

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

**J. BRADLEY NICHOLS,
Bar No. 017404,**

Respondent.

PDJ-2013-9025

**RULE 58(k) HEARING PANEL
REPORT**

State Bar No. 12-1459

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on March 18, 2013. On March 20, 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 April 16, 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 May 3, 2013, at which time a notice of aggravation and mitigation hearing was sent to all parties notifying them that the aggravation/mitigation hearing was scheduled for May 21, 2013 at 9:00 a.m., at the State Courts Building, 1501 West Washington, Phoenix, Arizona 85007-3231. On March 21, 2013, the Hearing Panel, duly empanelled, heard argument.

FINDINGS OF FACT

The facts listed below are those set forth in the SBA's complaint and were deemed admitted as a result of Respondent's default.

1. Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona in October of 1996.

2. On February 24, 2012, Respondent was administratively suspended for non-payment of dues.

COUNT ONE (File no. 12-1459/Nichols)

3. A Texas law firm referred an Arizona personal injury case to Respondent related to an auto accident that occurred in Maricopa County on February 24, 2007.

4. Respondent attempted to timely file a Complaint by mail on February 20, 2009, in Maricopa County Superior Court (CV2009-090963), but the filing was rejected by the Clerk's office for three reasons: Respondent used an old version of the Civil Cover Sheet, the Summons did not have a title and the Certificate was deemed by the Clerk to have two titles.

5. Respondent re-filed the action on March 4, 2009, two weeks beyond the two year statute of limitations and opposing counsel moved to dismiss the Complaint as untimely.

6. In Responding to opposing counsel's Motion to Dismiss, Respondent requested an equitable tolling of the statute of limitations, but the request was denied and the matter was dismissed on July 20, 2009.

7. Respondent appealed the ruling in Division One of the Arizona Court of Appeals (CA-CV 09-0598) and the dismissal was reversed and remanded to the trial court for further proceedings on March 5, 2010.

8. On September 23, 2011, opposing counsel filed a Motion to Dismiss for Lack of Prosecution. In the motion, opposing counsel alleged that Respondent failed to provide a disclosure statement and failed to answer discovery.

9. Respondent did not respond to the motion and the matter was dismissed with prejudice on November 9, 2011.

10. Respondent failed to communicate with his client concerning the outcome of the case and failed to provide him with any paperwork he may have prepared on the client's behalf. Respondent communicated with the client on only one occasion during the entirety of the representation. That communication took place a few days prior to the filing of the Complaint.

11. Respondent has failed to respond to the Bar's multiple attempts to communicate by phone and letter concerning the investigation and has not updated his address in the Bar membership directory.

12. In February of 2012, Respondent was placed on administrative suspension for failing to comply with MCLE requirements.

13. ER 1.3: Respondent failed to provide diligent representation resulting in dismissal of his client's case.

14. ER 1.4: Respondent failed to reasonably communicate with his client and abandoned his client's case.

15. Rule 8.4(d): Respondent engaged in conduct prejudicial to the administration of justice by abandoning his client's case.

16. Rule 32(c)(3): Respondent failed to maintain a current address in the member database.

17. Rule 55(b)(1): Respondent failed to provide a written response to bar counsel concerning his client's allegations.

18. Rule 72: Respondent failed to notify his client that he was suspended from the practice of law in February of 2012.

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 42, Ariz. R. Sup. Ct., specifically E.R.s 1.3, 1.4, 8.4(d) and Rules 32(c)(3), 55(b)(1) and Rule 72.

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). 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.

Duties violated:

Respondent violated his duty to clients, thereby implicating *Standard* 4.4. *Standard* 4.41 states:

Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client;

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client

In this matter, Respondent abandoned his practice and knowingly failed to perform services for his client causing serious injury to his client in the form of the dismissal with prejudice of his client's personal injury claim. Therefore, *Standard 4.41* is applicable.

AGGRAVATING AND MITIGATING FACTORS

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

- *Standard 9.22 (e)* - bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency: Respondent did not substantively respond in the SBA's investigation nor did he speak to SBA investigators. "Failure to cooperate with disciplinary authorities is a significant aggravating factor." *Matter of Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1172 (1988).

The Hearing Panel finds the following mitigating factor applies:

- *Standard 9.32(a)* absence of a prior disciplinary record: Respondent has no prior discipline.

The Hearing Panel finds the sole mitigating factor does not outweigh the aggravating factor. Disbarment is appropriate.

PROPORTIONALITY

In the past, the Supreme Court has consulted similar cases in an attempt to assess the proportionality of the sanction recommended. See *In re Struthers*, 179 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept of proportionality review is "an imperfect process." *In re Owens*, 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases "are ever alike." *Id.*

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. See *In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In the Matter of a Member of the State Bar of Arizona, Joseph Didio, SB-09-0018-D, is applicable and proportional as Mr. Didio was disbarred for failing to adequately communicate, failing to diligently represent his clients, failing to perform work, and essentially abandoning his practice. Mr. Didio violated ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.7, 1.16, 3.4(c), 5.1, 8.1(b), 8.4(c), 8.4(d) and Rules 53(d) and (f).

In the matter of a Member of the State Bar of Arizona, Jeff Jackson, SB-09-0079-D, is applicable and proportional. Mr. Jackson was disbarred for failing to adequately communicate and diligently represent clients, collecting retainers and fees from his clients without performing work and essentially abandoning his

practice. Mr. Jackson violated ERs 1.3, 1.4(a)(4), 1.5(a), 1.5(b), 1.15(d), 1.16, 3.2, 3.4(a), 3.4(d), 8.1(b), 8.4(d) and Rule 53(c), 53(d) and 53(f).

This case is similar to the above in that they all involve, among other things, abandonment of the practice of law.

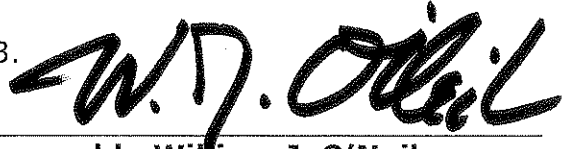
CONCLUSION

The Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

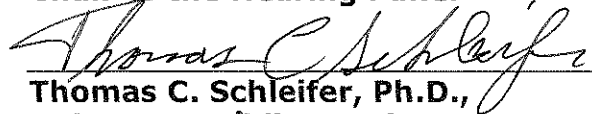
The Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the appropriate sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. Based upon the above, the Hearing Panel orders as follows:

1. Respondent shall be disbarred from the practice of law.
2. Respondent shall pay all costs and expenses incurred by the SBA and the Office of the Presiding Disciplinary Judge in this proceeding.
3. The Hearing Panel will enter the appropriate Final Judgment and Order.

DATED this 21st day of May, 2013.



**Honorable William J. O'Neil
Presiding Disciplinary Judge
Of the Supreme Court of Arizona
Chair of the Hearing Panel**



**Thomas C. Schleifer, Ph.D.,
Volunteer Public Member**



**Glen S. Thomas,
Volunteer Attorney Member**

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 21st day of May, 2013.

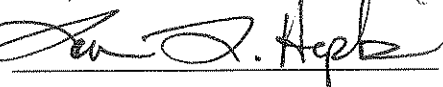
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this 21st day of May, 2013, to:

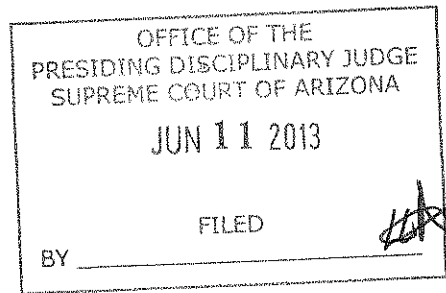
J. Bradley Nichols
Nichols & Associates, PLC
405 E. Wetmore Road, Suite 117-511
Tucson, Arizona 85705-1792
Email: aznmlaw@gmail.com
Respondent

J. Bradley Nichols
1001 Leah Avenue, Apt 525
San Marcos, Texas 78666
Respondent's Alternate Address

Copy of the foregoing hand-delivered
this 21st day of May, 2013, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

By: 



**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

J. BRADLEY NICHOLS,
Bar No. 017404

Respondent.

PDJ-2013-9025

FINAL JUDGMENT AND ORDER

[State Bar File No. 12-1459]

FILED JUNE 11, 2013

This matter having come on for an aggravation/mitigation hearing before a Hearing Panel of the Supreme Court of Arizona and a decision in this matter having been duly rendered on March 21, 2013, and no appeal having been filed, now accordingly:

IT IS HEREBY ORDERED that Respondent, **J. BRADLEY NICHOLS**, is disbarred for his conduct in violation of the Arizona Rules of Professional Conduct, **effective immediately**. Mr. Nichols is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the court. Mr. Nichols 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 no further disciplinary action shall be taken in reference to the matters that are the subject of the charges upon which this Judgment and Order of Disbarment are based.

IT IS FURTHER ORDERED granting Judgment to the State Bar of Arizona for costs in the amount of \$2,019.20 with interest as provided by law.

IT IS FURTHER ORDERED that Mr. Nichols pay those costs and expenses awarded to the State Bar of Arizona in the amount of \$2,019.20, 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 11TH day of June 2013.

/s/ William J. O'Neil

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 11th day of June, 2013.

Copies of the foregoing mailed/emailed
this 11th day of June 2013, to:

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Respondent

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by: [MSmith](#)