

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**ROBERT F. HUGHES,
Bar No. 003209**

Respondent.

PDJ 2014-9087

FINAL JUDGMENT AND ORDER

[State Bar No. 14-1112]

FILED DECEMBER 30, 2014

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

IT IS HEREBY ORDERED Respondent, **Robert F. Hughes, Bar Number 003209**, is hereby suspended for a period of four (4) years for his conduct in violation of the Arizona Rules of Professional Conduct, effective the date of this Order.

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

Restitution

IT IS FURTHER ORDERED Respondent shall pay restitution in case no. 14-1112 to Robert Van Horn in the amount of \$1,927.00, within thirty (30) days from the date of service of this Order.

IT IS FURTHER ORDERED Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

IT IS FURTHER ORDERED Respondent shall pay the costs and expenses of the State Bar of Arizona in the amount of \$ 2,000.00, within ninety (90) days from the date of service of this Order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 30th day of December, 2014

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 30th day of December, 2014.

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Respondent

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by: JAlbright

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

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

**ROBERT F. HUGHES,
Bar No. 003209**

Respondent.

PDJ 2014-9087

**REPORT AND ORDER IMPOSING
SANCTIONS**

State Bar No. 14-1112

FILED DECEMBER 9, 2014

On December 4, 2014, the Hearing Panel ("Panel") composed of Harlan Crossman, Attorney Member, Nance Daley, Public Member and the Presiding Disciplinary Judge William J. O'Neil, held an aggravation/mitigation hearing. David Sandweiss appeared on behalf of the State Bar. Mr. Hughes did not appear.

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on October 1, 2014. On October 3, 2014, the complaint was served on Mr. Hughes by certified, delivery restricted mail, and by regular first class mail, under Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct.¹ The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. Because of Mr. Hughes failure to file an answer or otherwise defend, a notice of default was properly issued on October 29, 2014. That default became effective on November 19, 2014. A notice of aggravation/mitigation hearing was sent to all parties notifying them the hearing was scheduled for December 4, 2014 at 9:30 a.m.,

¹All references to rules are to the Arizona Rules of the Supreme Court unless otherwise specifically stated.

at the State Courts Building, 1501 West Washington, Phoenix, Arizona 85007-3231. On December 4, 2014, the Hearing Panel, comprised of Harlan J. Crossman, attorney member, and Nance Daley, public member heard argument.

Bar Counsel informed the hearing panel of several attempts made to contact Mr. Hughes at his address of record with the SBA. All mail was returned as "undeliverable" and certified mail was "unclaimed." Bar counsel stated he called Mr. Hughes approximately two days ago at two separate numbers; his business number, which is his home office, and an alternate number. The business number is disconnected and the alternate number states that calls are not being taken. Bar counsel further stated that he sent e-mails to Mr. Hughes at his business e-mail address (estateplanpro@ifixtrusts.com) and a personal gmail address (rfrankhughes@gmail.com). The business e-mail was returned as "undeliverable," however, the personal e-mail address was not returned. More than reasonable efforts were made by the State Bar to contact Mr. Hughes.

The purpose of the aggravation/mitigation hearing is not only to weigh mitigating and aggravating factors, but also to assure there is a nexus between a respondent's conduct deemed admitted and the merits of the SBA's case. A respondent against whom a default has been entered and effective may no longer litigate the merits of the factual allegations. However, the respondent retains the right to appear and participate concerning that nexus and the sanctions sought. Included with that right to appear is the right to dispute the allegations relating to aggravation and to offer evidence in mitigation. Mr. Hughes was afforded these rights.

Due process requires a hearing panel to independently determine whether, under the facts deemed admitted, ethical violations have been proven by clear and convincing evidence. The facts deemed admitted constitute ethical violations. The hearing panel must also exercise discretion in deciding whether sanctions should issue for the respondent's misconduct. We find the actions of Mr. Hughes warrant sanctions. If the hearing panel finds that sanctions are warranted, then it independently determines which sanctions should be imposed. It is not the function panel to endorse or "rubber stamp" any request for sanctions. The State Bar requests disbarment. We find a four year suspension satisfies the purpose of lawyer discipline.

FINDINGS OF FACT

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

1. Mr. Hughes was licensed to practice law in Arizona having been first admitted to practice in Arizona on November 14, 1972.

2. Mr. Hughes' prior disciplinary offenses are:

- Censured was imposed effective February 10, 1978 in SB File No. 76-0179 for violating former Disciplinary Rules 7-101(A)(1), 7-101(A)(3), and 7-101(B)(1) by his intentional failure to provide an adequate defense for his client, and that respondent engaged in undignified and discourteous conduct degrading to a tribunal in violation of Disciplinary Rule 7-106(c)(6), in referring to the lower proceedings as a kangaroo court in his motion. However, the Committee also found respondent did not deprive his client of effective assistance as counsel to create error in the record. [Exhibit 8/].
- On August 24, 1990, he was informally reprimanded in SB File No. 89-1824.

- By Order of the PDJ in file no. PDJ 2014-9043, Mr. Hughes was suspended for six months and one day effective June 16, 2014, for noncompliance with the Order of Admonition, Probation and Costs imposed by the Attorney Discipline Probable Cause Committee for violating Rule 54(d) (failure to cooperate or respond to State Bar inquiry) and Rule 54(e), (violation of a condition of diversion (MAP)). [Exhibits 15, 16.]

The previous censure and informal reprimand are remote in time and little weight is given to those prior offenses. See mitigating factor 9.32(m).

3. On February 28, 2014, Mr. Hughes was administratively suspended for failure to comply with MCLE requirements.

COUNT ONE (File No. 14-1112/Van Horn)

4. In May, 2013, Complainant, a Pennsylvania attorney, retained Mr. Hughes to initiate ancillary probate proceedings in Arizona over a time-share unit.

5. Complainant paid Mr. Hughes, \$1,927.00 for the representation.

6. Mr. Hughes took no action and did not answer Complainant's several requests for a case status and accounting information.

7. Mr. Hughes failed to respond to the SBA's initial and reminder screening letters of April 23 and June 2, 2014, respectively.

8. By engaging in the misconduct described above, Mr. Hughes violated several rules including, but not limited to:

- a. ER 1.2 by failing to consult with Complainant on the means by which the objectives of representation were to be pursued;
- b. ER 1.3 by failing to act with reasonable diligence and promptness in representing Complainant;
- c. ER 1.4 by failing to communicate reasonably with Complainant;

- d. ER 1.5 by collecting from Complainant an unreasonable fee or an unreasonable amount for expenses;
- e. ER 1.15(d) by failing promptly to render a full accounting to Complainant regarding the funds Complainant paid to Mr. Hughes;
- f. ER 1.16(d) when Mr. Hughes abandoned Complainant as a client and failed to try to the extent reasonably practicable to protect Complainant's interest, such as giving reasonable notice to Complainant, allowing time for employment of other counsel, surrendering documents and property to which Complainant is entitled and refunding any advance payment of a fee not earned;
- g. ER 3.2 by failing to reasonably try to expedite litigation consistent with Complainant's interests;
- h. ER 8.1 by knowingly failing to respond to a lawful demand for information from the State Bar of Arizona in connection with a disciplinary matter; and
- i. Rule 54, by knowingly failing to respond to a lawful demand for information from the State Bar of Arizona in connection with a disciplinary matter.

CONCLUSIONS OF LAW

Mr. Hughes failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly effective and the allegations are deemed admitted under Rule 58(d). Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence Mr. Hughes violated Rule 42, specifically ERs 1.2, 1.3, 1.4, 1.5, 1.15(d), 1.16(d), 3.2, and 8.1, and Rule 54.

ABA STANDARDS ANALYSIS

Sanctions are imposed under the American Bar Association *Standards for Imposing Lawyer Sanctions* ("Standards"). Rule 58(k). In imposing a sanction, the hearing panel considers the following factor: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0*.

Duties violated:

Mr. Hughes violated his duties to his clients (ERs 1.2, 1.3, 1.4, 1.5, and 1.15(d)), the legal system (ER 3.2) and to the legal profession (ERs 1.16(d) and 8.1, and Rule 54).

Mental State:

Mr. Hughes knowingly violated the foregoing ERs and rules.

Injury:

Mr. Hughes caused actual and potentially serious injury to Complainant.

The following *Standards* are implicated:

Standard 4.11-Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

Standard 4.12 - Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

Standard 4.41-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

Standard 4.42 - Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Standard 4.61-Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

Standard 4.62 - Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client.

Standard 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.

Standard 7.2 - Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

The Panel determined that the presumptive sanction is between disbarment and suspension. Mr. Hughes knowingly abandoned his practice, kept his out-of-state client's money without ever rendering any contracted services, and ignored the State Bar's request for information during its investigation. The Panel concluded that in this matter, a long-term suspension and restitution will protect the public.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors are present:

Standard 9.22

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution; and

The Panel determined two of Mr. Hughes' prior disciplinary offenses (1978 and 1990) are considered remote in time, therefore mitigating factor 9.32(m) is applicable.

CONCLUSION

The objective of lawyer discipline is not to punish a lawyer but, rather, to protect the public, the profession, and the administration of justice; deter similar conduct among other lawyers; preserve public confidence in the integrity of the bar;

foster confidence in the legal profession and the self-regulatory process; and assist, if possible, in the rehabilitation of an errant lawyer. *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004); *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001); *In re Walker*, 200 Ariz. 155, 24 P.3d 602 (2001); *In re Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990); *In re Hoover*, 161 Ariz. 529, 779 P.2d 1268 (1989); and *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Rehabilitation is impossible when, as here, a respondent attorney does not even participate in the disciplinary process.

The Hearing Panel has determined the sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the sole mitigating factor, and the goals of the attorney discipline system. The Hearing Panel orders:

1. Mr. Hughes shall be suspended from the practice of law for four (4) years effective immediately.
2. Mr. Hughes shall pay all costs and expenses incurred by the SBA within 30 days of the date the Final Judgment and Order is entered. If costs are not paid within the 30 days, interest will accrue at the legal rate.
3. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.
4. Mr. Hughes shall pay restitution of \$1,927.00 to Complainant Robert Van Horn within 30 days of the date the final judgment and order is entered.
5. A final judgment and order will follow.

DATED this 9th of December, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING:

Harlan J. Crossman

Harlan J. Crossman, Volunteer Attorney Member

Nance Daley

Nance Daley Donahoe, Volunteer Public Member

Copies of the foregoing mailed/emailed
this 10th day of December, 2014.

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Respondent

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

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

**ROBERT F. HUGHES,
Bar No. 003209,**

Respondent.

PDJ-2014-_____

COMPLAINT

State Bar No. 14-1112

**COUNT ONE of ONE – STATE BAR OF ARIZONA (“SBA”) No. 14-1112
(Robert Van Horn, Complainant)**

1. At all relevant times Respondent was licensed to practice law in the state of Arizona, having first been admitted to the SBA on November 14, 1972.
2. In May 2013 Complainant, a Pennsylvania attorney, retained Respondent to initiate ancillary probate proceedings in Arizona over a time-share unit.
3. Complainant agreed with Respondent to pay, and paid Respondent, \$1,927.00 for the representation.
4. Respondent took no action in the matter and did not answer Complainant’s several requests for a case status and accounting information.
5. Respondent failed to respond to the bar’s initial and reminder screening letters of April 23 and June 2, 2014, respectively.

6. Respondent failed to consult with Complainant as to the means by which the objectives of representation were to be pursued, in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.2.

7. Respondent failed to act with reasonable diligence and promptness in representing Complainant, in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.3.

8. Respondent failed to communicate reasonably with Complainant, in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.4.

9. Respondent collected from Complainant an unreasonable fee or an unreasonable amount for expenses, in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.5.

10. Respondent failed promptly to render a full accounting to Complainant regarding the funds Complainant paid to Respondent, in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.15(d).

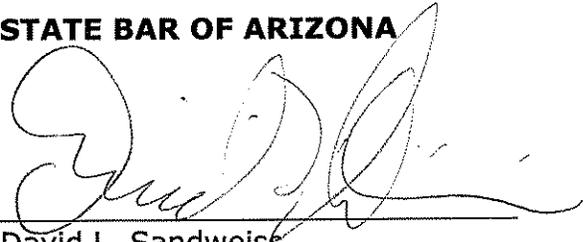
11. Respondent abandoned Complainant as a client and failed to take steps to the extent reasonably practicable to protect Complainant's interests, such as giving reasonable notice to Complainant, allowing time for employment of other counsel, surrendering documents and property to which Complainant is entitled and refunding any advance payment of a fee that has not been earned, in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.16(d).

12. Respondent failed to make reasonable efforts to expedite litigation consistent with Complainant's interests in violation of Rule 42, Ariz. R. Sup. Ct., ER 3.2.

13. Respondent knowingly failed to respond to a lawful demand for information from the SBA in connection with a disciplinary matter in violation of Rule 42, Ariz. R. Sup. Ct., ER 8.1, and Rule 54, Ariz. R. Sup. Ct.

DATED this 15th day of October, 2014.

STATE BAR OF ARIZONA

A handwritten signature in black ink, appearing to read "David L. Sandweiss", written over a horizontal line.

David L. Sandweiss
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 15th day of October, 2014.



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

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

**ROBERT F. HUGHES,
Bar No. 003209,**

Respondent.

No. 14-1112

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on August 15, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1¹, the Committee finds probable cause exists that Respondent violated the Rules of the Supreme Court of Arizona in File No. 14-1112.

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

Parties may not file motions for reconsideration of this Order.

DATED this 25 day of August, 2014.



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

¹ Committee member Karen E. Osborne did not participate in this matter.

Original filed this 20th day
of August, 2014, with:

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Copy mailed this 25th day
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