BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,

HARRY P. FRIEDLANDER, Bar No. 005244

Respondent.

No. PDJ-2012-9104

REPORT AND ORDER IMPOSING SANCTIONS

[State Bar No. 11-3431]

On February 22, 2013, the Hearing Panel ("Panel"), composed of Mark E. Salem, a volunteer public member from Maricopa County, James M. Marovich, a volunteer attorney member from Maricopa County, and the Presiding Disciplinary Judge ("PDJ"), held a one day hearing pursuant to Supreme Court Rules 58(j), Ariz.R.Sup.Ct. Nicole S. Kaseta appeared on behalf of the State Bar of Arizona ("State Bar") and David E. Johnson appeared on behalf of Respondent. Rule 615 of the Arizona Rules of Evidence, witness exclusionary rule, was invoked.[1] The Panel carefully considered the admitted exhibits, the parties' Joint Prehearing Statement, individual prehearing memorandum, testimony, and evaluated the credibility of the witnesses including Respondent. The Panel now issues the following "Report and Order Imposing Sanctions" pursuant to Rule 58(k), Ariz.R.Sup.Ct.

[1] Consideration was given to the sworn testimony of Harry Friedlander, Respondent, Elias Tinoco, Complainant, Jennifer Wiedle and Katherine Merolo.

I. SANCTION IMPOSED:

ATTORNEY SUSPENDED FOR SIXTY (60) DAYS. UPON REINSTATEMENT, TWO (2) YEARS OF PROBATION WITH THE STATE BAR'S LAW OFFICE MANAGEMENT ASSISTANCE PROGRAM ("LOMAP") AND THE PAYMENT OF COSTS OF THESE DISCIPLINARY PROCEEDINGS.

II. BACKGROUND AND PROCEDURAL HISTORY

Probable Cause Orders were filed on October 22, 2012. The Complaint was filed on November 7, 2012 and served by mail on November 8, 2012 pursuant to Rule 47(c), Ariz.R.Sup.Ct. The Complaint alleged violations of ER 1.2(a) (consulting client on means to accomplish objectives of representation), ER 1.3 (diligence), ER 1.4 (communication), 1.16(a) (withdrawing when representation terminated), 1.16(d) (providing reasonable notice to client and protecting client's interests when representation terminated), ER 3.2 (expediting litigation), ER 8.4(c) (knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentation), and ER 8.4(d) (conduct prejudicial to the administration of justice).

Respondent filed his Answer on November 27, 2012. On December 11, 2012, the PDJ held the Initial Case Management Conference and the matter was set for a one day hearing. The State Bar served Respondent with its initial disclosure statement on December 11, 2012. Respondent served his disclosure statement on December 27, 2012. The parties filed a Joint Prehearing Statement on January 25, 2013. Both parties filed their individual prehearing statements on February 6, 2013.

The State Bar argues that a short term suspension is appropriate for Respondent's conduct. The State Bar has the burden of proof. Ariz.R.Sup.Ct. Rule

48(e). The State Bar must prove its allegations by clear and convincing evidence. Ariz.R.Sup.Ct Rule 48(d).

Respondent argues that all allegations are unsupported and should be dismissed.

III. FINDINGS OF FACT

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on April 22, 1978. State Bar's Individual Prehearing Statement 1.

COUNT ONE (File No. 11-3431/Tinoco)

A. First Capital One Collection Case

2. Capital One Bank ("Plaintiff") filed a collection action ("Case I") against Elias Tinoco and his wife on February 1, 2010 in North Mesa Justice Court, case no. CC2010052501. Joint Prehearing Statement 1-2 para. 2. Plaintiff named Mr. Tinoco as the credit card holder and his wife as part of the marital community. *Id.* Plaintiff alleged Mr. Tinoco and his wife owed $3,565.53 plus interest. State Bar Ex. 17, at 87.

3. On March 23, 2010, Mr. Tinoco and his wife filed a "response" to the complaint, pro per. Joint Prehearing Statement 2 para 3.

4. Later that day, after filing the "response" with the court, Mr. Tinoco went to Respondent to seek representation. Hr'g Test. of Elias Tinoco.

5. On April 1, 2010, Mr. Tinoco and Respondent entered into an hourly fee agreement relating to the aforementioned case. State Bar Ex. 20, at 96-98. The fee agreement was limited in scope to representation in Case I. *Id.*, at 96.

6. Pursuant to this fee agreement, Mr. Tinoco retained Respondent to defend him in the debt collection action, to attempt to settle the matter, and to prepare a counterclaim for violation of the Fair Debt Collection Practices Act if Respondent could not settle the matter. Joint Prehearing Statement 2 para 5.

7. Mr. Tinoco made one payment of $1,500 to Respondent. Hr'g Test. of Elias Tinoco.

8. On April 29, 2010, Respondent filed a Notice of Appearance on behalf of Mr. Tinoco and his wife and filed a Motion to Amend Answer, attaching a proposed Amended Answer to the Complaint in accordance with Civil Rule 15(2). Joint Prehearing Statement 2 para. 7. Among other things, the Amended Answer alleged, in order to secure a set-off against any judgment, that the Plaintiff violated the Fair Debt Collection Practices Act. *Id.*

9. On April 30, 2010, Plaintiff filed a Motion for Judgment on the Pleadings which was dated and served on April 29, 2010. State Bar Ex. 12. at 67. This motion, and related supporting documents, was based upon Mr. Tinoco's March 23rd "response." State Bar Ex. 25-29.

10. The Plaintiff's Motion for Judgment on the Pleadings was received by Mr. Tinoco. State Bar Ex. 25, at 108; Hr'g Test. Of Elias Tinoco.

11. On or about that same day Mr. Tinoco gave a copy of that motion to Respondent who discussed that motion with him and told him he would take care of it. State Bar Ex. 15; Hr'g Test. of Elias Tinoco.

12. Respondent did not file a response to the Motion for Judgment on the Pleadings. Joint Prehearing Statement 2 para. 8.

13. On May 6, 2010, the court granted Mr. Tinoco's Motion to Amend Answer. State Bar Ex. 12, at 67.

14. Respondent failed to ever file or serve the amended pleading as required by Ariz.R.Civ.P. 15(a)(2). Hr'g Test. Of Respondent.

15. On June 2, 2010, the court granted Plaintiff's Motion for Judgment on the Pleadings, entering a total judgment against Mr. Tinoco and his wife in the amount of $4,479.53, including principal, interest and costs. Joint Prehearing Statement 2 para. 9; *see also* State Bar Ex. 32, at 133 (indicating judgment for principle, interest and costs).

16. Also on June 2, 2010, the court ruled on a motion to continue a pretrial conference submitted by the Plaintiff. State Bar Ex. 33, at 135. The court held the motion moot because of its prior granting of the judgment on the pleadings. *Id.* The court certified to mailing the ruling on motion to continue a pretrial conference to Respondent. *Id.*

17. On or about November 9, 2010, the Plaintiff prepared a Motion for Summary Judgment in cause CC2010052501-RC, with supporting documents, requesting a remedy of $3,565.53 in principle plus interest and costs. State Bar Ex. 38 – 41. However, the court did not record a filing of the Motion for Summary Judgment, or supporting documents, in its Calendar of Events and Hearings. State Bar Ex. 12.

18. On November 29, 2010, Respondent sent a letter[2] and a copy of the Motion for Summary Judgment, with supporting documents, to Mr. Tinoco. State Bar Ex. 2, at 6. Respondent advised his client that "we have no defense." *Id.*

19. On December 6, 2010, Respondent filed a Response to Motion for Summary Judgment citing the wrong case number[3]. State Bar Ex. 2, at 29-31. However, the court indicated that the Response to Motion for Summary Judgment was premature because the Plaintiff had not filed a Motion for Summary Judgment in case no. CC201023658. State Bar Ex. 2, at 33.

B. Second Capital One Collection Case

20. On April 26, 2010, Plaintiff filed a second collection action ("Case II") against Mr. Tinoco and his wife in North Mesa Justice Court, case no. CC2010203658. Joint Prehearing Statement 3 para. 10. The Plaintiff alleged that Mr. Tinoco's wife opened a credit card with it and owed it the sum of $2,308.97. *Id.* The Plaintiff named Mr. Tinoco's wife as the credit card holder and Mr. Tinoco as part of the marital community. *Id.*

21. Respondent told Mr. Tinoco that he would file a motion to combine the cases. He informed Mr. Tinoco that this would cause them to be transferred to Superior Court. Hr'g Test. of Elias Tinoco. Respondent did not file a motion to consolidate the collection actions brought by Capital One Bank. *Id.*, at 3 para. 11.

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[2] The letter refers to case no. CC2010203658, but the motion and supporting documents are for case no. CC2010052501. Case ending 501 is Case I. *See supra* pp. 5 para. 2. Case ending 658 is Case II. *See infra* pp. 6 para. 19.

[3] The response refers to case no. CC2010203658 (Case II) instead of CC2010052501 (Case I).

22. On or about June 30, 2010, Respondent filed an answer and counterclaim. *Id.*, at 3 para. 12. The answer alleged a violation of the Fair Debt Collection Practices Act. State Bar Ex. 99, at 277.

23. On September 16, 2010, Plaintiff filed a written motion to continue the prehearing conference which was reviewed by Respondent and granted by the court. Ex. 13 bates 74 and Ex. 15 Sept. 10, 2010 entry.

24. On February 12, 2011, Plaintiff and Mr. Tinoco appeared at a pretrial conference. State Bar Ex. 96; Hr'g Test. of Elias Tinoco. Both parties agreed to a continuance for settlement negotiations. State Bar Ex. 96. The next pretrial conference was scheduled for May 10, 2011. State Bar Ex. 95. We find that Respondent did not attend the pretrial conference on February 12, 2011, consistent with his incorrect calendaring of the pretrial conference on May 10, 2011.

25. Respondent admits to missing three additional pretrial conferences: May 10, 2011, August 23, 2011, and September 27, 2011. Hr'g Test. of Respondent; Closing Statement of Respondent.

26. Respondent did not appear at the pretrial conference on May 10, 2011 because he did not have it calendared. State Bar Ex. 69, at 204; Hr'g Test. of Respondent. The pretrial conference was continued because Plaintiff's counsel refused to discuss settlement with Mr. Tinoco. State Bar Ex. 94; Hr'g Test. of Katherine Merolo. The court certified to mailing a notice of the pretrial conference scheduled for May 10, 2011 to Respondent. State Bar Ex. 95. This certification was dated on February 8, 2011. State Bar Ex. 95.

27. Respondent testified he did not appear at the pretrial conference on August 23, 2011 because he was attempting to withdraw as counsel. Hr'g Test. of

Respondent. The pretrial conference was continued because Plaintiff's counsel refused to discuss settlement with Mr. Tinoco, who appeared without counsel. State Bar Ex. 91; Hr'g Test. of Katherine Merolo. The court certified to mailing a notice of the pretrial conference scheduled for August 23, 2011 to Respondent on July 13, 2011. State Bar Ex. 52. Respondent knew the pretrial conference was scheduled for August 23, 2011. State Bar Ex. 54.

28. In a letter dated August 23, 2011, Respondent requested Mr. Tinoco to sign a Motion to Withdraw. State Bar Ex. 55.

29. Mr. Tinoco did not sign nor otherwise consent to Respondent's withdrawal until November 2011 when Mr. Tinoco requested Respondent to withdraw. Hr'g Test. of Elias Tinoco. Prior to this Respondent had never discussed withdrawing from the case with Mr. Tinoco. Mr. Tinoco was not only scared of being unrepresented; he had repeatedly not been advised about the status of his cases and did not want Respondent to withdraw as he needed Respondent. He was also scared of potential legal "tricks" in the language of the Motion to Withdraw. Hr'g Test. of Elias Tinoco.

30. On September 23, 2011, Mr. Tinoco called Respondent through an online service to record phone calls. State Bar Ex. 4, at 53. Respondent's automated telephonic system prompted Mr. Tinoco to enter an extension for the person he wished to reach. State Bar Ex. 68. The system stated that Respondent's extension was 102. *Id.* Mr. Tinoco mis-pressed keys on his telephone and the automated system directed Mr. Tinoco to a voicemail box for 201. *Id.* Mr. Tinoco left a message stating that he would be unavailable to attend the pretrial

conference because he would be in Utah for religious reasons. *Id.* Mr. Tinoco requested that Respondent attend the pretrial conference. *Id.*

31. At least between September 23, 2011 and September 27, 2011, voicemail box 201 was not monitored. Hr'g Test. of Respondent.

32. Respondent did not appear at the pretrial conference on September 27, 2011. The court certified to mailing a notice of the pretrial conference scheduled for September 27, 2011 to Respondent on August 24, 2011. State Bar Ex. 56. Respondent knew the pretrial conference was scheduled for September 27, 2011. State Bar Ex. 57. This pretrial conference was scheduled for 9:00 a.m. State Bar Ex. 56. Besides an entry for this pretrial conference, Respondent's calendar for September 27, 2011 has meeting entries for 8:00 a.m. and 9:30 a.m. State Bar Ex. 71.

33. There was no clear agreement between Respondent and Mr. Tinoco for Respondent to not appear at the pretrial conference scheduled for September 27, 2011. However the order of the court was clear that the parties attendance was mandatory. Respondent was mandated as a result to be present. Ex. 18.

34. It is the business practice of Plaintiff's attorneys to attend pretrial conferences with a prepared Motion and Affidavit for Entry of Default Judgment Without Hearing. Hr'g Test. of Jennifer Wiedle. When Respondent and Mr. Tinoco both did not appear at the pretrial conference on September 27, 2011, Plaintiff's attorney filed a Motion and Affidavit for Entry of Default Judgment Without Hearing on that same date ("Motion for Default Judgment"). State Bar Ex. 85; State Bar Ex. 13, at 73.

35. Respondent received a copy of the Motion for Default Judgment. State Bar Ex. 15, at 82. No response to the Motion for Default Judgment was filed nor did Respondent take any action regarding the motion. State Bar Ex. 13.

36. Not until November 9, 2011, did the court grant the Motion for Default Judgment based upon the non-appearance of either Respondent or Mr. Tinoco at the pretrial conference on September 27, 2011. State Bar Ex. 84; Joint Prehearing Statement 4 para. 18. The judgment was for principal sum of $2,308.97 plus interest and costs for a total amount of $3,364.08 plus post-judgment interest. State Bar Ex. 84, at 256.

37. After Mr. Tinoco had filed a complaint with the State Bar, State Bar Ex. 1, Respondent, on or about January 5, 2012, sent a letter to Mr. Tinoco claiming to have been speaking with opposing counsel. State Bar Ex. 7. Respondent additionally stated the possibility of receiving a $1,000 credit due to a claimed Fair Debt Collection Practices Act violation by the Plaintiff. *Id.*

38. Respondent never filed a motion to withdraw from representing Mr. Tinoco. Joint Prehearing Statement 4 para. 19.

C. Responses to the State Bar

39. In response to a State Bar letter, Respondent stated that the only pretrial conference he missed was September 27, 2011. State Bar Ex. 2, at 3. In a letter to the Attorney Discipline Probable Cause Committee ("ADPCC"), Respondent stated he missed the pretrial conferences on May 10, 2011[4] and September 27, 2011, but not August 23, 2011. State Bar Ex. 66, at 200. At deposition, Respondent stated that he believed, contrary to presented evidence and his

[4] The document incorrectly states May 11, 2010.

Answer, that he was present at pretrial conferences on May 10, 2011 and August 23, 2011. State Bar Ex. 72 at 64:9-69:9, 71:10-72:19.

D. Claimed Mitigation Rising from Resolution of a Separate Case

40. Respondent, in his answer, pre-hearing statement, and testimony, claimed that he secured a settlement for Mr. Tinoco in a separate case[5] by a different creditor. Answer; Respondent's Pre-Hr'g Statement; Hr'g Test. of Respondent. In fact, however, Mr. Tinoco, on his own effort, secured a settlement of this other claim through an insurance policy that covered the debt should Mr. Tinoco become unemployed. Hr'g Test. of Elias Tinoco.

IV. CONCLUSIONS OF LAW

Respondent failed to do what he promised his client he would do. He did not respond to the Motion for Judgment on the Pleadings, file a motion for correction or appeal on the Judgment on the Pleadings, file a motion to consolidate the actions, appear at the February, May, August and September 2011 pretrial conferences, and file a response to the Motion for Default Judgment. All of these were contrary to protecting the interests of his client, the public and the judicial system.

Mr. Friedlander knowingly did not respond to the motion for judgment on the pleadings. He knowingly did not take any action to determine the status of the motion. He should have known not later than on June 2, 2010 that judgment had been entered on the motion. On that date the court ruled a motion to continue was

[5] This other case has confusingly been referred to by different names throughout this proceeding by both parties. Evidence of this case was only allowed to show mitigation. However, because we find Respondent did not secure the settlement, we find no mitigation arising from this third case.

moot due to the court having granted judgment on the pleadings. Mr. Friedlander argues he was merely negligent in not reviewing that minute entry ruling. The evidence clearly convinces us otherwise. When he testified he finally became aware that judgment had been entered against his client, he still refused to do anything. He took no corrective action or appeal.

Mr. Friedlander told his client he would consolidate the collection case. He stated this would cause the matter to be transferred to the Superior Court. He knowingly failed to do so. He acknowledges tracking three cases became confusing for him and argues this contributed to his actions. He knowingly did not properly calendar prehearing conferences and knowingly failed to appear at four pretrial conferences. He knew as a result of his failings that opposing counsel had refused to discuss the case with his client. Notwithstanding he refused to file a motion to continue the November pretrial conference and directed his client to appear and represent himself. He argues that the judge never would grant a motion for continuance, but ignores that the judge did precisely that for the plaintiff in September 2010.

For the Panel, the testimony of Mr. Friedlander was rarely credible. He began his testimony denying he received the motion for judgment on the pleadings around the time of its filing. Such statement was impeached. His testimony was inconsistent throughout and not trustworthy. He argues that termination of representation started sometime before August 23, 2011. Termination was not culminated until November 2011 when Mr. Tinoco affirmatively requested it. Throughout this period of uncertainty, Respondent had a duty to protect his client's interests. Mr. Friedlander failed to appear at the pretrial conference on August 23,

2011 for no other reason than he was in the process of trying to terminate his representation. He was required to continue diligent representation until he was terminated.

By his failure to advocate on his client's behalf, he knowingly permitted motions for judgment, to be entered against his clients. Respondent timely knew of the motions prior to their entry of judgment. However, Respondent thoroughly failed to do or file *anything*, either before or after the judgments were entered.

Respondent knowingly misrepresented his attendance at various pretrial conferences to the State Bar and ADPCC. He gave differing answers on differing dates to the State Bar. While the first erroneous answer may have been due to a failure to be fully informed, the later inconsistent answers were affirmatively given. He misrepresented to his client that he would file an appeal as well as a motion to consolidate the cases. These actions violate ER 8.4(c) (knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent's non-appearance at various pretrial conferences *caused* delays. These are not excused because the parties stipulated to other continuances. His first failure to appear gave him notice that he was causing delay and that the case would not advance without his presence, Respondent violated ER 3.2 (expediting litigation). Mr. Tinoco testified of multiple instances of not being informed of the status of the case. His testimony was credible. Respondent violated ER 1.4 (communication).

We find Respondent violated ER 1.2(a) (consulting client on means to accomplish objectives of representation), ER 1.3 (diligence), 1.16(a) (withdrawing when representation terminated), 1.16(d) (providing reasonable notice to client and

protecting client's interests when representation terminated), and ER 8.4(d) (conduct prejudicial to the administration of justice).

V. SANCTIONS

In consideration of an appropriate sanction, courts generally review the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") as a guideline. Rule 58(k), Ariz.R.Sup.Ct. The appropriate sanction depends on the facts and circumstances of each case.

A. Analysis under the ABA *Standards*

When determining which sanction to impose, consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004). See also *Standard* 3.0.

In this matter, Respondent violated duties owed to the client, the legal system and as a professional. *Standard* 4.4, *Lack of Diligence* is applicable to Mr. Friedlander's violations of ERs 1.2(a), 1.3 and 1.4(a). *Standard* 4.42 provides that:

> Suspension is generally appropriate when:
> (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
> (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Mr. Friedlander failed to abide by his client's objectives regarding the representation and failed to adequately communicate with his client during the representation. He engaged in a pattern of neglect by knowingly failing to file his amended answer and a response to the motion for judgment on the pleadings in File No. CC2010052501, He further knowingly failed to attend the pretrial

conferences in File No. CC2010203658 and knowingly failed to file a response or otherwise oppose the plaintiff's motion for default judgment in File No. CC2010052501. His misconduct caused injury to his client.

Standard 5.1, *Failure to Maintain Personal Integrity* is applicable to Mr. Friedlander's violation of ER 8.4(c). Standard 5.13 provides that:

> Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

Mr. Friedlander knowingly misrepresented to the State Bar his attendance or lack thereof at the pretrial conferences, waffled in his explanations to the State Bar regarding his failure to file a response to a motion for judgment on the pleadings. Mr. Friedlander further misrepresented to the State Bar in his deposition that he never filed a motion to withdraw before without the consent of his client, and misrepresented to his client that he would file an appeal and consolidate the two cases that the plaintiff filed against him and his wife.

Standard 6.2 *Abuse of the Legal System*, is applicable to Mr. Friedlander's violations of ERs 3.2 and 8.4(d). *Standard* 6.22 provides that:

> Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Mr. Friedlander knowingly failed to attend thee prehearing conferences, failed to file a response to a motion for judgment on the pleadings, failed to file an amended answer after the court granted his motion to amend the answer, and failed to

attend three pretrial conferences. Mr. Friedlander's misconduct caused actual injury to his client when the court entered judgment against the client and his wife.

Standard 7.2, *Violations of Other Duties Owed as a Professional*, is applicable to Mr. Friedlander's violation of ERs 1.16(a) and (d) and provides that:

> Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Mr. Friedlander knowingly failed to file a motion to withdraw after his client terminated him in November of 2011. Mr. Friedlander further failed to protect his client's interests after he informed his client that he intended to withdraw and caused actual or potential injury to the client.

After a lawyer's misconduct has been established, the Panel may consider any aggravating and mitigating factors to aid in determining the appropriate sanction. *Standards* at 9.

B. *Standard 9.0*, Aggravating and Mitigating factors

Aggravating factors in attorney discipline proceedings need only be supported by reasonable evidence. *Matter of Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). The Panel determined that he following aggravating factors are supported by the record: 9.22(a) (prior disciplinary offenses)[6] 9.22(g) (refusal to accept

[6] An informal reprimand was imposed in File No. 86-1402 on June 23, 1992 for violating ER 1.4; an informal reprimand was imposed in File No. 90-1927 on November 8, 1993 for violating ER 1.8(a); a censure and two years of probation was imposed in File No. 00-2172 for violating ER 1.15(a) and Rules 43 and 44; an informal reprimand and probation was imposed in File No. 09-1583 on March 10, 2010 for violating ERs 1.3, 1.4, 5.2(b) and 8.4(d); and probation was imposed in File No. 10-0593 for violating ER 1.15(a) and Rule 43.

wrongful nature of conduct), and 9.22(i) (substantial experience in the practice of law).

Mr. Friedlander was on probation during a substantial portion of his representation of Complainant and his misconduct here involves similar violations to those that occurred in 2010.

The Panel determined that the following factors are present in mitigation: 9.32(m) (remoteness of prior offenses; sanctions imposed in 1992, 1993 and 2003), and 9.32 (e) full and free disclosure to disciplinary board or cooperative attitude towards proceedings. Mr. Friedlander offered no evidence to support his assertion that mitigating factor 9.32(g) character and reputation was present.

VI. CONCLUSION

Based on the facts in this matter and in consideration of the applicable *Standards* including the significant aggravating factors and two mitigating factors, the Panel determined that a suspension of sixty (60) days, followed by two (2) years of probation (LOMAP) upon reinstatement and payment of the costs of these disciplinary proceedings, is the appropriate sanction. The suspension shall be effective thirty (30) days from the date of this Report and Order and Respondent shall comply with provisions of Rule 72, Ariz.R.Sup.Ct. The Terms of probation are as follows:

VII. TERMS OF PROBATION

1. Within thirty (30) days of reinstatement, Mr. Friedlander shall contact LOMAP and schedule an assessment.

2. Mr. Friedlander thereafter shall enter into a probation contract with LOMAP based on recommendations made by the LOMAP director or designee and shall

comply with all terms of the contract. The terms and conditions of which are incorporated herein by reference.

3. Mr. Friedlander shall be responsible for costs associated to LOMAP.

4. In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine if the terms of probation have been violated and, if an additional sanction should be imposed. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

DATED this 19th day of March, 2013.

Hon. William J. O'Neil
Presiding Disciplinary Judge

CONCURRING

Mark E. Salem, Volunteer Public Member

James M. Marovich, Volunteer Attorney Member

Original filed with the Disciplinary Clerk
this 19 day of March, 2013.

COPY of the foregoing e-mailed/mailed
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