

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

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

**ANTHONY J. WIGGINS,
Bar No. 010523**

Respondent.

PDJ-2013-9117

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar No. 13-0306]

FILED FEBRUARY 27, 2014

The State Bar of Arizona ("SBA") filed its complaint on December 9, 2013. Notice of Service of the Complaint was filed on December 10, 2013. Given Mr. Wiggins's failure to file an answer or otherwise defend against the complaint, a notice and entry of default was properly issued on January 7, 2014. That notice cautioned him that "An effective entry of default shall not be set aside except in cases where such relief would be warranted under Rule 60(c) of the Arizona Rules of Civil Procedure." The default was effective on January 28, 2014.

A notice was filed on January 28, 2014, and sent to all parties notifying them that the aggravation/mitigation hearing was scheduled for February 10, 2014, at 9:30 a.m. at 1501 West Washington, Room 109, Phoenix, Arizona 85007-3231. That notice again cautioned Mr. Wiggins that "[d]efault shall not be set aside except in cases where such relief would be warranted under Rule 60(c) of the Arizona Rules of Civil Procedure." Mr. Wiggins' failure to answer is deemed an admission to

the allegations contained within the complaint pursuant to Rule 58(d), Ariz. R. Sup. Ct.

On February 10, 2014, the Hearing Panel ("Panel"), composed of James Marovich, attorney member, Jan Enderle, public member, and William J. O'Neil, the Presiding Disciplinary Judge ("PDJ") held the hearing.¹ The Panel carefully considered the Complaint, the State Bar's Pre-hearing Statement, testimony including that of Mr. Wiggins, and admitted exhibits.² The Panel now issues the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz. R. Sup. Ct.

I. SANCTION IMPOSED

MR. WIGGINS IS SUSPENDED FOR THREE (3) MONTHS. RESTITUION AND COSTS OF THESE DISCIPLINARY PROCEEDINGS ORDERED.

II. BACKGROUND AND PROCEDURAL HISTORY

Mr. Wiggins is a lawyer licensed to practice law in the state of Arizona. He was first admitted to practice in Arizona on November 9, 1985. The SBA filed its complaint on December 9, 2013. On December 10, 2013, the complaint was served on Mr. Wiggins by certified, delivery-restricted mail, and by regular first class mail, pursuant to Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct. As a result of Mr. Wiggins's default, the following facts are deemed admitted as set forth in the

¹ Consideration was given to sworn testimony of Richard Dominguez and Mary Villanueva and Mr. Wiggins.

² We note that on Friday February 7, 2014, Mr. Wiggins requested by email a new hearing date, claiming he was conflicted by another hearing he had in the Superior Court of Pima County. Despite knowing of both hearing dates for at least over a week, Mr. Wiggins inexplicably waited until the eve of trial before making his email request. This last minute maneuver further illustrates Mr. Wiggins's troubling delay and inaction. The conflict was resolved that date in accordance with Civil Rule 38.1(k) by joint orders between the courts.

SBA's single count complaint, alleging violations of the following Arizona Rules of Professional Conduct: 1.3, 1.4, 1.5(a), 1.15(d), 8.1(b), and Rule 54(d)(1) and (2).³

III. FINDINGS OF FACT

COUNT ONE (File no. 13-0306/Dominguez)

Richard Dominguez was injured in a motor vehicle collision on January 6, 2005, and sought Mr. Wiggins to represent him on a contingent fee basis. (See Bates No. 5). Mr. Wiggins apparently believed that Mr. Dominguez's claims exceeded \$50,000.00, but he settled with State Farm Ins. Co. over a year and a half after the collision for \$9,750.00. (See Bates Nos. 9, 19). Seemingly consistent with the pattern of Mr. Wiggins's practice, his failure to provide timely medical lien information to State Farm resulted in a nearly three-year delay before collection of the settlement check.⁴ (See Bates No. 99). It took another four months for Mr. Wiggins to finally deposit the check into his IOLTA. (See Bates No. 111-14).

From the settlement check, Mr. Wiggins paid himself a one-third fee and costs (\$3,404.96) and left Mr. Dominguez with \$2,345.04. The remaining \$4,000, central to the case here, was held in Mr. Wiggins's IOLTA in reserve for the payment of purported healthcare provider or payor liens. (See Bates No. 111-14).

³ It should be noted that Mr. Wiggins may have even violated additional ERs during his short visit for the hearing. For example, prior to the hearing commencing, Mr. Wiggins confronted Mr. Dominguez and Ms. Villanueva, the parties that brought the complaint against Mr. Wiggins. More concerning is Mr. Wiggins's likely violation of ER 3.3 (candor toward the tribunal). Much of Mr. Wiggins's testimony during the hearing was false, as corroborated by admitted exhibits. For instance, Mr. Wiggins testified that he believed Mr. Dominguez was on Indian Health Services and was unaware that Mr. Dominguez was eligible for AHCCCS until at least 2009. However, the very first handwritten note in his file, dated January 28, 2005, reads "getting on AHCCCS—back to work." The approval of AHCCS for his client is effective 01/01/05 and faxed to him February 7, 2005. (See Bates No. 1-2).

⁴ Other evidence consistent with this pattern includes Mr. Wiggins's last minute motion to reschedule the aggravation/mitigation hearing, his missed calendaring in a personal injury case which was dismissed by the Superior Court, and the abundance of evidence showing untimeliness in the underlying case here.

However, the total medical charges incurred by his client were known by Mr. Wiggins to be only \$3,372.55. See Exhibit 1, Bates 21. No explanation was offered by him when questioned why he withheld \$627.55. We conclude there is no other explanation other than the inattention and negligence of Mr. Wiggins.

Mary Villanueva, Mr. Dominguez's mother, called Mr. Wiggins about once a month for status updates regarding distribution of the remaining \$4,000 to Mr. Dominguez. Mr. Wiggins failed to return many of Ms. Villanueva's calls. (Villanueva's Testimony). Furthermore, Mr. Wiggins has failed to take reasonable steps to determine whether any healthcare provider or payor liens indeed exist.⁵ We find his testimony regarding his purported monthly efforts to resolve this matter with AHCCS not credible. We are clearly convinced he has taken little to no action for years in this matter. To date, the \$4,000 remains in Mr. Wiggins's IOLTA, nearly five years after receiving the settlement check, seven and a half years since reaching a settlement, and over nine years since the vehicle collision.

Left essentially with no other options, Mr. Dominguez and Ms. Villanueva filed this matter with the SBA. Once notified of the matter, Mr. Wiggins failed to respond to the State Bar's A/CAP counsel's requests for information from February 12, 2013 to April 7, 2013. As a result, the SBA initiated formal screening on April 9, 2013. Mr. Wiggins failed to respond timely to the SBA's screening investigation by his initial and extended deadlines.

IV. CONCLUSIONS OF LAW AND DISCUSSION OF DECISION

⁵ By way of example of possible steps to take, Mr. Wiggins could have interpleaded the issue to pull possible claims from the woodworks. Alternatively, as suggested by Bar counsel, Mr. Wiggins could have subpoenaed the entities of concern to determine possible claims.

Due to Mr. Wiggins's failure to file an answer or otherwise defend against the allegations in the SBA's complaint, default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Panel finds by clear and convincing evidence that Mr. Wiggins violated the ethical rules detailed below.

ER 1.3

The Panel finds clear and convincing evidence that Mr. Wiggins violated ER 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client. During the course of the representation, Mr. Wiggins did not act diligently by failing to return reasonable client inquiries about distribution of remaining settlement funds and by failing to take reasonable steps to determine what, if any, outstanding claims on the distributed funds exist. We also note he retained more monies than there were medical charges.

ER 1.4

The Panel finds clear and convincing evidence that Mr. Wiggins violated ER 1.4, requiring a lawyer to keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. During the course of the representation, Mr. Wiggins failed to keep Mr. Dominguez reasonably informed about the status of the net settlement funds. Moreover, Mr. Wiggins failed to promptly comply with reasonable requests for information regarding the funds.

ER 1.5(a)

The Panel finds clear and convincing evidence that Mr. Wiggins violated ER 1.5, prohibiting a lawyer from charging unreasonable fees. By charging a full

contracted amount for a one-third contingent fee on the gross settlement funds and then holding and continuing to hold \$4,000 of Mr. Dominguez's net settlement funds for multiple years, Mr. Wiggins collected an unreasonable fee. His explanations for his inaction and delay are unconvincing especially when the dearth of documentation in his file is considered. Under the unique circumstances of this case, a more reasonable fee would be one-third of the remainder after a sufficient amount was set aside to satisfy possible liens. That is, from the \$9,750.00 total settlement check, \$3,372.55 should have been set aside, and Mr. Wiggins should have then collected one-third of the remainder (1/3 of 9,750 less 3,372.55). The remainder should have gone to Mr. Dominguez.

ER 1.15(d)

The Panel finds clear and convincing evidence that Mr. Wiggins violated ER 1.15(d), requiring a lawyer to promptly deliver a client's funds. Mr. Wiggins's failure to promptly deliver the funds Mr. Dominguez's was entitled to was a violation of ER 1.15(d).

Ariz. Sup. Ct. Rule 54 and ER 8.1

The Panel finds clear and convincing evidence that Mr. Wiggins violated ER 8.1(b), requiring a lawyer to respond to lawful demands for information from a disciplinary authority. Mr. Wiggins's knowing failure to provide the SBA information they requested was a violation of 8.1(b). This violation, as well as the others described above, provides a basis for disciplining Mr. Wiggins pursuant to Ariz. Sup. Ct. Rule 54, which sets forth grounds for attorney discipline. The grounds applicable here include Mr. Wiggins's violations of professional conduct rules (Rule

54(a)), his refusal to cooperate with staff of the SBA (Rule 54(d)(1)), and his failure to timely provide the SBA with requested information (Rule 54(d)(2)).

V. SANCTIONS

In determining an appropriate sanction, the Panel considered the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") as a guideline. Rule 58(k), Ariz. R. Sup. Ct. The appropriate sanction turns on the unique facts and circumstances of each case. *In re Wolfram*, 174 Ariz. 49, 59, 847 P.2d 94, 104 (1993).

Analysis Under the ABA Standards

Generally, when weighing what sanction to impose, the 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.*

Although the *Standards* do not account for multiple charges of lawyer misconduct, the sanction imposed should at least be consistent with the sanction for the most serious misconduct that has been found. *Theoretical Framework*, p. 7. Consideration is also given to the degree of harm caused by the misconduct. *Matter of Scholl*, 200 Ariz. 222, 224-225, 25, P.3d 710 (2001).

In these matters, Mr. Wiggins knowingly violated his duties owed to the legal system, his former clients, and as a professional.

Standard 4.4, Lack of Diligence, is applicable to Mr. Wiggins's violations of ERs 1.3 and 1.4. *Standard 4.42* provides:

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.

Mr. Wiggins violated ER 1.3 by failing to promptly take actions to settle the case and failed to ensure the client received all settlement funds to which he was entitled. Furthermore, Mr. Wiggins violated ER 1.4 by failing to keep his client reasonably informed regarding the status of the settlement funds and by failing to provide reasonably requested information. We have no difficulty determining Mr. Wiggins's mental state with respect to these violations because his pattern of neglect is clear from the evidence. This pattern caused injury or potential injury to Mr. Wiggins's client by depriving him of his settlement funds.

Standard 4.1, Lack of Candor, is applicable to Mr. Wiggins's violations of ERs 1.5(a)⁶ and 1.15(d). *Standard 4.12* provides:

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.

A one-third contingent fee is of itself, not an unreasonable fee. However, we find the unique facts which this case presents causes it to be unreasonable. The inaction, inattention and delay by Mr. Wiggins makes his one-third contingent fee on the gross settlement amount an unreasonable fee in violation of 1.5(a) and improper dealing of his client's property, causing actual or potential injury. After collecting his full fee from the gross settlement amount, some work was still required to ensure that his client received the remaining portion held in the IOLTA fund. Instead his disclosed file shows virtually nothing was done. There is no copy of the standard Recovery Management System Settlement Request form. There is

⁶ The SBA asserts that *Standard 4.62* is applicable to Mr. Wiggins's ER 1.5(a) violation. However, the SBA failed to show Mr. Wiggins' knowing deceit of the client.

no objective evidence of actual effort by Mr. Wiggins to resolve this issue. There is no evidence of liens by AHCCSS or any other medical provider.

We can only conclude by ensuring he was fully paid for the representation, Mr. Wiggins either knew or should have known that his motivation to remain involved in the matter would be greatly diminished. This amounts to improper dealing of client property. We find his inaction inexplicable and his explanations implausible.

Additionally, Mr. Wiggins' failure to take reasonable steps in pursuit of finalizing disbursement of the settlement funds violated 1.15(a) and amounted to an improper dealing of client property resulting in either actual or potential client harm. Moreover, Mr. Wiggins acknowledged that this type of work is a significant portion of his practice, and thus he either knew or should have known that his dealings were improper.

Standard 7.0, Violation of Duties Owed as a Professional, is applicable to Mr. Wiggins's violation of ER 8.1(b). *Standard 7.2* provides:

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.

Mr. Wiggins knowingly failed to respond to lawful demands for information from the SBA, violating 8.1(b). Moreover, this violation harmed the legal profession and the legal system. Again, we find his testimony was not credible. We have reviewed the entire file which he submitted to the SBA. There is no evidence supporting his contentions of regular communications with anyone regarding a resolution of these funds. The sworn testimony of his client, Richard Dominguez and Mary Villanueva, mother of his client was credible and frequently the opposite of Mr. Wiggins.

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Standard 9.0, Aggravating and Mitigating Factors

In attorney discipline proceedings, aggravating factors need only be supported by reasonable evidence. *In re Matter of Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). The Panel finds the evidence supports the existence of the following aggravating factors: 9.22(a) prior disciplinary offense, 9.22(c) a pattern of misconduct, 9.22(d) multiple offenses, 9.22(g) refusal to acknowledge wrongful nature of conduct, 9.22(h) vulnerability of victim; 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution.

The Hearing Panel was unable to find mitigating factors as insufficient evidence was submitted in mitigation. We considered his brief testimony regarding the unfortunate death of his wife. Little was offered regarding that unfortunate event. While we considered it, there was no context given for the nexus to be established to his conduct here. Given the extraordinary delay and inaction that the time frames involved in his conduct, it is unlikely we would have mitigated these sanctions. Notwithstanding, but for the request for a short suspension by the SBA, it is likely this Hearing Panel would have ordered a suspension of longer than six months. Perhaps the SBA has more information that resulted in its request for such a short suspension. If so, neither Mr. Wiggins nor Bar Counsel submitted it. Mr. Wiggins offered no plausible explanation for the \$4,000 which remains in his IOLTA, nearly five years after receiving the settlement check, seven and a half years since reaching a settlement, and over nine years since the vehicle collision. Again, nothing in his file corroborates his claim of repeated and consistent efforts to resolve the purported AHCCS lien. He knew that all of the medical charges equaled \$3,372.55, yet he retained \$4,000 and has no explanation for continuing to hold

that amount nor his ignoring of the repeated calls of his client. His claim that his clients did not inform him until 2009 that AHCCS was involved flies in the face of the testimony from his client's mother, his client, and was demonstrably false. His own records show he knew in 2005 that his client was on AHCCS. His conduct caused his client to be injured, and both his client's mother and his client's regard for the legal profession substantially diminished as a result and with good cause.

While we substantially defer to the SBA's request, we are troubled by the inexplicable conduct of Mr. Wiggins. We worry that the cause of his conduct remains unexplained. We remain concerned that the public and profession might be better served by requiring him to demonstrate by clear and convincing evidence his identification of the cause of his unethical conduct, his flagrant disregard for his client and, as importantly, that he has overcome whatever frailty caused his conduct.

CONCLUSION

The objective of lawyer discipline is not to punish a lawyer but, rather, to protect the public, the profession, and the administration of justice; deter similar conduct among other lawyers; preserve public confidence in the integrity of the bar; foster confidence in the legal profession and the self-regulatory process; and assist, if possible, in the rehabilitation of an errant lawyer. *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004); *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001); *In re Walker*, 200 Ariz. 155, 24 P.3d 602 (2001); *In re Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990); *In re Hoover*, 161 Ariz. 529, 779 P.2d 1268 (1989); and *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985).

The Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the appropriate sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the mitigating factors, and the goals of the attorney discipline system.

IT IS ORDERED Mr. Wiggins is suspended from the practice of law for ninety (90) days, effective thirty (30) days from the date of this Report and Order;

IT IS FURTHER ORDERED that Mr. Wiggins resolve the outstanding matter of the \$3,372.55 to ensure his client receives the funds to which he is entitled no later than thirty (30) days from the date of this Report and Order. If such cannot be completed before Mr. Wiggins's suspension becomes effective, Mr. Wiggins shall pay for new counsel's fees to resolve the issue.

TERMS OF PROBATION

IT IS FURTHER ORDERED:

1. Immediately upon reinstatement, Mr. Wiggins shall be on probation for a period of two (2) years the terms of which will include:
 - a. enrollment in and participation with the State Bar's Law Office Management Assistance Program ("LOMAP") to assure compliance with ERs 1.3 ,1.4, 1.5, and 1.15(d);
 - b. a MAP ("Member Assistance Program") assessment and up to two (2) years of follow-up on specified terms if the MAP compliance officer deems it appropriate; and
 - c. State Bar-sponsored fee arbitration with Richard C. Dominguez if Mr. Dominguez requests it.
2. A final Judgment and Order will follow.

DATED this 27th day of February, 2014.

William J. O'Neil

William J. O'Neil
Presiding Disciplinary Judge

Jan Enderle

Jan Enderle
Volunteer Public Member

James Marovich

James Marovich
Volunteer Attorney Member

Original filed with the Disciplinary Clerk
this 27th day of February, 2014.

Copy of the foregoing emailed/hand-delivered
this 27th day of February, 2014, to:

David L. Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Mr. Anthony J. Wiggins
7400 N. Oracle Rd., Ste 323
Tucson, AZ 85704-6341
Email: tony.wigginslaw@hotmail.com
Respondent

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: MSmith

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

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

**ANTHONY J. WIGGINS,
Bar No. 010523**

Respondent.

PDJ-2013-9117

FINAL JUDGMENT AND ORDER

[State Bar No. 13-0306]

FILED MARCH 21, 2014

This matter having come on for an aggravation/mitigation hearing before a Hearing Panel of the Supreme Court of Arizona and a decision in this matter having been duly rendered on February 27, 2014, no appeal having been filed and the time for appeal having expired, accordingly,

IT IS HEREBY ORDERED that Respondent, **Anthony J. Wiggins**, is hereby suspended for ninety (90) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the Report and Order Imposing Sanctions. The suspension is effective the date of this Order.

IT IS FURTHER ORDERED that effective 30 days from February 27, 2014, Mr. Wiggins shall resolve the outstanding matter of the \$3,372.55, to ensure his client receives the funds to which he is entitled. If such cannot be completed before the suspension is effective, Mr. Wiggins shall pay new counsel's fees to resolve the issue.

IT IS FURTHER ORDERED that upon reinstatement Mr. Wiggins shall be placed on probation for a period of two (2) years with the State Bar's Law Office Management Program and Member Assistance Program, with specific terms and conditions to be determined at the time of reinstatement.

IT IS FURTHER ORDERED that Mr. Wiggins shall participate in State Bar sponsored fee arbitration with Richard C. Dominguez if Mr. Dominguez requests it.

IT IS FURTHER ORDERED that Mr. Wiggins shall immediately 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 that Mr. Wiggins pay the costs and expenses of the State Bar of Arizona in the amount of \$2,000.00. 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 21th day of March, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 21st day of March, 2014.

Copies of the foregoing mailed/emailed
this 21st day of March, 2014 to:

Anthony J. Wiggins
7400 N. Oracle Rd., Ste 323
Tucson, AZ 85704-6341
Email: tony.wigginslaw@hotmail.com
Respondent

David Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

Sandra Montoya
Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: [MSmith](#)