

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**RICHARD M. SWARTZ,**  
**Bar No. 026120**

Respondent.

**PDJ 2021-9047**

**DECISION AND ORDER  
IMPOSING SANCTIONS**

State Bar No. 20-2285, 20-2616, & 21-0747

**FILED September 16, 2021**

The State Bar of Arizona filed a three-count complaint against Respondent Richard M. Swartz on June 17, 2021. On June 17, 2021, the complaint was served on Respondent by certified, delivery-restricted mail, as well as by regular first-class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. A notice of default was issued on July 16, 2021 due to Respondent's failure to file an answer or otherwise defend. Respondent did not respond to the notice of default. As a result, the default became effective on July 30, 2021, at which time notice of an aggravation/mitigation hearing via Zoom was sent to all parties.

On August 25, 2021, a hearing panel comprised of Presiding Disciplinary Judge Margaret H. Downie, attorney member George A. Riemer, and public member Nance A. Daley heard argument and considered the record before it. Exhibits 1-13 were admitted into evidence. Bar Counsel Kelly J. Flood appeared on behalf of the State Bar. Mr. Swartz was not present at the time set for hearing, and the hearing initially proceeded without

him, with Ms. Flood presenting the State Bar's recommendation and answering questions from the panel. After Ms. Flood was excused from the Zoom call, the panel was informed that Mr. Swartz was waiting to join the proceedings. Ms. Flood returned, the hearing was re-opened, and Mr. Swartz made a presentation that included some mitigating circumstances. Thereafter, bar counsel recommended that the hearing panel impose a long-term suspension. Mr. Swartz agreed that a suspension would be appropriate and expressed remorse for his conduct.

By virtue of the default, the facts set forth in the State Bar's complaint have been deemed admitted, as reflected in the following findings of fact.

#### **FINDINGS OF FACT**

1. Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on March 2, 2009.
2. On June 9, 2020, Respondent was administratively suspended for non-payment of dues.

#### **COUNT ONE (File no. 20-2285/Levitt)**

3. Respondent represented Jorge Ramirez in criminal proceedings, including a trial after which Ramirez was convicted. Attorney Harriette Levitt (Levitt) was appointed as post-conviction relief (PCR) counsel for Ramirez on April 23, 2020.

4. Levitt contacted Respondent on multiple occasions to obtain the client file. Respondent responded and repeatedly promised to provide the file, but he failed to do so.

5. On July 8, 2020, Levitt filed a motion with the trial court regarding the case status and explained her inability to obtain the client file. The court set a status conference for October 1, 2020, after which it issued an order that Respondent immediately turn over his file and set a contempt hearing for October 13, 2020 if Respondent did not comply.

6. Respondent did not provide the file. On October 12, 2020, the trial court issued a minute entry vacating the contempt hearing and noting that the summons to Respondent was returned "unserved with a notation that Mr. Swartz resided in Pennsylvania indefinitely."

7. On October 20, 2020, Respondent contacted intake counsel to say that he would forward the file, but he did not do so.

8. Respondent admitted in his response to the Bar that he did not forward the client file. He asserted that a combination of marital strife and dissolution proceedings, health problems, and a lack of income prevented him from being able to forward approximately 600 pages of file materials.

9. Respondent said he could not afford to forward the file, had considered borrowing money from family to do so, and was sincere every time he promised he was going to send the file.

10. Respondent noted that he took a job as a line cook to earn money to take care of his various financial obligations, and he apologized to Levitt, the client, the court, and the Bar.

11. By engaging in the conduct described above, Respondent violated ER 1.16, ER 3.4(c), and ER 8.4(d).

**COUNT TWO (File no. 20-2616/Rothstein )**

12. Heather Rothstein (Rothstein) was an opposing party in a family law case. On December 1, 2020, she received a demand letter by email from Respondent, who purported to represent Rothstein's husband. Rothstein checked Respondent's profile on azbar.org, noticed he was suspended, and submitted a charge.

13. Bar Counsel sent Respondent a screening letter on December 8, 2020. He did not submit a timely response. Bar Counsel sent a reminder and received a response on April 12, 2021.

14. Respondent admits that he sent the email to Rothstein. He explains:

I do not wish to delay any further but am at a loss on how to proceed. To answer the allegations, I did send the email to the complainant on behalf of her ex-husband. My involvement was limited to that email and limited conversations with her husband. It is an inexcusable lapse in judgment. This was due solely to economic distress coupled but as I just wrote that is no excuse. I am now employed in the food service industry outside of Arizona. I will not contest any sanctions as they would be appropriate.

15. By engaging in the conduct described above, Respondent violated ER 5.5, ER 8.4(c) and 8.4(d).

**COUNT THREE (File no. 21-0747/State Bar of Arizona )**

16. The Attorney Discipline Probable Cause Committee entered an Order of Diversion on October 30, 2019 in State Bar Case No. 19-0507. The terms of Diversion included that Respondent undergo an assessment by the State Bar's Member Assistance Program (MAP) and follow all recommendations.

17. Although Respondent delayed in obtaining his evaluation, he finally did so on August 11, 2020, and diversion terms were drafted in conformance with the evaluator's recommendations. The Compliance Monitor emailed diversion terms to Respondent on September 11, 2020. Respondent indicated in an email that he agreed to the terms.

18. However, Respondent failed to (a) return a signed copy of the MAP terms to the Compliance Monitor, (b) inform the Compliance Monitor of his chosen health care providers to obtain a psychiatric evaluation and attend counseling, (c) confirm that he

obtained the evaluation and was attending counseling, and (d) confirm for the Compliance Monitor that he was attending AA meetings for six months.

19. The Compliance Monitor emailed Respondent on September 22, 2020, and again on October 23, 2020, to remind of his need to comply, and stated she was referring the matter to Bar Counsel. Respondent did not respond further to the Compliance Monitor or otherwise provide evidence that he had complied with the terms of diversion.

20. Bar Counsel emailed Respondent on November 2, 2020, to remind him of the need to comply with this and another diversion matter. On November 12, 2020, Respondent responded as follows:

As you might expect, my dues suspension and my difficulty obtaining counseling is both monetary based, further aggravated by health issues. Without going into great detail, I practice almost exclusively in criminal defense, the amount of clients' dropped due to a decline in filing in Cochise County as well as the opening off a 3rd indigent defense office and lack of ability for client to pay. At the same time I developed an ulcer which wouldn't clear with normal prescription medication - ultimately the lack of income and the prospect of surgery which needs assisted recovery combined with a pending eviction from my apartment for failure to pay rent led me to relocate to the East Coast to live with family until I and successfully enroll in their state healthcare so I can get the surgery and counseling ordered. In the meantime, it's difficult to accomplish counseling. I am applying to local supermarkets and businesses to try to save enough money to pay my dues because I do take this seriously and have every intention of completing the diversion requirements. What I can do is begin attending the 5 required AA meetings and provide you proof of attendance.

21. Bar Counsel responded by attaching a duplicate copy of the unsigned MAP terms, and noting:

Mr. Swartz – you have not addressed the outstanding MAP issues in 19-0507. Ms. Penar states that she has not received the signed copy of the attached terms, nor an update regarding whether you found providers for the two mental health terms, a practice monitor, and started attending AA. You can attend virtually due to COVID 19. However, it appears you won't have enough time to complete all the terms before the file is due to close in April. You were ordered to get an psych evaluation and attend counseling for six months. Please advise if you have already commenced compliance with these terms.

22. Respondent did not provide a further response on this issue. Additionally, although Respondent stated he relocated to “the East Coast,” he has not updated his address with the State Bar.

23. By engaging in the conduct described above, Respondent violated ER 8.4(d) and Rule 54(e).

### CONCLUSIONS OF LAW

Clear and convincing evidence establishes that Respondent violated the following rules: ER 1.16, ER 3.4(c), and ER 8.4(d) (Count One), ER 5.5, ER 8.4(c) and 8.4(d) (Count Two), and ER 8.4(d) and Rule 54(e) (Count Three).

### SANCTION

Sanctions imposed against lawyers “shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* (“Standards”).” Rule 58(k), Ariz. R. Sup. Ct. In fashioning a sanction, the hearing panel considers the following factors: (1) the duty violated; (2) the lawyer’s mental state; (3) the actual or potential injury caused by the lawyer’s misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0*.

**Duties violated:**

Respondent violated duties owed to clients by violating ER 1.16, ER 5.5, and ER 8.4(d). He violated his duties to the legal system by violating ER 8.4(d). Respondent also violated his duties owed as a professional by violating ER 8.4(c), and Rule 54(e).

**Mental State and Injury:**

Although Respondent's conduct was intentional, it is mitigated somewhat by personal and emotional problems he was experiencing. His conduct in Count One implicates *Standards* 4.4 (Lack of Diligence) and 4.1 (Failure to Preserve the Client's Property).

*Standard* 4.42 provides that suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standard* 4.12 states that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

In Count Two, by undertaking representation of a client while suspended, and failing to tell the client he was suspended, Respondent's conduct implicates *Standard* 4.6 (Lack of Candor). *Standard* 4.62 provides that suspension is generally appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client. Respondent acknowledges that he knowingly undertook representation of a client while



suspended because of “economic distress.” Doing so resulted in the client at least initially believing he had retained counsel to protect his interests, until Respondent’s suspension came to light.

In Count Three, Respondent failed to comply with the terms of a diversion order. *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. Here, Respondent failed to fully comply with a diversion order and ceased responding to the Bar regarding compliance with diversion.

The hearing panel next considers the existence of aggravating or mitigating factors – both of which must be supported by reasonable evidence. *In re Abrams*, 227 Ariz. 248, 252 (2011). The following aggravating factors have been established by reasonable evidence:

1. 9.22(b) dishonest or selfish motive: Respondent acknowledges that he practiced law while suspended due to “economic distress.”
2. 9.22(d) multiple offenses: Respondent violated multiple ethical rules in three different matters, involving three different complainants.
3. 9.22(h) vulnerability of the victim: Respondent failed to provide the file for a client who is incarcerated and who needed the file for post-trial proceedings.

4. 9.22(i) substantial experience in the practice of law: Respondent was admitted to practice in 2009.

The record establishes the existence of the following mitigating factors:

1. 9.32(a) absence of a prior disciplinary record.
2. 9.32(c) personal or emotional problems.
3. 9.32(l) remorse.

After weighing the aggravating factors against the mitigating factors, the presumptive sanction of suspension remains appropriate.

### CONCLUSION

The purpose of lawyer discipline is to protect the public and the administration of justice, as well as to deter both the respondent attorney and members of the bar at large from engaging in the same or similar misconduct. *In re Zawada*, 208 Ariz. 232, 236 (2004). Attorney discipline also aims “to instill public confidence in the Bar’s integrity.” *In re Phillips*, 226 Ariz. 112, 117 (2010).

For the foregoing reasons, the hearing panel orders as follows:

- a) Respondent shall be suspended for a period of two years, effective immediately.

b) Respondent shall pay all costs and expenses incurred by the State Bar.  
There are no costs or expenses incurred by the Office of the Presiding  
Disciplinary Judge in this proceeding.

A final judgment and order will follow.

**DATED** this 16<sup>th</sup> day of September, 2021.

/s/ signature on file  
Margaret H. Downie, Presiding Disciplinary Judge

/s/ signature on file  
George A. Riemer, Attorney Member

/s/ signature on file  
Nance A. Daley, Public Member

Copy of the foregoing emailed  
this 16<sup>th</sup> day of September, 2021, to:

Richard M. Swartz  
4250 E Foothills Drive Unit 2009A  
Sierra Vista, AZ 85635-4378  
Email: richardm.swartz@gmail.com  
Respondent

Kelly Flood  
Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> St., Suite 100  
Phoenix, Arizona 85016-6266  
Email: LRO@staff.azbar.org

by: MSmith

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**RICHARD M. SWARTZ,**  
**Bar No. 026120**

Respondent.

**PDJ 2021-9047**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 20-2285, 20-2616,  
21-0747]

**FILED SEPTEMBER 30, 2021**

The hearing panel issued its decision on September 16, 2021 imposing a two-year suspension and the payment of costs. No appeal has been filed pursuant to Rule 59, Ariz. R. Sup. Ct. The State Bar filed its Statement of Costs and Expenses on September 20, 2021 pursuant to Rule 60(d). No objection has been filed.

**IT IS THEREFORE ORDERED** that Respondent **RICHARD M. SWARTZ, Bar No. 026120**, is suspended from the practice of law in Arizona for a period of two years effective September 16, 2021, for his conduct in violation of the Arizona Rules of Professional Conduct as set forth in the hearing panel's decision.

**IT IS FURTHER ORDERED** that Respondent comply with the requirements relating to notification of clients and others and file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

**IT IS FURTHER ORDERED** that Respondent shall pay the costs and expenses of the State Bar of Arizona in the sum of \$2,000.00. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

**DATED** this 30th day of September 2021.

Margaret H. Downie  
**Margaret H. Downie**  
**Presiding Disciplinary Judge**

COPY of the foregoing e-mailed  
on this 30th day of September 2021, to:

Richard M. Swartz  
4250 E. Foothills Drive, Unit 2009A  
Sierra Vista, AZ 85635-4378  
Email: [richardm.swartz@gmail.com](mailto:richardm.swartz@gmail.com)  
Respondent

Kelly Flood  
Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> St., Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: SHunt