

**BEFORE THE PRESIDING DISCIPLINARY JUDGE  
OF THE SUPREME COURT OF ARIZONA**

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

**ROSVAL A. PATTERSON,  
Bar No. 018872**

Respondent.

**PDJ-2011-9084**

**REPORT AND ORDER IMPOSING  
SANCTIONS**

[No. 10-1111]

On June 25 and 26, 2012, the Hearing Panel ("Panel") composed of Robert M. Gallo, a public member from Pinal County, Stephen H. Leshner, an attorney member from Pima County, and the Presiding Disciplinary Judge ("PDJ") held a two day hearing pursuant to Supreme Court Rule 58(j), Ariz.R.Sup.Ct. Craig D. Henley appeared on behalf of the State Bar of Arizona ("State Bar") and Respondent appeared *pro per*. The witness exclusionary rule was invoked.<sup>1</sup> The Panel carefully considered the exhibits, testimony, the parties' Joint Pre-Hearing Statement, individual pre-hearing statements, and evaluated the credibility of the witnesses including Respondent. The PDJ and Panel now issue the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz.R.Sup.Ct.

**I. SANCTION IMPOSED:**

**ATTORNEY SUSPENDED FOR ONE YEAR, TWO YEARS OF PROBATION,  
RESTITUTION AND COSTS OF THESE DISCIPLINARY PROCEEDINGS.**

---

<sup>1</sup> Consideration was given to the sworn testimony of Alex Jung, Sherry Nickels, Gloria Barr, and U.S. Attorney, Suzanne Chynoweth.

## **II. PROCEDURAL HISTORY**

The Probable Cause Order was filed on October 19, 2011, and the Complaint was filed on November 18, 2011, alleging violations of Supreme Court Rule 42, ERs 1.2(a) (scope of representation/allocation of authority), ER 1.2(d) (counsel client to engage in criminal or fraudulent conduct), 1.3 (diligence), 1.4(a) (communication/inform client), 1.5(a) (unreasonable fees), 1.5(b) (fees/cope of representation and basis or rate of fee and expenses), 1.5(c) (fees/contingency), 1.6 (reveal confidential information), 1.16 (termination of representation/protect client interests), 3.2 (expediting litigation), and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). On December 19, 2011, Respondent filed his Answer. An initial case management conference was held on December 21, 2011. Another case management conference was held on May 11, 2012. Respondent's counsel filed a Motion to Withdraw on May 11, 2012, and Respondent requested a continuance of the hearing to obtain new counsel, which was granted. The matter was then set for an evidentiary hearing to be held on June 25, 2012. The parties filed a Joint Pre-Hearing Statement on February 2, 2012.

## **III. FINDINGS OF FACT**

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 May 16, 1998.<sup>2</sup>
2. On or about April 17, 2002, Complainant, Alex Jung, initially consulted with Respondent regarding allegations of employment discrimination by the United States Postal Service (USPS).<sup>3</sup>

---

<sup>2</sup> Joint Prehearing Statement, pg. 1; see also Answer, para. 1.

3. On or about May 2, 2002, Complainant provided Respondent with a signed fee agreement regarding the allegations of employment discrimination by the USPS.<sup>4</sup>

4. On or about May 2, 2002, Complainant executed the fee agreement and paid Respondent the initial down payment of \$500.00.<sup>5</sup>

5. The fee agreement signed by Complainant is entitled "Attorney-Client Hourly Fee Contract" and provided, among other things, the following terms:

- a. Paragraph 3 entitled "HOURLY FEE" states that "Client agrees to pay a retainer of \$1500.00, terms of which are \$500.00 down with the balance of \$1000.00 due in payments of \$500.00 each on or about May 15, 2002 and June 1, 2002. Client will be billed the hourly fee of \$150.00 for all services provided. This is for Attorney's services under this Contract.";
- b. Paragraph 4 entitled "COSTS" states that "[i]n addition to paying legal fees, Client shall reimburse Attorney for all costs incurred by Attorney";
- c. Paragraph 5 entitled "STATEMENTS" states that "Attorney may send Client periodic statements for costs incurred. Client shall pay Attorney's statements within ten (10) days after each statement's date."
- d. Paragraph 6 entitled "FINANCE CHARGES" states that "It is understood and acknowledged by Client that all billings, which are not paid within

---

<sup>3</sup> Id.; see also Answer, para. 2.

<sup>4</sup> Id. at pg. 2; see also Answer, para. 3 and Exhibit 2.

<sup>5</sup> Id.; see also Answer, para. 5.

a time stated in paragraph 5 above, are considered to be delinquent balances, which will be charged a finance charge of one percent (1%) per month, which is an annual percentage rate of twelve percent (12%) per annum.”

e. Paragraph 8 entitled “CONCLUSION OF SERVICES” states that “[w]hen Attorney’s services conclude, all unpaid costs shall become immediately due and payable. After Attorney’s services conclude and all costs are paid, Attorney will, upon Client’s request, deliver Client’s file to Client, along with any Client funds or property in Attorney’s possession.”<sup>6</sup>

6. In June 2002, Complainant moved from Arizona to California.<sup>7</sup>

7. On or about July 10, 2002, Complainant paid Respondent the \$1,000.00 balance for the retainer.<sup>8</sup>

8. After receiving Complainant’s July 2002 payment of the initial retainer, Respondent failed to take any substantive actions in the case.<sup>9</sup>

9. On December 12, 2003, Respondent received a letter from the attorney representing the USPS requesting a written settlement demand.<sup>10</sup>

10. Respondent received two additional requests for a written settlement demand, one dated January 21, 2004 from the attorney representing the USPS and the other dated January 19, 2004 from Complainant.<sup>11</sup>

---

<sup>6</sup> See Exhibit 2, Bates SBA000027-30.

<sup>7</sup> Id.; see also Answer, para. 6; Exhibit 3, Bates SBA 000032.

<sup>8</sup> Id.; see also Answer, para. 7; Exhibit 3, Bates SBA 000032.

<sup>9</sup> See Trial Testimony of Respondent.

<sup>10</sup> See Exhibit 5, Bates SBA000039.

<sup>11</sup> See Exhibit 7, Bates SBA000043 and Exhibit 6, Bates SBA000041, respectively.

11. Despite the written requests of the attorney representing the USPS and the written request of Complainant, Respondent did not send the requested written settlement demand until January 29, 2004.<sup>12</sup>

12. On January 29, 2004, approximately one and a half years later, Respondent submitted an initial settlement demand to USPS.<sup>13</sup>

13. After representing Complainant for approximately eighteen (18) months, Respondent's January 2004 written settlement demand was the Respondent's first substantive action advancing Complainant's claim.<sup>14</sup>

14. The initial settlement demand contained many inaccuracies and errors, such as claiming Complainant had disabling condition in both knees instead of the left knee only, that Complainant was unfairly transferred to the "Party Center" instead of the "Priority Center", that Complainant suffered a five percent disability instead of a twenty percent disability and that Complainant incurred Eleven Thousand Two Hundred Twelve Dollars (\$11,212.00) in attorney's fees.<sup>15</sup>

15. On January 30, 2004 (the next day), the USPS attorney sent Respondent a response letter requesting support for the Eleven Thousand Two Hundred Twelve Dollars (\$11,212.00) attorney's fee claim.<sup>16</sup>

16. After receiving a February 25, 2004 letter from opposing counsel threatening sanctions for Respondent's delay in allowing certain requested

---

<sup>12</sup> See Exhibit 8, Bates SBA000045-6.

<sup>13</sup> Id.; see also Answer, para. 9.

<sup>14</sup> Id.; see also Trial Testimony of Respondent.

<sup>15</sup> Id.; see also Exhibit 12, Bates SBA000071.

<sup>16</sup> See Exhibit 9, Bates SBA000048.

discovery, Respondent filed a Complaint in United States District Court, District of Arizona on March 1, 2004.<sup>17</sup>

17. On or about August 19, 2004, Complainant wrote Respondent a letter complaining of the inaccurate information and errors in the demand letter as well as Respondent's lack of communication and lack of diligence in his case.<sup>18</sup>

18. In the letter, Complainant also stated "[i]n the past you made an offer without discussing it with me as your client. I do not want this to happen again." and "[a]lso if there is any offer made by the USPS you must inform me before you take any action."<sup>19</sup>

19. On August 27, 2004, Respondent responded to Complainant's letter by e-mail stating in pertinent part "I am concerned by the tone of your letter. I have put several hours in on your case and have only bill [sic] for 10 hours. I am no longer going to proceed in this manner. I will have my office bill you for what you owe. If you would like to seek alternative counsel that is ok with me."<sup>20</sup>

20. While Respondent has provided four (4) separate sets of billing statements which were purportedly sent to Complainant during the course of the representation, Complainant insists that he was not sent monthly billing statements.<sup>21</sup> The panel finds no monthly billing statements were sent.

---

<sup>17</sup> See Exhibit 10, Bates SBA000050; see also Exhibit 11, Bates SBA000053.

<sup>18</sup> See Exhibit 13, Bates SBA000073.

<sup>19</sup> Id.

<sup>20</sup> See Exhibit 14, Bates SBA000075.

<sup>21</sup> See Exhibit 25, Bates SBA000121-215; see also Exhibit 29, Bates SBA000235-355; Exhibit 32, Bates SBA000368-384; Exhibit 118, Bates SBA000748-800.

21. In August 2005, Complainant paid Respondent \$3,000.00 for deposition costs.<sup>22</sup>

22. On August 8, 2005, Respondent drafted a settlement letter that included a request for \$80,000 in attorney's fees and stated "Plaintiff will provide proof of billings." No billings were submitted with the settlement demand, and no settlement was reached.<sup>23</sup>

23. On April 11, 2006, Respondent's office assistant Sherry Nickels sent an e-mail to Complainant "[y]our statement is attached. Please remit payment upon receipt of this statement. Total Balance Due and Payable Upon Statement Receipt: \$993.15."<sup>24</sup>

24. Consistent with his understanding of his financial obligations to the firm, Complainant responded to this e-mail on April 11, 2006, stating "I was wondering about the balance due since all attorney fee [sic] supposed to be added to the settlement. I am currently having financial difficulty and will really help me a lot if you can wait until the settlement. If you cannot wait, could I make a monthly payment."<sup>25</sup>

25. The same day, Ms. Nickels replied "All the attorney's fees are removed from the invoices since we are on a contingency contract. The only costs to you are the actual costs from other sources such as depo costs, filing fees, etc. Not a

---

<sup>22</sup> Id.; see also Answer, para. 19; Exhibit 8, SBA000045-6.

<sup>23</sup> See Exhibit 15, Bates SBA000077-8.

<sup>24</sup> See Exhibit 16, Bates SBA000080-3.

<sup>25</sup> Id.

problem regarding payments . . . What kind of arrangement would you like to have."<sup>26</sup>

26. Following this e-mail exchange, Complainant made multiple monthly payments of \$100 and \$200 toward the \$993.15 in costs.<sup>27</sup>

27. On February 15, 2007, Complainant sent Respondent a letter requesting "[p]lease send any settlement offers. I would like to see our plan for the settlement so that when they offer we know how to respond."<sup>28</sup>

28. On February 23, 2007, Complainant sent Respondent an e-mail stating in pertinent part "I never received this settlement letter for approval before it was sent out. There are two major things. First of all, I never wanted to settle with 2 years pay if I don't get reinstated. (Ros, I really need my job back.) Secondly, 2007 was not included in the back pay."<sup>29</sup>

29. On February 26, 2007, Complainant sent Respondent another e-mail stating in pertinent part "I would like to speak with you since you are my only counsel I have. I am not familiar with the law so please inform me as to how this works and how you came to this number. I am confused since I was told that settlement letter was sent out on Friday to Suzanne. How is the settlement letter different from the settlement offer?... Just to clarify that since we are under contingency, how can I bill the USPS for this fee in case if we do settle before trial?"<sup>30</sup>

---

<sup>26</sup> Id.

<sup>27</sup> See Trial Testimony of Complainant and Respondent.

<sup>28</sup> See Exhibit 20, Bates SBA000093.

<sup>29</sup> See Exhibit 21, Bates SBA000095-8.

<sup>30</sup> See Exhibit 21, Bates SBA000101-2.



30. In March 2007, Complainant paid Respondent \$5,000.00 for trial costs.<sup>31</sup>

31. On May 4, 2007, a mandatory settlement conference was held in Flagstaff, Arizona before Judge Aspey.<sup>32</sup>

32. Respondent provided Judge Aspey a supplemental confidential settlement memorandum approximately one week prior to the settlement conference. The memorandum contained negative assessments of Complainant and the claims. Complainant did not know about this supplemental confidential settlement memorandum until years later when Respondent provided a copy to the State Bar as part of this investigation.<sup>33</sup>

33. The supplemental confidential settlement memorandum contains "Discrete Issues" containing inaccurate and information considered confidential by his client:

a. Plaintiff, based on discussions with his father in law, a Tax Attorney practicing in California is under the impression that he should receive damages that exceed those that are presently awarded in Rehabilitation Act cases in Maricopa County. Based on his father in law's (who has never tried a case anywhere) unreasonable expectations Plaintiff now believes that a Jury will award him damages like those seen in California.

b. . . .

---

<sup>31</sup> See Exhibit 23, Bates SBA000116.

<sup>32</sup> *Id.*; see also Answer, para. 28.

<sup>33</sup> See Exhibit 62, Bates SBA000516-9.

c. Plaintiff is under the belief that the Judge will order the postal service to reemploy him if he prevails at trial. I am requesting assistance on this issue. It is my understanding of the law that the judge has discretion in this area and usually does not order reemployment where there is a possibility of continuing hostilities between the parties.<sup>34</sup>

However, a confidential settlement memorandum is designed to advise the settlement judge, who cannot then serve as the trial judge, with candid information to assist the settlement process. The Hearing Panel as a result declines to find the above information improper.

34. The supplemental settlement memorandum also claimed \$212,000.00 in attorney's fees.<sup>35</sup>

35. The final invoice stated that Complainant owed \$196,120.28 for attorney's fees and costs.<sup>36</sup> Candor in a settlement memorandum to a settlement judge is appropriate. Untruths regarding fees due and owing are not appropriate and here are knowing, inexcusable violations of the duty owed to the settlement judge, his client and the legal profession.

36. The May 2, 2007, cover letter to that judge stated that Complainant owed an additional \$34,811.34 in finance charges on attorney's fees.<sup>37</sup>

37. In anticipation of the settlement conference, Respondent provided Complainant for the first time with a stack of invoices and a cover letter dated May

---

<sup>34</sup> Id.

<sup>35</sup> Id.; see also Answer, para. 31.

<sup>36</sup> Id.; see also Answer, para. 33.

<sup>37</sup> Id.; see also Answer, para. 34.

2, 2007.<sup>38</sup> He then instructed his client to lie to the settlement judge if he was questioned about the bills and tell the judge he had paid them. [Jung hearing testimony]

38. The sum total of the submitted invoices is \$164,705.10. The actual invoice amount plus the claimed interest balance total \$199,516.44 and not \$196,120.28.<sup>39</sup>

39. State Bar Examiner Gloria Barr testified that Complainant and Respondent have produced four (4) separate sets of invoices which contained a number of discrepancies thereby making it impossible to determine the actual amount of attorney's fees and costs incurred during the subject representation. Specifically:

- b. The cover letter incorrectly states that "[u]nder the Attorney/Client contract, any amount...are subject to a service charge of 1.5% per month or \$10.00, whichever is greater or at the annual percentage reate of eighteen (18%) per annum;"
- c. Some invoices identify the payment structure as a contingency representation with nothing due while other sets of invoices indicate that the payment structure is net 30 day pay while still others individual invoices indicate that payments are due upon receipt;
- d. Some invoices contain a tally of the attorney's fees and costs purportedly incurred for certain invoices, while others identify a lesser

---

<sup>38</sup> See Exhibit 25; see also Trial Testimony of Complainant.

<sup>39</sup> Id.

amount of attorney's fees and costs are due and owing, and still others indicate that nothing is due;

- e. Finally, some invoices show certain amounts of attorney's fees and costs purportedly incurred by specific individuals for certain activities while other invoices show a different amount for the same activities purportedly performed by the same person.<sup>40</sup>

40. Complainant's case went to trial on July 31, 2007. The jury returned a verdict in favor of Complainant on August 6, 2007, and awarded Complainant \$280,000.00 in compensatory damages.<sup>41</sup>

41. While the equitable remedy claims were still pending, Respondent sent a letter dated March 18, 2008, to Complainant. The letter provided Complainant with an accounting from March 2002 through February 2008, and enclosed a copy of all invoices for that time period.<sup>42</sup>

42. In November 5, 2007, Complainant again e-mailed Respondent's office identifying certain inaccurate information contained in a certain letter sent to the judge without the Complainant's knowledge or consent.<sup>43</sup>

43. As part of a letter dated March 14, 2008, Respondent attached billing records reflecting that no balance was due and stated among other things "[t]he attorney's fees and costs should be paid for by [USPS], however, the finance charges will not. The finance charges are charged as per the Attorney/Client

---

<sup>40</sup> See Exhibit 25, Bates SBA000121-215; see also Exhibit 29, Bates SBA000235-355; Exhibit 32, Bates SBA000368-384; Exhibit 118, Bates SBA000748-800; Demonstrative Exhibits marked for identification purposes as Exhibits 121 and 122; Trial Testimony of Gloria Barr.

<sup>41</sup> Id.; see also Answer, para. 39.

<sup>42</sup> Id. at pg. 3; see also Answer, para. 40.

<sup>43</sup> See Exhibit 28, Bates SBA000231.

contract, Item 6, which states all billings not paid within the 10 day time frame will be charged a finance charge of one percent (1%) per month, which the annual percentage rate of twelve (12%) per annum. These charges will be offset against the payments you have made to date".<sup>44</sup>

44. Based upon Respondent's and Respondent's office assistant's statements along with Respondent's failure to submit monthly billing statements, Complainant did not believe that he owed any amount of attorney's fees and costs or interest on any outstanding amount of attorney's fees and costs.<sup>45</sup>

45. On July 1, 2008, the court ruled on Complainant's requested equitable remedies and awarded Complainant an additional \$172,142.12.<sup>46</sup>

46. On July 15, 2008, Respondent filed a Motion Requesting Attorney's Fees requesting fees of \$529,167.00 and a "lodestar" award of attorney's fees of \$1,058,334.00.<sup>47</sup>

47. Respondent contemporaneously filed an application for costs totaling \$7,647.29. These costs were awarded and made part of the judgment.<sup>48</sup>

48. Also on July 15, 2008, USPS filed a Motion to Alter or Amend Judgment, contending that the equitable remedies were not appropriate.<sup>49</sup>

On August 26, 2008, Respondent's paralegal informed Complainant by e-mail that USPS had requested a settlement conference. Complainant replied by e-mail the

---

<sup>44</sup> See Exhibit 29, Bates SBA000235-355.

<sup>45</sup> See Trial Testimony of Complainant.

<sup>46</sup> Id.; see also Answer, para. 43.

<sup>47</sup> Id.; see also Answer, para. 44.

<sup>48</sup> Id.; see also Answer, para. 45.

<sup>49</sup> Id.; see also Answer, para. 46.

same day and asked for more information, and also asked to be informed about the scheduling of the settlement conference.<sup>50</sup>

49. On August 28, 2008, Respondent attended the settlement conference without Complainant and reached a global settlement.<sup>51</sup>

The overall terms of the settlement were as follows:

- a. \$280,000.00 for compensatory damages, by check payable to Respondent and Complainant (only endorsed by Respondent);
- b. \$172,142.12 for equitable remedies, minus any applicable taxes, by check payable to Complainant;
- c. \$322,857.88 for attorney's fees and costs, by check payable to Respondent.<sup>52</sup>

50. On August 29, 2008, USPS filed a Notice of Settlement with the court. The outstanding motions for attorney's fees and to amend the judgment were subsequently denied as moot.<sup>53</sup>

51. Complainant signed the settlement agreement on October 1, 2008, and returned it to Respondent.<sup>54</sup>

52. While the \$280,000.00 compensatory damages check was payable to both Complainant and Respondent, Respondent was the sole executor of the check and he deposited the \$280,000.00 compensatory damages check into his trust account.<sup>55</sup>

---

<sup>50</sup> Id.; see also Answer, para. 47.

<sup>51</sup> Id.; see also Answer, para. 49.

<sup>52</sup> Id.; see also Answer, para. 52.

<sup>53</sup> Id. at pg. 4; see also Answer, para. 53.

<sup>54</sup> Id.; see also Answer, para. 57.

<sup>55</sup> Id.; see also Answer, para. 58.

53. On November 4, 2008, Respondent sent Complainant a bank check for \$194,563.58.<sup>56</sup>

54. In January 2009, Respondent forwarded two additional checks from USPS directly to Complainant for the equitable damages.<sup>57</sup>

55. On or about September 2, 2009, the law firm of Steptoe & Johnson agreed to assist Complainant *pro bono* regarding the fairness of the attorney's fees paid in his case and contacted Respondent regarding Complainant's fee dispute.<sup>58</sup> On or about October 14, 2009, Respondent denied the allegations regarding the fee dispute and rejected the offer to discuss the matter further.<sup>59</sup>

56. Between August 25 and 27, 2008, Complainant and Respondent's paralegal e-mailed each other regarding a possible "global settlement" meeting being set "the following week" wherein Respondent would attempt to obtain an agreement that USPS would be responsible for all of the attorney's fees and costs.<sup>60</sup>

57. On August 28, 2008, a settlement conference occurred between Respondent and attorneys for the USPS but failed to include Complainant at all.<sup>61</sup> On August 28, 2008 at 5:03 pm, Respondent placed a three (3) minute phone call to Complainant notifying him that he settled the case.<sup>62</sup>

---

<sup>56</sup> Id.; see also Answer, para. 59.

<sup>57</sup> Id.; see also Answer, para. 61.

<sup>58</sup> Id.; see also Answer, para. 62.

<sup>59</sup> Id.; see also Answer, para. 63.

<sup>60</sup> See Exhibit 34, Bates SBA000388; see also Exhibit 35, Bates SBA000397.

<sup>61</sup> Id.; see also Trial Testimony of Complainant; Trial Testimony of US Attorney Suzanne Chynoweth.

<sup>62</sup> See Exhibit 73, Bates SBA000570.

58. Approximately forty (40) minutes after being notified of the settlement, Respondent's paralegal e-mailed the settlement agreement signed by the attorney for USPS, a representative of USPS and Respondent stating:

Dear Alex,

Here is the settlement agreement. Please sign and fax back. I will also need you to send the original signature back to me. The check will be no later than 90 days from now.

Thank you,

Stephanie L. Coulter<sup>63</sup>

59. On September 2, 2008, Complainant wrote back to Respondent and Ms. Coulter:

Dear Ros,

I have to chance to look over the settlement and I have several questions for you;

Are there any fees I have to pay?

Why is the first check made out to you and me?

How am I getting paid back for the fees I had paid such as Deposition fees and including the traveling cost?

I know that you said they promised to pay within 90 days but why isn't that due date on the settlement letter?

What is the interest on the \$280,000?

Thank you,

Alex<sup>64</sup>

---

<sup>63</sup> See Exhibit 66, Bates SBA000536.



60. On September 8, 2008, Respondent wrote to Complainant “[w]e settled the case for \$322,857.88 you owed \$357,719.16 in fees which left a difference of \$34,861.28. I am going to credit you the \$34,861.28, difference so that you don’t owe any fees. However you do owe interest in the amount of \$95,636.42. I am going to credit you the \$10,200 that you have paid as fees and cost against the interest and thus the balance due amount to \$85,436.42. The check is made out to both parties so that the firm can reduce the amount of \$85,436.42 that is due the firm. I will present you with a 1099 for your taxes showing the deduction. . .The fees that you have paid will be deducted from the finance charges you owe the firm. As to the travel costs, those costs were part of the \$280,000.00 that you were awarded as compensatory damages.”<sup>65</sup>

61. By his own admission and verified by State Bar Examiner Gloria Barr, Respondent’s excel calculations contain several inaccuracies and errors.<sup>66</sup> Unbeknownst to Complainant and contrary to his letter to Complainant dated September 8, 2008, Respondent engaged in an e-mail exchange with Assistant United States Attorney Suzanne Chynoweth wherein he stated:

“I believe we need to start over. I do not believe we did a ‘settlement’ which the client has to approve. What I now believe we did was a Rule 54(d) of the Federal Rules of Civil Procedure and Local Rule 54.2 ‘Resolution of Attorney Fees where we were able to resolve our

---

<sup>64</sup> See Exhibit 67, Bates SBA000538.

<sup>65</sup> See Exhibit 38, Bates SBA000409-414.

<sup>66</sup> Id.; see also Exhibit 17, Bates SBA000085-86; Exhibit 25, Bates SBA000121-215; Exhibit 29, Bates SBA000235-355; Exhibit 32, Bates SBA000368-384; Exhibit 118, Bates SBA000748-800; Demonstrative Exhibits marked for identification purposes as Exhibits 121 and 122; Trial Testimony of Gloria Barr.

disputed issues'. The client does not need to approve this settlement."<sup>67</sup>

62. Unbeknownst to Complainant, AUSA Chynoweth responded stating in pertinent part:

"The parties discussed and agreed upon a global settlement of all issues. The agreement, signed by you on behalf of your client, included resolution of all potential outstanding issues, including the parties' right to appeal. Your proposal is not acceptable for a variety of reasons, which I will not address here."<sup>68</sup>

63. Over the next several weeks – particularly in one string of e-mails dated September 16, 2008, at 9:36:37 a.m. and September 24, 2008, at 11:52:50 a.m. - Complainant continued to question Respondent about the terms of the settlement and stated, "I wish that you had talked with me regarding the settlement before it was formally written out."<sup>69</sup>

64. This check was meant to represent the balance of the compensatory damages award after Respondent deducted Eighty Five Thousand Four Hundred Sixty Three Dollars and 42/100 (\$85,463.42) for the unsubstantiated service fee or interest on purportedly "unpaid" legal fees.<sup>70</sup>

65. On December 7, 2009, Steptoe & Johnson requested Complainant's entire client file in writing.<sup>71</sup>

---

<sup>67</sup> See Exhibit 109, Bates SBA000717.

<sup>68</sup> Id.

<sup>69</sup> See Exhibit 41, Bates SBA000429/SBA000427.

<sup>70</sup> See Exhibit 42, Bates SBA000443; see also Trial Testimony of Respondent.

<sup>71</sup> See Exhibit 4, Bates SBA000034-5.

66. On December 10, 2010 (over one year later), the file was transferred to Complainant's counsel.<sup>72</sup>

67. On June 26, 2012, the State Bar filed documentation evidencing the change in travel costs incurred by Complainant as a result of the Respondent's "eleventh hour" continuance of the previously scheduled May 15, 2012 hearing date.

#### **IV. CONCLUSIONS OF LAW**

The Panel finds clear and convincing evidence is present that Respondent violated Rule 42, Ariz.R.Sup.Ct, specifically ERs 1.2(a) (scope of representation/allocation of authority), ER 1.2(d) (counsel client to engage in criminal or fraudulent conduct), 1.3 (diligence), 1.4(a) (communication/inform client), 1.5(a) (unreasonable fees), 1.5(b) (fees/cope of representation and basis or rate of fee and expenses), 1.5(c) (fees/contingency), 1.16 (termination of representation/protect client interests), 3.2 (expediting litigation), and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

#### **V. DISCUSSION**

The State Bar asserts that a suspension of no less than six (6) months and one (1) day and restitution is the appropriate sanction. Respondent asserts that this matter is merely a fee dispute and the State Bar does not have jurisdiction.

The Panel concluded that this is much more than a fee dispute. Mr. Patterson was untruthful on multiple levels. This culminated in Mr. Patterson settling the matter without his client's consent and informing him of the settlement after the fact. Respondent admits he did not include him in those settlement

---

<sup>72</sup> See Trial Testimony of Complainant.

negotiations but then states he was not required to pursuant to Rule 54(d) of the Federal Rules of Civil Procedure and Local Rule 54.2 *Resolution of Attorney Fees*. Respondent testified that he called Mr. Jung on at least 5 occasions during settlement. The Panel is not persuaded by Respondent's testimony. The evidence shows that Respondent called Mr. Jung one time on August 28, 2008 at 5:06 p.m., after the settlement had concluded. [Mr. Jung's hearing testimony and SB Exhibit 73]. His testimony that he contacted Mr. Jung several times during the negotiations was not credible.

The Panel determined Respondent's violation of ER 1.2 is the most egregious coupled with his violation of ER 8.4(c). Given the seriousness of those violations, the Panel determined that it was not critical to determine if the fee was an hourly or a contingent fee. Respondent's decision not to include the client in the settlement had adverse effect on his client and affected his client's rights on appeal.

## **VI. SANCTIONS**

### **Analysis under the ABA Standards**

In determining an appropriate sanction, courts generally utilize the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") as a guideline. Rule 58(k), Ariz.R.Sup.Ct. The appropriate sanction depends on the facts and circumstances of each case. Consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004). See also *Standard 3.0*.

The *Standards*, however, do not account for multiple charges of misconduct and advise that the ultimate sanction imposed should at least be consistent with the

sanction for the most serious instance of misconduct among a number of violations: it might well be and generally should be greater than the sanction for the most serious misconduct. See 1992 amended *Standards, Theoretical Framework*, p. 7.

In this matter, Respondent violated duties owed to the client, the legal system, and as a professional. The Panel applies the following *Standards* to Respondent's misconduct:

*Standard 4.22* provides that Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client. Respondent violated ER 1.2(a) by failing to abide by a client's decisions concerning the objectives of representation and shall consult with client as to the means by which they are pursued as well as failing to abide by a client's decision whether to settle a matter.

Respondent violated ER 1.6(a) by revealing information relating to the representation of a client without the client giving his informed consent.

*Standard 6.12* provides that Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceedings, or causes an adverse or potentially adverse effect on the legal proceedings.

*Standard 5.13* provides that Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law. Respondent violated ER 1.2(d) by advising his client to engage, or

assist a client, in conduct that the lawyer knows is criminal or fraudulent. Respondent also violated ER 8.4(c) by engaging in conduct that involves dishonesty, fraud, deceit or misrepresentation.

*Standard 4.13* provides that Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. Respondent violated ER 1.5 by changing the basis or rate of the fee or expenses without memorializing the change in writing. Respondent also violated ER 1.16 after termination of representation, by failing to take steps to the extent reasonably practicable to protect a client's interest and surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned.

*Standard 4.43* provides that Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. Respondent ER 1.3 by failing to act with reasonable diligence and violated ER 1.4 (a) by failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required; failing to reasonably consult with the client about the means by which the client's objectives are to be accomplished; failing to keep the client reasonably informed about the status of the case and failing to promptly comply with reasonable requests for information. Respondent violated ER 3.2 by failing to make reasonable efforts to expedite litigation consistent with the interests of the client.

The Panel determined that Respondent violated his duty to clients and the legal system in this matter and caused actual injury to the client. The presumptive sanction is suspension.

**Standard 9.0, Aggravating and Mitigating factors**

Aggravating factors in attorney discipline proceedings need only be supported by reasonable evidence. *Matter of Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). The Panel has determined based on the record, the following aggravating factors exist in this case:

9.22(a) prior disciplinary offenses:

Respondent was placed on two years of Probation (LOMAP with a practice monitor) effective November 4, 2009 in File 09-1113 for violating ERs 1.4(a)(3) and 1.5(d)(3). LOMAP was to focus on Respondent's practices and procedures re: communication with clients and addressing language and the adequacy of the waiver of future conflicts in his written fee agreements. Respondent's Probation was successfully completed and terminated on November 9, 2011. [Exhibit 117]

Pursuant to an Agreement for Discipline by Consent, a censure and one year of probation (LOMAP and TAEEP) was imposed effective January 24, 2008 in File 06-0741 for violating ERs 1.15 and Rules 43 and 44. (Exhibit 114-116)

An Informal Reprimand and Probation (Ethics Enhancement Program) was imposed in File 06-1713, effective June 27, 2007, for violating ERs 1.1, 1.3, 1.4, 3.1, 3.2 and 8.4(d). Probation completed/terminated on 03/06/09. [Exhibit 113]

An Order of Diversion (Ethics Enhancement Program) in File No. 03-2131 was imposed in November 2004 regarding client communication. Diversion was completed and the matter dismissed effective December 15, 2004. Diversion is not

considered prior discipline but if diversion meets the criteria and is pursued, it serves to "remedy the immediate problem and likely prevent any recurrence of it." Rule 56(b), Ariz.R.Sup.Ct.

It is troubling to this Panel that Respondent has not benefited from past remedial efforts of rehabilitation and establishes that a suspension requiring Respondent to submit to formal reinstatement proceedings is necessary. The Panel notes that many of the violations in the instant matter occurred during the time Respondent was on probation and involves similar misconduct. Character is more than a collection of occasional proclaimed good intentions; it is, rather, who we are through and through.

A substantial aspect of the defense by Mr. Patterson was his frequent self laudatory statement that only his skill as a lawyer brought a positive result for his client. That the case of his client had substantial merit did not factor into that argument. In doing so he seeks to disarm our judgment of his unscrupulous actions with his self declared brilliant contributions to the judgment obtained. However, this case presents an age old story based on an all too familiar theme; the end justifies the means. We find even the end product ruined.

If we are the product of our thoughts then the thermostat Mr. Patterson created by his pattern of practice and which regulated his thought was corroded and defective. We are reminded of the statement of French critic Alphonse Karr, "Every man has three characters-that which he exhibits, that which he has, and that which he thinks he has." Mr. Patterson is rooted in the third category.

Never refuted by Mr. Patterson was the testimony undergirded by the exhibits that he made his attorney fee statements up whole cloth. For Mr. Patterson his



frequently changing charges were chess pieces to be redefined as needed to benefit him. His testimony that he overstated his attorney fees so that the difference between what was awarded and what was owed would further benefit his client was hyperbole. He intentionally wielded anarchy in the proceedings and it directly impacted his client.

By definition anarchy is a state of disorder caused by a refusal to recognize authority. His refusal to recognize authority was on multiple levels. He lied to opposing counsel about his attorney fees to date when he finally adhered to the requests of his opposing counsel and the demands of his client and made an initial offer to settle. When his opposing counsel agreed to pay those fees provided he submit an affidavit verifying that fees; he never responded.

He instructed his client to lie to the settlement judge if questioned. He falsified his attorney fee statement and presented it to the settlement judge, grossly overstating his fees. Any hope for settlement was buried by such actions. His directives to lie about the billings to his client brought disrepute to the profession.

He repeatedly lied to his client. Those lies are made worse by the injuries his client suffered during the time he was delaying these proceedings to maximize his own profit at his clients expense. At other times he ignored the clear directives and authority of his client.

But such disorder cannot be easily controlled. In the end four of his attorney fee statements, each different from the other, became exhibits in this case. What was predictable was that such actions would leave devastation in its wake as shown in the mirror of hindsight these proceedings have offered. His actions were knowing, if

not intentional and involved multiple violations. The Panel finds the following infringements present:

- 9.22(b) dishonest or selfish motive;
- 9.22(c) a pattern of misconduct;
- 9.22(g) refusal to acknowledge wrongful nature of conduct;
- 9.22(i) substantial experience in the practice of law; and
- 9.22(j) indifference to making restitution;

The Panel also finds the following mitigation factor is present:

- 9.32(e) full and free disclosure to disciplinary board or cooperative attitude towards proceedings.

## **VII. CONCLUSION**

Based on the facts in this matter and in consideration of the *Standards* including the aggravating and mitigating factors present, the Panel determined that a one (1) year suspension, two (2) years of probation (LOMAP), restitution in the amount of \$85,463.42 for the interest fee on unpaid legal fees and \$230.40 for travel costs, and costs of these disciplinary proceedings is the appropriate sanction. The suspension is effective 30 days from the date of this Report and Order. The terms of probation are as follows:

### **Terms of Probation**

1. Upon reinstatement, Applicant shall be placed on two (2) years of Probation with the State Bar's Law Office Management Assistance Program (LOMAP) effective the date of the Order of Reinstatement.

2. Within thirty (30) days of the Order of Reinstatement, Applicant shall contact the LOMAP director and schedule an assessment. Respondent shall thereafter enter into a contract based upon the recommendation made by the LOMAP director or designee. Applicant shall comply with all recommended terms and pay costs associated with LOMAP. Those recommendations shall be incorporated herein by reference.

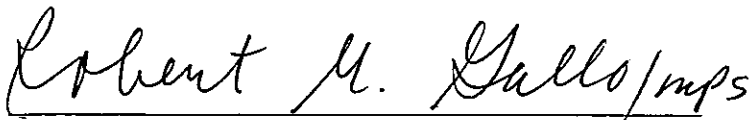
3. The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct., and a hearing may be held within thirty (30) days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

**DATED** this 26 day of July, 2012.

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

CONCURRING

  
\_\_\_\_\_  
Stephen H. Lesher, Volunteer Attorney Member

  
\_\_\_\_\_  
Robert M. Gallo, Volunteer Public Member

Original filed with the Disciplinary Clerk  
of the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona

this 26 day of July, 2012.

Copies of the foregoing mailed/emailed  
this 27 day of July, 2012, to:

Rosval A. Patterson  
*Patterson and Associates, PLLC*  
777 East Thomas Road, Suite 210  
Phoenix, AZ 85013-5478  
Email: rpatterson@pa-atlaw.com  
Respondent

Craig D. Henley  
Senior Bar Counsel  
STATE BAR OF ARIZONA  
4201 North 24<sup>th</sup> Street, Suite 200  
Phoenix, AZ 85016-6288

by: 