BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A DISBARRED MEMBER OF THE STATE BAR OF ARIZONA, **DEAN W. O'CONNOR,** **Bar No. 011941** Respondent.	**PDJ 2020-9108, 2020-9110** **FINAL JUDGMENT AND ORDER** [State Bar Nos. 20-0246, 20-0451, 20-1103] **FILED October 25, 2021**

The hearing panel issued its decision on July 12, 2021, imposing immediate disbarment and the payment of costs. Thereafter, Respondent filed an appeal that was dismissed by order of the Supreme Court of Arizona filed September 17, 2021.

The State Bar filed a Statement of Costs and Expenses pursuant to Rule 60(d). On October 12, 2021, Respondent filed an objection to the costs and also moved to waive and defer fees. On October 19, 2021, the State Bar filed its response. For the reasons stated in the State Bar's response, Respondent's objection to costs is overruled, and his motion to waive/defer fees is denied.

IT ORDERED that Respondent **DEAN W. O'CONNOR, Bar No. 011941**, is disbarred from the State Bar of Arizona and his name is stricken from the roll of lawyers -- effective July 12, 2021 **--** as set forth in the Decision and Order Imposing Sanctions. Mr. O'Connor is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court.

IT IS FURTHER ORDERED that Respondent shall comply with the requirements of Rule 72, Ariz. R. Sup. Ct., including notifying clients, counsel and courts of his disbarment.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses of the State Bar of Arizona in the sum of $4,151.80. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

DATED this 25th day of October, 2021.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing emailed
this 25th day of October, 2021, to:

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DEAN W. O'CONNOR,** **Bar No. 011941** Respondent	**PDJ Nos. 2020-9108 & 2020- 9110** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar Nos. 20-0451, 0246, & 20-1103] **FILED JULY 12, 2021**

An evidentiary hearing was held via Zoom on May 26, May 27, May 28, June 1, and June 2, 2021 before a hearing panel comprised of Presiding Disciplinary Judge Margaret H. Downie, attorney member George A. Riemer, and public member Marsha Morgan Sitterley. The State Bar of Arizona was represented by David E. Wood. Respondent Dean W. O'Connor represented himself.

The State Bar filed two formal complaints against Mr. O'Connor that were heard together. The participants have referred to the bar charge filed by Cindy L. Greene, Esq. (Pole bankruptcy) as Count One, the charge filed by Amy Hernandez, Esq. (Hugger bankruptcy) as Count Two, and the charge filed by Janell Weir (Millican guardianship/conservatorship) as Count Three.

The parties stipulated to a number of facts, more than 200 exhibits were introduced into evidence, and the following individuals testified:

- Dean W. O'Connor
- Jaime Sochor

- Cindy L. Greene, Esq.
- Amy P. Hernandez, Esq.
- Anthony Hugger
- Terry Dake, Esq.
- Janell Weir
- Kiernan Curley, Esq.
- Gary Doyle, Esq.
- Shelly Simon
- Jason Carthen
- David Degnan, Esq.
- Joseph Pole
- Neil Millican

After the evidentiary hearing, the parties filed proposed findings of fact and conclusions of law, and Mr. O'Connor submitted a written closing argument. Having considered the matters presented, the hearing panel issues the following findings of fact, conclusions of law, and sanction in the form of an order of disbarment.

FINDINGS OF FACT

1. Mr. O'Connor was admitted to the State Bar of Arizona in May of 1988. He was suspended from the practice of law from April 17, 2019 through June 16, 2019.

2. Mr. O'Connor has practiced in the area of bankruptcy litigation for decades and was a certified bankruptcy specialist from 1998 until 2005 or 2006.

Count One
(Complainant Greene)

3. Mr. O'Connor represented Joseph Pole in three separate bankruptcy cases. In the third proceeding, Mr. O'Connor filed a Chapter 11 petition for Mr. Pole on October 6, 2016.

4. Mr. Pole gave Mr. O'Connor a $3,000 retainer in October of 2016.

5. In his application for employment as debtor's counsel, *see* 11 U.S.C. §§ 327, 329, Mr. O'Connor stated that Mr. Pole had paid him a $3,000 retainer and avowed that all sums paid to him by Mr. Pole or his principals would be placed in his trust account, would be disclosed to the court, and would "only be applied upon Bankruptcy Court approval." The application further stated: "O'Connor acknowledges and understands that it [sic] must obtain Bankruptcy Court approval of its fees and costs."

6. In its order approving Mr. O'Connor's employment, the bankruptcy court ordered that, "there shall be no setoff against the retainer . . . and no compensation paid, and no reimbursement of expenses, except upon appropriate application and after notice and hearing."

7. Contrary to his avowal in the application for employment, Mr. O'Connor did not deposit the $3,000 retainer into his trust account. Moreover, although Mr. O'Connor knew he was required to obtain bankruptcy court approval before taking the funds, without notice to or approval of the court, he paid himself the $3,000 retainer. Mr. O'Connor knew that the $3,000 belonged to the bankruptcy estate unless and until the court authorized him to take the funds.

8. On December 20, 2016, Mr. O'Connor filed his first fee application with the bankruptcy court, seeking approval for $3,720 in fees, which included the $3,000 retainer he had already paid himself. Mr. O'Connor avowed in that application: "The firm has a retainer left for fees and costs from the Debtor of $3,000.00." Mr. O'Connor knew this statement was false. He had already paid himself the full retainer amount and had never placed the funds into his trust account. Unaware of these facts, the bankruptcy court

approved the first fee application. This is the only fee application the court ever approved in the Pole matter.

9. On September 15, 2017, Mr. O'Connor filed a second fee application, requesting court approval for $10,175 in fees and $372.61 in costs. This second request was denied without prejudice to Mr. O'Connor refiling the application in compliance with the United States Trustee's Guidelines.

10. Mr. Pole's bankruptcy case stalled due to attempts to sell a business he co-owned with his brother ("the gas station"). That sale was intended to partially fund a plan to pay creditors. The contemplated plan would also be funded by the sale of Mr. Pole's residential property.

11. Mr. Pole's residence sustained major fire damage on February 23, 2018. Mr. Pole submitted two insurance claims to Farmers Insurance ("Farmers") -- one for damage to the residence and the other for personal property loss.

12. At a hearing on March 20, 2018, Mr. O'Connor advised the bankruptcy court that Mr. Pole's residence had burned. He stated that the home was insured by Farmers and that insurance proceeds should be sufficient to pay off the residential lender. Mr. O'Connor did not mention the insurance claim for personal property.

13. At a hearing on May 15, 2018, Mr. O'Connor advised that Farmers was expected to pay at least $511,000 for damage to the residence. He also stated that a second claim for personal property could result in a payment of approximately $300,000. This was the only disclosure Mr. O'Connor made about insurance proceeds for Mr. Pole's

personal property loss until he filed delinquent operating reports some seven months later, after the court had already confirmed the plan of reorganization.

14. On May 23, 2018, Mr. O'Connor wrote to the claim's adjuster about Mr. Pole's personal property loss claim. He included a "Proof of Loss" and stated his understanding that "checks should be written by the end of this month." He asked that the checks be sent to his office "so I can disperse [sic] to the appropriate claimants or lienholders."

15. Mr. O'Connor filed a third application for fees on June 11, 2018 in the sum of $28,475. This application was never ruled on because, according to Bankruptcy Judge Eddward Ballinger, Mr. O'Connor "never filed a certificate of no objection or lodged a form of order."

16. No later than June 18, 2018, Mr. O'Connor received an itemization from Farmers that reflected an aggregate compensable loss of $322,854.91 for Mr. Pole's personal property.[1]

17. On June 19, 2018, Mr. O'Connor lodged a Stipulated Order Confirming Debtor's Chapter 11 Amended Plan of Reorganization. Under the plan, Mr. Pole's unsecured creditors would begin receiving monthly installment payments on September 15, 2018, with payment in full occurring upon sale of the gas station and adjoining lots. The stipulated order did not mention Mr. Pole's impending receipt of insurance proceeds

[1] In his bankruptcy filings, Mr. Pole valued his household furnishings at $3,000. Farmers paid him $337,199.88, including $33,912.15 for art, $37,726.95 for furniture, $38,273.66 for housewares, and $22,162.16 for "Movies, Music & Media."

in excess of $300,000. At a hearing held that same day, Mr. O'Connor advised the court that all objections to the plan of reorganization had been resolved. He did not disclose the substantial personal property insurance proceeds expected within a matter of days, which he knew were an asset of the bankruptcy estate.

18. Farmers sent Mr. O'Connor a check for $337,199.88 in settlement of Mr. Pole's personal property loss claim. Mr. O'Connor deposited that check into his trust account on June 21, 2018.

19. On June 22, 2018, Mr. O'Connor paid himself $39,742.61 from the insurance proceeds. He transferred $234,407.27 to Mr. Pole. Mr. O'Connor did not apply for or receive court approval for these disbursements, and he did not disclose either disbursement for almost six months.

20. Mr. O'Connor knew that Mr. Pole was a compulsive gambler.[2] One of the unsecured creditors in the bankruptcy case was the law firm of Burch & Cracchiolo. Burch & Cracchiolo had previously represented Mr. Pole in a different case, and Mr. O'Connor knew Mr. Pole had not paid substantial attorneys' fees owed to the firm. Mr. O'Connor also knew Mr. Pole had gambled away settlement funds he received in that matter.

21. The bankruptcy court signed the Stipulated Order Confirming Debtor's Chapter 11 Amended Plan of Reorganization on July 26, 2018. At the time, the court was

[2] Mr. Pole reported gambling winnings in 2016 of $648,691 in an amended tax return filed in 2018, after confirmation of the plan. Those winnings were offset by claimed gambling losses that year in the sum of $648,691.

unaware that Mr. O'Connor had received $337,199.88 in bankruptcy estate property, from which he had paid himself $39,742.61 and transferred $234,407.27 to Mr. Pole.

22. The United States Trustee ("Trustee") filed a Motion to Convert Case to Chapter 7 Proceeding on December 4, 2018 because Mr. Pole had not paid quarterly fees or filed mandated reports. The Trustee noted previous instances of non-compliance and argued the debtor's violation of court orders made it impossible to know whether he had made payments to creditors as required by the plan. Also on December 4, 2018, Judge Ballinger held a status hearing at which Mr. O'Connor stated that since confirmation, Mr. Pole had received insurance proceeds that would be used to pay creditors. Mr. O'Connor knew that insurance proceeds for the personal property loss claim had been received and disbursed more than a month before the court signed the confirmation order, but he did not so advise the court.

23. In December of 2018, Mr. O'Connor filed delinquent operating reports for June 2018 through November 2018. In those filings, he disclosed for the first time that he personally had received $39,742.61 in bankruptcy estate funds almost six months earlier. It was only from these belatedly filed reports that the court, Trustee, and creditors learned Mr. O'Connor had given Mr. Pole $234,407.27, most of which he had lost gambling.

24. Mr. O'Connor blamed Mr. Pole for the failure to file timely reports, testifying that he did not provide necessary information. There is, however, nothing in the record documenting any attempts to obtain information from Mr. Pole. Successor counsel to Mr. Pole – Cindy L. Greene – was asked whether she experienced difficulty getting necessary information from Mr. Pole. She responded, "not at all."

25. At a hearing on February 26, 2019, the Trustee discussed Mr. Pole's receipt of the personal property insurance proceeds in June, most of which had been "dissipated through different gambling activities" and "large cash withdrawals." Because Mr. O'Connor had not filed mandatory monthly and quarterly reports, the Trustee had been unaware of these events. The Trustee further reported that Mr. O'Connor still had not provided proof that creditors had been paid in accordance with the plan, expressed "significant concerns" about the case, and stated that an investigation was necessary to determine whether to seek to vacate the order confirming the plan of reorganization.

26. Judge Ballinger admonished Mr. O'Connor, noting that he could have prevented the dissipation of substantial bankruptcy estate assets. Mr. O'Connor avowed that he was unaware Mr. Pole had gambled away the insurance proceeds until January. That statement was false. Mr. O'Connor knew from reports he himself prepared, filed, and signed in December of 2018 that Mr. Pole had withdrawn and spent large sums of money at casinos after receiving the insurance proceeds.

27. Due to his impending suspension from the practice of law (see ¶ 1, *supra*), Mr. O'Connor was terminated as Mr. Pole's lawyer. Successor counsel, Cindy L. Greene, filed a notice of substitution of counsel on April 11, 2019. Ms. Greene asked Mr. O'Connor to turn over all funds in his trust account from the Pole matter. Mr. O'Connor sent Ms. Greene $44,937.35, withholding $9,980 he claimed was owed him as attorneys' fees. Later, at a hearing on July 16, 2019, Mr. O'Connor admitted he was "out of trust" and only retained approximately $5,000 of the $10,000 he had withheld in his trust account.

After Judge Ballinger ordered him to turn over all remaining funds to Ms. Greene, he sent her a check for $4,540.

28. On April 16, 2019, Mr. O'Connor filed a fourth fee application, seeking court approval for an additional $12,850 in fees. For the first time, in a single line, he referenced receipt of a $1,500 retainer from Mr. Pole in February 2018. He did not timely disclose receipt of that retainer, did not place the funds into his trust account, and did not receive court approval to take the funds.

29. The Trustee objected to the fourth fee application and asked the court to order Mr. O'Connor to disgorge all fees awarded or received. The Trustee argued, in pertinent part:

> Between the May 2018 hearing and the June 2018 hearing, O'Connor negotiated the proposed form of the Stipulated Confirmation Order with the Estate's creditors and lodged it with the Court. O'Connor then appeared before the Court the next day explaining the terms of the Stipulated Order. Yet, O'Connor failed to disclose to the Court and the Estate's creditors that the insurance claims had been approved and he was waiting for their receipt. . . .
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> Over the next 30 days O'Connor would: (1) file his 1129 Affidavit with the Court attesting that the Amended Plan had been proffered in good faith without disclosing his receipt of the Personal Residence and Personal Property Proceeds to the Court or creditors; (2) distribute $234,000 to the Debtor from the Personal Property Proceeds knowing of Mr. Pole's debilitating gambling habits; and (3) pay himself over $39,000.00 out of the Personal Property Proceeds from his IOLTA Account without any disclosure to the Court; and (4) fail to file the June 2018 MOR [Monthly Operating Report] by the deadline while being in control and fully aware of these transactions. . . .
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> The most troubling part is that O'Connor took all of these actions and failed to disclose any of them during the time that he knew the Court was reviewing the 2019 Affidavit and the case to determine whether to approve the Stipulated Confirmation Order. . . .

> There is little doubt that O'Connor not only used trickery to harm creditors . . . he used these deceptive practices to intentionally mislead the court in Order [sic] to achieve plan confirmation. In doing so, O'Connor breached his fiduciary duties and duty of loyalty that he owed to the Estate, not to mention his duty of candor to the Court.
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> Disclosure of these actions was only discovered after the U.S. Trustee compelled the filing of the delinquent MORs by filing her Motion to Convert the case. . . . And even then, after having multiple opportunities, O'Connor continued to fail to disclose the payment to himself from his IOLTA Account. O'Connor has even claimed to not know of Mr. Pole's gambling activities until the U.S. Trustee brought it to the attention of the Court in January. . . . However, Mr. Pole contends that he regularly delivered his bank statements to O'Connor so that he could prepare the MORs for filing. Even more troubling, is that Mr. Pole asserts that it was O'Connor who signed Mr. Pole's name on the MORs.

30. At a hearing on July 16, 2019, Judge Ballinger asked Mr. O'Connor the total amount he had received in the Pole matter. Mr. O'Connor responded, without equivocation: "$39,000." That statement was false. By July 16, 2019, Mr. O'Connor had – at a minimum -- been paid the following sums:

- $3,000 received in October of 2016
- $,1500 received in late February/early March of 2018
- $400 received June 21, 2018 (from insurance proceeds)
- $39,742.61 received June 22, 2018 (from insurance proceeds)
- $750 received December 31, 2018
- $747 received January 25, 2019
- $2,500 received February 1, 2019
- $2,000 received February 11, 2019

TOTAL: $50,639.61

At the disciplinary hearing, Mr. O'Connor conceded that Judge Ballinger's question was not confusing but stated he did not remember receiving more than $39,000. The hearing panel did not find this testimony to be credible.

31. Mr. O'Connor's inability to answer questions about money he received in the Pole matter was troublesome. For example, when bar counsel asked about the funds he received in February of 2019, Mr. O'Connor responded, "I took some money at some point. I don't know. You'd have to show me the ledgers." He has also failed to account for or explain funds that should have been in his trust account and transmitted to Ms. Greene but were not. Mr. O'Connor knew that the State Bar was alleging he had converted substantial funds, yet he was either unprepared or unwilling to cogently discuss the topic. More generally, throughout the disciplinary hearing, Mr. O'Connor refused to answer direct questions, instead offering meandering, non-responsive, evasive answers that detracted significantly from his credibility.

32. When Judge Ballinger mentioned the possibility of a disgorgement order during the July 16, 2019 hearing, Mr. O'Connor replied, "If you order me to disgorge, I'll just file bankruptcy." Judge Ballinger set a further hearing for July 24, 2019, and recommended Mr. O'Connor retain counsel, commenting, "I've never had anything like this before."

33. At the July 24, 2019 hearing, Judge Ballinger asked Mr. O'Connor how much in unapproved funds he had taken from the bankruptcy estate. Mr. O'Connor failed to answer the question. The court engaged in the math, assuming Mr. O'Connor had transferred only $39,742.61 to himself, and thus ordered him to remit $39,742.61 - minus the $3,720 that had been approved earlier in the case - to Ms. Greene for holding in her IOLTA account. Mr. O'Connor did not correct the court's misapprehension as to the amount of unapproved funds he had received.

34. At a hearing on August 28, 2019, Mr. O'Connor confirmed he had not complied with the July 24, 2019 order because he was financially unable to do so. Judge Ballinger ruled that Mr. O'Connor's claims for compensation would be denied unless and until the bankruptcy estate was made whole by the return of all assets he had taken. Judge Ballinger openly questioned whether Mr. O'Connor possessed the requisite integrity to represent clients in bankruptcy court, given his blatant violations and refusal to acknowledge any wrongdoing.[3]

35. On September 1, 2020, Judge Ballinger ordered Mr. O'Connor to disgorge all fees he had received in the Pole matter, stating:

> The question before this Court is whether demonstrating integrity, complying with federal bankruptcy edicts relating to the entitlement to compensation, and adhering to the applicable rules governing the practice of law are prerequisites to an award of any compensation to a debtor's counsel. The answer is: Absolutely.
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> Despite the fact this Court never approved any fees beyond the $3,720 requested in the first fee application, O'Connor admits to, in essence, converting almost $40,000 of Estate property. O'Connor argues that his failures and misappropriation of Estate property is of no significance because no one timely objected to the fee applications, a stipulated Plan was confirmed, the insurance proceeds received from the personal property losses were never earmarked to fund the Plan, and all creditors were paid in full in this case. The Court rejects these arguments.
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[3] When bar counsel asked Mr. O'Connor about the court's questioning of his integrity in open court, Mr. O'Connor responded that Judge Ballinger "went on and on and on about what I shouldn't have done." He seemed annoyed, not concerned, about the court's statements.

The Bankruptcy Code and Federal Rules of Bankruptcy Procedure ("FRBP") clearly forbid what happened here. 11 U.S.C. § 329(a) requires an attorney representing a debtor "to file with the court a statement of compensation paid or agreed to be paid." FRBP 2016 requires debtor counsel to file an application for compensation, and the supplemental statement per 11 U.S.C. § 329 within 14 days after any payment not previously disclosed. This duty to disclose is a continuing duty and is mandatory, not permissive.

* * * * *

There is no dispute that O'Connor did not file a FRBP 2016 disclosure within 14 days of receiving the funds. While he says he disclosed them in Debtor's delinquent monthly operating reports, that is not what FRBP 2016 requires. That revelation, moreover, came well after the Plan was confirmed in this case. He has provided no other defense to his failure to disclose other than to off-handedly claim that he is a sole practitioner, suggesting the rules do not apply to him. They do.

O'Connor characterizes his violations of the Code and Bankruptcy Rules as no harm, no foul because the Confirmed Plan paid all creditors in full. This ignores the fact that the Plan was confirmed without adequate disclosure or information to the creditors. It also ignores the fact that feasibility was a hotly contested issue in this case and Plan funding, at the time, was contingent on the sale of two properties – the house (which subsequently burned down) and Debtor's interest in a gas station co-owned with his estranged brother. Priority and general unsecured creditors ultimately received total payments of $347,272 which was payment in full, but not until April 2020. The $337,199 in cash would have been extremely beneficial to the Estate and would have enabled it to pay a large portion of the creditor claims far more quickly. The failure to disclose the receipt of these funds also begs the question whether the creditors would have voted in favor of the Plan as proposed knowing there was $337,199 immediately available. These funds were to be used to benefit creditors.

* * * * *

Equally troubling is the fact that O'Connor's behavior seemingly violates his duty of candor to the Court under Ethical Rules 3.3 and 8.4.

36. Mr. O'Connor has not complied – in whole or in part -- with Judge Ballinger's disgorgement order.

Count Two
(Complainant Hernandez)

37. On January 9, 2017, Mr. O'Connor filed a Chapter 7 bankruptcy petition on behalf of Anthony Hugger.

Failure to Discharge Tax Debts

38. On May 9, 2017, the bankruptcy court entered an order of discharge. Mr. Hugger's tax debts were not discharged because his tax returns had not been filed two years or more before the Chapter 7 petition was filed.

39. Mr. O'Connor filed a Motion to Vacate Discharge and Dismiss Case, stating that "the only reason" Mr. Hugger sought bankruptcy relief was to address his tax debt of approximately $40,000. He acknowledged that Mr. Hugger's tax returns for 2001, 2002, 2005, 2006, 2009, 2010, and 2012 had all been filed "in or around September of 2015" and that "[i]n order for the amounts due in those tax years to be discharged . . . the Debtor would have had to wait until approximately September of 2017 before filing this case."

40. The Trustee and the Arizona Department of Revenue (ADOR) opposed the motion to vacate. After oral argument, the bankruptcy court denied the motion. The court asked Mr. O'Connor why the tax return issue had not been discovered and raised before discharge. Mr. O'Connor conceded that it could have been if it had been "thoroughly researched" and stated, "it should have been verified when all those returns were filed so the exact date could have been discovered." The court observed that, "what

we may have here is gross negligence on [Mr. O'Connor's] part, and frankly, that is really unfortunate because it's now falling on the debtor."

41. Mr. O'Connor thereafter filed an "amended" motion for new trial and motion for relief from judgment, seeking to vacate the discharge based, in part, on incorrect advice he had given to Mr. Hugger. In that filing, he stated that Mr. Hugger owed the IRS approximately $80,000 and "an unknown amount" to ADOR.[4] One of the so-called "extraordinary circumstances" Mr. O'Connor cited in support of his motion was that he "gave inaccurate or incomplete advice regarding the deadlines or timeframes in/by which to file bankruptcy in order to discharge debts from certain tax years." The court denied the motion, and Mr. O'Connor filed an appeal with the Bankruptcy Appellate Panel that was unsuccessful.

42. In February of 2020, Amy Hernandez, acting as counsel for the Trustee, filed a legal malpractice action against Mr. O'Connor in the Maricopa County Superior Court based on his errors in the Hugger case. Mr. O'Connor filed a motion to dismiss, arguing: (1) the malpractice claim did not belong to the bankruptcy estate/Trustee; and (2) the statute of limitations began to run when the discharge order was entered -- May 9, 2017 – which occurred more than two years before the malpractice action was filed.

43. Before she filed the legal malpractice action, Ms. Hernandez communicated with Mr. O'Connor.[5] When he asserted that the statute of limitations had run, Ms.

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[4] ADOR had previously advised, in its objection to the Motion to Vacate, that Mr. Hugger owed it $11,600, plus interest and penalties.

[5] Among other things, Mr. O'Connor advised Ms. Hernandez that he had no malpractice insurance and stated, "[J]ust push me into bankruptcy if you like."

Hernandez sent him case law authority standing for the proposition that a cause of action for legal malpractice accrues when the plaintiff's damages are certain and not contingent on the outcome of an appeal. (The unsuccessful appeal to the Bankruptcy Appellate Panel concluded in 2019.) Mr. O'Connor nonetheless argued in his motion to dismiss that the statute of limitations had expired. At the disciplinary hearing, he testified he was unaware that an appeal tolled the statute of limitations until Ms. Hernandez responded to his motion. The record establishes otherwise. The same case law Ms. Hernandez sent to Mr. O'Connor on February 7, 2020 was cited in her response to the motion to dismiss. Mr. O'Connor clearly saw the authorities she transmitted in February because he communicated further with her about the issue. Although Mr. O'Connor testified that he withdrew his statute of limitations argument after reviewing Ms. Hernandez' response, Ms. Hernandez disputed that assertion, and nothing in the record supports Mr. O'Connor's claim.

44. Mr. O'Connor testified at the disciplinary hearing that he never argued Mr. Hugger owned the malpractice claim and that he only wanted the court to decide – as between Mr. Hugger and the Trustee – who owned the claim. That testimony is directly contrary to statements Mr. O'Connor made in a motion for summary judgment filed in these proceedings, where he stated: "Respondent sought to dismiss the state court case *asserting the litigation belonged to Debtor Anthony Hugger* and was not property of the Ch 7 [sic] Trustee Mr. Warfield and the bankruptcy estate." (Emphasis added)

45. Mr. O'Connor did not tell Mr. Hugger about the malpractice litigation, the motion to dismiss, or his advocacy for Mr. Hugger's ownership of the malpractice claim.

46. On the date set for oral argument in the superior court on his motion to dismiss, Mr. O'Connor contended the bankruptcy court was required to determine ownership of the malpractice claim. Ms. Hernandez agreed to have that court decide the issue. She thereafter filed a motion in the bankruptcy court, arguing that the bankruptcy estate – not Mr. Hugger – owned the malpractice claim. Despite his insistence that the bankruptcy court decide the issue, Mr. O'Connor did not respond to Ms. Hernandez' motion.

47. Approximately one hour before the scheduled argument on Ms. Hernandez' motion, Mr. O'Connor filed a Motion to Withdraw as Counsel for Debtor, citing conflicts of interest with Mr. Hugger based on the Trustee's malpractice claims against him. The motion did not include Mr. Hugger's consent to withdrawal or his contact information. Mr. O'Connor nevertheless appeared at the argument and incorrectly asserted that Ms. Hernandez or the Trustee should have "noticed" the motion directly to Mr. Hugger. The court pointed out that Mr. O'Connor was still counsel of record and had only moved to withdraw that morning. As such, the court stated, the motion was properly served on Mr. O'Connor.[6]

48. When questioned by the court about whether Mr. Hugger was aware of the ongoing proceedings, Mr. O'Connor stated, "I really haven't discussed this matter with

[6] In his post-hearing proposed findings of fact and conclusions of law, Mr. O'Connor continued to insist that Ms. Hernandez should have notified Mr. Hugger of the hearing on her motion. *See* Respondent's proposed finding of fact # 5 under "Count Two." Ms. Hernandez, though, was ethically precluded from communicating with Mr. Hugger because Mr. O'Connor was still his counsel of record. *See* ER 4.2 (communication with person represented by counsel).

[Mr. Hugger], this particular issue of whether [the malpractice claim] belongs to him or the estate." The court noted that Ms. Hernandez' motion had been pending for some time and clarified with Mr. O'Connor: "I'm hearing you say you never even talked to your client about the motion?" Mr. O'Connor replied, "That's correct, Your Honor." The court later observed, "This debtor has absolutely no idea what's happening and yet it's his interests that are at stake."[7]

49. The court permitted Mr. O'Connor to withdraw from Mr. Hugger's representation in the bankruptcy proceedings, but before doing so, stated, "It is a shame that only this morning Mr. O'Connor decides to finally wake up and make a motion to withdraw when, frankly, this looks to me like something that should have been done long ago." Because Mr. O'Connor had not communicated with Mr. Hugger about the pending motion, the court continued the oral argument.

50. After Mr. O'Connor withdrew, Ms. Hernandez and counsel for the Trustee – Terry Dake – spoke with Mr. Hugger. Mr. Dake testified that Mr. Hugger appeared to "be in the dark" about what had happened, and Ms. Hernandez testified that describing Mr. Hugger as confused would be "an understatement." At the disciplinary hearing, Mr. Hugger testified that he was "pretty taken aback by this telephone call" and that he knew nothing of the malpractice claim before that call.

[7] In a motion for summary judgment filed in these proceedings, Mr. O'Connor stated that Mr. Hugger had notice of the oral argument on Ms. Hernandez' motion to determine ownership of the malpractice claim "by Respondent's Motion to withdraw as his counsel." That statement was untrue. The motion to withdraw was filed and mailed to Mr. Hugger the same date as the oral argument.

51. Mr. O'Connor remained as counsel of record for Mr. Hugger in the bankruptcy proceedings for months after learning he was being sued by the Trustee for negligence in his representation of Mr. Hugger. Specifically, Mr. O'Connor knew of the impending malpractice claim no later than February 2, 2020, yet he did not seek to withdraw from Mr. Hugger's representation until July 10, 2020.

Legal Ownership of the Prescott Property

52. The bankruptcy petition Mr. O'Connor filed on January 9, 2017 listed Mr. Hugger's place of residence as a street address on Thumb Butte Road in Prescott, Arizona ("the Prescott property"). The debtor's residence is typically subject to a homestead exemption in a Chapter 7 proceeding.

53. A year before the bankruptcy filing – on January 7, 2016 -- Mr. O'Connor and Mr. Hugger had filed articles of incorporation for an entity called Hafner Holdings LLC. Mr. Hugger was the sole member and manager. Mr. O'Connor was the statutory agent, and his office address was listed as the LLC's "known place of business."

54. On December 31, 2015, Mr. Hugger executed a warranty deed transferring ownership of the Prescott property from himself to Hafner Holdings LLC.

55. On January 4, 2017, Mr. Hugger – in his capacity as managing member of Hafner Holdings -- executed a warranty deed transferring ownership of the Prescott property back to himself. That deed was recorded with the Yavapai County Recorder one day after the bankruptcy petition was filed -- on January 10, 2017.

56. Mr. O'Connor had personal knowledge of the deed transfers. The recorded deeds were sent to his office address.

57. In July of 2020, the Trustee, through counsel Terry Dake, filed a Motion to Set Aside Abandonment in Mr. Hugger's bankruptcy case. The Trustee alleged that the bankruptcy schedules Mr. O'Connor prepared and filed falsely stated that Mr. Hugger owned the Prescott property on the date the petition was filed, when, in fact, Hafner Holdings LLC was the legal owner. The Trustee argued that because of the "false representations regarding the ownership of the Property, the trustee [had previously] determined that there were no assets available to creditors."

58. After Mr. O'Connor withdrew from his representation, Mr. Hugger settled with the Trustee by paying $40,000. Mr. Hugger testified that only $8,000 went toward reducing his tax debt and that he owed substantial fees to Mr. Dake and Ms. Hernandez. As a "last resort," Mr. Hugger was forced to list the Prescott property for sale – which includes a retirement home he designed -- in order to pay the tax obligations that should have been discharged. He also had to borrow $40,000. Mr. Hugger could not qualify for a mortgage because of the recency of the Chapter 7 petition Mr. O'Connor filed.

59. There were significant deficiencies in the bankruptcy schedules and associated documents Mr. O'Connor prepared and filed in the Hugger bankruptcy. The initial statement of financial affairs was largely blank and lacked required information. Mr. O'Connor failed to answer the question: "Within 10 years before you filed for bankruptcy, did you transfer any property to a self-settled trust or similar device of which you are a beneficiary?" He also failed to answer the question: "Within 2 years before you filed for bankruptcy, did you sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial

affairs?"[8] The schedules also required identification of ownership or connections to any business in the prior four years, including membership in an LLC or position as officer or managing director of a corporation. Mr. O'Connor falsely stated there was no such ownership or association.

Count Three
(Complainant Weir)

60. Janell Weir and her brother, Neil Millican, are the children of Tammy Millican.[9] Neil is on long-term disability and suffers from bipolar disorder, depression, and anxiety. With some regularity, Neil self-admits to Valley Hospital for mental health treatment. Until recently, he had resided with Tammy his entire life in a home that Tammy owned.

61. Neil and Mr. O'Connor have been friends for years.

62. Tammy was diagnosed with dementia and Alzheimer's disease in December of 2018. Due to her cognitive decline, Tammy's relationship with Neil began to change because – for the first time – she required assistance with daily activities.

63. In January 2020, Arizona Adult Protective Services (APS) opened an investigation based on a report by Valley Hospital staff about statements Neil had made regarding Janell's use of Tammy's money. That investigation was closed as unsubstantiated after the APS investigator obtained Tammy's financial records.

[8] Hafner Holdings did not conduct any business. It existed for the sole purpose of holding title to the Prescott property.

[9] To distinguish between the three family members, we refer to them by their first names.

64. A second APS investigation was initiated against Neil, based on allegations of financial exploitation, potential fraud requiring prosecution, and neglect of Tammy.

65. APS investigator Shelly Simon communicated with Neil and Janell about the need for a meeting to gather information. That meeting was set for February 25, 2020 at a Denny's restaurant.

66. On February 12, 2020, Neil sent a fax to Ms. Simon with the subject line: "Bed Bug action plan from Valley Hospital & Report on AAA." Neil stated:

> Hi Shelly thank you for talking to me things have been very chaotic with my discharge and even my return home. I would ask you are very patient as I am moving very quickly as possible my ultimate concern is for mom and I really am on hold with Valley Hospital as they have required many appointments and things to do for them also they are awaiting my return into PHP – which his Partial Hospitalization 5 hrs a day but I am working hard for my care . . .

67. Tammy had signed two powers of attorney (POA) in March of 2019: one in favor of Neil and the other in favor of Janell. The POAs were prepared and witnessed by attorney Randal L. Stowell, for whom Tammy had previously worked as a legal secretary.

68. On February 24, 2020, Ms. Simon, Neil, and Janell had a telephone conference. Both Janell and Neil stated that they had a POA, though Janell did not have any documentation in her possession. Neil agreed to meet with Ms. Simon and Janell and to bring the POAs. Neil then contacted Mr. O'Connor, asking to bring Tammy into his office that same day to revoke Janell's POA. Neil testified that the plan had been for Tammy's previous employer -- attorney Stowell -- to handle the POA revocation and that Tammy "was quite angry when he said that he wouldn't."

69. Neil and Tammy arrived at Mr. O'Connor's office on February 24, 2020. Mr. O'Connor had prepared a revocation of Janell's POA that he had Tammy sign. In his response to the bar charge, Mr. O'Connor stated he was unaware of the APS investigation at the time Tammy and Neil came to his office. That statement was untrue. Neil testified that he discussed the fact APS was investigating him with Mr. O'Connor *before* going into his office on February 24, 2020. Neil further testified that, immediately after Tammy signed the revocation, he spoke privately with Mr. O'Connor about the scheduled meeting with Shelly Simon the next day.

70. Mr. O'Connor testified that Tammy "seemed oriented" and aware of what was happening when she signed the revocation of Janell's POA in his office. He did not, however, speak with Tammy outside Neil's presence.

71. After Neil and Tammy left his office, Mr. O'Connor sent a text message to Janell, stating that the meeting set for the next day with Ms. Simon would not take place. Mr. O'Connor also contacted Ms. Simon, asking her to reschedule the meeting. She declined to do so. Ms. Simon explained the information-gathering purpose of the meeting and initially stated Mr. O'Connor could not attend. When he pressed the issue, Ms. Simon relented and agreed he could be present as moral support for Neil but could not participate or interfere.

72. On February 25, 2020, Ms. Simon, Janell, Neil, and Mr. O'Connor met at a Denny's restaurant. Ms. Simon advised that APS had obtained records and determined that Janell had not misused Tammy's money. Despite Ms. Simon's admonitions, Mr. O'Connor repeatedly interjected objections, accusations, and commentary. According to

Ms. Simon and Janell – both of whom were credible witnesses – Mr. O'Connor "rolled his eyes" repeatedly, raised his voice, and was sarcastic.[10] Neil became extremely agitated, refused to answer questions, and left the restaurant on more than one occasion. Mr. O'Connor told Ms. Simon that Neil had Tammy's POA and could spend her money as he saw fit. Ms. Simon ultimately terminated the meeting because it was unproductive. Afterwards, Mr. O'Connor told Janell she should pay Neil out of her own pocket for taking care of Tammy and suggested the sum of $1500 per month. Janell responded that that was completely unreasonable, as Neil was living rent-free in Tammy's home and had access to her finances. Nevertheless, Mr. O'Connor subsequently sent Janell text messages requesting payments to Neil.

73. Although APS substantiated some of the neglect and financial exploitation charges against Neil, the agency could not proceed further because Neil himself is classified as a vulnerable adult based on his serious mental health issues.

74. In early March of 2020, Neil went missing. He left Janell a voice mail message stating that he needed help. Janell and her uncle went to Tammy's home and found her there alone. The home was dirty and infested with bedbugs. Janell took Tammy home with her, where she has remained ever since. Janell did not know Neil's whereabouts for several days but discovered he had been using Tammy's debit card for purchases and withdrawals, including at a liquor store. Neil had also taken Tammy's car

[10] Ms. Simon further testified that Mr. O'Connor persisted in sending her inappropriate text messages and that "it was getting so bizarre" that she met with an Assistant Attorney General, who advised her to cease communicating with Mr. O'Connor, which she did.

and abandoned it after getting a flat tire.[11] Neil testified at the disciplinary hearing that he abandoned his mother's vehicle because he was "so frightened," "so out of it that I thought someone was going to shoot me." He informed Mr. O'Connor of this incident. Janell later learned Neil was at Valley Hospital, where he remained for approximately one week.

75. On March 27, 2020, Janell filed a petition in the Maricopa County Superior Court, seeking appointment as Tammy's guardian and conservator. The court appointed attorney Kiernan Curley to represent Tammy. It later appointed attorney Gary Doyle as statutory representative (previously known as a guardian *ad litem*) because Mr. Curley was concerned that Tammy was making requests that were not in her best interests.

76. Mr. Curley met with Tammy within two weeks of his appointment and determined that she clearly met the threshold for a guardian: she was incapacitated, her needs were not being met, and there was no less restrictive option.

77. On May 12, 2020, Neil – through Mr. O'Connor as counsel – filed an objection to Janell's petition, as well as a petition to appoint Neil as Tammy's guardian and conservator. In these filings, Mr. O'Connor alleged that Janell "removed Tammy Millican from her home for over 50 years without cause or justification" and that Janell "just wants Tammy Millican's money."

[11] Neil had also taken Tammy to obtain approximately seven title loans on her vehicle.

78. Mr. O'Connor told Janell he would ask the court to order her to pay Neil's attorneys' fees, even though he knew (but Janell did not) that he was representing Neil free of charge.

79. During a probate court hearing on May 13, 2020, all of the participants – including Mr. O'Connor – agreed that Tammy was incapacitated.[12] The court set an evidentiary hearing to consider the competing petitions and objections.

80. Tammy's court-appointed attorney did not object to Janell serving as guardian and conservator. Mr. Curley testified that although Tammy would say she wanted to return to her home, she would also tell him she liked living with Janell. Mr. Curley believed Tammy "was pretty much in agreement" with whatever her children decided.

81. Throughout the probate proceedings, Mr. Doyle, Mr. Curley, Janell, and Ms. Simon advised Mr. O'Connor that Neil was not qualified to serve as Tammy's guardian or conservator because of his mental health issues, a recent bankruptcy, and, according to Mr. Doyle, "prior exploitation." Mr. Doyle testified that he told Mr. O'Connor "there was not a chance in Hades" Neil would be appointed and that it "was an impossibility." Neil himself testified he was "not well during this period" and was experiencing "horrible" anxiety attacks and a flare-up of his bipolar disorder.

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[12] At the disciplinary hearing, Mr. Doyle opined that the POA revocation Tammy signed in Mr. O'Connor's office was invalid based on Tammy's condition, though he acknowledged having no contact with Tammy until after she revoked Janell's POA. Mr. Curley similarly testified that when he met Tammy, she would not have been competent to execute any estate planning documents. When Ms. Simon met with Tammy in March of 2020, Tammy was unable to answer basic questions.

82. On July 30, 2020, Gary Doyle circulated a proposed order appointing Janell as guardian and conservator. Mr. Curley, as Tammy's counsel, approved the order. Mr. O'Connor, though, insisted that Neil's consent was contingent on a list of demands, including: (1) Tammy "will return to her home and live with Neil by Sept 1 or a [sic] soon as possible after Sept 1;"[13] (2) "Bank account set up to use for Tammy's food and expenses that Neil has access to;" and (3) "dryer fixed or replaced and new stove, dishwasher and washer and bath tub replaced, paid through the credit line on the reverse mortgage." Mr. Doyle responded, stating:

> Dean: Janell cannot agree to do anything based upon what Neil wants. Janell's sole responsibility is to act in the best interests of her mother . . . She cannot commit to a date to have her mother return to her residence, except to say that she will do so when she believes it is safe to do so and in Tammy's best interest.

83. The day before the contested evidentiary hearing, Mr. O'Connor withdrew Neil's petition, as well as the objections to Janell's appointment, contingent on satisfaction of a list of purportedly agreed-to items. He did not tell the court that Mr. Doyle and Janell had both disputed several of the items included on his list. He also omitted emails they had sent to him that made clear no such agreement existed.

84. On August 5, 2020, the probate court appointed Janell as Tammy's guardian on the identical terms requested in her petition and with none of the conditions urged by Mr. O'Connor. The court later appointed Janell as Tammy's conservator; delays in that appointment were primarily attributable to Janell's inability to obtain a bond.

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[13] Tammy had taken out a reverse mortgage on her home, which prohibited her from being absent from the property for more than six months.

85. After Janell was appointed Tammy's guardian, Neil, through Mr. O'Connor, continued interposing objections and demands. In November of 2020, Mr. O'Connor advised that Neil would be withdrawing his consent to Janell's appointment -- primarily because Janell had not allowed Tammy to return to live with him. Mr. Doyle responded to Mr. O'Connor, noting that, "there is a .1% likelihood that any other entity appointed as Tammy's guardian will return her home." Mr. Doyle further cautioned: "I don't think you have a back-up plan and the final result will be eventually draining of Tammy's resources; and your client will still need to find a new place to live." When Mr. O'Connor asserted that everyone had agreed Tammy would return to live with Neil, Mr. Doyle disputed this claim, stating:

> Dean: Your memory fails you. I repeatedly instructed you that whether Tammy would return home was entirely in the discretion of Janell if she were guardian. I refused to make any guarantees or agreements that Tammy would return. I also informed you that Janell was the only one that presented Neil with a glimmer of hope of Tammy returning home. Neil clearly did not and does not understand his predicament. I do not agree that it is in Tammy's best interest to return home at this time. Your client needs to focus on his next step and find a place to live.

When Mr. O'Connor continued to insist that Mr. Doyle had agreed Tammy would return to live with Neil, Mr. Doyle responded:

> Dean: I did no such thing. What I repeatedly told you is my preference is that an individual remain at home for as long as possible. Whether that is in the best interests of the individual is based upon the underlying circumstances.
>
> As such, I never agreed that Tammy should return home, only that it is a possibility and Janell as guardian would be final arbiter. I repeatedly informed that Janell would have total and complete discretion as the guardian to determine where Tammy should live. The fact that Janell had

> to take her mother out of her house in the first place merits that it is not in her best interest to go back.
>
> * * * * *
>
> Your client has a substantial conflict of interest in his desire to have his mother return home, he doesn't want to move and/or pay for a place to live. Janell, on the other hand, gets nothing out of having her mother remain w/ her.

86. On December 1, 2020, Mr. O'Connor filed a document captioned: "Objection to Lodged Forms of Orders Appointing Janell Weir as Guardian and Conservator and Motion to Enforce Agreements/Settlement to Allow Her Appointment." The primary argument raised therein was that Janell had not permitted Tammy to return to live with Neil, in purported violation of her agreement to do so.

87. Mr. O'Connor's actions caused the guardianship proceedings to be significantly expanded, yet in the end, Janell was granted the same relief requested in her petition. Tammy is now responsible for approximately $25,000 in fees owed to her court-appointed attorney and the statutory representative. Although she would have incurred some fees even without Neil's objections, allegations, and cross-petition, the amount would have been substantially less. Contributing to the fees was the fact that the probate court had to reappoint Mr. Doyle in October of 2020 due to Neil's continuing objections.

88. Mr. O'Connor's petition to have Neil appointed as Tammy's guardian and conservator was not meritorious. Moreover, he falsely asserted that Janell had "removed Tammy Millican from her home for over 50 years without cause or justification." In fact, Janell took custody of Tammy after Neil experienced a serious mental health episode and left an incapacitated Tammy alone in a dirty, bedbug-infested home.

CONCLUSIONS OF LAW

Count One
(Complainant Greene)

1. The filing of Mr. Pole's Chapter 11 petition created a bankruptcy estate that encompassed all legal or equitable interests Mr. Pole had in property, including: (1) proceeds, product, offspring, rents, or profits of or from property of the estate; and (2) any interest in property that the estate acquired after commencement of the case.

2. The Farmers insurance policies, as well as any payments made under those policies, were assets of the bankruptcy estate.

3. Debtors in Chapter 11 proceedings have an ongoing duty to disclose estate assets to the court and creditors. A debtor's attorney is a fiduciary whose primary duty runs to the bankruptcy estate:

> Counsel for the estate must keep firmly in mind that his client is the estate and not the debtor individually. Counsel has an independent responsibility to determine whether a proposed course of action is likely to benefit the estate or will merely cause delay or produce some other procedural advantage to the debtor. While he must always take his directions from his client, where counsel for the estate develops material doubts about whether a proposed course of action in fact serves the estate's interests, he must seek to persuade his client to take a different course or, failing that, resign. Under no circumstances, however, may the lawyer for a bankruptcy estate pursue a course of action, unless he has determined in good faith and as an exercise of his professional judgment that the course complies with the Bankruptcy Code and serves the best interests of the estate.

In re Perez, 30 F.3d 1209, 1219 (9th Cir. 1994).

4. The Bankruptcy Code and Bankruptcy Rules of Procedure require a debtor's attorney to advise the court within specified time frames of compensation

received and the source of the compensation. The code and rules also require a debtor's attorney to obtain court approval before receiving any compensation.

5. On multiple occasions, Mr. O'Connor took funds belonging to the bankruptcy estate for his own benefit without notice to the court or court approval. He failed to place funds he received into his trust account. Mr. O'Connor knew when he took those funds that they had not been approved and that he was acting in violation of bankruptcy law and rules, as well as court orders issued at the outset of the proceedings. His violations were intentional and were motivated by self-interest.

6. Mr. O'Connor's disbursement of $234,407.27 in insurance proceeds to Mr. Pole and his taking of $39,742.61 for himself constituted a transfer of bankruptcy estate assets. His failure to disclose the receipt and disbursement of the proceeds to the court, creditors, Trustee, and other interested parties violated bankruptcy law and rules, constituted a breach of his fiduciary duties, and was dishonest. Mr. O'Connor's repetitive disregard for compliance with bankruptcy rules and procedures and his attempts to shift the blame for his defalcations to the Trustee's office – both in these disciplinary proceedings and in the bankruptcy court – evidences not only a lack of competence and a refusal to honor well-established fiduciary duties imposed on him personally, but also demonstrates that he poses an ongoing threat to the public and the administration of justice.

7. Mr. O'Connor made multiple false statements to the bankruptcy court. Additionally, his misconduct unnecessarily expanded the scope and expense of the proceedings and needlessly consumed judicial resources.

8. Mr. O'Connor has not accounted for all funds he took in the Pole matter.

9. Mr. O'Connor has failed to comply with Judge Ballinger's disgorgement order. By retaining more than $50,000 in fees – only $3,720 of which was approved by the court, Mr. O'Connor collected and retained an unreasonable fee.

10. Mr. O'Connor is legally incorrect that principles of collateral estoppel prohibit taking disciplinary action against him for his conduct in the Pole bankruptcy case simply because Judge Ballinger addressed some of his misconduct. *See, e.g.,* Rule 46(a), Ariz. R. S. Ct.; *In re Zawada*, 208 Ariz. 232, 235 (2004) (Arizona Supreme Court has exclusive jurisdiction to discipline those admitted to the practice of law in Arizona).

11. As to Count One, clear and convincing evidence establishes that Mr. O'Connor violated ERs 1.2(d) (counseling and assisting a client in obtaining bankruptcy estate assets without court approval), 1.5(a) (collecting fees without obtaining required court approval), 1.15(a) (failing to maintain client funds separate from the lawyer's own property), 1.16(d) (upon termination, a lawyer shall refund any advance payment of fees not earned), 3.1 (claiming entitlement to fees without a good faith basis in law and fact), 3.3(a)(1) (making false statements of fact or law to a tribunal and failing to correct false statements of material fact or law previously made to the tribunal by the lawyer), 3.3(a)(3) (offering evidence the lawyer knows to be false), 3.3(b) (failing to take reasonable remedial measures to rectify fraudulent conduct), 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), 8.4(d) (engaging in conduct prejudicial to the administration of justice), Rule 43(a) (failing to comply with rules applicable to

attorney trust accounts), and Rule 43(b)(4) (using money held in trust without permission of the owner – here, the bankruptcy estate).

Count Two
(State Bar File. No. 20-0451/Complainant Hernandez)

12. Mr. O'Connor filed the Chapter 7 petition too soon for Mr. Hugger's tax debts to be dischargeable. As a result, the purpose of the bankruptcy filing was defeated.

13. Mr. O'Connor failed to competently or accurately prepare and file the initial statement of financial affairs and schedules in the Hugger bankruptcy.

14. Under bankruptcy law, Hafner Holdings' execution of a warranty deed on January 4, 2017 was ineffective to transfer ownership of the Prescott property to Mr. Hugger. Because the deed was not recorded until January 10, 2017, Hafner Holdings was the legal owner of the property under bankruptcy law when the Chapter 7 petition was filed, not Mr. Hugger.[14] As such, the Prescott property was an asset of the bankruptcy

[14] Mr. O'Connor introduced a declaration of bankruptcy attorney Allan NewDelman, who stated, in pertinent part:

> One of the issues was the transfer to Mr. Hugger from his LLC, of his house just before the case was filed and Mr. O'Connor was arguing the transfer was effective upon delivery of the deed and not the date of recording. I disagreed with him because timing of a transfer between purchasers under state law was irrelevant, in the context of an intervening bankruptcy. The protection of Mr. Hugger's interest was instead governed by bankruptcy law, which required perfection of any property transfer. A Chapter 7 Trustee has the rights of a bone [sic] fide purchaser for value, and so a recording of the deed was also necessary before filing the case to be effective against the trustee's claims under bankruptcy law because filing of the deed transfer was necessary to perfect the transfer.

estate that could be used to pay creditors. Mr. O'Connor failed to competently research this issue before arguing that Mr. Hugger owned the Prescott property.

15. A lawyer's negligence does not always constitute a violation of ER 1.1. However, "[a] lawyer crosses the line between negligence and unethical incompetence by . . . neglecting to investigate the facts and law as required to represent the client's interests." *In re Alexander*, 232 Ariz. 1, 8 (2013) (citations omitted). The issue concerning the dischargeability of Mr. Hugger's tax debts could have been discovered and addressed before discharge had it been competently researched. Given Mr. O'Connor's decades of practice in bankruptcy litigation and his former designation as a bankruptcy specialist, an objective standard of competence demanded that he research the tax issue before filing the bankruptcy petition – particularly because Mr. Hugger's objective in seeking bankruptcy relief was to discharge his tax debts. The same conclusion applies to the homestead exemption issue.

16. Mr. O'Connor failed to adequately communicate with Mr. Hugger. He did not tell him about the malpractice claim, the motion to dismiss he filed that focused heavily on Mr. Hugger's rights and interests, the proceedings in the bankruptcy court to determine ownership of that claim, or his clear conflict of interest, leading to his last-minute motion to withdraw. "The intentionality of an attorney's conduct is irrelevant in determining a violation of ER 1.4. The question is simply whether or not the attorney provided the client with sufficient information to enable the client to make an informed decision regarding the representation." *In re Shannon*, 179 Ariz. 52, 63 (1994).

17. Mr. O'Connor advanced non-meritorious claims and contentions in the legal malpractice case and did not – contrary to his testimony at the disciplinary hearing – withdraw those claims.

18. Mr. O'Connor continued as Mr. Hugger's counsel in the bankruptcy proceedings for months after he developed a clear conflict of interest due to the malpractice claims against him.

19. Mr. O'Connor unreasonably expanded and delayed the proceedings by, *inter alia*, insisting Ms. Hernandez file in bankruptcy court to determine ownership of the malpractice claim and then failing to respond to her motion; maintaining a non-meritorious statute of limitations defense; and failing to withdraw in the face of a clear conflict of interest until the day of oral argument, thereby delaying resolution of Ms. Hernandez' motion.

20. Mr. Hugger suffered substantial harm as a result of Mr. O'Connor's conduct.

21. Mr. O'Connor accomplished nothing of benefit to Mr. Hugger. On the contrary, he created legal and financial issues for his client that would not otherwise have existed. As such, charging and retaining any fee for services in Mr. Hugger's matter is unreasonable.

22. As to Count Two, clear and convincing evidence establishes that Mr. O'Connor violated ERs 1.1 (a lawyer shall provide competent representation to a client), 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client), 1.4 (lack of reasonable communication), 1.5 (charging and collecting unreasonable fees),

1.7 (conflict of interest based on personal interests), 1.16(a)(1) (duty to withdraw from representation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Count Three
(State Bar File No. 20-1103/Complainant Weir)

23. Mr. O'Connor advanced non-meritorious claims and contentions in the probate proceedings. He falsely alleged that Janell had removed Tammy from her home without justification. He also filed a frivolous petition seeking to have Neil appointed Tammy's guardian and conservator. His actions appeared calculated to exert pressure on Janell to allow Neil to continue using Tammy's money and home for his own personal benefit.

24. Mr. O'Connor's actions unreasonably expanded the scope and expense of the probate proceedings.

25. Mr. O'Connor's misconduct caused financial harm to Tammy and her relatively modest estate.

26. Mr. O'Connor falsely stated to the State Bar that he knew nothing about the APS investigation into Neil until *after* Tammy revoked Janell's POA.

27. As to Count Three, clear and convincing evidence establishes that Mr. O'Connor violated ERs 3.1 (a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous), 3.3(a) (a lawyer shall not knowingly make a false statement of fact

or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer), 8.1 (making a false statement of material fact in connection with a disciplinary matter), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

SANCTION

Sanctions imposed against lawyers "shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions*" ("ABA Standards"). Rule 58(k), Ariz. R. Sup. Ct. In fashioning an appropriate sanction, the hearing panel considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. *See In re Scholl*, 200 Ariz. 222, 224 (2001).

"When an attorney faces discipline for multiple charges of misconduct, the most serious charge serves as the baseline for the punishment. We assign the less serious charges aggravating weight." *In re Moak*, 205 Ariz. 351, 353 (2003) (citations omitted). Mr. O'Connor committed many serious ethical violations, including conversion and non-disclosure of bankruptcy estate assets, multiple false statements to the court, failure to account for funds he received, advancing non-meritorious claims in all three counts at issue here, and causing significant harm to his clients, third parties, and the administration of justice. With the exception of his gross negligence in the Hugger matter, Mr. O'Connor's misconduct was intentional.

Based on the most serious misconduct found by the hearing panel, the following ABA Standards are relevant:

> 7.1 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.
>
> 6.11 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 a significant or potentially significant adverse effect on the legal proceeding.
>
> 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
>
> 4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.

Disbarment is the presumptive sanction. The panel next considers the existence of aggravating or mitigating factors – both of which must be supported by reasonable evidence. *In re Abrams*, 227 Ariz. 248, 252 (2011).

Mr. O'Connor did not establish any mitigating factors recognized by the ABA Standards. A client's failure to complain is neither an aggravating nor mitigating factor. *See* Standard 9.4(f). The hearing panel rejects Mr. O'Connor's contention that the court order to disgorge fees in the Pole matter should be considered a mitigating factor under Standard 9.32(k) (imposition of other penalties or sanctions). He has failed to comply – or even attempt to partially comply – with that order.

The State Bar proved the existence of the following aggravating factors by reasonable evidence:

Prior Disciplinary Offenses.

In 2019, Mr. O'Connor was suspended for 60 days and placed on probation for violating ER 3.4(b) (falsifying evidence/counseling or assisting a witness to testify falsely) and ER 8.1(a) (knowingly making a false statement of material fact in a bar disciplinary matter). The recency and serious nature of this prior discipline – which involved dishonesty to the court and the State Bar – merits substantial weight when fashioning the appropriate sanction in the pending matters.

In 2017, Mr. O'Connor received an admonition and was placed on probation after the State Bar learned that his client trust account had a negative balance. In that matter, Mr. O'Connor was found to have violated ER 1.15(a), Rule 43(a), Rule 43(b)(1)(A), Rule 43(b)(1)(c), Rule 43(b)(2)(A), Rule 43(b)(2)(B), Rule 43(b)(2)(C), Rule 43(b)(2)(D), and Rule 43(b)(5) "by failing to safe keep client property, to exercise due professional care in the performance of the lawyer's duties, to maintain adequate internal controls under the circumstances to safeguard funds or other property held in trust." He was placed on probation for 18 months, beginning in September of 2017. Mr. O'Connor was on probation for trust account violations when he misused his trust account in the Pole bankruptcy matter.

Prior discipline is an aggravating factor that weighs heavily against an attorney in a disciplinary proceeding. *In re Brady*, 186 Ariz. 370, 375 (1996). Mr. O'Connor's prior discipline is particularly troublesome because of its recency and because his earlier

misconduct also included significant dishonesty and trust account violations. ABA Standard 8.1 states that disbarment is generally appropriate when a lawyer "has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession."

Dishonest or Selfish Motive. Mr. O'Connor acted selfishly and dishonestly in the Pole bankruptcy matter. He enriched himself by converting funds belonging to the bankruptcy estate without court approval and in violation of well-established fiduciary duties he owed to the estate. He misled the bankruptcy court regarding estate funds he had taken.

Pattern of Misconduct. In the Pole matter, Mr. O'Connor committed numerous acts of misconduct, most of which appeared designed to keep the bankruptcy court in the dark about assets of the bankruptcy estate. Similar misconduct occurred in the Hugger case. Additionally, as noted *supra*, Mr. O'Connor advanced frivolous claims in all three counts at issue here.

Multiple Offenses. The hearing panel has found violations of numerous ethical rules.

Refusal to Acknowledge Wrongful Nature of Conduct. This aggravator applies to Mr. O'Connor's misconduct in Counts One and Three. He showed some remorse for his misconduct affecting Mr. Hugger (Count Two). But even in that matter, he attempted to shift the blame to the Trustee and Ms. Hernandez.

Substantial Experience in the Practice of Law. Mr. O'Connor was admitted to the State Bar of Arizona in 1988 and was a certified bankruptcy specialist for approximately eight years. He has been a member of the Illinois bar since 1980.

Indifference to Making Restitution. Mr. O'Connor has made no attempt to comply with the bankruptcy court's disgorgement order in Count One.

Mr. O'Connor's refusal to acknowledge the wrongfulness of his conduct in Counts One and Three is a significant aggravating factor and one that demonstrates his continued practice of law poses a threat to the public and the administration of justice. *See In re Zawada*, 208 Ariz. 232, 236 (2004) (the purpose of lawyer discipline is to protect the public and the administration of justice, as well as to deter the respondent attorney and members of the bar at large). Although Mr. O'Connor would occasionally admit making an error or agree he should have done something differently, he would quickly follow up with excuses, including attempting to shift the blame to others.[15]

The hearing panel rejects Mr. O'Connor's repeated assertion that his conduct in the Pole matter is a "no harm, no foul" situation because the creditors were ultimately

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[15] As Judge Ballinger stated in the Pole matter:

> O'Connor's claim that the UST [United States Trustee] knew or should have known that the Estate received the funds is entirely misplaced. Nothing in the record suggests the UST had sufficient knowledge of the Estate's receipt of these funds until late December, 2018, early 2019. More important, the duty to disclose did not lay with the UST: It lay with counsel. The knowledge of the UST or any creditor does not excuse O'Connor's violations of his legal duties under the Bankruptcy Code, Federal Rules of Bankruptcy Procedure or Ethical Rules.

paid in full, after he was out of the case. *See, e.g., In re Arrick*, 180 Ariz. 136, 139 (1994) ("We are unpersuaded with [Respondent's] attempts to persuade us that this is a case of 'no harm, no foul.'"). Most of those payments were not made until April of 2020. The $337,199.88 in insurance proceeds Mr. O'Connor received in June of 2018 as a fiduciary of the bankruptcy estate could have covered roughly 97% of the priority and unsecured creditor claims that were eventually paid. Instead, the creditors were forced to wait almost two years to receive full payment. Moreover, whether or not the plan of reorganization was to be funded by the personal property insurance proceeds, Mr. O'Connor was required to discharge his fiduciary duty and inform the court and creditors of his receipt and disbursement of assets belonging to the bankruptcy estate.

CONCLUSION

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

1. Dean W. O'Connor is disbarred from the practice of law in Arizona, effective immediately.
2. Mr. O'Connor shall comply with the requirements of Rule 72, Ariz. R. Sup. Ct., including notifying clients, counsel and courts of his disbarment.
3. Mr. O'Connor shall pay costs and expenses incurred by the State Bar of Arizona. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

A final judgment and order will follow.

DATED this 12th day of July 2021.

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

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

/s/ signature on file
Marsha Morgan Sitterley, Public Member

COPY of the foregoing e-mailed
on this 12th day of July 2021, to:

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