

SUPREME COURT OF ARIZONA

In the Matter of a Member of the ) Arizona Supreme Court  
State Bar of Arizona ) No. SB-14-0054-AP  
)  
RAY C. BROWN, ) Office of the Presiding  
Attorney No. 1064 ) Disciplinary Judge  
) No. PDJ20149039  
Respondent. )  
\_\_\_\_\_ ) **FILED 2/10/2015**

**O R D E R**

The Court has received the Respondent's opening brief on appeal, the State Bar's answering brief, and Respondent's reply brief. Upon consideration of the briefs, the record, and the "Report and Order Imposing Sanctions" filed by the Hearing Panel,

**IT IS ORDERED** affirming the decision and sanction of the Hearing Panel.

DATED this 10<sup>th</sup> day of February, 2015.

\_\_\_\_\_  
SCOTT BALES  
Chief Justice

TO:

Ray C Brown

Craig D Henley

Jennifer Albright

Sandra Montoya

Maret Vessella

Don Lewis

Beth Stephenson

Mary Pieper

Netz Tuvera

Lexis Nexis

IN THE  
**SUPREME COURT OF THE STATE OF ARIZONA**  
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE  
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**RAY C. BROWN,**  
**Bar No. 001064**

Respondent.

**No. PDJ-2014-9039**

**REPORT AND ORDER IMPOSING  
SANCTIONS**

[State Bar No. 14-0306]

**FILED OCTOBER 6, 2014**

**I. PROCEDURAL HISTORY**

In this matter, after conducting a screening investigation, bar counsel recommended admonition as an appropriate sanction and explained to Mr. Brown his recommendation. Mr. Brown was informed of his right to file a summary response to the charges. On March 17, 2014, Mr. Brown filed his response with the Attorney Discipline Probable Cause Committee ("Committee"), for its consideration. [State Bar Exhibit 14.] Bar Counsel on April 21, 2014, informed Mr. Brown of the sanction and his right to appeal. [State Bar Exhibit 16.] The Committee reviewed the matter on April 11, 2014, found probable cause, and on April 18, 2014, issued an Order of Admonition with two years of probation. [State Bar Exhibit 15.] On April 28, 2014, Mr. Brown submitted his Notice of Appeal and demanded formal proceedings be instituted. [State Bar Exhibit 17.] On May 2, 2014, that Committee issued its Order Vacating Admonition, Probation and Costs. [State Bar Exhibit 18.]

The State Bar of Arizona (SBA) filed its complaint on May 6, 2014. The Complaint was properly served on Ray C. Brown. On May 9, 2014, the Disciplinary Clerk assigned the Presiding Disciplinary Judge ("PDJ") to the case. On May 21, 2014, Mr. Brown timely filed his answer. An initial case management conference was held on June 4, 2014, and case management orders were issued. Those orders included a directive the parties prepare a joint prehearing statement and file it not later than August 6, 2014. On June 26, 2014, the parties participated in a settlement conference. On that same date, Mr. Brown filed a Motion to "simplify" the proceedings, requesting to waive the hearing panel and have the matter resolved by the pleadings filed. After a response by the State Bar, Mr. Brown filed a reply in "support of dismissal" of the proceedings. On July 23, 2014, for reasons stated, the PDJ issued an order denying the motion to simplify proceedings and to dismiss the proceedings.

Under the initial case management orders issued by the PDJ, Bar Counsel emailed a draft of the joint prehearing statement to Mr. Brown on July 31, 2014. Mr. Brown did not respond nor participate in that statement. Instead, he delivered to Bar Counsel his suggested prehearing statement with a list of exhibits and summary statement apparently suggesting he had filed them. He had not. On August 5, 2014, the State Bar filed a unilateral joint prehearing statement. [State Bar's Separate Pre-Hearing Statement.]

On August 28, 2014, the Hearing Panel ("Panel"), composed of public member, Bennie Click, attorney member, Andrea J. Curry, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a one day hearing under Rule 58(j), Ariz. R. Sup. Ct. Craig D. Henley, Senior Bar Counsel, appeared on behalf of the State Bar of Arizona

("State Bar"). Ray C. Brown, despite having been encouraged to retain a lawyer, appeared *pro per*. The Panel carefully considered the Complaint, Answer, Prehearing Statement of the State Bar, testimony of Mr. Gerald Molumby, and the admitted exhibits.<sup>1</sup> The Panel now issues the following "Report and Order Imposing Sanctions," under Rule 58(k), Ariz. R. Sup. Ct.

## **II. FINDINGS OF FACT**

At all times relevant, Mr. Brown was a lawyer licensed to practice law in Arizona having been first admitted to practice on September 26, 1959. [Joint Prehearing Statement, p. 1.] Prior to his representing Gerald E. Molumby, Mr. Brown had not practiced in over thirty years. [Testimony of Mr. Brown.]

Dora F. Molumby, the wife of Gerald F. Molumby, filed for dissolution of their marriage. The parties had few assets which consisted primarily of cash accounts, respective pensions, a car and furniture. The Chairman of the homeowners association of the community in which they had lived brought Mr. Brown to meet Mr. Molumby. At the time of their meeting, Mr. Brown was a neighbor of Mr. Molumby. No written fee agreement was entered into. Mr. Brown did not inform Mr. Molumby he had not practiced law in over thirty years. [Testimony of Mr. Molumby.] Mr. Molumby agreed to have Mr. Brown represent him *pro bono*. [Testimony of Mr. Brown and Mr. Molumby.]

Mr. Brown represented Mr. Molumby in the Superior Court of Arizona in Maricopa County dissolution action, *FN2013-050367*. [State Bar Prehearing Statement, ¶ 2.] After Mr. Brown appeared, the primary dispute in the dissolution

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<sup>1</sup> Consideration was also given to sworn testimony of Gerald Molumby, James E. Viles Esq., and Lyndon B. Steimel Esq.

became a determination of the parties' legal rights regarding the home they lived in at 10501 W. Tropicana Circle, Sun City ("property") that was never titled in their names. The property was acquired solely in the name of Rita Martin who had paid \$20,000 of her own funds towards the purchase and borrowed the balance. Mr. and Mrs. Molumby made no contribution to the purchase of the property. [Testimony of Mr. Molumby; State Bar Prehearing Statement, ¶¶ 4-6.]

Mr. Brown filed an unverified Response to the petition for dissolution on July 8, 2013, purportedly "under oath," admitting all the allegations of the petition. [State Bar Exhibit 22, Bates 122-124.] He alleged, as part of his responsive pleading, the parties had a community ownership interest in the property titled in the name of Rita K. Martin. Mr. Brown, included a "Third Party Claim," stating,

That title to the said community property home is and has been in the name of petitioner's sister, Third Party defendant Rita K. Martin, for the convenience and benefit of Petitioner and Respondent/Third Party Plaintiff, and as a way of acknowledging the \$20,000 down payment that the Third Party Defendant graciously provided to assist Petitioner and Respondent/Third Party Plaintiff with the purchase of their home about thirteen years ago.

[Id. at Bates 123.] He petitioned for Ms. Martin to convey title to the property to Mr. and Ms. Molumby. [Id. at 123-124.]

On August 6, 2013, he filed an amended response and an amended third party claim. [State Bar Exhibit 22, Bates 125-127.] His amendment set forth the address and cellular phone number of Ms. Martin and requested title to preferably pass to Ms. Molumby and her daughter, with a life estate in the property to his client. [Id.] On August 19, 2013, Mr. Brown recorded, with the Maricopa County Recorder, a "Notice of Claim to Title or Real Property" regarding the property. [State Bar Exhibit 23.]

On August 26, 2013, Lyndon B. Steimel Esq., on behalf of his client Rita K. Martin, wrote Mr. Brown. Mr. Steimel stated his letter was sent under Rule 11, arguing Mr. Molumby had no legal basis to demand recovery or recognition to the property. A copy of the answer to the third party claim was attached. It included a verified third party counterclaim for quiet title. Mr. Steimel acknowledged Mr. Molumby "may have a cause under unjust enrichment but then again enjoyed the improvements that he made to the property." [State Bar Exhibit 22, Bates 129-135.]

On August 26, 2013, Mr. Brown filed a "[P]leading to correct oversight regarding the technicalities of Rules 8 and 11 as pointed out by Third-Party Defendant's Attorney." [Id. at Bates 128.] Mr. Brown submitted the required mailing address of his client and stated, "[T]hat he is signing this Pleading to constitute his certificate to the truthfulness of the technicalities set forth in Rule 11(a)." [Id.] On September 3, 2013, Mr. Brown filed an answer to the Third Party Counterclaim. [Id. at Bates 136-137]. This pleading was properly verified as Mr. Brown had duplicated the verification form attached to the counterclaim. [Id. at 137.]

On September 3, 2013, Mr. Brown filed an unverified pleading entitled, "Statement of Fact by Gerald E. Molumby and Arguments by Gerald E. Molumby and Arguments by Gerald's Pro Bono Attorney." [State Bar Exhibit 24, Bates 143-145.] By that pleading Mr. Brown alleged the property was intentionally titled in the name of Rita K. Martin due to a proper Internal Revenue Lien filed against Mr. and Mrs. Molumby because of their withdrawing money from a retirement account without paying taxes on the withdrawal. [Id. at 143.] Mr. Brown acknowledged Ms. Martin paid the down payment, financed the rest of the purchase by solely obtaining a mortgage loan secured by a lien on the property by the lender. [Id. at 144.] The

statement of fact also avers Mr. and Mrs. Molumby signed a lease agreement as tenants with Ms. Martin being the landlord due to the Sun City homeowners association ("RCSC"), to "have the real owners of our home continue to appear to be invisible to all but Rita, Dora and myself." [Id. at Bates 144.]

Regarding the demand from Ms. Martin for Mr. Molumby to vacate the home, Mr. Brown avowed, "[I]t graphically shows how a person can transition from initially being generous, kind and gracious to later becoming greedy, selfish and wicked." [State Bar Exhibit 24, Bates 145.] Regarding the positions of the attorneys for Ms. Molumby and Ms. Martin, Mr. Brown asserted, "they have allowed themselves to become gripped by the desire to embrace the "wrong" as being 'right' in order to assist their efforts to keep their meters running to enhance their fees if their bluster can pull off a Court victory." [Id.]

The following day on September 4, 2013, Mr. Brown filed a document entitled, "[P]leading to provide an overlooked verification on Page 4 of the Statements of Fact, Etc., that was filed with the Clerk's Office on September 3, 2013." [Id. at Bates 146-147.] The pleading was comprised of a verification by Mr. Molumby and three exhibits referred to in the earlier filing but which Mr. Brown had failed to attach. [Id. at 147.] The exhibits verified Ms. Martin did not rely upon Mr. and Mrs. Molumby in qualifying for the loan. [Id. at Bates 148-160.] Those exhibits comprised a copy of the residential loan application of Ms. Martin, demonstrating her employment and assets relied upon by the mortgage company to loan the \$69,800, sought for the balance of the purchase price. [Id.]

On October 23, 2003, Ms. Martin moved for Summary Judgment on Third Party Counterclaim and for Wrongful Lien and Sanctions supported by a sworn statement



of facts. Ms. Martin demonstrated the real property was purchased in her name alone, with no aid or assistance from Mr. and Mrs. Molumby nor promises to them. It also demonstrated she consistently received rental payments from Mr. and Mrs. Molumby and the tax benefits associated with such rental. [State Bar Exhibits 48-49].

On October 28, 2013, Mr. Brown filed a response to that motion and a four page Counter Motion for Summary Judgment. [State Bar Exhibit 50]. On November 18, 2013, Ms. Molumby responded to the motion of her then husband and joined for Summary Judgment filed by Ms. Martin. She categorically denied the allegations of her husband. [State Bar Exhibits 51-52]. On that same date, Ms. Martin filed her reply to the response of Mr. Molumby and a response to the motion of Mr. Molumby. [State Bar Exhibit 53].

On November 21, 2013, Mr. Brown filed a three page response for Mr. Molumby entitled "Gerald's Response to the 11-18-2013 Filings of Dora, His Wife of over 43 Years, and Her Sister Rita K. Martin, With Whom Dora Resides." [State Bar Exhibits 27 and 54.] In that pleading, Mr. Brown acknowledged Mr. and Mrs. Molumby at the time of the purchase of the property, "had no money for a down payment, they had no ability to obtain a mortgage or Deed or trust on their own, and they still had their unresolved IRS problem." [Id. at Bates 172, 401.] Notwithstanding those facts, Mr. Brown argued, "[T]he expectations by Gerald and his Attorney that the Court will be making its ruling based on the facts and merits of this Dissolution and not on technicalities that Attorney Steimel would have the court rely and rule on." [Id.]

At the status conference before the Court on December 16, 2014, the parties waived oral argument on their respective motions. Judge Polk granted summary judgment to Ms. Martin ruling that "legal title to the real property in question is held

in her name alone, and has been held since 1999.” Judge Polk denied the counter motion filed by Mr. Brown. Judge Polk noted that Mr. Molumby “is asserting a claim for breach of contract, and has not produced any writing in support of the alleged contract, and because the contract deals with real property that claim is barred by the Statute of Frauds.” Judge Polk additionally found, “Husband has not set forth any other legal theory that would support his claim.” The Notice of Claim filed by Mr. Brown was quashed and Ms. Martin was awarded statutory damages for \$5,000 for the wrongful lien and reasonable attorney fees. The Court set a one hour hearing on any remaining issues. [State Bar Prehearing Statement, ¶¶ 11-12; State Bar Exhibit 55.]

Judge Polk’s minute entry also ordered a detailed Joint Pretrial Statement. His order detailed what that prehearing statement had to include. Judge Polk ordered the failure of counsel or a party to appear during trial or to timely present the pretrial statement would be subject to sanctions under the Rules of Family Law Procedure absent good cause show. [State Bar Exhibit 55, Bates 406].

On December 18, 2013, Mr. Brown sent an *ex parte* letter to Judge Polk. In that letter he complains “[Y]ou took me by surprise as you opened the scheduled Telephonic Conference on Monday, December 16, 2013, as I have always assumed that the purpose of litigation was to determine where the truth resides concerning the facts of the disputes involved.” Mr. Brown concluded, “[I]f the truth is not important in your Court when you can base your Ruling on legal technicalities, please indicate that in your Reconsidered Ruling, as it will help simplify a possible Appeal of your Reconsidered Ruling.” [Exhibit 28, Bates 176.]

On December 20, 2013, the Court issued a minute entry. The Judge pointed out the letter violated Rule 43(E) as it had not been filed with the Clerk of Court. Rule 43(E) of the Arizona Rules of Family Law Procedure mandates, "The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court...." He then denied the request for reconsideration and directed the Clerk to file the letter. [State Bar Exhibit 56.]

On December 23, 2013, Mr. Brown sent a letter to Judge Polk complaining of the judge's issued statement of "Protocol and Practice of Persons appearing in the Court of Judge Jay Polk." [State Bar Exhibit 28.] Mr. Brown also attached a copy of his December 18, 2013, letter he had written *ex parte* to Judge Polk. [Id. at Bates 176.] Mr. Brown complained parts of the protocol should be changed, "...because it is impossible to be achieved by those not actively practicing law." [Id. at Bates 174.] Mr. Brown states in that letter "I have not been an active practitioner for almost thirty-one years...." [Id.] In those correspondence he recommended changing the method of handling family dissolution actions complaining rulings are based on legal technicalities rather than the merits and truths surrounding the disputed factual features of the Dissolution litigation. [Id. at 176.] He attached multiple quotes and a document composed by him entitled, "How to Efficiently, Effectively and Economically Process Family Dissolution Actions" [Id. at Bates 177-183].

Mr. Brown followed that with multiple correspondence to Judge Polk which included a proposal the parties determine where the "truth resides" by a flip of a coin, [State Bar Exhibit 58, Bates 418], an objection to opposing counsel's attorney fees over one hundred dollars per hour, [State Bar Exhibit 59], and a concern Judge Polk was "vindictive" due to his "providing the blessings you bestowed upon (opposing

counsel) in the Dec. 16, 2013 Telephonic Conference” [State Bar Exhibit 61, Bates 424-425]. These were substantially repeated in his supplemental prehearing statement. [State Bar Exhibit 61.] Mr. Brown knew the allegations of his client were refuted under oath by Ms. Martin. [Exhibit 22, Bates 131-135.] Despite knowing Ms. Martin had, under oath, unequivocally denied the allegations of Mr. Molumby, Mr. Brown continued to argue his own belief his position was irrefutable, citing his own letters to Judge Polk in his pretrial statement. [State Bar Exhibit 62.]

On February 3, 2014, Thomas E. McCauley, State Bar Investigator, wrote Mr. Brown, summarizing their conversations and the status of the court proceedings. [State Bar Exhibit 4.] It was pointed out summary judgment had been entered against his client and attorney fees assessed. Mr. McCauley reminded Mr. Brown of his prior cautionary statement which Mr. Brown had ignored.

You have not actively practiced for 31 years. During our conversation you agreed that the rules, statutes, and case law relevant to the representation of Mr. Molumby may have significantly changed over the 31 years. You have not kept up with those changes. I advised you that it appears that you were not ethically competent to represent your client.

[Id. at Bates 28.] Because of his continued representation, a copy of the fee agreement between Mr. Molumby and Mr. Brown was requested. The letter concluded by explaining the State Bar Diversion program to Mr. Brown. [Id.]

The following day Mr. Brown wrote back to Mr. McCauley: “[A]s also just discussed, I need to have your State Bar matter wait until after the February 26, 2014 Trial date that has been scheduled by Judge Polk.” [State Bar Exhibit 5, Bates 30.] Mr. Brown attached a copy of a January 16, 2014 document which he stated was the fee agreement between Mr. Molumby and himself. [Id. at Bates 31.] At the hearing, Mr. Molumby swore he never saw the document before and testified he was

unaware Mr. Brown had not been in the active practice of law for over thirty years. Mr. Molumby stated Mr. Brown brought him multiple documents to sign, rarely explained them, and instead assured the case was going well. [Testimony of Mr. Molumby.]

Having considered the testimony and respectful interaction by Mr. Molumby towards Mr. Brown during the hearing, we find Mr. Molumby entirely credible. While he signed the document, Mr. Brown never even casually reviewed with his client the written fee agreement. We find Mr. Brown progressively took advantage of the growing weakness and confusion of Mr. Molumby who was unduly influenced by Mr. Brown. Mr. Molumby relied on the representations of Mr. Brown and because of that reliance was unaware of the content of the document. He did not know Mr. Brown had not practiced for over thirty years. Regardless, there was no written fee agreement between the parties prior to that date.

On January 27, 2014, Mr. Brown filed a supplemental memorandum. [State Bar Exhibit 63.] In that pleading Mr. Brown explains the "Protocol and Practice for Persons Appearing in a hypothetical Ray C. Brown FLC." We find Mr. Brown completely and knowingly, if not intentionally, ignored his client's best interests. He instead focused on his own self laudatory solution to what he found to be inequities in the family court. It is not clear to us why Mr. Brown did the things he did. What is clear to us is Mr. Brown knowingly, if not intentionally, ignored the law and evidence, predetermined what happened, threw out anything that did not fit his conclusion, and declared his finding as the only possible conclusion as part of his argument to better the family court.

On February 20, 2014, Mr. Brown filed a Telephonic Conference Recommendation stating his willingness to mail his Trial Argument Memorandum "to each of you...so that any two or all three of you can get together, without Gerald and I needing to be present, to work out a proposed Decree of Dissolution..." [State Bar Exhibit 68] That Trial Argument Memorandum was filed with his Telephonic Conference Recommendation. [State Bar Exhibit 69.] Mr. Brown asserted "It is inferred that Judge Polk, with his busy schedule and the bizarre volume of forms and paperwork in the AZ FLCs simply went along with the technicalities of the Statue of Frauds without giving any 'real' consideration to the Truths of the Molumby and Martin Agreement that the Molumbys were the agreed upon real owners of the Molumbys Sun City home." [State Bar Exhibit 69, Bates 450.]

Mr. Brown also queried, "Can you imagine yourself as the Judge of an AZ FLC making a Ruling, Based on the AZ S/F, that permits an Attorney to allow his client to steal the home belonging to his client's sister and her husband? Then, how would you expect to live with yourself after doing that?" [Id. at 451.] He then again referred in laudatory terms to the "recommended simplification by Attorney Brown" which "was forwarded with his Dec. 23 2013 letter to Judge Polk." He declared "What a relief that would be for AZ FLC Judges and the citizens of Arizona" if his plan were followed. [Id. at Bates 452.]

The Court held a telephonic status conference and executed an Order Extinguishing Notice of Claim/Lis Pendens. The Court granted in its entirety the Motion for Summary Judgment on the Quiet Title/Wrongful Lien counterclaim filed by Ms. Martin. Ms. Martin was awarded approximately Five Thousand dollars in attorney fees and costs under A.R.S. §§ 12-341.01, 12-1103 and 33-420, with statutory

damages of another Five Thousand Dollars. [State Bar Exhibit 67; State Bar Prehearing Statement, ¶¶ 13-14, 16-17.]

On March 3, 2014, Mr. Brown filed a Motion to Reconsider again arguing his position was irrefutable. [State Bar Exhibit 70.] Mr. Brown stated his pleading “again dramatically illustrate why Gerald’s Pro Bono Attorney Brown believes that the Court does not possess the appropriate understanding of Right and Wrong, Fair and Unfair and Just and Unjust to be in the Maricopa County Superior Court FLC Division.” [State Bar Exhibit 70, Bates 465.] Mr. Brown then argued “the untruthful Litigant should be the Litigant required to initiate an Appeal, if one is desired, rather than the Truthful Litigant. The reason again is to avoid wrongfully Abusing and Punishing the Truthful Litigant.” [Id.]

Thereafter, Judge Polk recused himself and Judge Gerald Porter was assigned the case. [State Bar Exhibit 12, Bates 47-48; Exhibit 71.] Judge Porter denied the motion to reconsider on March 26, 2014 [State Bar Exhibit 72], and issued a trial setting minute entry [State Bar Exhibit 73]. On April 4, 2014, Mr. Brown filed a Trial Argument Memorandum for Judge Porter. [State Bar Exhibit 75.] That memorandum repeats the same allegations stating Judge Polk “sanctioned Martin’s ‘wrongful theft of the home....’” [Id. at Bates 480.] Mr. Brown engaged in the same misconduct regarding Judge Porter stating, “[T]hat Judge Porter should ask Judge Polk if he wants to be rubber-stamped or if he wanted Judge Porter to make honest Rulings.” [Id. at Bates 483.] Mr. Brown declared if Judge Porter did not rule under the “requests and expectations” of Mr. Brown, “perhaps he will also want to Recuse himself from the responsibilities of Honestly Judging and Explaining the reasons for his Ruling in this AZ FLC Proceeding.” [Id.] He declares the pitfall which applies to all judges is the

reality of "Since you have scratched my back I'll scratch yours with Attorney Fee Awards that accommodate whatever requests are made by Attorneys representing litigants in the AZ FLCs." He concludes with a multiple page plan to improve the judiciary and the court. [State Bar Exhibit, bates 485-487.]

On April 10, 2014, Judge Porter approved the parties partial agreement on certain issues and conducted a trial on the remaining issues. [State Bar Exhibit 36, Bates 255-258.] He issued a ruling on that same date, which was amended and signed on May 8, 2014. [Id. at Bates 259-263.] Mr. Brown filed a Motion to Reconsider on May 2, 2014, repeating his prior vitriolic statements of "rubber-stamp" and the court approving "theft". [State Bar Exhibit 77.] On June 4, 2014, Mr. Molumby filed a notice dismissing Mr. Brown. [State Bar Exhibit 78.]

At the hearing in this disciplinary matter, Mr. Molumby testified he was unaware of Mr. Brown filing any document with the County Recorder. Mr. Molumby testified he remembered going to the Bank of America, which held the Deed of Trust on the property and giving them a letter requesting they not permit Ms. Martin to refinance the house. However, he was unaware and uninformed of the decision by Mr. Brown to file a cloud on the title of the property. Mr. Brown acted independently, did not inform his client of his decision to cloud the title and did so without regard to the damages which could be assessed against his client. [Testimony of Mr. Molumby.]

Mr. Brown repeatedly told Mr. Molumby the case was such an open and shut case, that the only way a ruling could be adverse to Mr. Molumby was by a "dishonest judge." Mr. Molumby testified he believes the reason Mr. Brown took his case was a desire to change the family court system. Mr. Brown informed Mr. Molumby he thought the family court system was all wrong and he wanted to change it. Mr.



Molumby testified he knew Mr. Brown wanted to appeal but, Mr. Molumby dealing with the divorce, cancer, and the costs of the litigation, terminated him because he had enough of it all. [Testimony of Mr. Molumby.]

### **III. CONCLUSIONS OF LAW AND DISCUSSION OF DECISION**

In a practical sense, the values of evidence for the lawyer fall into two distinct aspects. The first aspect is admissibility, that which guards the tribunal against erroneous persuasion. The second aspect relates to persuasion - seeking to move the mind of the tribunal. In applying these aspects there are two facets. There is a proposition to be established and the material evidencing that proposition. The proposition is hypothetical. The material evidencing that proposition is offered to convince the tribunal that the proposition is also a reality.

Mr. Brown failed in both. He knew of the applicability of the Statute of Frauds in Arizona, A.R.S. § 44-101: "No action shall be brought in any court in the following cases unless the promise or agreement upon which the action is brought or some memorandum thereof, is in writing and signed by the party to be charged...." When the law did not fit his proposition, Mr. Brown declared state law a nullity. When the other parties swore his client's assertions were false, Mr. Brown resorted to the same tactic. He declared those sworn statements a nullity by avowing his client's statements were "irrefutable." When the judge followed the law, Mr. Brown, with reckless disregard, vilified the judge to his client and in his pleadings. Respondent's Concluding Remarks filed on August 28, 2014 to this Panel was virtually identical.

The Panel finds clear and convincing evidence Mr. Brown violated the following ERs under Rule 42, Ariz. R. Sup. Ct.:

ER 1.1 (Competence). We find Mr. Brown does not know current legal procedures and obligations reasonably necessary to represent his client.

ER 3.1 (Meritorious Claims and Contentions). We find Mr. Brown pursued a contract claim barred by the Statute of Frauds which resulted in an award of statutory damages, attorney fees and costs.

ER 8.2(a) (Judicial and Legal Officials). We find Mr. Brown made statements with reckless disregard as to the truth concerning the qualifications or integrity of a judge.

ER 8.4(d) (Conduct Prejudicial to the Administration of Justice). Mr. Brown engaged in misconduct including, but not limited to, mailing and filing letters to the Court that were prejudicial to the administration of justice.

We find by engaging in this conduct, Mr. Brown caused actual financial harm to his client [Exhibit 74, Bates 477-478] and is responsible for restitution under Rule 60(a)(6), Ariz. R. Sup. Ct.

#### **IV. SANCTIONS**

The State Bar requested that no less than reprimand be imposed and that Mr. Brown be placed on two years of probation. Considering Mr. Brown's misconduct, this Panel remains concerned Mr. Brown has little interest in following the law, the ethical rules or his client's best interests.

In consideration of an appropriate sanction, the Panel considered the following factors of *Standard 3.0* in the American Bar Association *Standards for Imposing Lawyer Discipline (Standards)*:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and

(d) the existence of aggravating or mitigating factors.

Mr. Brown violated his duties to his client and caused actual harm to his client, the legal system and as a professional. *Standard 4.5, Lack of Competence*, is applicable to Mr. Brown's violation of ER 1.1 (competence) in cases involving failure to provide competent representation to a client. *Standard 4.52* provides:

Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

*Standard 4.53* provides:

Reprimand is generally appropriate when a lawyer demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client.

*Standard 6.2, Abuse of the Legal System*, is applicable to Mr. Brown's violation of ER 3.1. *Standard 6.22* provides:

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.

*Standard 6.23* provides:

Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

*Standard 6.1, False Statements, Fraud, and Misrepresentations*, is applicable to Mr. Brown's violation of ER 8.2. *Standard 6.12* provides:

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.

*Standard 6.13* provides:

Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, 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.

The Panel determined that the presumptive sanction in this matter is between suspension and reprimand. We are reminded that the *Standards* are considered a guideline for imposing sanctions in discipline proceedings and often a respondent's particular misconduct is unique and does not always fit squarely within such guidelines. In considering the appropriate sanction, the Panel gave weight to the fact that Mr. Brown has no prior discipline, has not actively practiced law in over 30 years, and is well over 70 years of age.

Based on these factors, the Panel determined that reprimand, and not suspension would fulfill the purposes of lawyer discipline in this matter. The purposes of attorney discipline are: (1) maintaining the integrity of the profession in the eyes of the public, (2) protecting the public from unethical or incompetent lawyers, and (3) deterring other lawyers from engaging in criminal or unethical conduct. *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001).

This matter appears to be an isolated incident. Clearly, Mr. Brown has not practiced law in over 30 years; hence the imposition of an admonition by the Committee. However, given the harm that occurred in this matter, the Panel concluded

that a more severe sanction is necessary to deter Mr. Brown and other lawyers from engaging in similar misconduct.

After an attorney's misconduct has been established, the Panel may consider any aggravating and mitigating circumstances in determining the appropriate sanction. Aggravating or mitigating circumstances may justify an increase or decrease in the degree of discipline to be imposed. The Panel finds the following aggravating factors are present:

9.22(b) (selfish or dishonest motive); and

9.22(d) (multiple offenses)

The Panel finds the following mitigating factors are present:

9.32(a) (absence of prior disciplinary offenses).

The Panel determined that in this matter, the above mentioned factors do not serve to increase or decrease the sanction.

## **V. CONCLUSION**

The Supreme Court of Arizona "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). In that regard, a goal of lawyer regulation is to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993).

Based on the facts, conclusions of law, and application of the *Standards*, including aggravating and mitigating factors, the Panel determine that reprimand, probation, and restitution is the appropriate sanction. Accordingly,

**IT IS ORDERED:**

Mr. Brown is reprimanded.

**IT IS FURTHER ORDERED** Mr. Brown shall pay restitution to Gerald Molumby in the amount of \$10,189.00<sup>2</sup> with interest at the legal rate until paid.

**IT IS FURTHER ORDERED** placing Mr. Brown on two years of probation under the following terms and conditions:

1. The period of probation shall be effective the date of this Order and shall conclude two years from that date.
2. Mr. Brown shall complete 6 hours of continuing legal education in the area of fundamentals of the Arizona Rules of Civil Procedure and Arizona Rules of Family Law Procedures. These hours shall be in addition to any annual Mandatory Continuing Legal Education requirements pursuant to Rule 45.
3. Mr. Brown shall report, in writing, his compliance with the terms and conditions of probation to the State Bar.
4. In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to

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<sup>2</sup> This total amounts includes a \$9939.00 garnishment, \$100.00 processing fee; and \$150.00 in attorney's fee.

determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

**IT IS FURTHER ORDERED** that Mr. Brown shall pay costs and expenses in this matter.

A final judgment and order will follow.

**DATED** this 6<sup>th</sup> day of October, 2014.

*William J. O'Neil*

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

*Ben Click*

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**Ben Click, Volunteer Public Member**

*Andrea Curry*

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**Andrea Curry, Volunteer Attorney Member**

COPY of the foregoing e-mailed/mailed  
this 6<sup>th</sup> day of October, 2014, to:

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

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

**RAY C. BROWN,  
Bar No. 001064,**

Respondent.

PDJ 2014-\_\_\_\_\_

**COMPLAINT**

[State Bar No. 14-0306]

Complaint is made against Respondent as follows:

**GENERAL ALLEGATIONS**

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on September 26, 1959.

**COUNT ONE (File no. 14-0306/Arizona)**

2. Respondent represents Gerald E. Molumby in the Maricopa County Superior Court case of *In re: The Marriage of Dora F. Molumby*, FN2013-050367.

3. After the initial pleadings by Dora Molumby (hereinafter referred to as "Dora") against Gerald E. Molumby (hereinafter referred to as "Gerald"), her husband of forty-three years, Respondent filed a third-party claim against Rita Martin (hereinafter referred to as "Rita"), Dora's sister on July 8, 2013. Rita filed a third-party counterclaim alleging her sole ownership of the Subject Property.

4. The primary dispute in the divorce action involves a determination of the parties' legal rights regarding a certain parcel of land located at 10501 W. Tropicana Circle, Sun City, Arizona 85351 (hereinafter referred to as "Subject Property") arising, in part, due to a Notice of Claim to Title filed by Respondent on behalf of Gerald.

5. On September 3, 2013, Respondent filed a pleading entitled "STATEMENTS OF FACT BY GERALD E. MOLUMBY AND ARGUMENTS BY GERALD'S PRO BONO ATTORNEY" claiming, among other things, that Rita loaned Dora and Gerald Twenty Thousand Dollar (\$20,000.00) so that they could place a down payment on the Subject Property, that the Molumbys had several issues with the Internal Revenue Service at the time of the purchase of the property and that the Molumbys made several renovations to the property during their residency.

6. The loan was not documented and the Subject Property was acquired solely in Rita's name.

7. In her October 23, 2013, Motion for Summary Judgment on the Third Party Counterclaims (Quiet Title) and for Wrongful Lien and Sanctions, Rita demonstrated that the Subject Property was purchased in her name alone in 1999 and that she consistently received rental payments and the tax benefits associated with Gerald and Dora residence at the property.

8. On October 28, 2013, Respondent filed a four page Response and Counter Motion for Summary Judgment.

9. While the response contained nine (9) paragraphs referred to as "[t]he true and controlling facts", the fourth page of the response is merely a blanket verification by Gerald.

10. On November 18, 2013, Dora joined in Rita's motion and filed a responsive pleading to Gerald's pleading alleging, among other things, that Respondent's pleading did not comply with Rule 56 of the *Arizona Rules of Civil Procedure* in that it did not include a Statement of Fact or Controverting Statement of Facts and did not contain an affidavit attesting to the "true and controlling facts".

11. The responsive pleading contained a number of cases identifying the insufficiency of the motion and the inappropriateness of merely reciting a litany of conclusory or self-serving statements in the motion without supporting affidavit.

12. On November 21, 2013, Respondent filed a three page pleading entitled "GERALD'S RESPONSE TO THE 11-18-2013 FILINGS OF DORA, HIS WIFE OF OVER 43 YEARS, AND HER SISTER RITA K. MARTIN, WITH WHOM DORA RESIDES".

13. The pleading contains five paragraphs which reiterated the allegations in Respondent's Response and Counter Motion regarding the purported loan and contained the following support of Gerald's requested relief:

- a. "That without the Agreement, the Molumbys...had no money for a down payment, they had no ability to obtain a mortgage or Deed of Trust on their own, and they still had their unresolved IRS problems."
- b. "(That) [t]he three page Statements of Fact and Argument by Gerald's Pro Bono Attorney...sets forth the relevant facts and argument that positively demonstrate the Agreement among the three parties."
- c. "(That) [t]he three page Response To Rita K. Martin's Motion For Summary Judgment and Counter Motion For Summary Judgment By Gerald E. Molumby...further demonstrates the truthfulness and merits of Gerald's position in this Dissolution Action."

d. “(That) [t]he expectations by Gerald and his Attorney that the Court will be making its ruling based on the facts and merits of this Dissolution Action and not on technicalities that (Opposing Counsel) would have the Court rely and rule on. It is obvious that He (sic) desires to achieve a court victory by any means possible since he can’t help by know that the facts and merits are not with his client Rita K. Martin.”

14. On December 16, 2013, the Court held a telephonic status conference and issued a ruling on all of the pleadings finding, among other things, that Rita established legal title to the Subject Property in her name alone since 1999.

15. The Court further found that Gerald’s purported breach of contract claim was barred by the Statute of Frauds, quashed Respondent’s Notice of Claim to Title and set a one hour trial on any remaining issues.

16. On December 18, 2013, Respondent mailed a letter requesting that the Court reconsider its ruling. While Respondent mailed a copy to opposing counsels, the letter is a personal letter stating, in part:

a. “You took me by surprise as you opened the scheduled Telephonic Conference...as I have always assumed that the purpose of litigation was to determine where the truth resides concerning the facts of the disputes involved.”

b. “If the truth is not important in your Court when you can base your Ruling on legal technicalities, please indicate that in your Reconsidered Ruling, as it will help simplify a possible Appeal of your Reconsidered Ruling.”

17. On December 20, 2013, the Court issued a minute entry denying the request as Respondent's letter to the Court violated Rule 43(E) as it was not filed with the Clerk of Court.

18. The Court further found that the letter contained no legal or factual basis for the request and "reminded (Respondent) that requests to the Court must be made by petition or motion. Petitions are governed by Rule 24, A.R.F.L.P., and motions are governed by Rule 35, A.R.F.L.P. In addition, all documents filed with the Court must comply with Rule 30(D), A.R.F.L.P."

19. On December 23, 2013, Respondent filed a letter to the Judge with the Clerk of Court enclosing, among other things, the December 18<sup>th</sup> letter, an attachment from the Judge's Biographical Profile and Respondent's recommendations on "How To Efficiently, Effectively and Economically Process Family Dissolution Actions" and "Reasons Why The Above Would Be A Successful Approach".

20. In the December 23, 2013, Respondent also acknowledged that he is Gerald's neighbor and has not actively practice law in approximately thirty-one years.

21. On January 2, 2014, Respondent filed a letter to the Judge with the Clerk of Court submitting "Gerald Molumby's Offer Of Settlement Of The Molumby And Martin Litigation" which consists of, among several others, the following term(s):

- a. "That the three parties agree to submit to lie-detector testing which is intended to indicate where the truth resides...; OR
- b. That the three parties agree to determine where the "truth resides" by the flip of a coin by Judge Polk, with the Agreement that the litigation will be thereby settled and concluded without any appeal(s). The flip can be between the team of sisters against Gerald, who appears to be the decided underdog

trying to salvage something other than homelessness and impecuniousness from his 43-year marriage.”

22. The letter further recites purported facts and circumstances surrounding Respondent’s agreement to use of a lie detector, apparently without his client’s knowledge or consent, to efficiently resolve a Tucson lawsuit years earlier.

23. On January 6, 2014, Respondent filed an objection to opposing counsel’s *China Doll* affidavit simply stating “[t]he reasonableness of (opposing counsel’s) Attorney’s fees should be no more than one hundred dollars (\$100.00) an hour, which would equate to \$4,000 for a 40-hour week, \$16,000 for a four week month, and \$208,000 for a 52 week year.”

24. On January 8, 2014, Respondent filed a letter to the Judge with the Clerk of Court stating, in part, that Respondent read Rule 76(D) A.R.F.L.P. and “became concerned that if you were a vindictive Judge you might bestow your wrath upon Gerald and me. This concern came over me after having experienced what seemed to me to be your excessive glee in sticking it to Gerald and in providing the blessings you bestowed upon (opposing counsel) in the Dec. 16, 2013 Telephonic Conference (TC).”

25. On January 16, 2014, Respondent filed a pretrial conference memorandum reiterating, among other things, the substance of the letters to the Judge.

26. On January 27, 2014, Respondent filed a supplemental pretrial conference memorandum again reiterating, among other things, the substance of the letters to the Judge.

27. On February 4, 2014, Respondent submitted a writing to the State Bar outlining the scope of the pro bono representation along with his client's knowledge that Respondent has not actively practiced law in over thirty years.

28. On February 20, 2014, the Court held a telephonic status conference and contemporaneously executed an Order Extinguishing Notice of Claim/Lis Pendens and granted Rita's Motion for Summary Judgment on the Quiet Title/Wrongful Lien counterclaim in its entirety.

29. The Court further awarded Rita approximately Five Thousand Dollars in attorney's fees and costs pursuant to A.R.S. §§ 12-341.01, 12-1103 and 33-420 along with statutory damages of Five Thousand Dollars pursuant to A.R.S. § 33-420.

30. On March 3, 2014, Respondent filed a Motion to Reconsider requesting that "the Court vacate or reverse both of its Rulings against Gerald Molumby, the \$5,000 Sanction Fee and the Attorney's Fee and Costs, as a careful reading of Gerald's Court Filings irrefutably and conclusively show that he is the Truthful Litigant and that Rita Martin is the Untruthful Litigant - which also can be easily verified by polygraph or lie detection testing."

31. In the motion, Respondent states "[t]hese foregoing paragraphs again dramatically illustrate why Gerald's Pro Bono Attorney Brown believes that the Court does not possess the appropriate understanding of Right and Wrong, Fair and Unfair and Just and Unjust to be in the Maricopa County Superior Court FLC Division" and "the Untruthful Litigant should be the Litigant required to initiate an Appeal, if one is desired, rather than the Truthful Litigant. The reason, again, is to avoid wrongfully Abusing and Punishing the Truthful Litigant."

32. On April 10, 2014, the Court approved the parties' partial agreement on certain issues and conducted a trial on the remaining issues in the case.

33. After taking the matter under advisement, the Court entered several adverse rulings against Respondent's client.

34. On May 2, 2014, Respondent filed a Motion to Reconsider stating, among other things, the following:

- a. "This Court's 4/10/2014 Rulings make a Travesty and Mockery of Judicial Truth and Justice..."
- b. "This Court seems determined to wrongfully Rubber-Stamp its predecessor and allow the AZ S/Fs, intended to prevent frauds, to be used to permit Rita Martin to 'defraud' the Molumbys..."
- c. "This Court needs to drastically change its comments from those stated in the first seven lines that follow ATTORNEY'S FEES AND COSTS on page 4 of the Court's 4/10/14 Rulings, so this Court doesn't appear to be wickedly unconcerned with the reality that, to this point, both Courts, this Court and its predecessor Court, are sanctioning 'theft'..."

35. By engaging in the above listed conduct, Respondent violated Rule 42, Ariz. R. Sup. Ct.:

- A. ER 1.1 – Respondent does not possess the knowledge of current legal procedures and obligations reasonably necessary to represent his client;
- B. ER 3.1 – Respondent pursued a contract claim which was, at all times pertinent, barred by the Statute of Frauds and which caused an award



of statutory damages and attorney's fees and costs to be rendered against his client;

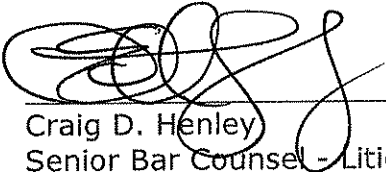
C. ER 8.2(a) – Respondent has made statements with reckless disregard as to its truth concerning the qualifications or integrity of a judge;

D. ER 8.4(d) – Respondent engaged in misconduct including, but not limited to, mailing and filing letters to the Court and that were prejudicial to the administration of justice.

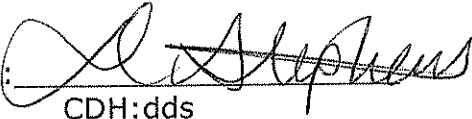
36. By engaging in the above listed conduct and causing actual financial harm, Respondent is responsible for restitution pursuant to Rule 60(a)(6), Ariz. R. Sup. Ct.

**DATED** this 6th day of May, 2014.

**STATE BAR OF ARIZONA**

  
\_\_\_\_\_  
Craig D. Henley  
Senior Bar Counsel - Litigation

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 6<sup>th</sup> day of May, 2014.

by:   
CDH:dds