BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **MARC A. VENTURA,** **Bar No. 017539** Respondent.	**PDJ-2015-9013** [State Bar File Nos. 14-1940, 14-2273, 14-2528] **FINAL JUDGMENT AND ORDER** **FILED MAY 29, 2015**

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

IT IS HEREBY ORDERED Respondent **MARC A. VENTURA,** is suspended from the practice of law for a period of four (4) years effective May 8, 2015, for conduct in violation of his duties and obligations as a lawyer as disclosed in the Hearing Panel's Decision and Order Imposing Sanctions filed May 8, 2015.

IT IS FURTHER ORDERED Respondent shall pay the following in restitution within 30 days from the date of the Hearing Panel's Decision and Order Imposing Sanctions filed May 8, 2015:

$1,500.00 to Sandra Sledge; and

$4,777.00 to the Estate of Catherine Adams.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $2,030.28.

IT IS FURTHER ORDERED Respondent 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.

DATED this 29th day of May, 2015.

William J. O'Neil

_____

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 19th day of May, 2015, to:

Marc A Ventura
3411 N. 5th Ave, Ste 307
Phoenix, AZ 85013-3811
Email: marc.ventura@azbar.org
Respondent

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BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **MARC A. VENTURA, Bar No. 017539,** Respondent.	**PDJ 2015-_____** **COMPLAINT** State Bar Nos. 14-1940, 14-2273, 14-2528

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 19, 1996.

COUNT ONE (File no. 14-1940/Sledge)

2. Sandra Sledge's ("Sledge") husband died and his estate included property in Florida, Nebraska, and Arizona.

3. Sledge hired a Nebraska and a Florida attorney to handle her deceased husband's estate.

4. On April 18, 2013, the Florida attorney emailed Respondent that she obtained his name from the Nebraska attorney. The Florida attorney further wrote: "My client is the named personal representative in the decedent's Will, and we need

a probate of the Pinal County lot in which the decedent owned a 50% interest with his ex-wife. Upon distribution of the 50% interest in the lot to my client, who is the sole named beneficiary in the decedent's Will, my client then wants to transfer the 50% interest to the decedent's ex-wife. I would like to discuss this matter with you and look forward to speaking with you."

5. In another email sent later that day, the Florida attorney thanked Respondent for calling her back and wrote: "My client will be pleased to hear that you are related to Mary [the Nebraska attorney] by marriage which should facilitate the necessary communication and coordination between you and Mary. As we discussed, I will scan and e-mail you copies of the Will, the death certificate, the Pinal County lot deed, the CO divorce decree and the settlement agreement, along with contact information for the surviving spouse. . . . It is my understanding that you will prepare a retainer letter. . . . Ultimately you will be dealing directly with Sandy and coordinating with Mary. . ., as it sounds like Mary will be handling the main probate and you will handle the ancillary probate and then effect the transfer of the 50% interest in the Pinal County lot to the co-owner, his ex-wife, per the decedent and Sandy's wishes."

6. On April 21, 2013, Respondent sent Sledge a letter enclosing a fee agreement. In the letter, Respondent wrote: "Based on the information that has been provided to me, I expect that my time related to the ancillary probate will be approximately 4-6 hours. In addition to that, there will be costs incurred for recording and filing of approximately $400.00, costs for an appraisal . . . and costs for obtaining certified copies of the Nebraska probate documents and the Colorado Divorce Decree.

Regarding the title and gifting issues[,] I would expect that those will be resolved with an additional two to three hours of work."

7. The fee agreement provides for an advanced deposit for fees and costs in the amount of $1,500.

8. On April 22, 2013, Sledge emailed Respondent stating that she was mailing Respondent the $1,500 check and his signed fee agreement that day. Sledge wrote: "Bottom line, I want Al's half to be deeded to Deloris Sledge, the owner of the other half. She was his first wife, and this was Al's Wish."

9. Respondent replied the next day: "I will need to record a certified copy of the Divorce Decree. If you have one, let me know, otherwise I will wait until a Colorado attorney has been retained and have that person obtain it. An appraisal should be completed of the Pinal property."

10. Sledge responded by asking Respondent if she should send him additional funds for the appraisal and Respondent answered in the negative.

11. Sledge's last contact with Respondent was in March or April of 2013.

12. Sledge attempted to contact Respondent a number of times but Respondent did not return her calls.

13. On July 8, 2013, the Nebraska attorney emailed Respondent: "Please communicate directly with Sandy. . . . She has left unreturned messages for you, so her communication problems with you need to be resolved, and, most importantly, she wants to expedite the completion of the AZ probates and deed transfers as much as is reasonably possible."

14. Respondent replied on the following day and wrote: "I will call Sandy this afternoon and update her. This is my first day back in the office after being gone most of the last 2 weeks. I apologize for the inconvenience."

15. Respondent then followed up with Sledge on October 16, 2013 and then on December 3, 2013. Respondent wrote Sledge: "I need to speak with you about a couple of points that I want to make sure you understand prior to signing."

16. On February 2, 2014, Sledge asked Respondent for a status update.

17. Respondent subsequently sent Sledge a deed, transferring the property to the ex-wife.

18. Sledge signed, notarized, and returned this deed to Respondent on February 19, 2014.

19. Respondent never recorded the deed.

20. On July 3, 2014, Sledge submitted her bar charge.

21. Intake bar counsel contacted Respondent regarding Sledge's bar charge but Respondent failed to respond to intake bar counsel's phone calls.

22. On July 11, 2014, bar counsel sent Respondent a screening letter requesting a response by July 31, 2014.

23. Respondent did not respond to the screening letter and, on August 5, 2014, bar counsel sent Respondent a second letter demanding a response to the bar charge within ten days.

24. Respondent did not respond to bar counsel's August 5, 2014 letter and, on August 26, 2014, a staff investigator served a subpoena duces tecum on Respondent demanding his complete file relating to Sledge.

25. On or about September 25, 2014, Respondent partially complied with the subpoena by submitting some, but not all, of the documents demanded in the subpoena. Respondent appears to have provided bar counsel with his original file, including the original deed that he did not record.

26. Respondent informed bar counsel that he had a trial scheduled for the next week and that he would submit a response to the bar charge after this trial concluded or by October 7, 2014.

27. On September 30, 2014, bar counsel emailed Respondent regarding his failure to produce all the documents demanded by the subpoena, including any representation letter, client billing statements, invoices, receipts, and any communications between him and Sledge.

28. Respondent replied that he would provide a response to the bar charge and any outstanding documentation by October 7, 2014.

29. Respondent failed to provide a response or additional documentation by October 7, 2014.

30. Respondent's conduct in this count violated Rule 42, ERs 1.2(a), 1.3, 1.4, 8.1(b), Ariz. R. Sup. Ct., and Rule 54(d), Ariz. R. Sup. Ct.

COUNT TWO (File no. 14-2273/Bivens)

31. On March 10, 2011, Respondent entered his appearance as attorney for Jessica Adams ("Jessica") who petitioned to be appointed guardian and conservator for her mother, Catherine Adams ("Catherine").

32. On July 21, 2011, the court appointed Jessica as temporary conservator for Catherine. The order states that all of the assets of the Ward "are restricted" and

that no "withdrawals . . . shall be allowed from any restricted account except upon receipt of a certified copy of an order of this Court authorizing the withdrawal."

33. On October 6, 2011, Jessica was appointed permanent guardian and conservator.

34. Attorney Chris Anderson ("Anderson") was appointed to represent Catherine.

35. On September 20, 2011, Respondent filed a stipulated motion to release certain funds. The motion states: "The Guardian will be moving Catherine Adams into a residential placement in approximately the next month. The costs of care will increase substantially."

36. On September 29, 2011, the court granted Respondent's motion.

37. On February 14, 2012, Respondent filed a motion to unrestrict funds and increase the conservator bond.

38. On March 9, 2012, the court directed that certain funds from one of Catherine's accounts be released to Respondent and deposited into his trust account "to be disbursed as with the consent of Chris Anderson. . . ." The court further ordered that the conservator's bond be increased to $95,000 and that that the conservator file proof of the same within 30 days.

39. On May 11, 2012, the court entered an order scheduling a show cause hearing because Respondent and Jessica "failed to file proof of increased bond in the amount of $95,000, per minute entry dated March 9, 2012." The court initially scheduled the hearing for June 25, 2012 but then continued it until August 7, 2012.

40. On June 25, 2012, Respondent filed a motion to withdraw, stating that "continued representation has been unreasonably difficult due to both ongoing health issues and communication problems between the attorney and client."

41. On August 7, 2012, the court held the show cause hearing. At the hearing, Respondent advised the court that an Arizona Long Term Care System application had not yet been filed "because the ward's current assets will prevent her from qualifying at this point", and that an interim accounting was provided to Anderson. The court then granted Respondent's oral motion to withdraw his motion to withdraw.

42. On January 2, 2013, Jessica emailed Respondent stating: "I am writing to see where we stand with, well . . . everything. . . . I haven't heard from you since our cancelled meeting. . . . Please let me know where everything stands . . . ."

43. Respondent did not respond to this email.

44. On January 17, 2013, Jessica emailed Respondent again: "Still waiting to hear from you. . . . I literally have not heard a single word from you. . . . Let's move this forward."

45. Respondent did not respond to this email.

46. On January 21, 2013, Jessica emailed Respondent again: "Please contact me soon. I need to know where we stand in regards [sic] to mom and what we need to do to move forward. I have not heard from you in months and have no idea what is going on."

47. Respondent responded the next day.

48. On January 25, 2013, the court entered an order stating that Jessica failed to file a proof of restriction on assets, first accounting, and annual report. The

court ordered Jessica to appear on February 27, 2013 "and show cause why she should not be removed as Conservator/Guardian, held in contempt of court or have other sanctions issued against her."

49. The court held the show cause hearing on February 27, 2013.

50. The court entered a minute entry regarding the same stating that Respondent will file the accounting on the same day, that Anderson was provided copies of the accounting, and that Respondent informed the court that "proofs of restriction have not been filed."

51. On April 30, 2013, Respondent filed a status report with the court stating that Catherine's expenses are approximately $4,700 per month but that her income is only $2,300 per month such that "she is . . . spending down her assets at a rate of approximately $30,000.00 per year, just on care costs." Respondent recommended a spend-down plan where they "[c]ontinue to spend-down her funds until she has less than $2000.00 in resources and then qualify for ALTCS [Arizona Long Term Care System] and terminate the Conservatorship". Respondent also advised the court that certain accounts that the court ordered to be restricted have not been restricted despite "substantial efforts."

52. On May 16, 2013, Respondent filed a petition to authorize spend-down plan.

53. On June 28, 2013, the court entered an order authorizing the spend-down plan. The court ordered that all financial accounts of the ward be unrestricted and that Jessica is authorized to direct withdrawals of the accounts, that Jessica direct withdrawal of two of Catherine's retirement accounts, and that Jessica is authorized

to execute a Miller Trust on behalf of Catherine with the residual from the trust payable to Catherine's children.

54. On December 18, 2013 and December 20, 2013, the court entered additional orders approving the spend-down plan. The court ordered that Jessica withdraw or transfer certain retirement accounts, purchase a Medicaid qualifying annuity, and submit an application for ALTCS benefits "no later than December 15, 2013. . . ." The court further ordered that Jessica "shall utilize the withdrawn funds for necessary expenses of Catherine . . . and to pay fees approved by this Court."

55. On the same date, the court entered an order approving the payment of fees to Anderson and stating: "The approved fees shall be paid to . . . Anderson, . . . less any amounts previously paid."

56. In the same order, the court approved attorney fees to Respondent "in the amount of $39,910.22 for services rendered and costs incurred from January, 2011 through the termination of the Conservatorship."

57. Respondent did not complete the steps necessary for the spend-down plan.

58. Additionally, around this time, Respondent stopped communicating with anyone relating to this case, including Jessica, and no one could obtain an accounting of Catherine's assets from Respondent. Anderson and Stephanie Bivens ("Bivens"), Jessica's soon to be new attorney, attempted to contact Respondent but Respondent would not communicate with them.

59. Around this time, Respondent also stopped performing work for Catherine on this matter.

60. As a result, Catherine's expenses were going unpaid.

61. On February 19, 2014, Jessica emailed Respondent stating "I have received some legal advice and wanted you to be aware of how things will be handled going forward. 1) Starting tomorrow, you **will** respond to any phone calls or emails within two hours. . . . I will no longer tolerate waiting weeks for a response. . . . 2) When I request you to pay Mom's rent, you will do so that same day. . . . I will be in touch with Emeritus to ensure that you are doing this. 3) You stated that the check for Mom's rent will be cut tomorrow, however you then said that it would be arriving at Emeritus next week. This is not acceptable. . . . I regret that I have to resort to this, but I cannot tolerate your gross negligence any longer. I am aware that you have other clients, but I am not asking for anything unreasonable. . . . My mother's long-term care and well-being are my sole priority and going forward every action on your part needs to be determined by how it will affect her." (emphasis in original).

62. On April 8, 2014, Anderson filed a Notice of Non-Compliance with Court Order. The notice states that Respondent violated the December 18, 2013 court order because: "Notwithstanding numerous e-mails sent to and phone messages left with Conservator's attorney since the entry of the . . . Order, Conservator's attorney has failed: To pay the necessary expenses incurred by the Protected Person. . ., and the approved attorney's fees; to provide proof that an application for ALTCS benefits has been submitted; and . . . to complete the annuity purchase."

63. On April 11, 2014, the court entered a show cause order based on Anderson's notice and because Jessica and Respondent failed "to pay the necessary expenses, which includes, but not limited to, the bill of Desert Care Management, attorney's fees, [and] proof that an application to ALTCS has been submitted. . . ." The order requires that Jessica and Respondent appear and show cause why Jessica

"should not be removed as conservator, held in contempt of court or have other sanctions issued against her."

64. On May 19, 2014, the court held the show cause hearing.

65. Jessica attended the hearing but Respondent did not attend the hearing.

66. At the hearing, Anderson informed the court that he had not been paid.

67. Jessica testified that "she had been unable to contact her attorney despite numerous phone calls and e-mails" and that "her attorney is in possession of the Ward's funds, in the approximate amount of $100,000.00."

68. The court entered another show cause order on the same date so that Respondent can "personally appear and show cause why he should not be in contempt of court." The court further noted that Jessica intended to hire a new attorney and that: "A portion of [Respondent's] fees will be used to pay new counsel as a result of [Respondent's] failure to follow through with the final tasks that need to be completed for ALTCS."

69. On May 28, 2014, Bivens entered her appearance on behalf of Jessica.

70. On May 29, 2014, the court held another show cause hearing.

71. Respondent again failed to attend the show cause hearing.

72. At the show cause hearing, Bivens informed the court that: ". . . the ALTCS application has been denied as a result of the application not being completed, the annuity has not been purchased as the check was sent back to Merrill Lynch, there is approximately $18,000.00 in a retirement account, the income only trust has not been established, and it is unknown if [Respondent] is in possession of any of the ward's funds."

73. Anderson and Bivens both informed the court that "there has been no communication" with Respondent.

74. The court found Respondent "in contempt of court for failing to appear for two Order to Show Cause hearings and to comply with the court's prior orders."

75. The court then continued the show cause hearing for July 17, 2014 and ordered Respondent to appear and "show cause why he should not be held in contempt of court or have other sanctions issued against him."

76. The court also directed its investigators to attempt to locate Respondent so that Respondent could be personally served with the court's order to appear.

77. Finally, the court again ordered that a portion of Respondent's "fees will be used to pay new counsel/court-appointed counsel as a result of . . . [Respondent's] failure to comply with the court's prior orders."

78. On July 15, 2014, Bivens submitted her bar charge and wrote: ". . . it is our understanding that . . . [Respondent] holds a significant amount of Catherine A. Adams' funds in his IOLTA account. On information and belief, Mr. Ventura holds somewhere between $40,000.00 to $60,000.00. . . . Because he holds these funds, . . . we are unable to move forward the long term care benefits planning for the Ward . . . or use her funds for care expenses. . . . Despite numerous attempts to contact Mr. Ventura, he has not responded except for one brief email to me dated June 5, 2014 in which he asks if we can talk. . . . Ms. Adams resides in an assisted living facility and, on information and belief, is in arrears to the facility in the approximate amount of $8,000.00 and $2,000.00 for medical expenses. The facility has issued an eviction notice. . . . Thus far, because Jessica . . . is able to make partial payments,

the facility has been flexible, given the situation. However, we are not sure how long its patience will last."

79. On July 16, 2014, Bivens filed a status report with the court informing the court that that Respondent was supposed to orchestrate a spend down plan to qualify Catherine for ALTCS but that Respondent "has been mostly incommunicado with" Jessica since the end of 2013 and has failed to respond to Complainant's requests "for substantive information in this matter."

80. Bivens also informed the court that the ALTCS application was submitted but denied and that no withdrawals were made from the ward's State of Arizona retirement account as part of the spend-down plan.

81. Bivens further informed the court that, as part of the spend-down plan, Respondent had two checks issued from a Merrill Lynch retirement account—one for approximately $50,000 and one for approximately $40,000. Bivens further informed the court that Respondent deposited the $40,000 check into his trust account but Merrill Lynch placed a stop-order on the other check because "they never received the completed annuity contract paperwork: no annuity was ever purchased."

82. Biven's status report also states: "It is currently unknown how much of the Ward's monies are currently held in Marc Ventura's IOLTA account. Marc Ventura has not responded to multiple requests for information. The following is known: (1) Marc Ventura submitted an 'accounting' of the Ward's funds held in his IOLTA account . . . which indicate a balance of $21,042.59, and 2) Marc Ventura deposited . . . [a] check into his IOLTA account in the amount of $40,178.58."

83. Bivens' status report also states that: "The Ward has several outstanding medical bills, but the largest of which is to Emeritus, her assisted living placement. .

. . Note, Marc Ventura was to pay Emeritus until the Ward qualified for ALTCS benefits but since he went 'missing' Emeritus has not been paid and Conservator has been able to explain the situation and pay minimum amounts each month from the Ward's income to prevent discharge thus far."

84. On July 17, 2014, the court held its third continued show cause hearing.

85. Respondent attended this show cause hearing.

86. On the same date, the court ordered the following: "This afternoon Mr. Ventura will deliver an accounting and a check in the approximate amount of $4,000 to Mr. Anderson. Mr. Ventura will provide backup documentation."

87. Respondent complied with this order by providing the required check and accounting.

88. Shortly after she submitted her bar charge, Respondent contacted Bivens and provided her an accounting, and a check for the balance of Catherine's funds in the amount of approximately $5,000.

89. Respondent also provided Bivens copies of all the cancelled checks he wrote on behalf of Catherine.

90. Bivens informed a staff investigator that "Respondent's bookkeeping appears correct."

91. On July 23, 2014, Anderson emailed Respondent and informed him that he was overpaid by $1,000.

92. Bivens wrote a demand letter to Respondent but Respondent did not respond to this demand letter.

93. Respondent has not communicated with Bivens since August of 2014.

94. On August 13, 2014, the court held a status conference.

95. The court entered a minute entry on the same day. The court's minute entry states that the conservator deposited into a conservatorship account certain funds, including $4,858.47 from Respondent, and that the conservator then paid certain bills for the ward. The minute entry further states: "Mr. Ventura owes $3,777.00 and $1,000 for overpayments. . . ."

96. The $3,777.00 appears to be for the disgorgement of fees that the court ordered on May 29, 2013.

97. On July 31, 2014, bar counsel sent Respondent a screening letter and demanded a response by August 20, 2014. Bar counsel also requested Respondent's file relating to this matter and trust account records.

98. Respondent did not respond to bar counsel's letter.

99. On August 26, 2014, a staff investigator served a subpoena duces tecum on Respondent demanding his complete file and trust account records.

100. On or about September 25, 2014, Respondent produced some documents responsive to the subpoena but did not produce all the documents demanded in the subpoena. Specifically, Respondent did not produce all the trust account records demanded in the subpoena.

101. At this time, Respondent informed bar counsel that he would submit a response to the bar charge by October 7, 2014.

102. Respondent failed to do so.

103. Respondent's conduct in this count violated Rule 42, ERs 1.2(a), 1.3, 1.4, 1.15(d), 1.16(d), 3.4(c), 8.1(b), 8.4(d), Ariz. R. Sup. Ct., and Rules 43(b)(2)(B), 54(c), and 54(d), Ariz. R. Sup. Ct.

104. Rule 43(d)(3) applies, rebuttal presumption, because Respondent failed to provide all the trust account records that the State Bar subpoenaed from Respondent.

COUNT THREE (File no. 14-2528/Glaser)

105. In late 2013, Davina Glaser ("Glaser") contacted Respondent to update her will and assist her with estate planning.

106. Glaser initially had a difficult time getting in touch with Respondent but they eventually met at his office for approximately one hour.

107. Respondent agreed to assist Glaser.

108. Respondent did not provide Glaser a writing complying with ER 1.5(b) and Glaser did not pay Respondent any money.

109. Glaser provided Respondent certain documents to assist him in completing this estate planning.

110. Respondent never completed the agreed upon work.

111. Respondent stopped communicating with Glaser.

112. Glaser called Respondent approximately ten times but Respondent never returned her calls.

113. Glaser's son also emailed Respondent but Respondent failed to respond to this email.

114. Respondent did not return Glaser's documents to her.

115. On September 11, 2014, bar counsel sent a screening letter to Respondent, demanding his entire file relating to Glaser, and requesting a response by October 1, 2014.

115. On September 11, 2014, bar counsel sent a screening letter to Respondent, demanding his entire file relating to Glaser, and requesting a response by October 1, 2014.

116. Respondent failed to respond to the bar charge and failed to produce the requested documents.

117. On October 23, 2014, bar counsel sent Respondent a second letter demanding a response to the bar charge within ten days.

118. To date, Respondent has not responded to the bar charge and has not provided the documents that bar counsel requested from him.

119. Respondent's conduct in this count violated Rule 42, ERs 1.2(a), 1.3, 1.4, 1.5(b), 1.15(d), 1.16(d), 8.1(b), Ariz. R. Sup. Ct., and Rule 54(d), Ariz. R. Sup. Ct.

DATED this 3rd day of February, 2015.

STATE BAR OF ARIZONA

Nicole S. Kaseta
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 3rd day of February, 2015

by: Jackie Dewitt
NSK:jld

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **MARC A. VENTURA,** **Bar No. 017539** Respondent.	**PDJ 2015-9013** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar Nos. 14-1940, 14-2273, and 14-2528] **FILED MAY 8, 2015**

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on February 3, 2015. On February 10, 2015, the complaint was served on Mr. Ventura by certified, delivery restricted mail, as well as by regular first class mail, pursuant to Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. A notice of default was properly issued on March 10, 2015. Mr. Ventura did not file an answer or otherwise defend against the complaint's allegations and default was effective on March 31, 2015. On that same date, a notice of aggravation and mitigation hearing was sent to all parties notifying them the aggravation/mitigation hearing was scheduled for 9:30 a.m. on April 22, 2015, at the State Courts Building, 1501 West Washington, Room 109, Phoenix, Arizona 85007-3231.

On April 22, 2015, the Hearing Panel, composed of Andrea Curry, attorney member, Nance Daley, public member, and Presiding Disciplinary Judge, William J.

O'Neil, heard the case. Staff Bar Counsel, Nicole S. Kaseta appeared on behalf of the State Bar of Arizona. Marc A. Ventura appeared *pro per.* State Bar exhibits 1-33 were admitted. Mr. Ventura presented one exhibit for admission which was medical records and he requested the exhibit be sealed. There being no opposition to the exhibit or the sealing of that exhibit, the PDJ admitted the exhibit and granted the request for protective order sealing the exhibit. The State Bar called Mr. Ventura and Stephanie Bivens to testify. Mr. Ventura testified in his own interest as well. Mr. Ventura testified he has been suspended since January, 2015, as he has failed to take his required MCLE.

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 SBA's case. A respondent against whom a default has been entered and effective may no longer litigate the merits of the factual allegations. However, the respondent retains the right to appear and participate 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. Mr. Ventura 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. We find the facts deemed admitted constitute ethical violations. The hearing panel must also exercise discretion in deciding whether sanctions should issue for the respondent's misconduct. We find the actions of Mr. Ventura warrant sanctions. If the hearing panel finds sanctions are warranted, then it independently

determines which sanctions should be imposed. It is not the function of a hearing panel to endorse or "rubber stamp" any request for sanctions. The State Bar requests disbarment or in the alternative a multi-year long term suspension with conditions to be determined upon any later reinstatement. We find a long term suspension satisfies the purpose of lawyer discipline.

The facts listed below are those set forth in the SBA's complaint and were deemed admitted by Mr. Ventura's default. Mr. Ventura also testified he did not dispute any of the allegations in the complaint. His testimony and that of the other witness and the exhibits admitted are clear and convincing evidence of the accuracy of the allegations we find and which were substantially alleged in the complaint.

The facts listed below are those set forth in the SBA's complaint and were deemed admitted by Mr. Ventura's default.

FINDINGS OF FACT

Mr. Ventura was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 19, 1996.

COUNT ONE (File no. 14-1940/Sandra Sledge)

Sandra Sledge's ("Ms. Sledge") husband died and his estate included property in Florida, Nebraska, and Arizona. Ms. Sledge hired a Nebraska and a Florida attorney to handle her deceased husband's estate. Having obtained Mr. Ventura's name from the Nebraska attorney, on April 18, 2013, the Florida attorney emailed Mr. Ventura. The Florida attorney further wrote: "My client is the named personal representative in the decedent's Will, and we need a probate of the Pinal County lot in which the decedent owned a 50% interest with his ex-wife. Upon distribution of the 50% interest in the lot to my client, who is the sole named beneficiary in the decedent's

Will, my client then wants to transfer the 50% interest to the decedent's ex-wife. I would like to discuss this matter with you and look forward to speaking with you." [SBA Exhibit 3, Bates 000004.]

In another email sent later that day, the Florida attorney thanked Mr. Ventura for calling her back and wrote:

> My client will be pleased to hear that you are related to Mary [the Nebraska attorney] by marriage which should facilitate the necessary communication and coordination between you and Mary. As we discussed, I will scan and e-mail you copies of the Will, the death certificate, the Pinal County lot deed, the CO divorce decree and the settlement agreement, along with contact information for the surviving spouse. . . . It is my understanding that you will prepare a retainer letter. . . . Ultimately you will be dealing directly with Sandy and coordinating with Mary. . ., as it sounds like Mary will be handling the main probate and you will handle the ancillary probate and then effect the transfer of the 50% interest in the Pinal County lot to the co-owner, his ex-wife, per the decedent and Sandy's wishes.

[SBA Exhibit 3, Bates 000005.]

On April 21, 2013, Mr. Ventura sent Ms. Sledge a letter enclosing a fee agreement. In the letter, Mr. Ventura wrote:

> Based on the information that has been provided to me, I expect that my time related to the ancillary probate will be approximately 4-6 hours. In addition to that, there will be costs incurred for recording and filing of approximately $400.00, costs for an appraisal . . . and costs for obtaining certified copies of the Nebraska probate documents and the Colorado Divorce Decree. Regarding the title and gifting issues[,] I would expect that those will be resolved with an additional two to three hours of work.

[SBA Exhibit 4, Bates 000006.] The fee agreement provides for an advanced deposit for fees and costs in the amount of $1,500. [SBA Exhibit 4, Bates 000007-9.] On that same date he sent an email to the Florida attorney attaching the retainer agreement for her review. The Florida attorney then wrote Ms. Sledge informing her the retainer agreement was reasonable. [SBA Exhibit 5.]

On April 22, 2013, Ms. Sledge emailed Mr. Ventura stating that she was mailing Mr. Ventura the $1,500 check and his signed fee agreement that day. Ms. Sledge wrote: "Bottom line, I want Al's half to be deeded to Deloris Ms. Sledge, the owner of the other half. She was his first wife, and this was Al's Wish." Mr. Ventura replied the next day: "I will need to record a certified copy of the Divorce Decree. If you have one, let me know, otherwise I will wait until a Colorado attorney has been retained and have that person obtain it. An appraisal should be completed of the Pinal property." Ms. Sledge responded by asking Mr. Ventura if she should send him additional funds for the appraisal and Mr. Ventura answered in the negative. [SBA Exhibit 6.]

Ms. Sledge attempted to contact Mr. Ventura a number of times but Mr. Ventura did not return her calls. On July 8, 2013, the Florida attorney sent Mr. Ventura an email entitled "Al Sledge Estate-URGENT". The email stated, "Please communicate directly with Sandy. . . . She has left unreturned messages for you, so her communication problems with you need to be resolved, and, most importantly, she wants to expedite the completion of the AZ probates and deed transfers as much as is reasonably possible." [SBA Exhibit 7, Bates 000016.] Mr. Ventura replied on the following day and wrote: "I will call Sandy this afternoon and update her. This is my first day back in the office after being gone most of the last 2 weeks. I apologize for the inconvenience." [SBA Exhibit 7, Bates 000015.]

Mr. Ventura then followed up with Ms. Sledge on October 16, 2013 and then on December 3, 2013. Mr. Ventura wrote Ms. Sledge: "I need to speak with you about a couple of points that I want to make sure you understand prior to signing." On February 2, 2014, Ms. Sledge asked Mr. Ventura for a status update. [SBA Exhibit 8.]

Mr. Ventura subsequently sent Ms. Sledge a deed for her to sign, to transfer the property to the ex-wife. Ms. Sledge signed, notarized, and returned this deed to Mr. Ventura on February 19, 2014. [SBA Exhibit 9.] Mr. Ventura never recorded the deed. On April 21, 2014, Ms. Sledge wrote the Nebraska attorney, as Mr. Ventura had not recorded the deed. She requested her help as Mr. Ventura was not responded to her. The Nebraska attorney emailed her back stating she would contact Mr. Ventura. On May 22, 2014, the Nebraska attorney checked by email to determine if Ms. Sledge has been contacted by Mr. Ventura. Ms. Sledge expressed her frustration by an email the following day stating. "No he hasn't. I've got Matt involved. I don't' understand what the problem is. Very frustrated I've paid him Not happy". [SBA Exhibit 10.] On July 3, 2014, Ms. Sledge submitted her bar charge.

Intake bar counsel contacted Mr. Ventura regarding Ms. Sledge's bar charge but Mr. Ventura failed to respond to intake bar counsel's phone calls. On July 11, 2014, bar counsel sent Mr. Ventura a screening letter requesting a response by July 31, 2014. [SBA Exhibit 1.] Mr. Ventura did not respond to the screening letter and, on August 5, 2014, bar counsel sent Mr. Ventura a second letter demanding a response to the bar charge within ten days. [SBA Exhibit 2.] Mr. Ventura did not respond to bar counsel's August 5, 2014 letter and, on August 26, 2014, a staff investigator served a subpoena duces tecum on Mr. Ventura demanding his complete file relating Ms. Sledge. [SBA Exhibit 27-29.] On or about September 25, 2014, Mr. Ventura partially complied with the subpoena. Mr. Ventura appears to have provided bar counsel with his original file, including the original deed that he did not record. Mr. Ventura informed bar counsel that he had a trial scheduled for the next week and that he would submit a response to the bar charge after this trial concluded or by

October 7, 2014. [Complaint paragraphs 23, 24 and 25, SBA Exhibit 30 and testimony of Mr. Ventura.]

On September 30, 2014, bar counsel emailed Mr. Ventura regarding his failure to produce all the documents demanded by the subpoena, including any representation letter, client billing statements, invoices, receipts, and any communications between him and Ms. Sledge. Mr. Ventura replied that he would provide a response to the bar charge and any outstanding documentation by October 7, 2014. [SBA Exhibit 31.] Mr. Ventura failed to do so. To date, Mr. Ventura has not provided the State Bar with a written response to any of the State Bar's screening letters. [Testimony of Mr. Ventura.]

By engaging in the above listed misconduct, we find Mr. Ventura violated the following ethical rules in Count One:

a) Rule 42, Ariz. R. Sup. Ct., ER 1.2(a), by failing to record the signed and notarized deed transferring the property in question.

b) Rule 42, Ariz. R. Sup. Ct., ER 1.3, by failing to act diligently throughout the representation of his client. Mr. Ventura failed to promptly perform the contracted legal services for the client.

c) Rule 42, Ariz. R. Sup. Ct., ER 1.4, by failing to keep his client reasonably informed about the status of the matter or to respond to multiple inquiries by the client.

d) Rule 42, Ariz. R. Sup. Ct., ER 8.1(b), by knowingly failing to respond to a lawful demand for information from the State Bar for the instant investigation.

e) Rule 54(d), Ariz. R. Sup. Ct., for failing to respond promptly to the State Bar's screening letters and requests for information, including failure to furnish complete documentation related to the State Bar's subpoena.

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COUNT TWO (File no. 14-2273/Bivens)

On March 10, 2011, Mr. Ventura entered his appearance as attorney for Jessica Adams ("Jessica") who petitioned to be appointed guardian and conservator for her mother, Catherine Adams ("Catherine"). On July 21, 2011, the court appointed Jessica as temporary conservator for Catherine. The order states that all of the assets of the Ward "are restricted" and that no "withdrawals . . . shall be allowed from any restricted account except upon receipt of a certified copy of an order of this Court authorizing the withdrawal." On October 6, 2011, Jessica was appointed permanent guardian and conservator. Attorney Chris Anderson ("Anderson") was appointed to represent Catherine. [Complaint paragraphs 31-34 and Testimony of Mr. Ventura.]

On September 20, 2011, Mr. Ventura filed a stipulated motion to release certain funds. The motion states: "The Guardian will be moving Catherine Adams into a residential placement in approximately the next month. The costs of care will increase substantially." On September 29, 2011, the court granted Mr. Ventura's motion. On February 14, 2012, Mr. Ventura filed a motion to unrestrict funds and increase the conservator bond. On March 9, 2012, the court directed that certain funds from one of the Catherine's accounts be released to Mr. Ventura and deposited into his trust account "to be disbursed as with the consent of Chris Anderson. . . ." The court further ordered that the conservator's bond be increased to $95,000 and that that the conservator file proof of the same within 30 days. [Complaint paragraphs 35-38 and Testimony of Mr. Ventura.]

On May 11, 2012, the court entered an order scheduling a show cause hearing because Mr. Ventura and Jessica "failed to file proof of increased bond in the amount of $95,000, per minute entry dated March 9, 2012." The court initially scheduled the

hearing for June 25, 2012 but then continued it until August 7, 2012. On June 25, 2012, Mr. Ventura filed a motion to withdraw, stating that "continued representation has been unreasonably difficult due to both ongoing health issues and communication problems between the attorney and client." [Complaint paragraphs 39-34; Testimony of Mr. Ventura.]

On August 7, 2012, the court held the show cause hearing. At the hearing, Mr. Ventura advised the court that an Arizona Long Term Care System application had not yet been filed "because the ward's current assets will prevent her from qualifying at this point", and that an interim accounting was provided to Anderson. The court then granted Mr. Ventura's oral motion to withdraw his motion to withdraw. [Complaint paragraphs 41-41; Testimony of Mr. Ventura.]

On January 2, 2013, Jessica emailed Mr. Ventura stating: "I am writing to see where we stand with, well . . . everything. . . . I haven't heard from you since our cancelled meeting. . . . Please let me know where everything stands . . . ." Mr. Ventura did not respond to this email. On January 17, 2013, Jessica emailed Mr. Ventura again: "Still waiting to hear from you. . . . I literally have not heard a single word from you. . . . Let's move this forward." Mr. Ventura did not respond to this email. [SBA Exhibit 11.]

On January 21, 2013, Jessica emailed Mr. Ventura again: "Please contact me soon. I need to know where we stand in regards [sic] to mom and what we need to do to move forward. I have not heard from you in months and have no idea what is going on." [SBA Exhibit 11.] Mr. Ventura finally responded the next day.

On January 25, 2013, the court entered an order stating that Jessica failed to file a proof of restriction on assets, first accounting, and annual report. The court

ordered Jessica to appear on February 27, 2013 "and show cause why she should not be removed as Conservator/Guardian, held in contempt of court or have other sanctions issued against her." The court held the show cause hearing on February 27, 2013. The court entered a minute entry regarding the same stating that Mr. Ventura will file the accounting on the same day, that Anderson was provided copies of the accounting, and that Mr. Ventura informed the court that "proofs of restriction have not been filed."

On April 30, 2013, Mr. Ventura filed a status report with the court stating that Catherine's expenses are approximately $4,700 per month but that her income is only $2,300 per month such that "she is . . . spending down her assets at a rate of approximately $30,000.00 per year, just on care costs." Mr. Ventura recommended a spend-down plan where they "[c]ontinue to spend-down her funds until she has less than $2000.00 in resources and then qualify for ALTCS [Arizona Long Term Care System] and terminate the Conservatorship". Mr. Ventura also advised the court that certain accounts that the court ordered to be restricted have not been restricted despite "substantial efforts."

On May 16, 2013, Mr. Ventura filed a petition to authorize spend-down plan. On June 28, 2013, the court entered an order authorizing the spend-down plan. The court ordered that all financial accounts of the ward be unrestricted and that Jessica is authorized to direct withdrawals of the accounts, that Jessica direct withdrawal of two of Catherine's retirement accounts, and that Jessica is authorized to execute a Miller Trust on behalf of Catherine with the residual from the trust payable to Catherine's children.

On December 18, 2013 and December 20, 2013, the court entered additional orders approving the spend-down plan. The court ordered that Jessica withdraw or transfer certain retirement accounts, purchase a Medicaid qualifying annuity, and submit an application for ALTCS benefits "no later than December 15, 2013. . . ." The court further ordered that Jessica "shall utilize the withdrawn funds for necessary expenses of Catherine . . . and to pay fees approved by this Court." [SBA Exhibit 16.]

On the same date, the court entered an order approving the payment of fees to Anderson and stating: "The approved fees shall be paid to . . . Anderson, . . . less any amounts previously paid." In the same order, the court approved attorney fees to Mr. Ventura "in the amount of $39,910.22 for services rendered and costs incurred from January, 2011 through the termination of the Conservatorship." [SBA Exhibit 16.]

Mr. Ventura did not complete the steps necessary for the spend-down plan. Additionally, around this time, Mr. Ventura stopped communicating with anyone relating to this case, including Jessica, and no one could obtain an accounting of Catherine's assets from Mr. Ventura. Anderson and Stephanie Bivens ("Bivens"), Jessica's soon to be new attorney, attempted to contact Mr. Ventura but Mr. Ventura would not communicate with them.

Around this time, Mr. Ventura also stopped performing work for Catherine on this matter. As a result, Catherine's expenses were going unpaid. On February 19, 2014, Jessica emailed Mr. Ventura stating:

> I have received some legal advice and wanted you to be aware of how things will be handled going forward. 1) Starting tomorrow, you **will** respond to any phone calls or emails within two hours. . . . I will no longer tolerate waiting weeks for a response. . . . 2) When I request you to pay Mom's rent, you will do so that same day. . . . I will be in

> touch with Emeritus to ensure that you are doing this. 3) You stated that the check for Mom's rent will be cut tomorrow, however you then said that it would be arriving at Emeritus next week. This is not acceptable. . . . I regret that I have to resort to this, but I cannot tolerate your gross negligence any longer. I am aware that you have other clients, but I am not asking for anything unreasonable. . . . My mother's long-term care and well-being are my sole priority and going forward every action on your part needs to be determined by how it will affect her.

[SBA Exhibit 12 (emphasis in original).]

On April 8, 2014, Anderson filed a Notice of Non-Compliance with Court Order. The notice states that Mr. Ventura violated the December 18, 2013 court order because: "Notwithstanding numerous e-mails sent to and phone messages left with Conservator's attorney since the entry of the . . . Order, Conservator's attorney has failed: To pay the necessary expenses incurred by the Protected Person. . ., and the approved attorney's fees; to provide proof that an application for ALTCS benefits has been submitted; and . . . to complete the annuity purchase." [SBA Exhibit 17.]

On April 11, 2014, the court entered a show cause order based on Anderson's notice and because Jessica and Mr. Ventura failed "to pay the necessary expenses, which includes, but not limited to, the bill of Desert Care Management, attorney's fees, [and] proof that an application to ALTCS has been submitted. . . ." The order requires that Jessica and Mr. Ventura appear and show cause why Jessica "should not be removed as conservator, held in contempt of court or have other sanctions issued against her." [SBA Exhibit 18.]

On May 19, 2014, the court held the show cause hearing. Jessica attended the hearing but Mr. Ventura did not attend the hearing. At the hearing, Anderson informed the court that he had not been paid. Jessica testified that "she had been unable to contact her attorney despite numerous phone calls and e-mails" and that "her attorney

is in possession of the Ward's funds, in the approximate amount of $100,000.00." The court also continued the order to show cause order directing Mr. Ventura "shall personally appear and show cause why he should not be in contempt of court." The court further noted that Jessica intended to hire a new attorney and that: "A portion of Mr. Ventura's fees will be used to pay new counsel as a result of Mr. Ventura's failure to follow through with the final tasks that need to be completed for ALTCS." [SBA Exhibit 19.]

On May 28, 2014, Bivens entered her appearance on behalf of Jessica. On May 29, 2014, the court held another show cause hearing. Mr. Ventura again failed to attend the show cause hearing. At the show cause hearing, Bivens informed the court that: ". . . the ALTCS application has been denied as a result of the application not being completed, the annuity has not been purchased as the check was sent back to Merrill Lynch, there is approximately $18,000.00 in a retirement account, the income only trust has not been established, and it is unknown if Mr. Ventura is in possession of any of the ward's funds." Anderson and Bivens both informed the court that "there has been no communication" with Mr. Ventura. [SBA Exhibit 20.]

The court found Mr. Ventura "in contempt of court for failing to appear for two Order to Show Cause hearings and to comply with the court's prior orders." The court then continued the show cause hearing for July 17, 2014 and ordered Mr. Ventura to appear and "show cause why he should not be held in contempt of court or have other sanctions issued against him." The court also directed its investigators to attempt to locate Mr. Ventura so that Mr. Ventura could be personally served with the court's order to appear. Finally, the court again ordered that a portion of Mr. Ventura's "fees

will be used to pay new counsel/court-appointed counsel as a result of . . . [Mr. Ventura's] failure to comply with the court's prior orders." [SBA Exhibit 20.]

On July 15, 2014, Bivens submitted her bar charge and wrote:

> . . . it is our understanding that . . . [Mr. Ventura] holds a significant amount of Catherine A. Adams' funds in his IOLTA account. On information and belief, Mr. Ventura holds somewhere between $40,000.00 to $60,000.00. . . . Because he holds these funds, . . . we are unable to move forward the long term care benefits planning for the Ward . . . or use her funds for care expenses. . . . Despite numerous attempts to contact Mr. Ventura, he has not responded except for one brief email to me dated June 5, 2014 in which he asks if we can talk. . . . Ms. Adams resides in an assisted living facility and, on information and belief, is in arrears to the facility in the approximate amount of $8,000.00 and $2,000.00 for medical expenses. The facility has issued an eviction notice. . . . Thus far, because Jessica . . . is able to make partial payments, the facility has been flexible, given the situation. However, we are not sure how long its patience will last.

On July 16, 2014, Bivens filed a status report with the court informing the court that that Mr. Ventura was supposed to orchestrate a spend down plan to qualify Catherine for ALTCS but that Mr. Ventura "has been mostly incommunicado with" Jessica since the end of 2013 and has failed to respond to Complainant's requests "for substantive information in this matter." Bivens also informed the court that the ALTCS application was submitted but denied and that no withdrawals were made from the ward's State of Arizona retirement account as part of the spend-down plan. [SBA Exhibit 21.]

Bivens further informed the court that, as part of the spend-down plan, Mr. Ventura had two checks issued from a Merrill Lynch retirement account—one for approximately $50,000 and one for approximately $40,000. Bivens further informed the court that Mr. Ventura deposited the $40,000 check into his trust account but Merrill Lynch placed a stop-order on the other check because "they never received the

completed annuity contract paperwork: no annuity was ever purchased." Biven's status report also states: "It is currently unknown how much of the Ward's monies are currently held in Marc Ventura's IOLTA account. Marc Ventura has not responded to multiple requests for information. The following is known: (1) Marc Ventura submitted an 'accounting' of the Ward's funds held in his IOLTA account . . . which indicate a balance of $21,042.59, and 2) Marc Ventura deposited . . . [a] check into his IOLTA account in the amount of $40,178.58." [SBA Exhibit 21.]

Bivens' status report also states that: "The Ward has several outstanding medical bills, but the largest of which is to Emeritus, her assisted living placement. . . . Note, Marc Ventura was to pay Emeritus until the Ward qualified for ALTCS benefits but since he went 'missing' Emeritus has not been paid and Conservator has been able to explain the situation and pay minimum amounts each month from the Ward's income to prevent discharge thus far." [SBA Exhibit 21.]

On July 17, 2014, the court held its third continued show cause hearing. Mr. Ventura attended this show cause hearing. On the same date, the court ordered the following: "This afternoon Mr. Ventura will deliver an accounting and a check in the approximate amount of $4,000 to Mr. Anderson. Mr. Ventura will provide backup documentation." Mr. Ventura complied with this order by providing the required check and accounting. [SBA Exhibit 22.]

Shortly after she submitted her bar charge, Mr. Ventura contacted Bivens and provided her an accounting, and a check for the balance of Catherine's funds in the amount of approximately $5,000. Mr. Ventura also provided Bivens copies of all the cancelled checks he wrote on behalf of Catherine. Bivens informed a staff investigator that "Mr. Ventura's bookkeeping appears correct."

On July 23, 2014, Anderson emailed Mr. Ventura and informed him that he was overpaid by $1,000. Bivens wrote an August 5, 2014 demand letter to Mr. Ventura but Mr. Ventura did not respond to this demand letter. Mr. Ventura has not communicated with Bivens since August of 2014. [SBA Exhibit 14.]

On August 13, 2014, the court held a status conference. The court entered a minute entry on the same day. The court's minute entry states that the conservator deposited into a conservatorship account certain funds, including $4,858.47 from Mr. Ventura, and that the conservator then paid certain bills for the ward. The minute entry further states: "Mr. Ventura owes $3,777.00 and $1,000 for overpayments..." The $3,777.00 appears to be for the disgorgement of fees that the court ordered on May 29, 2013. [SBA Exhibit 23.]

On July 31, 2014, bar counsel sent Mr. Ventura a screening letter and demanded a response by August 20, 2014. Bar counsel also requested Mr. Ventura's file relating to this matter and trust account records. [SBA Exhibit 15.]

Mr. Ventura did not respond to bar counsel's letter. On August 26, 2014, a staff investigator served a subpoena duces tecum on Mr. Ventura demanding his complete file and trust account records. [SBA Exhibits 27-29.] On or about September 25, 2014, Mr. Ventura produced some documents responsive to the subpoena but did not produce all the documents demanded in the subpoena. Specifically, Mr. Ventura did not produce all the trust account records demanded in the subpoena. Mr. Ventura assured bar counsel that he would submit a response to the bar charge by October 7, 2014. [SBA Exhibit 30-31.] Mr. Ventura has failed to do so. To date, Mr. Ventura has not provided the State Bar with a written response to any of the State Bar's screening letters.

In his testimony, Mr. Ventura stated he had almost shut down his practice as early as 2011. Instead he swore he "got involved" in a contested guardianship matter and then probate matter. He stated from a fee standpoint he had to see it to completion for the fee. He also testified because he had focused on that matter he had a "substantial fee." He intends to pay back the monies owed from that fee.

Based on his testimony, we find Mr. Ventura was capable to handle that matter, and therefore could have communicated with his other clients but chose not to in favor of the substantial fee.

By engaging in the above listed misconduct, Mr. Ventura violated the following ethical rules in Count Two:

a) Rule 42, Ariz. R. Sup. Ct., ER 1.2(a), by failing to abide his client's decisions and subsequent court orders regarding the guardianship and conservatorship for the client's mother, Catherine Adams ("Catherine").

b) Rule 42, Ariz. R. Sup. Ct., ER 1.3, by filing to act diligently throughout his representation of his client. Mr. Ventura failed to appear at hearings, failed to complete the steps necessary for the spend down plan, failed to file an application and affidavit for long term care services, and failed to pay the client's necessary expenses.

c) Rule 42, Ariz. R. Sup. Ct., ER 1.4, failing to keep his client reasonably informed regarding the status of the matter and failing to promptly comply with reasonable requests for information by the client.

d) Rule 42, Ariz. R. Sup. Ct., ER 1.15(d), by failing to return unearned fees to the client.

e) Rule 42, Ariz. R. Sup. Ct., ER 1.16(d), by failing to properly withdraw from the representation and for failing to take steps, to the extent reasonably practicable, to protect the client's interests.

f) Rule 42, Ariz. R. Sup. Ct., ER 3.4(c), for knowingly disobeying an obligation under the rules of a tribunal.

g) Rule 42, Ariz. R. Sup. Ct., ER 8.1(b), by knowingly failing to respond to a lawful demand for information from the disciplinary authority for the instant investigation

h) Rule 42, Ariz. R. Sup. Ct., ER 8.4(d), by engaging in conduct which was prejudicial to the administration of justice

i) Rules 43(b)(2)(B), Ariz. R. Sup. Ct., for failing to provide all of the trust account records that the SBA subpoenaed.

j) Rule 54(c), and 54(d), Ariz. R. Sup. Ct., for knowingly violating multiple orders of the court in the underlying guardianship and conservatorship matter and failing to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

COUNT THREE (File No. 14-2528/Glaser)

In late 2013, Davina Glaser ("Glaser") contacted Mr. Ventura to update her will and assist her with estate planning. Glaser initially had a difficult time getting in touch with Mr. Ventura but they eventually met at his office for approximately one hour. Mr. Ventura agreed to assist Glaser. Mr. Ventura did not provide Glaser a writing complying with ER 1.5(b) and Glaser did not pay Mr. Ventura any money. [Complaint Paragraphs 105-108; Testimony of Mr. Ventura.]

Glaser provided Mr. Ventura certain documents to assist him in completing this estate planning. Mr. Ventura never completed the agreed upon work. Mr. Ventura stopped communicating with Glaser. Glaser called Mr. Ventura approximately ten times but Mr. Ventura never returned her calls. Glaser's son also emailed Mr. Ventura but Mr. Ventura failed to respond to this email. Mr. Ventura did not return Glaser's documents to her. [Complaint paragraphs 109-114; Testimony of Mr. Ventura.]

On September 11, 2014, bar counsel sent a screening letter to Mr. Ventura, demanding his entire file relating to Glaser, and requesting a response by October 1, 2014. [SBA Exhibit 25.] Mr. Ventura failed to respond to the bar charge and failed to produce the requested documents. On October 23, 2014, bar counsel sent Mr. Ventura a second letter demanding a response to the bar charge within ten days. [SBA Exhibit 26.] To date, Mr. Ventura has not responded in writing to the bar charge and has not provided the documents that bar counsel requested from him.

By engaging in the above listed misconduct, Mr. Ventura violated the following ethical rules in Count Three:

a) Rule 42, Ariz. R. Sup. Ct., ER 1.2(a), by failing to abide the client's decision to complete his estate planning.

b) Rule 42, Ariz. R. Sup. Ct., ER 1.3, by filing to act diligently throughout the representation of the client. Mr. Ventura did not complete the agreed upon legal services related to the client's estate planning.

c) Rule 42, Ariz. R. Sup. Ct., ER 1.4, by failing to reasonably keep the client informed about the status of the matter and filing to promptly comply with reasonable requests for information by the client.

d) Rule 42, Ariz. R. Sup. Ct., ER 1.5(b), for filing to communicate to the client in writing the scope of the representation and the basis or rate of the fee and expenses before or within a reasonable time of commencing the representation.

e) Rule 42, Ariz. R. Sup. Ct., ER 1.15(d), by failing to return to the client, upon the client's request, documents the client gave to Mr. Ventura for purposes of completing an estate plan.

f) Rule 42, Ariz. R. Sup. Ct., ER 1.16(d), by failing to properly withdraw from the representation and failing to take steps to the extent reasonably practicable to protect the client's interests.

g) Rule 42, Ariz. R. Sup. Ct., ER 8.1(b), by knowingly failing to respond to a lawful demand for information from the disciplinary authority for the instant investigation.

h) Rule 54(d), Ariz. R. Sup. Ct., by refusing to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

CONCLUSIONS OF LAW

Mr. Ventura failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Although the allegations are deemed admitted by default, there has also been an independent determination by the Hearing Panel that the State Bar has proven by clear and convincing evidence that Respondent violated the ethical rules.

The Hearing Panel finds by clear and convincing evidence that Mr. Ventura violated the following ethical rules: Rule 42, Ariz. R. Sup. Ct., specifically Rule 42, ERs 1.2(a), 1.3, 1.4, 1.5(b), 1.15(d), 1.16(d), 3.4(c), 8.1(b), Ariz. R. Sup. Ct., 8.4(d), and Rules 43(b)(2)(B), 54(c), 54(d), Ariz. R. Sup. Ct.

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 consider: (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:

Mr. Ventura violated his duties to his clients by violating ERs 1.2(a), 1.3, 1.4, 1.5(b), 1.15(d), and 1.16(d). Mr. Ventura violated his duty to the legal system by violating ERs 3.4(c) and 8.4(d), and Rule 54(c), Ariz. R. Sup. Ct. Mr. Ventura also violated his duty owed as a professional by violating ER 8.1(b), as well as Rule 54(d).

Mental State and Injury:

Mr. Ventura knowingly violated his duty to clients, thereby implicating *Standard* 4.4. *Standard* 4.41 states:

> Disbarment is generally appropriate when:
> (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client;
>
> (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; 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 4.44 states:

> Suspension is generally appropriate when:
> (a) a lawyer knowingly fails to perform services for a client and causes injury or potentially injury to a client; or
> (b) a lawyer engages in a pattern of neglect with respect to client matters and causes injury or potentially injury to a client

In this matter, Mr. Ventura abandoned three clients. During the same time he worked on a case which through trial brought him a "substantial fee." Mr. Ventura's abandonment in File No. 14-2273 caused potentially serious injury to Catherine Adams (the Ward). Specifically, Mr. Ventura held all of the Ward's funds in his trust account and he was not timely paying her assisted living facility which could have resulted in her eviction. Moreover, Mr. Ventura failed to secure an approved Arizona Long Term Care (ALTC) application as court ordered or to complete the court ordered spend down of the Ward's assets in order to ensure ATLC application approval. Mr. Ventura's client

suffered actual harm by being forced to negotiate a payment plan with her mother's assisted living facility, whereby she paid her own monies, toward the outstanding facility bills to ensure her mother would not be evicted. The potential for him by his delay in achieving an approved ALTC application was real. That other assets were ultimately found to pay the bill is of good fortune, and does not mitigate the potential for harm.

Further, Mr. Ventura's conduct caused his client actual harm in that his client was forced to obtain substitute counsel and pay fees and expenses that would not have been necessary had Mr. Ventura not abandoned his client and his practice and completed the work for which his client retained him and which he was ordered by the probate court to complete. Therefore, *Standard* 4.41 applies.

Mr. Ventura violated his duty to the legal system, thereby implicating *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.

In File No. 14-2273, Mr. Ventura knowingly violated the court's December 18, 2013 order mandating the payment of Mr. Anderson's fees and the payment of Catherine Adams' care expenses. This resulted in interference with the legal proceedings as the court had to issue show cause orders, hold show cause hearings, and found Mr. Ventura in contempt. Mr. Ventura also knowingly violated the court's April 11, 2014 and May 19, 2014 show cause orders because he failed to attend the show cause hearings that the court scheduled and ordered that he attend. Mr. Ventura also violated the court's May 13, 2014 order as Mr. Ventura has not paid back the amounts of $1,000.00 and $3,777.00 to the Estate of Catherine Ward.

Mr. Ventura also 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 matter, Mr. Ventura failed to substantively respond to the SBA's investigation and failed to fully comply with a subpoena that the SBA served on Mr. Ventura. *Standard* 7.2, therefore, is applicable.

AGGRAVATING AND MITIGATING FACTORS

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

- *Standard* 9.22(c): A pattern of misconduct. In all three counts, Mr. Ventura violated ERs 1.2(a), 1.3, 1.4, 8.1(b), and Rule 54(d), Ariz. R. Sup. Ct.
- *Standard* 9.22(d): Multiple offenses.
- *Standard 9.22(e):* Bad faith obstruction of the disciplinary proceeding by knowingly, if not intentionally falling to comply with rules or orders of the disciplinary agency. Mr. Ventura did not respond to the bar charges in the above files. Accordingly, the SBA had to subpoena Mr. Ventura's files. "Failure to cooperate with disciplinary authorities is a significant aggravating factor." *Matter of Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1172 (1988).
- *Standard 9.*22(h): Vulnerability of victim. In File No. 14-2273, Mr. Ventura's conduct caused serious potential harm to Catherine Adams who had both a guardian and conservator.

- *Standard 9.*22(i): Substantial experience in the practice of law. Mr. Ventura has been licensed to practice law in Arizona since October 19, 1996.

The Hearing Panel finds the following mitigating factor applies:

- *Standard* 9.32(a): Absence of a prior disciplinary record.[1]
- *Standard* 9.32(c): Personal or emotional problems. [Sealed Exhibit 34]

Although Mr. Ventura apologized for his misconduct*,* in his testimony we found Mr. Ventura shifted blame for his misconduct to the State Bar. See mitigating factor, 9.32(l) remorse. He stated he called them for help with either an aggressive client as listed in his lone exhibit or as he swore an opposing party. The best evidence of genuine remorse however, is an affirmative effort to make clients whole. *Matter of Augenstein,* 178 Ariz. 133, 871 P. 2d 254. (1994)

We find Mr. Ventura minimized his conduct. He stated he didn't dispute the allegations in the complaint, and also stated he didn't dispute what his three clients went through. But then minimized those statements by arguing one doesn't practice for a number of years and then just walk away from clients.

We noted during this same time he was focused on trying a case for a different client. At one point he stated he thought he would teach law, at another point that there were multiple lawyers wanting him to join them and yet concluded, he didn't think he would ever practice law again.

It is not clear to us what health issues Mr. Ventura had as he made no disclosure and with the exception of his Sealed Exhibit 34, we have nothing but his

[1] Respondent has been diverted for conduct similar to the conduct in the instant case in File No. 11-3583. Respondent's diversion is not discipline; however, *In re Zawada*, 208 Ariz. 232, 238, n. 4, 92 P.3d 862, 869 (2004), holds that absence of a prior disciplinary record is accorded little or no consideration when there is evidence of prior, known misconduct. *Id.*

own self-serving statements. His single exhibit consisted of an evaluation based on his statements to the physician. Based on the report, we conclude he sought assistance because of his wife filing for divorce.

He testified he had multiple ailments including multiple allergy reactions which disappeared in 2011-2012 when he went off a prescribed medication. However, in his reported history he informed the physician he was still taking that medication in 2015. [Sealed Exhibit 34, pages 1 and 4.] He testified at the time of this evaluation he was not sure he would live as his health condition was so dire. Yet no medications were ordered for him. In that same exhibit Mr. Ventura points out his dislike for the profession because of the things he has to do as a lawyer. His report offers no objective insight into his medical history.

Notwithstanding, and although the presumptive sanction is disbarment, the Hearing Panel finds these mitigating factors, especially whatever health issues Mr. Ventura may actually have, warrant a sanction less than disbarment. Nonetheless, even if Mr. Ventura's health conditions were as dire as he suggested, his ability to focus on a different client's case that offered a substantial fee, in which he tried and won, would not mitigate the presumptive sanction of disbarment under any circumstance, by more than the one year; hence the imposition of a four year suspension in lieu of disbarment, or a 5 year suspension, the practical equivalent of disbarment.

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 future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

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

1. Mr. Ventura shall be suspended from the practice of law for a period of four (4) years effective immediately;

2. Mr. Ventura shall pay all costs and expenses incurred by the SBA in this proceeding. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these proceedings; and

3. Mr. Ventura shall pay the following in restitution within 30 days from the date of this Decision and Order: (A) $1,500 to Sandra Sledge; and (B) $4,777.00 to the Estate of Catherine Adams.

A Final Judgment and Order will follow.

DATED this 8th day of May 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Concurring

Nance A. Daley

Nance A. Daley, Volunteer Public Member

Andrea J. Curry

Andrea J. Curry, Volunteer Attorney Member

Copies of the foregoing mailed/emailed
this 8th day of May, 2015.

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