

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of the Form B  
Resignation of:

MATTHEW D. SAMWICK.

Oregon State Bar  
01161

S055714

**RECEIVED**

MAR 28 2008

DISCIPLINARY  
COUNSEL

**ORDER ACCEPTING RESIGNATION FROM PRACTICE OF LAW**

Upon consideration by the court.

Matthew D Samwick has tendered his Form B Resignation from the practice of law.

It is ordered that the resignation is accepted. The name of Matthew D Samwick (Bar No. 914138) shall be stricken from the roll of attorneys, and he shall not be entitled to the rights or privileges of an attorney, effective the date of this order.

March 26, 2008  
DATE

Robert D. Devcham  
PRESIDING JUSTICE

c: Martha M Hicks  
Wayne Mackeson

gar/S055714oafb080326

**ORDER ACCEPTING RESIGNATION FROM PRACTICE OF LAW**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
 )  
MATTHEW D. SAMWICK ) FORM B RESIGNATION  
OSB No. 914138 ) Case No. 01-161  
 )  
 )  
\_\_\_\_\_ )

State of Oregon )  
 ) ss.  
County of Washington )

I, Matthew D. Samwick, being duly sworn on oath, depose and say that my principal office for the practice of law or other business is located at Oswego Law Group LLC, 460 5th Street Suite C, Lake Oswego, Oregon 97034; that my residence address is 2349 OAKHURST LANE <sup>60 DAYS AFTER</sup> LAKE OSWEGO, Oregon; and that effective <sup>APPROVAL BY</sup> ~~OREGON STATE BAR~~ I hereby tender my resignation from membership in the Oregon State Bar and request and consent to my removal from the roster of those admitted to practice before the courts of this state and from membership in the Oregon State Bar.

I am aware that there is pending against me a formal complaint concerning alleged misconduct and/or that complaints, allegations or instances of alleged misconduct by me are under investigation by the Oregon State Bar and that such complaints, allegations and/or instances include:


A Second Amended Formal Complaint (Case No. 01-161), a copy of which is attached hereto and incorporated by this reference.

I do not desire to contest or defend against the above-described complaints, allegations or instances of alleged misconduct. I am aware of the rules of the Supreme Court and of the bylaws and rules of procedure of the Oregon State Bar with respect to admission, discipline, resignation and reinstatement of members of the Oregon State Bar. I understand that any future application by me for reinstatement as a member of the Oregon State Bar is currently barred by BR 9.4, but that should such an application ever be permitted in the future, it will be treated as an application by one who has been disbarred for misconduct, and that, on such application, I shall not be entitled to a reconsideration or reexamination of the facts, complaints, allegations or instances of alleged misconduct upon which this resignation is predicated. I understand that, on its filing in this court, this resignation and any supporting documents, including those containing the complaints, allegations or instances of alleged misconduct, will become public records of this court, open for inspection by anyone requesting to see them.

This resignation is freely and voluntarily made; and I am not being, and have not been, subjected to coercion or duress. I am fully aware of all the foregoing and any other implications of my resignation.

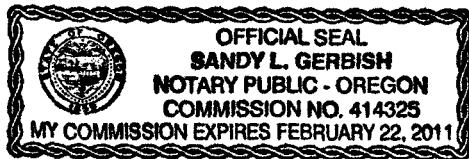
I hereby certify that all client files and client records in my possession have been or will be placed promptly in the custody of BRETT J. HALL, a resident Oregon attorney, whose principal office address is 460 5th ST LAKE OSWEGO, OR 97034, Oregon and that all such clients have been or will be promptly notified accordingly.

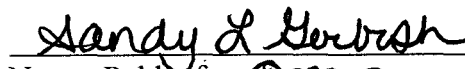
Dated at Tigard, Oregon, this 12<sup>th</sup> day of February, 2008.



Matthew D. Samwick

Subscribed and sworn to before me this 12<sup>th</sup> day of February, 2008.





Notary Public for Oregon

My Commission Expires: 2/22/2011

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:

## Complaint as to the Conduct of

MATTHEW D. SAMWICK,

Accused.

)

Case No. 01-161

## SECOND AMENDED FORMAL COMPLAINT

### Background Information Common to All Causes of Complaint

1.

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

2.

The Accused, Matthew D. Samwick, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Clackamas, State of Oregon.

3.

Beginning in or around 1994, and at all relevant times herein, the Accused had an attorney-client relationship with Ambrose Calcagno (hereinafter referred to as "Calcagno").

4.

In 1996, in addition to his law practice, the Accused was an investment advisor and a licensed securities broker acting through an entity called Cascade Asset Management Company. The Accused rendered investment advice to and made investments for the individuals named herein and the business entities in which they were members or shareholders.

1

5.

2 In about April 1996 and again in 1999, the Accused organized a limited liability  
3 company, Vista Venture Group, LLC, for the purpose of making investments on behalf of  
4 himself and third persons. The Accused was the manager of Vista Venture Group, LLC. In 1999  
5 or 2000, the members of Vista Venture Group, LLC were the Accused, Calcagno, and John Briece  
6 (hereinafter referred to as "Briece"). Before July 31, 1999, and at all relevant times thereafter, the  
7 Accused had an attorney-client relationship with Vista Venture Group, LLC.

8

6.

9 In or around April 1996, the Accused formed a limited partnership named Ash Creek  
10 Venture Partners, which later changed its name to Cascade Venture Partners (hereinafter referred  
11 to jointly as "Cascade Venture Partners"), for the purpose of making investments on behalf of  
12 himself and third persons. The original general partner of Cascade Venture Partners was Cascade  
13 Asset Management Company, and in 1999 or 2000 the general partnership interest was  
14 transferred to Vista Venture Group. The limited partners in Cascade Venture Partners included  
15 the Accused's wife, Christine Samwick, the Accused's father-in-law, Robert Cihak (hereinafter  
16 referred to as "Cihak"), Randell Guyer (hereinafter referred to as "Guyer"), Calcagno, Briece,  
17 and Timothy Triebel and Laurie Kelly and entities owned by them (hereinafter referred to as "the  
18 Triebels"). Before July 31, 1999, and at all relevant times thereafter, the Accused had a business  
19 interest in and an attorney-client relationship with Cascade Venture Partners.

20

7.

21 In or about 1996 and continuing thereafter, Cascade Venture Partners began to invest in  
22 Skylink Telecommunications Corp.; Northwest Communications, Inc. (hereinafter referred to as  
23 "Northwest," which was a corporation acquired by Skylink Telecommunications Corp. in about  
24 January 1997); and other related business entities. Before July 31, 1999, and at all relevant times  
25

1 thereafter, Cascade Venture Partners was a creditor and shareholder of, and investor in  
2 Northwest.

3 8.

4 In about October 1997, the Accused organized Granite Head, LLC, a limited liability  
5 company. The only member of Granite Head was Christine Samwick, the Accused's wife. The  
6 Accused was the sole manager of Granite Head and conducted his personal business and financial  
7 transactions through it. In or before September 1999, Granite Head became a creditor of or investor  
8 in Northwest.

9 9.

10 In about late 1997, the Accused became a member of the boards of directors of Northwest  
11 and Skylink Telecommunications Corp. By June 1998, and at all times relevant herein, the  
12 Accused was a creditor of and investor in Skylink Telecommunications Corp. and Northwest.

13 10.

14 By June 1998, upon the Accused's recommendation, advice or request, Catherine  
15 Boshaw (hereinafter referred to as "Boshaw"), Cihak, Guyer, Briece, Calcagno, and the Triebels  
16 had become creditors of or investors in Skylink Telecommunications Corp. or Northwest either  
17 directly or through their investment in Cascade Venture Partners. By June 1998, and continuing  
18 at all relevant times thereafter, the Accused also had attorney-client relationships with Cihak,  
19 Guyer, Briece and Calcagno and the business entities in which they held interests.

20 11.

21 In and before June 1998, Skylink Telecommunications Corp., Northwest, and other  
22 related business entities were experiencing financial difficulties and needed additional capital to  
23 avoid bankruptcy reorganization. In or about June 1998, Skylink Telecommunications Corp. and  
24 Northwest were reorganized so that they became wholly owned subsidiaries of Skylink  
25 Communications Corp. (hereinafter referred to as "Skylink").

PAGE 3 – MATTHEW D. SAMWICK – SECOND AMENDED FORMAL COMPLAINT

12.

By June 1998, and continuing at all relevant times thereafter, the Accused was Chairman of the boards of directors of Skylink and Northwest. Boshaw was Secretary of the boards of directors of these corporations.

13.

Beginning in about April 1997, Northwest began to factor its accounts receivable through Receivables Funding Corporation. This factoring agreement was terminated on or about July 31, 1999.

14.

In early 1999, the Accused attempted to obtain financing to enable Vista Venture Group and Cascade Venture Partners to put into effect a factoring arrangement with Northwest that would replace Northwest's factoring arrangement with Receivables Funding Corporation described in paragraph 13 above. In the course of his attempt to obtain financing, the Accused prepared and caused to be filed with the State of Oregon financing statements, which gave notice of a security interest in all of the assets of Northwest—including Northwest's accounts receivable—in favor of Cascade Venture Partners. Institutional lenders refused to provide financing to Vista Venture Group and Cascade Venture Partners for a factoring arrangement with Northwest.

#### **The Ambrose Calcagno Matter**

For its FIRST CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

15.

Realleges and incorporates by reference the allegations of paragraphs 1 through 4 of this Formal Complaint as if fully set forth herein.

16.

In or about April 1995, when the Accused opened his law office, he received approximately \$111,000 from Calcagno. These funds were not a gift, but were a loan or a retainer against future legal fees. Calcagno expected the Accused to exercise his professional judgment in this transaction for Calcagno's protection.

17.

Insofar as the transaction with Calcagno described in paragraph 16 above was a loan, the Accused's interests as a debtor differed from Calcagno's interests as a creditor. Before entering into this transaction, the Accused failed to obtain Calcagno's consent to the transaction after full disclosure. Thereafter, the Accused continued to represent Calcagno when the exercise of his professional judgment on behalf of Calcagno was or could reasonably have been affected by his status as a debtor, without first obtaining Calcagno's consent to the continued representation after full disclosure.

18.

Insofar as the transaction with Calcagno described in paragraph 16 above was the payment of a retainer against future legal fees, the Accused did not deposit Calcagno's \$111,000 into a lawyer trust account and failed to maintain complete records of these funds or render appropriate accounts to Calcagno regarding them.

19.

The aforesaid conduct of the Accused constituted a lawyer's self-interest conflict; entering into a business transaction with a client in which the lawyer and client have differing interests; failing to deposit or maintain client funds in a lawyer trust account; and failing to maintain complete records of funds of a client coming into his possession and render appropriate accounts to the client regarding them, in violation the following standards of professional conduct established by law and by the Oregon State Bar:





The aforesaid conduct of the Accused constituted conduct involving dishonesty in violation of the following standard of professional conduct established by law and by the Oregon State Bar:

A. DR 1-102(A)(3) of the Code of Professional Responsibility.

**The RRMJ Company Formation Matter**

AND, for its THIRD CAUSE OF COMPLAINT, the Oregon State Bar alleges:

Realleges and incorporates by reference the allegations of paragraphs 1 through 14 of this Formal Complaint.

On or before September 27, 1999, the Accused proposed to Briece, Cihak, and Guyer that they form a limited liability company with Granite Head to factor Northwest's accounts receivable and make other future investments. The proposed limited liability company would be named RRMJ Company LLC (hereinafter referred to as "RRMJ"). The name "RRMJ" was derived from the first initials of Cihak (Robert), Guyer (Randell), the Accused (Matthew) and Briece (John). Under the proposed factoring arrangement with Northwest, RRMJ would purchase Northwest's accounts receivable at a discount and collect the full amount of those accounts, plus interest and a monthly fee, when they came due. The Accused represented to Cihak, Briece and Guyer that a factoring arrangement with Northwest would result in substantial profits to RRMJ.

On or about September 27, 1999, as attorney for RRMJ, the Accused prepared and filed Articles of Organization for RRMJ Company LLC, a limited liability company. The members of RRMJ were Granite Head, Briece, Guyer and Bob-O-Link, LLC. Bob-O-Link, LLC was a limited

1 liability company, which the Accused organized and Cihak controlled and managed. Cihak and the  
2 Accused's wife were members of Bob-O-Link. The initial contributions made by the members of  
3 RRMJ were not equal.

4 27.

5 Because their initial contributions to RRMJ were not equal and because of their differing  
6 relationships with Northwest and Cascade Venture Partners, the interests of Briece, Calcagno,  
7 Guyer, Cihak and Bob-O-Link, and Granite Head were adverse. The Accused undertook to organize  
8 and represent RRMJ while he had an attorney-client relationship with the individual members of  
9 RRMJ, Cihak, and Calcagno, without first having obtained the consent of all of these clients after  
10 full disclosure.

11 28.

12 The Accused undertook to organize and represent RRMJ when his status as creditor of and  
13 investor in Northwest and Skylink; as chairman of the boards of directors of Northwest and Skylink,  
14 as manager of Granite Head; and as attorney for Calcagno, Briece, Guyer and Cihak, would or  
15 reasonably might affect his professional judgment on behalf of RRMJ, Briece, Calcagno, Cihak,  
16 Bob-O-Link, or Guyer. The Accused accepted employment by RRMJ without first having obtained  
17 consent to do so from Briece, Guyer, Calcagno, or Cihak and Bob-O-Link after full disclosure.

18 29.

19 The organization of RRMJ and the Accused's membership in it through Granite Head was a  
20 business transaction in which the Accused's interests differed from those of Briece and Calcagno,  
21 Guyer, and Cihak and Bob-O-Link. Briece and Calcagno, Guyer, and Cihak and Bob-O-Link  
22 expected the Accused to exercise his professional judgment in the organization of RRMJ for their  
23 protection. The Accused failed to obtain the consent of Calcagno or Briece, Guyer, and Cihak and  
24 Bob-O-Link to his participation in RRMJ after full disclosure.

25 ///

1 30.

2 The aforesaid conduct of the Accused constituted a lawyer's self-interest conflict; business  
3 transactions with a client; and a current client conflict of interest in violation of the following  
4 standards of professional conduct established by law and by the Oregon State Bar:

- 5 A. DR 5-101(A) of the Code of Professional Responsibility;  
6 B. DR 5-104(A) of the Code of Professional Responsibility; and  
7 C. DR 5-105(E) of the Code of Professional Responsibility.

8  
9 **The RRMJ Factoring Agreement Transactions**

10 AND, for or its FOURTH CAUSE OF COMPLAINT against the Accused, the Oregon State  
11 Bar alleges:

12 31.

13 Realleges and incorporates by reference the allegations of paragraphs 1 through 14, 25 and  
14 26 of this Formal Complaint as if fully set forth herein.

15 32.

16 At all relevant times herein, the Accused had an attorney-client relationship with RRMJ.  
17 From the formation of RRMJ, and thereafter, the Accused controlled RRMJ. The Accused acted for  
18 Cihak, claiming he held Cihak's "proxy" in violation of ORS 63.130(6).

19 33.

20 When the Accused approached Guyer and Briece about organizing RRMJ, he led them to  
21 believe that they would derive a profit from a factoring arrangement with Northwest and that such a  
22 factoring arrangement could be secured by a first priority security interest in Northwest's accounts  
23 receivable. The Accused knowingly failed to disclose to Guyer and Briece that one of his other  
24 clients, Cascade Venture Partners, had previously recorded a first priority security interest in  
25 Northwest's accounts receivable. The Accused also failed to disclose that he knew that banks would

1 not loan on the security of Northwest's accounts receivable and would require personal guaranties  
2 from the members of RRMJ. These were material facts the Accused knew or had in mind when he  
3 failed to disclose them.

4 34.

5 The RRMJ operating agreement drafted by the Accused provided that RRMJ was to be  
6 managed by its members, unless management responsibility was delegated to a subcommittee of  
7 members or to an individual member, and that amendments to the operating agreement required the  
8 unanimous written consent of all the members. At all relevant times, ORS 63.444 required that all  
9 amendments to the operating agreement of a limited liability company be approved unanimously by  
10 the members.

11 35.

12 On or about September 27, 1999, without the knowledge or consent of Guyer, the Accused  
13 drafted and, with Briece, signed a document entitled "Consent in Lieu of Organizational Meeting of  
14 Members of RRMJ Company, LLC" (hereinafter referred to as the "consent").

15 36.

16 The consent represented that the actions described therein were taken by all of the members  
17 of RRMJ and that RRMJ's members had unanimously consented to the following:

- 18 A. That the Accused and Briece would be RRMJ's only managers;  
19 B. That the managers of RRMJ were authorized to establish bank accounts with each  
20 manager having single signing authority; and  
21 C. That the managers of RRMJ had authority to enter into contracts and agreements on  
22 behalf of RRMJ.

23 The consent effectively amended RRMJ's operating agreement, was never unanimously adopted,  
24 and the Accused knew that the above-described representations contained in it were false and  
25 material when he made them.

1 37.

2 In about September 1999, in the course of forming RRMJ, the Accused promised, and  
3 Briece and Guyer understood, that no money would be advanced by RRMJ under a factoring  
4 arrangement with Northwest unless and until the parties had signed a factoring agreement that gave  
5 RRMJ a first priority security interest in Northwest's accounts receivable and control over the funds  
6 received from the accounts receivable, and RRMJ's security interest in the accounts receivable had  
7 been perfected. The Accused represented that Northwest was in a position to grant RRMJ a first  
8 priority security interest in its accounts receivable. This representation was false, and the Accused  
9 knew it was false when he made it.

10 38.

11 In about September 1999, as attorney for RRMJ, the Accused undertook to prepare the  
12 factoring agreement and security documents referred to in paragraph 37 above at a time when he  
13 represented Cascade Venture Partners, which already held a first priority security interest in  
14 Northwest's accounts receivable. The interests of RRMJ and Cascade Venture Partners were  
15 adverse by virtue of their competing interests in Northwest's accounts receivable. The Accused  
16 failed to obtain consent to the multiple representations from both RRMJ and Cascade Venture  
17 Partners after full disclosure.

18 39.

19 The Accused failed to prepare the factoring agreement referred to in paragraph 37 above  
20 until about July 2000, and failed to perfect a first priority security interest in favor of RRMJ in  
21 Northwest's accounts receivable. Before July 2000, the Accused failed to disclose to some or all the  
22 members of RRMJ that he had not obtained a written agreement by Northwest to a factoring  
23 arrangement with RRMJ and that he had not perfected a security interest in Northwest's accounts  
24 receivable. These were material facts the Accused had in mind when he failed to disclose them.

1 40.

2 On or about September 29, 1999, RRMJ was capitalized with \$600,000 in contributions  
3 from its members. These funds were deposited into RRMJ's checking account. Within  
4 approximately two weeks of September 29, 1999, the Accused caused \$682,000 to be transferred  
5 from RRMJ's checking account, without the knowledge or consent of Briece or Guyer and without  
6 any agreement to repay this money, to pay interest on it, or to provide security for the debt to  
7 RRMJ. These transfers caused an \$82,000 overdraft in RRMJ's checking account. Thereafter, the  
8 Accused failed to account truthfully for funds paid and received purportedly pursuant to the  
9 factoring arrangement with Northwest, and converted these funds to his own use.

10 41.

11 The aforesaid conduct of the Accused constituted conduct involving dishonesty, fraud or  
12 misrepresentation; a current client conflict of interest; and neglect of a legal matter entrusted to him,  
13 in violation of the following standards of professional conduct established by law and by the Oregon  
14 State Bar:

- 15 A. DR 1-102(A)(3) of the Code of Professional Responsibility;  
16 B. DR 5-105(E) of the Code of Professional Responsibility; and  
17 C. DR 6-101(B) of the Code of Professional Responsibility.

18  
19 **The \$1,000,000 Bank Loan to RRMJ**

20 For its FIFTH CAUSE OF COMPLAINT against the Accused, the Oregon State Bar  
21 alleges:

22 42.

23 Realleges and incorporates by reference the allegations of paragraphs 1 through 14, 25, 26 ,  
24 and 33 through 40 of this Formal Complaint as if fully set forth herein.

1 43.

2 At the time of the formation of RRMJ or shortly thereafter, the members of RRMJ  
3 authorized the Accused to obtain a line of credit in the amount of \$1,000,000. Briece and Guyer  
4 directed, and the Accused agreed, that \$600,000 from this line of credit was to be used to return the  
5 initial capital contributions made by the members of RRMJ. Briece and Guyer directed, and the  
6 Accused agreed, that the remaining \$400,000 from the line of credit was to be used to make other  
7 investments as unanimously directed by the members of RRMJ. Briece and Guyer directed, and the  
8 Accused agreed, that the \$400,000 would not be invested in entities or individuals related to  
9 Cascade Venture Partners, Northwest, Skylink, entities owned by or related to Skylink, or other  
10 telecommunications companies.

11 44.

12 In connection with RRMJ Company's application for the \$1,000,000 line of credit described  
13 in paragraph 43 above, the Accused submitted the false Consent described in paragraphs 35 and 36  
14 above to a bank insured by the Federal Deposit Insurance Corporation.

15 45.

16 In connection with RRMJ Company's application for the \$1,000,000 line of credit described  
17 in paragraph 43 above, the Accused also signed and submitted a limited liability company  
18 borrowing resolution purportedly on behalf of RRMJ. This borrowing resolution represented as  
19 follows:

- 20 A. That the members of RRMJ with authority to bind RRMJ were the Accused and  
21 Briece;
- 22 B. That the Accused and Briece had the authority to request and receive advances under  
23 a line of credit and receive the proceeds either in cash or as a credit to RRMJ's  
24 account; and  
25



1 C. That the Accused and Breece had the authority to designate additional or alternate  
2 individuals as being authorized to request advances under a line of credit.

3 These representations were false and material, and the Accused knew they were false and material  
4 when he made them.

5 46.

6 In the borrowing resolution described in paragraph 45 above, the Accused knowingly failed  
7 to disclose that Bob-O-Link, Guyer, and Granite Head were members of RRMJ. The Accused had  
8 this fact in mind when he failed to disclose it.

9 47.

10 In connection with RRMJ's application for the \$1,000,000 line of credit, the Accused  
11 submitted to the bank a personal financial statement. This financial statement represented as  
12 follows:

13 A. That beginning in October 1999, the Accused had income of \$10,000 per month  
14 from Northwest; and

15 B. That the Accused or his wife owned an interest in a factoring business worth  
16 \$100,000.

17 These representations were false and material, and the Accused knew they were false and material  
18 when he made them. The Accused also failed to disclose personal liabilities exceeding \$1.5 million.  
19 This was a material fact that the Accused knew was material and that the Accused had in mind  
20 when he failed to disclose it.

21 48.

22 In the personal financial statement described in paragraph 47 above, the Accused knowingly  
23 failed to disclose that he had no ownership interest in his residence or in Granite Head. The Accused  
24 had these facts in mind when he failed to disclose them.

25 ///

1 49.

2 At all relevant times herein, pursuant to ORS 165.100, it was a Class C misdemeanor for a  
3 person, with intent to defraud, to knowingly make or utter a written statement which purported to  
4 describe that person's or another person's financial condition or ability to pay which is inaccurate in  
5 some material respect.

6 50.

7 At all relevant times herein, pursuant to 18 U.S.C. §1014, it was a felony for a person to  
8 knowingly make any false statement or report, or willfully overvalue any land, property or security,  
9 for the purpose of influencing in any way the action of a bank insured by the Federal Deposit  
10 Insurance Corporation upon any application, advance, discount, purchase, purchase agreement,  
11 repurchase agreement, commitment, or loan.

12 51.

13 On or about March 7, 2000, after receiving approval by the bank of the \$1,000,000 line of  
14 credit described in paragraph 43 above, without the knowledge or consent of Briece or Guyer, the  
15 Accused caused the bank to transfer approximately \$150,025 from the line of credit to his personal  
16 bank account and converted this sum to his own use. Using proceeds from the line of credit, the  
17 Accused also purchased a cashier's check in the amount of \$62,000, payable to Northwest, and a  
18 cashiers check in the amount of \$785,975.00, payable to RRMJ.

19 52.

20 Between about March 8, 2000 and about March 22, 2000, without the knowledge or  
21 consent of Briece or Guyer, the Accused disbursed approximately \$660,000 from RRMJ's bank  
22 account. The Accused later represented to the members of RRMJ that the funds had been paid to  
23 Northwest, when in fact the funds were diverted to Cascade Venture Partners from which the  
24 Accused converted all or a portion of those funds to his or Granite Head's use.

25 ///

1 53.

2 On or about March 8, 2000, without the knowledge or consent of Briece or Guyer, the  
3 Accused paid approximately \$195,833 from RRMJ's bank account to Cihak. Some or all of this  
4 amount represented repayment of a personal obligation of the Accused to Cihak. In using  
5 RRMJ's funds to repay a personal obligation, the Accused converted this sum to his own use.

6 54.

7 The aforesaid conduct of the Accused constituted a criminal act or acts that reflect adversely  
8 on his honesty, trustworthiness or fitness to practice law; and conduct involving dishonesty, fraud,  
9 deceit or misrepresentation, in violation of the following standards of professional conduct  
10 established by law and by the Oregon State Bar:

- 11 A. DR 1-102(A)(2) of the Code of Professional Responsibility; and  
12 B. DR 1-102(A)(3) of the Code of Professional Responsibility.

13  
14 **The John Briece Line of Credit**

15 AND, for its SIXTH CAUSE OF COMPLAINT against the Accused, the Oregon State Bar  
16 alleges:

17 55.

18 Realleges and incorporates by reference the allegations of paragraphs 1 through 14, 25, 26,  
19 32 and 40 of this Formal Complaint if fully set forth herein.

20 56.

21 In about September 1999, the Accused assisted Briece to obtain a \$400,000 standby letter  
22 of credit from U.S. Bank National Association (hereinafter referred to as "US Bank") in order to  
23 make funds available to Briece in the event he decided to fund future investments or make loans  
24 to Northwest. Briece did not give the Accused permission to draw on this line of credit or make  
25 investments with money drawn on the line of credit without his knowledge and consent.

1 57.

2 On or about October 14, 1999, without Briece's knowledge or consent, the Accused or  
3 his agent withdrew \$82,000 from Briece's line of credit and transferred this money to Key Bank  
4 to cover an overdraft in RRMJ's checking account created by the fund transfer described in  
5 paragraph 40 above. Thereafter, the Accused continued to represent Briece and RRMJ even  
6 though their interests as creditor and debtor were adverse, without first obtaining the consent of  
7 both clients to the multiple representations after full disclosure.

8 58.

9 Between about October 14, 1999 and about November 22, 1999, without Briece's  
10 knowledge or consent, the Accused or his agent, acting with the Accused's knowledge and  
11 consent, withdrew the remaining \$312,000 from Briece's line of credit and transferred this  
12 money to Skylink, Northwest, or related business entities.

13 59.

14 On or before November 22, 1999, Briece discovered that the Accused had withdrawn or  
15 caused to be withdrawn \$400,000 from his line of credit and demanded repayment in full of this  
16 sum. The Accused or his agent caused the business entities to which the Accused had transferred  
17 this money to repay it in full on November 22, 1999.

18 60.

19 On or about November 22, 1999, the Accused or his agent acting with the Accused's  
20 knowledge and consent, presented to US Bank a letter that authorized the Accused's assistant,  
21 Bette Douglas (hereinafter referred to as "Douglas") to "direct funds related to loan proceeds in  
22 the amount of \$400,000 from U.S. Bank." This letter bore what purported to be Briece's  
23 signature. The letter was not signed by Briece, and the Accused knew it when he or Douglas  
24 presented the letter to US Bank.

1 61.

2 Between November 30, 1999 and December 2, 1999, the Accused or his agent, with the  
3 Accused's knowledge and consent, again withdrew \$400,000 from Briece's line of credit and  
4 transferred the money to the bank accounts of Northwest, or entities related to the Accused  
5 without Briece's knowledge or consent. Thereafter, the Accused or his agent concealed these  
6 transactions from Briece.

7 62.

8 The aforesaid conduct of the Accused constituted conduct involving dishonesty, fraud,  
9 deceit or misrepresentation; and a current client conflict of interest, in violation of the following  
10 standards of professional conduct established by law and by the Oregon State Bar:

11 A. DR 1-102(A)(3) of the Code of Professional Responsibility; and

12 B. DR 5-105(E) of the Code of Professional Responsibility.

13  
14 **RRMJ Lease**

15 AND, for its SEVENTH CAUSE OF COMPLAINT against the Accused, the Oregon State  
16 Bar alleges:

17 63.

18 Realleges and incorporates by reference the allegations of paragraphs 1 through 14, 25  
19 through 29, 32, and 34 through 36 of this Formal Complaint as if fully set forth herein.

20 64.

21 On or about December 10, 1999, on behalf of RRMJ, and without the knowledge and  
22 consent of Guyer, the Accused leased office space to be occupied by Northwest. The Accused  
23 personally guaranteed this lease without first having obtained RRMJ's consent after full disclosure.  
24 As guarantor and guarantee, the Accused and RRMJ had differing interests in the lease transaction,  
25

1 and RRMJ and its members expected the Accused to exercise his professional judgment in the  
2 transaction for their protection.

3 65.

4 On or about December 22, 1999, on behalf of both RRMJ and Northwest, the Accused  
5 drafted an agreement whereby Northwest sublet from RRMJ the office space described in paragraph  
6 64 above at a rent that was more than that to which RRMJ was obligated under its lease. As lessor  
7 and lessee, RRMJ and Northwest had differing interests, and the Accused undertook to represent  
8 both clients in the sublease transaction without the consent of either after full disclosure.

9 66.

10 The Accused's interests as creditor of, guarantor for, investor in, and chairman of the board  
11 of directors of Northwest, and the Accused's and his wife's interests in Granite Head as a member  
12 of RRMJ, affected or reasonably might have affected the exercise of the Accused's professional  
13 judgment on behalf of RRMJ and Northwest in the lease and sublease transactions. The Accused  
14 undertook to represent RRMJ in the lease transaction and both RRMJ and Northwest in the sublease  
15 transaction without their consent after full disclosure.

16 67.

17 The aforesaid conduct of the Accused constituted a lawyer's self-interest conflict; entering  
18 into a business transaction with a client when they had differing interests without consent after full  
19 disclosure; and a current client conflict of interest, in violation of the following standards of  
20 professional conduct established by law and by the Oregon State Bar:

- 21 A. DR 5-101(A) of the Code of Professional Responsibility;  
22 B. DR 5-104(A) of the Code of Professional Responsibility; and  
23 C. DR 5-105(E) of the Code of Professional Responsibility.

24 ///

**The \$300,000 RRMJ Loan**

AND, for its EIGHTH CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

68.

Realleges and incorporates by reference the allegations of paragraphs 1 through 14, 25, 26, 32, 34 through 36, and 43 through 46 of this Formal Complaint as if fully set forth herein.

69.

In about April 2000, without the knowledge or consent of Briece or Guyer, on behalf of RRMJ, the Accused obtained an additional \$300,000 line of credit from a bank. The Accused obtained Briece's and Guyer's personal guarantees for this line of credit by making the following representations to Briece and Guyer:

- A. That the bank had lost their guarantees of the \$1,000,000 line of credit described in paragraph 43 above;
- B. That the bank had not yet funded the \$1,000,000 line of credit because the bank's paperwork on this loan was incomplete;
- C. That the guarantees Briece and Guyer were to sign would replace the guarantees for the \$1,000,000 line of credit that had been lost by the bank; and
- D. That the bank had not funded the \$1,000,000 line of credit because it was processing a loan to Cihak.

These representations were false and material, and the Accused knew they were false when he made them.

70.

The Accused represented to the bank that the purpose of the \$300,000 line of credit was to support and to provide temporary working capital to West Coast Phone Company, LLC. This representation was false and material, and the Accused knew it was false when he made it.

1 71.

2 On or about April 21, 2000, without the knowledge or consent of Briece or Guyer, the  
3 Accused caused the bank to transfer \$300,000 to RRMJ's bank account. On or about April 21,  
4 2000, without the knowledge or consent of Briece or Guyer, the Accused transferred \$300,000 from  
5 RRMJ's bank account to Northwest.

6 72.

7 The aforesaid conduct of the Accused constituted conduct involving dishonesty, fraud,  
8 deceit, or misrepresentation in violation of the following standard of professional conduct  
9 established by law and by the Oregon State Bar:

10 A. DR 1-102(A)(3) of the Code of Professional Responsibility.

11  
12 **The Northwest Communications Matter**

13 AND for its NINTH CAUSE OF COMPLAINT against the Accused, the Oregon State Bar  
14 alleges:

15 73.

16 Realleges and incorporates by reference the allegations of paragraphs 1 through 14, 25, 26,  
17 and 34 of this Formal Complaint as if fully set forth herein.

18 74.

19 In or about May 2000 and continuing thereafter, while he was attorney for and a member of  
20 RRMJ through Granite Head and chairman of the board of directors of Northwest, and without the  
21 knowledge or consent of Boshaw, the disinterested member of the board of directors of Northwest,  
22 the Accused moved his law firm into the office space leased by Northwest from RRMJ and caused  
23 Northwest to pay the rent on the space his law firm occupied.

24 ///



1 75.

2 In or about May 2000 and continuing thereafter, while he was chairman of the board of  
3 directors of Northwest, and without the knowledge or consent of Boshaw, the disinterested member  
4 of the board of directors of Northwest, the Accused caused Northwest to pay the payroll for the  
5 Accused's law firm.

6 76.

7 The aforesaid conduct of the Accused constituted conduct involving dishonesty in violation  
8 of the following standard of professional conduct established by law and by the Oregon State Bar:

9 A. DR 1-102(A)(3) of the Code of Professional Responsibility.

10  
11 **The Northwest Litigation Settlement**

12 AND, for its TENTH OF COMPLAINT against the Accused, the Oregon State Bar alleges:

13 77.

14 Realleges and incorporates by reference the allegations of paragraphs 1 through 14 and 25  
15 of this Formal Complaint as if fully set forth herein.

16 78.

17 At all relevant times herein, the Accused had an attorney-client relationship with Timothy J.  
18 Trieble, Laurie Kelly, individually, and Timothy J. Trieble, M.D., P.C., doing business as East  
19 Portland Orthopedic and Fracture Clinic (hereinafter known collectively as "the Triebels"). At all  
20 relevant times, the Triebels were creditors of Northwest or Skylink and investors in Cascade  
21 Venture Partners I, LLC.

22 79.

23 On May 15, 2000. Northwest, through counsel other than the Accused, filed litigation  
24 against Advantage Wireless and AirTouch Cellular, Multnomah County Circuit Court No. CV 00-  
25 659JE (hereinafter referred to as "the litigation"). At all relevant times herein, the Accused was

1 attorney for, chairman of the board of directors, general manager and creditor of, guarantor for, and  
2 investor in Northwest.

3 80.

4 In about April 2000, without authority from Northwest to do so, the Accused sold to RRMJ  
5 a 70% share in the proceeds of the settlement of the litigation described in paragraph 79 above. In  
6 June 2000, without authority from Northwest or RRMJ to do so, the Accused sold the Triebels what  
7 he represented was a 25% share in the proceeds of the settlement of the litigation for \$100,000. In  
8 order to induce the Triebels to purchase a share in the litigation settlement proceeds, the Accused  
9 also made the following representations:

10 A. That he was the lawyer handling the litigation;

11 B. That payment of a settlement amount was certain.

12 C. That he would immediately prepare documentation of the Triebels' interest in the  
13 settlement proceeds.

14 The Accused's representations to the Triebels were false or misleading, and the Accused knew they  
15 were false or misleading when he made them.

16 81.

17 The Accused failed to disclose to the Triebels that he did not have authority from Northwest  
18 or RRMJ to sell interests in the proceeds of the settlement of the litigation, that RRMJ had  
19 purchased 70% of the settlement proceeds, or that what he was actually selling to the Triebels was  
20 25% of RRMJ's 70% of the settlement proceeds at a profit to himself or Granite Head. These facts  
21 were material, the Accused knew they were material, and the Accused had them in mind when he  
22 failed to disclose them.

23 82.

24 The Accused acted as the Triebels' lawyer in the purchase of the interest in the proceeds  
25 from the settlement of the litigation. The Accused's interests in Northwest and RRMJ did or were

1 reasonably likely to affect the Accused's professional judgment on behalf of the Triebels. The  
2 Accused undertook to represent the Triebels in the transaction without their consent after full  
3 disclosure.

4 83.

5 The interests of Northwest and RRMJ, as owners of the settlement proceeds, and the  
6 Triebels, as buyers of an interest in the settlement proceeds, were adverse. The Accused undertook  
7 to represent the Triebels in the transaction without first having obtained the consent of Northwest,  
8 RRMJ and the Triebels to the multiple representations after full disclosure.

9 84.

10 The Triebels purchased what they believed was a 25% share of the litigation settlement  
11 proceeds, but the Accused failed to prepare any documentation of the purchase or procure  
12 Northwest's or RRMJ's promise to repay the Triebels, despite reminders from the Triebels of his  
13 obligation to do so. Thereafter, the Accused continued to conceal from and misrepresent to the  
14 Triebels the status of their investment in the settlement funds. Northwest and RRMJ later refused to  
15 pay any part of the settlement proceeds to the Triebels.

16 85.

17 The aforesaid conduct of the Accused constituted conduct involving dishonesty, fraud, or  
18 misrepresentation; a lawyer's self-interest conflict; a current client conflict of interest; and neglect  
19 of a legal matter entrusted to him, in violation of the following standards of professional conduct  
20 established by law and by the Oregon State Bar:

- 21 A. DR 1-102(A)(3) of the Code of Professional Responsibility;
- 22 B. DR 5-101(A) of the Code of Professional Responsibility;
- 23 C. DR 5-105(E) of the Code of Professional Responsibility; and
- 24 D. DR 6-101(B) of the Code of Professional Responsibility.

1 WHEREFORE, the Oregon State Bar demands that the Accused make answer to this  
2 complaint; that a hearing be set concerning the charges made herein; that the matters alleged  
3 herein be fully, properly and legally determined; and pursuant thereto, such action be taken as  
4 may be just and proper under the circumstances.

5 EXECUTED this 5th day of January, 2007.

6 OREGON STATE BAR

7  
8 By: 

9 JEFFREY D. SAPIRO  
10 Disciplinary Counsel  
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