

MAR 08 2013

FILED 
BY _____

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

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

**MICHAEL E. ISLER,
Bar No. 020847**

Respondent.

PDJ-2012-9083

**REPORT AND ORDER IMPOSING
SANCTIONS**

[Nos. 11-1377, 11-1653, 11-2482,
11-3097, 11-3494, 11-3562, 11-
3713, 12-0870]

On January 29, 30, 31, 2013, the Hearing Panel ("Panel") composed of Carol Kemp, a public member from Maricopa County, Ralph J. Wexler, an attorney member from Maricopa County, and the Presiding Disciplinary Judge ("PDJ") held a three day hearing pursuant to Supreme Court Rule 58(j), Ariz.R.Sup.Ct. Craig D. Henley appeared on behalf of the State Bar of Arizona ("State Bar") and Ralph Adams appeared on behalf of Mr. Isler. Rule 615 of the Arizona Rules of Evidence, witness exclusionary rule was invoked.¹ The Panel carefully considered the admitted exhibits, the parties' Joint Prehearing Statement, individual prehearing memorandum, testimony and evaluated the credibility of the witnesses including Mr. Isler. The Panel now issues the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz.R.Sup.Ct.

¹ Consideration was given to the sworn testimony of Joshua Bernstein, Jason Lamm, Esq., Thomas Braeger, Francine Akins-Arbuckle, Erva Lewis, Margaret Johnson, Angela Lindsell-Alberts, Marybeth Maly, Lynanne Chapman, Alicia Baker, Wallace Brown and Christy Cantu.

I. SANCTION IMPOSED:

ATTORNEY DISBARRED. UPON REINSTATEMENT, TWO (2) YEARS OF PROBATION WITH THE STATE BAR'S LAW OFFICE MANAGEMENT ASSISTANCE PROGRAM ("LOMAP") AND THE PAYMENT OF COSTS OF THESE DISCIPLINARY PROCEEDINGS.

II. BACKGROUND AND PROCEDURAL HISTORY

Probable Cause Orders were filed on April 16, 2012 and August 10, 2012. The Complaint was filed on August 21, 2012 and served by mail on August 23, 2012 pursuant to Supreme Court Rule 47(c). The Complaint alleged violations of ER 1.1 (competence), ER 1.2 (scope of representation), ER 1.3 (diligence), ER 1.4 (communication), ER 1.5 (fees), ER 1.16 (terminating representation), ER 3.1 (meritorious claims and contention), ER 3.2 (expediting litigation), ER 3.3(a) (knowingly make a false statement of fact or law to tribunal or failure to correct a false statement of act or law), ER 4.1(a) (knowingly make a false statement of fact of law to third person), ER 4.4(a) (use of means that have no substantial purpose other than to embarrass, delay or burden any other person or use methods of obtaining evidence that violate legal rights of such a person), ER 8.4(c) (knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentation) and ER 8.4(d) (conduct prejudicial to the administration of justice).

Mr. Isler filed his Answer on September 2012. On September 19, 2012 the Initial Case Management Conference was held and the matter was set for a four day hearing. The State Bar served Mr. Isler with its initial disclosure statement on October 1, 2012. Mr. Isler served his disclosure statement on October 17, 2012. The parties filed a Joint Prehearing Statement on December 17, 2012. Both parties filed individual prehearing statements on January 3, 2013.

The State Bar argues that a long term suspension is appropriate for Mr. Isler's most serious misconduct, the abandonment of clients and his serious misrepresentations to the court resulting in egregious injury to his clients.

Mr. Isler argues that the allegations in Counts One, Two, Three and Four are unsupported and should be dismissed. Mr. Isler however admits that his communications with the clients in Counts Five and Seven "could have and should have been better" and therefore violated ER 1.4. Respondent's Pre-Hr'g Mem. Mr. Isler further admits his Motion to Withdraw was "inartful[ly] and confusing[ly]" written. Respondent Individual Pre-Hr'g Mem. 17. Mr. Isler asserts that *Standard* 4.44 (Admonition) is applicable as Mr. Isler negligently failed to communicate with clients in Counts Five and Seven and there was no injury to the client as a result of the lack of communication.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant, Mr. Isler was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on July 10, 2001. Joint Pre-Hr'g Statement 2 para. 1.

COUNT ONE (File No. 11-1377/J. Bernstein) and COUNT FOUR (File No. 11-3097/M. Bernstein)

2. Complainants are opposing litigants in the Maricopa County Superior Court family law court case of *Bernstein v. Bernstein*, FC2007-003710. Joint Pre-Hr'g Statement 2 para. 2.

3. Complainants in this count, Joshua Bernstein, was represented by counsel and Michelle Bernstein was represented by Mr. Isler. *Id.* at 2 para. 3.

4. In June 2010, Mr. Isler began representing his client, Michelle Bernstein (hereinafter referred to as "Client" under these counts) in the lawsuit. *Id.* at 2 para. 4.

5. At some time thereafter, Client sought advice from Mr. Isler regarding her belief that she needed an order of protection. State Bar Ex. 5. The fee agreement did not "exclude" protective order advice. Respondent Hr'g Test. Respondent told her that she should only get the police involved if absolutely necessary but otherwise advised that she could get a protective order from any court. *Id.* That advice was erroneous, as when a family law court case is pending in Superior Court, the Superior Court has "exclusive jurisdiction" to issue the protective order". Ariz.R. Protective Order P. 4(A)(2).

6. This language substantially mirrors A.R.S. 13-3602(O) ("The superior court shall have exclusive jurisdiction to issue orders of protection in all cases if it appears from the petition that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties.").

7. Relying on that advice Client sought and obtained an order of protection from the San Marcos Justice Court. State Bar Ex. 10; *see also* State Bar Ex. 12 (moving to dismiss charges based upon issued protective order); *see also* State Bar Ex. 8, at Bates SBA000023:10-19 (Client explaining her reliance upon her understanding of Respondent's advice). On her petition for that order she correctly marked the box that an action was pending in the Superior Court but erroneously listed the Justice Court case number, not the Superior Court cause number. State Bar Ex. 10.

8. Client testified at an Order of Protection hearing that she was advised by Mr. Isler to file a Petition for Order of Protection in the San Marcos Justice Court instead of filing it in the Maricopa County Superior Court lawsuit. Joint Pre-Hr'g Statement 2 para. 5.

9. Mr. Bernstein was served with the jurisdictionally invalid order and later charged with violating that order. State Bar Ex. 2; Bernstein Hr'g Test. This resulted in his being fingerprinted, and incurring expenses and embarrassment. State Bar Ex. 2; State Bar Ex. 16; Bernstein Hr'g Test. The prosecution later dismissed the case with prejudice because the order was jurisdictionally invalid. State Bar Ex. 4.

10. Mr. Bernstein hired a lawyer who filed a Motion to Dismiss the Protective Order in the Superior Court Action which was set for hearing. State Bar Ex. 8, at Bates SBA000021:14-24. Mr. Isler did not appear at that February 2011 hearing set by the Superior Court on the Motion to Dismiss filed on behalf of Mr. Bernstein. *Id.*, at Bates SBA000021:11-12. The ruling addressed the jurisdictional impropriety of Client's filing of the Petition for Order of Protection in the San Marcos Justice Court instead of Maricopa County Superior Court. *Id.* Mr. Isler believed he had no duty to appear at the hearing as it did not relate to child custody issues. Respondent Hr'g Test. He reasoned that domestic violence, unless witnessed by the child or perpetrated against the child, seldom has any impact on legal custody or visitation. *Id.* He did not inform his client he was not appearing. *Id.*

11. A.R.S. 25-403.03 mandates that a "court shall consider evidence of domestic violence as being contrary to the best interests of the child." That law further states a rebuttable presumption arises "that an award of custody to the

parent who has committed the action of domestic violence is contrary to the child's best interests." *Id.*

12. After the hearing on Mr. Bernstein's motion, the Court dismissed the protective order and its underlying petition *ab initio* informing Client that Mr. Isler's advice was legally incorrect and potentially an abuse of the judicial process. Joint Pre-Hr'g Statement 2 para. 7. The Court further informed Client that she should seek redress with counsel or the State Bar. *Id.*

13. The Panel is aware a judge's findings in an underlying case does not necessarily determine whether or not an ethical violation occurred. *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004) citing *In re Wolfram*, 174 Ariz. 49, 53, 847 P. 2d 94, 98. The Panel has made its determination independently and gave no "preclusive effect" to that ruling. *In re Levine*, 174 Ariz. 146, 847 P.2d 1093 (1983).

14. We agree that an attorney typically might have no obligation to appear in such a protective order proceeding seeking a dismissal of the order. However, Mr. Isler's advice and the consequences thereof make this anything but a typical situation. We find Mr. Isler had an obligation to inform his client under these circumstances of his non-appearance or to represent Client at the hearing on the motion to dismiss. His explanation for choosing not to appear based on the notion that domestic violence seldom has any impact on legal custody or visitation is troubling. Regardless, he did have an obligation to give legally correct advice to his client. The outcome of following his advice was more than predictable, including causing the filing of the petition without a good faith basis in a court without jurisdiction without a good faith basis in law for doing so.

15. On or about August 15, 2011, opposing counsel filed a pleading entitled "Expedited Motion to Remove Counsel of Petitioner Due to Conflict of Interest." Joint Pre-Hr'g Statement 2 para. 8.

16. In the pleading, Mr. Isler was alleged to have filed a personal bankruptcy listing Mr. Bernstein as a creditor. *Id.* at 2 para. 9. This allegation was true. Respondent Hr'g Test.

17. Mr. Isler did not file a response to the expedited motion. Respondent Hr'g Test. Respondent acknowledged the conflict but determined there was no need to file a response as it was likely he would be removed for the conflict. *Id.*

18. On September 7, 2011, the Court ordered that Mr. Isler immediately withdraw from representation. Joint Pre-Hr'g Statement 2 para. 10.

19. Mr. Isler took no further action in the case and did not provide his Client with her file until October 4, 2011. *Id.* at 3 para. 11.

20. In early November 2011, the parties settled the family court lawsuit. *Id.* at 3 para. 12.

21. We find he violated ERs 3.1, 4.4 and 8.4(d).

COUNT TWO (File no. 11-1653/Braeger)

22. On September 9, 2010, Mr. Braeger, "Complainant" in this count, retained Mr. Isler to get custody of his son through a family court lawsuit. Complainant executed a fee agreement containing a clause requiring that all fee disputes be resolved through the State Bar Fee Arbitration Program. Joint Pre-Hr'g Statement 3 para. 14.

23. On September 24, 2010, Mr. Isler filed a Petition and served the opposing party. *Id.* at 3 para. 15.

24. On January 4, 2011, the parties attended an Early Resolution Management Conference and entered a temporary agreement allowing both parties equal parenting access to their child. *Id.* at 3 para. 16.

25. Due to the time needed to travel to and from work, Complainant was not able to exercise his right of equal access to the child. *Id.* at 3 para. 17.

26. Despite his unavailability to exercise equal access to the child, Complainant wanted Mr. Isler to advocate on his behalf for a permanent order of sole custody or equal parenting access in his favor. *Id.* at 3 para. 18.

27. On March 1, 2011, Complainant and Mr. Isler spoke in order to prepare for the March 8, 2011 trial. *Id.* at 3 para. 19.

28. During that time, Mr. Isler advised Complainant that a better strategy would be to enter an alternating weekend visitation plan prior to trial and request a modification to an equal parenting access plan once Complainant obtained a reduction in his work schedule. *Id.* at 3 para. 20.

29. Shortly after this discussion with Mr. Isler Complainant contacted Mr. Isler and rescinded his previously granted settlement authority. Braeger Hr'g Test.

30. However, after receiving Complainant's authorization to pursue the new strategy, Mr. Isler contacted opposing counsel and prepared a Notice of Settlement. Joint Pre-Hr'g Statement at 3 para. 15. That was filed the following day, March 2, 2011, at 9:26 a.m. *Id.*

31. Complainant sent an e-mail dated March 2, 2011 at 1:35 a.m. that more formally rescinded in writing any settlement authority and requested that Mr. Isler proceed to trial. Braeger Hr'g Test.; State Bar Ex. 32.

32. Later on March 2nd, Complainant and Mr. Isler discussed the status of the case and Mr. Isler stated that Complainant once again re-authorized him to continue the previously agreed upon settlement strategy. Joint Pre-Hr'g Statement 4 para. 22.

33. On March 4, 2011, Complainant sent Mr. Isler a text message terminating his representation resulting in later that day Mr. Isler filing a Notice of Withdrawal with client's consent. Joint Pre-Hr'g Statement 4 para. 23; Respondent Hr'g Test.

34. In his response to the State Bar's investigation, Mr. Isler asserted that the fee was reasonable as it was capped at Three Thousand Five Hundred Dollars (\$3500.00) if the case proceeded to trial. Joint Pre-Hr'g Statement 4 para. 25. But it did not proceed to trial with Mr. Isler. Respondent Hr'g Test.

35. Complainant had made payments whenever Mr. Isler demanded additional money despite the capped fee agreement. Braeger Hr'g Test.

36. On July 26, 2011, Mr. Isler admits that there was at least a Four Hundred Fifty (\$450.00) overpayment which was being "forwarded to [Complainant] immediately." Joint Pre-Hr'g Statement 4 para 26.

37. Complainant ultimately demanded fee arbitration. Respondent Hr'g Test. Despite being aware of and acknowledging the overpayment, State Bar Ex. 37, at Bates SBA000122, Mr. Isler did not return the overpayment by check dated until December 13, 2011, Respondent Ex. 143, at Bates 000430. Mr. Isler did not provide the refund to the Complainant in a timely manner. Braeger Hr'g Test.

38. We find Mr. Isler collected and retained an unreasonable fee in excess of the amount written in the fee agreement and violated of ER 1.5.

COUNT THREE (File No. 11-2482/Akins-Arbuckle)

39. On May 4, 2011, Ms. Francine Akins-Arbuckle, "Complainant" in this count, retained Mr. Isler to represent her in an Arizona Board of Behavioral Health Examiners hearing. Joint Pre-Hr'g Statement 4 para. 27. Mr. Isler testified he had her sign a fee agreement. Respondent Hr'g Test. Complainant testified there was no such agreement. Akins-Arbuckle Hr'g Test. The purported agreement presented by Mr. Isler for this hearing was an unsigned, undated document. State Bar Ex. 49. The testimony of Mr. Isler is not credible. We find there was no written fee agreement entered into.

40. Complainant informed Mr. Isler that he would need to notify the Board regarding his representation and also to request a "formal interview" in lieu of a "formal administrative hearing". Akins-Arbuckle Hr'g Test.

41. Respondent was informed of the confirmation of that coverage not later than May 6, 2011 by a delivery of a letter of confirmation from the insurance carrier dated April 29, 2011 and delivered to him by Complainant. State Bar Ex. 50; Akins-Arbuckle Hr'g Test.

42. Regardless, after confirming malpractice insurance coverage, Complainant met with Mr. Isler twice in order to prepare for the May 31, 2011 hearing. Joint Pre-Hr'g Statement 4 para. 28.

43. He had never handled such a matter before. Respondent's Hr'g Test.

44. On May 27, 2011 he filed his formal notice of appearance. State Bar Ex. 51. It was the only document he filed on behalf of his client. Respondent's

Hr'g Test. He neither requested nor reviewed any documents in preparation for the matter. Respondent Hr'g Test.

45. Respondent billed time for preparing for a formal hearing. State Bar Ex. 45.

46. Complainant did not know when the hearing was but was informed by Mr. Isler of the time. Akins-Arbuckle Hr'g Test. As a result, on May 31, 2011 at approximately 9:45 a.m., Mr. Isler and Complainant met at the Board of Behavioral Health Examiners' building. *Id.*

47. While they believed that the matter was scheduled to begin at 10 a.m., Complainant's case was not called until the early afternoon. Joint Pre-Hr'g Statement 5 para. 30. In fact the Notice & Agenda of the Board listed a formal hearing scheduled for Complainant followed thereafter by a listing of a formal interview for Complainant. Respondent Ex. 141, at Bates 000425.

48. After the differences between the interview and hearing processes were explained to Mr. Isler by the Board as well as the importance of properly notifying the Board of their interest in having an interview instead of a hearing, Mr. Isler asked a few evidentiary/procedural questions regarding the hearing. State Bar Ex. 42. He then stated to the Board that he had to leave due to a previous commitment and left at approximately 12:47 p.m. *Id.*

49. He testified he left his client as he had a review hearing in a family law matter set for 1:30 p.m. in the Superior Court in Pinal County. Respondent's Hr'g Test; State Bar Ex. 46. In fact that hearing had been vacated by the court as a direct result of Mr. Isler having filed a notice of settlement four months earlier. State Bar Ex. 145; Respondent Ex. 1D.

50. He testified he called the Judicial Assistant after he was on the road towards Florence but intentionally did not return to the Board hearing. Respondent's Hr'g Test.; Respondent's Ex. 1E.

51. The minutes and audiotape of the March 31st hearing confirm that Mr. Isler initially requested a continuance claiming that he only became involved in the case the prior week and believed that the Board was going to conduct a formal interview not a formal administrative hearing. Joint Pre-Hr'g Statement 5 para. 31.

52. Prior to the Board ruling on the requested continuance, Mr. Isler abandoned his client and left the Board of Behavioral Health Examiners' building. Joint Pre-Hr'g Statement 5 para. 32; State Bar Ex. 47, at Bates SBA000140.

53. The Board denied Mr. Isler's request for a continuance and proceeded to a formal hearing. State Bar Ex. 42. The Complainant was left to represent herself. *Id.*

54. In fact, despite his statement to the Board, Mr. Isler never went to a court hearing as it had been vacated and his testimony was intentionally misleading to this panel. Respondent's Hr'g Test.

55. The Board hearing began at 12:47 p.m. and was more than three hours and fifteen minutes in length. State Bar Ex. 46.

56. Following the formal administrative hearing, Complainant was placed on probation and ordered to comply with certain terms of probation. Joint Pre-Hr'g Statement 5 para. 33; State Bar Ex. 42.

57. On June 1, 2011, Mr. Isler submitted an invoice to Complainant's insurance company. Joint Pre-Hr'g Statement 5 para. 34.

58. Complainant rather than Mr. Isler received the insurance check but used the funds for new counsel and kept any remainder. Joint Pre-Hr'g Statement 5 para. 35; Akins-Arbuckle Hr'g Test.

59. We find Mr. Isler failed to file the appropriate paperwork or to take any action on behalf of the client to ensure that a formal interview was scheduled instead of a formal hearing, abandoned his client at the hearing and violated ERs 1.1, 1.2, and 1.3. Mr. Isler further made false statements to the Board of Behavioral Health Examiners and violated ERs 4.1 and 8.4(c).

COUNT FIVE (File No. 11-3494/Lewis)

60. Ms. Irva Lewis, "Complainant" under this count, is the mother and the executor for her daughter's disability benefits (SSI) due to a brain injury received when she was six to eight months old causing severe auditory processing problems. Lewis Hr'g Test. Because of those disabilities, her daughter is unable to read, utilize a telephone, or comprehend legal correspondence. *Id.* She is unable to sign legal pleadings. *Id.* She does not live with Complainant. *Id.* Mr. Isler never physically met with her daughter. *Id.*

61. Due to her advancing years and concern for her severely disabled daughter, Complainant retained Mr. Isler, on or about July 6, 2011, to primarily draft a special needs trust for her. *Id.*; Joint Pre-Hr'g Statement 5 para. 36. She was worried about her daughter's inheritance impacting her SSI benefits. Lewis Hr'g Test. She also discussed, at Mr. Isler's suggestion, seeking to modify a child support order in Maricopa County Superior Court case *In re State of Arizona*

(*Latoya M. Lewis*), *Petitioner and Dennis W. Soils, Jr., Respondent*, DR1999-90663. *Id.*; Joint Pre-Hr'g Statement 5 para 36.

62. Mr. Isler charged a flat fee of One Thousand Five Hundred Dollars (\$1500.00) for both matters and provided the Complainant a draft fee agreement for her daughter, Latoya Lewis to sign and return to his office. Lewis Hr'g Test. He testified that only the daughter, Latoya Lewis, was his client. State Bar Ex. 64; Respondent's Hr'g Test.

63. Complainant testified that Mr. Isler charged \$1,250 fee for the special needs trust and \$250.00 for possible child support modification. Lewis Hr'g Test.; State Bar Ex. 56.

64. Complainant did not receive a copy of any fee agreement and did not sign any fee agreement for herself or on her daughter's behalf. Lewis Hr'g Test. Complainant only met with Mr. Isler once. *Id.*

65. Mr. Isler sent the Petition to Modify Child Support directly to Complainant. *Id.* After Complainant received the petition, Mr. Isler would not return her calls to discuss the Petition nor its meaning. *Id.* On February 14, 2012 Mr. Isler informed the bar that he gave the fee agreement to Complainant. State Bar Ex. 64. He asked Complainant to return the fee agreement, "...preferably at the same time she returned the signed Petition to Modify Child Support." *Id.* We find implausible that the purported copy of the fee agreement which Mr. Isler attached to that email was made contemporaneously with the matter herein discussed.

66. Prior to ever speaking with Complainant's disabled daughter, Mr. Isler, on or about August 29, 2011, mailed the Petition to Modify Child Support to LaToya Lewis for review and signature. Respondent Hr'g Test.

67. The letter accompanying that petition stated, "Dear LaToya: After speaking with you mother it is my understanding that you want to modify your current child support amount." State Bar Ex. 58.

68. Approximately 5 days after meeting Complainant, on or about July 11, 2011, Respondent conducted research regarding the special needs trust and determined that he was not qualified to handle the matter, but he did not notify either Complainant or her daughter. Respondent Hr'g Test.; State Bar Ex. 59.

69. Mr. Isler did not notify the Complainant that he was not competent to handle a special needs trust matter until he sent a letter to her dated November 11, 2011. State Bar Ex. 59. That letter was the only notification he gave her that he had referred her to another attorney. Lewis Hr'g Test.

70. Mr. Isler spoke with LaToya Lewis on one occasion, telephonically, in or around September 2011, in order to determine the status of the petition. Respondent Hr'g Test.; Joint Pre-Hr'g Statement 6 para. 42. LaToya purportedly indicated that she was speaking with her mother and would contact him shortly. Joint Pre-Hr'g Statement 6 para. 42..

71. In a letter dated November 11, 2011 that Mr. Isler mailed to Complainant, he asked Complainant, "how you wish to proceed on the child support matter for LaToya." Joint Pre-Hr'g Statement 6 para. 43; State Bar Ex. 59.

72. On November 17, 2011 Complainant mailed Mr. Isler a letter terminating the representation based on his failure to communicate and requested a refund of \$1,250.00 based on Mr. Isler's representation that the child support modification would cost \$250.00. Lewis Hr'g Test.; State Bar Ex. 56.

73. On December 13, 2011, Mr. Isler provided Complainant with a copy of the file (consisting of the petition and three one-paragraph letters), the billing statement and a check in the amount of \$412.00. Joint Pre-Hr'g Statement 6 para. 44.

74. We find Mr. Isler failed to timely prepare a petition to modify child support and violated ER 1.3; he failed to timely address the trust agreement and failed to keep the client informed of the status of the matter and violated ER 1.4; charged an unreasonable fee and failed to communicate the scope and basis/rate of fee in writing and violated ER 1.5. Mr. Isler further failed to refund unearned, advanced fees and violated ER 1.16.

COUNT SIX (File No. 11-3562/Johnson)

75. On June 24, 2010, Ms. Margaret Johnson, "Complainant" in this count, retained Mr. Isler to pursue her grandparent visitation rights in the Maricopa County Superior Court lawsuit *Staton v. Johnson*, FC2005-090116. The written representation agreement was styled a \$1200.00 flat fee representation and required the parties to arbitrate any fee dispute through the State Bar Arbitration Program. Joint Pre-Hr'g Statement 6 para. 45; State Bar Ex. 85.

76. On June 29, 2010, Mr. Isler filed a pleading entitled "Petition for Grandparent Visitation." Joint Pre-Hr'g Statement 7 para. 46; State Bar Ex. 69. While the pleading requested an order for grandparent visitation rights, Mr. Isler did not request that the Court schedule a hearing. Joint Pre-Hr'g Statement 7 para. 46; State Bar Ex. 69.

77. While Mr. Isler was able to effect service upon the father of the child, he was unable to effect service upon the mother of the child, Swanya Staton. Joint Pre-Hr'g Statement 7 para. 47.

78. On August 20, 2010, Mr. Isler filed a pleading entitled "Motion to Serve by Alternative Means." Joint Pre-Hr'g Statement 7 para. 48; State Bar Ex. 70.

79. On September 8, 2010, the Court granted the request for alternative service authorizing him to post a copy of the pleadings with the order at the residence of Ms. Staton and mail to that address the pleadings by certified mail, without signature required, but rather only confirmation required, pursuant to the Rules of Family Court for publication. Joint Pre-Hr'g Statement 7 para. 49; State Bar Ex. 92.

80. In October 2010, Mr. Isler mailed a certified letter to the opposing party which was returned unclaimed. Joint Pre-Hr'g Statement 7 para. 50.

81. During late October 2010, Complainant contacted Mr. Isler and requested a status report. *Id.* at 7 para. 51.

82. Complainant left multiple phone messages, none of which Mr. Isler returned. Johnson Hr'g Test. On November 11, 2010, Mr. Isler e-mailed Complainant apologizing for the delayed response and stated that he had been on vacation but petitioned the Court for a hearing and was waiting for the court to schedule a court date. Joint Pre-Hr'g Statement 7 para. 52; State Bar Ex. 71. In fact, he had not petitioned for nor requested a hearing. Respondent's Hr'g Test; Johnson Hr'g Test.

83. During February 2011, Complainant again contacted Mr. Isler and requested a status report. Joint Pre-Hr'g Statement 7 para. 53.

84. On February 16, 2011, Mr. Isler e-mailed Complainant and reiterated that he petitioned the Court for a hearing and was waiting for the court to schedule a court date. Joint Pre-Hr'g Statement at 7 para. 54; State Bar Ex. 72. Mr. Isler further indicated that he would "follow up again today." Joint Pre-Hr'g Statement at 7 para. 54; State Bar Ex. 72. In fact, he still had not petitioned for nor requested a hearing and did not follow up as promised. Respondent's Hr'g Test; Johnson Hr'g Test.

85. On March 11, 2011 Mr. Isler filed a one paragraph pleading entitled "Request for Resolution Management Conference/Status Conference." Joint Pre-Hr'g Statement 9 para. 55; State Bar Ex. 89

86. On March 22, 2011 at 10:48 a.m., Complainant terminated Mr. Isler's representation regarding her grandparent visitation rights action and requested a refund. State Bar Ex. 73, at Bates SBA000203.

87. Having received that email Mr. Isler responded on that same day by email at 11:14 a.m. that he was "going to file an expedited motion to set today." *Id.*

88. Complainant reiterated her request to terminate representation at 12:50 p.m. *Id.*

89. On April 28, 2011, Complainant repeated her request for a refund of the unused attorney fees. *Id.*, at Bates SBA000204.

90. On June 3, 2011, Complainant again made requests for a refund of the unused portion of the attorney's fees. Joint Pre-Hr'g Statement 8 para. 56; State Bar Ex. 74.

91. On June 7, 2011, Mr. Isler responded and apologized for the delayed response, asked for her address promising to send "a billing statement with refund balance." Joint Pre-Hr'g Statement 8 para. 57; State Bar Ex. 75. Her address had never changed and he failed to do as promised. Johnson Hr'g Test. He did not return her calls. *Id.*

92. On June 28, 2011, Complainant again requested a full accounting, her file and a refund. State Bar Ex. 76.

93. Mr. Isler testified he recalled he may have made telephone calls to his client. Respondent's Hr'g Test. This self serving testimony is not corroborated by any evidence and we find it not credible.

94. On July 26, 2011, Mr. Isler mailed an accounting indicating that a balance of fees was incurred but that "I am waiving that due (sic) our flat fee agreement." Joint Pre-Hr'g Statement 8 para. 58; State Bar Ex. 79.

95. On or about July 26, 2011, Complainant obtained a copy of the Court's file from the Maricopa County Clerk of Court and received his accounting. State Bar Ex. 77.

96. On August 8, 2011, Complainant set up an appointment with Mr. Isler but received an e-mail indicating that Mr. Isler had "no problem refunding you a portion of your retainer." Joint Pre-Hr'g Statement 8 para.59; State Bar Ex. 78, at Bates SBA000210.

97. On August 9, 2011, Complainant e-mailed Mr. Isler and informed him that she would prefer receiving one-half of the money paid. Joint Pre-Hr'g Statement 8 para. 60; State Bar Ex. 78, Bates SBA000209.

98. Later on August 9, 2011, Mr. Isler replied stating that he would refund one-half of the funds minus the fees incurred. Joint Pre-Hr'g Statement 8 para. 61; State Bar Ex. 78, Bates SBA000209.

99. Mr. Isler further stated that although the billing statement reflected that no fees were due, he could change that and requested that Complainant provide him with direction on moving forward. State Bar Ex. 78, Bates SBA000210.

100. On August 22, 2011, Complainant mailed Mr. Isler a letter setting forth the events and circumstances of the representation along with her demand for the return of Six Hundred Dollars (\$600.00) as promised. Joint Pre-Hr'g Statement 8 para. 62; State Bar Ex. 80.

101. On August 29, 2011, Mr. Isler mailed Complainant a refund check in the amount of Four Hundred Dollars (\$400.00) which he claims represents more than half of the originally paid amount after deducting the Four Hundred Thirty Seven Dollars and 71/100 (\$437.71) in costs. Joint Pre-Hr'g Statement 8 para. 63; State Bar Ex. 81-82.

102. In October 2011, Complainant cashed the refund check. Joint Pre-Hr'g Statement 8 para. 64.

103. He still has not returned any part of her case file. Johnson Hr'g Test.

104. We find Mr. Isler failed to promptly request and secure a hearing on the petition for visitation, failed to comply with his client's request for information and charged unreasonable fees that were contrary to the terms of the fee

agreement, failed to provide an accounting and promptly deliver documents, and misrepresented the nature of legal services and rights as outlined in the written agreement and violated ERs 1.3, 1.4, 1.5, 1.16(d) and 8.4(c).

COUNT SEVEN (File No. 11-3713/Lindsell)

105. Ms. Angela Lindsell, "Complainant" in this count, first retained Mr. Isler's law firm regarding the dissolution of her marriage in the Superior Court case in Maricopa County of *Alberts v. Alberts*, FC2010-090629 in March 2010. Joint Pre-Hr'g Statement 9 para. 65.

106. In September 2010, the parties settled their issues and a consent decree was filed on October 1, 2010. Joint Pre-Hr'g Statement 9 para. 66.

107. In March 2011, Complainant "rehired" Mr. Isler in order to file a Petition for Post-Decree modifications to the consent decree. Joint Pre-Hr'g Statement 9 para. 67.

108. On April 1, 2011, in accordance with their agreement, Complainant paid Mr. Isler One Thousand Dollars (\$1,000.00) of the One Thousand Five Hundred Dollars (\$1,500.00) pre-payment of fees. Joint Pre-Hr'g Statement 9 para. 68; State Bar Ex. 96.

109. On April 4, 2011, Mr. Isler acknowledged receipt of the initial pre-payment. Joint Pre-Hr'g Statement 9 para. 69; State Bar Ex. 95.

110. On May 5, 2011, Mr. Isler filed the Petition for Post-Decree Mediation. Joint Pre-Hr'g Statement 9 para. 70; State Bar Ex. 102.

111. On May 6, 2011, Complainant paid Mr. Isler One Hundred Dollars (\$100.00). Joint Pre-Hr'g Statement 9 para. 71; State Bar Exhibit 97.

112. On June 25, 2011, Complainant e-mailed Mr. Isler regarding the status of the case. Joint Pre-Hr'g Statement 9 para. 72; State Bar Ex. 98. She also left telephone messages that were rarely returned. Lindsell-Albert's Hr'g Test.

113. On June 28, 2011, Mr. Isler responded indicating that he "will be forwarding (sic) you the petition to modify later this week." Joint Pre-Hr'g Statement 9 para. 73; State Bar Ex. 98.

114. Several months later, Mr. Isler finally delivered a copy of a draft of a Petition to Modify on August 10, 2011 for her review. State Bar Ex. 99.

115. Complainant informed Mr. Isler that information contained in the Petition to Modify was inaccurate. Lindsell-Alberts Hr'g Test. Mr. Isler did not amend the Petition or contact Complainant regarding the inaccuracies. *Id.*

116. On August 11, 2011, Complainant signed the Petition to Modify Parenting Time & Child Support, which was notarized that date. State Bar Ex. 104, at Bates SBA000266. Mr. Isler dated the document as signed by him on Monday, August 22, 2011 and verified that it was filed on that same date. *Id.*, at Bates SBA000265. It was not filed until Thursday, August 25, 2011. Joint Pre-Hr'g Statement; State Bar Ex. 104, at Bates SBA000263.

117. On September 27, 2011, Mr. Isler told Complainant that the process server was having problems serving the opposing party. Joint Pre-Hr'g Statement 9 para. 75; State Bar Ex. 100, at Bates SBA000253.

118. On September 27, 2011, Complainant replied and asked questions regarding service. Joint Pre-Hr'g Statement 10 para. 76; State Bar Ex. 100, at Bates SBA000253.

119. On October 4, 2011, Complainant e-mailed Mr. Isler as she had not received a response to her September 27, 2011 inquiry. State Bar Ex. 100, at Bates SBA000253.

120. On October 5, 2011, Mr. Isler sent Complainant an e-mail merely requesting a confirmation of the opposing parties' address. Joint Pre-Hr'g Statement 10 para. 77; State Bar Ex. 100, Bates 254.

121. On December 21, 2011, the opposing party was served, State Bar Ex. 105, and the affidavit of service was filed on December 30, 2011, State Bar Ex. 108.

122. The matter was scheduled for a Resolution Management Conference on June 28, 2012, at 8:30 am. Joint Pre-Hr'g Statement 10 para. 78; State Bar Ex. 113.

123. On June 22, 2012, the Court granted Mr. Isler's Motion to Continue the RMC based on Mr. Isler's avowals that the Petitioner still needed to be served by publication and reset the RMC for August 15, 2012. Joint Pre-Hr'g Statement 10 para. 79; State Bar Ex. 114.

124. The Court's June 22, 2012 minute entry shows that Mr. Isler and the Petitioner's attorney were both copied. Joint Pre-Hr'g Statement 10 para. 80.

125. On June 28, 2012, the parties both showed up for the originally scheduled Resolution Management Conference on Mr. Isler/Mother's Petition to Modify Parenting Time and Child Support filed on August 25, 2011. Joint Pre-Hr'g Statement 10 para. 81; State Bar Ex. 115.

126. The Court's June 28, 2012, Minute Entry reflects that Mr. Isler failed to appear at the Resolution Management Conference (RMC). Joint Pre-Hr'g Statement 10 para. 82; State Bar Ex. 115.

127. That Minutes Entry further reflects that Complainant advised the Court she has not had contact with Mr. Isler for several months. State Bar Ex. 115, at Bates SBA000285.

128. Complainant, appearing pro-per, lost custody of her children and suffered enormously as a result. Lindsell-Alberts Hr'g Test.

129. The day prior to the hearing in this matter she finally received her children back. Lindsell-Alberts Hr'g Test.

130. We find Mr. Isler failed to timely prepare a petition to modify child support, failed to keep his client informed about the status of the matter, failed to advise the client that the conference was continued, failed to attend the hearing which resulted in the client representing herself and violated ERs 1.3, 1.4 and 8.4(d).

COUNT EIGHT (File No. 12-0870/Maly)

131. On or about August 5, 2010, Mr. Isler was retained by Ms. Mary Beth Maly, "Complainant" in this count, to file a Petition to Enforce Complainant's parenting time in the Maricopa County Superior Court case of *Maly v. Maly*, FC2007-090003. Joint Pre-Hr'g Statement 10 para. 83.

132. Pursuant to the terms of their Fifteen Hundred Dollars (\$1,500.00) flat fee agreement, Complainant made an initial payment of Seven Hundred Fifty Dollars (\$750.00) and monthly payments of One Hundred Fifty Dollars (\$150.00) thereafter. Joint Pre-Hr'g Statement 10 para. 84; State Bar Ex. 119.

133. At some point, Mr. Isler discovered that the originally filed agreement regarding Complainant's parenting time had not been reduced to a minute entry or order of the Court. Joint Pre-Hr'g Statement 11 para. 85.

134. On August 11, 2010², Mr. Isler filed a Notice of Appearance and "Request for Order Re: Notice of Relocation, Change in Parenting Time & Travel Expenses". Joint Pre-Hr'g Statement 11 para. 86; State Bar Ex. 120, Bates SBA000305.

135. The mailing certificate of both documents indicated that the documents were mailed to the ex-husband at his "Whistle Stop Dr." address. Joint Pre-Hr'g Statement 11 para. 87.

136. Mr. Isler mailed the Notice of Settlement to Complainant's ex-husband at a different address. State Bar Ex. 123.

137. The "Request for Order Re: Notice of Relocation, Change in Parenting Time & Travel Expenses" was meant to obtain a minute entry or order of the Court accepting and ordering the terms of the one page *pro per* August 2008 agreement between the parties. Joint Pre-Hr'g Statement 11 para. 88.

138. On August 17, 2010, the Court executed an order entering the 2008 agreement as a formal Order of the Court. The agreement granted Complainant four (4) weeks of visitation in the State of Arizona including one (1) week during Spring Break, two (2) weeks during the summer and one (1) week during Christmas Break, for a total of eight (8) weeks visitation per year. Joint Pre-Hr'g Statement 11 para. 89.

² The Joint Pre-Hearing statement lists the filing date as August 10, 2010, but the case history in State Bar Ex. 120 lists the filing date as August 11, 2010.

139. On August 19, 2010, Complainant e-mailed Mr. Isler for an update of her case. Joint Pre-Hr'g Statement 11 para. 90.

140. That same day, Mr. Isler provided Complainant with a draft Petition to Enforce Parenting Time. Joint Pre-Hr'g Statement 11 para. 91.

141. Complainant filled out the petition and returned it to Mr. Isler via US Mail. Joint Pre-Hr'g Statement 11 para. 92.

142. On August 25, 2010, Complainant e-mailed Mr. Isler in order to ensure that he received the completed petition. Joint Pre-Hr'g Statement 12 para. 93; State Bar Ex. 132, at Bates SBA000356.

143. That same day (Wednesday, August 25, 2010), Mr. Isler replied stating "Hi Marybeth, Got it. Filed today. Mike." Joint Pre-Hr'g Statement 12 para. 94; State Bar Ex. 132, at Bates SBA000356.

144. However, the Petition to Enforce Parenting Time was not filed that day, but filed on August 30, 2010. State Bar Ex. 121, at Bates SBA000313.

145. On August 30, 2010, Complainant e-mailed Mr. Isler and asked for a copy of the filed documents. Joint Pre-Hr'g Statement 12 para. 95; State Bar Ex. 132, Bates SBA000357.

146. On January 18, 2011, the Court held a Resolution Management Conference and scheduled a March 11, 2011 Order to Show Cause Hearing re: Contempt and Enforcement of Mother's parenting time. Joint Pre-Hr'g Statement 12 para. 96.

147. On March 8, 2011, Mr. Isler filed a Notice of Settlement with the Court requesting that the March 11, 2011 hearing be vacated. Joint Pre-Hr'g Statement 12 para. 97.

148. Complainant was unaware of any settlement between the parties or the terms of the purported agreement that was the basis of Mr. Isler's March 8, 2011 Notice of Settlement and request to vacate the March 11, 2011 hearing. Maly Hr'g Test.

149. Mr. Isler signed the Notice on behalf of both Complainant and her ex-husband and indicated that a signed Stipulation would be submitted to the Court within thirty (30) days. Joint Pre-Hr'g Statement 12 para. 98.

150. We find no exhibit that demonstrates her ex-husband knew of the purported agreement, nor is there an exhibit demonstrating Mr. Isler had authority to sign that such an agreement was entered. Further there is no exhibit presented that even demonstrates what that purported agreement consisted of.

151. On April 19, 2011, Complainant called Mr. Isler and informed Mr. Isler that she was temporarily in Florida to assist a family member and would return to Arizona on or about July 2011 for a job interview and to enroll in school. Maly Hr'g Test.; State Bar Ex. 133, Bates SBA000364.

152. Mr. Isler did not inform his client that he filed a Notice of Settlement or that the March Order to Show Cause Hearing had been vacated. Maly Hr'g Test.

153. Mr. Isler informed Complainant that a Status Conference was scheduled for May 25, 2011 and that he would motion for Complainant to appear telephonically. Maly Hr'g Test.

154. On April 21, 2011, the Court issued a minute entry setting a Status Conference on May 25, 2011 as the Court did not receive the signed Stipulation within thirty (30) days as stated in the Notice of Settlement. Joint Pre-Hr'g Statement 12 para. 99; State Bar Ex. 124.

155. No corroborating evidence has been submitted that demonstrates there ever was such an agreement. Under the circumstances we find Mr. Isler was untruthful in his testimony and that no such agreement was ever crafted or existed.

156. Complainant attempted to contact Mr. Isler on April 25 and April 28, 2011 but received no response. Maly Hr'g Test.; State Bar Ex. 133, at Bates SBA000362-363.

157. At the hearing on May 25, 2011, Mr. Isler appeared personally, Complainant appeared telephonically and Complainant's ex-husband did not appear. Joint Pre-Hearing Statement; State Bar Ex. 125. Joint Pre-Hr'g Statement 12 para. 100; State Bar Ex. 125.

158. Mr. Isler made an avowal to the Court that the parties entered into an agreement which was memorialized and sent to the ex-husband for signature but that ex-husband learned that Complainant relocated to the State of Florida and changed his mind. Respondent's Hr'g Test.; Joint Pre-Hr'g Statement 12 para. 101. He learned of her purported relocation from Mr. Isler. Respondent's Hr'g Test.

159. Based on Mr. Isler's avowals regarding a visitation agreement, the Court Ordered Mr. Isler to resend the Stipulation to the ex-husband and further ordered the ex-husband to sign the document. State Bar Ex. 125.

160. During the May 25, 2011 hearing, the Court made a finding that if either party wished to modify the agreement, Arizona would no longer have jurisdiction and that the parties can pursue the case in either Florida or Texas. Joint Pre-Hr'g Statement 13 para. 102; State Bar Ex. 125. This ruling was based on the false information given by Mr. Isler that Complainant residence was in Florida. Joint Pre-Hr'g Statement 13 para. 102; State Bar Ex. 125.

161. Complainant attempted to contact Mr. Isler by phone and e-mail after the May 25, 2011 hearing but received no response. Mr. Isler never called his client again. State Bar Ex. 133, at Bates SBA000365, 367.

162. On May 31, 2011, Complainant provided Mr. Isler with her relatives' "6 Coventry Place, Palm Court, FL 32137" address as her temporary address while in the State of Florida. Joint Pre-Hearing Statement 13 para. 103; State Bar Ex. 132, at Bates SBA000358. Mr. Isler received this information. State Bar Ex. 132, at Bates SBA000358.

163. On June 7, 2011, Complainant again called Mr. Isler, leaving him a message. State Bar Ex. 133, at Bates SBA000367.

164. On June 16, 2011, Mr. Isler e-mailed Complainant a copy of the pleading entitled Post Decree Stipulation re: Modification of Parenting Time (hereinafter referred to as "Stipulation") and requested that she sign, notarize, then return the document immediately. Joint Pre-Hr'g Statement 13 para. 104; State Bar Ex. 132, at Bates SBA000359.

165. Complainant responded that same day that "This is not acceptable to me..." demonstrating there had been no previous agreement and that the current purported "agreement" terms were first seen by Complainant when this email was received. *Id.* at Bates SBA000360.

166. On June 17, 2011, Mr. Isler reiterated to Complainant, among other things, that once Complainant moved to the State of Florida she divested the State of Arizona of jurisdiction. Joint Pre-Hr'g Statement 13 para. 105; State Bar Ex.132, at Bates SBA000360.

167. On June 23, 2011, Mr. Isler filed a motion to withdraw as attorney of record stating, among other things, that Complainant moved to Florida and has not provided Mr. Isler with an address. Joint Pre-Hr'g Statement 13 para. 106; State Bar Ex. 126. Mr. Isler further stated that "despite numerous attempts to reach (Complainant), (Complainant) has not returned phone calls or emails." Joint Pre-Hr'g Statement 13 para. 106; State Bar Ex. 126. The motion was not mailed or e-mailed to Complainant. State Bar Ex. 126. As pointed out above, Complainant had not failed to return phone calls or emails, and had provided Mr. Isler with her temporary address in Florida to the contrary of Mr. Isler's statement to the court. *See supra* pp. 26-29.

168. In fact Mr. Isler had made no calls to Complainant since May 25, 2011. State Bar Ex. 133.

169. On June 28, 2011, at 3:30 p.m., Mr. Isler filed the Stipulation which was purportedly signed by the ex-husband but not the Complainant. Joint Pre-Hr'g Statement 13 para. 107; State Bar Ex. 128.

170. Mr. Isler wrote, "The parties now agree to modify the current court Order as follows: Petitioner will visit the minor children in Texas for a weekend on a date that is agreeable to both parties. Any future visitation will be worked out between the parties." State Bar Ex. 128, at Bates SBA000340. We find that Mr. Isler knew these statements were false at the time he wrote the Post Decree Stipulation and his actions were intentional.

171. The harm to his client is not measurable. The result of hiring Mr. Isler to enforce her visitation rights resulted in an "agreement" she was never a party to that reduced visitation for Complainant, who had been denied visitation for over a

year, from eight weeks to one “weekend on a date that is agreeable to both parties.” *Id.*

172. Based on the false statement of Mr. Isler, the Court issued a minute entry finding that the Stipulation was voluntarily entered into by the parties and enforceable as written. Joint Pre-Hr’g Statement 13 para. 108; State Bar Ex. 129.

173. On June 28, 2011, at 4:15 p.m., the Court granted Mr. Isler’s Motion to Withdraw. Joint Pre-Hr’g Statement 13 para. 109; State Bar Ex. 127.

174. Upon learning about this Complainant sunk into a deep depression and was stunned. Maly Hr’g Test. She requested the file from Mr. Isler. *Id.* He said he no longer had it. *Id.* She went to the court and copied the file discovering the enormity of the fraud. *Id.* On February 29, 2012, Complainant filed an Expedited Request to Remove Unauthorized Stipulation dated June 28, 2011. State Bar Ex. 130.

175. The Judge having been informed by Mr. Isler of her abandonment of the “stipulation” and disappearance, his response to her Request was predictable. State Bar Ex. 131. The judge “summarily denied” her request with comment. Those comments included findings that “Mother abandoned the case and her attorney and did not provide a means to contact her.” *Id.*

176. We find Mr. Isler intentionally misrepresented his client. He settled the case without the client’s knowledge, consent or authority. He failed to expedite litigation, failed to communicate with his client, misrepresented her and did not keep her informed as to the status of the case. He failed to properly withdraw from representation. He made false statements to the court intentionally deceiving the court stating his client had not returned phone calls, emails and not communicated

with him. He repeatedly misrepresented to the court that his client had agreed to settle the matter, misrepresented her residency status and violated ERs 1.2, 1.3, 1.4, 1.16, 3.2, 3.3, and 8.4(d). Under these circumstances we question whose interests he acted on behalf of.

DISCUSSION OF DECISION

In evaluating the Complainants' testimony, the Panel found their experiences with Mr. Isler to be similar and their testimony credible. These clients testified that they consistently had to initiate contact with Mr. Isler as he routinely did not communicate with them or keep them apprised of the status of their cases. All too often when he did respond, he was not truthful with them.

The Panel was not swayed by the explanations of Mr. Isler. His testimony was not credible. By way of example, Mr. Isler's reason for abandoning his client in Count Three was not plausible. He testified the insurance coverage was not resolved until late May to explain his waiting until May 27, 2011 to file his notice of appearance. The best evidence is the April 29, 2011 letter from the insurance carrier. Its date is consistent with the testimony of his client that she delivered it to him in early May.

Mr. Isler testified that the "Formal Interview Response Form" was not attached to the letter from the Board which he was given by his client. He stated there was a lack of follow through regarding the formal written request for an interview. He stated he relied on his client's statement that she had requested a formal interview. Yet the letter itself gave clear enough warning regarding the importance of such formal request in underscored language. "please notify the Board within 10 business days of the date of this letter whether or not you will

participate in the formal interview by completing and returning the enclosed form to the Board's office..." As importantly, the letter concludes, "If the Board does not hear from you within 10 days, it will assume that you do not wish to participate in the formal interview and will remand your case for a formal hearing." If he had read the letter, he would have known this. We conclude he did not read the letter. We do not believe his testimony that his client assured him that she had formally requested a hearing. We conclude that Mr. Isler, as was so common throughout these various counts, failed to follow through.

We repeat that we find he appeared before the Board shortly after 12:47 p.m. and requested a continuance. He left before the Board made a determination on that request purportedly to attend a hearing in Florence that was scheduled for 1:30 p.m. That hearing however, had been vacated by the court as a direct result of Mr. Isler having filed a notice of settlement four months earlier. He acknowledges on that date he never even went to that court.

Instead he swore he waited to call the Judicial Assistant until he was on the road towards Florence and thus discovered the hearing had been vacated. Why he could not have stepped out of the hearing and made the same call earlier is left unexplained. Also of concern, is an entry sandwiched between his billing dates of 5/24/11 and 5/31/11. There Mr. Isler lists the date of 5/26/11 upon the billing statement prepared by him for "Preparation for a *Formal Hearing*". It is either an ironic evidence of his lack of attention to detail that permeated his actions or a slip that sheds light on what he was hired for. In either instance it furthers the argument of the State Bar.

We are convinced he was not prepared for either an interview or a hearing. He had no investment of time in learning what was needed. His ill preparedness and even blaming of his client's purported lateness in contacting him harmed his client.

As a further example, in Count Six, Mr. Isler's argument regarding his use of the term "waiving" the fee was not believable. Mr. Isler testified that it was a "poor choice of words;" however, the Panel was not persuaded and finds it was used to intimidate the client and convince her that she may actually owe money.

We are far more than troubled by such evidence and testimony. If there is a consistency in this matter, it is the unshakable inability of Mr. Isler to perform tasks timely and a remarkable ease at being untruthful with his clients regarding those failings. There is an insinuation that his absence of inner motive to harm his clients should somehow explain away the overwhelming evidence of his unethical behavior. He may not have intended some of his clients harm. However, we find an abundance of evidence that he did not intend them well either.

Collectively all of the counts do not equate to the harm done to Ms. Maly in Count Eight. A review of the documents throughout this case offers a clarity to that which was previously veiled by his abstractions. However with Ms. Maly, the harm to his client is stunning both in the scope of the multiple level of injury, its impact and the very means by which it was done. The client is harmed, the court was harmed and the profession is harmed.

Lawyers are required to operate with truth, because truth is not a supposition. It is a foundational relationship between our actual words or thoughts *and* reality. It has been said that knowledge for the attorney is true belief based on

good evidence. It is not an illusion, or worse, deceit. Here we find actual deception. The brick and mortar of the deceit of Mr. Isler became the baseline wall of reality which the court has set. It was a foreseeable wall that his client has slammed into and is now forced to try and scale.

His failure to be truthful had profound implications for multiple clients. An attorney has power in a case, and a client is at the mercy of an attorney's preparedness and ethical behavior. The Panel found Mr. Isler consistently untruthful in his interactions with his clients and in his testimony. Without the truth, there is little else but manipulation.

Mr. Isler's misconduct is particularly serious in that it involves dishonesty, something Mr. Isler has been disciplined for in the past and evidences a pattern of misconduct. Mr. Isler's prior disciplinary history is as follows: A Censure and Two years of Probation (MAP/EEP) were imposed by default in File No. 03-0272 effective May 6, 2004 for violating ER 8.4(c) and Rules 53(d) and (f). Mr. Isler, while employed as a deputy county attorney for Gila County, made false statements to his employer over a seven month period concerning his wife's health and the death of a relative. The false statements were made to obtain a favorable work schedule and time off from work. State Bar Ex. 138.

An Order of Informal Reprimand and Probation (TAEEP/TAP) was imposed in File No. 05-1413 effective September 13, 2005 for violating ER 1.15 and 1.5(d) and Rules 43 and 44(c)(2). State Bar Ex. 139.

Lastly, although Diversion is not considered prior discipline, an Order of Diversion (LOMAP) was imposed on July 3, 2008 in File No. 08-0374 for violating ERs 1.5 and 1.15. Diversion was successfully completed and the matter dismissed on

November 4, 2009. State Bar Ex. 140. Mr. Isler was on notice regarding fees and communication issues with clients when he participated in and successfully completed Diversion in 2009.³ Despite his heightened awareness of his duties to clients, Mr. Isler again repeatedly failed to fulfill his duties to clients.

At hearing, Mr. Isler acknowledged that in order to maintain an income, he took on too many cases but asserted that his quality of work was not affected. The record however, overwhelmingly does not support this assertion. In multiple instances, he failed to act or to put his client's interest first. When Mr. Isler did take action on behalf of some clients, he did so without informing clients and those actions ultimately caused serious injury.

V. SANCTIONS

In considering an appropriate sanction, we review the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") as a guideline. Rule 58(k), Ariz.R.Sup.Ct. The appropriate sanction depends on the unique facts and circumstances of each case.

Analysis under the ABA Standards

Generally, when weighing which sanction to impose, consideration is given to 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.

³ State Bar Ex. 140, Term 5 of Respondent's 2008 - 2009 Diversion Program, Bates SBA000418 required that Respondent "shall continue his policy of returning all phone calls either by telephone call or e-mail within 24 hours, or shall always ensure that he returns all client phone calls within two business days and shall establish and consistently utilize a method of documenting compliance.

The *Standards* do not account for multiple charges of lawyer misconduct and the ultimate sanction should at least be consistent with the sanction for the most serious misconduct. *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). A lawyer's most important ethical duties are those duties owed to clients. *Standards* at 5.

In these matters, Mr. Isler violated duties owed to the client, the legal system and as a professional. *Standard 4.4*, Lack of Diligence is applicable to Mr. Isler's violation of ERs 1.2, 1.3 and 1.4. *Standard 4.41* provides that 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) lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

In multiple Counts, Mr. Isler engaged in a pattern of neglect when he knowingly failed to perform services for clients and caused serious or potential serious injury. In Count Seven, Mr. Isler's misconduct caused the client to ultimately lose custody of her children. In Count Three, Mr. Isler knowingly failed to file the appropriate documentation which ensured his client was participating in a formal interview and not a formal administrative hearing. Worse he intentionally abandoned the client at the hearing causing serious injury to the client.

Standard 6.1, False Statements, Fraud, and Misrepresentation is applicable to Mr. Isler's most serious misconduct involving violations of ERs 3.3(a), 4.1 and 8.4(c). *Standard 6.11* provides that:

Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes serious or potentially serious adverse effect on the legal proceeding.

In Count Three, Mr. Isler intentionally made false statements to the Board of Behavior Health Examiners in support of his oral motion to continue the matter and misrepresented that he had just recently been retained as counsel and caused serious injury to the client when he abandoned the client at the hearing.

Most egregious was Mr. Isler's misconduct in Count Eight (Maly). Mr. Isler intentionally deceived the court stating his client had not returned phone calls, emails and not communicated with him. He repeatedly misrepresented to the court that his client had agreed to settle the matter, misrepresented her residency status, and caused serious injury to the client.

Standard 5.1, Failure to Maintain Personal Integrity is also applicable to Mr. Isler's violation of ER 8.4(c). *Standard 5.11(b)* provides that disbarment is generally appropriate when:

(b) a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Mr. Isler's repeated failure to maintain personal integrity and honesty not only caused serious injury to clients, it seriously adversely reflects on his fitness to practice.

The Panel determined that disbarment is the presumptive sanction in this matter. Generally when imposing sanctions, the more serious the injury, the more serious the sanction should be. *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). After a lawyer's misconduct has been established, the Panel may consider any aggravating and mitigating factors to aid in determining the appropriate sanction.

Standard 9.0, Aggravating and Mitigating factors

Aggravating factors in attorney discipline proceedings need only be supported by reasonable evidence. *In re Matter of Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). The Panel determined that the following aggravating factors are present: 9.22(a) prior disciplinary offenses, 9.22(b) dishonest or selfish motive, 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, 9.22(g) refusal to acknowledge wrongfulness of 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution.

The Panel determined that the following factors are present in mitigation: 9.32(c) personal and emotional problems,⁴ 9.22(e) cooperative attitude during proceedings and 9.32(g) character and reputation. Mr. Isler provided 6 character letters for the Panel's consideration. Respondent's Ex. 144.

Mr. Isler failed to formally disclose any mitigation in the Joint Prehearing Statement. He testified that this was done as part of the strategy of the case. The State Bar objected to its admission at hearing and advised that the mitigation was also not formally disclosed at the settlement conference. Counsel for Mr. Isler in

⁴ This includes his Wife's mental illness, the loss of her income and the impact on his practice.

rebuttal stated that the mitigating circumstances were attached to Respondent's Pre-Hearing Memorandum filed on January 3, 2012 as Exhibit A and further moved it sealed, which the PDJ granted. Hearing, Day 3.

The PDJ allowed the testimony of Mr. Isler's mitigation witness and advised the parties that appropriate weight would be given to the mitigating evidence given the lack of formal disclosure. It is well established that the purpose of disclosure is to give parties reasonable opportunity to prepare for trial or settlement and to maximize the likelihood of reaching a decision on the merits. *In re All State Ins. Co. v. O'Toole*, 182 Ariz. 284, 896 P.2d 254 (1995).

Mr. Isler provided little independent evidence, other than his self serving testimony at hearing and a written statement attached to his prehearing memorandum, regarding his wife's mental illness. Nonetheless, Mr. Isler's character witnesses testified that Mr. Isler's wife experienced serious mental health issues after the birth of their daughter from approximately 2008 until 2010.

However, Alicia Baker testified that she cared for Mr. Isler's 5 week old daughter beginning in October 2008, Monday - Friday from 8:00 a.m. -5:30 p.m. to present and that Mr. Isler's mother -in-law cared for the child on the weekends. His daughter had full time care, Monday through Friday starting when she was 5 weeks old. This should have provided Mr. Isler with ample time to properly discharge his duties to his clients without committing the acts of misconduct we have described.

Further the time parameters of these concerns appear to have substantially occurred within an approximate time period of 18 months between October 2008 and March of 2010, well before any of the matters before us commenced.

Most of the character witness testified that they utilized Mr. Isler's legal services in the past and referred family and friends to Mr. Isler for legal services with favorable results. The Panel gave little weight to the fact that Mr. Isler did not fail to perform services or abandon those clients who were friends, friends of friends or family.

Mr. Isler and his attorney both stated his legal work was competent at all times. They stated his wife's condition did not impact his quality of work nor his practice of law in general. Even had the mitigating circumstances been disclosed timely, it is unlikely that the Panel would have weighed these factors differently. Mr. Isler testified that he discussed with his counsel the pros and cons and of presenting mitigation and decided to follow the plan of nondisclosure. Such lack of disclosure was puzzling.

It does not escape us that Mr. Isler was intentionally not truthful in the past concerning his family's circumstances in order to obtain a benefit for himself and that his most serious misconduct here was intentional and involved a repeated lack of candor. For those reasons, the Panel struggled with the sanction in this matter as disbarment is clearly the appropriate sanction.

CONCLUSION

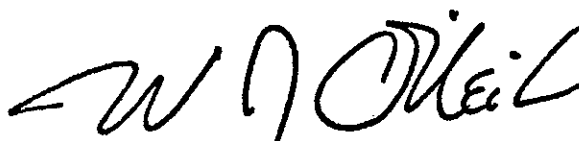
The Panel has weighed the facts in this matter and considered the applicable *Standards* including the aggravating and mitigating factors.

Now therefore,

The Panel orders Mr. Isler be disbarred from the State Bar of Arizona and his name be stricken from the roll of lawyers, followed by two years of probation (LOMAP) upon reinstatement and payment of the costs of these disciplinary

proceedings, as the appropriate sanction. The disbarment shall be effective thirty (30) days from the date of this Report and Order.

DATED this 8 day of March, 2013.

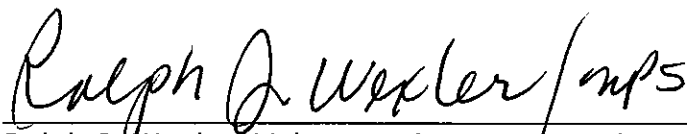


Hon. William J. O'Neil
Presiding Disciplinary Judge

CONCURRING



Carole Kemp, Volunteer Public Member



Ralph J. Wexler, Volunteer Attorney/Member

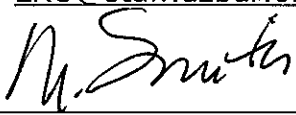
Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 8 day of March, 2013.

Copies of the foregoing mailed/emailed
this 8 day of March, 2013, to:

Craig D. Henley
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288
Email: LRO@staff.azbar.org

Ralph Adams
Adams & Clark, P.C.
520 E. Portland St., Ste. 200
Phoenix, Arizona 85004-1843
Email: ralph@adamsclark.com
Respondent's Counsel

Sandra Montoya
Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288
Email: LRO@staff.azbar.org

by:  _____