BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **Nancy D. Petersen, Bar No. 017025** Respondent.	**PDJ-2013-9006** **REPORT AND ORDER IMPOSING SANCTIONS** [State Bar No. 12-1675]

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on January 17, 2013. On January 23, 2013, the complaint was served on Respondent by certified, delivery restricted mail, as well as by regular first class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. A notice of default was properly issued on February 20, 2013, given Respondent's failure to file an answer or otherwise defend. Respondent did not file an answer or otherwise defend against the complainant's allegations and default was properly entered on March 11, 2013, at which time a notice of aggravation and mitigation hearing was sent to all parties notifying them the aggravation/mitigation hearing was scheduled for April 2, 2013, at 9:00 a.m. at 1501 West Washington, Room 109, Phoenix, Arizona 85007-3231. On April 2, 2013, the Hearing Panel, composed of the PDJ, attorney member Stanley R. Lerner and public member Mark E. Salem, considered the SBA's exhibits 1-44, Complainant's testimony, and bar counsel's argument.

FINDINGS OF FACT

COUNT ONE of ONE (File No. 12-1675/Hernandez)

1. Respondent was admitted to practice law in Arizona on December 17, 1996.

2. At all times relevant Respondent was and is suspended from practicing law in Arizona by virtue of two final judgments and orders, dated June 6, 2011 in PDJ-2011-9007 (SBA nos. 09-1893, 09-2267, and 09-2327) and August 14, 2012 in PDJ-2012-9072 (SBA nos. 11-3421, 12-0815, and 12-0833).

3. By Final Judgment and Order filed June 6, 2011, PDJ-2011-9007, State Bar matter nos. 09-1893, 09-2267, and 09-2327, Respondent was suspended from practicing law for 90 days "effective immediately."

4. Respondent filed an Application for Reinstatement on October 18, 2011.

5. The State Bar opposed Respondent's application on the ground that she did not comply with the Supreme Court Rule 72 requirements of her suspension which is a prerequisite for reinstatement under Rule 64(e)(2).[1]

6. On November 9, 2011, the Presiding Disciplinary Judge denied Respondent's application with instructions to comply with Rule 72 as a condition precedent to reinstatement.

7. Thereafter, Respondent did not comply with Rule 72, re-apply for reinstatement, or obtain an order of reinstatement.

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[1] All references herein to "Rules" are to the Arizona Rules of the Supreme Court.

8. Complainant, a Texas resident, first spoke to Respondent in August 2011 and, in October 2011, hired Respondent to represent her in a family court matter.

9. Complainant thought that Respondent was a lawyer, fully licensed and authorized to represent clients in Arizona courts.

10. Complainant signed a written fee agreement dated October 5, 2011, in which Respondent represented herself to be an attorney licensed in Arizona and California.

11. The written fee agreement states that Respondent would provide "full representation" in the case, including "all matters up to and including the hearing", for a flat fee of $2,000 plus costs.

12. Complainant paid Respondent $1,000 and agreed to pay Respondent $150 per month; however, when Complainant saw that Respondent was not performing as agreed, she stopped making payments.

13. Unbeknownst to Complainant, Respondent filed court documents on pleading paper that identified Complainant as her own representative "In Pro Per", and signed Complainant's name.

14. It is obvious even to an untrained eye that Complainant's "signatures" on the court filings do not match her genuine signature on the fee agreement.

15. Although Respondent promised Complainant that she would attend court, Respondent concocted excuses shortly before court hearings as to why she could not attend and left Complainant to fend for herself in court.

16. Because Respondent never filed a Notice of Appearance in the case, the court and opposing party were none the wiser.

17. When Complainant pressed Respondent several times for an explanation as to why she had not entered an appearance, Respondent lied.

18. The day prior to trial, Respondent told Complainant that she would not be able to attend.

19. Respondent told Complainant over the telephone what questions to ask the witnesses, and how to respond to questions on cross examination.

20. The court denied Complainant's request to relocate her daughter to Texas, and the father's request to enforce child support and arrears.

21. Respondent failed to respond to SBA screening by either the initial or extended deadlines.

22. In her dealings with Complainant, Respondent practiced law while suspended in violation of Rule 31 and Rule 42, ER 5.5.

23. By failing to respond to the SBA's screening investigation, Respondent knowingly failed to respond to a lawful demand for information in violation of Rule 42, ER 8.1 and Rule 54(d).

24. By leading Complainant to believe that she was admitted to practice law in Arizona and would provide "full representation" in the case, including "all matters up to and including the hearing", by misrepresenting Complainant's signature on court filings, and by lying to Complainant about the reasons Respondent was unable to attend court, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 42, ER 8.4(c).

25. By failing to obey the Presiding Disciplinary Judge's Order to comply with Rule 72 as a condition precedent to reinstatement, and by failing to notify Complainant of her suspension, Respondent violated Rules 54(c) and 72.

CONCLUSIONS OF LAW

Respondent failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Respondent violated the following: Rule 31; Rule 42, E.R.s 5.5, 8.1, and 8.4(c); Rules 54(c) and (d); and Rule 72.

ABA STANDARDS ANALYSIS

"Sanctions imposed shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* ["*Standards*"] and, if appropriate, a proportionality analysis." Rule 58(k).

According to the *Standards*, in imposing a sanction the following factors should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard* 3.0.

(1) Duties violated

Respondent violated her duties to her client (E.R. 8.4(c)), the public (E.R. 8.4(c)), and the legal profession (E.R.s 5.5, 8.1, and 8.4(c); and Rules 31, 54, and 72).

(2)Mental State

Respondent acted knowingly and intentionally in conducting herself as described above.

(3) Actual or Potential Injury

Respondent caused actual injury to her client by misleading her client into believing that she was authorized to practice law and would participate in court proceedings; taking her client's money under false pretenses; withholding crucial information from her client about her actual status with the SBA; lying to her client about why she had not entered an appearance in court; and leaving her client to fend for herself in court without legal representation.

The applicable *Standards* are:

4.6 Lack of Candor

4.61-Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

5.1 Failure to Maintain Personal Integrity
5.11-Disbarment is generally appropriate when:

* * *

(b) a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

7.0 Violations of other Duties Owed as a Professional
7.1-Disbarment is generally appropriate when a layer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

7.2-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.

8.0 Prior Discipline Orders
8.1-Disbarment is generally appropriate when a lawyer:

* * *

(b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

"The standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations . . . ." *Standards*, "II. Theoretical Framework". Thus, the presumptive sanction herein is disbarment.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors are present in this matter:

Standard 9.22

(a) prior disciplinary offenses–Respondent's long history of offenses is described in State Bar exhibits 11-38, and cover the period from 2004-2012;

(b) dishonest or selfish motive–Respondent misled her client into believing that Respondent was a licensed lawyer in order to collect fees;

(c) a pattern of misconduct–Several of Respondent's violations are the same as those for which she has been disciplined previously, including Rule 42 ERs 5.5, 8.1(b), and 8.4(c); and Rules 54(c) and (d), and 72;

(d) multiple offenses–Respondent violated seven different ERs and rules, in factually distinct ways (unauthorized practice of law, misrepresentations, failure to respond to a State Bar screening investigation, failure to notify client of suspension);

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency–Respondent failed to respond to a State Bar screening investigation, made false statements in her letter directed to the Attorney Discipline Probable Cause Committee ("ADPCC"), and falsely stated that she responded to the State Bar's screening investigation when, in fact, she did not do so. "Failure to cooperate with disciplinary authorities is a significant aggravating factor." *Matter of Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1172 (1988);

(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process–see (e) above;

(g) refusal to acknowledge wrongful nature of conduct;

(h) vulnerability of victim;

(i) substantial experience in the practice of law; and

(j) indifference to making restitution-Respondent did not refund any money to her client, contrary to the false statement contained in her letter to the ADPCC that she returned her client's money order to her. Respondent has taken no steps to make restitution to her client.

The Hearing Panel finds that there are no mitigating factors present in this matter.

PROPORTIONALITY

The Hearing Panel does not believe that a proportionality analysis is necessary or appropriate in this case. Respondent's long history of disciplinary offenses, the serious nature of the offenses she committed herein, the presumptive sanction of disbarment, Respondent's failure to even appear and participate in these proceedings, and the overwhelming preponderance of aggravating over mitigating factors, are such as to warrant imposition of disbarment without the need to conduct a proportionality analysis.

CONCLUSION

Lawyer discipline has many purposes which are not to punish a lawyer but, rather, to protect the public, the profession, and the administration of justice; deter similar conduct among other lawyers; preserve confidence in the integrity of the bar; foster confidence in the legal profession and the self-regulatory process; maintain the integrity of the profession in the eyes of the public; and assist, if possible, in the rehabilitation of an errant lawyer. *In re Peasley, 208 Ariz. 27, 90*

P.3d 764 (2004); In re Scholl, 200 Ariz. 222, 25 P.3d 710 (2001); *In re Walker*, 200 Ariz. 155, 24 P.3d 602 (2001); *In re Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990); *In re Hoover*, 161 Ariz. 529, 779 P.2d 1268 (1989); and *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). In view of the the facts deemed admitted by Respondent's default, the above-recited findings of fact and conclusions of law, the applicable *Standards*, the aggravating factors, the absence of mitigating factors, and the purposes of the attorney discipline system, the Hearing Panel orders as follows:

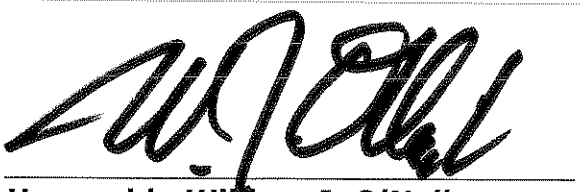
1. Respondent shall be disbarred from the practice of law effective immediately;

2. Respondent shall pay restitution of one thousand dollars ($1,000.00) to Maria Hernandez; and

3. Respondent shall pay all costs and expenses incurred by the State Bar and the Office of the Presiding Disciplinary Judge in this proceeding.

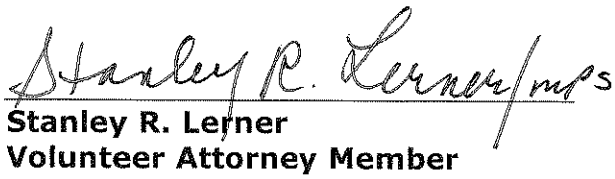
4. A Final Judgment and Order will follow.

DATED this 8th day of April, 2013.



Honorable William J. O'Neil
Presiding Disciplinary Judge

Mark E. Salem
Volunteer Public Member



Stanley R. Lerner
Volunteer Attorney Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 9 day of April, 2013.

Copies of the foregoing mailed and emailed
this 9 day of April, 2013, to:

Nancy D. Petersen
P.O. Box 50007
Phoenix, Arizona 85076-0007
Email: petersen2office@gmail.com
Respondent

David L. Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy of the foregoing hand-delivered
this 9 day of April, 2013, to:

Sandra Montoya
Lawyer Regulation Records Manager
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Phoenix, Arizona 85016-6266

by: M Smith

BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **NANCY D. PETERSEN, Bar No. 017025** Respondent.	**PDJ-2013-9006** [State Bar File No. 12-1675] **FINAL JUDGMENT AND ORDER**

This matter having come on for hearing before the Hearing Panel of the Supreme Court of Arizona, it having duly rendered its decision; and no appeal having been filed and the time for appeal having passed, accordingly,

IT IS HEREBY ORDERED that Respondent, **Nancy D. Petersen**, is hereby disbarred from the State Bar of Arizona and her name is hereby stricken from the roll of lawyers. Ms. Petersen is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court. Ms. Petersen shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED that Respondent, **Nancy D. Petersen**, pay restitution to Maria Hernandez in the amount of $1,000.00 within 30 days from the date of service of this Order.

IT IS FURTHER ORDERED granting Judgment to the State Bar of Arizona for costs in the amount of $2,000.00 with interest as provided by law.

IT IS FURTHER ORDERED that Ms. Petersen pay those costs and expenses awarded to the State Bar of Arizona in the amount of $2,000.00, within thirty (30) days from the date of service of this Order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 30 day of April 2013.

The Honorable William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 30th day of April, 2013.

Copies of the foregoing mailed/emailed
this 30th day of April, 2013, to:

Nancy D. Petersen
P.O. Box 50007
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Respondent

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By: _____