same results in Canada and the United States. These studies were directed particularly to the proliferation of pornography on the Internet.

[48] Dr. Fisher testified that "the Internet has provided anonymous, accessible, unfettered access to every variant of sexually explicit material from erotic to violent pornographic to what have you, so there's no question but that there has been a dramatic increase in the last say decade....in availability of all forms of explicit material on the Internet." (Transcript March 9, 2004, p. 21, l. 39)

[49] Dr. Fisher testified that they "found no impact of increasing levels of exposure to Internet pornography on any measure of attitudes to women or acceptance of rape or rape myth.... including attitudes that are regarded as important in respect to acceptance of sexual assault and likelihood of sexually assaulting women" (Transcript, March 9, 2004, p. 20, l. 21).

[50] Moreover, Dr. Fisher relying on statistics provided by Statistics Canada and the FBI in the United States has concluded that the proliferation of pornography via the Internet has not resulted in any increase in sexual assault. In fact, the opposite is true. During the period 1994 to 1999, while the Internet was "rolled out", the number of reported sexual assaults has declined dramatically. (Transcript March 9, 2004, pages 22-23).

[51] The thrust of Dr. Fisher's opinion was that exposure to diverse forms of pornography does not:

   a) cause attitudinal harm;
   
   b) cause anti-social attitudes towards men or women;
   
   c) cause harm to Canadian Society in that it does not cause sexual aggression;
   
   d) cause people to act in an anti-social manner;
   
   e) cause the mental or physical mistreatment of women or men.

[52] Dr. Fisher testified there had been no research conducted with regards to the effect of pornography on children. His
opinions were limited to adults.

[53] There was no evidence called to contradict any of the opinions of Dr. Moser or Dr. Fisher.

[54] Through cross-examination of Dr. Moser, it was apparent that he was closely affiliated with the Institute for the Advanced Study of Human Sexuality in California. This institute has a particular view of basic human sexual rights which Dr. Moser subscribes to. While those rights may be controversial for some, I do not accept the notion that his acceptance of those rights undermined the objectivity of his observations and opinions regarding the BDSM culture to the extent that I should have a doubt as to their reliability.

[55] During cross-examination, Dr. Fisher was directed to statistics provided by the FBI for the years 2001 and 2002 showing an increase in the United States of forcible rape. Dr. Fisher was not aware of these statistics. While Dr. Fisher agreed that one plausible interpretation of the 2001, 2002 U.S. statistics might be that pornography had caused an increase in reported sexual assaults he testified there were other plausible explanations. Significantly, Dr. Fisher did not restate from his opinion because he pointed out, the 2001, 2002 FBI statistics confirmed there was still an overall decline in reported sexual assaults in the U.S. since 1994. Dr. Fisher also pointed out that Statistics Canada confirmed that reported sexual assaults continued to decline in Canada in 2001 and 2002.

[56] Ultimately, I have concluded that Dr. Fisher’s opinions regarding the harmfulness of pornography were not undermined by this cross-examination. His opinion was corroborated by other studies conducted not only by himself but other researchers in the field and did not rest exclusively on the correlation between the rise of Internet pornography and the decline of reported sexual assaults. The evidence does not leave me with a doubt as to the reliability of Dr. Fisher’s opinions.

[57] With one exception the Eleven Videos all portrayed similar scenes of BDSM. The one exception was a video called Rage.

[58] The plot of Rage is simple and brutal.

[59] A man suspects his female partner of infidelity. He verbally abuses her and then compels her to go to the bathroom where she is bent backwards over a toilet with her mouth open. The man urinates into her mouth. The urine overflows her mouth. The man expresses anger about the resulting mess the urine has made and to further punish the woman forces her head into the toilet’s bowl and uses the woman’s head to scrub it. There is virtually no dialogue other than verbal abuse of the woman by the man. The woman is obviously not consenting to the activities.

[60] The remaining ten of the Eleven Videos (the Ten Videos) all portray scenes similar to each other. In two of the Ten Videos the subservient party is male while the dominant party is female. In one of the Ten Videos the subservient party is female while there are two dominant parties, one male one female. In the remainder of the Ten Videos the subservient party is female and the dominant party is male. In all of the Ten Videos the subservient party is totally naked for the majority of the video. The genitalia, anus and all other private areas of the subservient parties’ bodies are closely, fully, and graphically displayed. The genitalia are either clean or nearly clean shaven. In all of the Ten Videos the dominant parties are clothed to some degree, although in the case of the dominant women the manner of dress is revealing.

[61] There is very little dialogue in any of the Ten Videos. What little there is consists primarily of commands and directions to the subservient party. There is enough dialogue to gather that the subservient party is being punished for not doing their job properly at a brothel where they are employed to provide sexual services. The subservient party is expected to obey all commands of the dominant party without question and address the dominant party as Master or Mistress. The subservient parties are portrayed as being under duress to participate. They are not portrayed in the Ten Videos as consenting to the procedures.

[62] Each subservient party is punished by the consecutive administration of various procedures. Some of the procedures are applied in combination. Usually, each subsequent procedure is more severe than the last. The following list of these procedures is not exhaustive:

   a) Confinement to a small cage;

   b) Whipping with canes, crops, switches or cat o’ nine tails. All sensitive parts of the subject’s
bodies including the soles of feet, breasts, nipples, buttocks, inner thighs and genitals are whipped;

c) The application of hot wax from burning candles to all parts of the body including the inner thighs, breasts, genitals and buttocks. After the wax cools, it is whipped off with a cat o’ nine tails;

d) The application of clothes pegs, clamps, mousetraps and similar devices to breasts, nipples and genitals. Weights are suspended from these devices. When the weights are suspended from clamps attached to their genitals, the subservient party is required to do deep knee bends which cause the weight to be relieved and then reapplied. The devices are ultimately removed.

e) The use of a device to apply electric shocks to all parts of the subject’s body including breasts, nipples, inner thighs, anus and genitals;

f) The piercing with small gauge needles, of breasts, nipples, and genitalia including the glans of the penis and the clitoris. In some cases thread is woven in and around the needles and weights are suspended from the needles. In most cases the needles are inserted through folds of subcutaneous skin and in some cases the needles are simply inserted into the skin and flesh below. The needles are ultimately removed. In some cases the insertion/removal of the needles causes minor amounts of bleeding. Alcohol as a disinfectant is poured over the pierced area both before and after the insertion and removal of the needles;

[63] In one of the Ten Videos, after the application of a combination of a variety of the procedures described above, the male dominant party urinates into the face of the female subject. Similarly in another of the Ten Videos a female dominant party urinates into the face of a male dominant party;

[64] Some of the procedures are carried out while the subservient party is standing, seated or lying on a bench unrestrained. In some cases the subservient party is confined in stocks, strapped to a St. Christopher’s Cross or strapped to benches of varying degrees of complexity. In some cases the subservient party is strapped by hands and feet into elaborate devices and suspended above the floor. In some cases the subservient party is hooded and gagged. The subservient party is attached to the devices with leather straps or rope tied in elaborate knots.

[65] The subservient parties in the Ten Videos respond in varying degrees to the application of these procedures. Some shriek and writhe continuously. Some merely wince or twitch in discomfort. Some, after being asked, expressed pleasure. Some subservient parties exhibited reddening of the skin or welts and some subservient parties bled slightly.

[66] All subservient parties are completely calm while awaiting the next procedure. In some cases the subservient parties willingly help set up the various devices used.

[67] Except for the video Rage, the relationship between the subservient and dominant parties has virtually no emotional component. At best I would describe it as mechanical.

[68] The evidence conclusively demonstrates that despite what is portrayed, the subservient parties in all Eleven Videos consented to the taking part in the procedures before hand and were completely satisfied with how the procedures were carried out.

[69] Any indication of fear, pain or lack of consent portrayed by the subservient parties in the Eleven Videos is merely play acting. I accept the evidence of Doctors Fisher and Moser that any pain or injury caused the subservient parties during the making of the Eleven Videos was minor and completely transitory.

THE LAW

[70] The exclusive and exhaustive test for obscenity is found in S. 163(8) of the Criminal Code.

[71] S. 163(8) says a publication shall be deemed obscene if it meets one of two criterion:
a) If it is a "publication a dominant characteristic of which is the undue exploitation of sex" or
b) it is a "publication a dominant characteristic of which is.....sex and ....violence."

[72] The seminal case of R. v. Butler, [1992] 1 S.C.R. 452 affirmed the right of parliament to criminalize the sale and distribution of obscene material. Although S. 163 infringes the Charter's guarantee of freedom of expression, Butler determined that the section was directed at the prevention of harm and therefore S. 163 was a reasonable limit on this freedom pursuant to S. 1 of the Charter.

[73] Butler also directed trial judges on how to correctly interpret and apply S. 163(8). Butler at page 498 states, "S.163 (8) criminalizes the exploitation of sex and sex and violence, when on the basis of the community test it is undue."

[74] Earlier, Butler at page 475 states, "In order for a work to qualify as 'obscene', the exploitation of sex must not only be its dominant characteristic, but such exploitation must be 'undue'."

[75] Since the promulgation of S. 163 in 1959, Canadian courts have formulated three tests to determine undueeness:

a) the Community Standard of Tolerance test;
b) the Degradation or Dehumanization test;

a. the Internal Necessities test.

[76] According to Butler, (p. 484-485) the arbiter of these three tests is the community of Canada as a whole. While explicit sex with violence will almost always constitute the undue exploitation of sex, triers of fact must still determine "as best they can what the community would tolerate others being exposed to on the basis of the degree of harm that may flow from such exposure....The stronger the inference of a risk of harm the lesser the likelihood of tolerance."

[77] The tests in Butler were discussed at length by the Ontario Court of Appeal in R. v. Hawkins, 86 C.C.C. (3d) 246 (leave to appeal to the Supreme Court of Canada refused). At page 263 the Court said "Under the Butler test, not all material depicting adults engaged in sexually explicit acts which are degrading or dehumanizing will be found to be obscene. The material must also create a substantial risk of harm to society....Like any element of a criminal allegation, it must be proved beyond a reasonable doubt and that proof must be found in the evidence adduced at trial."

[78] I am satisfied from reading Hawkins and Butler that this applies as well to material portraying sex and violence.

[79] Therefore, portrayals of explicit sex without violence or portrayals of explicit sex without violence but which subject people to degrading or dehumanizing treatment (two of three types of pornography identified by Butler) cannot, without more evidence, be assumed to be incompatible with current Canadian standards of tolerance and substantially harmful. However, where explicit sex and violence are portrayed together (the third type of pornography identified by Butler), it can be assumed without expert or other evidence, that the portrayals exceed Canadian standards of tolerance and are substantially harmful. That is because there is a strong inference of a risk of harm in such portrayals. Nonetheless, even if sex and violence are portrayed together, it remains open to the Court to find that the evidence does not establish beyond a reasonable doubt the portrayals exceed Canadian standards of tolerance and that the harm component has been established.

DISCUSSION

[80] The Crown argues that the Eleven Videos depict graphic sex and violence without any "wider artistic, literary or other similar purpose." Therefore, the Crown says, as a result of the Butler tests, I must infer the Eleven Videos carry a risk they will predispose people to act in an anti-social manner. Thus, the Crown argues, they have proved beyond a reasonable doubt, the Eleven Videos are obscene.

[81] The Crown says the evidence of Dr. Moser that the Eleven Videos depict normal and appropriate human sexual behaviour, the evidence of Dr. Fisher that there is no potential the Eleven Videos will cause harm and the evidence that other similar material is readily available to the Canadian public in all manner of venues, is therefore irrelevant.
[82] The Defence argues that even if I do not accept the opinion of Dr. Fisher that viewing violent pornography does not cause harm, all the evidence taken together, at least raises a doubt that Canadians would not tolerate other Canadians viewing the Eleven Videos. Since Canadians are the final arbiter of what will harm other Canadians, such tolerance raises a doubt that the Eleven Videos if viewed would cause harm and therefore the Crown has not proved beyond a reasonable doubt the Eleven Videos are obscene.

[83] The Defence urged me in their final submissions to take a bold step and acquit Mr. Price. There is no need for me to be bold. My only role is to examine the evidence before me against the law and determine whether I am satisfied that the Crown has proven beyond a reasonable doubt that the Eleven Videos are obscene.

[84] I agree with the Crown that the Eleven Videos are devoid of any artistic or literary purpose. There is no plot, it is an understatement to describe the dialogue as marginal and the filming is at best amateur.

[85] I agree with the Crown, that I cannot conclude from Dr. Fisher's evidence that pornography, including violent pornography is harmless and therefore the Eleven Videos are not obscene. S.163 (8) of the Criminal Code says that in particular situations violence and explicit sex is obscene. Butler says that S. 163 is a valid law because Parliament has a reasonable basis for concern that violent sexual pornography may cause anti-social behaviour. I note that while Dr. Fisher's evidence regarding the harmlessness of violent pornography was not before the Supreme Court of Canada in Butler, the Court was alive to the notion that some segments of society, quite validly, took a similar position. In particular Butler at page 484 discusses the Fraser Report which was endorsed by Dr. Fisher in his evidence.

[86] Therefore, while I have no reason to reject Dr. Fisher's opinions regarding violent pornography, his opinion that the Eleven Videos will not cause harm as contemplated by S. 163 of the Code, simply contradict Parliament's reasonably based concerns as found by Butler. Therefore, Dr. Fisher's opinions do not assist me and I am not prepared to consider them in determining the charges before me.

[87] I agree with the Crown, that the Eleven Videos, although they do not depict any classic sexual activity such as vaginal or anal intercourse or oral sex, are entirely sexual in nature. This was confirmed by the evidence of Doctors Moser and Fisher who testified the Eleven Videos portrayed BDSM sexual fantasies.

[88] I also agree with the Crown, there is strong evidence simply from the content of the Eleven Videos they themselves by which I may infer a risk of harm and that Canadians would have no tolerance for other Canadians viewing this material. The Eleven Videos portray explicit, graphic sexual activity coupled with explicit, graphic portrayals of violence. These portrayals are the very nature of BDSM sexual fantasies. But that is not the end of the matter.

[89] Of the three tests for undue ness, considered in Butler, the most important is the community standard of tolerance test. Butler specifically instructed triers of fact how to apply this test. The trier of fact must consider what Canadians would tolerate other Canadians viewing. The standards of the community of Canada as a whole must be considered and not the standards of a small segment of the Canadian community. Canadian community standards change. Canadian Community standards as to what is harmful have changed since 1959. The standard therefore must be a contemporary one. (Butler p. 476-477 and p. 496)

[90] I have considered the following as evidence of what contemporary Canadians would tolerate other Canadians viewing.

[91] First, I accepted Dr. Moser's opinion that consensual BDSM is part of normal and acceptable adult sexual behaviour and that viewing material similar to the Eleven Videos is a normal and appropriate part of that sexual behaviour.

[92] Second, I accept Mr. MacDonald's evidence that BDSM practices similar to those portrayed in the Eleven Videos, are regularly carried on in public venues. These venues are well known to the police who take no interest in preventing these public activities from taking place. These public venues are easily accessible by any adult with sufficient financial means to attend an ordinary movie theatre. These public venues are available throughout Canada and are widely advertised in the public domain.

[93] Third, while the Supreme Court of Canada, in 1992, described in Butler at page 498, a "burgeoming pornography industry" they could not contemplate, the impact, the Internet, since 1995, has had on this industry and on Canadian society generally. It is an understatement to say there is an immense amount of BDSM material, on the Internet, readily available to the Canadian public.

[94] Fourth, I agree with the Crown, that there are distinctions to be made between the material in the Eleven Videos and the additional examples of pornographic material filed by the Defence described in paragraphs 23-27 above (the Supplementary Materials). I accept that some of the Supplementary Materials are in some cases less graphic than the Eleven Videos or in some cases, such as the documentary films described in paragraph 26, provide serious treatment of a theme which is lacking in the Eleven Videos.

[95] I accept that the films I Spit On Your Grave, Rape Me, Irreversible, American Psycho and Henry Portrait of a Serial Killer, (the Fictional Material) have a more sophisticated plot than the Eleven Videos. However, the Fictional Material contains graphic, protracted portrayals of the highest degree of sexual violence towards women. The book and the subsequent film, American Psycho, contain an almost unbroken litany of unimaginable gore and savagery, much of which is directed towards women in a sexual context. While the portrayal of genitalia and other private sexual areas may be less graphic in the Fictional Materials, the level of violence in the Fictional Materials is higher than that portrayed in the Eleven Videos.

[96] Other than having a plot, there is little to distinguish the explicit sexual violence portrayed in the Fictional Materials from the explicit sexual violence portrayed in the Eleven Videos.

[97] All of the Fictional Materials are widely available to the general Canadian public either through theatres, video stores, well known book stores, public libraries or broadcast by cable television companies.

[98] It is not my role to determine whether any of the Fictional Materials are obscene.

[99] However, the contents of the Fictional Materials, coupled with their wide spread availability, satisfies me that Canadians, for better or for worse, tolerate other Canadians viewing explicit sexual activity coupled with graphic violence which is more or less indistinguishable from the Eleven Videos.

[100] This evidence of tolerance coupled with the evidence I have described in paragraphs 91 to 93 leaves me with a reasonable doubt that the contemporary Canadian community would not tolerate other Canadians viewing the Eleven Videos on the basis that harm would flow from watching the Eleven Videos.

[101] I must resolve that doubt in favour Mr. Price. I acquit him of counts one through twenty.

The Honourable R. R. Low, P.C.J.