

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

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

**LORRAINE LYNN HARRINGTON,
Bar No. 028403,**

Respondent.

PDJ-2013-9045

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar Nos. 12-2205 and 12-3094]

FILED JULY 19, 2013

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on May 23, 2013. On May 24, 2013, the complaint was served on Ms. Harrington 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. The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. A Notice of Default was properly entered on June 19, 2013, given Respondent's failure to file an answer or otherwise defend. Respondent did not file an answer or otherwise defend against the complainant's allegations. As a result default became effective. A notice of the aggravation and mitigation hearing was sent to all parties more than fifteen days in advance, notifying them that the aggravation mitigating hearing was scheduled for July 19, 2013, at 9:00 a.m., at the State Courts Building, 1501 West Washington Street, Phoenix, Arizona 85007-3231.

A respondent against whom a default has been entered no longer has the right to litigate the merits of the factual allegations, but retains the right to appear

and participate in the hearing that will determine his sanctions. Included with that right to appear is the right to testify and the right to cross-examine witnesses, in each instance only to establish facts related to aggravation and mitigation. Ms. Harrington did not appear.

On July 19, 2013, the Hearing Panel, composed of attorney member, R. Joel Stern, and volunteer public member, Michael Snitz, considered the evidence and heard argument. The State Bar requested disbarment. Although the allegations are deemed admitted by default, there has also been an independent determination by the Hearing Panel that the State Bar has proven by clear and convincing evidence that Ms. Harrington violated the ethical rules.

FINDINGS OF FACT

The facts listed below are those set forth in the SBA's complaint and are deemed admitted by Ms. Harrington's default.

1. At all times relevant, Ms. Harrington was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on February 15, 2011.

COUNT ONE (File no. 12-2205/Ochoa)

2. On February 29, 2012, Ernesto Ochoa ("Ochoa") retained Ms. Harrington to draft a 501(c)3 application and corresponding non-profit bylaws and officer agreement for South West Athletics, Inc. ("South West Athletics"). Respondent charged a flat fee of \$500.00. Ochoa agreed to pay costs associated with the representation, including the \$450.00 IRS filing fee to be submitted with the 501(c)3 application.

3. Also on February 29, 2012, Respondent sent Ochoa an invoice for \$950.00, which Ochoa paid on that date using PayPal.

4. By email dated March 2, 2012, Ochoa acknowledged having received a voicemail message from the Respondent with a status update.

5. By email dated March 9, 2012, Ochoa asked Respondent for a status update on the 501(c)3 application.

6. Respondent replied on March 12, 2012, stating that the "bylaws and parts 1-6" were complete, but that she was still working on the financial history section of the application.

7. By email dated March 20, 2012, Ochoa asked for a status update.

8. By email dated March 22, 2012, Respondent advised Ochoa that the application was "complete and ready to be signed," but that she still needed the tax ID number. Less than an hour later, Ochoa provided Respondent with the tax ID number for South West Athletics.

9. By emails dated March 29, April 3, April 11, April 23, and May 10, 2012, Ochoa repeatedly asked Respondent for a status update. Respondent did not reply to the requests.

10. By email dated May 24, 2012, Ochoa again asked for a status update and expressed concern that he had not heard from Respondent "in a couple of months," and that while the initial emails were "great," he was no longer receiving any communication and was worried about his "organizational goals" and that the delay was keeping him "from expanding opportunities for kids in our communities." Respondent did not respond to the email.

11. By letter dated July 9, 2012, Ochoa asked Respondent for a status update. Respondent did not respond to the letter.

12. By emails dated July 26, August 2, and August 3, 2012, Ochoa asked Respondent for a status update. Respondent did not respond to the emails.

13. On September 21, 2012, after Ochoa filed a bar charge, Bar Counsel sent Respondent a screening letter asking her to respond to Ochoa's allegations in the bar charge.

14. On October 12, 2012, Respondent responded in writing to the screening letter and admitted that she had violated ERs 1.3 and 1.4 during the course of the representation.

15. On October 19, 2012, Respondent spoke with SBA Investigator Marlene Cartusciello and stated that the 501(c)3 application was ready to file but that she had not yet filed it because she "got freaked out" when she learned that Ochoa had contacted the State Bar.

16. Respondent could not have filed the 501(c)3 application regardless because Respondent had not provided it to Ochoa for his signature.

17. During the telephone interview with Investigator Cartusciello, Respondent stated that she still had Ochoa's filing fee in her trust account.

18. During the telephone interview with Investigator Cartusciello, Respondent promised to provide her with additional documentation, including a copy of the completed application and bylaws. Respondent did not do so.

19. On November 15 and 19, 2012, Investigator Cartusciello attempted to follow-up with Respondent by telephone. Respondent did not answer the telephone

calls and Investigator Cartusciello was unable to leave Respondent a voice mail message either time because the mailbox was full.

20. On November 19, 2012, Bar Counsel called Respondent's telephone number of record with the SBA. Respondent did not answer the telephone call and Bar Counsel was unable to leave Respondent a voicemail message because the mailbox was full.

21. By letter dated November 30, 2012, Bar Counsel asked Respondent to provide the following within ten (10) days: the documentation/information that Respondent had previously promised to provide to Investigator Cartusciello; the date upon which Respondent filed the Client's 501(c)3 application and a copy of the completed application and appendices; and if Respondent had not yet filed the application, an explanation for her failure to do so, Ochoa's client file, and the unused application filing fee. Respondent did not respond to the letter.

22. On February 12, 2013, Bar Counsel called Respondent's telephone number of record with the SBA. Respondent did not answer the telephone, but Bar Counsel was unable to leave a voicemail message because the mailbox was full.

23. On February 20, 2013, Bar Counsel called Respondent's telephone number of record with the SBA at approximately 2:20 p.m. and was able to leave a voice mail message. Bar Counsel advised Respondent to call her immediately; that the SBA had been trying to reach her; that Bar Counsel was proceeding with the disciplinary action; and that Bar Counsel wanted to speak with her about the case. Respondent did not return Bar Counsel's telephone call.

24. Respondent violated ER 1.3, which provides that a lawyer shall act with reasonable diligence and promptness in representing a client. Respondent did not complete and file the 501(c)3 application and corresponding non-profit bylaws and officer agreements for South West Athletics.

25. Respondent violated ER 1.4, which provides that a lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Respondent failed to respond to numerous requests for information from Ochoa and failed to keep him reasonably informed regarding the status of the matter.

26. Respondent violated ER 1.5, which provides that a lawyer shall not collect an unreasonable fee. Respondent charged and collected a \$500.00 fee for legal services that she failed to perform.

27. Respondent violated ER 1.16, which provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned. Respondent failed to provide Ochoa with his file; failed to refund any unearned fees; and failed to refund the \$450.00 filing fee for the 501(c)3 application, which Respondent never filed.

28. Respondent violated ER 8.1, which provides that a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority. Respondent failed to respond to inquiries by Bar Counsel and

Investigator Cartusciello regarding the allegations set forth in the bar charge or to provide Investigator Cartusciello and Bar Counsel with requested documents.

29. Respondent violated Rule 54(d), which provides that grounds for discipline of members include evading service or refusal to cooperate with officials and staff of the State Bar; failure to furnish information or respond promptly to any inquiry or request from bar counsel made pursuant to these rules for information relevant to pending charges, complaints or matter under investigation concerning conduct of a lawyer. Respondent failed to respond to inquiries by Bar Counsel and Investigator Cartusciello regarding the allegations set forth in the bar charges and to provide requested documents.

COUNT TWO (File No. 12-3094/Wilson)

30. On August 1, 2012, David Wilson and his wife ("Wilson") retained Respondent to prepare "two basic estate planning packages, a revocable trust and two limited-liability companies." Respondent charged a flat fee of \$1,500.00 and sent Wilson an invoice reflecting the breakdown of the charges for the services to be provided. The Basic Estate Plan was \$350.00. Wilson made an initial payment of \$500.00 on that date.

31. Wilson provided Respondent with documents necessary to complete the object of the representation including, but not limited to, land contracts, documentation of properties owned by Wilson, and his personal financial information.

32. During the course of the representation, Respondent completed only a will for Wilson.

33. In or about September 2012, Respondent met with Wilson at which time Wilson asked Respondent to give him a day or two to think about some issues relating to a proposed living trust. Respondent agreed to call Wilson to schedule another appointment. She did not do so.

34. That meeting was the last contact that Wilson had with Respondent.

35. On November 19, 2012, Bar Counsel called Respondent's telephone number of record with the SBA. Respondent did not answer the telephone call and Bar Counsel was unable to leave Respondent a voicemail message because the mailbox was full.

36. On November 21, 2012, and after Wilson filed a bar charge, Bar Counsel sent Respondent a screening letter asking her to respond to Wilson's allegations in the bar charge.

37. By letter dated January 22, 2013, Bar Counsel sent Respondent a reminder letter asking her to respond within ten (10) days to the allegations set forth in Wilson's bar charge. She did not do so.

38. On February 12, 2013, Bar Counsel called Respondent's telephone number of record with the SBA. Respondent did not answer the telephone and Bar Counsel was unable to leave Respondent a voicemail message because the mailbox was full.

39. On February 20, 2013, Bar Counsel called Respondent's telephone number of record with the SBA at approximately 2:20 p.m. and was able to leave a

voice mail message. Bar Counsel advised Respondent to call immediately; that the Bar had been trying to reach her; that Bar Counsel was proceeding with the disciplinary action; and that Bar Counsel wanted to speak with her about the cases. Respondent did not return Bar Counsel's telephone call.

40. Wilson had to change all of his bank account information because of Respondent's failure to return his original documents.

41. Respondent violated ER 1.3, which provides that a lawyer shall act with reasonable diligence and promptness in representing a client. Respondent did not complete Wilson's trust documents or set up the limited liability companies, which Wilson retained Respondent to do.

42. Respondent violated ER 1.4, which provides that a lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Respondent failed to respond to numerous requests for information and failed to keep Wilson reasonably informed regarding the status of the matter.

43. Respondent violated ER 1.5, which provides that a lawyer shall not collect an unreasonable fee. Respondent collected \$500.00 to prepare various documents for Wilson, but she prepared only a will for which she charged \$350.00.

44. Respondent violated ER 1.16, which provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been

earned. Respondent failed to return Wilson's original documents, including his confidential financial documents, or refund any unearned fees to Wilson.

45. Respondent violated ER 8.1, which states that a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority. Respondent failed to respond to inquiries by Bar Counsel and Investigator Cartusciello regarding the allegations set forth in the bar charge.

46. Respondent violated Rule 54(d), which states that grounds for discipline of members include evading service or refusal to cooperate with officials and staff of the state bar; failure to furnish information or respond promptly to any inquiry or request from bar counsel made pursuant to these rules for information relevant to pending charges, complaints or matter under investigation concerning conduct of a lawyer. Respondent failed to respond to inquiries by Bar Counsel and Investigator Cartusciello regarding the allegations set forth in the bar charge.

CONCLUSIONS OF LAW

Ms. Harrington failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and became effective. The allegations within the complaint are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Ample proof was submitted undergirding those admissions. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Respondent violated the following: Rule 42, Ariz. R. Sup. Ct., specifically E.R.s 1.3, 1.4, 1.5, 1.16, 8.1 and Rule 54(d).

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 consider: (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:

Ms. Harrington violated her duty to her clients by violating E.R.s 1.3, 1.4, and 1.5. Ms. Harrington violated her duty owed as a professional by violating E.R. 1.16 and 8.1, as well as Rule 54(d).

Mental State and Injury:

Ms. Harrington violated her duty to clients, thereby implicating *Standard* 4.4. *Standard* 4.41 states:

Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

In this matter, Ms. Harrington abandoned two of her clients, knowingly failed to perform services for them and engaged in a pattern of neglect of client matters, all which caused injury or potential serious injury to those clients. Therefore, *Standard* 4.41 is applicable.

Ms. Harrington also violated her duty owed as a professional, which implicates *Standard 7.0*. *Standard 7.1* states:

"Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system."

In this matter, Ms. Harrington failed return unearned fees and costs to the clients. She failed to substantively respond to the SBA's investigation. Further, her actions caused serious injury or potentially serious injury to the clients and the legal system. *Standard 7.1*, therefore, is applicable.

AGGRAVATING AND MITIGATING FACTORS

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

- *Standard 9.22(c)* (a pattern of misconduct): Ms. Harrington violated substantially the same ethical rules during the course of the representation of two (2) clients.
- *Standard 9.22(d)* (multiple offenses): Ms. Harrington violated the ethical rules in two (2) matters for two (2) different clients.
- *Standard 9.22 (e)* (bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency): Respondent did not respond to the SBA's investigation. "Failure to cooperate with disciplinary authorities is a significant aggravating factor." *Matter of Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1172 (1988).
- *Standard 9.22(j)* (indifference to making restitution): Ms. Harrington has not returned the \$450 filing fee to Mr. Ochoa, despite that she never filed his

501(c)3 application. Nor has she returned to Mr. Wilson the unearned fees that he paid to her.

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

- *Standard 9.32(a)* (absence of a prior disciplinary record): Ms. Harrington has no prior discipline.
- *Standard 9.32(f)* (inexperience in the practice of law): Ms. Harrington was admitted to practice in Arizona on February 15, 2011.

The Hearing Panel finds the mitigating factors do not outweigh the aggravating factors. Disbarment is appropriate.

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 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 factor,

and the goals of the attorney discipline system. Based upon the above, the Hearing Panel orders as follows:

1. Ms. Harrington shall be disbarred from the practice of law effective thirty (30) days from the date of this Order.
2. Ms. Harrington shall pay all costs and expenses incurred in this proceeding.
3. Ms. Harrington shall pay the following in restitution:
 - a. Nine Hundred and Fifty Dollars (\$950.00) to Ernesto Ochoa; and
 - b. One Hundred and Fifty Dollars (\$150.00) to David Wilson.
4. Respondent shall immediately turn over her entire client files to Ernesto Ochoa and David Wilson respectively.
5. The Hearing Panel will enter the appropriate Final Judgment and Order.

DATED this 19th day of July, 2013.

/s/ R. Joel Stern

R. Joel Stern
Volunteer Attorney Member

/s/ Michael Snitz

Michael Snitz
Volunteer Public Member

/././.

PRESIDING DISCIPLINARY JUDGE O'NEIL, Concurring in part and respectfully dissenting in part,

For the reasons explained by my colleagues in the majority decision, I concur in affirming the findings and conclusion in the State Bar's Rule 58(k) Hearing Panel Report. However, I respectfully disagree with the majority's sanction of disbarment. I admit that not having any meaningful response from Ms. Harrington slices the distinction between disbarment and suspension rather thin.

Multiple ethical rules and standards apply in this case. By way of example, ABA *Standard 7.0* sets forth one of the guidelines regarding the appropriate sanctions in this matter. *Standard 7.1* provides:

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

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.

I do not take issue with the State Bar of Arizona's request for disbarment, nor do I find the determination by my colleagues as unreasonable. It is undisputed that the client of Ms. Harrington in Count Two gave her all of his critical financial documents including "land contracts, documentation of properties" as well as "his personal financial information." (Admitted Count 31.) It is also true that at the time of the aggravation/mitigation hearing, there had been no contact by Ms.

Harrington with that client since September 2012. It is true that her client "had to change all of his bank account information because of Respondent's failure to return his original documents." (Admitted Count 40.) I am fully convinced that her client did this out of a reasonable fear of improper use of that financial information. I also concur that this is "potentially serious injury" in an age where identity theft is too frequent and use of the type of financial information Ms. Harrington's client gave her holds an enormous potential for significant theft. For either a business or an individual, such withholding is cause for more than significant concern. That those documents have still not been returned, despite these proceedings, has done nothing to alleviate the client's concerns or mine.

Likewise it is admitted that Ms. Harrington violated her duty "to protect a client's interests, such as surrendering documents and property to which the client is entitled..." (Admitted Count 44.) Again, her "failure to cooperate and her failure to furnish information or respond promptly to any inquiry or request from bar counsel," makes this matter worse and is a violation of Rule 54(d). (Admitted Count 46.)

The sanction found by my colleagues' is reasonable in that I am satisfied that the evidence is clear and convincing that Ms. Harrington knew of her duty and knowingly failed to perform. In Count One Ms. Harrington declined to return the filing fee she collected for use in filing the documents she was to have drafted for the client. Her client's I.R.S. filing was delayed by her actions for perhaps as long as an additional year. The potential for serious injury is real. Ms. Harrington

informed the State Bar she had retained that fee in her trust account, but at the time of this hearing she had still not returned the fee. This is financially to her benefit. She also retained the unearned fee in Count Two to her benefit. She abandoned both of these clients.

I do not minimize her actions. They are egregious. The distinction between suspension and disbarment in this case is slim. However particularistic as it may be, regarding disbarment, to paraphrase Justice Potter Stewart, I think I know it when I see it. I respectfully disagree with disbarment.

/s/ William J. O'Neil

Hon. 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 19th day of July, 2013.

Copy of the foregoing emailed/mailed
this 19th day of July, 2013, to:

Lorraine Lynne Harrington
Law Office of Lorraine Harrington
3661 North Campbell Avenue,
Suite 443
Tucson, Arizona 85719-1527
Email: lharrington@lorraineharringtonlaw.com
Respondent

Copy of the foregoing emailed/hand-delivered
this 19th day of July, 2013, to:

Stacy L Shuman
Staff 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

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

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

LORRAINE LYNNE HARRINGTON,
Bar No. 028403

Respondent.

PDJ-2013-9045

[State Bar File No. 12-2205, 12-9034]

FINAL JUDGMENT AND ORDER

FILED AUGUST 9, 2013

This matter having come on for hearing before the Hearing Panel of the Supreme Court of Arizona, it having duly rendered its decision; and no appeal having been filed and the time for appeal having passed, accordingly,

IT IS HEREBY ORDERED Respondent, **Lorraine Lynne Harrington**, is hereby disbarred from the State Bar of Arizona and her name is hereby stricken from the roll of lawyers **effective immediately**. Respondent is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the court. Respondent 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 no further disciplinary action shall be taken in reference to the matters that are the subject of the charges upon which this Judgment and Order of disbarment are based.

IT IS FURTHER ORDERED that Respondent pay restitution to the following individuals in the following amounts:

Ernesto Ochoa	\$ 950.00
David Wilson	<u>\$ 150.00</u>
TOTAL	\$1,100.00

IT IS FURTHER ORDERED that Respondent 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 9th day of August, 2013.

/s/ William J. O'Neil
Hon. 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 9th day of August, 2013.

Copies of the foregoing mailed/emailed
this 9th day of August, 2013, to:

Lorraine Lynne Harrington
Law Office of Lorraine Harrington
3661 North Campbell Avenue, Suite 443
Tucson, Arizona 85719-1527
Respondent

Copy of the foregoing hand-delivered/emailed
this 28th day of March, 2013, to:

Stacy L. Shuman
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