

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,**

**NAIDA B. AXFORD,
Bar No. 006292**

Respondent.

PDJ 2014-9038

FINAL JUDGMENT AND ORDER

[State Bar No. 13-0807]

FILED AUGUST 13, 2014

This matter having come before the Hearing Panel of the Supreme Court of Arizona, the Hearing Panel 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, **NAIDA B. AXFORD**, is hereby disbarred from the State Bar of Arizona and her name is hereby stricken from the roll of lawyers effective July 23, 2014. Ms. Axford is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court.

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

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 13th day of August, 2014.

William J. O'Neil

**William J. O'Neil, Presiding Disciplinary
Judge**

Copies of the foregoing mailed/emailed
this 13th day of August, 2014.

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Naida B. Axford
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Respondent

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by: [MSmith](#)

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**NAIDA B. AXFORD,
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PDJ 2014-9038

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar No. 13-0807]

FILED JULY 23, 2014

PROCEDURAL HISTORY

The State Bar of Arizona (State Bar) filed its complaint on May 6, 2014. On May 8, 2014, the Complaint was served on Ms. Axford 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 Complaint was mailed to Ms. Axford's address of record with the State Bar, as well as an alternative address obtained by the State Bar. The Presiding Disciplinary Judge (PDJ) was assigned to the matter. Default was entered and a notice of entry of default was issued and served by mail on June 3, 2014. On June 17, 2014, Ms. Axford filed a handwritten Response to the Complaint that did not comply with the rules. On June 19, 2014, the PDJ ordered that the Response be stricken and extended the effective date of the default up to and including 12:00 noon on June 27, 2014, for Ms. Axford to file an Answer. Ms. Axford did not file an Answer or otherwise defend against the allegations set forth in

the Complaint and default was properly effective on June 27, 2014. On July 1, 2014, a Notice of Aggravation and Mitigation Hearing was sent to all parties notifying them that the hearing was scheduled for July 15, 2014 at 9:00 a.m. at the State Courts Building, 1501 West Washington, Phoenix, Arizona 85007-3231. On that date, Stacey L. Schuman appeared on behalf of the State Bar of Arizona. Naida B. Axford appeared on her own behalf. The Hearing Panel, composed of the PDJ, Bruce M. Brannan, public member and Harlan J. Crossman, attorney member, heard this matter.

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's conduct deemed admitted and the merits of the State Bar's case. A respondent against whom a default has been entered no longer has the right to litigate the merits of the factual allegations of the complaint. However, the respondent 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 evidence in mitigation. Ms. Axford was afforded these rights.

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

Default was entered and effective against Ms. Axford. At the hearing Ms. Axford orally moved the default be set aside. Supreme Court Rule 58(d) mandates "Entry of default shall not be set aside except in cases where such relief would be warranted under Rule 60(c), Ariz. R. Civ. P." Her oral motion was denied at the hearing. Notwithstanding, the fact that her oral motion was not compliant with Rule 58(d), and Rule 47 (a)(1), this Hearing Panel has collectively reviewed the effective default entered in this matter.

We note, Ms. Axford was aware of the charge against her not later than mid-May, 2013, after Bar Counsel mailed her a copy of that charge. Ms. Axford acknowledged receipt of that correspondences from the State Bar and asserted that her correspondence followed a conversation with Maret Vessella, Chief Bar Counsel. In her correspondence [Exhibit 7.] Ms. Axford stated,

This email follows my conversations with you regarding my desire to have additional time for responding to the recent letters with attachments. The matters arising from the State Bar of Arizona's operations(s) include documents which were filed in the United States Supreme Court and which I have been told by the Clerk of Court, United States Supreme Court must be obtained through the Library of Congress Archives. I estimate the documents will have been obtained by me in the next thirty (30) days.

On June 25, 2014, Bar Counsel disputed that Ms. Axford had ever engaged in a conversation with Ms. Vessella regarding this matter. Notwithstanding, Ms. Axford was given an additional two weeks to respond. [Ex. 8.] We note Bar Counsel sent her another letter dated July 10, 2013 and granted her an additional "ten (10) days of the date of the letter" to respond. [Ex. 9.] On August 7, 2013, Bar Counsel extended time to August 19, 2013, for Ms. Axford to respond. [Ex. 10.] On February 26, 2014, Bar Counsel wrote Ms. Axford and offered her until March 17,

2014, to submit a written statement to the Attorney Discipline Probable Cause Committee. [Ex. 11.]

The substantial changes in the Attorney Discipline system which were implemented in 2011 were in part designed to assure that a respondent in an attorney disciplinary matter was promptly given written notification of the investigation, early in the process. That occurred in this matter. We find Ms. Axford had multiple opportunities to participate. She was fully aware of the charge against her. We confirm the entry of default that is effective against her.

FINDINGS OF FACT

The facts set forth below are taken from the Complaint and were deemed admitted upon Ms. Axford's default, as well as facts established by the State Bar's exhibits, which were admitted during the hearing.

1. Ms. Axford was first admitted to practice law in Arizona on October 4, 1980. [Complaint at p.1, ¶1.]

2. Effective February 11, 1997, Ms. Axford was suspended from the practice of law in SB-97-0009-D, for failure to comply with Mandatory Continuing Legal Education (MCLE) requirements. [Ex. 13, Bates 000121, Lines 11-14.]

3. Consistent with her statements before this Hearing Panel, Ms. Axford during a July 21, 1998 hearing held in connection with a disciplinary proceeding regarding her, "testified that the Order in SB-97-0009 was the result of her conscious decision not to comply with the State Bar's compulsory legal education requirements." As she generally stated in the aggravation/mitigation hearing before this Hearing Panel, Ms. Axford testified in that 1998 hearing that she "did not want to be associated with the State Bar of Arizona" and believes the State Bar is

“functioning illegally, wrongfully and against the spirit and intent of the power it’s been granted by the Supreme Court of Arizona.” [Ex. 14, Bates 000135, Paragraph 25.]

4. Ms. Axford represented Mark Sanchez (Mr. Sanchez) in or about 1995 in a matter that apparently concluded before February 11, 1997. [Ex. 14, Bates 000135, Paragraph 26.]

5. By order dated October 10, 2000, the Arizona Supreme Court suspended Ms. Axford from the practice of law in SB-00-0068-D, for six (6) months and one (1) day and ordered her to pay \$26,933.75 in restitution. [Ex. 13, Bates. 000120, 000126.] In that case, Ms. Axford violated ERs 1.2(d), 1.3, 1.4, 1.4(a), 1.4(b), 1.5(a), 1.5(c), 3.1, 3.2, and 8.4(d). [*Id.*, Bates 000100, 000103, 000108, and 000110.]

6. On March 25, 2002, the Arizona Supreme Court held Ms. Axford in contempt for violating the order entered in SB-00-0068-D and fined her \$500. [Ex. 14, Bates 000134.] The Supreme Court cautioned Ms. Axford that if she failed to comply with the order again, she would face “the risk of greater penalties including disbarment.” [*Id.*]

7. By order dated October 31, 2002, the Arizona Supreme Court suspended Ms. Axford in SB-02-0115-D for one (1) year for the unauthorized practice of law while she was suspended for failure to comply with MCLE requirements. Ms. Axford violated ERs 3.4(c), 5.5(c), 8.1(b) and 8.4(d), as well as Rule 51(e), (f), (h), (i) and (k). [*Id.*, Bates 000164; Complaint at p.1, ¶2.]

8. The disciplinary sanction imposed in SB-02-0115-D involved Ms. Axford’s role in an action brought by Mr. Sanchez against his workplace supervisor,

John Naugle. [Ex. 14, Bates 000135.] In 1997, Mr. Sanchez filed an action against Mr. Naugle in the Maricopa County Superior Court, Case No. CV 97-23719. [*Id.*, Bates 000136.] The case ultimately made its way to the Arizona Supreme Court where Mr. Sanchez filed a Petition for Review on January 24, 2000. [*Id.*, Bates 000137.] Ms. Axford admitted that she knowingly wrote the Petition for Review while she was suspended pursuant to SB 97-0009-D. [*Id.*, Bates 000140.]

9. Ms. Axford has not been reinstated to the practice of law since her initial suspension in 1997. [Complaint at p. 1, ¶3.]

COUNT ONE (File no.13-0807/Burns)

10. Mr. Sanchez is a *pro per* plaintiff in the case of *Sanchez v. UPS*, No. 2:10-cv-01586-DGC (the Litigation), which was filed with the District Court of Arizona. [*Id.* at ¶1¹.]

10. On April 13, 2012, Mr. Sanchez attended a settlement conference as ordered by the District Court in its September 23, 2011, Case Management Order. Ms. Axford attended the settlement conference to “assist” Mr. Sanchez. [*Id.* at ¶2; Ex. 12, Bates. 00031-32.]

11. On May 10, 2012, defense counsel C. Christine Burns was scheduled to take Mr. Sanchez’s video deposition. According to a transcript of the deposition, Ms. Axford appeared with Mr. Sanchez for the deposition and stated, on the record, that she intended to defend Mr. Sanchez during the deposition. [Complaint at ¶3; Ex. 1, Bates 000004-09.]

¹ Due to a typographical error, the paragraph numbers in the Complaint start over with paragraph 1 in the Section identified as “Count One.”

12. The parties scheduled a teleconference with the District Court for that afternoon to discuss Ms. Axford's role in the Litigation. While waiting for the teleconference with the Court, Attorney Burns advised Ms. Axford as follows:

We will proceed with the deposition. Naida, if you believe it is appropriate for you to be here we will allow you to be here. We will object to that. We will also reserve the right to report her conduct to the State Bar and if that is how you want to proceed that is how we will proceed.

[Complaint at ¶4; Ex. 1, Bates 000007.] During their exchange, defense counsel advised Ms. Axford that he would report her conduct to the State Bar because he was "worried" about Mr. Sanchez's case. [Ex. 1, Bates 000007.] Ms. Axford made it a point to advise defense counsel that she had a "financial interest, as well as a personal interest" in the Litigation. [*Id.*, at Bates 000009.]

13. After conducting a telephonic conference, the District Court issued a minute entry on that date stating, in pertinent part, as follows:

Defendant objects to the appearance and assistance of [Ms. Axford] on behalf of plaintiff at his deposition. [Ms. Axford] is a former member of the Arizona State Bar whose license has been suspended. . . . Under Local Rule 83.1(a)(b) [Ms. Axford] is prohibited from representing plaintiff at his deposition and [in] this case. [Respondent]'s request to brief the issue is denied. The Local Rule is clear and will be enforced by this Court.

[Complaint at ¶5.]

14. On January 17, 2013, Mr. Sanchez and defense counsel were scheduled to meet to exchange exhibits and work on joint documents. Mr. Sanchez arrived to the meeting late and brought with him Ms. Axford, who introduced herself as "co-counsel." Defense counsel provided Mr. Sanchez with a copy of their exhibit list and asked if Mr. Sanchez had his exhibit list. Mr. Sanchez said that he did not. Ms. Axford stated that they would not be providing defense counsel with any documents

because “we do not believe you will be trying this case, so we don’t have anything for you.” Ms. Axford then stated that she would be filing “a lot of documents” that would have defense counsel removed from the case and criminally prosecuted. Mr. Sanchez and Ms. Axford accused defense counsel of committing fraud. Ms. Axford accused them of having “got to” the Judge through *ex parte* communications. Ms. Axford also accused defense counsel of “bullying” Mr. Sanchez by initiating communications with him, an unrepresented party. [*Id.* at ¶6.]

15. By letter dated January 22, 2013, defense counsel, David T. Barton, advised Mr. Sanchez that Ms. Axford would no longer be permitted to attend meetings regarding the Litigation because Ms. Axford had “become a complete barrier to our communication and she makes it impossible for us to work cooperatively, as she is constantly accusing us of improprieties and distracting the parties from the issues at hand.” [*Id.* at ¶7; Ex. 1, Bates 000001.]

16. According to the January 22, 2013 letter, Ms. Axford continued to identify herself as “co-counsel” despite that the District Court had previously ruled that she could not do so. [Ex. 1, Bates 000001.]

17. On February 27, 2013, Ms. Axford attended the Final Pretrial Conference in the Litigation with Mr. Sanchez. During the hearing, Ms. Axford advised the Court that her role was to “mak[e] certain Mr. Sanchez has access to the documents he has before him in order to present his case.” [Complaint at ¶8; Ex. 12, Bates 000034.]

18. During the hearing, the Court admonished Ms. Axford as follows: “You and I have spoken in this case before, and I’ve indicated you cannot appear as an attorney in the case, you cannot represent Mr. Sanchez in this case. That was in the

context of a deposition that my order said you can't appear as a representative of Mr. Sanchez in this case." [Complaint at ¶9; Ex. 12, Bates 000034.]

19. On March 29, 2013, Ms. Axford filed an "Application for Stay" with the Court, in which she identified herself as "Counsel" on the first page and signed the last page, along with Mr. Sanchez. [Complaint at ¶10; Ex. 2, Bates 000011-13.]

20. On April 8, 2013, the Court issued Order on the Application for Stay (the Order), in which the Court denied the Application for Stay and "direct[ed], **again**, that [Ms. Axford] make no attempt to represent [the plaintiff] in this case, including appearing on pleadings or attempting to speak for him in court." [Emphasis added.] [Complaint at ¶11; Ex. 2, Bates 000014-16.]

21. The Order states that Ms. Axford:

has attempted in the past to represent Plaintiff in this case. Because she is not a member in good standing of the bar of this Court, and has not been admitted for purposes of this case, the Court has told her that she cannot represent Plaintiff. The Court reiterates that instruction. The Court will direct the Clerk not to accept any future filings in this case that bear [Ms. Axford]'s name or her signature. [Ms. Axford] cannot speak for Plaintiff in the courtroom, nor speak for Plaintiff in dealing with Court's staff. She may sit at counsel table to assist [the Plaintiff] in a paralegal-type capacity during hearings and trial so long as her presence does not interfere with the proceedings in any way.

[Complaint at ¶12; Ex. 2, Bates 000015.)

22. On April 13, 2013, Ms. Axford attended a settlement conference with Mr. Sanchez purportedly to "assist" him. [Complaint at ¶13.)

23. On April 16, 2013, Mr. Sanchez filed a document captioned "Objections to Uncalendered 'Hearings'," wherein he states that he "attempted to file a Notice of Appearance for NAIDA B.G. AXFORD." [*Id.* at ¶14; Ex. 12, Bates 000092.]

24. By letter dated May 3, 2013, Bar Counsel sent a screening letter to Ms. Axford at her address of record with the State Bar and requested that she respond to the allegations set forth in the bar charge filed against her. [Complaint at ¶15; Ex. 3, Bates 000017.]

25. The letter was returned to the State Bar marked by the United States Post Office on May 8, 2013, as "Return to Sender; No Such Number; Unable to Forward." [Complaint at ¶16.]

26. By letter dated May 10, 2013, Bar Counsel sent a screening letter to Ms. Axford at an alternative address: 1087 E. Minton Drive, Tempe, Arizona 85282. [*Id.* at ¶17; Ex. 5, Bates 000021.]

27. By letter dated May 14, 2013, Bar Counsel sent Ms. Axford additional information that was received relating to the allegations set forth in the bar charge filed against her. [Complaint at ¶18; Ex. 6, Bates 000023.]

28. In response to Bar Counsel's May 14, 2013 letter, Ms. Axford sent an undated correspondence to Maret Vessella, State Bar's Chief Bar Counsel, seeking a thirty (30) day extension of time to respond to the screening letter. [Complaint at ¶19; Ex. 7, Bates 000024.]

29. By email dated June 25, 2013, Ms. Axford was advised that the Chief Bar Counsel had granted her a two (2) week extension of time, up to and including July 8, 2013, to respond to the screening letter. Ms. Axford did not respond to the screening letter. [Complaint at ¶20; Ex. 8, Bates 000025-26.]

30. By letter dated July 10, 2013, Bar Counsel sent Ms. Axford a reminder letter asking that she respond to the allegations set forth in the bar charge within

ten (10) days. However, Ms. Axford did not do so. [Complaint at ¶21; Ex. 9, Bates 000027.]

31. On August 7, 2013, Bar Counsel spoke with Ms. Axford, who refused to acknowledge whether or not she had received the July 10, 2013 letter. Instead, Ms. Axford demanded that all communication with the State Bar take place solely by email, which Bar Counsel agreed to do, in addition to sending copies of all correspondence to Ms. Axford's last known physical address. [Complaint at ¶22.]

32. Also on August 7, 2013, Bar Counsel emailed Ms. Axford another copy of the July 10, 2013 letter and asked that she respond to the allegations in the bar charge with ten (10) days. Ms. Axford did not do so. [*Id.* at ¶23; Ex. 10, Bates 000028.]

33. On February 26, 2014, Bar Counsel wrote Ms. Axford advising her the investigation regarding this matter was complete. Attached to the letter was an investigative report. Ms. Axford was informed that investigative report was intended to be submitted to the Attorney Discipline Probable Cause Committee for review. Ms. Axford was given until March 17, 2014, to submit a written statement summarizing her response to the charge in this matter. [Ex. 11.]

34. On April 18, 2014, by a vote of 9-0-0, the Attorney Discipline Probable Cause Committee found probable cause in this matter. As reflected in the Probable Cause Order attached to the May 6, 2014 Complaint in this matter, that Probable Cause Order was filed on April 21, 2014.

CONCLUSIONS OF LAW

Ms. Axford failed to file an answer or otherwise defend against the allegations in the State Bar's complaint. Default was properly entered and effective. 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 Ms. Axford violated the following: Rule 42, Ariz. R. Sup. Ct., specifically E.R.s 3.4(c), 5.5(a), 8.1(b), 8.4(d) and Rules 32(c)(3), 54(a) and 54(c), as set forth below:

1. ER 3.4(c) [Fairness to Opposing Party and Counsel] A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. Ms. Axford repeatedly attempted to represent the plaintiff in matters relating to the Litigation despite that (1) she is a suspended member of the State Bar of Arizona; (2) the Local Rule 83.1 of the Arizona District Court prohibits Ms. Axford, as a suspended member, from practicing before the Court; and (3) the District Court ordered that Ms. Axford was prohibited from doing so.

2. ER 5.5(a) [Unauthorized Practice of Law] A lawyer shall not practice in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. Ms. Axford repeatedly attempted to represent the plaintiff in matters relating to the Litigation despite that (1) she is a suspended member of the State Bar of Arizona and (2) the Local Rule 83.1 of the Arizona District Court prohibits Ms. Axford, as a suspended member, from practicing before the Court.

3. ER 8.1(b) [Disciplinary Matters] A lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority. Ms. Axford knowingly failed to respond to the screening letters sent to her by Bar Counsel.

4. ER 8.4(a) [Misconduct] It is professional misconduct for a lawyer to, among other things, violate or attempt to violate the Rules of Professional Conduct. Ms. Axford repeatedly attempted to represent the plaintiff in matters relating to the Litigation despite that (1) she is a suspended member of the State Bar of Arizona; (2) the Local Rule 83.1 of the Arizona District Court prohibits Ms. Axford, as a suspended member, from practicing before the Court; and (3) the District Court ordered that she was prohibited from doing so.

5. ER 8.4(d) [Misconduct] It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Ms. Axford repeatedly attempted to represent the plaintiff in matters relating to the Litigation despite that (1) she is a suspended member of the State Bar of Arizona and (2) the Local Rule 83.1 of the Arizona District Court prohibits Ms. Axford, as a suspended member, from practicing before the Court. Ms. Axford did so despite repeated admonitions by the Arizona District Court that she was prohibited from representing the plaintiff in the Litigation. As a result of Ms. Axford's actions, among other things, the Court had to conduct a hearing to address Ms. Axford's attempt to defend the plaintiff during his deposition.

6. Rule 32(c)(3), Ariz. R. Sup. Ct. [Membership] All members of the State Bar shall provide to the State Bar office a current street address, e-mail address, telephone number, any other post office address the member may use, and the name of the bar of any other jurisdiction to which the member may be admitted. Ms. Axford failed to confirm her current street address at the request of Bar Counsel and failed to provide the State Bar office with her current street address.

7. Rule 54(a), Ariz. R. Sup. Ct. [Grounds for Discipline] Grounds for discipline of members of the State Bar of Arizona include violations of professional conduct rules in effect in any jurisdiction. Ms. Axford repeatedly attempted to represent the plaintiff in matters relating to the Litigation despite that (1) she is a suspended member of the State Bar of Arizona and (2) the Local Rule 83.1 of the Arizona District Court prohibits Ms. Axford, as a suspended member, from practicing before the Court. Ms. Axford did so despite repeated admonitions by the Arizona District Court that she was prohibited from representing the plaintiff in the Litigation. Ms. Axford also knowingly failed to respond to Bar Counsel's screening letter.

8. Rule 54(c), Ariz. R. Sup. Ct. [Grounds for Discipline] Grounds for discipline of members of the State Bar of Arizona include knowing violations of any rule or any order of the court including, among others, court orders issuing from a District of the United States. Ms. Axford repeatedly attempted to represent the plaintiff in matters relating to the Litigation despite that (1) she is a suspended member of the State Bar of Arizona; (2) the Local Rule 83.1 of the Arizona District Court prohibits Ms. Axford, as a suspended member, from practicing before the Court; and (3) the District Court ordered that she was prohibited from doing so.

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:

Ms. Axford violated her duty to the legal system by violating ER 3.4(c). Ms. Axford also violated her duty owed as a professional by violating ERs 5.5(a), 8.1(b), 8.4(a) and 8.4(d), as well as Rules 32(c)(3), 54(a) and 54(c).

Mental State and Injury:

Ms. Axford violated her duty owed as a professional, which implicates *Standard 8.0*. This standard "should be imposed on lawyers who violate the terms of prior disciplinary orders." *Standard 8.0* [Introduction.].

Standard 8.1 states, "Disbarment is generally appropriate when a lawyer (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession."

The Commentary to *Standard 8.1* explains that the "most common case" in which disbarment is the appropriate sanction is the case in which "a lawyer has been suspended but, nevertheless, practices law." According to the Commentary, "when the record establishes a lawyer's willingness to violate the terms of [her] suspension order, disbarment is appropriate 'as a prophylactic measure to prevent further misconduct by the offending individual.'" (Citing *Matter of McInerney*, 389 Mass. 528, 532, 451 N.E.2d 401, 405 (1983)). Disbarment is also appropriate when the lawyer intentionally or knowingly engages in the same of similar misconduct, as Ms.

Axford has done in this case. See *e.g.*, *Benson v. State Bar*, 13 Cal.3d 581, 531 P.2d 1081 (1975) (Attorney disbarment for inducing client to loan money by making false representations and then failing to repay the loan when lawyer had previously been suspended for misappropriation of client funds.)

We find Ms. Axford repeatedly and intentionally violated existing disciplinary orders and continues to practice law while suspended. In the present case, she actively sought to represent Mr. Sanchez in the Federal Court case notwithstanding her current suspension and repeated admonitions by the District Court Judge that Ms. Axford not do so. By her actions, Ms. Axford caused injury or potential injury to Mr. Sanchez's interests in the Litigation, to the public, the legal system and the profession.

AGGRAVATING AND MITIGATING FACTORS

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

- *Standard 9.22(a)*. Prior disciplinary offenses. As discussed *supra*, Ms. Axford has been repeatedly suspended for practicing while suspended. See Findings of Fact at ¶¶ 2, 4, 5, 6.

- *Standard 9.22(c)*. A pattern of misconduct. As discussed *supra*, Ms. Axford has repeatedly attempted to represent Mr. Sanchez despite being suspended from the practice of law and being admonished by the District Court not to do so. See Findings of Fact at ¶¶ 2, 4, 6, 13, 18, 20, 21.

- *Standard 9.22(d)*. Multiple offenses. As discussed *supra*, Ms. Axford has repeatedly attempted to represent Mr. Sanchez despite being suspended from the practice of law and being admonished by the District Court not to do so. See Findings of Fact at ¶¶ 2, 4, 6, 13, 18, 20, 21.

- *Standard 9.22(e)*. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. As discussed *supra*, Ms. Axford failed and refused to cooperate with the State Bar in its investigation of this case. See Findings of Fact at ¶¶ 29-32.

- *Standard 9.22(i)*. Substantial experience in the practice of law. Ms. Axford was admitted to practice law on October 4, 1980. She practiced for seventeen (17) years before she was suspended for the first time. See Findings of Fact at ¶1.

The statements of Ms. Axford to this Hearing Panel at the hearing at times substantially mirrored those she has made to the hearing officer in SB-02-0115-D. Ms. Axford offered virtually no legal authority for her assertions. She appeared at times to be arguing there was no subject matter jurisdiction for this disciplinary matter. As in SB-02-0115-D, she asserted that a mandatory continuing legal education requirement is illegal and that she was suspended in violation of her due process rights. She maintained that the State Bar is illegal under the Arizona Constitution. [Ex. 14, Bates 000150.]

Ms. Axford made multiple arguments but offered no support for those assertions. Her positions included her premise that the incorporation of the State Bar was a violation of the separation of powers but she failed to identify why or what relevance such opinion had to these proceedings. Ms. Axford asserted the Arizona Attorney General had failed to respond to her petition for *certiorari* to the United States Supreme Court. She emphasized that as a result of the failure to respond to the petition that her factual allegations in her petition were established as true and apparently in her opinion, could never be refuted. She acknowledged that the U.S.

Supreme Court denied her petition but proclaimed that its denial did not matter. She argued what was little more than a logical *non sequitur* in claiming the State Bar had no authority to prosecute her as an attorney for ethical violations but that the State Bar had failed in its duty to prosecute a lawyer she had previously told the State Bar to "open an ancillary file against." When asked by a Hearing Panel Member in the instant matter if she thought the State Bar could prosecute every lawyer in every case. Ms. Axford proclaimed she was not every lawyer in every case. She stated "I'm a star." She then detailed her accomplishments as a lawyer presumably as mitigation.

The Hearing Panel sought to find mitigation but Ms. Axford offered only that which had previously been considered in her prior cases. Ms. Axford failed to answer or otherwise defend against the allegations set forth in the Complaint. Ms. Axford may well believe that she has helped the oppressed. She is clearly firm in her conclusion that her effective argument in the landmark case *Wagenseller v. Scottsdale Memorial Hosp.* 147 Ariz. 370, 710 P.2d 1025 (1985), revolutionized Arizona Employment Law and that she should be free to practice law in the manner in which she chooses in return for those efforts.

Exhibits 13 and 14 contained the detailed hearing officer individual reports that led to her prior suspension of six months and one day and the suspension of one year that followed. Having considered those reports, we note that the hearing officer in SB-00-0068-D noted her "great service to the public, the profession, the State Bar of Arizona and the practice of law in Arizona." That hearing officer did take the admirable legal background of Ms. Axford into consideration. He then balanced that history with her misconduct and found her "admirable history makes

her present predicament all the more tragic.” He concluded that Ms. Axford “has shown a pattern of misconduct, multiple offenses and obstruction of the disciplinary proceedings by intentionally failing to comply with the rules of the disciplinary process by failing to respond to reasonable requests by the State Bar.” [Ex. 13, Bates 000111 and 000115.]

The hearing officer in SB-02-0115-D listed one mitigating factor. He wrote Ms. Axford “asserted that she suffers from ‘post-traumatic stress symptoms,’ but offered no credible evidence in support of that claim.” [Ex. 14, Bates 000153.] That hearing officer later referred to *In re Tarletz*, 165 Ariz. 243, 798 P. 2d 381 (1990). He noted the Hearing Committee’s observations about the attorney’s conduct during the disciplinary process in that case as instructive and quoted from that opinion.

The file on the subject Complaint....may only be fairly described as shocking. It is clearly evident to the Committee that Respondent marches to the beat of a different drummer and cares not about the propriety of her actions, the integrity of the judicial process, the legal profession or the Rules of the Supreme Court of Arizona.

Nothing has changed from the findings of aggravating factors listed by prior hearing officers. In this current matter, there is no evidence upon which this Hearing Panel can base a finding of mitigation. As a result, we find no mitigating factors.

The Hearing Panel finds that after considering the aggravating factors, 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 case of *In re Tarletz*, 165 Ariz. 243, 798 P.2d 381 (1990), the Arizona Supreme Court ordered that Ms. Tarletz be disbarred. Ms. Tarletz, who had initially been suspended for nonpayment of dues, continued to engage in the unauthorized practice of law. The Supreme Court noted that while “the underlying conduct exhibited by respondent [was] not necessarily so egregious by itself as to warrant disbarment. . . . Respondent ha[d] shown a total disregard for the disciplinary process and the legal profession. Failure to cooperate with disciplinary authorities is a significant aggravating factor in considering proper discipline.” 165 Ariz. at 244, 798 P.2d at 382. The Court found *Standard* 8.1 to be persuasive and disbarred Ms. Tarletz.

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 the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). And, it is a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the State Bar. *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, and the goals of the attorney discipline system. Based upon the above, the Hearing Panel orders as follows:

IT IS ORDERED:

1. Ms. Axford shall be disbarred from the practice of law effective immediately.
2. Ms. Axford shall pay \$2,000.00 in costs and expenses incurred by the State Bar in this proceeding as reflected in the Statement of Costs and Expensed filed on July 16, 2014.
3. A final Judgment and Order will follow.

DATED this 23rd day of July 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Concurring:

Bruce M Brannan

Bruce Brannan, Volunteer Public Member

Harlan J. Crossman

Harlan Crossman, Volunteer Attorney Member

Copies of the foregoing mailed/emailed
this 23rd day of July, 2014.

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by: MSmith