

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

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

**MIRIAM HOLLY KLAIMAN,  
Bar No. 024299,**

Respondent.

**PDJ-2011-9060**

**REPORT AND ORDER IMPOSING  
SANCTIONS**

**[No. 10-0329]**

On February 2 and 3, 2012, the Hearing Panel composed of Robert M. Gallo, a public member from Pinal County, Maria Salapska, an attorney member from Maricopa County, and the Honorable William J. O'Neil, Presiding Disciplinary Judge ("APDJ") 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 Denise M. Quinterri appeared on behalf of Respondent Miriam Holly Klaiman ("Respondent"). The Panel considered the testimony, the admitted exhibits, the parties' Joint Pre-Hearing Statement, Proposed Findings of Fact and Conclusions of Law, and evaluated the credibility of the witnesses. The PDJ and Hearing Panel ("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 AND UPON REINSTATEMENT,  
TWO YEARS OF PROBATION WITH THE STATE BAR MEMBER  
ASSISTANCE PROGRAM, 15 HOURS OF CONTINUING LEGAL  
EDUCATION IN ETHICS, AND COSTS.**

## **II. PROCEDURAL HISTORY**

A Probable Cause Order was filed on May 17, 2011. The Complaint in this matter was filed on September 29, 2011 alleging violations of ERs 3.1, 3.2, 3.3(a)(1), 3.3(a)(3), 3.4(c), 3.4(d), 4.1, 4.1(b) 4.4(a), 8.4(c), 8.4(d) and Rule 41(g). On October 31, 2011, Respondent filed her Answer. A hearing on the merits was held on February 2 and 3, 2011, in Tucson, Arizona. Following the conclusion of the hearing, the PDJ ordered the parties to file Proposed Findings of Fact and Conclusions of Law by February 17, 2012. Both parties timely filed their Proposed Findings. Respondent seeks a Reprimand or in the alternative, a short-term suspension and the State Bar seeks a suspension of no less than six months and one day.

## **III. FINDINGS OF FACT**

1. Respondent obtained her M.D. from the University of Minnesota in 1997 and did additional studies in sleep apnea.<sup>1</sup>
2. Respondent was a lawyer licensed to practice law in the State of Arizona having been *conditionally* admitted on May 2, 2006.<sup>2</sup>
3. A term of her conditional admittance required her to participate in the State Bar's member Assistance Program (MAP), a term she complained about.<sup>3</sup>
4. Respondent worked at the Santa Cruz County Attorney's Office from approximately October 1, 2006, through February 16, 2007.<sup>4</sup>
5. Respondent obtained a job with, and worked for, the Law Offices of Nina Caples from approximately October 2, 2007, through January 5, 2008. On or about January 5, 2008, Respondent's employment ended with the Law Offices of Nina Caples.<sup>5</sup>

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<sup>1</sup> Exh. M Bates 1043 and Testimony of Respondent.

<sup>2</sup> Complaint ¶ 1; Answer ¶ 1.

<sup>3</sup> Exh. J at Bates 1020.

<sup>4</sup> Complaint ¶ 2; Answer ¶ 2.

<sup>5</sup> Complaint ¶ 3-4; Answer ¶ 3-4; Exh. 24 at Bates SBA000537-8.

6. On January 11, 2008, Respondent sued the Law Offices of Nina Caples and filed a misconduct charge against Ms. Caples with the Bar (hereinafter referred to as the "Caples lawsuit"). Ms. Caples also filed a misconduct charge against Respondent with the Bar.<sup>6</sup>
7. This charge resulted in an order of probation, MAP & Costs entered against her by the Probable Cause Panelist. This was appealed by Respondent, resulting in multiple findings of fact and conclusions of law from actions occurring at or during the same time as the events in this complaint. There are no findings of medical or mental problems raised. The Commission, at finding page 20, noted: "The respondent has already successfully completed MAP. The respondent does not appear to have any substance abuse or mental health problems, which are often the reason for a MAP referral."<sup>7</sup>
8. On February 20, 2008, Leslie Spira, a Deputy County Attorney with the Santa Cruz County Attorney's Office, filed a misconduct charge with the State Bar alleging among other things that Respondent had been dishonest in her correspondence with the State Bar. The charge was dismissed.<sup>8</sup>
9. On April 5, 2008, seeking damages against the Santa Cruz County Attorney for the actions of Leslie Spira, Respondent improperly mailed a Notice of Claim to the Santa Cruz Board of Supervisors only for events occurring during her employment with the Santa Cruz County Attorney's Office.<sup>9</sup>
10. On October 6, 2008, Respondent filed a civil lawsuit against the Santa Cruz County Attorney's Office alleging defamation, false light invasion of privacy, public disclosure of private facts, negligent hiring, and gross negligence related to the State Bar charge against Respondent (hereinafter referred to as the "Lawsuit") by Ms. Leslie G. Spira, Santa Cruz County Deputy County Attorney. Respondent's initial complaint sought \$150,000.00 in damages "[f]or County's intentionally and maliciously subjecting [Respondent] to public embarrassment and ridicule and for harm to [Respondent's] professional reputation by filing a false complaint which cannot be expunged from [Respondent's] Bar record for three years . . ."(hereinafter referred to as the "Santa Cruz lawsuit"). The initial complaint was amended on October 30, 2008, and again on February 6, 2009.<sup>10</sup>

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<sup>6</sup> Complaint ¶ 5-6; Answer ¶ 5-6; Exh. 24 at Bates SBA000535.

<sup>7</sup> Exh. J Bates 1029.

<sup>8</sup> Complaint ¶ 7-8

<sup>9</sup> Exhibit 16 at Bates 000288-9.

<sup>10</sup> Complaint ¶ 9-10; Answer ¶ 9-10; Exh. 4 at Bates 000006-12; Exh. 10 at Bates SBA000185-90; Exh. 16 at Bates SBA000292-99.

11. On October 15, 2008, Respondent filed a pleading entitled "Plaintiff's Amended Third Mandatory Disclosure to Defendant" in the Caples lawsuit which detailed several events and circumstances purportedly occurring during her employment with the Law Offices of Nina Caples.<sup>11</sup>
12. On October 17, 2008, Respondent sent a thirty-five (35) page response to the Bar which outlined several events and circumstances which allegedly occurred during her employment with the Law Offices of Nina Caples.<sup>12</sup>
13. On or about December 31, 2008, Respondent filed an affidavit with the court in the Santa Cruz lawsuit, in support of a request for attorney's fees and costs.<sup>13</sup>
14. While Respondent attached a resume to the affidavit prepared by her and alleged to be her "current resume", the resume was substantively deficient and specifically omitted any mention of Respondent's employment with the Law Offices of Nina Caples.<sup>14</sup>
15. On January 19, 2009, Respondent was deposed by counsel for Santa Cruz County, Ms. Georgia Staton. During the deposition, Ms. Staton asked Respondent questions about her employment history, and the following dialogue occurred:

Q: So let me make sure I understand this. Between February 16 of 2006 - - of '7 when you left the Santa Cruz County Attorney's Office and December 31 of 2007 you had not set up your private practice.

**A: Correct.**

Q: Did you work in any legal capacity during that timeframe?

**A: Well, that's a matter of record. I'm going back here to my reference earlier to my resume that I furnished recently to the court as an exhibit to a pleading and also in an application to your - I believe your firm is called Skelton, Jones & Hochuli?**

Q: Jones, Skelton & Hochuli.

**A: Jones, Skelton & Hochuli. Well, I noted that I did some contract work for an attorney in Maricopa County in the second half of 2007.**

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<sup>11</sup> Exhibit 26 at Bates SBA000446-450.

<sup>12</sup> Exhibit 26 at Bates 000404-438.

<sup>13</sup> Complaint ¶ 11; Answer ¶ 11; Exh. 6 at Bates SBA000211-15.

<sup>14</sup> Complaint ¶ 12; Answer ¶ 12; Exh. 6 at Bates SBA000214.

Q: Okay

**A: And then I got serious in 2008 about having a solo practice.**

Q: Okay. Let me make sure. You sent a letter of inquiry to my law firm?

**A: Yes. I have disclosed that to you.**

Q: Okay. But you weren't interviewed, were you?

**A: No, I don't recall interviewing –**

Q: Okay.

**A: -- for the Jones, Skeleton.**

Q: I'm sorry. With whom – I haven't memorized your resume. With whom did you work or do contract work in Maricopa County?

**A: Well, as I indicated on the resume I furnished as an exhibit recently in this legal matter, in this case, there was an organization I worked with, there was one that I worked for on a contract basis briefly, a private firm, and I'm blanking on the name.**

Q: Okay. So it was a specific project that you were asked to do?

**A: A couple of projects.**

Q: Okay. Did you provide the full name and address of that particular firm?

**A: I think it's on my resume.**

Q: All right. Other than that, do you – did you do any other legal work for anybody between February 16<sup>th</sup> and December 31<sup>st</sup> of 2007?

**A: I don't think so.<sup>15</sup>**

16. During her deposition, Respondent intentionally failed to disclose her prior employment with the Law Offices of Nina Caples and instead referred Ms. Staton to the pleading including her substantively deficient resume. During the deposition, Ms. Staton also asked Respondent whether she had ever sued a prior employer wherein the following exchange took place:

Q: And that is true, you did sue a prior employer?

**A: Are you inquiring in connection with Exhibit 1?**

Q: I'm just asking the question. Did you sue a prior employer?

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<sup>15</sup> Complaint ¶ 13-14; Answer ¶ 13-14; Exh. 5 at Bates SBA000041.

**A: I was a plaintiff in a lawsuit, but it was ruled that they were not my employer.**

Q: So you sued the Ohio State University?

**A: Yes. I was a plaintiff in a lawsuit where the defendant was Ohio State University.<sup>16</sup>**

17. During her deposition, Respondent intentionally failed to disclose that she had previously sued the Law Offices of Nina Caples and instead referred Georgia Staton to the pleading knowing it contained a substantively deficient resume.<sup>17</sup>
18. The evidence and testimony presented strongly contradicted Respondent's claim of memory loss and fatigue caused by her health condition.<sup>18</sup> The Panel finds her memory to be remarkable in multiple areas of the deposition.
19. During the deposition, Ms. Staton also asked Respondent to detail her alleged damages resulting from the State Bar charge. Respondent did not provide any examples of damages resulting from Ms. Spira's State Bar charge.<sup>19</sup>
20. During the deposition, Respondent claimed to have eye problems and attended the deposition with a bandaged eye.
21. On February 20, 2009, Respondent submitted a five (5) page letter to the Bar which included references to the January 19, 2009, deposition along with events and circumstances occurring during her employment with the Law Offices of Nina Caples.<sup>20</sup>
22. Respondent preserved her right to review the transcript of the deposition taken by Ms. Staton. Despite fully reviewing the transcript and making corrections, she made no corrections regarding her false answers to Ms. Staton regarding the omission of her Caples employment.
23. On March 25, 2009, Respondent filed a pleading entitled "Respondent's Notice of Appeal" outlining events and circumstances occurring during her employment with the Law Offices of Nina Caples.<sup>21</sup>

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<sup>16</sup> Complaint ¶ 13-14 [The State Bar's Complaint erroneously contained two sets of paragraphs numbered 13 and 14. The paragraphs referred to appear on page 4 of the Complaint.]; Answer ¶ 13-14; Exh. 5 at Bates SBA000042.

<sup>17</sup> Complaint ¶ 15; Answer ¶ 15; Exh. 5.

<sup>18</sup> Exhibit 25 at Bates 385-6.

<sup>19</sup> Complaint ¶ 16-17; Answer ¶ 16-17; Exh. 5.

<sup>20</sup> Exhibit 26 at Bates SBA000463-67.

<sup>21</sup> Exhibit 26 at Bates SBA000506-509.

24. On September 18, 2009, the court granted the Santa Cruz County's cross-motion for summary judgment finding:

- a. There was no Notice of Claim; as such, it is barred; and
- b. [T]here is absolute immunity (for complaints to the Bar).<sup>22</sup>

25. On or about February 16, 2010, the court entered a ruling in Respondent's case that made a number of findings, including the following:

- a. Defendants had repeatedly put Respondent on notice with their defenses that their action in filing a charge with the State Bar was absolutely privileged by law and that her lawsuit therefore failed to state a legal claim. Respondent continued to process her claims despite case law that supported defendants' position.
- b. On or about January 7, 2009, Respondent had filed a Rule 16 Scheduling Memorandum with the Court that raised issues such as the County Attorney's actual motive in employing Ms. Spira, whether the County was grossly negligent in failing to furnish public records requested by Respondent in her Notice of Claim, whether employees of the county were grossly negligent in providing information in support of the bar charge filed by Ms. Spira, whether the County Board of Supervisors was grossly negligent in the employment of Ms. Spira, and the validity of any actions taken on behalf of the county by Ms. Spira. The court found these issues were irrelevant to Respondent's claims and were brought primarily for delay or harassment in violation of A.R.S. §12-349(A)(2) & (3).
- c. Respondent had engaged in abuse of discovery by seeking discovery on the following irrelevant issues: (1) Deputy County Attorney Parra's relatives' criminal history; (2) items allegedly missing from Respondent's office, including a lady bug pin; (3) the location of Ms. Spira's home; (3) Luis Parra's statement allegedly objecting to Respondent not wearing "high heel" shoes; (4) Marie Martinez allegedly putting cans of pork sausage in Respondent's mail basket; (5) carpooling arrangements made by other members of the Santa Cruz County Attorney's staff; (6) conversations made during those carpools and books on tape played during those carpools; (7) alleged hazing of Respondent for not being Roman Catholic; (8) the disappearance of Ms. Spira's cousin; (9) suggestion that Ms. Spira or her family was involved with her cousin's disappearance; (10) whether it was a condition of her employment that she be allowed to carpool or whether others would not provide Respondent with a ride; (11) information relating to Pima County officials use of government cars;

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<sup>22</sup> Exh. 16 at Bates SBA000301-2.

and (12) information regarding a misconduct charge filed against Georgia Staton with the State Bar.

- d. On September 17, 2009, defendants gave Respondent an opportunity to stipulate that she would not refer to the above-listed matters. Respondent refused, resulting in an extensive motion in limine.
- e. Respondent failed to provide proper notice to Defendant George Silva, Santa Cruz County Attorney, prior to filing a lawsuit against her in violation of A.R.S. §12-821.01 and applicable case law.
- f. Respondent filed at least seven motions for sanctions throughout the litigation, all of which were denied.<sup>23</sup>

26. The court also found that Respondent filed the lawsuit without substantial justification, that her claim was groundless and that the issues she asserted were designed to harass the defendants.<sup>24</sup>

27. The court also noted that absolute immunity for filing a misconduct complaint with the State Bar is a well settled issue of law and it dismissed Respondent's case on summary judgment.<sup>25</sup>

28. The Court ordered Respondent to pay defendants' attorneys fees in the amount of \$48,057.66 and expenses in the amount of \$2,214.35.<sup>26</sup>

29. In Respondent's appeal of the judgment, she alleged that Ms. Spira filed her misconduct charge in her individual capacity and that Santa Cruz was not a party to such filing with the State Bar. These statements were directly contradictory to the statements she made to the State Bar and under oath to Ms. Staton during her deposition and which formed the stated basis of her underlying lawsuit.<sup>27</sup>

30. On March 31, 2011, Division Two of the Arizona Court of Appeals affirmed the findings of the Santa Cruz Superior Court judge.<sup>28</sup>

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<sup>23</sup> Complaint ¶ 18; Answer ¶ 18; Exh. 14 at Bates SBA000216-23.

<sup>24</sup> Complaint ¶ 19; Answer ¶ 19; Exh. 14 at Bates SBA000221-22.

<sup>25</sup> Complaint ¶ 20; Answer ¶ 20; Exh. 14 at Bates SBA000221-22.

<sup>26</sup> Complaint ¶ 21; Answer ¶ 21; Exh. 14 at Bates SBA000223.

<sup>27</sup> Complaint ¶ 23-25.

<sup>28</sup> Complaint ¶ 22; Answer ¶ 22; Exh. 22 at Bates SBA000339-45.



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

Respondent admits to negligently violating ethical rules. However, the Panel finds that the record supports the conclusion that Respondent knowingly, if not intentionally violated the following ethical rules.

25. Respondent knowingly violated ER 3.1 by bringing a proceeding and asserting or controverting an issue therein, without a good faith basis in law and fact for doing so that is not frivolous claim;
26. Respondent knowingly violated ER 3.2 by failing to make reasonable efforts to expedite litigation.
27. Respondent intentionally violated ER 3.3(a)(1) by knowingly making a false statement of fact or law to a tribunal and failing to correct a false statement of material fact or law previously made to the tribunal.
28. Respondent knowingly violated ER 3.3(a)(3) by offering evidence that Respondent knew to be false including, but not limited to, her submissions to the State Bar.
29. Respondent knowingly violated ER 3.4(c) by consciously disobeying an obligation under the rules of a tribunal.
30. Respondent violated ER 3.4(d)—making a frivolous discovery request or failing to comply with a legally proper discovery request by an opposing party.
31. Respondent intentionally violated ER 4.1 by knowingly making a false statement of fact or law to a third person.
31. Respondent knowingly violated ER 4.1(b) by knowingly failing to disclose a material fact when disclosure was necessary to avoid assisting a criminal or fraudulent act.
32. Respondent intentionally violated ER 4.4(a) by using means that had no substantial purpose other than to embarrass, delay, or burden another person.
33. Respondent intentionally violated ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.
34. Respondent intentionally violated ER 8.4(d)—engaging in conduct prejudicial to the administration of justice; and

35. Respondent knowingly violated Rule 41(g) by engaging in unprofessional conduct and advancing a fact prejudicial to the honor or reputation of a party or witness that was not required by the justice of the cause.

The underlying lawsuit is troubling in and of itself and raises multiple questions regarding Respondent whose witnesses and testimony demonstrate her to be remarkably intelligent and knowledgeable with excellent research skills. Her actions in the lawsuit were unprofessional, calculated and bitingly personal.

However, that Respondent intentionally omitted employment information during her deposition, causes an even deeper concern. Most troubling to this Panel is Respondent's failure to mention her employment with the Law Offices of Nina Caples during her deposition with Ms. Georgia A. Staton, Esq. The following evidence leads to the unmistakable conclusion that Respondent knowingly omitted her employment with Ms. Caples:

a. At the time Respondent was being deposed, she was suing Ms. Caples personally. As Ms. Staton noted during her testimony—and this Panel agrees—one does not simply forget to mention an employer that one is currently suing.

b. When asked about past employment, Respondent referred Ms. Staton to her resume, which Respondent had purposefully crafted to exclude her employment with Ms. Caples. Respondent notes that she had been advised to exclude employment experiences which would reflect poorly on her, and that not all information can be included in a resume. Standing alone, this explanation is condemning. In the context of the deposition, the omission can only be viewed as an additional attempt to omit her employment with Ms. Caples. The situation was as follows: Respondent purposefully omits her employment with Ms. Caples from her resume before the deposition; Respondent fails to mention this employment when asked directly during the deposition, and refers her examiner to a resume which has been crafted with the intention of leaving off the employment. Taken in context, this can only be viewed as an attempt by Respondent to withhold harmful information—an attempt that Respondent made intentionally.

c. Respondent argues to the Panel that her memory frequently failed her during the deposition and offers as evidence the number of times she refers

to her “memory” in the deposition. Multiple times her use of the word “memory” or “remember” do not indicate a lack of memory on Respondent’s part but rather remarkable clarity. The fact is that Respondent was able to provide lucid, clear answers to many of Ms. Staton’s questions, which belies her claim that her omission was somehow due to memory failure.

d. Respondent argues that her poor health clouded her memory during the deposition, and made it difficult—if not impossible—to remember all the critical details. Respondent was hospitalized on November 17, 2008 for pulmonary emboli. Studies concluded that she also suffered from obstructive sleep apnea. As the exhibits make known, both illnesses may result in memory loss or mental fatigue. SB’s sealed Exhibit 25; Respondent’s sealed Exhibits E, F, H, L, M, and R; *also* testimony of Dr. Jonathan Ruzi (“Dr. Ruzi”), and Respondent.

e. Respondent’s expert medical witness, Dr. Ruzi, stated that “[based] on the medical information reviewed Ms. Klaiman may not have been mentally competent to be deposed and likely had multiple medical conditions that may have adversely affected her judgment and mental capabilities.” Respondent’s sealed Exhibit F. When asked whether Dr. Ruzi could state with certainty, however, that Respondent’s condition would have prevented her from giving competent testimony at the deposition, Dr. Ruzi initially wavered, but ultimately concluded that her condition would have prevented competent testimony. See Dr. Ruzi’s testimony.

While this Panel sympathizes with Respondent’s health-related struggles this Panel ultimately rejects Dr. Ruzi’s testimony that Respondent’s illnesses would have resulted in memory loss during her deposition. First, it is noteworthy that Dr. Ruzi’s testimony changed from “may have” to “would have.” If Respondent’s illnesses would have caused memory loss during her deposition, then Dr. Ruzi’s failure to state so in an unqualified manner in his initial report reduces the credibility of his testimony at hearing. Second, as noted above, Respondent was able to provide many lucid, clear answers to deposition questions that required the use of her recollection. On the whole, the Panel finds that Respondent’s medical condition was not a barrier to her ability to answer competently during the deposition.

Further, this Panel finds her testimony entirely implausible and manipulative. Her witnesses underscore the opposite of what she claims. The witnesses applaud her timeliness and her excellent memory.

## **V. SANCTIONS**

### ***ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS***

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*.

*Standard 5.1, Failure to Maintain Personal Integrity* provides that absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud deceit, or misrepresentation.

*Standard 5.11(b)* provides that Disbarment is generally appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

*Standard 5.12* provides that Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements

listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

*Standard 5.13* provides that Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involve dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

Respondent engaged in this type of conduct by knowingly filing a pleading which included a resume known to omit her employment with the Law Offices of Nina Caples and then failing to accurately testify regarding her employment and lawsuit with the Law Offices of Nina Caples during her deposition - choosing instead to refer Ms. Staton to the resume known to be substantially deficient [ER 8.4(c)].

Additionally, Respondent violated duties owed to the legal system (*Standard 6.0 series*), and her duties as a professional (*Standard 7.0 series*).

*Standard 6.11, False Statements, Fraud and Misrepresentation* provides that Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes serious or potentially serious adverse effect on the legal proceeding.

*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 proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. Lawyers

who engage this type of misconduct “violate the most fundamental duty of an officer of the court.”

Respondent knowingly if not intentionally, filed a self prepared pleading which included a substantially deficient resume, which Respondent knew omitted her employment with the Law Offices of Nina Caples, and then failing to accurately testify regarding her employment and lawsuit with the Law Offices of Nina Caples during her deposition [ERs 3.3(a)(1), 3.3(a)(3) and 4.1(b)].

*Standard 6.21, Abuse of the Legal Process* provides that Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.

*Standard 6.22* provides that 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 [ERs 3.1, 3.2, 3.4(c) and 3.4(d) and 4.4(a) and 8.4(d)].

Respondent engaged in this type of conduct by filing a lawsuit and pleadings which were known to be frivolous and contrary to long established principles of law.

*Standard 7.1, Violations of Other Duties Owed as a Professional* provides that Disbarment is generally appropriate when a layer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

*Standard 7.2* provides that 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. Respondent engaged in unprofessional behavior by engaging in all of the activity listed above [Rule 41(g)].

The Panel determined that the presumptive sanction falls between disbarment and suspension and all violations involved some actual or potential injury.

### **AGGRAVATING AND MITIGATING FACTORS**

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

In Aggravation:

*Standard 9.22(b)* – Dishonest or selfish motive.

*Standard 9.22(g)* – Refusal to acknowledge wrongful nature of her conduct.

In Mitigation:

*Standard 9.32(c)* – Personal or emotional problems [medical issues]<sup>29</sup>

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<sup>29</sup> The hospital discharge summary from her pulmonary emboli treatment makes no mention of her oxygen level. The absence of such testing nor follow up testing for new emboli leaves meaningless the statement of Dr. Ruiz that there was no evidence that she adequately recovered from the illness. There was no evidence she hadn't recover either. Sealed Exhibit H. Pulmonary embolism is serious and potentially life threatening. Her weight issues and embolism should be of concern. While the panel finds her hypoxemia was not the cause of her unethical behavior, the admitted reports of her experts substantiate it is now an ongoing concern. Dr. Ruiz reviewed multiple 2010 and 2011 medical records and yet made no mention of her present condition. The most current medical records finds a ventilation perfusion lung scan will not be of much benefit. Untreated hemoptysis in July 2011 is reported another Dr she saw is erased from the exhibit and the records not given to Dr. Ruiz. Her chronic shortness of breath is only "somewhat better." Dr. Ruiz reported Hypoxemia is associated with symptoms including "poor judgment" and "not medically competent to make important decisions." These are critical concerns regarding her practice of law now.

*Standard 9.32(k)* – Imposition of other penalties or sanctions (Respondent was ordered to pay over \$100,000.00 in sanctions, including paying the legal fees of Ms. Staton).

Respondent does not have prior discipline. However, she was conditionally admitted with participation in MAP, which she successfully completed. Respondent later complained about the requirement to participate in MAP as a condition to practice law and was also ordered to participate in Diversion in File 08-1652, filed September 29, 2009. Diversion required her to obtain 30 hours of CLE courses in the area of ethics. See Respondent's Exhibits I and J. These previous instances appear to have been a window into the same time period of Respondent's unprofessional and unethical behavior, which may have been resolved through those rehabilitative measures. However, such previous diversion occurred in the vacuum of the events *sub judice*. If Respondent does not get to the root of her behavior or manage her personal and emotional circumstances, she will continue to fail in the practice of law. Therefore, out of an abundance of caution and moreover, the need to protect the public, a term of probation with MAP is ordered if Respondent is reinstated.

Respondent has completed multiple ethics courses. In these events the Panel does not believe knowledge alone is sufficient to overcome such ethical lapses. What's the point of knowing ethics if you don't keep trying to become ethical? Respondent believes a study in Mussar, an ethical approach to daily life, would be of assistance. The Panel agrees. It is the application of practical ethics that is lacking. Perhaps applying such a course to practical relating and interacting with others will aid her in resolving that which has thus far escaped her.

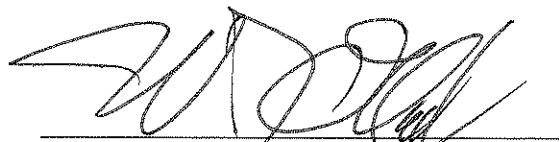


## CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Given the numerous ethical rule violations, the appropriate *Standards*, the aggravating factors, and the two (2) mitigating factors, the Panel determined that the objectives of discipline will be met by the imposition of a long-term suspension.


The Panel notes that Respondent's failure to divulge her employment information during a deposition, when directly asked to do so, coupled with her submission of an incomplete resume, led the Panel to discuss disbarment as a potential sanction. The facts of this matter are replete with instances of Respondent's dishonesty—dishonesty in which she engaged knowingly if not intentionally. However, under the circumstances, the Panel concluded a suspension of one year and, upon reinstatement, two years of probation is the appropriate sanction. In addition, Respondent shall pay all of the costs incurred by this Court and the Bar. Pursuant to Rule 72(d), the Suspension is effective 30 days from the date of service of this Report. The specific terms of probation (MAP) shall be addressed at the time of reinstatement. The continuing legal education may be obtained during the suspension period and are in addition to the hours required by Rule 45.

**DATED** this 19 of March, 2012.

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

CONCURRING:

  
\_\_\_\_\_  
Maria Salapska, Volunteer Attorney Member

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

Original filed with the Disciplinary Clerk  
of the Office of the Presiding Disciplinary Judge  
this 19<sup>th</sup> day of March, 2012.

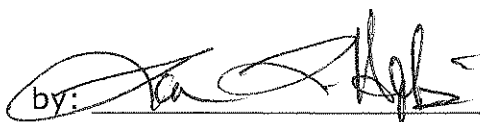
Copies of the foregoing mailed/emailed  
this 19<sup>th</sup> day of March, 2012, to:

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by:   
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