

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,

SUSAN E. ELLIOTT,
Bar No. 020574

Respondent.

PDJ-2013-9070

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar File Nos. 12-0660,
12-2352, 12-2646]

FILED OCTOBER 28, 2013

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on August 21, 2013. On August 23, 2013, the complaint was served on Respondent by certified mail, delivery restricted to Respondent, as well as by regular first class mail, pursuant to Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge ("PDJ") of the Supreme Court of Arizona was assigned to the matter.

A notice of entry of default was properly filed on September 18, 2013 and served on Ms. Elliott. That notice cautioned her 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, Ms. Elliott 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 effective on

October 8, 2013. That notice again cautioned Ms. Elliott 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 the aggravation/mitigation hearing was scheduled for October 28, 2013, at 9:00 a.m. at 1501 West Washington, Court of Appeals Courtroom 2, Phoenix, Arizona 85007-3231. That notice again cautioned Ms. Elliott that "[D]efault 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."

On October 28, 2013, the Hearing Panel, comprised of volunteer attorney member, James Marovich and volunteer public member, Carole Kemps, heard argument. James D. Lee appeared on behalf of the State Bar. Ms. Elliott did not appear.

The State Bar detailed extensively the facts alleged in its complaint and then summarized the facts deemed admitted in its prehearing memorandum. The State Bar bears the burden of proof by clear and convincing evidence that the Respondent committed the violations charged. Respondent failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and effective. Ms. Elliott's failure to answer is therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct.

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 judicially admitted behavior 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 mitigation. Ms. Elliott was afforded these rights.

At the same time, the Hearing Panel does not operate in a vacuum. The State Bar properly demanded documents and records from Ms. Elliott. The testimony of a defaulted respondent is not a reliable substitute for documents and records that were required to be disclosed but were not. As pointed out above, in this matter Ms. Elliott did not appear. 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 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 a hearing panel to simply endorse or "rubber stamp" any request for sanctions.

FINDINGS OF FACT

GENERAL ALLEGATIONS

We hereby adopt and incorporate by reference the factual background of this case, as fully admitted in the admitted complaint. [See the admitted complaint for further detailed findings of fact.] Ms. Elliott was first admitted to practice law in the

state of Arizona on December 15, 2000. She was transferred to inactive status on March 10, 2008, and reinstated to active status on April 30, 2008. Ms. Elliott was suspended from the practice of law in Arizona on February 24, 2012, for failing to comply with the requirements of Mandatory Continuing Legal Education and was reinstated to the practice of law in Arizona on March 6, 2012. She was again suspended from the practice of law in Arizona on February 22, 2013, for failing to comply with the requirements of Mandatory Continuing Legal Education, and remained suspended at the time the complaint was filed.

COUNT ONE (File No. 12-0660/Connelly)
Representation of Joanne Connelly

Joanne and Thomas Connelly, neither of whom was represented by legal counsel during the dissolution proceeding, filed a *Consent Decree of Dissolution of Marriage (With Minor Children)*, which was signed by Maricopa County Superior Court Judge Roger Hartsell on September 29, 2008. On August 29, 2011, Joanne consulted with Respondent regarding her fee and the issues that Joanne wanted to address in a post-dissolution proceeding.

Ms. Elliott failed to appear at two meetings that she had scheduled to further consult with Joanne and cancelled another. On September 6, 2011, Joanne met with Ms. Elliott to discuss the representation. At that meeting, Joanne paid Respondent's \$3,500.00 flat fee for the representation and provided Respondent with information she would need for the representation, including a list of concerns/issues she wanted to have addressed. Respondent and Joanne discussed the possibility of settling various issues with Thomas Connelly, and Respondent agreed to litigate the matter if settlement negotiations were unsuccessful. Joanne asked Respondent to provide her with a list of the services she was going to provide

for the flat fee she had paid and an estimate of the time it would take to complete them. Respondent never communicated to Joanne in writing the scope of the representation and the basis or rate of the fee and expenses for which Joanne would be responsible. Respondent never provided Joanne with any accounting of the time she spent representing her.

Between September 6 and 29, 2011, Ms. Elliott repeatedly promised Joanne that she would send a letter to Thomas Connelly addressing each of her requests. When she finally did so on September 29, the letter did not address all of the issues and requests that Joanne had provided to Respondent in writing on more than one occasion. On October 4, 2011, Respondent promised to immediately prepare and send a follow-up letter to Thomas Connelly addressing those issues that were not addressed in her September 29, 2011, letter. When Joanne failed to receive a draft copy of the follow-up letter, she attempted to contact Respondent to determine when the follow-up letter would be ready for her review. Respondent provided Joanne with various explanations for the delay in sending a follow-up letter, including claims that she (a) had called Thomas Connelly; (b) had problems with her computer; (c) had "female issues"; and (d) had been sick.

Ms. Elliott finally provided Joanne with a copy of her draft follow-up letter to Thomas Connelly. Joanne left a number of voice-mail messages for Respondent and sent email messages to her in an attempt to discuss the follow-up letter. Much later Ms. Elliott gave her client multiple excuses for her unavailability and failure to return calls. She also told Joanne that she would schedule a meeting with Thomas Connelly and then follow-up with Joanne. Ms. Elliott informed her client that she had scheduled a settlement conference with Thomas Connelly and

that she had sent him a letter. Respondent failed to provide Joanne with a copy of the letter that she claimed she had sent to Thomas Connelly. On November 10, 2011, Respondent informed Joanne that she had made arrangements to meet with Thomas Connelly for lunch that day to discuss her letters and the various issues. Respondent never met with Thomas Connelly on November 10, 2011, but told Joanne that she had. Ultimately, Joanne directed her to file the legal pleadings to initiate the court action.

On numerous occasions Joanne unsuccessfully attempted to obtain a status report from Ms. Elliott and left several voice-mail messages for Respondent in which she asked for a return call. Respondent did not return Joanne's calls. When Joanne finally reached her attorney, Ms. Elliott informed Joanne that Maricopa County had reduced Conciliation Services due to the economy and asked Joanne to provide her with information about the sale of real property that was comparable to that belonging to Joanne and/or Thomas Connelly (Joanne, however, had already provided that information to Respondent on two occasions).

During January 2012, Joanne unsuccessfully attempted to communicate with Respondent on numerous occasions. Respondent, however, answered the telephone when Joanne called on January 26, 2012. Respondent claimed to have been sick for the preceding two weeks and stated she had been waiting for Joanne to contact her (even though Joanne had told her the last time they spoke that she should initiate court proceedings). Joanne once again directed Respondent to file an appropriate pleading/motion regarding the post-decree issues. Respondent promised to prepare the necessary pleading/motion by no later than January 30, 2012. Joanne confirmed the substance of that telephonic conversation by email.

Joanne left multiple voice-mail messages for Respondent. During the next several weeks, Joanne emailed documents to Respondent that she had requested and then unsuccessfully attempted to communicate with Respondent regarding the status of the pleading/motion she had directed Respondent to file.

On March 16, 2012, Respondent spoke with Joanne by telephone and informed her, among other things, that she (a) had received the financial documents from Joanne; (b) had not received any of the voice-mail messages that Joanne had left on her cell phone; (c) had been attempting to communicate with Thomas Connelly to negotiate a settlement; and (d) had not received the filing fee from Joanne. Respondent told Joanne that she concluded that Joanne and Thomas Connelly were attempting to address the issues themselves, and that Joanne had changed her mind about initiating court action. Respondent agreed to meet with Joanne on March 18, 2012, so she could sign the necessary documents, verify the facts, and provide another check for the filing fee. Ms. Elliott failed to appear for the meeting.

Thereafter, Joanne made numerous attempts to communicate with Ms. Elliott. After contacting the State Bar, Joanne spoke with Respondent on July 17, 2012. Joanne asked Respondent to forward Thomas Connelly's settlement proposal to her, but Respondent told Joanne that she had never received the settlement proposal. Respondent inquired whether the property had been refinanced, and said she had broken her wrist, that her Wi-Fi was not working and that she could not send email messages to anyone. Joanne once again gave Thomas Connelly's telephone numbers to Respondent so she could call and obtain another copy of the

settlement proposal. Later on July 17, Thomas Connelly provided Joanne with a copy of the settlement proposal.

Ms. Elliott and Joanne made arrangements to meet on July 30, 2012, to transfer the file to Joanne. Respondent cancelled that meeting and another meeting that had been scheduled to transfer the file. Thereafter, Respondent told Joanne that she had mailed the file, but that it had been returned to her. She told Joanne that she would mail it again. Finally during or about late August or mid-September 2012, Respondent delivered to Joanne the file she maintained on her behalf.

Failure to Timely Respond to Bar Counsel re: File No. 12-0660
and Failure to Notify the State Bar of a Change of Address

On August 17, 2012, Bar Counsel Stacy Shuman mailed an initial screening letter to Respondent at her address of record with the State Bar of Arizona. That letter stated in part:

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, 1.5, 1.15 and 1.16.

(Underline in original).

On August 29, 2012, Bar Counsel Shuman mailed another letter to Respondent at her address of record with the State Bar. Respondent failed to submit a written response, as directed by Bar Counsel Shuman in those letters. On September 17, 2012, Bar Counsel Stacy Shuman sent another letter to Respondent

at her address of record with the State Bar to remind her that her response to the screening letter was past due. On or about September 28, 2012, Bar Counsel Shuman's letter to Respondent dated September 17, 2012, was returned to the State Bar; the envelope stated, "RETURN TO SENDER; No longer at the address; RETURN TO SENDER; NOT DELIVERABLE AS ADDRESSED; UNABLE TO FORWARD."

On October 2, 2012, Bar Counsel Shuman spoke with Respondent. Respondent gave her new address to Bar Counsel Shuman and informed her that she would update her address with the State Bar that day. Bar Counsel Shuman mailed a letter to Respondent that day at the address she had provided requiring a response within ten (10) days. Respondent called Bar Counsel Shuman and acknowledged receipt of the screening letters. She stated she had updated her address with the State Bar. On or about October 9, 2012, Bar Counsel Shuman's August 17, 2012, letter to Respondent's address of record with the State Bar of Arizona was returned to the State Bar; the envelope stated, "RETURN TO SENDER; No longer at the address." Respondent failed to submit a written response, as directed by Bar Counsel Shuman.

On October 29, 2012, Bar Counsel Shuman again spoke with Respondent, who promised to submit a response to Joanne Connelly's charges of misconduct by Friday, November 2, 2012. She blamed the delay in responding on a cold. Respondent failed to submit a written response to Joanne Connelly's charges, as she had promised on October 29, 2012. On November 17, 2012, Bar Counsel Shuman called Respondent but was unable to leave a voice-mail message because her voice-mailbox was full. This pattern of non-responsiveness continued.

COUNT TWO (File No. 12-2352/Young)
Representation of Nathan Young

On January 29, 2009, Nathan Young (Nathan) and his wife, Nayda Brignoni-Young (Nayda) (collectively, "the Youngs"), retained the Law Offices of Laura Jane Edwards, PLLC (the Firm), to represent Nathan regarding an *in loco parentis*/non-parent custody case involving Wyatt Gabriel (Wyatt), Nathan's stepson. During the period of representation, Respondent was primarily responsible for representing the Youngs. By letter dated June 30, 2011, the Firm advised Nathan that Respondent was leaving the firm effective immediately and that Nathan was free to retain Respondent to continue the representation. Nathan chose to retain Respondent because she was familiar with his case.

Nathan made numerous appointments to meet or talk with Respondent to discuss his case, but Respondent often failed to meet with him as they had planned. Nathan met with Respondent on two occasions. On May 7, 2012, the Youngs met with Respondent, at which time Respondent agreed to continue representing Nathan for a flat fee. During that meeting, Respondent told Nathan that she would file a notice of appearance immediately prior to the hearing. Respondent failed to communicate to Nathan in writing, before or within a reasonable time after commencing the representation, the scope of the representation and the basis or rate of the fee and expenses for which he would be responsible.

Following the May 7, 2012, meeting, Nathan sent an email message to Respondent in which he requested an email receipt for the \$300.00 that he had given her during the meeting. Respondent acknowledged receipt of the email

message, but did not send a receipt, as Nathan had requested. A week prior to the June 29, 2012, hearing, Nathan called and sent a text message to Respondent to find out where he should meet her prior to the hearing. Respondent informed Nathan that she was preparing for the hearing and accepted the Youngs' offer to drive her to the hearing in Prescott because she had broken her wrist and could not drive. Nathan told Respondent that he would call her at approximately 5:30 a.m. the morning of the hearing so she could provide him with her home address so that he and his wife could pick her up.

On June 29, 2012, the Youngs sent a text message to Respondent and called her several times, but their calls went to voice-mail. The Youngs left several messages, but then decided to drive to the hearing without Respondent, hoping that she was already on her way and did not need a ride. The Youngs arrived at court for the hearing on June 29, 2012, but Respondent never appeared or filed a notice of appearance on Nathan's behalf. Due to Respondent's failure to appear at the hearing, Nathan represented himself, even though he was not fully prepared to do so and had relied on Respondent's promise to represent him at the hearing. The judge denied Nathan's *in loco parentis*/non-parent custody request.

Nathan called Respondent on June 30, 2012, to determine why she failed to appear at the hearing the day before. He left several voice-mail messages and sent several email messages to Respondent, asking her to refund the \$300.00 he had paid her on May 7, 2012. Respondent never responded or refunded the \$300.00.

Failure to Timely and Truthfully Respond to Bar Counsel re: File No. 12-2352

As in Count One, Bar Counsel Stacy Shuman mailed an initial screening letter to Respondent at her address of record with the State Bar of Arizona. On or about November 23, 2012, Respondent submitted to the State Bar a written response to Nathan Young's charges. In that response, Respondent was untruthful and stated that Nathan Young was not her client and that she "was never retained and no money exchanged hands." In fact, Respondent had agreed to represent Nathan and had accepted \$300.00 from Nathan on May 7, 2012.

On January 3, 2013, State Bar investigator April Landry attempted to interview Respondent regarding Nathan Young's charges. Respondent claimed she was ill, but agreed to call the investigator on January 7, 2013, at 10:00 a.m. Also on January 3, 2013, State Bar investigator Landry sent an email message to Respondent confirming that they would talk by telephone on January 7, 2013. On January 7, 2013, State Bar investigator Landry called Respondent, but Respondent did not answer and Respondent's voice-mailbox was full. Respondent failed to contact the State Bar on January 7, 2013. On January 17, 29 and 31, 2013, Bar Counsel Shuman called Respondent's cell phone in an attempt to speak with Respondent about Nathan Young's charges. Bar Counsel Shuman left voice-mail messages for Respondent on January 29 and 31, 2013, directing Respondent to call her back. Respondent failed to return Bar Counsel Shuman's calls, as directed.

COUNT THREE (File No. 12-2646/Ling)
Representation of David Ling

On August 21, 2011, David Ling (Ling) retained Respondent to file a petition to modify child support and parenting time. Ling paid Respondent \$2,500.00 in four installments (\$1,500.00 on August 21, 2011; \$400.00 on September 14, 2011;

\$400.00 on September 28, 2011; and \$200.00 on an unknown date). On September 20, 2011, Ling signed the verification page that was to be attached to a *Petition to Modify Custody, Parenting Time and Child Support* (the Petition) prepared by Respondent. Shortly after Ling hired Respondent, she made a statement that led him to believe that she had filed the Petition.

Finally, on December 5, 2011, Respondent filed the Petition (*In re the Marriage of Ling and Ling*, Maricopa County Superior Court File No. FC2002-070815). The Petition stated that the parties' minor children had been residing with Ling since the summer of 2011 and moved the court to designate Ling as the primary residential parent and re-calculate child support.

During February 2012, the parties signed a two-page *Stipulation to Modification of Parenting Time and Child Support* that Respondent had prepared. The agreement stated that neither party owed the other any back child support or any child support in the future. The agreement, however, did not include either a child support worksheet or a parenting time worksheet, which should have been included or otherwise filed with the stipulation. Ling understood that Respondent would file the agreement with the court, but she failed to do so. Respondent also failed to take any other step to ensure the Petition was addressed by the court.

By minute entry dated June 5, 2012, the court placed the Ling case on the inactive calendar for dismissal on June 29, 2012. The minute entry reflected there had been no activity on the case since the filing of the Petition. Respondent failed to advise Ling about the minute entry. On July 16, 2012, the court dismissed the *Petition to Modify Custody, Parenting Time and Child Support*. Ling contacted

Respondent, who stated the case had not been dismissed and that everything was "being handled."

In or about September or October 2012, the Arizona Department of Economic Security contacted Ling's employer and began garnishing fifty percent (50%) of Ling's take-home pay (approximately \$220.00 per week). Ling attempted to discuss his case with Respondent by telephone on numerous occasions beginning in or about September 2012, but Respondent's office number had been changed and her cell phone voice-mailbox was most often full. Ling left several voice-mail messages for Respondent and sent several email messages to her, but Respondent failed to communicate with Ling. Respondent failed to respond and failed to provide Ling with the file she maintained on his behalf or an itemized statement of services rendered.

On September 25, 2012, Ling hired attorney Laura Gillis (attorney Gillis), who advised him that his case had been dismissed and that the Petition had been "deficient." Attorney Gillis took steps to have the case reinstated. Thereafter, the court indicated it would accept an amended stipulation to resolve the matter.

Failure to Respond to Bar Counsel re: File No. 12-2646

As in the earlier counts, on October 4, 2012, Bar Counsel Stacy Shuman mailed an initial screening letter and multiple follow up letters. Respondent failed to submit a written response. On January 17, 29 and 31, 2013, Bar Counsel Shuman called Respondent's cell phone in an attempt to speak with her about Ling's charges and her failure to respond to her requests for a written response to Ling's charges. Bar Counsel Shuman left voice-mail messages for Respondent on

January 29 and 31, 2013, in which she directed Respondent to call her back. Respondent failed to return Bar Counsel Shuman's calls, as directed.

CONCLUSIONS OF LAW

Ms. Elliott 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. We decline to find that in any of the counts that Ms. Elliott violated E.R. 1.5(a) by charging or collecting an unreasonable fee. While it is clearly unreasonable to charge a fee and not do work to earn that fee, typically E.R. 1.5(a) is based on a reasonableness standard. The factors listed within the rule do not address such a failure to perform but rather address a more objective standard of reasonableness for the task undertaken.

We recognize that Ms. Elliott failed to establish an understanding with any of these clients as to fees and expenses by furnishing any of these clients with an explanation that would aid that understanding. Clearly it is more desirable to furnish the client with at least a simple agreement that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of representation. Such a written document was absent in each of these counts.

In any event, the Panel finds the allegation of E.R. 1.5(a) superfluous in this unique matter. We are however, more than persuaded that none of these clients received any value for the fees paid and thus order full restitution of those fees.

Therefore, based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Ms. Elliott engaged in the following misconduct.

Count One (File No. 12-0660): By engaging in the conduct set forth in Count One, Respondent violated the following: ER 1.2, ER 1.3, ER 1.4(a), ER 1.5(b), ER 1.15(d), ER 1.16(d), ER 3.2, ER 8.1(b), ER 8.4(c), ER 8.4(d), 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 her 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.

Count Two (File No. 12-2352): By engaging in the conduct set forth in Count Two, Respondent violated the following: ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.5(b), ER 1.15(d), ER 1.16(d), ER 8.1(a), ER 8.1(b), ER 8.4(c), by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation when she made false statements to bar counsel during the State Bar's screening investigation (e.g., Respondent stated that Nathan Young was not her client and that she "was never retained and no money exchanged hands"); ER 8.4(d) 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.

Count Three (File No. 12-2646): By engaging in the conduct set forth in Count Three, Respondent violated the following: ER 1.2, ER 1.3, ER 1.4(a), ER 1.15(d), ER 1.16(d), ER 3.2, ER 8.1(b), ER 8.4(c), by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation (e.g., Respondent led David Ling to

believe she had filed the parties' stipulation, and lied or misrepresented facts to David Ling regarding the status/dismissal of his case); ER 8.4(d) 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.

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

Ms. Elliott violated her duty to her clients by violating ER 1.2, ER 1.3, ER 1.4(a), ER 1.5(b), ER 1.15(d), ER 1.16(d), ER 3.2 and ER 8.4(c) & (d); her duty to the public by violating ER 8.4(d); her duty to the legal system by violating ER 8.4(d); and her duty to the legal profession by violating ER 8.1(a) & (b), ER 8.4(c), and Rules 32(c)(3) and 54(d), Ariz. R. Sup. Ct.

The Lawyer's Mental State

Ms. Elliott engaged in most—if not all—of the misconduct with a knowing or intentional state of mind (e.g., Respondent was aware of the duties she owed to her clients, but failed to honor her duties).

The Extent of the Actual or Potential Injury

Ms. Elliott's conduct resulted in actual harm to her clients to the extent that she failed to appear at a hearing to represent Nathan Young, failed to promptly or timely file pleadings on her clients' behalf, and delayed the resolution of her clients' cases. There was actual harm to the public insofar as there was delay in the processing of civil cases, which is contrary to the public's interest in the prompt resolution of civil disputes. There was actual harm to the profession because Respondent, as a professional, failed on a number of occasions to respond to bar counsel during the State Bar's screening investigation; and failed to participate in the formal disciplinary proceedings. In addition, there was actual harm to the legal system insofar as the Yavapai County Superior Court judge did not have the benefit of Respondent's argument on Nathan Young's behalf at a scheduled hearing (Nathan Young filed an appeal of the Superior Court's ruling against him); and a Maricopa County Superior Court judge dismissed David Ling's *Petition to Modify Custody, Parenting Time and Child Support*, but then reinstated it after David Ling hired subsequent counsel.

Applicable Presumptive Standards

Ms. Elliott violated her duty to her 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, Ms. Elliott failed to adequately communicate with her clients and failed to diligently and promptly represent them. Respondent essentially abandoned two clients and failed to take reasonable steps upon termination of representation to protect her clients’ interests. For example, Respondent failed to notify two clients that she was no longer going to represent them, failed to promptly provide her clients with the files she maintained on their behalf, and failed to refund unearned fees upon termination of representation, all of which could have resulted in harm to her clients’ legal rights.

Ms. Elliott violated her joint duties to her clients and the profession. *Standard 5.11* states, “Disbarment is generally appropriate when: (a) [serious criminal conduct]; or (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice,” while *Standard 5.13* states, “Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer’s fitness to practice law.” In this case, Respondent lied to two clients and bar counsel.

Ms. Elliott also violated her 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."

Respondent additionally violated her 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, Respondent violated her duty owed as a professional by abandoning her clients, failing to respond to bar counsel on several occasions during the State Bar's investigation into the charges of misconduct, and failing to participate in the formal disciplinary proceeding.

Aggravation and Mitigation

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

Aggravating Factors

Standard 9.22(b): dishonest or selfish motion (Respondent abandoned clients that she had agreed to represent, failed to refund unearned fees that her clients had paid, and lied to two clients and bar counsel);

Standard 9.22(c): a pattern of misconduct;

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 (i.e., Respondent failed to respond to a number of bar counsel's letters and telephone calls regarding the State Bar's investigation into the allegations of misconduct);

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(f): submission of false evidence, false statements, or other deceptive practices during the disciplinary process (Respondent lied to bar counsel during the State Bar's screening investigation);

Standard 9.22(g): refusal to acknowledge the wrongful nature of the conduct;

Standard 9.22(h): vulnerability of the victims; and

Standard 9.22(i): substantial experience in the practice of law (Respondent was admitted to practice law in Arizona on December 15, 2000).

Mitigating Factor

Standard 9.32(a): absence of a prior disciplinary record.

RESTITUTION

The conduct deemed admitted as a result of the entry of default and notarized affidavits from Ms. Elliott's clients, which were admitted at the Aggravation/Mitigation Hearing, establish by a preponderance of evidence that restitution should be ordered to the following persons in the following amounts:

Joanne Connelly in the amount of \$3,500.00;

Nathan Young and Nayda Brignoni-Young in the amount of \$300.00; and

David Ling in the amount of \$2,500.00.

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 either suspension or disbarment. Disbarment is warranted, however, because a presumptive sanction of suspension would in any event be increased to disbarment based upon the existence of several aggravating factors, which substantially outweigh the existence of a single factor in mitigation.

Most striking is the dishonesty and deceit of Ms. Elliott towards her clients and the profession. In all aspects of the legal profession, the truth matters. It matters because it is where reality resides. We find this dishonesty and deceit intentional. Such duplicity assures erosion by the public in confidences for the legal system and the profession itself. Truth, however painful, provides nourishment and stability to the lawyer-client relationship and ultimately deep root affection for justice. Dishonesty cuts ruts that are deep and long, soon becoming a character trait that is difficult to get back on track from. Such is what we find here.

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

IT IS ORDERED that Ms. Susan E. Elliott shall be disbarred from the practice of law effective immediately.

IT IS FURTHER ORDERED that shall comply with all provisions of Rule 72, Ariz.R.Sup.Ct., including notice to clients and others.

IT IS FURTHER ORDERED that Ms. Susan Elliott shall pay restitution with interest at the legal rate until paid to:

Joanne Connelly in the amount of \$3,500.00

Nathan Young and Nayda Brignoni-Young in the amount of \$300.00

David Ling in the amount of \$2,500.00

IT IS FURTHER ORDERED that Ms. Susan Elliot shall pay the costs and expenses of these disciplinary proceeding.

A Final Judgment and Order will follow.

DATED this 28th day of October, 2013.

/s/ William J. O'Neil

The Honorable William J. O'Neil
Presiding Disciplinary Judge

CONCURRING:

/s/ James M. Marovich

James Marovich, Attorney Member

/s/ Carole Kemps

Carole Kemps, Public Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 28th day of October, 2013.

Copies of the foregoing mailed/emailed
this 28th day of October, 2013, to:

Susan E. Elliott
1907 East Coolidge Street
Phoenix, AZ 85016-4611
Email: susan.elliott@azbar.org
Respondent

Susan E. Elliott
1206 E. Bethany Home Road, #202
Phoenix, AZ 85014-2029
Email: selliott.2008@yahoo.com
Respondent's alternate address

Copy of the foregoing hand-delivered/emailed
this 28th day of October, 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,

SUSAN E. ELLIOTT,
Bar No. 020574

Respondent.

PDJ-2013-9070

FINAL JUDGMENT AND ORDER

[State Bar File Nos. 12-0660,
12-2352, 12-2646]

FILED NOVEMBER 19, 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 and no appeal has been filed. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Susan E. Elliot, Bar No. 020574**, is hereby disbarred from the State Bar of Arizona and her name is hereby stricken from the roll of lawyers effective immediately. Ms. Elliot 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 Ms. Elliot 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 the following persons in the following amounts with interest at the legal rate until paid:

Joanne Connelly in the amount of \$3,500.00;

Nathan Young and Nayda Brignoni-Young in the amount of \$300.00; and

David Ling in the amount of \$2,500.00.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$2,097.80, within thirty (30) days from the date of service of this Order.

DATED this 19th day of November, 2013.

/s/ William J. O'Neil

**The Honorable William J. O'Neil
Presiding Disciplinary Judge**

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 19th day of November, 2013.

Copies of the foregoing mailed/emailed
this 19th day of November, 2013, to:

Susan E. Elliott
1907 East Coolidge Street
Phoenix, AZ 85016-4611
Email: susan.elliott@azbar.org
Respondent

Susan E. Elliott
1206 E. Bethany Home Road, #202
Phoenix, AZ 85014-2029
Email: selliott.2008@yahoo.com
Respondent's alternate address

Copy of the foregoing hand-delivered/emailed
this 19th 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 85016-6288
Email: lro@staff.azbar.org

by: MSmith