

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

GENE C. CHANG,
Bar No. 023147

Respondent.

PDJ-2013-9083

**REPORT AND ORDER
IMPOSING SANCTIONS**

[State Bar Nos. 12-0317 and 12-1803]

FILED NOVEMBER 29, 2013

PROCEDURAL HISTORY

The State Bar of Arizona (SBA) filed its complaint on September 13, 2013. On September 20, 2013, the complaint was served on Respondent Chang by certified mail, delivery restricted to Mr. Chang, 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 of the Supreme Court of Arizona ("PDJ") was assigned to the matter.

A notice of entry of default was properly filed on October 17, 2013, and served on Mr. Chang. That notice cautioned him that "[a]n effective entry of default shall not be set aside except in cases where such relief would be warranted under Rule 60(c) of the Arizona Rules of Civil Procedure." Despite that notice, Mr. Chang did not file an answer or otherwise defend against the allegations in the complaint, and an Effective Entry of Default was filed by the Disciplinary Clerk and

became effective on November 6, 2013. That notice again cautioned Mr. Chang that "Default shall not be set aside except in cases where such relief would be warranted under Rule 60(c) of the Arizona Rules of Civil Procedure."

That Effective Entry of Default also included a notice that was sent to all parties notifying them that an aggravation/mitigation hearing was scheduled for November 26, 2013, at 1:30 p.m. at 1501 West Washington, Room 109, Phoenix, Arizona 85007-3231.

On November 26, 2013, the Hearing Panel, comprised of the PDJ, Andrea J. Curry (volunteer attorney member) and Mark Salem (volunteer public member) heard argument. James D. Lee appeared on behalf of the State Bar. Mr. Chang did not appear at the scheduled aggravation/mitigation hearing.

The State Bar bears the burden of proof by clear and convincing evidence that Mr. Chang committed the violations charged. Mr. Chang failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and became effective. Therefore, pursuant to Rule 58(d), Ariz. R. Sup. Ct., Mr. Chang's failure to answer resulted in the allegations of the complaint being deemed admitted.

The purpose of the aggravation/mitigation hearing is not only to weigh mitigating and aggravating factors, but also to assure there is a nexus between a respondent-lawyer's judicially admitted behavior and the merits of the State Bar's case. A respondent-lawyer against whom a default has been entered no longer has the right to litigate the merits of the factual allegations of the complaint. However, a respondent-lawyer retains the right to appear and participate in the hearing concerning that nexus and the sanctions sought. Included with that right to appear

is the right to dispute the allegations relating to aggravation and to offer mitigation. Mr. Chang was afforded those rights.

At the same time, a hearing panel does not operate in a vacuum. The State Bar properly demanded documents and records from Mr. Chang. The testimony of a defaulted respondent-lawyer is not a reliable substitute for documents and records that were required to be disclosed but were not. As pointed out above, Mr. Chang did not appear in this matter. Notwithstanding, a hearing panel is not precluded from giving consideration to the failure to cooperate or disclose records or documents.

Regardless, due process requires a hearing panel to independently determine whether, under the facts deemed admitted, ethical violations have been proved by clear and convincing evidence. The hearing panel must also exercise discretion in deciding whether sanctions should issue for a respondent-lawyer's misconduct. If a hearing panel finds that sanctions are warranted, then it independently determines which sanctions should be imposed. It is not the function of a hearing panel to simply endorse or "rubber stamp" any request for sanctions.

The State Bar seeks a two year suspension and probation.

FINDINGS OF FACT

GENERAL ALLEGATIONS

We hereby adopt and incorporate by reference the factual background of this case, as effective entry of default resulted in the facts being deemed admitted. [See admitted complaint for further detailed findings of fact.] Mr. Chang was first admitted to practice law in the state of Arizona on October 21, 2004. He was summarily suspended from the practice of law in Arizona on February 22, 2013, for

failing to comply with the requirements of Mandatory Continuing Legal Education ("MCLE") and remained suspended at the time this complaint was filed.

At various times, Mr. Chang changed his business address but failed to notify the State Bar of such changes within 30 days. Some correspondence the State Bar mailed to Mr. Chang was returned as undeliverable. [See admitted complaint for more detailed information regarding Mr. Chang's various addresses and the returned mail.]

COUNT ONE (File No. 12-0317/Goldberg)
Representation of Charles Jeffrey Goldberg

On November 16, 2010, Charles Jeffrey Goldberg (Goldberg) was indicted on one count of aggravated driving under the influence while his license was suspended, revoked or restricted (a class 4 felony) and one count of aggravated driving with an alcohol concentration of 0.08 or more while his license was suspended, revoked or restricted (a class 4 felony) (Pima County Superior Court File No. CR2010-3937-001). On that same date, a Deputy Pima County Attorney filed an *Allegation of Prior DUI Conviction* against Goldberg.

On December 13, 2010, the Law Office of Thomas Wilson, P.C., filed a *Notice of Appearance* on Goldberg's behalf.

On January 25, 2011, Goldberg accepted a plea offer and pled guilty to one count of endangerment (a class 6 felony) and one count of driving while under the influence of liquor, drugs, vapor releasing substances or any combination (a class 1 misdemeanor). Goldberg admitted to a prior misdemeanor DUI conviction.

On February 25, 2011, Pima County Superior Court Judge Pro Tem Jose Robles sentenced Goldberg to three years of probation, which included 30 days in jail.

On April 29, 2011, Goldberg filed a *Petition for Post-Conviction Relief* in CR2010-3937-001 in which he alleged ineffective assistance of counsel.

On May 19, 2011, Judge Robles appointed Mr. Chang to represent Goldberg and ordered the preparation of the record and transcripts. Judge Robles ordered the filing of a petition for post-conviction relief within 60 days of the deadline he imposed for preparation of the record and transcripts. Mr. Chang was "copied" on Judge Robles' written notice containing the foregoing orders.

On or about June 20, 2011, Mr. Chang met with Goldberg and his wife and discussed issues pertaining to Goldberg's petition for post-conviction relief.

On August 4, 2011, Mr. Chang filed a *Petitioner's Request for Additional Transcripts* in which he requested the record be expanded to include a March 3, 2011, hearing and preparation of the transcript of that hearing. In addition, Mr. Chang moved the court to continue the due date for filing his "opening brief" (i.e., petition for post-conviction relief).

On August 10, 2011, Judge Robles granted Mr. Chang's request for an additional transcript; ordered preparation of a transcript of the March 3, 2011, hearing; and ordered that a petition for post-conviction relief be filed within 60 days of the deadline he imposed for preparation of the additional transcript, or by December 9, 2011. Mr. Chang was "copied" on Judge Robles' written order.

On September 20, 2011, Mr. Chang filed a *Petitioner's Motion to Extend Time* in which he sought an extension of time to file an "opening petition" because he needed additional time to visit Goldberg and "complete review of disclosure and issues."

On September 28, 2011, Judge Robles entered an order (filed on September 29, 2011) stating he had previously granted Mr. Chang's request for an additional transcript and that he had given the court reporters until October 10, 2011, to prepare the transcript. That order directed the filing of a petition for post-conviction relief within 60 days of receipt of the additional transcript. Mr. Chang was "copied" on Judge Robles' written order.

The additional transcript was available for retrieval by Mr. Chang and the Pima County Attorney's Office as of January 19, 2012. Mr. Chang was "copied" on a notice, dated January 19, 2012, that the additional transcript was available. Based upon Judge Robles' order dated September 28, 2011, Mr. Chang had 60 days from that date (i.e., until March 19, 2012) to file a petition for post-conviction relief.

On January 31, 2012, Mr. Chang filed a *Rule 32 Montgomery Notice, Motion to Extend Time for Pro Se Petition, and Motion to Withdraw* in which he (a) stated he could not find any tenable issue for review and could not proceed; (b) moved the court to grant Goldberg 60 days to file a *pro se* "brief" (i.e., petition for post-conviction relief); and (c) moved to withdraw if the court failed to find an arguable issue on its own review or in Goldberg's *pro se* petition. Goldberg was "copied" on Mr. Chang's motion, but never received a copy of the motion.

By letter dated January 31, 2012, Goldberg informed the court that he was having difficulty communicating with Mr. Chang and that he was unaware of the status of his petition for post-conviction relief.

On February 3, 2012, Judge Robles entered an order (filed on February 7, 2012) in which he stated that the court had received a letter from Goldberg, who

advised that he was having difficulty communicating with Mr. Chang and that he was unaware of the status of his petition for post-conviction relief. Judge Robles' written order also stated that it was not until January 19, 2012, that the last transcript was prepared and the notice of preparation sent to Mr. Chang. Judge Robles ordered Mr. Chang, by March 1, 2012, to provide the court and Goldberg with written notification of the status of Goldberg's petition for post-conviction relief. Mr. Chang was "copied" on that order.

On March 1, 2012, Mr. Chang filed an *Addendum to Rule 32 Montgomery Notice, Motion to Extend Time for Pro Se Petition, and Motion to Withdraw* in which he stated he could not find any tenable issue for review and could not proceed. Mr. Chang moved the court to grant Goldberg 60 days to file a *pro se* "brief" (i.e., petition for post-conviction relief), and moved to withdraw if the court failed to find an arguable issue on its own review or in Goldberg's petition. Goldberg was "coped" on Mr. Chang's *Addendum*, but never received a copy of it.

On March 2, 2012, Judge Robles entered an order (filed on March 6, 2012) directing Goldberg to file his own Rule 32 petition for post-conviction relief by May 31, 2012, and ordered Mr. Chang to "forthwith mail, FedEx or UPS to [Goldberg] the file" and to "aid in the *pro se* petition if requested by [Goldberg] to do so." Goldberg was "copied" on that order, but Mr. Chang was not.

On or about March 7, 2012, Goldberg sent a letter to Judge Robles in which he requested a change of counsel and an extension of time to file his *pro per* petition for post-conviction relief.

Also on March 7, 2012, Mr. Chang met with Goldberg. Goldberg claims it was at that meeting that Mr. Chang first informed him that he had filed the

Montgomery Notice and that he had moved to withdraw as his counsel.

On June 18, 2012, Judge Robles denied Goldberg's request for change of counsel and ordered Goldberg to file his *pro se* petition for post-conviction relief by August 1, 2012. Mr. Chang and Goldberg were "copied" on Judge Robles' written order.

On October 2, 2012, Pima County Superior Court Judge Pro Tem Michael Cruikshank summarily dismissed Goldberg's petition for post-conviction relief because Goldberg had not filed a petition or requested an extension of time within which to file a petition. Although Goldberg was "copied" on Judge Robles' June 18, 2012, order, he claims he was unaware that the court had granted an extension of time within which to file a petition for review.

During the period of representation, Mr. Chang failed to adequately communicate with Goldberg. For example, Goldberg made a number of unsuccessful attempts to communicate with Mr. Chang, including leaving numerous voice-mail messages for him that went unreturned. On those occasions when Mr. Chang returned Goldberg's telephone calls, it was weeks later. Mr. Chang failed to provide Goldberg with copies of the various court orders and, upon information and belief, did not communicate with Goldberg in writing. In addition, Mr. Chang failed to provide Goldberg with information about the status of his case, despite Goldberg's repeated requests for that information. Between June 20, 2011, and March 7, 2012, Goldberg had only three telephone conversations with Mr. Chang, one of which was to schedule a meeting with Mr. Chang on March 7, 2012. Mr. Chang, on the other hand, believes his communication was adequate because it was more than most of his clients received.

Mr. Chang provided Goldberg with some information and/or documents, including transcripts, to assist him in filing his own petition for post-conviction relief, but failed to provide him with the entire file he maintained on Goldberg's behalf. In addition, Mr. Chang failed to assist Goldberg with his *pro se* petition for post-conviction relief.

Failure to Respond or to Timely Respond to Bar Counsel re: File No. 12-0317
and Failure to Notify the State Bar of a Change of Address

On or about March 16, 2012, Charles Jeffrey Goldberg (Goldberg) submitted to the State Bar allegations that Mr. Chang had failed to properly represent him.

On June 27, 2012, Senior Bar Counsel Roberta Tepper mailed a letter to Mr. Chang at his address of record with the State Bar of Arizona. That letter stated in part:

The State Bar received a bar charge against you from Jeff Goldberg on March 22, 2012. A copy of the charge is enclosed for your reference.

We are considering whether a screening investigation of Mr. Goldberg's allegations is warranted but require information from you to do so. I am therefore requesting that you provide me with an informal written response addressing Mr. Goldberg's allegations on or before July 9, 2012. In addition to any information you believe may be helpful to me in assessing Mr. Goldberg's allegations, please be certain that your response addresses the following specific issues:

- Whether you failed to file a status report as required by the Court, and if so, why it was not timely filed;
- Mr. Goldberg's allegations that you failed to communicate with him;
- Mr. Goldberg's allegations that you failed to provide him with necessary information about his case including but not limited to transcripts.

.

If you have questions about this request please contact me at the number above. I will expect to receive your written response in my office no later than July 9, 2012. Thank you for your anticipated cooperation.

Mr. Chang failed to submit a written response to Goldberg's charges, as directed by Senior Bar Counsel Tepper in her letter dated June 27, 2012.

On July 16, 2012, Bar Counsel Stacy Shuman mailed an initial screening letter to Mr. Chang at his address of record with the State Bar of Arizona. That letter stated in part:

The State Bar has received information concerning your professional conduct that warrants a screening investigation pursuant to Rule 55(b), Ariz. R. Sup. Ct. At this point, the matter is not considered a formal complaint, but rather a "bar charge" that is being investigated through a "screening investigation." Your participation in the screening investigation is extremely important, as Bar Counsel will make a recommendation at the end of the investigation as to the disposition of this matter. Pursuant to ER 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct., you have a duty to cooperate with this investigation. Failure to fully and honestly respond to, or cooperate with, the investigation is, in itself, grounds for discipline.

A copy of the information received by the State Bar has been included with this letter. Please submit a written response to the enclosed information, directed to my office, within 20 days of the date of this letter. . . . If you cannot file a timely response, you should contact my office immediately. . . .

The ethical rules that should be addressed in your response include, but are not limited to: E.R.s 1.2, 1.3, 1.4, 8.4(d), and Rule 54.

(Underline in original).

Mr. Chang failed to submit a written response to Goldberg's charges, as directed by Bar Counsel Shuman in her letter dated July 16, 2012.

On August 15, 2012, Bar Counsel Shuman mailed another letter to Mr. Chang at his address of record with the State Bar. That letter stated in part:

Reference is made to my letter dated July 16, 2012 advising you of the allegations of Mr. Goldberg. A copy of that letter is enclosed. It was requested that your response be filed within 20 days of the date of my letter. This office has no record of the receipt of your response.

Pursuant to Rule 47(h) and 55(b)(1)(B), Ariz. R. Sup. Ct., you are hereby given notice that your failure to comply with this request for

response **within ten (10) days of the date of this letter** may require the taking of your deposition pursuant to subpoena, or a recommendation to the Attorney Disciplinary Probable Cause Committee for an order of probable cause. Please be further advised that, should your failure to cooperate result in the taking of a deposition pursuant to Rule 47, you "shall be liable for the actual costs of conducting the deposition. . . ." If you fail to comply with an investigative subpoena, you may be subject to contempt proceedings, and could be summarily suspended.

I again refer you to Rule 54(d), and caution you that failure to cooperate with a disciplinary investigation is grounds, in itself, for discipline.

(Bold and ellipsis in original).

Mr. Chang failed to submit a written response to Goldberg's charges, as directed by Bar Counsel Shuman in her letter dated August 15, 2012.

On September 19, 2012, Bar Counsel Shuman called Mr. Chang's telephone number on record with the State Bar and left a voice-mail message directing him to call her regarding his failure to submit a written response to Goldberg's charges. Mr. Chang failed to return Bar Counsel Shuman's call.

On September 28, 2012, Bar Counsel Shuman called Mr. Chang's telephone number on record with the State Bar and left a voice-mail message directing him to call her as soon as possible regarding his failure to submit a written response to Goldberg's charges.

On October 2, 2010, Bar Counsel Shuman spoke by telephone with Mr. Chang, who advised that he had changed his address but had not yet notified the State Bar. Bar Counsel Shuman directed Mr. Chang to immediately inform the State Bar of his current address. She agreed to re-send the screening letters to Mr. Chang at 177 North Church, Suite 200, Tucson, Arizona 85701. Mr. Chang told Bar Counsel Shuman that he would submit a written response to Goldberg's charges within 10 days.

On October 3, 2012, Bar Counsel Shuman mailed a letter to Mr. Chang that stated:

Pursuant to our telephone conversation of October 2, 2012, I have enclosed with this letter copies of the screening letters in the above-referenced files (including the bar charge received from each Complainant), letter dated August 29, 2012 (including supplemental information received from Complainant in File No. 12-1803), and letters dated August 15, 2012[,] and September 17, 2012 (advising you that failure to cooperate with a disciplinary investigation can be separate grounds for discipline), all of which were sent to your address of record with the State Bar of Arizona.

You advised me during our telephone conversation that you had not changed your address of record, but that you would do so as soon as possible with the State Bar's Membership Services. It is my understanding that your current address is: 177 N. Church, Suite 200, Tucson, AZ 85701.

Please respond to the Complainants' allegations within ten (10) days of the date of this letter.

Mr. Chang failed to submit a written response to Goldberg's charges, as directed by Bar Counsel Shuman in her letter dated October 3, 2012, and failed to provide the State Bar's Resource Center (i.e., membership records department) with his new address within 30 days of his change of address.

On October 24, 2012, Bar Counsel Shuman again spoke by telephone with Mr. Chang, who stated that he had met with the State Bar's Member Assistance Program (MAP) and a therapist the week before. Mr. Chang promised to submit a written response to Goldberg's charges by October 26, 2012, as well as a release for MAP to discuss his situation with Bar Counsel Shuman. Mr. Chang failed to submit a written response to Goldberg's charges or a release, as he had promised.

On October 29, 2012, Bar Counsel Shuman sent an email message to Mr. Chang in which she directed him to advise her about the status of his written response to Goldberg's charges.

On November 9, 2012, Bar Counsel Shuman spoke by telephone with Mr. Chang, who claimed that he just found Bar Counsel Shuman's October 29, 2012, email in a "junk" email folder. He promised to FedEx to Bar Counsel Shuman that evening his written response to Goldberg's charges. Mr. Chang, however, failed to submit to Bar Counsel Shuman a written response to Goldberg's charges, as he had promised. Mr. Chang also promised Bar Counsel Shuman that he would email to her a release so she could speak with MAP regarding his situation. Mr. Chang, however, failed to submit a release to Bar Counsel Shuman, as he had promised.

On November 30, 2012, Bar Counsel Shuman mailed a letter to Mr. Chang, which stated in part:

. . . I still have not received your response to the screening letter sent to you in case 12-0317. It is imperative that you provide me with a response as quickly as possible. If it would be easier, we can schedule a meeting in my office during which you can provide me with a copy of your file and you can respond to the allegations in[-]person. Please advise which you would prefer. As a last resort, I can notice your deposition although I would prefer to avoid having to do so. Obviously, if I am forced to take your deposition, the cost will be taxed back to you.

I look forward to hearing from you.

Mr. Chang failed to provide a response to Goldberg's charges, as directed by Bar Counsel Shuman in her letter dated November 30, 2012.

During February 2013, State Bar Investigator April Landry began undertaking efforts to interview Mr. Chang regarding Goldberg's charges. She left voice-mail messages for him on February 7 and 12, 2013, at his telephone number on record with the State Bar. She also sent a letter to Mr. Chang on February 12, 2013, at his address of record with the State Bar.

On February 13, 2013, Mr. Chang left a voice-mail message for Investigator Landry. Later on that date, Investigator Landry left a voice-mail message for Mr. Chang in which she requested a return call between 8:30 a.m. and 5:00 p.m.

On February 14, 2013, Investigator Landry spoke by telephone with Mr. Chang, who stated he believed he had sent by FedEx, on or about November 29, 2012, a written response to the State Bar regarding Goldberg's charges. Mr. Chang failed to provide bar counsel with a copy of any FedEx receipt, even though he stated he would review his file to determine whether he had such a receipt. Mr. Chang also failed to produce any other evidence of mailing his written response to the State Bar, which Bar Counsel Shuman never received. Mr. Chang informed Investigator Landry that he maintained an Excel spreadsheet evidencing dates of interaction with clients and stated he would provide a copy of Goldberg's spreadsheet to Investigator Landry. Mr. Chang, however, failed to provide the State Bar with a copy of the spreadsheet he maintained regarding his representation of Goldberg. Mr. Chang also told Investigator Landry that he would review Goldberg's file upon his return to Arizona and agreed to call her on February 18, 2013, to discuss his representation of Goldberg. Mr. Chang, however, failed to call Investigator Landry as of at least February 22, 2013. Mr. Chang additionally stated he would review his file to determine whether he retained a copy of the research he provided to Goldberg to assist him in preparing his *pro se* petition for post-conviction relief. He stated he would provide a copy to the State Bar if he retained a copy of the research he gave to Goldberg. Mr. Chang never provided the State Bar with any copies of any documents he claimed to have given to Goldberg.

On July 1, 2013, Bar Counsel Shuman left a voice-mail message for Mr. Chang in which she (a) asked him to return her call; (b) notified him that he was suspended; (c) inquired what he intended to do regarding the charges; and (d) informed him that they could enter into a consent agreement.

Mr. Chang failed to return most of the voice-mail messages left for him by Bar Counsel Shuman.

COUNT TWO (File No. 12-1803/Hunter)
Representation of Brian Shalom Hunter

On July 1, 2008, Brian Shalom Hunter (Hunter) was indicted on four counts of sale and/or transportation of a narcotic drug (class 2 felonies), one count of possession of a narcotic drug for sale (a class 2 felony), and one count of possession of drug paraphernalia (a class 6 felony) (Pima County Superior Court File No. CR-2008-2451). Also on that date, a Deputy Pima County Attorney filed an *Allegation of Prior Convictions* that listed two prior convictions.

On August 20, 2010, following a four-day jury trial between August 17 and August 20, 2010, Hunter was found guilty by a jury of two counts of sale and/or transfer of a narcotic drug, one count of possession of a narcotic drug, and one count of possession of drug paraphernalia. A mistrial was declared regarding two counts of sale and/or transfer of a narcotic drug because the jury was unable to reach a verdict.

On October 25, 2010, the State proved that Hunter had one or two prior convictions (the court's minute entries were inconsistent). Also on that date, the court dismissed with prejudice, on the State's motion, the two counts that resulted in a mistrial.

On November 10, 2010, Hunter was sentenced to 14 years in prison for each of two counts of sale and/or transfer of a narcotic drug and one count of possession of a narcotic drug, and sentenced to 3.75 years in prison for one count of possession of drug paraphernalia. All sentences were ordered to run concurrently, and concurrently with another prison sentence that Hunter was already serving.

Hunter, through advisory counsel and on his own, filed notices of appeal and motions for delayed appeal in CR-2008-2451. His appeal was dismissed twice for failing to timely file a notice of appeal. Then, on April 15, 2011, Division Two of the Arizona Court of Appeals reinstated Hunter's appeal (File No. 2 CA-CR 2011-0090).

On September 22, 2011, the Court of Appeals appointed attorney Emily Danies to represent Hunter on appeal and ordered that an opening brief be filed on or before November 1, 2011.

On January 3, 2012, the Arizona Court of Appeals granted Danies' motion to withdraw and appointed Mr. Chang to represent Hunter on appeal. The Court of Appeals ordered that an opening brief be filed on or before February 13, 2012.

On February 14, 2012, Mr. Chang filed a motion for extension of time to file an opening brief.

On February 16, 2012, the Court of Appeals granted Mr. Chang's motion for extension of time to file his opening brief and ordered that an opening brief be filed on or before March 13, 2012.

On March 13, 2012, Mr. Chang filed a *Motion to Expand Record and Vacate Date of Opening Brief*.

On March 19, 2012, the Court of Appeals granted Mr. Chang's motion and ordered the preparation of additional transcripts. Mr. Chang was ordered to file an

opening brief within 40 days after the court's notice that the expanded record was complete.

On May 1, 2012, the Court of Appeals ordered Mr. Chang to file his opening brief on or before June 11, 2012.

Mr. Chang failed to file an opening brief or an *Anders* brief on or before June 11, 2012, and failed to file a motion for extension of time within which to do so.

On June 19, 2012, because an opening brief had not been timely filed, the Court of Appeals, *sua sponte*, granted an extension of time to file an opening brief by no later than 8:00 a.m. on June 25, 2012. The Court of Appeals also ordered Mr. Chang, if he failed to timely file an opening brief, to appear at 9:30 a.m. on June 25, 2012, to show cause why he had not yet filed an opening brief. Mr. Chang was "copied" on the Court's written order (it listed Mr. Chang's address as The Chang Law Firm, PLLC, 1830 E. Broadway Blvd., #124-158, Tucson, Arizona 85719). A copy of that order was mailed to Mr. Chang by certified mail, return receipt requested.

On June 22, 2012, Hunter filed a motion titled: *Motion to Withdraw Counsel for Ineffectivness [sic] And Ethical Rule Violations, Defendant Once Again Request [sic] To Proceed Pro Per*. In that motion, Hunter alleged that Mr. Chang (a) told him that he had very little or no experience in criminal cases and that he specialized in juvenile cases; (b) told him that he would not raise certain issues because they "may tarnish his law firm"; (c) refused to answer any of his telephone calls or correspondence; and (d) had done nothing on his case.

Mr. Chang failed to file an opening brief by 8:00 a.m. on June 25, 2012, and failed to appear in court on that date to show cause why he had failed to file a timely opening brief on Hunter's behalf.

Although Mr. Chang claims he filed an opening brief on or about June 25 or 27, 2012, which he claims was "apparently non-compliant with filing guidelines," the Court of Appeals docket has no reference to such a filing or attempted filing and the copy provided to the State Bar by Mr. Chang was not file stamped.

On or about eight occasions, prison officials unsuccessfully attempted to schedule a legal call between Hunter and Mr. Chang. In addition, Mr. Chang failed to respond to correspondence from Hunter, failed to respond to calls from Hunter's friends and/or relatives, and failed to keep Hunter informed about the status of his case.

At some point in time, Hunter's family paid \$250.00 to Mr. Chang for "discovery" documents and \$500.00 to investigate a police officer relevant to the charges filed against him. Hunter never received the "discovery" documents.

On August 2, 2012, the Court of Appeals, *sua sponte*, relieved Mr. Chang as counsel for Hunter and appointed attorney Brick Storts, III (attorney Storts), to represent Hunter on appeal. The Court ordered the filing of an opening brief on or before October 1, 2012.

Also on August 2, 2012, or very shortly thereafter, attorney Storts' office began its attempts to contact Mr. Chang by telephone to request the file he maintained on Hunter's behalf.

On August 3, 2012, the Court of Appeals issued an order stating:

[Mr. Chang] having failed to successfully file an Opening Brief, to keep the Court advised of his whereabouts since the June 19, 2012[,]

OSC order sent to the address counsel gave to this Court was returned "Attempted—Not Known—Unable to Forward," to acknowledge a July 2, 2012[,] email from the Clerk of this Court sent to counsel's correct email address advising him that an OSC had issued and asking counsel to contact the court forthwith, and to ever acknowledge receipt of any notice or order emailed to him since his appointment on January 3, 2012,

ORDERED: [Mr. Chang] shall appear before this Court on August 14, 2012, at 10:00 a.m., at 400 W. Congress Street, Room 200, and show cause why counsel should not be held in contempt of court for failing to abide by the briefing deadlines for filing a timely brief in appropriate form with the court, for repeatedly failing to respond to this court's efforts to contact him at the address and telephonic numbers he has provided to the court for that purpose and for thereby abandoning his client in this appeal. Failure to appear by result in contempt of court and the imposition of a FINE and/or the issuance of a CIVIL ARREST WARRANT.

(Capitalization in original).

Mr. Chang was personally served with the Court of Appeals' August 3, 2012, order regarding the August 14, 2012, hearing.

On August 14, 2012, Mr. Chang appeared before the Court of Appeals, as ordered.

On or about August 15, 2012, the Court of Appeals found Mr. Chang in contempt "for failing to file a timely brief without explanation, for ignoring this court's repeated efforts to contact him, and for ultimately abandoning his client." The Court of Appeals sanctioned Mr. Chang by ordering him to pay a \$250.00 fine, which was intended "in part to reimburse this court for the cost of personally serving him although the overall administrative costs to this court in addressing this matter far exceed that amount." Mr. Chang was ordered to pay the fine on or before August 31, 2012. The Court of Appeals' order stated in part:

Mr. Chang offered no excuses, nor indeed any concrete explanation, for his loss of contact with this court. He did, however, show considerable remorse, a recognition of the gravity of his lapses, and a

resolve to practice more professionally in the future. Based on his demeanor, it is this court's conclusion that his resolve and remorse were sincere. He also advised the court that he had contacted Member Services at the State Bar of Arizona to secure assistance for his problems. He left those problems unspecified but this court assumes those issues were of a private nature that he understandably did not wish to disclose to this court or the broader legal community. This court did note that he had also failed to electronically acknowledge all of this courts [sic] communications to him since his assignment to this case and that the address for his office which he had filed both with this court and the state bar had been incorrect for at least two years.

On August 20, 2012, the Court of Appeals denied, as moot, Hunter's June 22, 2012, motion for the removal of Mr. Chang as his counsel.

On August 23, 2012, Hunter filed a *pro per Motion Requesting Additional Sanctions Be Imposed And Reimbursement Of Funds* in which he asked the Court of Appeals to impose additional sanctions against Mr. Chang, including ordering Mr. Chang to refund \$250.00 that Hunter's family had paid to Mr. Chang to obtain copies of "disclosure."

On or about August 24, 2012, attorney Storts filed with the Court of Appeals a *Notice to the Court* in which he stated he had been unable to obtain Hunter's file from Mr. Chang, who was non-responsive to his telephone calls and a letter seeking the file he maintained on Hunter's behalf. Attorney Storts stated "there is no indication counsel will be hearing from Mr. Chang at any time in the future." Attorney Storts stated he was unable to prepare an opening brief without reviewing the file that Mr. Chang maintained on Hunter's behalf.

On August 29, 2012, the Court of Appeals denied, without explanation, Hunter's August 23, 2012, motion for additional sanctions and request for reimbursement.

On August 31, 2012, Mr. Chang paid the \$250.00 sanction to the Clerk of the Court of Appeals.

On or about August 31, 2012, attorney Storts received Hunter's file from Mr. Chang. Storts determined that Hunter did not lose any appellate rights due to the three-week delay in receiving Hunter's file from Mr. Chang.

On September 17, 2012, Hunter filed a *pro per Motion Requesting Reconsideration and Requesting Clarification* in which he asked the Court of Appeals to reconsider its August 29, 2012, order and provide a reason for its denial of his request for additional sanctions against, and reimbursement from, Mr. Chang.

On September 19, 2012, the Court of Appeals denied Hunter's September 17, 2012, motion.

Failure to Timely Respond to Bar Counsel re: File No. 12-1803
and Failure to Notify the State Bar of a Change of Address

On or about June 19 and July 23, 2012, Brian Shalom Hunter (Hunter) submitted to the State Bar allegations that Mr. Chang failed to properly represent him.

On or about August 9, 2012, Bar Counsel Stacy Shuman mailed an initial screening letter to Mr. Chang at his address of record with the State Bar of Arizona regarding charges of misconduct submitted by Hunter. That letter stated in part:

The State Bar has received information concerning your professional conduct that warrants a screening investigation pursuant to Rule 55(b), Ariz. R. Sup. Ct. At this point, the matter is not considered a formal complaint, but rather a "bar charge" that is being investigated through a "screening investigation." Your participation in the screening investigation is extremely important, as Bar Counsel will make a recommendation at the end of the investigation as to the disposition of this matter. Pursuant to ER 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct., you have a duty to cooperate with this investigation. Failure to fully and honestly respond to, or cooperate with, the investigation is, in itself, grounds for discipline.

A copy of the information received by the State Bar has been included with this letter. Please submit a written response to the enclosed information, directed to my office, within 20 days of the date of this letter. . . . If you cannot file a timely response, you should contact my office immediately. . . .

The ethical rules that should be addressed in your response include, but are not limited to: E.R.s 1.1, 1.3, 1.4, 3.2, and 8.4(d).

(Underline in original).

On August 15, 2012, the Court of Appeals held an order to show cause hearing regarding Mr. Chang's failure to file an opening brief on Hunter's behalf. Following the hearing on that date, the Court of Appeals issued an order in which it stated that it appeared that Mr. Chang "failed to successfully file an opening brief with this court [on Hunter's behalf], and thereafter failed to respond to this court's numerous efforts to reach him by telephone, electronic mail and registered mail." The Court concluded that Mr. Chang had abandoned Hunter. At the hearing, Mr. Chang offered no excuses or any explanation why he lost contact with the Court. Mr. Chang showed "considerable remorse" and "resolve[d] to practice more professionally in the future." The Court found Mr. Chang in contempt of court for failing to file a timely brief, for ignoring the Court's repeated efforts to contact him, and for "ultimately abandoning [Hunter]." Mr. Chang was ordered to pay a \$250.00 sanction on or before August 31, 2012.

On August 16, 2012, Division Two of the Arizona Court of Appeals submitted to the State Bar a copy of an order in which the Court found Mr. Chang in contempt of court for failing to timely file an opening brief on Hunter's behalf and failing to respond to communications from the Court.

Mr. Chang failed to submit a written response to Hunter's charges, as directed by Bar Counsel Shuman in her letter dated August 9, 2012.

On August 29, 2012, Bar Counsel Shuman mailed another letter to Mr. Chang at his address of record with the State Bar regarding the charges submitted by Hunter. That letter stated:

Enclosed is a copy of correspondence supplementing Mr. Hunter's earlier allegations, for your reference. If you would like to submit any additional information regarding this correspondence, please include it with your initial response, which is due on or before September 4, 2012.

Also on August 29, 2012, Bar Counsel Shuman mailed an initial screening letter to Mr. Chang at his address of record with the State Bar regarding the charges submitted by the Court of Appeals (the Court of Appeals' charges were subsequently consolidated with the charges filed by Hunter). That letter stated in part:

The State Bar has received information concerning your professional conduct that warrants a screening investigation pursuant to Rule 55(b), Ariz. R. Sup. Ct. At this point, the matter is not considered a formal complaint, but rather a "bar charge" that is being investigated through a "screening investigation." Your participation in the screening investigation is extremely important, as Bar Counsel will make a recommendation at the end of the investigation as to the disposition of this matter. Pursuant to ER 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct., you have a duty to cooperate with this investigation. Failure to fully and honestly respond to, or cooperate with, the investigation is, in itself, grounds for discipline.

A copy of the information received by the State Bar has been included with this letter. Please submit a written response to the enclosed information, directed to my office, within 20 days of the date of this letter. . . . If you cannot file a timely response, you should contact my office immediately. . . .

The ethical rules that should be addressed in your response include, but are not limited to: E.R.s 1.3, 1.4, 1.16, 8.4(d), and 54(c).

(Underline in original).

Mr. Chang failed to submit a written response to Hunter's charges, as directed by Bar Counsel Shuman in her letter dated August 29, 2012.

On September 17, 2012, Bar Counsel Shuman mailed a letter to Mr. Chang at his address of record with the State Bar regarding Hunter's charges of misconduct. That letter stated in part:

Reference is made to my letter dated August 9, 2012 advising you of the allegations of Mr. Hunter. A copy of that letter is enclosed. It was requested that your response be filed within 20 days of the date of my letter. This office has no record of the receipt of your response.

Pursuant to Rule 47(h) and 55(b)(1)(B), Ariz. R. Sup. Ct., you are hereby given notice that your failure to comply with this request for response **within ten (10) days of the date of this letter** may require the taking of your deposition pursuant to subpoena, or a recommendation to the Attorney Disciplinary Probable Cause Committee for an order of probable cause. Please be further advised that, should your failure to cooperate result in the taking of a deposition pursuant to Rule 47, you "shall be liable for the actual costs of conducting the deposition. . . ." If you fail to comply with an investigative subpoena, you may be subject to contempt proceedings, and could be summarily suspended.

I again refer you to Rule 54(d), and caution you that failure to cooperate with a disciplinary investigation is grounds, in itself, for discipline.

(Bold and ellipsis in original).

Mr. Chang failed to submit a written response to the Court of Appeals' charges, as directed by Bar Counsel Shuman in her letter dated August 29, 2012.

On September 19, 2012, Bar Counsel Shuman called Mr. Chang's telephone number on record with the State Bar and left a voice-mail message directing him to call her regarding his failure to submit a written response to Hunter's charges.

On or about September 24, 2012, Mr. Chang executed a Voluntary Therapeutic Contract with the State Bar's Member Assistance Program (MAP).

On September 28, 2012, Bar Counsel Shuman called Mr. Chang's telephone number on record with the State Bar and left a voice-mail message directing him to call her as soon as possible regarding his failure to submit a written response to Hunter's charges.

On October 2, 2012, Bar Counsel Shuman spoke with Mr. Chang. She informed him that she would provide him with another copy of the screening letters because Mr. Chang had changed his address but failed to update his contact information with the State Bar. Mr. Chang informed Bar Counsel Shuman that he would provide a written response to the screening letter within 10 days.

On October 3, 2012, Bar Counsel Shuman mailed a letter to Mr. Chang that stated:

Pursuant to our telephone conversation of October 2, 2012, I have enclosed with this letter copies of the screening letters in the above-referenced files (including the bar charge received from [Hunter and the Court of Appeals]), letter dated August 29, 2012 (including supplemental information received from [the Court of Appeals] in File No. 12-1803), and letters dated August 15, 2012[,] and September 17, 2012 (advising you that failure to cooperate with a disciplinary investigation can be separate grounds for discipline), all of which were sent to your address of record with the State Bar of Arizona.

You advised me during our telephone conversation that you had not changed your address of record, but that you would do so as soon as possible with the State Bar's Membership Services. It is my understanding that your current address is: 177 N. Church, Suite 200, Tucson, AZ 85701.

Please respond to [Hunter's and the Court of Appeals'] allegations within ten (10) days of the date of this letter.

Mr. Chang failed to submit a written response to Hunter's or the Court of Appeals' charges, as directed by Bar Counsel Shuman in her letter dated October 3, 2012, and failed to provide the State Bar's Resource Center (i.e., membership records department) with his new address within 30 days of his change of address.

On October 24, 2012, Bar Counsel Shuman again spoke by telephone with Mr. Chang, who stated that he had met with MAP and a therapist the week before. He promised to submit a response to Hunter's and the Court of Appeals' charges by October 26, 2012, along with a release that would allow MAP to discuss his situation with her. Mr. Chang failed to submit a written response to Hunter's or the Court of Appeals' charges or a release, as he promised on October 24, 2012.

On October 29, 2012, Bar Counsel Shuman sent an email message to Mr. Chang in which she directed him to advise her about the status of his written response to Hunter's and the Court of Appeals' charges.

On November 9, 2012, Bar Counsel Shuman spoke by telephone with Mr. Chang, who claimed that he just found Bar Counsel Shuman's October 29, 2012, email in a "junk" email folder. He promised to FedEx to Bar Counsel Shuman that evening his written response to Hunter's and the Court of Appeals' charges. Mr. Chang, however, failed to submit a written response to Hunter's and the Court of Appeals' charges, as he had promised. Mr. Chang also promised Bar Counsel Shuman that he would email to her a release so she could speak with MAP regarding his situation. Mr. Chang, however, failed to submit a release to bar counsel, as he had promised.

On or about November 15, 2012, Mr. Chang mailed a written response to Hunter's and the Court of Appeals' charges (which was received by the State Bar on November 29, 2012). In his written response, Mr. Chang admitted that the Court of Appeals' August 15, 2012, order was "accurate."

On July 1, 2013, Bar Counsel Shuman left a voice-mail message for Mr. Chang in which she (a) asked him to return her call; (b) notified him that he was

suspended; (c) inquired what he intended to do regarding the charges; and (d) informed him that they could enter into a consent agreement.

Mr. Chang failed to return most of the voice-mail messages left for him by Bar Counsel Shuman.

CONCLUSIONS OF LAW

Mr. Chang failed to file an answer or otherwise defend against the allegations in the State Bar's complaint. Default was properly entered and the allegations were 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 Mr. Chang engaged in the following misconduct.

Count One (File No. 12-0317): By engaging in the conduct set forth in Count One, Mr. Chang violated ER 1.3 by failing to act with reasonable diligence and promptness in representing Goldberg (e.g., Mr. Chang failed to provide Goldberg with a copy of the entire file he maintained on Goldberg's behalf, failed to provide Goldberg with copies of all court orders, and failed to assist Goldberg with his *pro se* petition for post-conviction relief); ER 1.4(a)(2), (3) & (4) by failing to reasonably consult with Goldberg about the means by which his objectives were to be accomplished, failing to keep Goldberg reasonably informed about the status of his matter, and failing to promptly comply with Goldberg's reasonable requests for information (e.g., Mr. Chang failed to respond to numerous requests for information and failed to keep Goldberg reasonably informed about the status of his case); ER 1.15(d) by failing to promptly deliver to Goldberg property that he was entitled to receive (e.g., Mr. Chang failed to promptly deliver to Goldberg a copy of the entire file he maintained on Goldberg's behalf); ER 1.16(d) by failing, upon termination of

representation, to take steps to the extent reasonably practicable to protect Goldberg's interests, including failing to surrender documents and property to which Goldberg was entitled (e.g., Mr. Chang failed to promptly deliver to Goldberg a copy of the entire file he maintained on Goldberg's behalf); ER 3.4(c) by knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists (e.g., Mr. Chang failed to promptly deliver to Goldberg a copy of the entire file he maintained on Goldberg's behalf and failed to assist Goldberg with his *pro se* petition for post-conviction relief, as ordered by the court; and violated Rule 32(c)(3), Ariz. R. Sup. Ct., by failing to report a current address to the State Bar within 30 days of the effective date of his change of address); ER 8.1(b) by knowingly failing to respond to a lawful demand for information from disciplinary authorities in connection with a disciplinary matter (e.g., Mr. Chang failed to provide Bar Counsel Shuman and State Bar Investigator Landry with a written or verbal response to Goldberg's charges and the documents they had requested); ER 8.4(d) by engaging in conduct prejudicial to the administration of justice; Rule 54(c), Ariz. R. Sup. Ct., by knowingly violating a rule or order of the court (e.g., Mr. Chang failed to promptly deliver to Goldberg a copy of the entire file he maintained on Goldberg's behalf and failed to assist Goldberg with his *pro se* petition for post-conviction relief, as ordered by the court; and violated Rule 32(c)(3), Ariz. R. Sup. Ct., by failing to report a current address to the State Bar within 30 days of the effective date of his change of address); and Rule 54(d)(1) and (2), Ariz. R. Sup. Ct., by refusing to cooperate with State Bar staff regarding a disciplinary investigation and failing to furnish information or respond promptly to an inquiry or request from bar counsel

regarding a disciplinary investigation or, alternatively, failing to assert a ground for refusing to do so (e.g., Mr. Chang failed to provide Bar Counsel Shuman and State Bar Investigator Landry with a written or verbal response to Goldberg's charges and the documents they had requested).

Count Two (File No. 12-1803): By engaging in the conduct set forth in Count Two, Mr. Chang ER 1.2(a) by failing to abide by Hunter's decisions concerning the objectives of representation and failing to consult with Hunter regarding the means by which his objectives were to be pursued (e.g., Mr. Chang failed to file an opening brief on Hunter's behalf, failed to adequately communicate with Hunter, and discontinued his representation of Hunter without notice); ER 1.3 by failing to act with reasonable diligence and promptness in representing Hunter (e.g., Mr. Chang failed to timely file an opening brief on Hunter's behalf—the Court of Appeals *sua sponte* extended the date by which an opening brief had to be filed because Mr. Chang had not met a previously set deadline); ER 1.4(a)(2), (3) & (4) by failing to reasonably consult with Hunter about the means by which his objectives were to be accomplished, failing to keep Hunter reasonably informed about the status of his matter, and failing to promptly comply with Hunter's reasonable requests for information (e.g., Mr. Chang failed to respond to Hunter's various attempts to communicate with him and failed to keep him apprised of the status of his case); ER 1.5(a) by charging or collecting an unreasonable amount for expenses (e.g., Hunter paid Mr. Chang \$250.00 for "disclosure" of documents that were never provided to Hunter and paid \$500.00 to Mr. Chang for an investigation into a particular police officer, even though he was court-appointed to represent Hunter); ER 1.15(d) by failing to promptly deliver to Hunter the property he was

entitled to receive (e.g., Mr. Chang failed to promptly deliver to Hunter or his subsequent counsel the file he maintained on Hunter's behalf); ER 1.16(d) by failing, upon termination of representation, to take steps to the extent reasonably practicable to protect Hunter's interests, including failing to surrender documents and property to which Hunter was entitled (e.g., Mr. Chang failed to promptly deliver to Hunter or his subsequent counsel the file he maintained on Hunter's behalf); ER 3.2 by failing to expedite litigation consistent with Hunter's interests (e.g., Mr. Chang failed to timely file an opening brief on Hunter's behalf—the Court of Appeals *sua sponte* extended the date by which an opening brief had to be filed because Mr. Chang had not met a previously set deadline); ER 3.4(c) by knowingly disobeying an obligation under the rules of a tribunal (e.g., Mr. Chang knowingly failed to file an opening brief on Hunter's behalf by the date ordered by the Court of Appeals; and violated Rule 32(c)(3), Ariz. R. Sup. Ct., by failing to report a current address to the State Bar within 30 days of the effective date of his change of address); ER 8.1(b) by knowingly failing to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter (e.g., Mr. Chang failed to timely provide Bar Counsel Shuman with a written response to Hunter's and the Court of Appeals' charges); ER 8.4(d) by engaging in conduct prejudicial to the administration of justice (e.g., the Court of Appeals found it necessary to (a) appoint other counsel to represent Hunter because Mr. Chang failed to timely file an opening brief on Hunter's behalf; (b) schedule an order to show cause hearing to address Mr. Chang's failure to file an opening brief on Hunter's behalf; and (c) address motions filed by both Hunter and his subsequent counsel that would not have been necessary if he had communicated with Hunter

and promptly provided to subsequent counsel the file he maintained on Hunter's behalf); Rule 54(c), Ariz. R. Sup. Ct., by knowingly violating a rule or order of the court (e.g., Mr. Chang knowingly failed to file an opening brief on Hunter's behalf by the date ordered by the Court of Appeals; and violated Rule 32(c)(3), Ariz. R. Sup. Ct., by failing to report a current address to the State Bar within 30 days of the effective date of his change of address); and Rule 54(d)(1) and (2), Ariz. R. Sup. Ct., by refusing to cooperate with State Bar staff regarding a disciplinary investigation and failing to furnish information or respond promptly to an inquiry or request from bar counsel regarding a disciplinary investigation or, alternatively, failing to assert a ground for refusing to do so (e.g., Mr. Chang failed to promptly provide Bar Counsel Shuman with a written response to Hunter's and the Court of Appeals' charges).

Although deemed admitted by default, the Hearing Panel finds no violation of ER 1.1 (competence) in Count Two. At hearing, bar counsel advised that ER 1.1 (competence) was an alternative violation to other ethical rule lapses alleged in the complaint (i.e., ER 1.3 (diligence)). Mr. Chang stated in his response to the State Bar that he filed an opening brief that was noncompliant with filing guidelines. [Exhibit 43] However, there is no evidence that Mr. Chang filed an opening brief that did not comply with appellate rules and therefore, the Panel is not inclined to conclude that Mr. Chang was not competent.

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 duties 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

Mr. Chang violated his duty to his clients by violating ER 1.2(a); ER 1.3; ER 1.4(a)(2), (3) & (4); ER 1.5(a); ER 1.15(d); ER 1.16(d); ER 8.1(b); ER 8.4(d); his duty to the public by violating ER 8.4(d); his duty to the legal system by violating ER 3.2, ER 3.4(c), ER 8.4(d) and Rule 54(c), Ariz. R. Sup. Ct.; and his duty to the legal profession by violating ER 1.2(a), ER 1.5(a), ER 1.16(d), ER 8.1(a) & (b) and Rules 32(c)(3) and 54(d)(1) and (2), Ariz. R. Sup. Ct.

The Lawyer's Mental State

Mr. Chang engaged in most—if not all—of the misconduct with a knowing or intentional state of mind (e.g., Mr. Chang was aware of the duties he owed to his clients, the profession and the legal system, but failed to honor his duties).

The Extent of the Actual or Potential Injury

Mr. Chang's conduct resulted in actual harm to his clients to the extent that he failed to provide client Goldberg with a complete copy of the file he maintained on his behalf and failed to file an opening brief on client Hunter's behalf, which delayed the processing of his appeal. There was actual harm to the public insofar as there was delay in the processing of criminal cases, which is contrary to the public's interest in the prompt and final resolution of criminal charges. There was actual harm to the profession as a result of Mr. Chang's failure to respond to bar counsel or a State Bar investigator during the State Bar's screening investigation and failure to participate in the formal disciplinary proceeding. In addition, there

was actual harm to the legal system insofar as the Court of Appeals had to appoint another lawyer to represent client Hunter when Mr. Chang essentially abandoned him and held an order-to-show-cause hearing to address Mr. Chang's failure to file an opening brief on client Hunter's behalf, failure to communicate with the court, and abandonment of client Hunter.

Applicable Presumptive Standards

Mr. Chang violated his duty to his clients, thereby implicating *Standards* 4.12, 4.41 and 4.42. *Standard* 4.12 states, "Suspension is generally appropriate when a lawyer knows or should know that [s]he is dealing improperly with client property and causes injury or potential injury to a client." *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; or (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client." *Standard* 4.42 states, "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."

In this case, Mr. Chang failed to diligently and promptly represent his clients and failed to adequately communicate with them. Mr. Chang abandoned one client and failed to take reasonable steps upon termination of representation to protect his clients' interests. For example, Mr. Chang failed to notify his clients that he was no longer going to represent them, failed to promptly provide his clients with the

files he maintained on their behalf, and failed to refund unearned fees (in one instance) upon termination of representation, all of which could have resulted in harm to his clients' legal rights.

Mr. Chang also violated his duty to the legal system, which implicates *Standard 6.22*. *Standard 6.22* states, "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. Chang additionally violated his duty owed as a professional, which implicates *Standard 7.0*. *Standard 7.2* states, "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." In this case, Mr. Chang violated his duty owed as a professional by failing to respond to bar counsel and a State Bar investigator during the State Bar's investigation into the charges of misconduct, and failing to participate in the formal disciplinary proceedings.

Aggravation and Mitigation

The Hearing Panel finds the following aggravating and mitigating factors are supported by reasonable evidence.¹

Aggravating Factors

Standard 9.22(b) – dishonest or selfish motive (to the extent he accepted fees for work to be performed, but which he never performed);

Standard 9.22(c) – a pattern of misconduct (to the extent that two clients establishes a "pattern");

¹ Factors that may aggravate or mitigate the presumptive sanction "need only be supported by reasonable evidence." *In re Abrams*, 227 Ariz. 248, 252 ¶27, 257 P.3d 167, 171 (2011) (quoting *In re Peasley*, 208 Ariz. 27, 36 ¶36, 90 P.3d 764, 773 (2004)).

Standard 9.22(d) – multiple offenses;

Standard 9.22(e) – bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

Standard 9.22(h) – vulnerability of the victims (to the extent that Chang’s clients were incarcerated and unable to readily communicate with Chang or assist in their defenses); and

Standard 9.22(i) – substantial experience in the practice of law (Chang was admitted to practice law in Arizona on October 21, 2004).

Mitigating Factors

Standard 9.32(a) – absence of a prior disciplinary record;

Standard 9.32(c) – personal or emotional problems; (Mr. Chang notified the Court of Appeals that he had contacted the State Bar’s Member Assistance Program (MAP) and notified bar counsel that he met with someone at MAP and with a therapist, but the Hearing Panel gives very little weight to this mitigating factor because of the absence of any evidence to support this factor other than Mr. Chang’s statements); and

Standard 9.32(l) – remorse (in the Hunter case, the Court of Appeals found that Mr. Chang “show[ed] considerable remorse, a recognition of the gravity of his lapses, and a resolve to practice more professionally in the future” and concluded that Mr. Chang’s “resolve and remorse were sincere”).

The Panel however, gives little weight to mitigating factors, 9.32(c) and (l) as Mr. Chang has not provided any evidence to support these factors.

RESTITUTION

The conduct deemed admitted as a result of the entry of default and notarized affidavits from client Hunter and Maria D. Robinson, Mr. Hunter’s fiancé, which were admitted at the Aggravation/Mitigation Hearing, establish by a preponderance of evidence that restitution should be ordered to the following person in the following amount:

Maria D. Robinson in the amount of \$750.00.

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." *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 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 similar conduct by other lawyers." *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993) (citing *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990)). Another goal of lawyer regulation is to protect and instill public confidence in the integrity of individual members of the State Bar. *In re Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994) (citing *In re Loftus*, 171 Ariz. 672, 675, 832 P.2d 689, 692 (1992)).

The Hearing Panel has made the above findings of fact and conclusions of law, and utilized the facts deemed admitted, the ABA *Standards* (including *Standards* addressing aggravating and mitigating factors), and the goals of the attorney discipline system to determine an appropriate disciplinary sanction. The presumptive disciplinary sanction is suspension. Also, the existence of several aggravating factors outweighs the mitigating factors.

Based upon the foregoing, the Hearing Panel orders as follows:

IT IS ORDERED that Gene C. Chang shall be suspended from the practice of law for a period two (2) years effective immediately.

IT IS FURTHER ORDERED that Mr. Chang shall comply with all provisions of Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED that Mr. Chang shall pay restitution with interest at the legal rate until paid to: Maria D. Robinson in the amount of \$750.00.

IT IS FURTHER ORDERED that Mr. Gene C. Chang shall pay the costs and expenses of this disciplinary proceeding.

A Final Judgment and Order will follow.

DATED this 29th day of November, 2013.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING:

Andrea J. Curry

Andrea J. Curry, Volunteer Attorney Member

Mark Salem

Mark Salem, Volunteer Public Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 29th day of November, 2013.

Copies of the foregoing mailed/emailed
this 29th day of November, 2013, to:

Gene C. Chang
1830 East Broadway Boulevard,
Suite 124
Tucson, Arizona 85719-5974
Email: clobbersaurus@azbar.org
Respondent

Gene C. Chang
177 North Church Avenue,
Suite 200
Tucson, Arizona 85701-1153
Email: clobbersaurus01@gmail.com
Respondent's alternate address

Copy of the foregoing hand-delivered
this 29th day of November, 2013, to:

James D. Lee
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

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

by: MSmith

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**GENE C. CHANG,
Bar No. 023147**

Respondent.

PDJ-2013-9083

FINAL JUDGMENT AND ORDER

[State Bar Nos. 12-0317 and 12-1803]

FILED DECEMBER 20, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, in conjunction with a duly appointed hearing panel, has rendered a decision in the above-captioned matter. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Gene C. Chang, Bar No. 023147**, is hereby suspended from the practice of law in Arizona for two (2) years for his conduct in violation of the Arizona Rules of Professional Conduct, effective **November 29, 2013**.

IT IS FURTHER ORDERED that Mr. Chang 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 shall be subject to terms and conditions of probation that might be imposed by a Hearing Panel as a result of reinstatement hearings.

IT IS FURTHER ORDERED that Respondent pay restitution to Maria D. Robinson in the amount of \$750.00, with interest at the legal rate until paid.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$2,000.00. 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 20th day of December, 2013.

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 20th day of December, 2013.

Copies of the foregoing mailed/emailed
this 20th day of December, 2013, to:

Gene C. Chang
1830 East Broadway Boulevard,
Suite 124
Tucson, Arizona 85719-5974
Email: clobbersaurus@azbar.org
Respondent

Gene C. Chang
177 North Church Avenue,
Suite 200
Tucson, Arizona 85701-1153
Email: clobbersaurus01@gmail.com
Respondent's alternate address

Copy of the foregoing hand-delivered/emailed
this 20th day of December, 2013, to:

James D. Lee
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

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

by: [MSmith](#)