

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

ANTHONY GUY SALVADOR,
Bar No. 030974

Respondent.

PDJ 2019-9057

**FINAL JUDGMENT AND
ORDER OF SUSPENSION**

[State Bar No. 19-0896]

FILED NOVEMBER 15, 2019

This matter came for hearing before the hearing panel which rendered its Decision and Order Imposing Sanctions (Decision) on October 23, 2019, ordering suspension, a MAP assessment prior to applying for reinstatement, and costs. The Decision of the hearing panel is final under Rule 58(k), Ariz. R. Sup. Ct. No appeal has been filed pursuant to Rule 59(a), Ariz. R. Sup. Ct., and the time to appeal having expired,

IT IS ORDERED suspending Respondent, **ANTHONY GUY SALVADOR, Bar No. 030974**, from the practice of law for six (6) months and one (1) day effective November 22, 2019 for his conduct in violation of the Arizona Rules of Professional Conduct.

IT IS FURTHER ORDERED prior to applying for reinstatement, Mr. Salvador shall submit to a Member Assistance Program evaluation by Dr. Lett or other such doctor as approved by the State Bar.

IT IS FURTHER ORDERED Mr. Salvador shall comply with the requirements relating to notification of clients and others and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED Mr. Salvador shall pay the costs and expenses of the State Bar of Arizona totaling \$2,000.00 pursuant to Rule 60(b), Ariz. R. Sup. Ct. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

DATED this 15th day of November 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
This 15th day of November 2019 to:

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Anthony Guy Salvador
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Respondent

by: BEnsign

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**ANTHONY GUY SALVADOR,
Bar No. 030974**

Respondent.

PDJ 2019-9057

**DECISION AND ORDER
IMPOSING SANCTIONS**

State Bar No. 19-0896

FILED OCTOBER 23, 2019

SUMMARY

Anthony Guy Salvador while under LOMAP terms of probation after entry of an admonition delayed filing an answer for a client and default was entered and effective. His motion to set aside the default was denied on December 11, 2018. On January 29, 2019 default judgment was entered against his clients. Mr. Salvador did not communicate the denial of the motion or the entry of default judgment with his clients. He admitted to his clients that the default occurred because of his error. He settled with his clients by offering to pay them an agreed upon sum. His check was returned for insufficient funds and his client charged bank fees. He later paid the settlement and bank charges in full. He violated ERs 1.2(scope of representation), 1.3 (diligence), 1.4 (communication), 3.2 (expediting litigation), and 8.4(d) (conduct prejudicial to the administration of justice).

PROCEDURAL HISTORY

The State Bar of Arizona (“SBA”) filed its complaint on August 20, 2019. On August 22, 2019, the complaint was served on Mr. Salvador by certified, delivery restricted mail, and by regular first-class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. Mr. Salvador filed no answer or otherwise defend against the complaint’s allegations and default was properly entered on October 7, 2019, at which time a notice of aggravation and mitigation hearing was sent to all parties notifying them of the scheduled aggravation mitigating hearing. On October 23, 2019, the Hearing Panel comprised of the Presiding Disciplinary Judge, William J. O’Neil, voluntary attorney member, Glen S. Thomas, and volunteer public member, Richard L. Westby, heard the matter and considered the evidence. Exhibits 1-9 were admitted.

FINDINGS OF FACT

The facts listed below are set forth in the SBA’s complaint and deemed admitted by Mr. Salvador’s default or supported by the exhibits. Where inconsequential allegations contradict the objective exhibits, we rely on those exhibits.

1. Mr. Salvador was a lawyer licensed to practice law in Arizona having been first admitted to practice in Arizona on February 05, 2014.

COUNT ONE (File no. 19-0896/John Woodruff)

2. The Woodruffs retained Mr. Salvador to represent them and an entity they control in a commercial lease dispute in which a lawsuit had been filed on August 23, 2018. They retained Mr. Salvador on August 30, 2018, for a flat fee of \$2,500 for a limited scope representation to attempt settlement negotiations to avoid extensive litigation. (Ex. 4, SBA000015-17).

3. Mr. Salvador stated he immediately contacted opposing counsel and began settlement negotiations. (Ex. 4, SBA000010) No settlement was reached. (Id.) Opposing counsel applied for default on October 2, 2018. (Ex. 8, SBA000035-38).

4. On Monday, October 8, 2018, before the default was effective, Mr. Salvador entered into a new engagement agreement with the Woodruffs that enlarged the scope to authorize Mr. Salvador to file a Notice of Limited Scope Appearance and an Answer or other responsive pleading. (Ex. 4, SBA000019-22).

5. Under Rule 55, Ariz. R. Civ. P., the default became effective on October 16, 2018. Mr. Salvador requested no extension of time to file an answer. On Wednesday, October 17, 2018, Mr. Salvador filed an Answer. (Ex. 8, SBA000039-46). Opposing counsel moved to strike the answer as untimely, and Mr. Salvador responded. (SBA000047-55). On November 6, 2018, the Court denied the motion to strike without prejudice and ordered Mr. Salvador to file a Motion to Set Aside Default within 10 days. (Ex. 8, SBA000058).

6. Mr. Salvador filed the Motion to Set Aside Default on November 7, 2018, arguing excusable neglect based on ongoing settlement discussions. (Ex. 8, SBA000059-63). Opposing counsel responded and demonstrated that Mr. Salvador had been informed of the entry of default and done nothing between that entry and its effective date. (Id. SBA000064-67). Mr. Salvador timely replied. (Ex. 8, SBA000064-84). On December 11, 2018, the Court denied the motion to set aside the default, finding that Mr. Salvador had failed to establish excusable neglect. (Ex. 8, SBA000085).

7. On January 29, 2019, the Court entered a default judgment against the Woodruffs and their entity for \$65,914.47, attorneys' fees of \$1,900, and costs. (Ex. 8, SBA000086-87).

8. Mr. Salvador acknowledged that he erred in not timely responding to the complaint or securing an extension. Mr. Salvador further acknowledged that he was not prompt in informing the Woodruffs that the Court denied the motion to set aside the default or that the default had been entered against them. (Ex. 4, SBA000009-13).

9. In their bar charge the Woodruffs asserted that Mr. Salvador did not communicate with them and they were originally unaware that a default judgment had been entered against them and their entity. (Ex. 1). The Woodruffs said that after Mr. Salvador acknowledged that the default occurred because of his error, Mr.

Salvador promised to pay half of what was owed on the judgment. (Ex. 1, SBA000003). The Woodruffs ultimately settled with Mr. Salvador regarding what Mr. Salvador would pay them. (Id., Ex. 6, SBA000032-33).

10. The Woodruffs reported that a settlement check they received from Mr. Salvador was returned for insufficient funds, for which they were charged bank charges. They indicated that Mr. Salvador provided another check that included the bank charges. (Ex. 6, SBA000032). Ultimately Mr. Salvador paid his clients the funds agreed upon plus the fees and charges they incurred from the insufficient check.

11. Mr. Salvador has asserted that he was having personal difficulties (Id.) and is undergoing medical treatment for multiple mental health issues (Ex. 4).

12. In his response to the State Bar regarding the charge of his clients, Mr. Salvador admitted he violated ERs 1.3, 1.4, and 8.4(d). He denied he violated ERs 1.2 and 3.2. (Ex. 4, SBA000011-12).

CONCLUSIONS OF LAW

The Hearing Panel finds by clear and convincing evidence that Mr. Salvador violated: Rule 42, Ariz. R. Sup. Ct., specifically ER 1.2 ~ Scope of Representation and Allocation of Authority between Client and Lawyer, ER 1.3 ~ Diligence, ER 1.4 ~ Communication, ER 3.2 ~ Expediting litigation, ER 8.4(d) ~ Conduct Prejudicial to the Administration of Justice.

Mr. Salvador denied in his response to the State Bar that he violated either ER 1.2 or ER 3.2. A lawyer who fails to carry out the objectives of a representation chosen by the client violates Rule 1.2. *See, e.g., In re Hagedorn*, 725 N.E.2d 397 (Ind. 2000). Mr. Salvador was hired specifically to file an answer or other responsive pleading to ensure settlement or the ability to litigate the matter. He failed to carry out that objective in violation of ER 1.2.

While ER 1.3 sets forth the general requirement that lawyers “act with reasonable diligence and promptness in representing a client,” ER 3.2 specifically requires lawyers to attempt to “expedite litigation.” Lawyers who fail to make reasonable efforts to do so are subject to discipline. *See People v. Maynard*, 238 P.3d 672 (Colo. O.P.D.J. 2009) Rule 3.2 requires that a lawyer prosecute or defend a client’s claim without undue delay. This means all necessary filings and service must be made promptly. *See In re Kimbrough*, 685 S.E.2d 713 (Ga. 2009). Mr. Salvador was specifically hired to expeditiously file an answer or responsive pleading. He failed to do so in violation of ER 3.2.

ABA STANDARDS ANALYSIS

The American Bar Association’s *Standards for Imposing Lawyer Sanctions* (“Standards”) are a “useful tool in determining the proper sanction.” *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should be considered: (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:

Mr. Salvador violated his duty to his clients, the legal system, and his duties owed as a professional by violating ERs 1.2, 1.3, 1.4, 3.2, and 8.4(d).

Mental State and Injury:

Mr. Salvador violated his duty to clients by failing to act timely to protect the interests of his clients and failing to communicate promptly with them when he had missed a deadline, implicating *Standard 4.4 Diligence*. *Standard 4.42* provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury.

Mr. Salvador's conduct also implicates *Standard 6.2, Abuse of the Legal Process*. *Standard 6.23*, provides that a reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury to the client or other party. Mr. Salvador failed to comply with the Arizona Rules of Civil Procedure. He failed to timely file an answer in violation of Rule 12(a)(1)(A), Ariz. R. Civ. P. Mr. Salvador also failed to timely answer or otherwise defend after the application for default was filed. *See Rule 55(a)(5), Ariz. R. Civ. P.*

The clients were actually harmed because a default judgment was entered against them. The opposing party and the Court were burdened by Mr. Salvador's

untimely filing, which resulted in the subsequent motion to strike and motion to set aside default, which needlessly protracted the proceedings.

AGGRAVATING AND MITIGATING FACTORS

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

1. 9.22(a) prior disciplinary offenses. Mr. Salvador is currently on LOMAP terms of probation for violations of ERs 1.15(e), 1.16(d), and 1.5(a). Mr. Salvador (and his former partner Delano Phillips (17-3180)) were admonished for retaining unused fees and/or applying them to other matters without client consent. Mr. Salvador and his former partner were ordered to participate in LOMAP, and to pay restitution to several clients. The State Bar filed a Motion to Extend Probation on September 30, 2019, because Mr. Salvador had not finished paying restitution to one client; and
2. 9.22(d) multiple offenses. Mr. Salvador violated ERs 1.2, 1.3, 1.4, 3.2, and 8.4(d).

The Hearing Panel finds the following mitigating factors apply:

1. 9.32(c) personal or emotional problems. Mr. Salvador asserts in his response that he was experiencing mental health issues that contributed to his misconduct, and especially to his failure to promptly communicate with his clients. Mr. Salvador acknowledged that he was initially embarrassed to admit

to his clients that he had failed them and is presently undergoing medical treatment for multiple mental health issues; [Ex. 4]

2. 9.32(d) timely good faith effort to make restitution or to rectify consequences of misconduct. Mr. Salvador settled with his clients and paid his clients a mutually acceptable amount; and
3. 9.32(l) remorse. Mr. Salvador apologized to his clients and has expressed sincere remorse for his violations of his duties.

The Hearing Panel finds that suspension is the appropriate sanction.

PROPORTIONALITY

In the past, the Supreme Court has consulted similar cases to assess the proportionality of the sanction recommended. *See In re Struthers*, 179 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept of proportionality review is “an imperfect process.” *In re Owens*, 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases “are ever alike.” *Id.*

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases factually similar. *See In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778

(citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

Mr. Salvador is on probation. He completed LOMAP terms that determined the checks and balances and calendaring systems were in already in place. Under such circumstances, negligence is absent. “Knowingly” is defined by ER 1.0(f). It “denotes actual knowledge of the fact in question” and may be inferred from circumstances. Under the ABA *Standards*, “Knowledge” is defined as the “conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” Mr. Salvador acted knowingly. “Generally, suspensions should be for a period of time equal to or greater than six months” ABA *Standard* 2.3.

CONCLUSION

The Supreme Court “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. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation 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).

The Hearing Panel has determined the appropriate sanction based on the record, application the *Standards*, and the goals of the attorney discipline system.

IT IS ORDERED,

1. Anthony Guy Salvador shall be suspended from the practice of law for six (6) months and one (1) day, effective thirty days from the date of this order.
2. Mr. Salvador shall pay all costs and expenses incurred by the SBA. There are no costs associated with the Office of the Presiding Disciplinary Judge.
3. Prior to applying for reinstatement, Mr. Salvador shall undergo a Member's Assistance Program evaluation by Dr. Lett or such other doctor as approved by the State Bar.

A final judgment and order shall follow.

DATED this 23rd day of October 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Glen S. Thomas

Glen S. Thomas, Volunteer Attorney Member

Richard L. Westby

Richard L. Westby, Volunteer Public Member

Copy of the foregoing emailed
this 23rd day of October, 2019/
mailed this 24th day of October, to:

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by: BEnsign

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

AUG 20 2019

FILED

BY  _____

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**ANTHONY GUY SALVADOR,
Bar No. 030974,**

Respondent.

PDJ 2019-9057

COMPLAINT

[State Bar No. 19-0896]

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 February 5, 2014.

COUNT ONE (File no. 19-0896/Woodruff)

2. The Woodruffs retained Respondent to represent them and an entity they control in a commercial lease dispute in which a lawsuit had been filed on August 23, 2018. They retained Respondent on August 30, 2018, for a flat fee of \$2,500 for a limited scope representation to attempt settlement negotiations to avoid extensive litigation.

3. Respondent stated he immediately contacted opposing counsel and began settlement negotiations. No settlement was reached. Opposing counsel filed an Application for Default on October 2, 2018. Respondent did not request an extension of time to file an answer.

4. On October 8, 2018, Respondent entered into a new engagement agreement with the Woodruffs that enlarged the scope to authorize Respondent to file a Notice of Limited Scope Appearance and an Answer or other responsive pleading.

5. On October 17, 2018, Respondent filed an Answer. Opposing counsel filed a motion to strike the answer as untimely, and Respondent responded. On November 6, 2018, the Court granted the motion to strike, and ordered Respondent to file a Motion to Set Aside Default within 10 days.

6. Respondent filed the Motion to Set Aside Default on November 11, 2018, arguing excusable neglect based on ongoing settlement discussions. Opposing counsel responded, and Respondent replied.

7. On December 11, 2018, the Court denied the motion to set aside the default, finding that Respondent had failed to establish excusable neglect.

8. On January 29, 2019, the Court entered a default judgment against the Woodruffs and their entity for \$65,914.47, attorneys' fees of \$1,900, and costs.

9. The Woodruffs asserted that Respondent did not communicate with them and they were originally unaware that a default judgment had been entered against them and their entity.

10. The Woodruffs said that after Respondent acknowledged that the default occurred because of his error, Respondent promised to pay half of what was owed on the judgment. The Woodruffs ultimately reached an agreement with Respondent regarding what Respondent would pay them.

11. The Woodruffs reported that a settlement check they received from Respondent was returned for insufficient funds, for which they were charged bank fees and incurred other charges. They indicated that Respondent provided another check that included the bank charges as well.

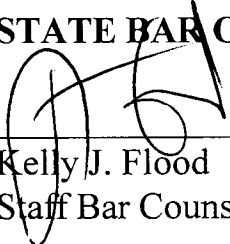
12. Respondent acknowledged that he erred in not timely responding to the complaint or securing an extension. Respondent further acknowledged that he was not prompt in informing the Woodruffs that the Court denied the motion to set aside the default or that the default had been entered against them.

13. Respondent has asserted that he was having personal difficulties at the time.

14. Respondent violated Rule 42, Ariz.R.Sup.Ct., ERs 1.2, 1.3, 1.4, 3.2, and 8.4(d).

DATED this 20th day of August, 2019.

STATE BAR OF ARIZONA



Kelly J. Flood
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 20th day of August, 2019.

by: 

KLF:js

**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

FILED

AUG 09 2019

BY 

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

No. 19-0896

**ANTHONY GUY. SALVADOR
Bar No. 030974**

PROBABLE CAUSE ORDER

Respondent.

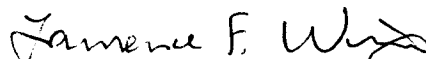
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on August 9, 2019, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 7-0-2¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 19-0896.

IT IS THEREFORE ORDERED pursuant to Rule 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 9 day of August, 2019.



Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

¹ Committee members Robert Page and Brent Vermeer did not participate in this matter.

Original filed this ____ day
of August, 2019, with:

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of August, 2019, to:

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