

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

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

**GRADY S. WADE,
Bar No. 025811**

Respondent.

No. PDJ-2012-9074

**REPORT AND ORDER
IMPOSING SANCTIONS**

[Nos. 12-0031, 12-0115, 12-0131, 12-0255, 12-0261, 12-0363, 12-0390, 12-0421, 12-0427, 12-0534, 12-0566, 12-0696, 12-0802, 12-0954, 12-1147 AND 12-1270]

Complaint in this matter was filed on August 8, 2012 and timely served. Notice of Default was filed by the Disciplinary Clerk on September 5, 2012. Mail returns were received by the Disciplinary Clerk. The address of Mr. Wade was verified with bar counsel as being the last address provided by Mr. Wade to bar counsel and as listed in the state bar's membership records department pursuant to Supreme Court Rule 32(c)(3). The Initial Case Management Conference in this matter was held on September 11, 2012. Hunter F. Perlmeter appeared on behalf of the State Bar of Arizona ("the Bar.") Grady S. Wade ("Respondent") did not appear. Default was thereafter entered by the Disciplinary Clerk on September 18, 2012 and notice of the aggravation/mitigation hearing was sent to all parties notifying them the aggravation/mitigation hearing was scheduled for October 15, 2012 at 10:30 a.m., at 1501 West Washington, Phoenix, Arizona 85007-3231.

Mr. Perlmeter appeared on behalf of the State Bar of Arizona. Mr. Wade did not appear. After default was entered Supreme Court Rule 58(d) directs that "the allegations in the complaint shall be deemed admitted."

FINDINGS OF FACT

The following facts have been alleged in the Complaint and have been deemed admitted as a result of Respondent's Default:

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 November 1, 2007.

2. Respondent was arrested in Blythe, California on December 20, 2011¹ and thereafter abandoned his law practice.

3. On January 31, 2012, Edward Parker of the State Bar was appointed as conservator for all of Respondent's financial accounts and was ordered to take possession of all of Respondent's files and papers. Respondent did not appear to contest the appointment of a conservator.

4. Respondent, who is no longer in custody, has failed to respond to any of the Bar's screening letters. The Bar has received returned mail from both Respondent's office address and his home address and has been unable to locate Respondent.

COUNT ONE (File no. 11-4021/Stiefken)

5. On March 21, 2011, Charles Stiefken ("Stiefken") retained Respondent in a family law matter.

6. Respondent repeatedly failed to return phone calls from Stiefken and canceled three appointments without providing notice.

¹ To date Respondent has not been charged; any disciplinary action relating to charges from his arrest will be handled subsequent to any criminal charges filed.

7. Respondent failed to provide an itemized bill to Stiefken upon request.

8. Respondent failed to request a continuance for Stiefken after communicating to Stiefken that he would do so because of Stiefken's scheduling conflict related to his military service.

9. Respondent has not refunded the unused portion of the \$2,500.00 payment made by Stiefken.

COUNT TWO (File no. 12-0002/Page)

10. Polly Page ("Page") retained Respondent for work in two family law matters in May of 2010 and paid \$5,200.00 to Respondent for work in the two matters.

11. Beginning on December 15, 2011, Respondent stopped communicating with Page and did not return her file or any portion of the fees paid by Page.

COUNT THREE (File no. 12-0031/Robinson)

12. Lee Ann Robinson ("Robinson") retained Respondent to handle a Workers' Compensation claim.

13. When Robinson attempted to contact Respondent on December 22 and 26 of 2011 regarding the settlement of her claim, Respondent's phone was disconnected.

14. Robinson visited Respondent's office and discovered it was closed.

15. Robinson received no communication that Respondent was terminating his representation.

16. Respondent's fees were to be paid out of any settlement reached in Robinson's case.

COUNT FOUR (File no. 12-0115/Richie)

17. Benjamin Richie ("Richie") retained Respondent to handle a family law matter in September of 2011 and paid Respondent \$2,000.00.

18. Richie has been unsuccessful in his attempts to contact Respondent since December 9, 2011.

19. Respondent has not returned Richie's file or issued a refund for work that Respondent failed to complete.

COUNT FIVE (File no. 12-0131/Anderson)

20. Amy Anderson ("Anderson") retained Respondent in May of 2011 to handle a family law matter for which she paid Respondent \$3,500.00.

21. Anderson has been unsuccessful in her attempts to contact Respondent since December of 2011 and Respondent has not returned her file or issued a refund.

COUNT SIX (File no. 12-0255/Romero)

22. Raymond Romero ("Romero") retained Respondent in September of 2011 to handle a family law matter. Respondent collected \$1,500.00 from Romero.

23. After paying Respondent, Romero never received further communication from Respondent.

24. Romero's file has not been returned to him and he has not received a refund.

COUNT SEVEN (File no. 12-0261/Pierce)

25. Jack Pierce ("Pierce") retained Respondent in 2010 to handle a bankruptcy matter. During the representation Pierce paid Respondent \$1,800.00

26. Respondent stopped communicating with Pierce in December of 2011.

27. Respondent did not return Pierce's file or offer a refund of any of the fees paid.

COUNT EIGHT (File no. 12-0363/Hofsdal)

28. Melissa Hofsdal ("Hofsdal") paid Respondent \$1,700.00 for representation in a family law matter and \$500.00 in a collections matter. Representation began in January of 2011.

29. Respondent appeared at one hearing before ending communication and failing to return Hofsdal's file or any portion of the fee paid by her.

COUNT NINE (File no. 12-0390/Ruthowski)

30. Ray Ruthowski ("Ruthowski") retained Respondent to file a breach of contract action and to represent him in a harassment matter in August of 2011.

31. Respondent filed a pleading in the matter in October of 2011, but made no further filings and stopped communicating with Ruthowski.

32. Respondent did not return Ruthowski's file or issue a refund for any of the \$2,000.00 paid by Ruthowski.

COUNT TEN (File no. 12-0421/Clark)

33. Debbie Clark ("Clark") retained Respondent for \$1,500.00 to handle a civil matter.

34. Respondent failed to appear at a February 9, 2012 hearing in Clark's case.

35. Respondent did not communicate with Clark regarding his failure to appear and did not return her file or refund any portion of her fee.

COUNT ELEVEN (File no. 12-0427/Murphy)

36. Patrick Murphy ("Murphy") retained Respondent on October 27, 2011 through a referral from Legal Aid.

37. Murphy delivered a cashier's check for \$2,349.00 to Respondent's office on December 21, 2011.

38. The cashier's check was not cashed by Respondent and was recovered by the Bar and returned to Murphy.

39. Respondent performed no work in Murphy's case.

40. Respondent did not communicate with Murphy after receiving his check and did not return Murphy's file to him.

COUNT TWELVE (File no. 12-0534/Zaragoza)

41. Oscar Zaragoza ("Zaragoza") retained Respondent in April of 2011 to represent him in a family law matter in exchange \$3,500.00.

42. Respondent failed to perform work in Zaragoza's case, failed to issue a refund and failed to return Zaragoza's file.

COUNT THIRTEEN (File no. 12-0566/Carradine)

43. Leshon Carradine retained Respondent in October of 2010 to represent her in a family law matter in exchange for \$5,000.00.

44. Respondent failed to appear for one of Carradine's court hearings and never communicated with her thereafter or returned her file.

COUNT FOURTEEN (File no. 12-0696/Roth)

45. Karen Roth retained Respondent in April of 2011 for \$5,000.00 to represent her in her efforts to adopt her grandchildren.

46. On the final date on which Respondent communicated with Roth before abandoning her case, Respondent indicated that he had not yet used up any of her down payment towards fees.

47. Respondent did not return Roth's file or issue a refund to her.

COUNT FIFTEEN (File no. 12-0802/Boyle)

48. Judy Boyle hired Respondent in a divorce matter in February of 2011 for \$1,000.00 and subsequently made two payments to him of \$300.00 each.

49. Respondent lost documents that Boyle provided to him, failed to notify the court when her ex-husband violated court orders and withheld settlement money paid to her by her husband.

50. Respondent stopped communicating during the representation and failed to return Boyle's file or refund any money to her.

COUNT SIXTEEN (File no. 12-0954/Valdez)

51. In October of 2010, Ricardo Valdez hired Respondent by making a \$100.00 down payment for representation in a personal bankruptcy matter and agreeing to pay an additional \$1,700.00.

52. In February of 2011, Valdez paid Respondent \$1,000.00.

53. Valdez was subsequently notified by the Bar that Respondent had abandoned his practice.

54. Valdez has not been refunded any of the \$1,100.00 that he paid to Respondent and Respondent has not returned Valdez's file.

COUNT SEVENTEEN (File no. 12-1147/Boanca)

55. Gabriel Boanca hired Respondent in September of 2011 to represent her in a landlord/tenant dispute in exchange for \$500.00.

56. After accepting the funds, Respondent ceased all communication with Boanca and performed no work for her.

57. Respondent did not return Boanca's file or issue a refund.

COUNT EIGHTEEN (File no. 12-1270/State Bar)

58. In May of 2012, the State Bar received a letter from a Pima County Superior Court judge concerning seven matters, in addition to the above matters, in which Respondent abandoned cases in which he was listed as counsel of record:

a. Fairbanks v. Gallegos Auto Sales; C20118036

b. Hawes v. RTS Consulting, Inc.; C20114655

c. Taylor v. Elias; D20113453

d. Walton v. Bayham Law; C20117084

e. Giron v. Cordoba; DC20110014

f. McNall v. Ranges; SP2011445

g. Walker v. Walker; DC20110022

59. Respondent either failed to appear or failed to otherwise timely represent the clients in the above cases.

RULE VIOLATIONS

60. Respondent violated ER 1.3 by failing to exercise reasonable diligence and promptness in representing clients.

61. Respondent violated ER 1.4 by failing to reasonably and promptly communicate with his clients.

62. Respondent violated ER 1.5 by collecting fees for work that he failed to perform.

63. Respondent violated ER 1.15 by failing to safekeep client files and client funds.

64. Respondent violated ER 1.16(d) by failing to take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, prior to terminating representation. Respondent abandoned all complainants.

65. Respondent violated ER 8.4(d) by engaging in conduct prejudicial to the administration of justice. Respondent abandoned all of his clients and failed to notify the courts of his decision. His actions prejudiced his clients and the legal system.

RESTITUTION

The Bar sought restitution in the following amounts for the following Complainants:

1. Charles Stiefken (File no. 11-4021): \$2,500.00
2. Polly Page (File no. 12-0002): \$5,200.00
3. Benjamin Richie (12-0115): \$2,000.00
4. Amy Anderson (12-0131): \$3,500.00
5. Raymond Romero (12-0255): \$1,500.00
6. Jack Pierce (12-0261): \$1,800.00
7. Melissa Hofsdal (12-0363): \$2,200.00
8. Ray Ruthowski (12-0390): \$2,000.00 fee arbitration.
9. Debbie Clark (12-0421): \$1,500.00
10. Oscar Zaragoza (12-0534): \$3,500.00
11. Leshon Carradine (12-0566): \$5,000.00

12. Karen Roth (12-0696): \$5,000.00
13. Judy Boyle (12-0802): \$1,700.00
14. Ricardo Valdez (12-0954): \$1,100.00
15. Gabriel Boanca (12-1147): \$500.00

However, some of these individuals were unable to provide proof for the fees requested. At the request of the State Bar of Arizona they are referred to fee arbitration which may assist in their claim to the Client Protection Fund. Nothing precludes their litigating the issue of their fees and/or damages.

ABA STANDARDS

In determining an appropriate sanction, the hearing panel is required to utilize the American Bar Association's *Standards for Imposing Lawyer Sanctions* (hereinafter *Standards*). Rule 58(k), Ariz. R. Sup. Ct. In determining an appropriate sanction, 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); *Standard 3.0*.

The following discussion of the *Standards* illustrates that Respondent violated duties owed to clients.

4.41 Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

PROPORTIONALITY

In the Matter of a Member of the State Bar of Arizona, Joseph Didio, SB-09-0018-D, is applicable and proportional as Mr. Didio was disbarred for failing to adequately communicate, failing to diligently represent his clients, failing to perform work, and essentially abandoning his practice. Mr. Didio violated ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.7, 1.16, 3.4(c), 5.1, 8.1(b), 8.4(c), 8.4(d) and Rules 53(d) and (f)

In the matter of a Member of the State Bar of Arizona, Jeff Jackson, SB-09-0079-D, is applicable and proportional. Mr. Jackson was disbarred for failing to adequately communicate and diligently represent clients, collecting retainers and fees from his clients without performing work and essentially abandoning his practice. Mr. Jackson violated ERs 1.3, 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).

AGGRAVATING AND MITIGATING FACTORS

Pursuant to 9.22, the following aggravating factors exist:

- a. A pattern of misconduct
- b. Multiple offenses
- c. Indifference to making restitution
- d. Illegal conduct

Pursuant to 9.32, the following mitigating factors exist:

- a. Absence of a prior disciplinary record

CONCLUSIONS OF LAW

Mr. Wade 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). Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Respondent violated the following:

DISCUSSION

The issuance of a final order by default in a disciplinary case requires a two step progression. First, default must be formally entered by the disciplinary clerk. Supreme Court Rule 58(d) outlines the default procedure in discipline cases.

If respondent fails to answer within the prescribed time, the disciplinary clerk shall, within ten (10) days thereafter, file and serve a copy of the notice of default upon respondent and bar counsel. A default shall not be entered if the respondent files an answer or otherwise defends prior to the expiration of ten (10) days from the service of the notice of default. Otherwise, a default shall be entered by the disciplinary clerk eleven (11) days after the notice of default is filed and served and the allegations in the complaint shall be deemed admitted.

This procedure is substantively different from the default process set forth within the Civil Rules of Procedure. Civil Rule 55 has not been incorporated into the discipline rules. See Supreme Court Rule 48(b). In discipline cases, the disciplinary clerk files and serves a copy of the notice of default upon respondent and bar counsel. Unlike the civil rules, the right to file an answer is continuous until the actual entry of default by the disciplinary clerk. A default cannot be entered if the respondent files an answer or otherwise defends anytime before the actual entry of default by the disciplinary clerk. As noted above, default was properly

entered by the disciplinary clerk and respondent has never appeared. Under rule 58(d) the formal entry of default mandates, "the allegations in the complaint shall be deemed admitted." When a default is properly entered there is a judicial admission of all well-pleaded facts in the complaint.

The second step of the progression is to acquire "an order regarding discipline" under Supreme Court Rule 58(k). After default is entered and the allegations in the complaint are necessarily "deemed admitted," an aggravation/mitigation hearing is set before a hearing panel. The purpose of that hearing is not merely to weigh the mitigating and aggravating factors. The hearing also serves to assure there is a nexus between the respondent's judicially admitted actions and the merits of the case. A respondent against whom a default has been entered no longer has the right to litigate the merits of the factual allegations, but 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 cross-examine witnesses but not for the purpose of disputing the factual allegations.

Due process requires the 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 conduct. It is not the function of a hearing panel to simply endorse or "rubber stamp" any request for sanctions. Here, there has been an independent determination by the Panel that the state bar has, by clear and convincing evidence proven that the actions of Mr. Wade are in violation of the ethical rules.

CONCLUSION

Lawyer discipline has many purposes which are not to punish a lawyer but, rather, to protect the public, the profession, and the administration of justice; deter similar conduct among other lawyers; preserve confidence in the integrity of the bar; foster confidence in the legal profession and the self-regulatory process; maintain the integrity of the profession in the eyes of the public; and assist, if possible, in the rehabilitation of an errant lawyer. *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004); *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001); *In re Walker*, 200 Ariz. 155, 24 P.3d 602 (2001) (1,4,5); *In re Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990); *In re Hoover*, 161 Ariz. 529, 779 P.2d 1268 (1989); and *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Neither the State Bar nor this Panel can help those who choose not to be helped, or rehabilitate an errant lawyer such as Mr. Wade who has shown that he no longer wishes even to be a lawyer.

Given the numerous ethical rule violations, the appropriate *Standards*, the aggravating factors, and the potential mitigating factors, the objectives of discipline will be met by the imposition of disbarment with the assessment of all costs and expenses incurred in this matter.

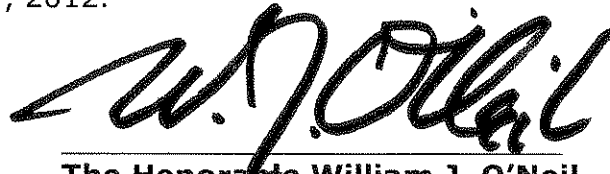
Based upon the above, the Panel orders as follows:

IT IS ORDERED:

1. Respondent shall be disbarred from the practice of law.
2. Respondent shall pay all costs and expenses incurred by the State Bar and the Office of the Presiding Disciplinary Judge in this proceeding.
3. Respondent shall pay the following in restitution:
 - a. Charles Stiefken (File no. 11-4021): \$2,500.00
 - b. Polly Page (File no. 12-0002): \$5,200.00
 - c. Benjamin Richie (12-0115): \$2,000.00

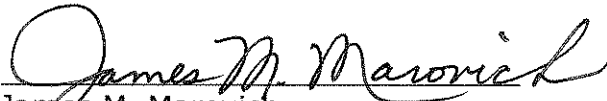
- d. Amy Anderson (12-0131): \$3,500.00
 - e. Melissa Hofsdal (12-0363): \$1,700.00
 - f. Debbie Clark (12-0421): \$1,500.00
 - g. Oscar Zaragoza (12-0534): \$3,500.00
 - h. Leshon Carradine (12-0566): \$3,500.00
 - i. Karen Roth (12-0696): \$5,000.00
 - j. Judy Boyle (12-0802): \$1,700.00
 - k. Ricardo Valdez (12-0954): \$1,100.00
4. The State Bar requested restitution for various individuals and requested each individual to submit proof regarding their request for restitution. However the following individuals provided no documentation in support of their request. At the request of the State Bar, the Panel orders that fee arbitration be available for each of these individuals which may assist in their claim to the Client Protection Fund.
- a. Raymond Romero (12-0255): \$1,500.00
 - b. Jack Pierce (12-0261): \$1,800.00
 - c. Leshon Carradine (12-0566): \$1,500.00 (Ms. Carradine had proof for \$3,500.00 but was unable to locate her receipt for \$1,500.)
 - d. Gabriel Boanca (12-1147): \$500.00
 - e. Ray Because Ray Ruthowski (12-0390): \$1,500.00
5. A Final Judgment and Order will be issued.
6. Due to the absence of Mr. Wade and the appointment of a conservator for his practice, the disbarment shall be effective immediately.

DATED this 15th day of October, 2012.



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

CONCURRING:



James M. Marovich
Volunteer Attorney Member



Bruce Brannan
Volunteer Public Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 15 day of October, 2012.

Copies of the foregoing mailed
this 15th day of October, 2012, to:

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by: 