

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

IN THE MATTER OF A SUSPENDED  
AND DISABILITY INACTIVE  
MEMBER OF THE STATE BAR OF  
ARIZONA,

**PAUL R. BAYS,**  
**Bar No. 013479**

Respondent.

**PDJ 2021-9017**

**DECISION AND ORDER  
IMPOSING SANCTIONS**

State Bar Nos. 20-2302, 20-2414 & 20-  
2530

**FILED JUNE 28, 2021**

**SUMMARY**

Mr. Bays failed to adequately communicate with and diligently represent clients. He charged unreasonable fees and overall engaged in a pattern of neglect of clients. In some counts, Mr. Bays accepted fees for legal services and then failed to perform those services. We find he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in all three counts.

**PROCEDURAL HISTORY**

The State Bar of Arizona (“SBA”) filed its complaint on March 22, 2021. Mr. Bays was properly served and filed an answer on March 26, 2021. The Presiding Disciplinary Judge (“PDJ”) was assigned. As required by Rule 58(c), a “mandatory case management conference” was set. Notice was sent to Mr. Bays. Rule 58(c), Ariz. R. Sup. Ct. mandates that each party “shall appear for the initial case

management conference.” Mr. Bays did not appear for the initial trial management conference. Mr. Bays was called at the two phone numbers he listed with the clerk. Emails were sent to the two email addresses that Mr. Bays listed with the disciplinary clerk and that were listed on his answer. The telephonic conference was delayed for ten minutes to determine if Mr. Bays would respond. Mr. Henley stated he had not been contacted by Mr. Bays since mid-November 2020. In his prior case, PDJ 2020-9114, in which effective default was entered against him, Mr. Bays appeared telephonically for the February 4, 2021 aggravation/mitigation hearing. We conclude he was receiving notices.

Civil Rule 16(h) directs that,

Except upon a showing of good cause, the court—on motion or on its own—*must* enter such orders as are just including, among others, any of the orders in Civil Rule 37(b)(2)(A)(ii) through (vii), if a party (A) fails to obey a scheduling or pretrial order or (B) fails to appear at a Trial Management Conference. (Emphasis added.)

Included within those potential orders is the rendering of a default judgment against the disobedient party. A default judgment was entered against Mr. Bays in a written order of April 13, 2021. Mr. Bays was given two weeks to purge his contempt by filing a statement of good cause to explain his absence. As no statement of good cause was timely filed, he failed to purge his contempt.

Mr. Bays initial disclosure statement had to be served on the State Bar within thirty (30) days from filing his answer under Rule 58(e), Ariz. R. Sup. Ct. Mr. Bays never served an initial disclosure statement. A notice of the aggravation and mitigation hearing was sent to all parties.

On May 12, 2021, the hearing was held. The Hearing Panel was comprised of volunteer public member Thomas C. Schleifer, volunteer attorney member, Teri M. Rowe, and the PDJ, William J. O’Neil. Senior Bar Counsel, Craig D. Henley represented the State Bar. Mr. Bays was self-represented. Exhibits 1-23 were admitted.

## **FINDINGS OF FACT**

### **GENERAL ALLEGATIONS**

Mr. Bays admitted the first two general allegations. While the remaining allegations are deemed admitted, the hearing panel also weighed the exhibits against the complaint allegations. Mr. Bays denied virtually all the complaint allegations. We find the complaint allegations to be true. We find Mr. Bays was intentionally misleading in most of these denials. His arguments primarily centered on Count 1.

1. Mr. Bays admitted in his answer that at all times relevant he was a lawyer licensed to practice law in the State of Arizona having been first admitted on June 14, 1991. Mr. Bays also admitted that under a consent agreement he was

voluntarily transferred to disability inactive status on August 27, 2020. [*In re: Paul R. Bays*, PDJ 2020-9069 (SB20-1806).]

2. We note that due to his incapacity to discharge his professional duties his transfer was effective immediately pursuant to Rule 63(b)(3), Ariz. R. Sup. Ct. Rule 63(d)(1) states that such a transfer “does not affect any pending disciplinary proceedings, which shall continue...”

**COUNT ONE (File No. 20-2302/Gilbert)**

3. Complainant in her charge to the State Bar stated that she provided a retainer to Mr. Bays of \$5,000 in “approximately middle 2017.” [Ex. 1, 000002.] In his response to the State Bar Mr. Bays denied her allegation that she paid him \$5,000. [Ex. 2.] Mr. Bays relied in his response to the State Bar upon his “billing [statement] dated March 13, 2018” as proof that he was not paid. [Ex. 2, 000003.] The billing statement he references was attached by him to his response to the bar charge and is entitled “Exhibit D.” [Ex. 2, 000022.] Mr. Bays’ own billing statement proves he was paid a retainer of \$5,000 in June 2017. [Ex. 2, 000026.]

4. The State Bar complaint alleged that “In or around June 2017, Complainant paid Mr. Bays \$5000.00 as required by a signed written representation agreement with Mr. Bays’ law firm to initiate the Cochise County Superior Court case of *Vicki Gilbert v. Wendell Gilbert*, DO201700438 on her behalf.” Mr. Bays

denied this allegation in his answer. That complaint allegation is also true. Mr. Bays was intentionally misleading in his answer and in his response to the State Bar.

5. The complaint alleged that Mr. Bays provided no substantive legal services between June 19, 2017 and November 27, 2017. [Ex. 2, 000022.] Mr. Bays denied this allegation. His billing statement impeaches him again as there are no services listed. [Ex. 2, 000022.] The allegation is true.

6. The complaint alleged that on November 27, 2017, Mr. Bays purportedly spent 2.0 hours preparing certain bank records for disclosure. Mr. Bays denied this allegation. His billing statement again impeaches him. [Id.]

7. Mr. Bays provided no substantive legal services between November 27, 2017 and December 14, 2017, at which time Complainant instructed Mr. Bays to take the actions necessary to dismiss the case. Mr. Bays denied this allegation. His billing statement proves the allegation is true. [Id.]

8. Mr. Bays moved to dismiss on December 19, 2017 which was granted that same day. The billing statement of Mr. Bays reports that he charged Ms. Gilbert for drafting the motion to dismiss the divorce on December 14, 2017. [Id.] He then charged her for drafting a “Stipulated Motion to Dismiss” the following day. [Id., 000023.]

9. Mr. Bays advised Complainant to allow him to retain the balance of the prepaid funds in the event the parties decided to reinstate the divorce action. [Ex. 1,

00002.] In his answer Mr. Bays denied this allegation. His billing records show no refund after the petition for dissolution was dismissed. Mr. Bays retained over \$4,000 of the initial \$5,000 paid him after that dismissal. [Ex. 2, 000023.]

10. The complainant accurately states that by February 23, 2018, Complainant requested that Mr. Bays reinstate the divorce action. On February 23, 2018, Mr. Bays initiated the Cochise County Superior Court case of *Vicki Gilbert v. Wendell Gilbert*, DO201800141. Mr. Bays denied both allegations in his answer. His billing statement impeach his denial. [Ex. 2, 000023.] The allegations are true.

11. Despite engaging in discussions with the attorney representing Wendell Gilbert in the 2017 case between February 23<sup>rd</sup> and March 1<sup>st</sup>, 2018, Mr. Bays failed to perfect service until April 2018. Mr. Bays denied this allegation. His billing record impeaches his denials and confirms that he did not deliver the packet of documents to the constable for service until March 1, 2018. [Ex. 2, 000024.]

12. Mr. Bays provided Complainant with billing records claiming that he purportedly “prepared”, “reviewed and signed”, then delivered unspecified discovery requests to the constable, e-mailed opposing counsel and e-mailed a process server on March 1<sup>st</sup> for a total of 3.70 hours for \$915.00. Mr. Bays denied this allegation in his answer. His billing record substantiates the allegation as true. [Ex. 2, 000029.]

13. Mr. Bays also provided Complainant with billing records claiming that he purportedly spent 3.70 hours on March 5<sup>th</sup> researching, preparing and later filing a motion for change of venue for a total of \$1100.00. Mr. Bays denied this allegation in his answer. His billing record substantiates the allegation as true. [Id.]

14. While the Gilbert marriage occurred in Las Vegas, Nevada, the motion for change of venue was groundless as both parties resided in the State of Arizona at the time of both lawsuits.

15. The motion for change of venue was also groundless as all the real and commercial community properties in both lawsuits are located in the State of Arizona.

16. Mr. Bays provided Complainant with billing records claiming that he purportedly spent 4 hours on March 27<sup>th</sup> reviewing a motion to continue an order to show cause hearing, researching and filing an objection to the motion and sending certain unspecified e-mails to the Pima County and Graham County courts for a total of \$1200.00. Mr. Bays denied this allegation in his answer. His billing record substantiates the allegation as true. [Ex. 2, 000031.]

17. Mr. Bays also provided Complainant with billing records claiming that he purportedly spent 7.5 hours on May 30<sup>th</sup> for a discussion with opposing counsel, a separate discussion with Complainant, reviewing a letter from opposing counsel and drafting a responsive letter, drafting a motion to compel and motion for

contempt, “reviewing and signing” the responsive letter and “reviewing and signing” the motions for a total of \$1200.00. Mr. Bays denied this allegation in his answer. His billing record substantiates the allegation as true. [Ex. 2, 000035.]

18. Shortly thereafter, Wendell was found to be incompetent and a guardian was appointed through a separate probate proceeding. Mr. Bays denied this allegation. The consent decree of dissolution that he prepared impeaches him. The allegation is true. [Ex. 2, 000063.]

19. On February 12, 2019, the parties stipulated to a Consent Decree dissolving the marriage. The consent decree was filed on February 12, 2019. [Ex. 2, 000055-64.] The individual parties signed the document on January 24, 2019. The attorneys and the judge signed the document on January 25, 2019. [Id. 000062-64.]

20. Under a consent agreement Mr. Bays was voluntarily transferred to disability inactive status on August 27, 2020. On September 22, 2020, Mr. Bays filed the Sierra Vista Justice Court case of *Paul Randall Bays v. Vicki Gilbert*, CV2020-000673 in an attempt to collect the alleged debt owed to Bays Law PC.

21. Mr. Bays initiated the lawsuit naming himself as plaintiff without naming the law firm. The fee agreement and the billings were from Bays Law Firm P.C. [Ex. 3, 000066.] Mr. Bays knew he was voluntarily transferred to disability inactive status and thereby could not represent the corporation. He knowingly misrepresented to the court that the debt was owed personally to him.

22. On December 23, 2020, Complainant moved to dismiss which was granted on January 21, 2021.

23. By engaging in the above-referenced misconduct, Mr. Bays violated these ethical rules:

- b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Mr. Bays failed to act diligently during the representation;
- c. Rule 42, Ariz. R. Sup. Ct., ER 1.5(a) – Mr. Bays charged and collected an unreasonable fee for the representation;
- d. Rule 42, Ariz. R. Sup. Ct., ER 3.1 – Mr. Bays brought or asserted without a good faith basis in law or fact for doing so that is frivolous;
- e. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Mr. Bays failed to expedite the litigation;
- f. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) – Mr. Bays engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- g. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Mr. Bays engaged in conduct prejudicial to the administration of justice.

**COUNT TWO (File No. 20-2414/Rinehart)**

24. On November 14, 2019, Complainant paid Mr. Bays \$2,000.00 pursuant to the terms of a signed written representation agreement regarding the anticipated Cochise County Superior Court case of *Helen Lampinen v. Clint*

*Rinehart*, DO201900779. [Ex. 5, 000076-95.] We find the intake sheet and “Family Law Information Worksheet” of Mr. Bays stated that Complainant resided in California and Mr. Bays knew or should have known this. [Id. at 000076, 79.] While he claimed in his response that he was unaware of this, we find this disingenuous and self-serving. The documents were clear.

25. On December 5, 2019, Lampinen filed the complaint and related documents.

26. We find Complainant did not relocate to San Diego, California. Mr. Bays knew he resided in California from the forms filled out by Mr. Bays. Regardless, Complainant and Mr. Bays primarily used e-mail communications to discuss the case.

27. On December 20, 2019, Complainant and Mr. Bays sent each other several e-mails about Complainant’s informal receipt of the petition. These were attached by Mr. Bays in his response to the State Bar charge. We note Mr. Bays attached a copy of an email he claimed he sent to Complainant at 2:47 p.m. on December 20, 2019. It states,

Hello Clint; Is there anyway you can scan and email the Petition? The photos are not clear. It might be a better idea if you schedule an appointment and bring the Petition with you. We can draft the response while you are here and have you sign the response in front of a notary at the office.

That attachment includes a same day prefatory email to Mr. Bays from Complainant stating “Thanks!” The copy provided by Mr. Bays shows that was sent at 1:04 p.m. [Ex. 5, 000099.] Mr. Bays also attached a copy of an email which contradictorily states that email was sent at 1:48 p.m. to Complainant by Mr. Bays. [Id. at 000107.]

28. Regardless, while Complainant sent Mr. Bays a copy of the pleadings, the copy was apparently barely legible. Mr. Bays requested a clearer copy which was sent by Complainant.

29. Despite purportedly preparing a draft response and discovery pleadings dated January 2020, Mr. Bays failed to file or submit any of the documents to the Court or opposing counsel. We find he was untruthful in stating he prepared the documents. While Mr. Bays claims that a December 20, 2019 e-mail exchange indicates that he sent the draft response and discovery pleadings to Complainant for signature and return, the exchange does not mention or attach the documents.<sup>1</sup>

30. Despite repeated requests for information, Mr. Bays failed to respond to Complainant regarding the status of the case.

31. On February 14, 2020, Bays pled guilty under a signed plea agreement to Aggravated Assault, a class 6 undesignated, non-dangerous, domestic violence felony and Unlawful Imprisonment, a class 6 undesignated, non-dangerous,

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<sup>1</sup> See also Paragraph 32. Mr. Bays told Complainant he had no paperwork regarding him.

domestic violence felony in the Arizona Superior Court (for Cochise County) of *State v. Paul Randall Bays*, OC201900212 (CR201900212)

32. On March 24, 2020, Mr. Bays e-mailed Complainant informing him that he “decided to shut down my practice effective March 31, 2020....We have no paperwork to return to you and the fees paid were earned upon receipt.” [Id. at 000075.] We find Mr. Bays was intentionally misleading in this statement to Complainant to take advantage of him. Had he prepared the documents referenced in paragraph 29, they would have been part of the paperwork he had to return to his client. His own words impeach his claimed preparation of paperwork. He had nothing to return because he prepared nothing.

33. We find the fee agreement of Mr. Bays repeatedly impeaches various claims of Mr. Bays. Mr. Bays demanded and received a “hybrid fee” by which he was to complete the services stated in paragraph 1 of the fee agreement which included, but was not limited to, completing the “divorce.” The fee agreement also provides that, “The nonrefundable flat fee shall entitle client to para #1.” [Id. at 000093 at 4 (B).] Paragraph #1 of the fee agreement required Mr. Bays to complete the duties described in that paragraph which included, but was not limited to, completing the “divorce.” [Id. at 000092.]

34. As importantly, the fee agreement prepared by Mr. Bays states that Complainant “may be entitled to a refund of all or part of the fees...” [Id. at 000093 at 4(C).]

35. When Complainant called Mr. Bays about the firm closure, Mr. Bays informed Complainant that he was closing the firm due to COVID-19. This was untrue and intentionally misleading.

36. We also note that while Mr. Bays in his response to the State Bar claimed he could not “move forward because we could not get a signed and verified Response to the Petition.” [Id. at 000074.] His fee agreement again impeaches his claim. “Once Attorney is hired to represent Client, Attorney may take such action on behalf of Client as is impliedly authorized to carry out the representation.” [Id., 000091.]

37. By engaging in the above-referenced misconduct, Mr. Bays violated these ethical rules:

- a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 – Mr. Bays failed to abide by the decisions and authority of the client;
- b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Mr. Bays failed to act diligently during his representation of the client;
- c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Mr. Bays failed to reasonably communicate with his client;

- d. Rule 42, Ariz. R. Sup. Ct., ER 1.5(a) – Mr. Bays charged and collected an unreasonable fee for the representation as Complainant received no legal services of value;
- e. Rule 42, Ariz. R. Sup. Ct., ER 1.16(d) – Mr. Bays failed to take the steps reasonably practicable to protect the client’s right including returning the client file and all unearned fees;
- f. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Mr. Bays failed to expedite litigation;
- g. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) – Mr. Bays engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- h. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Mr. Bays engaged in conduct prejudicial to the administration of justice.

**COUNT THREE (File No. 20-2530/Self-Musselman)**

38. On September 7, 2018, Complainant paid Mr. Bays \$6,000.00 pursuant to a signed written fee agreement with Mr. Bays’ law firm to initiate the Cochise County Superior Court case of *Katie Sue Musselman v. Tod Alan Musselman*, DO201800687. The contract mirrors the fee agreement in Count 1. We conclude Mr. Bays was well familiar with the terms of the contract and the requirements that it imposed on him. Consistent with the statements of the Complainant, the agreement was a “hybrid” agreement. The \$6,000 was a “flat fee” that he was paid under that

agreement. The contract mandated that the “flat fee *shall entitle* client to See paragraph 1.” (Italics added, underscore in original.) [Ex. 10, “part 2” at 000157.]<sup>2</sup> Paragraph 1 required Mr. Bays to complete the divorce as promised to Complainant. [ Ex. 10.]

39. Mr. Bays filed the petition and related documents on September 10, 2018.

40. Despite repeated attempts over the next three months to obtain information regarding the case, Complainant could not contact Mr. Bays. The fee agreement prepared by Mr. Bays required Mr. Bays to keep Complainant “reasonably informed about the status of the matter.” Mr. Bays was required to “Promptly comply with reasonable requests for information.” Mr. Bays was required to “make all reasonable offers to settle a matter as expeditiously as possible.” We find Mr. Bays repeatedly violated these terms. [Exs. 10, 10 part 1 & part 2.]

41. Unbeknownst to Complainant, Tod filed a response on October 10, 2018.

42. Also unbeknownst to Complainant, Mr. Bays filed two separate motions to change the assigned judges.

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<sup>2</sup> There are three exhibits marked 10. They are entitled exhibits “10”, “10 part 1”, and “10 part 2.”

43. On December 10, 2018, Complainant and her parents went to the office of Mr. Bays to attend a meeting previously scheduled by his staff.

44. As they pulled up to his office, his staff called and informed them that Mr. Bays was in court in Phoenix and would be unable to attend the meeting.

45. When Complainant and her parents attempted to enter the office, they saw the office lights being turned off.

46. Mr. Bays called Complainant the next day and “chewed (her) out from top to bottom” accusing Complainant of lying about the office visit. Complainant states that Mr. Bays was rude and disrespectful in every subsequent discussion with her.

47. Complainant alleges that little, if any, legal services were rendered requiring her involvement.

48. The Cochise County Superior Court online records also reflect *de minimis* activity in the case between January 11, 2019 and the entry of a decree of dissolution on June 25, 2019.

49. Despite repeated requests for a complete itemized accounting, Mr. Bays refused to respond to Complainant’s requests. The fee agreement between the parties was a standard boiler plate contract prepared by Mr. Bays. The terms of the contract mandated that Bays Law PC “shall send Client statements showing fees and costs should the representation require additional hourly billings.” [Ex. 10, 000157.] One

does not violate the terms of self-written contract without intent. One does not fail to submit such an accounting without intent. We find he intentionally failed to adhere to the terms of the fee agreement in order to profit himself. We need not determine the cause for his failure to timely submit the accounting. The invoice he submitted to the State Bar states it was submitted to his client on April 23, 2020. The last entry is dated June 25, 2019. [Ex. 7.]

50. On April 23, 2020, Mr. Bays for the first time sent Complainant an invoice. In the invoice he alleged an additional four-thousand-dollars due and owing.

51. On October 16, 2020, Mr. Bays initiated the Sierra Vista Justice Court case of *Paul Randall Bays v. Katie Musselman*, CV2020000775 attempting to collect the firm's purported debt. Identical to Count 1 above, the billing record of Mr. Bays includes his standard and unreasonable pattern of excessive billings. It is replete with multiple occasions of a charge of twelve minutes of time to review and sign documents his office prepared. We conclude that none of this was a reasonable basis by which to claim the anticipated work of completing the divorce was exceeded.

52. As examples, on October 9, 2018, he charged eighteen minutes of time to prepare a standard form "Notice of Filing for Return of Service." He charged twelve minutes of time for review and its' signing. [Ex. 7, 000131.] He claimed it took him twelve minutes to review the reassignment of a judge and to make notes

on December 1, 2018. [Id. 000132.] He claimed it took him an hour to prepare a “Notice of Service” on January 3, 2019 and twelve minutes to review and sign it. [Id.]

53. Mr. Bays initiated the lawsuit naming himself as plaintiff without naming the law firm. The fee agreement and the billings were from Bays Law Firm P.C. Mr. Bays knew he was voluntarily transferred to disability inactive status on August 27, 2020 as admitted in his answer and thereby could not represent the corporation. He knowingly misrepresented to the court that the debt was owed personally to him.

54. On November 19, 2020, the State Bar e-mailed Mr. Bays an initial screening letter to his last known e-mail address requesting a written response to the bar charge within twenty (20) days. Mr. Bays did not respond.

55. On December 16, 2020, the State Bar again e-mailed Mr. Bays an initial screening letter to his last known e-mail address requesting a written response to the bar charge within ten (10) days. Despite receiving confirmation that Mr. Bays “read” the e-mail on December 16, 2020 at 10:48 a.m., Mr. Bays failed to respond.

56. Mr. Bays license was suspended effective February 16, 2021. On or before a February 17, 2021 arbitration hearing in Sierra Vista Justice Court, the parties agreed to dismiss Mr. Bays’ lawsuit against Complainant. Mr. Bays was to

file a written statement to Justice Court Precinct 5 of their understanding and never did so. [Ex. 13.]

57. On February 24, 2021, the State Bar e-mailed Mr. Bays a second notice that his bar charge was scheduled for presentation to the Attorney Discipline Probable Cause Committee (ADPCC) on their March 12, 2021 agenda.

58. On or about February 25, 2021, Mr. Bays filed a Motion to Set for Arbitration and e-mailed Complainant a copy on February 26, 2021 stating, in pertinent part:

“Last week, when we were supposed to have our arbitration hearing, you and I agreed that I (sic) was dismiss it... Yet, two days ago, I received notice from the state bar that they have completed an investigation filled with a number of lies and factual discrepancies and a request that I pay you restitution... If it is your intent to pursue your bar complaint and restitution, then I will request a hearing before the arbitrator... If you still want to avoid arbitration, I will draft a stipulated motion to dismiss, which you will be required to sign and send back to me. However, I will not agree to a dismissal so long as there is a pending bar issue requiring me to pay you restitution. Instead, I will defend against that as well.” [Ex. 11.]

59. By engaging in the above-referenced misconduct, Mr. Bays violated these ethical rules:

- a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 – Mr. Bays failed to abide by the decisions and authority of the client;
- b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 – Mr. Bays failed to act diligently during his representation of the client;

- c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 – Mr. Bays failed to reasonably communicate with his client;
- d. Rule 42, Ariz. R. Sup. Ct., ER 1.5(a) – Mr. Bays charged, collected and attempted to further collect an unreasonable fee for the representation as Complainant received no legal services of value;
- e. Rule 42, Ariz. R. Sup. Ct., ER 1.16(d) – Mr. Bays failed to take the steps reasonably practicable to protect the client’s right including returning the client file and all unearned fees;
- f. Rule 42, Ariz. R. Sup. Ct., ER 3.2 – Mr. Bays failed to expedite litigation;
- g. Rule 42, Ariz. R. Sup. Ct., ER 8.1 – Mr. Bays knowingly failed to respond to a lawful demand for information from the discipline authority;
- h. Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) – Mr. Bays engaged in conduct involving dishonesty, fraud, deceit or misrepresentation;
- i. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) – Mr. Bays engaged in conduct prejudicial to the administration of justice; and
- j. Rule 54(d)(2) – Mr. Bays failed to furnish information or promptly respond to request from bar counsel.

## CONCLUSIONS OF LAW

Mr. Bays exhibits appear to argue little else than that he wasn't guilty of anything but was instead the victim. The letters which were included were not current and offer no mitigation as they do not relate to these proceedings but rather the criminal conduct of Mr. Bays for which he pled guilty.

Mr. Bays emphasized in the aggravation/mitigation hearing that he had won the arbitration regarding his apparent claim for \$4,979.03 plus accruing interest in Count 3. [Ex. 8.] We accept that he feels he won. His feelings are no defense for the claim of unreasonable fees substantiated in this matter and which claim was not submitted in accord with his own fee agreement. The arbitrator reduced his claimed fees by over \$1,000 because they were not supportable by his evidence which supports our findings that he charged unreasonable fees.

That these fees were unreasonable is substantiated by his own fee agreements and billing statements. In Count Two he did not complete the engagement at all. In multiple Arizona cases in which lawyers accepted advanced retainers and not completed the engagement the Disciplinary Commission routinely ordered restitution. *See Matter of Brady*, 186 Ariz. 370 (1996), *Matter of Woltman*, 181 Ariz. 525 (1995), and *Matter of Secrist*, 180 Ariz. 50 (1994). We find restitution is appropriate in each count.

That he “won” his Justice Court arbitration, while this matter was pending, if nothing else impeaches his repeated claim that he is not competent to represent himself. It also demonstrates the reasonable basis of Rule 63(d)(1), Ariz. R. Sup. Ct. that directs that the prosecution of bar proceedings should not be stayed when an attorney like Mr. Bays is unable to discharge his duties to clients, the bar, the courts, or the public.

His billing records reflect his apparent standard practice to charge the client \$60 for a claimed .20 of an hour, which is twelve (12) minutes, to sign his own prepared documents. [Ex. 2, 000029-31.] He also appears to have had a standard practice to charge .30 of an hour, which is eighteen (18) minutes, to email. [Id.] In an egregious example he sent an email to Mr. Mendoza “w/copies of List of Witnesses and Exhibits” charging 18 minutes and sent the identical information to the “Judge’s JAA” charging an additional 18 minutes. He claimed he took twelve (12) minutes to review a notice of acceptance of service. [Id. at 000030.]

While we recognize that the State Bar’s is correct that Mr. Bays had no right to represent in court Bays Law P.C., and he thereby listed himself as the plaintiff, we consider that only for evidentiary purposes including credibility.

We find his conduct was intentional throughout. Notwithstanding, the State Bar requested we use a “knowing” state of mind.

### **ABA STANDARDS ANALYSIS**

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152 (1990). In imposing a sanction, we consider: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0*.

**Duties violated:**

Mr. Bays violated his duty to his clients by violating Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.5(a), 8.4(c) and 8.4(d).

Mr. Bays violated his duty to the legal system and profession by violating Rule 42, Ariz. R. Sup. Ct., ERs 1.16(d), 3.1, 3.2, 8.1, and 8.4(d) and Rule 54(d)(2), Ariz. R. Sup. Ct.

**Mental State and Injury:**

Mr. Bays violated his duties to the profession, his client and the legal system implicating the following *Standards*:

**Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3 and 1.4:**

*Standard 4.42*

Suspension is generally appropriate when a lawyer: a) knowingly fails to perform services for a client or b) engages in a pattern of neglect and causes injury or potential injury to a client.

**Rule 42, Ariz. R. Sup. Ct., ERs 1.5(a) and 8.4(c):**

**Standard 4.62**

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

**Rule 42, Ariz. R. Sup. Ct., ERs 1.16(d) and 8.1, and Rule 54(d)(2):**

**Standard 7.2**

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

**Rule 42, Ariz. R. Sup. Ct., ER 3.1, 3.2 and 8.4(d):**

**Standard 6.22**

Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Therefore, the Hearing Panel finds that the above-listed *Standards* are applicable.

**AGGRAVATING AND MITIGATING FACTORS**

The Hearing Panel finds the following aggravating factors are present in the record:

1. 9.22(a) prior discipline history;

- PDJ 2020-9078 (SB19-2767 and 20-0139) [Ex. 21]: Mr. Bays was suspended for one-year effective February 16, 2021 for violating Rule 41(g), Ariz. R. Sup. Ct. and Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.5(a), 1.7(a)(2), 3.2, 3.3(a)(1), 8.4(c) and 8.4(d);
- PDJ 2020-9114 (SB20-0147, 20-0210 and 20-0366) [Ex. 22]: Mr. Bays was suspended for one-year effective February 16, 2021 for multiple violations including, but not limited to, Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.5(a), 1.9(a), 3.2 and 8.4(d); and
- SB99-0053 [Ex. 18]: Mr. Bays received an informal reprimand for violating Rule 42, Ariz. R. Sup. Ct., ER 8.2 by writing a letter to another attorney in which he indicated that a judge's decision was contrived and highly unethical.

While *not* discipline, the Hearing Panel also considered the prior diversion history of Mr. Bays regarding knowledge or intent regarding all three Counts:

- SB 15-2522 [Ex. 20]: Mr. Bays was diverted for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.5 and ER 1.5(d)(3) by failing to pursue enforcement of a divorce decree and property claims as requested by the client; and
- SB 13-1878 [Ex. 19]: Mr. Bays was diverted for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.5(d)(3), 1.15(d), 1.18(c) and 8.4(d) by representing a husband in a divorce matter without disclosing that he had previously consulted with the husband's wife about representation in the same matter.

2. 9.22(b) dishonest or selfish motive;

3. 9.22(c) a pattern of misconduct;

4. 9.22(f) submission of false evidence, false statements, or other deceptive practices during the discipline process;

- While Mr. Bays has repeatedly claimed that he is unable to proceed in this matter due to his inactive disability status, as recently as March-April 2021, Mr. Bays has complied with court orders, telephonically

appeared for court proceedings, and actively litigated the case in Cochise County Superior Court of Arizona in *Paul Randall Bays v. Gina Marie Bays*, CV2020-00264, [Exs. 15-17] and *Paul Randall Bays v. Katie Musselman* CV 2020000755 in Justice Court Precinct 5 in Sierra Vista, AZ, [Ex. 9, 12-14]. He also actively litigated in *Paul Randall Bays v. Vicki Gilbert*, CV2020-000673 after he was transferred to disability inactive status. In *Bays v. Bays* it is clear he engaged in the unauthorized “practice of law” in violation of Rule 42, Ariz. R. Sup. Ct., ER 5.5 as defined by Rule 31(b) and Rule 31.2 Ariz. R. Sup. Ct. He intentionally did not appear “*pro per*” but rather listed himself on court filings he made as an attorney at law with the law firm of “Bays Law PC” well after his license was suspended. [Exs. 16-17.]

5. 9.22(g) refusal to acknowledge wrongful nature of conduct;
6. 9.22(h) vulnerability of victim;
7. 9.22(i) substantial experience in the practice of law; and
8. 9.22(j) indifference to making restitution.

The Hearing Panel finds no mitigating factors are present.

We note within these three counts and both of his prior suspensions that Mr. Bays has violated ERs 1.2, 1.3, 1.4, 1.5, 3.2, 8.4(c) and (d). Prior to that Mr. Bays has been sent to diversion to address violations of ERs 1.2, 1.5, 8.4(c) and (d). The

pattern is clear. The sanction for intentional conduct under the *Standards* cited above is disbarment. In two counts he caused potentially serious injury and in one count caused serious injury. While the Hearing Panel finds his conduct intentional, we agree that under the knowing mental state requested by the State Bar that the presumptive sanction is suspension.

### **CONCLUSION**

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.’” *Alcorn*, 202 Ariz. at 74 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20 (1994).

The Hearing Panel orders:

- a) Mr. Bays shall be suspended for six (6) months and one (1) day, to be served consecutively to the one-year suspension in PDJ 2020-9078 (SB19-2767 and 20-0139) and PDJ 2020-9114 (SB20-0147, 20-0210 and 20-0366), effective February 16, 2021;

b) Mr. Bays shall pay all costs and expenses incurred by the SBA. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in this proceeding.

c) Mr. Bays shall pay the following restitution within thirty (30) days of entry of the final judgment and order:

- i. Count 1 to Vicki Gilbert in the amount of \$4,415.00;
- ii. Count 2 to Clint Rinehart in the amount of \$2,000.00; and
- iii. Count 3 to Katie Self (Musselman) in the amount of \$6,000.00.

A final judgment and order will follow.

**DATED** this 28<sup>th</sup> day of June 2021.

*William J. O'Neil*

**William J. O'Neil, Presiding Disciplinary Judge**

*Signature on File*

**Teri M. Rowe, Volunteer Attorney Member**

*Signature on File*

**Thomas C. Schleifer, Volunteer Public Member**

Copy of the foregoing emailed  
this 28<sup>th</sup> day of June, 2021, to:

Craig Henley  
Senior Bar Counsel  
State Bar of Arizona  
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Paul R. Bays  
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Respondent

-and-

Paul R. Bays  
1325 New Found Harbor Drive  
Merritt Island, Florida 32952  
520-459-2639  
Email: doctorjuris1991@yahoo.com  
Respondent

by: MSmith

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**PAUL R. BAYS,**  
**Bar No. 013479**

Respondent.

**PDJ 2021-9017**

**FINAL JUDGMENT AND  
ORDER**

[State Bar Nos. 20-2302, 20-2414,  
20-2530 ]

**FILED JULY 15, 2021**

The hearing panel issued its decision on June 28, 2021, imposing a suspension and the payment of restitution and costs. No appeal has been filed. The State Bar filed its Statement of Costs and Expenses on June 28, 2021 pursuant to Rule 60(d). No objection has been filed.

**IT IS THEREFORE ORDERED** that Respondent **PAUL R. BAYS, Bar No. 013479**, is suspended from the practice of law in Arizona for six months and one day, to be served consecutively to the one-year suspension imposed in PDJ 2020-9078 and PDJ 2020-9114.

**IT IS FURTHER ORDERED** that Respondent shall pay restitution to the following individuals within 30 days:

Count 1: Vicki Gilbert in the amount of \$4,415.00;

Count 2: Clint Rinehart in the amount of \$2,000.00; and

Count 3: Katie Self (Musselman) in the amount of \$6,000.00.

**IT IS FURTHER ORDERED** that Respondent shall pay the costs and expenses of the State Bar of Arizona in the sum of \$2,000.00. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

**DATED** this 15th day of July 2021.

*Margaret H. Downie*

**Margaret H. Downie**  
**Presiding Disciplinary Judge**

COPY of the foregoing e-mailed  
This 15th day of July 2021, to:

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by: SHunt