

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 SUSPENDED MEMBER  
OF THE STATE BAR OF ARIZONA,

**JOSEPH W. CHARLES,**  
**Bar No. 003038**

Respondent.

**No. PDJ-2014-9031**

**FINAL JUDGMENT AND  
ORDER OF ADMONITION**

[State Bar No. 13-2239]

**FILED SEPTEMBER 16, 2014**

This matter having been heard by the Hearing Panel of the Supreme Court of Arizona, it having duly rendered its decision, no appeal having been filed and the time for appeal having passed, accordingly,

**IT IS HEREBY ORDERED** admonishing **JOSEPH W. CHARLES**, effective the date of this Order, for conduct in violation of his duties and obligations as a lawyer, as detailed in the Hearing Panel's Report and Order Imposing Sanctions filed on August 18, 2014.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of to the State Bar of Arizona in the amount of \$4,000.00. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 16<sup>th</sup> day of September, 2014.

*William J. O'Neil*

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

COPY of the foregoing e-mailed/mailed  
this 16<sup>th</sup> day of September, 2014, to:

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**JOSEPH W. CHARLES,**  
**Bar No. 003038**

Respondent.

**No. PDJ-2014-9031**

**REPORT AND ORDER IMPOSING  
SANCTIONS**

[State Bar No. 13-2239]

**FILED AUGUST 18, 2014**

On July 17, 2014, the Hearing Panel ("Panel"), composed of Betty J. Davies, a public member, Richard A. Cruz, an attorney member, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a one day hearing pursuant to Rule 58(j), Ariz.R.Sup.Ct. Shauna R. Miller appeared on behalf of the State Bar of Arizona ("State Bar"). James J. Syme, Jr., appeared on behalf of Joseph W. Charles. Rule 615 of the Arizona Rules of Evidence, the witness exclusion rule, was invoked. The Panel carefully considered the Complaint, Answer, the parties' Joint Prehearing Statement, individual Pre-Hearing Memorandum, testimony including that of Mr. Charles, and admitted exhibits.<sup>1</sup> The Panel now issues the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz.R.Sup.Ct.

**I. SANCTION IMPOSED:**

**ADMONITION AND COSTS OF THESE DISCIPLINARY PROCEEDINGS**

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<sup>1</sup> Consideration was also given to sworn testimony of Gerald Bernard, CPA, Christopher Short, Esq., and Mrs. Rhonda Charles.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

An Order of Probable Cause was filed in this matter on December 20, 2013. The State Bar filed its Complaint on April 4, 2014. Mr. Charles filed his Answer on May 13, 2014. The initial case management conference was held on May 27, 2014.

The State Bar requests disbarment or, in the alternative, a three-year suspension for alleged violations of Rule 42, Ariz.R.Sup.Ct., specifically ERs 5.4(a), 5.5(b), 8.4(a) and (d), and Rule 54(c), Ariz.R.Sup.Ct. Mr. Charles asserts any violations were committed negligently.

## **III. FINDINGS OF FACT**

At all relevant times Mr. Charles was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on September 23, 1972. [Joint Prehearing Statement ¶1]. Mr. Charles' license to practice law has been suspended on three occasions since November 2010. [*Id.*]. On November 27, 2010, Mr. Charles began his initial 60-day suspension. [Joint Prehearing Statement ¶2, SB Exhibit 29, SBA000411-12]. On March 2, 2011, Mr. Charles was suspended for a period of six months and a day, effective April 1, 2011. [Joint Prehearing Statement ¶3, SB Exhibit 30, SBA000425-37]. On March 8, 2012, Mr. Charles filed his first application for reinstatement. [Joint Prehearing Statement ¶4]. As authorized by Rule 65(a)(5), Ariz.R.Sup.Ct., Mr. Charles withdrew that petition. The PDJ formally acknowledged Mr. Charles' withdrawal of the initial application for reinstatement on July 2, 2012. [*Id.*]. On September 25, 2012, Mr. Charles was suspended a third time for a period of six months. [Joint Prehearing Statement ¶5, SB Exhibit 31, SBA000482-84]. On April 30, 2013, Mr. Charles filed his second application for reinstatement. [Joint Prehearing Statement ¶6]. On January 7, 2014, the PDJ granted the joint request of the State Bar and Respondent to stay the matter until

July 7, 2014. [*Id.*]. That stay was extended by stipulation of the parties until four weeks after the issuance of this report. As of the July 17, 2014 hearing, Mr. Charles has not been reinstated to the practice of law. [*Id.* at ¶7].

The present disciplinary proceedings stem from Mr. Charles' alleged misconduct during this extended period of suspension. After Mr. Charles filed his application for reinstatement, the State Bar conducted an investigation concerning Mr. Charles' qualifications and fitness to resume the practice of law. During this investigation, the manner in which business was conducted at the successor office of Mr. Charles' former firm was fully disclosed. That disclosure helped elucidate this matter. The State Bar determined there was probable cause to believe there were ethical violations. The evidence the State Bar deemed relevant to make this determination was as follows:

*Fee-Splitting*

Christopher S. Short was admitted to the practice of law in Arizona on September 10, 2009, and worked for Mr. Charles as an associate. [SB Exhibit 20, SBA000196, 198]. During the investigation in preparation for Mr. Charles' reinstatement proceedings, the State Bar stated it became aware Harry Lenaburg, another attorney in the office, and Mr. Short had taken over Mr. Charles' law firm and were responsible for representing clients and supervising the office staff. [SB Exhibit 19, SBA000172-73, SB Exhibit 20, SBA000199]. Mr. Charles' former clients were properly informed of his suspension and Mr. Short took over their files unless those clients wished to retain alternative representation. [SB Exhibit 20, SBA000219]. The State Bar also alleged, and Mr. Short agreed, Mr. Charles was paying Mr. Short and the office staff out of the corporate payroll account. [SB Exhibit 20, SBA000219]. Mr. Short had proposed an arrangement to Mr. Charles after Mr.

Charles realized his suspensions would last longer than the initial 60 days and his reinstatement proceedings would take a significant time to resolve. Mr. Short would pay Mr. Charles whatever he could towards the expenses of operating the business, such as rent, from the fees he generated through his representation of clients and would retain, at a minimum, his existing salary. [SB Exhibit 20, SBA000219]. The arrangement never generated a profit for Mr. Charles. The office was structured for a multi-lawyer firm, not a solo practice. He knew he could not afford to rent the entire office. In the event Mr. Short did not make enough from fees to cover the monthly expenses, Mr. Charles would cover them out of his own pocket. [Hearing Testimony of Mr. Short and Mr. Charles]. Mr. Charles did in fact make a sizable loan to the PC to cover employee salaries and ongoing operating expenses totaling \$123,481 through January 1, 2011. [SB Exhibit 3, SBA000047, Hearing Testimony of Mr. Bernard, Mr. Short, Mr. Charles, and Mrs. Charles].

The State Bar performed a review of Mr. Charles' tax returns and offered extensive testimony from Gerald Bernard, CPA, who prepared Mr. Charles corporate and personal tax returns. Mr. and Mrs. Charles personally own the buildings in which his prior law firm was located. Mr. Charles was still listed as the employer of record and sole shareholder for Joseph W. Charles, PC ("the PC") with the IRS. [SB Exhibit 3, SBA000031, SBA000049, Hearing Testimony of Mr. Bernard]. That corporation is a C Corporation for Federal Tax purposes. Unlike a S Corporation, under which the shareholders individually report taxes, C corporations report and pay taxes.

The State Bar noted Mr. Charles' corporate tax returns indicate the PC had gross receipts of \$831,147 in 2010 and \$752,111 in 2011. [SB Exhibit 3, SBA000010, SBA000025]. Mr. Bernard's testimony covered a wide range of topics on both the PC's corporate tax returns and Mr. Charles' personal tax returns. However, he could

not expound on virtually any of those matters as the corporation's source documents or books of original entry were either not subpoenaed or not offered as exhibits. The topics he covered generally included: the corporation's gross receipts or sales, costs of goods sold, client costs, salaries and wages, repairs and maintenance, taxes and licenses, the various deductions taken by the PC, rents (which included rents paid by the PC to Mr. Charles for use of the legal office property), the strategy used by personal service "C" corporations where net operating losses carried forward to the next taxable year can zero out profits for the current tax year to avoid higher tax rates, Mr. Charles' personal federal and state income tax refunds, Mr. Charles' personal income tax return wages and salaries, taxable interest, and Mr. Charles' income from rental real estate properties (including the rents received from the PC's use of the office building property owned by Mr. Charles). [Hearing Testimony of Mr. Bernard].

Mr. Bernard testified he was only given the numbers to prepare the tax returns and never viewed the source documents. This is something he only does in specific case by case circumstances and is not unique to Mr. Charles or the PC. [*Id.*]. Furthermore, Mr. Bernard testified he had virtually no understanding of the deposit activity into the PC because the books he receives are kept on a cash basis of accounting and found it impossible from that method to determine the substance of the deposits into bank accounts. Mr. Charles had significant accounts receivable. [*Id.*]. Similarly, Mr. Bernard speculated he may have prepared the PC's tax returns differently had he known there were two sources of income, one being the receivables from work done by Mr. Charles prior to his suspension and the other being the fees generated by those currently representing clients in the PC. [*Id.*].

However, Mr. Bernard testified he had no way of distinguishing the sources of income, not having seen the source documents. [*Id.*]. Mr. Bernard was straight forward, believable and professional in his testimony. We found his testimony truthful. He was unable to testify regarding the details of taxes or licenses and unable to even speculate about costs without the books themselves. As sworn by him, without the books, even determining what the physical maintenance of the building entailed was speculative. Those costs could relate to maintenance of office items such as copier repairs or even janitors. Ultimately, Mr. Bernard had no way to discern how much of the fees which came into the PC were as a result of monies earned prior to Mr. Charles' suspension as opposed to after, and whether any of the monies earned were the result of work Mr. Charles did as opposed to someone else. [*Id.*]. As a result we find there is insufficient evidence to conclude Mr. Charles was receiving income from other than his receivables.

The testimony of Mr. Short, while at times vague and seemingly evasive, corroborated Mr. Charles' position; there was no fee splitting. Mr. Short testified Mr. Charles was provided money for renting out the office building and other office supplies. [Hearing Testimony of Mr. Short]. The terms of this rental agreement were never reduced to a document. [*Id.*]. This was also consistent with Mr. Short's earlier statements. [SB Exhibit 20, SBA000200, 205, 207, 212-13, 219].

#### Unauthorized Practice of Law

After Mr. Charles' suspension, in an effort comply with the ethical rules, the law firm "John W. Charles, P.C." changed its name to "Wykoff Law Group" after the individual who was Mr. Charles' predecessor, now deceased. [SB Exhibit 18, SBA000139, Hearing Testimony of Mr. Charles]. However, after being informed the firm could not ethically use that name, the firm was again renamed, this time to



"Charles Law Group." When this switch occurred is unclear on the record before the Panel. [SB Exhibit 5, SBA000104-07, SB Exhibit 20, SBA000205]. We find Mr. Short had misgivings, due to the fact it included the word "Group" suggesting several attorneys when, at the time, Mr. Short was the only attorney working at the firm consistently. [SB Exhibit 20, SBA000204-205, Hearing Testimony of Mr. Short]. As mentioned above we found the testimony of Mr. Short often evasive and even self-serving. The testimony of Mr. Charles and Mr. Short at times seemed to conflict regarding the name of the law firm. On some areas of Mr. Short's testimony, we found him not credible.

Mr. Short testified he was assured by Mr. Charles, who informed him he had spoken with several other professionals and they told him the name was acceptable. [Hearing Testimony of Mr. Short and Mr. Charles, SB Exhibit 18, SBA000138, Respondent's Prehearing Memorandum at 1]. Mr. Short did not raise the issue again. [Hearing Testimony of Mr. Short].

In a deposition on January, 10, 2012, Mr. Charles was warned by State Bar counsel that not only the use of Mr. Wykoff's name was improper, but "as long as [Mr. Charles] is suspended [he] can't have anything with [his] name attached to law." [SB Exhibit 18, SBA000139]. Mr. Charles was asked to dispose of business cards bearing the "Charles Law Group" heading as well as change the firm's email address which still included "@JoeCharles.com." [*Id.*]. Mr. Charles stated he had tried to sit down with his staff and explain the importance of making those changes. In his testimony he acknowledges sometimes, as State Bar counsel agreed, "it is almost impossible to get some of this electronic stuff cleaned up..." [*Id.*]. However, Mr. Charles promised he would address the issue with his staff again that afternoon following the deposition. [*Id.*].

The issue was raised again during Mr. Charles' April 17, 2012 deposition. Bar counsel informed Mr. Charles that after some research, several pleadings bearing "Joe Charles, P.C." were discovered. [SB Exhibit 19, SBA000173]. Mr. Charles again stated staff had tried to clean up references to the old firm name as best they could and still continued to do so. [Id.]. Furthermore, Mr. Charles stated he had attempted to do all he could do by getting rid of business cards and taking his name off the firm's building. [Id.]. However, Mr. Charles admitted he was "completely ignorant of working a computer" and had attempted to delegate the task of removing electronic remnants of the firm's former names to other staff members. [Id.].

As a part of this present disciplinary hearing, the State Bar stated certain concerns raised by Mr. Charles' January and April 2012 depositions, highlighting certain evidence. In November 2011 the State Bar identified at the web address "www.joecharles.com" a homepage for the "Charles Law Group." That homepage stated the firm had been located in Glendale, Arizona and represented clients for over 40 years. [SB Exhibit 5, SBA000104]. However, the website also stated the law firm staff had over 50 years of legal experience and could help with "about any kind of legal matter that you may have." [SB Exhibit 5, SBA000105]. Furthermore, according to the State Bar, the contact information for the firm matched the address Mr. Charles provided in his reinstatement application. [SB Exhibit 5, SBA000106]. The email of the law office was also "LawOffice@JoeCharles.com." [Id.].

However, according to the State Bar, viewing the website again in November 2013 showed the site to be "temporarily unavailable." [State Bar's Prehearing Memorandum]. The State Bar noted on May 30, 2013, during Mr. Charles' reinstatement investigation, a State Bar staff investigator performed a Google search for the "Charles Law Group" website and, at the "www.charleslawgroup.com"

address, Christopher S. Short was listed as the attorney at law for the "Law Center of the Northwest Valley" and the home page indicated the law firm had over 40 years of legal experience. [SB Exhibit 16, SBA000125-26]. The State Bar also obtained letters and other documents, including business cards, medical records requests, and pleadings, which included the designation "Charles Law Group" along with the "@JoeCharles.com" email domain as late as November 21, 2012. [SB Exhibit 7-14, SBA000108-18].

At the hearing, Mr. Short stated while he was aware a website existed for the firm, he was not involved in the setting up of the "Charles Law Group" site and could not explain any of the discrepancies, such as listing the firm had either 40 or 50 years of legal experience during the period for which Mr. Charles was suspended. [Hearing Testimony of Mr. Short]. Furthermore, Mr. Short testified at the hearing he was not aware of the "Law Center of the Northwest Valley" website at the "www.charleslawgroup.com" address listing him as the attorney at law and never gave permission for such a site to be put online. [*Id.*]. Mr. Short's testimony regarding the other letters and documents utilizing both the "Charles Law Group" heading and "@JoeCharles.com" email domain was extremely vague, evasive, and ultimately unhelpful to this Panel. However, the panel found the testimony of both Mr. and Mrs. Charles to be forthright, consistent and believable.

Mr. Charles' wife, Rhonda Charles, testified that after Mr. Charles' suspensions he sat down with staff and told them he could no longer practice or come into the office. [Hearing Testimony of Mrs. Charles]. She testified her husband stayed away from the office to avoid the appearance of practicing or influencing the decisions of other attorneys. [*Id.*]. She testified things at the firm remained essentially the same following Mr. Charles' initial suspension with regard to the name of the corporation

and the accounts the firm utilized. [*Id.*]. She and Mr. Charles had a telephonic conference with Russell Yurk, Mr. Charles' counsel at the time. He informed them while Mr. Charles could not practice or be on the letterhead during his suspension, this was limited to Mr. Charles appearing on pleadings and documents as a practicing attorney and not to the name of the corporation itself. [*Id.*].

Both Mrs. Charles and Mr. Charles testified that after this conversation with Mr. Yurk they were under the impression, going forward, it was acceptable to continue to operate under the corporate name "Joseph W. Charles, P.C." so long as Mr. Charles was not practicing and was not listed as an attorney. [Hearing Testimony of Mrs. Charles and Mr. Charles]. Mrs. Charles testified she even contacted advertising agencies and other organizations in an effort to get Mr. Charles taken off as a practicing attorney, including from the internet. [Hearing Testimony of Mrs. Charles].

Mrs. Charles also testified, at the time of the suspension, the website associated with the law firm was "www.joecharles.com." [*Id.*]. Immediately after the suspension, she testified Mike Grant, an office employee skilled with computers, was contacted and asked to remove Mr. Charles' name from the website. [*Id.*]. Subsequently, Mr. Charles' name, photo, and biography were removed from the "www.joecharles.com" website. However, the name of the corporation, "Law Office of Joseph W. Charles, P.C." remained on the page pursuant to the legal opinion Mr. and Mrs. Charles' received that the name of the corporation need not be changed. [*Id.*].

Upon learning the firm's website could not include Mr. Charles' name, Mrs. Charles took charge of trying to remove the "www.joecharles.com" web address as well as change the firm's email address from "@JoeCharles.com." [*Id.*] Mrs. Charles

contacted GoDaddy.com, Domains Priced Right, and ultimately Web Design by Jack in order to remove the prior web address and create new email addresses. [Hearing Testimony of Mrs. Charles, SB Exhibit 17, SBA000127]. At the same time and over the next few months, Gwen, one of the office secretaries working for Mr. Short, was in charge of interviewing and hiring someone to set up a separate website for Mr. Short which eventually became the "Law Center of the Northwest Valley." [Hearing Testimony of Mrs. Charles]. Mrs. Charles testified the process took some time and, due to her lack of technical understanding, she needed to contact several people to resolve the issue. [*Id.*].

The "www.joecharles.com" web address no longer exists and the firm's email address is now "@nwatty.com." [*Id.*]. Furthermore, the firm's website currently contains no references to "Joseph W. Charles, P.C.," "Charles Law Group," or any other derivative of Mr. Charles' name. The website is found at the "www.nwatty.com" web address and the email address listed under contact information is "Office@nwatty.com." These change occurred prior to the hearing.

We find Mr. Charles, after receiving his suspension for six months and a day, came back to the office and at the meeting with his staff told them to take "Law Office" off the side of the building, take his business cards out, and to take his name off of "anything and everything." [Hearing Testimony of Mr. Charles]. Mr. Charles relied on Mrs. Charles and Gwen the secretary to take care of the emails and websites change overs. [*Id.*]. Mr. Charles noted his name would occasionally pop up and he would remind the secretaries to remove it whenever that occurred. [*Id.*]. In the meantime, in order to keep the corporation going, Mr. Charles instructed his staff to change the firm's name to something generic and appropriate. [*Id.*]. We also find, Mr. Charles, in response to the further concerns from the State Bar, and at the

suggestion of his current counsel, completely shut down his corporation formerly named "Josephs W. Charles, P.C." and then "Charles Law Group." [*Id.*]. At that time, Mr. Charles testified Mr. Short's corporation "Law Center of the Northwest Valley" had been established and Mr. Short had made a full transition. [*Id.*].

The State Bar also presented evidence in the form of a billing statement which listed Mr. Short having a "conference with Gwen and Joe" on July 16, 2012, and designated as "Legal Services" activity. [SB Exhibit 15, SBA000120]. Again on July 31, 2012, the billing statement lists Mr. Short having a "discussion with Kevin and Joe" on the same case and again designated as "Legal Services." [SB Exhibit 15, SBA000121]. The State Bar offered these exhibits as evidence of Mr. Charles' involvement in cases during the time of his suspension to support their allegation he was engaged in the unauthorized practice of law. We find it does not.

Mr. Short testified at the hearing that if Mr. Charles sat in on any meetings, Mr. Short would ask him things such as: "in your experience, how did you handle this situation," "which direction did you go," "what did you take into account," picking his brain to see how he would handle a situation Mr. Short was unfamiliar with. [Hearing Testimony of Mr. Short]. However, Mr. Short testified the ultimate decision on any matter was his and Mr. Charles never attempted to influence his decision-making or judgment. [*Id.*]. Ultimately, Mr. Short reiterated the statements in his September 27, 2013 response letter to the State Bar in which he stated, "[Mr. Charles] has little to nothing to do with anything regarding cases." [SB Exhibit 20, SBA000220, Hearing Testimony of Mr. Short]. While somewhat consistent with the testimony of Mr. Charles, we continue to find such testimony of Mr. Short questionable and of concern. His statements were often not credible.

Mr. Charles had a more detailed recollection of those particular meetings listed on the billing statements and we find his recollection to be accurate. Mr. Charles testified that at the behest of a local bishop from the community, who had referred a particular case to Mr. Short, he inquired about the facts of that case from Mr. Short and the secretary Gwen at the July 16, 2012 meeting. [Hearing Testimony of Mr. Charles, SB Exhibit 15, SBA000120]. Mr. Short represented a widow and opposing counsel, who Mr. Charles knew, represented the widow's adult children. [Hearing Testimony of Mr. Charles]. According to Mr. Charles, this case was a bitter family feud which appeared headed towards an expensive court battle. [*Id.*] Therefore, on July 31, 2012, Mr. Charles called in opposing counsel and suggested to both him and Mr. Short that they seek to "make peace" in this dispute rather than tear the family apart. [Hearing Testimony of Mr. Charles, SB Exhibit 15, SBA000121]. In particular, Mr. Charles recommended they seek mediation rather than take the dispute to trial. [Hearing Testimony of Mr. Charles]. Ultimately, Mr. Charles testified the bishop wanted the family to be reconciled and asked him to assist in that regard. [*Id.*]. Mr. Charles testified he did not consider the advice given at those meeting to be legal advice, but simply an attempt to bring the family back together, which ultimately failed. [*Id.*]. We agree.

#### **IV. DISCUSSION**

##### ER 5.4(a) and 8.4(a)

The State Bar alleges Mr. Charles violated ER 5.4(a) which states: "A lawyer...shall not share legal fees with a nonlawyer..." Specifically, the State Bar alleges by allowing Mr. Short, the lawyer in this scenario, to take over the firm and to step into Mr. Charles' shoes, Mr. Charles, the "nonlawyer," was receiving legal fees from Mr. Short during his suspension, in violation of this rule. [State Bar's Prehearing

Memorandum at 8]. However, the State Bar's argument is fundamentally flawed. Reading the plain language of ER 5.4(a), it appears likely under these circumstances, not applicable to the "nonlawyer" Mr. Charles. ER 5.4(a) appears to have been more applicable to Mr. Short, however this Panel is not concerned with Mr. Short's alleged disciplinary violations as they are not before us in these proceedings.<sup>2</sup>

Regardless, by the evidence presented at hearing, this Panel finds there was no fee splitting in this circumstance. The State Bar presented a summation of Mr. Charles' corporate tax returns for the years 2010 and 2011 but failed to present any evidence which would support their allegation of fee splitting. Nothing in their analysis of "taxes and licenses" and "net operating loss deductions" clearly and convincingly demonstrated "fee splitting" or an ethical violation. The State Bar's chief witness, Mr. Bernard, could not definitively demonstrate fee splitting as he did not have access to the "source documents," which would have been itemized and shown in which accounts fees were deposited. Moreover, the State Bar did not present these documents as exhibits. Mr. Bernard testified Mr. Charles could ostensibly be "profiting" from the legal work of another attorney, but only indirectly in the form of rent payments. [Hearing Testimony of Mr. Bernard]. However, even if Mr. Charles had profited from the rental agreement, which he did not, that would not be tantamount to the prohibited fee splitting.

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<sup>2</sup> It is worth noting the Attorney Discipline Probable Cause Committee did in fact find probable cause existed Mr. Short violated ER 5.4(a) and issued an order of probation and costs. It is peculiar the State Bar seeks sanctions for alleged fee splitting against both Mr. Short and Mr. Charles, yet Mr. Short was only issued probation while the State Bar seeks disbarment with regard to Mr. Charles. Furthermore, this Panel also takes notice the State Bar ties an ER 8.4(a) violation to Mr. Charles' ER 5.4(a) violation but did not do so in Mr. Short's companion case. See Order of Probation in File No. 13-2238 filed on December 20, 2013. These inconsistencies further undermine the State Bar's argument regarding this proposed rule violation and the magnitude of sanctions sought.



The law firm operated out of a building owned by Mr. Charles and paid him rent from the income generated by legal fees. We find the parties intended only a rental agreement rather than fee splitting as the State Bar alleges, even though such an agreement was never reduced to writing. Nevertheless, there were no real “profits” as the firm did not bring in enough in fees and Mr. Charles was forced to take out loans in an attempt to cover operating expenses and keep the company afloat. This was anticipated by Mr. Short. He testified the office was too large for him and he was unwilling to pay what the full rental was worth on the market. Ostensibly, had there been more fees generated, the expenses would have been paid and the excess would have gone to the practicing attorneys.

This Panel finds no ER 5.4(a) violation, by extension, this Panel finds no ER 8.4(a) violation. Additionally, as with a violation of ER 8.4(a), a violation of Rule 54(c) (violation of a court order) requires a knowing mental state and here, Mr. Charles’ misconduct at worst is negligent.

The State Bar offers *In re Struthers*, 179 Ariz. 216, 877 P.2d 789 (1994) and *In re Phillips*, 226 Ariz. 112, 244 P.3d 549 (2010), to support its position that while suspended, a lawyer is not entitled to receive income generated by the firm and a lawyer or law firm shall not share fees with a non-lawyer. First, this Panel finds these cases distinguishable as it has determined there was a rental agreement rather than a fee splitting arrangement characterized by a sharing of income generated by the firm. Second, this Panel accepts that Mr. Charles is considered a nonlawyer under these circumstances as he was acting as a landlord not a lawyer. There was no violation of ER 5.4(a) by him.

ER 5.5(b) and 8.4(d)

The State Bar also alleges, by maintaining his corporate name on websites, in email addresses, and on letterhead, Mr. Charles violated ER 5.5(b) which specifically states: “[A] lawyer who is not admitted to practice in this jurisdiction shall not...establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.” Bar counsel argues that by using the designation “Charles Law Group” on websites, continuing to list “Joseph W. Charles, P.C.” as contact information for several sources, and utilizing the “@JoeCharles.com” email address domain, Mr. Charles “[held] out to the public or otherwise represent[ed]” that he was eligible to practice law or was associated with his former firm.

However, such argument flies in the face of the evidence established at the hearing. The witnesses testified individuals came into or called the office seeking Mr. Charles’ counsel during his periods of suspension and were informed he was not practicing. [Hearing Testimony of Mr. Short and Mr. Charles]. The State Bar suggests the public did in fact perceive Mr. Charles as either associated with the firm or able to provide counsel because of these individuals seeking the legal assistance of Mr. Charles. We find it is far more likely his long established legal reputation in the community is the cause of those individuals seeking his assistance. Regardless, none of them testified. It is speculative at best why they sought him out.

Based on the dearth of evidence presented at the hearing, this Panel finds that such a violation was at most negligent rather than intentional. The evidence was neither clear nor convincing for any finding of even a negligent violation. The testimony and exhibits presented by the State Bar describe a genuine effort for a

transition with regard to the name of the firm and subsequent attempts to update relevant letterhead and electronic sources.

It is far more likely in the effort to stay away from the office to avoid the appearance of interacting with clients and cases, Mr. Charles trusted that the responsibilities of changing letterhead, websites, and emails to the office staff of Mr. Short. That staff, unfortunately, struggled to complete that task due in part to lack of technological expertise. While this may have been indicative of a violation of ER 5.3(b) in which “a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer,” such a violation is not alleged by the State Bar.

Ultimately, while this Panel does find a violation of ER 5.5(b), based on the efforts of Mr. Charles and his office staff to remedy the violations, though unsuccessful, this Panel finds such a violation was merely negligent rather than intentional. However, this Panel does not find a violation of ER 8.4(d) as the efforts and difficulties with the website and internet of one who is actively distancing himself from any potential clients would not undermine an informed public’s perception that the legal profession is capable of self-regulation.

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

The Panel finds clear and convincing evidence Mr. Charles violated Rule 42, ER 5.5(b).

#### **VI. SANCTIONS**

When considering an appropriate sanction, the Panel looks to the American Bar Association’s *Standards for Imposing Lawyer Sanctions* (“Standards”) as a guideline. Rule 58(k), Ariz.R.Sup.Ct. The appropriate sanction however, turns on the unique

facts and circumstances of each case. *In re Wolfram*, 174 Ariz. 49, 59, 847 P.2d 94, 104 (1993). We find the facts and circumstances completely unique.

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

In weighing what sanction to impose in attorney discipline matters, the Hearing Panel considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004). *See also Standard 3.0.*

*Standard 7.0, Violation of Duties Owed as a Professional* is applicable to Mr. Charles violation of ER 5.5. *Standard 7.4* provides:

Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed as a professional, and causes little or no actual potential injury to a client, the public, or the legal system.

By using the trade name or designation of "Joseph W. Charles, P.C.," "Charles Law Group," and associated web and email addresses Mr. Charles negligently engaged in the unauthorized practice of law and caused little or no actual injury to a client, the public or the legal system.

In its Prehearing Memorandum, the State Bar urges application of *Standard 8.0, Prior Discipline Orders*. On this record however, the Panel declines to apply *Standard 8.0* as Mr. Charles has not been previously sanctioned for a violation of ER 5.5(b). Although ER 5.5(a) was discussed in the Agreement for Discipline by Consent in PDJ 2012-9055, the Panel notes the Agreement does not reflect a violation of ER 5.5. Instead, Mr. Charles violated Rule 72(a), because of his failure to notify his

clients and others of his suspension. A Rule 72 violation is not alleged in this instant matter.

*Standard 6.0 Violations of Duties Owed the Legal System* is applicable to Mr. Charles' only if a violation of ER 8.4(d) occurred. *Standard 6.24* provides:

Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

If, under these circumstances, by using the trade name "Charles Law Group" and email address of "LawOffice@JoeCharles.com" while suspended, Mr. Charles undermined the self-regulating ability of the legal profession, then he caused little or no actual or potential injury to a party or interference with a legal proceeding. The Panel declines to find a violation of ER 8.4(d), as it does not believe Mr. Charles' misconduct rose to the level of an ethical violation. We do not ignore the Attorney Probable Cause Committee's decision in the companion case involving Mr. Short, File No. 13-2238.<sup>3</sup> However the Hearing Panel concludes that if we had found such a violation of ER 8.4(d), it at worst was negligent and would not aggravate the sanction or warrant significant discipline as urged by the State Bar.

*Standard 9.0, Aggravating and Mitigating Factors*

In general, after ethical rule violations have been established, aggravating and mitigating circumstances attach and those factors may justify an increase or decrease in the degree of discipline to be imposed. *Standards 9.1, 9.2.* In attorney discipline

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<sup>3</sup> An Order of probation (LOMAP and fee arbitration) was imposed on December 20, 2013 for violating ERs 5.4(a), 5.5(a), 8.4(d).

proceedings, aggravating factors need only be supported by reasonable evidence. *In re Matter of Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004).

Aggravating factors

The Panel finds the evidence supports the existence of the following aggravating factors:

9.22(a) prior disciplinary offenses; and

9.22(i) substantial experience in the practice of law. Respondent has practiced law in Arizona since September 23, 1972.

Mitigating factors

The Panel finds the following mitigating factors are present:

9.32(d) timely good faith effort to make restitution or to rectify consequences of misconduct. Mr. Charles and his staff corrected the domain and e-mail issues after it was brought to his attention during his deposition in his reinstatement matter that those designation were considered improper.

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

9.32(l) remorse. At hearing, Respondent expressed genuine remorse for his misconduct. He testified he did not profit from the fees generated by the firm during his period of suspension and his primary motive in his rental agreement with Mr. Short was to maintain employment for the firms' longstanding employees. We find this to be true.

**VII. CONCLUSION**

The Panel has weighed the facts and circumstances in this matter and has considered the applicable *Standards* including the aggravating and mitigating factors.

**IT IS ORDERED** admonishing Mr. Charles.

**IT IS FURTHER ORDERED** that Mr. Charles shall pay costs associated with these disciplinary proceedings pursuant to Rule 60(b), Ariz.R.Sup.Ct.

An Order of Admonition will follow.

**DATED** this 18<sup>th</sup> day of August, 2014.

*William J. O'Neil*

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

**CONCURRING**

*Betty J. Davies*

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**Betty J. Davies Volunteer Public Member**

*Richard A. Cruz*

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**Richard A. Cruz, Volunteer Public Member**

COPY of the foregoing e-mailed/mailed  
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