

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,**

**JEANNE M. ZINGSHEIM,  
Bar No. 022778**

Respondent.

**PDJ 2014-9020**

**FINAL JUDGMENT AND ORDER**

[State Bar No. 13-2419]

**FILED JUNE 13, 2014**

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 for appeal having passed, accordingly,

**IT IS HEREBY ORDERED** that Respondent, **Jeanne M. Zingsheim**, is suspended from the practice of law for six (6) months and one (1) day, effective May 7, 2014.

**IT IS FURTHER ORDERED** that Ms. Zingsheim 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 Ms. Zingsheim shall obtain a Member Assistance Program assessment prior to filing an application for reinstatement.

**IT IS FURTHER ORDERED** that upon reinstatement, Respondent shall be placed on probation for a period of two (2) years with terms to include, but not

limited to, participation in the State Bar's Law Office Management Assistance Program and Member Assistance Program.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$2,069.03. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

**DATED** this 13<sup>th</sup> day of June, 2014.

*William J. O'Neil*

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

Copies of the foregoing mailed/emailed  
this 13<sup>th</sup> day of June, 2014.

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by: MSmith

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

**JEANNE M. ZINGSHEIM,  
Bar No. 022778**

Respondent.

**PDJ-2014-9020**

**REPORT AND ORDER IMPOSING  
SANCTIONS**

[State Bar No. 13-2419]

**FILED MAY 7, 2014**

**PROCEDURAL HISTORY**

The State Bar of Arizona ("SBA") filed its complaint on February 21, 2014. On February 24, 2014, the complaint was served on Ms. Zingsheim 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 24, 2014. 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. Zingsheim did not file an answer or otherwise defend against the allegations in the complaint and the default entered by the Disciplinary Clerk became effective on April 16, 2014.

A notice was filed and sent to all parties notifying them a notice of aggravation and mitigation hearing was scheduled for May 7, 2014, at 9:30 a.m., at

the State Courts Building, 1501 West Washington, Phoenix, Arizona 85007-3231. That notice again cautioned Ms. Zingsheim 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.” Ms. Zingsheim’s failure to answer is deemed an admission to the allegations contained within the complaint pursuant to Rule 58(d), Ariz. R. Sup. Ct.

On May 7, 2014, the Hearing Panel composed of James M. Marovich, attorney member, Douglas S. Pilcher, public member, and William J. O’Neil, Presiding Disciplinary Judge, heard this matter. Craig D. Henley, Senior Bar Counsel, appeared on behalf of the SBA. Ms. Zingsheim did not appear.

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 no longer has the right to litigate the merits of the factual allegations of the complaint. However, the respondent retains the right to appear and participate in the hearing concerning that nexus and the sanctions sought. Included with that right to appear is the right to dispute the allegations relating to aggravation and to offer evidence in mitigation. Ms. Zingsheim was afforded these rights.

Due process requires a hearing panel to independently determine whether, under the facts deemed admitted, ethical violations have been proven by clear and convincing evidence. The hearing panel must also exercise discretion in deciding whether sanctions should issue for the respondent’s misconduct. If the hearing panel finds that sanctions are warranted, then it independently determines which

sanctions should be imposed. It is not the function of the hearing panel to simply endorse or “rubber stamp” any request for sanctions.

### **FINDINGS OF FACT**

1. The Hearing Panel hereby adopts and incorporates by reference the factual background of this case, as fully admitted in the complaint. At all times relevant, Ms. Zingsheim was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on August 5, 2004. On June 19, 2012, Ms. Zingsheim was administratively suspended for non-payment of dues. On February 27, 2014, Ms. Zingsheim was suspended from the practice of law for six (6) months and one (1) day, effective March 29, 2014.

### **COUNT ONE (File no. 13-2419/Mr. Rick Palmer)**

2. On February 6, 2014, the Hearing Panel, duly empanelled, heard argument in the case of *In re: Jeanne Zingsheim*, PDJ-2013-9113 and suspended Ms. Zingsheim for a period of six months and one day.

3. The Hearing Panel found that Ms. Zingsheim violated her duty to her client by violating ERs 1.2, 1.3, 1.4(a)(1-4) and 1.16. She violated her duty owed as a professional by violating ER 8.1 and Rules 54(d).

4. On or about August 9, 2012, Ms. Zingsheim entered a Notice of Limited Scope Representation on behalf of Complainant’s wife in the Maricopa County Superior Court Family Court lawsuit of *Palmer v. Palmer*, FC2012-000562.

5. On October 25, 2012, Ms. Zingsheim filed a bankruptcy action on behalf of Complainant’s wife.

6. On or about November 6, 2012, the parties appeared at an Alternative Dispute Resolution Conference and reached a full settlement of all issues. The

settlement included an agreement that Ms. Zingsheim would expedite taking the steps necessary to lift the bankruptcy stay to permit the filing of the Family Court Consent Agreement.

7. A draft consent agreement memorializing the agreement was initially prepared at the ADR conference and later finalized by Complainant's attorney.

8. On November 6, 2012, Ms. Zingsheim filed an Expedited Motion for Stay and Request that the ADR resolution be vacated.

9. On November 15, 2012, Complainant's attorney filed a Notice of Settlement in the Maricopa County Superior Court action.

10. On November 19, 2012, Complainant's attorney forwarded the finalized settlement documents and requested an update on Ms. Zingsheim's efforts to lift the bankruptcy stay. Ms. Zingsheim did not respond.

11. On November 27, 2012, Complainant's attorney again requested an update on Ms. Zingsheim's efforts to lift the bankruptcy stay. Ms. Zingsheim did not respond.

12. On November 28, 2012, Complainant's attorney reviewed online records regarding the bankruptcy action and discovered that the bankruptcy had been dismissed on November 14, 2012.

13. Complainant's attorney attempted to contact Ms. Zingsheim several additional times, to no avail.

14. On or about December 10, 2012, the Court placed the Maricopa County case on the Inactive Calendar.

15. On January 4, 2013, Complainant's attorney filed a Notice of Lodging Consent Decree setting forth the foregoing events and requested that the finalized

Consent Decree be signed along with the documents necessary to comply with the terms of the agreement. The Notice also requested sanctions against Ms. Zingsheim who was still listed as attorney of record.

16. On February 1, 2013, Complainant's attorney requested that Ms. Zingsheim provide her with confirmation that Ms. Zingsheim would attend a February 7, 2013, status conference or alternatively provide Complainant's attorney with the executed Consent Decree no later than February 6, 2013, at 10:00 am.

17. On February 7, 2013, the parties and their attorneys attended the status conference.

18. Ms. Zingsheim claimed that she had not responded to the numerous requests by Complainant's attorney because the e-mailed communications went to her "spam" folder.

19. The Court accepted and signed the Consent Decree.

20. On August 23, 2013, Bar Counsel attempted to contact Ms. Zingsheim regarding another matter (State Bar File No. 13-1317) at the last known phone number with Membership Services. A voice message was left requesting that Ms. Zingsheim contact Bar Counsel immediately.

21. On October 23, 2013, the State Bar mailed Ms. Zingsheim an initial screening letter to Ms. Zingsheim's last known address with Membership Services and requested that a response be submitted to the State Bar within twenty (20) days. The letter reminded Ms. Zingsheim of her obligation to submit a timely response pursuant to Rule 42, ER 8.1(b) and Rule 54(d) of the *Arizona Rules of the Supreme Court* and further stated that a failure to timely respond would result in additional discipline.

22. On November 19, 2013, the State Bar mailed Ms. Zingsheim a second letter to Ms. Zingsheim's last known address with Membership Services and requested that a response be submitted to the State Bar within ten (10) days. The letter again stated that the State Bar would seek additional discipline for her failure to timely comply.

23. To date, Ms. Zingsheim has not provided any response to the State Bar regarding this matter.

24. By engaging in the misconduct described above, Ms. Zingsheim violated several ethical rules including, violating Rule 42, Ariz. R. Sup. Ct.:

- a. ER 1.2 – Ms. Zingsheim failed to comply with the client's directions and authority regarding the representation;
- b. ER 1.3 – Ms. Zingsheim failed to diligently represent client during the representation and abandoned the lawsuit while attorney of record;
- c. ER 8.1(b) – Ms. Zingsheim failed to respond to the lawful requests of the State Bar;

25. By failing to promptly respond or furnish any information requested by the State Bar as part of this investigation, Ms. Zingsheim violated Rule 54(d), Ariz. R. Sup. Ct.

### **CONCLUSIONS OF LAW**

Ms. Zingsheim failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Ms. Zingsheim violated the following:



Count 1: Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 8.1(b) and Rule 54(d). We decline to find the conduct was prejudicial to the administration of justice. We find her conduct inefficient and caused obstruction. The complainant incurred unnecessary expenses. These do not arise to a level of an 8.4(d) violation.

### **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:**

Ms. Zingsheim violated her duty to her client by violating ERs 1.2 and 1.3. Ms. Zingsheim also violated her duty owed as a professional by violating ER 8.1 and Rules 54(d).

#### **Mental State and Injury:**

ERs 1.2 and 1.3: Authority and Diligence

4.42 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 potentially injury to a client.

ERs 8.1, Rule 54 (c) and (d): Failure to Respond/Cooperate with Disciplinary Investigation and Proceedings

7.2 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.

**Aggravating and Mitigating Factors:**

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

- *Standard 9.22(c)* pattern of misconduct
  - a) Ms. Zingsheim was suspended for six months and one day in PDJ-2013-9113 for violations of Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 8.1, 8.4(d) and Rule 54 (c) and (d);
  - b) While not a prior sanction but submitted for the sole purpose of demonstrating Ms. Zingsheim's knowledge of her obligations as set forth in Rule 42, Ariz. R. Sup. Ct., ERs 1.3, Ms. Zingsheim was placed on diversion in State Bar file number 11-0334 for two (2) years by order dated April 24, 2012, for failing to diligently fulfill the terms of representation and failing to properly withdrawing from the representation.
- *Standard 9.22(e)* bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules or orders of the disciplinary agency.

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

- None.

## **PROPORTIONALITY**

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

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

*In re: Jeff C. Jackson*, SB-09-0079, Ms. Zingsheim was disbarred for violating ERs 1.3, 1.4(a), 1.4(a)(4), 1.5(a), 1.5(b), 1.15(d), 1.16, 3.2, 3.4(a), 3.4(d), 8.1(b), 8.4(d) and Rule 53(c), 53(d) and 53(f). In multiple counts, Ms. Zingsheim failed to adequately communicate and diligently represent clients and virtually abandoned clients. Ms. Zingsheim collected retainers and fees from clients and then failed to perform any legal services. Ms. Zingsheim further failed to pay court ordered child support and failed to cooperate with the State Bar’s investigation.

This case is similar to the above in that it involves an attorney that abandoned her clients as attorney of record in a lawsuit, abandoned the State Bar

during the investigation into the allegations of misconduct and abandoned the disciplinary system during the formal proceedings.

### **CONCLUSION**

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

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

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

1. Ms. Zingsheim shall be suspended from the practice of law for a period of six (6) months and one (1) day, effective May 7, 2014.
2. Ms. Zingsheim shall obtain a MAP assessment prior to filing an Application for Reinstatement;
3. If reinstated, Ms. Zingsheim shall be placed on probation for a period of two (2) years with terms to include, but not be limited to, participation in the State Bar's Law Office Management Assistance Program (LOMAP) and Member Assistance Program (MAP);

4. Ms. Zingsheim shall pay all costs and expenses incurred by the SBA and the Office of the Presiding Disciplinary Judge in this proceeding within thirty days of the execution of the Final Judgment and Order in this matter;
5. A final Judgment and Order will follow.

**DATED** this 7<sup>th</sup> day of May, 2014.

*William J. O'Neil*

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

*Douglas S. Pilcher*

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**Douglas S. Pilcher,  
Volunteer Public Member**

*James M. Marovich*

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**James Marovich,  
Volunteer Attorney Member**

Copies of the foregoing mailed/emailed  
this 7<sup>th</sup> day of May, 2014, to:

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by: MSmith