

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

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

**GUSTAVO TOLEDO,**  
**Bar No. 012000**

Respondent.

**PDJ-2014-9053**

[State Bar File Nos. 12-1165, 13-3264]

**AMENDED FINAL JUDGMENT  
AND ORDER**

**FILED OCTOBER 16, 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** that Respondent, **GUSTAVO TOLEDO**, is hereby disbarred from the State Bar of Arizona effective immediately and his name is hereby stricken from the roll of lawyers. Mr. Toledo 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 immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

**IT IS FURTHER ORDERED** that Respondent shall pay restitution as follows: \$13,043.89 with interest at the legal rate to Matthew Jimenez.

**IT IS FURTHER ORDERED** that Respondent pay those costs and expenses awarded to the State Bar of Arizona in the amount of \$2,045.63, within thirty (30)

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 16<sup>th</sup> day of October, 2014.

*William J. O'Neil*

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

Copies of the foregoing mailed/emailed this 16<sup>th</sup> day of October, 2014, to:

Gustavo Toledo  
57 N. Alma School Road, Suite 308  
Mesa, AZ 85201-7039  
Email: toledolawfirm@gmail.com  
Respondent

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by: JAlbright

**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

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

**GUSTAVO TOLEDO,  
Bar No. 012000**

Respondent.

**PDJ 2014-9053**

**REPORT AND ORDER IMPOSING  
SANCTIONS**

[State Bar No. 12-1165]

**FILED SEPTEMBER 24, 2014**

**PROCEDURAL HISTORY**

The State Bar of Arizona (SBA) filed its complaint on June 20, 2014 (the Complaint). On June 26, 2014, the Complaint was served on Respondent by certified, delivery restricted mail and regular first class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct., to Respondent's address of record with the SBA: 57 N. Alma School Rd., Ste. 308, Mesa, Arizona, 85201. Both mailings were returned to the SBA undelivered. On July 8, 2014, the SBA mailed the Complaint to Respondent at two alternative addresses identified by the SBA: 1) 179 W. Ironwood Dr., Chandler, Arizona 85225 and 2) 724 W. Dakota Dr., Tucson, Arizona 85706. The Complaint was again sent by certified, delivery restricted mail and regular first class mail. Only the certified mailings were returned to the SBA undelivered. The Presiding Disciplinary Judge (PDJ) was assigned to the matter. A notice of default was issued on July 24, 2014. Respondent did not file an answer or otherwise defend against the

allegations set forth in the Complaint and default was properly entered on August 14, 2014. On August 19, 2014, a Notice of Aggravation and Mitigation Hearing was sent to all parties notifying them that the hearing was scheduled for October 15, 2014. On August 21, 2014, the Court issued an order expanding the time limits within which to conduct the hearing. On August 29, 2014, the hearing was re-set for September 24, 2014, at 10:30 a.m. at the State Courts Building, 1501 West Washington, Room 109, Phoenix, Arizona 85007-3231. Notice was provided to Respondent by mailing to his address of record, as well as by email to toledolawfirm@gmail.com.

On September 24, 2014, the Hearing Panel composed of Robert D. Myers, the attorney member and retired judge, Brett Eisele, the public member, and William J. O'Neil, Presiding Disciplinary Judge, heard this matter. Stacy L. Schuman, Bar Counsel, appeared on behalf of the SBA. Mr. Toledo did not appear.

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 no longer has the right to litigate the merits of the factual allegations of the complaint. However, the respondent retains the right to appear and participate in the hearing 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. Toledo 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 hearing panel must also exercise discretion in deciding

whether sanctions should issue for the respondent's misconduct. If the hearing panel finds that sanctions are warranted, then it independently determines which sanctions should be imposed. It is not the function of the hearing panel to simply endorse or "rubber stamp" any request for sanctions.

### **FINDINGS OF FACT**

The facts set forth below are taken from the Complaint and were deemed admitted upon Respondent's default, as well as facts established by the SBA's exhibits, which were admitted during the Aggravation/Mitigation Hearing.

1. Respondent was first admitted to practice law in Arizona on May 21, 1988. (Complaint at ¶1.)
2. On June 10, 2014, Respondent was administratively suspended from the practice of law in Arizona for failure to pay his annual bar dues. (*Id.* at ¶2.)

### **COUNT ONE (File no.13-3264/Jimenez)**

1. Initially, Matthew Jimenez (Jimenez) paid Maria Ortiz, a certified document preparer, to prepare pleadings for him in a family law matter that was pending in the Maricopa County Superior Court, *Jimenez v. Lotches*, FC2010-054071 (the Litigation). Ms. Ortiz prepared a "Petition for Paternity, Child Custody, Parenting Time and Child Support." (*Id.* at ¶3.)
2. After Jimenez appeared *pro per* at an early hearing, the Court suggested that he retain counsel. (*Id.* at ¶4.)
3. Ms. Ortiz referred Jimenez to Respondent, who was subletting space in the same office complex in which she worked. Ms. Ortiz received Respondent's email and kept it for him at her desk until he picked it up. Respondent would allow mail to

sit for “two weeks” sometimes before he retrieved it. Ms. Ortiz also forwarded Respondent’s emails to his attention. (*Id.* at ¶5.)

4. In February 2011, Jimenez retained Respondent to represent him in the Litigation. While Jimenez believes that he signed a fee agreement, he does not have a copy of one. (*Id.* at ¶6; Ex. 12 [8/15/14 Letter] at SBA 000021.)

5. Jimenez paid Respondent \$2,500 in three payments of \$500 and one payment of \$1,000. Jimenez made the payments in person, at which time he would have brief, case-related conversations with Respondent. (Complaint at ¶7; Ex. 13 [Receipts] at SBA 000026-30.)

6. On February 22, 2011, Respondent entered his appearance on behalf of Jimenez in the Litigation. (Complaint at ¶8.)

7. During the course of the representation, in addition to the four visits to Respondent’s office to pay attorney fees, Jimenez visited Respondent’s office approximately four (4) other times, but Respondent was not there. (*Id.* at ¶9.) Jimenez made ten (10) to twenty (20) telephone calls to Respondent and left voice mail messages for him each time. Respondent returned approximately four (4) of the telephone calls, which coincided with the four (4) times that Jimenez met with Respondent in person to make fee payments. (*Id.* at ¶10.)

8. During the course of the representation, Respondent did not send Jimenez any letters or emails regarding the Litigation. (*Id.* at ¶11.)

9. Respondent did not consult with Jimenez before he responded to discovery requests that were propounded by his ex-wife’s attorney, Wendy Hernandez. When Jimenez asked Respondent why he did not do so, Respondent stated “Don’t worry. It was nothing. I couldn’t get a hold of you.” Jimenez denies

that Respondent was unable to communicate with him and states that he would have returned any messages left for him by Respondent. (*Id.* at ¶14.)

10. Ms. Hernandez states that her client file does not reflect any correspondence from Respondent. She does not recall ever meeting with Respondent in person or talking with him apart from court appearances. She recalls that Respondent provided her with hand-written responses to discovery requests approximately three (3) months after they were due and that they appeared to have been completed solely for purposes of complying with discovery deadlines because some of the responses were simply "will supplement." And, Respondent did not assist in the preparation of the joint pre-trial statement. Ms. Hernandez believes that Respondent did not really represent Jimenez and that Respondent "screwed him over." Other than appearing for trial, Ms. Hernandez questions whether Respondent did any work at all in the underlying case. (*Id.* at ¶25.)

11. Respondent did not prepare Jimenez for trial, which was set for August 16, 2011. (Ex. 14 [8/22/2011 Minute Entry] at SBA No. 000032.) On the date of trial, Respondent was almost an hour late. (*Id.*) While he waited for Respondent to show up at Court, Jimenez observed Ms. Hernandez telling his ex-wife what to do during the hearing. Jimenez denies receiving any such advice from Respondent. Nor did Respondent consult with Jimenez about exhibits before trial or "speak up in Court" on his behalf during the trial. Jimenez recalls that at one point, "the judge kind of scolded me and I thought, 'Why are you telling me? That's why I hired an attorney.'" (Complaint at ¶15.)

12. According to Ms. Hernandez, on the day of trial, the judge's staff had to call Respondent because he did not appear on time. When Respondent did appear,

Ms. Hernandez observed him to be “completely unprepared,” “flying by the seat of his pants,” and “freaked out and disheveled.” Respondent told the Court that his car had broken down, but Ms. Hernandez was not convinced that Respondent was being candid. The trial was held on August 16, 2011, and “considering the time of year,” Ms. Hernandez “would have been a sweaty mess if [her] car broke down.” Ms. Hernandez observed that Jimenez appeared to be “really upset,” and “exasperated” during the trial. She also recalled that Respondent may not have known the name of the minor child or that he referred to the child by the wrong name throughout the trial. (*Id.* at ¶24.)

13. On September 29, 2011, and after the trial had concluded, Ms. Hernandez filed an application for attorney’s fees (the Application). (Ex. 15 [Application] at SBA No. 000036.) Respondent did not provide Jimenez with a copy of the Application. (Complaint at ¶16.)

14. The Application alleged, among other things, that 1) Respondent had failed to timely or sufficiently respond to discovery; 2) that the trial court had continued the first trial setting and ordered Respondent to respond to discovery, which he failed to timely do; 3) that when Respondent finally responded, the responses were untimely and “grossly insufficient”; 4) that Respondent failed to clarify the discovery responses despite being requested by Ms. Hernandez to do so; 5) that Respondent failed to contact Ms. Hernandez regarding the preparation of a joint pre-trial statement; and 6) the Respondent failed to file an individual pre-trial statement or provide any exhibits to either Ms. Hernandez or the trial court. (Ex. 15 [Application] at SBA 000037-38.)

15. Respondent did not oppose the Application or take any other action to protect Jimenez' interests and on November 8, 2011, the trial court entered a judgment against Jimenez for \$10,543.89, plus interest. (Ex. 16 [Judgment] at SBA 000064.)

16. Respondent did not tell Jimenez about the judgment. Jimenez learned about the judgment when another of his ex-wives, who works in a law firm, came across the judgment and told him about it. Jimenez tried unsuccessfully to contact Respondent to get more information about the judgment. Jimenez finally contacted Ms. Ortiz to see if she knew anything about the judgment. Ms. Ortiz told Jimenez that she would try to find out for him. (Complaint at ¶17.)

17. On December 8, 2011, Respondent filed a notice of withdrawal with the trial court. It does not appear that he mailed a copy to Jimenez. (Ex. 17 [Notice of Withdrawal] at SBA 000066.)

18. On December 9, 2011, Jimenez filed a motion *pro per* seeking to have the Judgment vacated due to Respondent's inaction. (Ex. 18 [Motion to Vacate] at SBA000069.) The motion was denied and a garnishment order was later entered against Jimenez. (Ex. 19 [Application for Order] at SBA 000078.) Jimenez eventually satisfied the judgment. (Ex. 20 [Order Discharging Garnishee] at SBA 000081.)

19. Jimenez waited to file a bar charge against Respondent because he "thought [Respondent would] still try to make good," but Respondent continued to avoid him. (Complaint at ¶20.)

20. After Jimenez terminated the representation, he sent Respondent letters asking for his file, but Respondent did not respond. (*Id.* at ¶12; Ex. 1 [3/12/12 Letter] at SBA 000002.) Ultimately, SBA investigators retrieved Jimenez's file from

Ms. Ortiz, who had called Respondent and left a message explaining that Jimenez had requested his file and was now calling her about it. (Complaint at ¶13.) Respondent left Ms. Ortiz a voice mail message stating that he would leave the file on her desk, which he later did. (*Id.* at ¶22.) The file does not include any correspondence from Respondent to Jimenez, time records, invoices, or fee/representation agreement. (*Id.* at ¶13.)

21. Jimenez asked Ms. Ortiz to review his file after Respondent left it on her desk. Ms. Ortiz could not find even “one piece of correspondence to opposing counsel” and there were “no responses to interrogatories” that had been propounded by opposing counsel. Ms. Ortiz had to explain to Jimenez what interrogatories were because Respondent had never done so. Ms. Ortiz determined that Respondent did not handle Jimenez’s case properly and that he was “beyond negligent.” According to Ms. Ortiz, opposing counsel Hernandez “worked [the case] to the hilt.” But, Respondent “never responded to a single pleading,” he was an hour to an hour and a half late for trial, and he never forwarded the Application to Jimenez or even told Jimenez that it had been filed. (*Id.* at ¶23.)

22. As of the filing of the Complaint, Ms. Ortiz had not seen Respondent since September or October 2012 and he has “disappeared.” Ms. Ortiz moved out of her office space in July 2013, at which time she put Respondent’s belongings into storage. (*Id.* at ¶26.)

23. As recently as July 2013, Ms. Ortiz was still receiving emails intended for Respondent. She stopped forwarding the emails to Respondent because he did not confirm that he was receiving them and she began returning the emails to the sender and advising them that Respondent was no longer around. (*Id.* at ¶27.)

24. By letter dated April 30, 2013, Bar Counsel sent Respondent a screening letter asking him to respond to the bar charge. The letter was sent to Respondent's then current address of record with the State Bar. The letter was returned marked "unable to forward." (*Id.* at ¶28.)

25. On May 8, 2013, State Bar Investigator Kevin McBay contacted Respondent at Bar Counsel's request. He confirmed that Respondent's address was 57 North Alma School Road, Suite 308, Mesa, Arizona 85201. Investigator McBay told Respondent to update his address with the State Bar's Membership Section, which Respondent later did. (*Id.* at ¶29.)

26. By letter dated May 9, 2013, Bar Counsel re-sent the screening letter to Respondent's address at 57 North Alma School Road, Suite 308, Mesa, Arizona 85201. The letter was not returned. Respondent did not respond to the screening letter. (*Id.* at ¶30.)

27. By letter dated June 10, 2013, Bar Counsel sent Respondent a ten (10) day reminder letter to his address at 57 North Alma School Road, Suite 308, Mesa, Arizona 85201. The letter was not returned. Respondent did not respond to the screening letter. (*Id.* at ¶31.)

28. While Respondent did not respond to the May 9<sup>th</sup> and June 10<sup>th</sup> letters, Respondent did respond to an August 13, 2013 screening letter that Bar Counsel sent to him at the same address relating to another bar charge that had been lodged against him. (*Id.* at ¶32.)

**COUNT TWO (File no. 13-3264/Borunda)**

29. On March 17, 2010, Danielle Borunda (Borunda) was in a serious automobile accident. She was referred to Respondent by a family friend, Maria Ortiz.

Ms. Ortiz, a certified document preparer, shared office space with Respondent. (*Id.* at ¶42.)

30. In March 2010, Borunda retained Respondent to represent her with respect to the automobile accident. At Respondent's request, Borunda forwarded all paperwork that she received relating to the accident to Respondent. (*Id.* at ¶43.)

31. As a result of the accident, Borunda was out-of-work for six (6) months and received treatment for almost a year, which she paid for out-of-pocket. (*Id.* at ¶43.)

32. During 2011, whenever Borunda called Respondent for an update on the case, Respondent told her that he was waiting for the other party to respond to his representation letter. (*Id.* at ¶44.)

33. During 2012, Borunda called Respondent monthly for an update on the status of the case. (*Id.* at ¶45.)

34. In March 2012, Borunda advised Respondent that she had unpaid bills that had gone to collections and that she wanted to settle her claim against the driver. When she asked why the case seemed to be on "hold," Respondent claimed that a month after the accident, the driver had moved and Respondent had not been able to find him. Respondent told Borunda that he had a skip trace on the driver in an effort to locate him. (*Id.* at ¶46.)

35. On March 16, 2012, Respondent filed a complaint with the Maricopa County Superior Court, *Borunda v. Lora*, Case No. CV2012-004847 (the Complaint), on behalf of Ms. Borunda. (*Id.* at ¶47; Ex. 28 [Complaint] at SBA 000093.)

36. On June 16, 2012, the trial court issued a Notice of Intent to Dismiss for Lack of Service, stating that the deadline for completing service was July 16, 2012. (Complaint at ¶48; Ex. 28 [Notice] at SBA 000097.)

37. Sometime after that date, Borunda decided to check the status of the Complaint online, at which time she saw the Notice of Intent to Dismiss. Respondent had not advised her of same. Borunda immediately called Respondent and was told “not to worry about it,” and that Respondent would file the appropriate paperwork so that the case would not be dismissed. Respondent never filed any such paperwork. (Complaint at ¶49.)

38. However, after Respondent assured Borunda that he would take care of the case, she stopped calling him monthly. (*Id.* at ¶50.)

39. On August 18, 2012, the trial court issued a 150 Day Order, whereby it provided notice of certain case management deadlines, pursuant to Rule 38.1, Arizona Rules of Civil Procedure. (*Id.* at ¶51; Ex. 28 [150 Day Order] at SBA 000099.)

40. By order filed September 12, 2012, the trial court dismissed the Complaint without prejudice for lack of service. (Complaint at ¶52; Ex. 28 [Judgment of Dismissal] at SBA 000102.)

41. In February 2013, Ms. Borunda spoke to Respondent after she was involved in another car accident. At that time, Ms. Borunda asked for a status update on the case and Respondent stated that he was still trying to locate the driver. Respondent did not advise Ms. Borunda that the complaint had actually been dismissed. Respondent has not been in communication with Ms. Borunda since February 2013. (*Id.* at ¶53.)

42. In August 2013, Ms. Borunda found out from Ms. Ortiz that Respondent was under investigation by the State Bar and contacted the State Bar herself to submit a bar charge against Respondent. (*Id.* at ¶54.)

43. By letter dated December 2, 2013, Bar Counsel sent a screening letter to Respondent at his address of record with the State Bar, 57 North Alma School Road, Suite 308, Mesa, Arizona 85201, asking him to respond to the bar charge. The letter was not returned. Respondent did not respond to the screening letter. (*Id.* at ¶55.)

44. By letter dated January 10, 2014, Bar Counsel sent Respondent a ten (10) day reminder letter to his address of record with the State Bar, 57 North Alma School Road, Suite 308, Mesa, Arizona 85201. The letter was not returned. Respondent did not respond to the screening letter. (*Id.* at ¶56.)

45. While Respondent did not respond to the May 9<sup>th</sup> and June 10<sup>th</sup> letters, Respondent did respond to an August 13, 2013, screening letter that Bar Counsel sent to him at the same address relating to another pending bar charge brought against Respondent. (*Id.* at ¶57.)

### **CONCLUSIONS OF LAW**

Respondent failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Respondent violated the following: Rule 42, Ariz. R. Sup. Ct., specifically E.R.s 1.3, 1.4(a)(2) and (3), 1.5(b), 1.16(d), 3.2, 8.1(b), 8.4(d), and Rule 54(d)(2), as set forth below:

**COUNT ONE (File no. 12-1165/Jimenez)**

1. ER 1.3 [Diligence]. A lawyer shall act with reasonable diligence and promptness in representing a client. Respondent did not timely comply with discovery requests propounded upon him by Attorney Hernandez and he did not conduct any discovery on behalf of his client. Nor did he cooperate with the preparation of the Joint Prehearing Statement. Respondent failed to prepare Mr. Jimenez for trial and was himself unprepared for trial.

2. ER 1.4(a)(2), (3) [Communication]. A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished and shall keep the client reasonably informed about the status of the matter. Respondent failed to reasonably communicate with Mr. Jimenez regarding his case. He did not advise Mr. Jimenez about the discovery requests propounded by Attorney Hernandez; the application for attorney's fees; or the judgment that was ultimately entered against Mr. Jimenez for those fees.

3. ER 1.5(b) [Fees]. The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing. There is no evidence that Respondent complied with the requirements of ER 1.5(b).

4. ER 1.16(d) [Termination of Representation]. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as ... surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned. Upon the client's request, the lawyer shall provide the client with all of the client's documents, and all documents reflecting work performed for the client.

Respondent did not timely return Mr. Jimenez's file to him. In fact, he gave it to a third party to pass along to Mr. Jimenez instead of responding to Mr. Jimenez's request himself. Respondent also failed to return to Mr. Jimenez any unearned fees. Bar Counsel's investigation supports the conclusion that the services provided to Respondent were minimal and were of little or no value to him.

5. ER 3.2 [Expediting Litigation]. A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Respondent did not timely or properly respond to discovery propounded by opposing counsel; he did not propound any discovery on behalf of Mr. Jimenez; he did not cooperate in the preparation of the Joint Prehearing Statement; nor did he advise Mr. Jimenez of the Application for Attorney's fees or consult with him regarding resisting same.

6. ER 8.1(b) [Disciplinary Matters]. A lawyer in connection with a disciplinary matter, shall not knowingly fail to respond to a lawyer demand for information from a disciplinary authority. Respondent did not respond to the screening letters that Bar Counsel sent to him at his address of record with the State Bar.

7. ER 8.4(d) [Misconduct]. It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Respondent did not timely or properly respond to discovery propounded by opposing counsel; he did not cooperate with opposing Counsel in the preparation of the Joint Prehearing Statement; and he appeared late for the underlying trial.

8. Rule 54(d)(2) [Grounds for Discipline]. Grounds for discipline include the failure to furnish information or respond promptly to any inquiry or request from bar counsel made pursuant to these rules for information relevant to pending

charges, complaints or matters under investigation concerning conduct or a lawyer. Respondent did not respond to the screening letters that Bar Counsel sent to him at his address of record with the State Bar.

**COUNT TWO (File no. 13-3264/Borunda)**

9. ER 1.3 [Diligence]. A lawyer shall act with reasonable diligence and promptness in representing a client. Respondent failed to effectuate service of the complaint, which resulted in its dismissal by the Court.

10. ER 1.4(a)(2), (3) [Communication]. A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished. And, a lawyer shall keep the client reasonably informed about the status of the matter. Respondent failed to reasonably communicate with Ms. Borunda regarding her case and his efforts, if any, to effectuate service of the complaint. Nor did he advise her that the trial court dismissed the complaint for lack of service.

11. ER 1.16(d) [Termination of Representation]. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as ... surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned. Upon the client's request, the lawyer shall provide the client with all of the client's documents, and all documents reflecting work performed for the client. Respondent abandoned Ms. Borunda without returning her client file. The file should contain all of the documents relating to the accident that Ms. Borunda forwarded to Respondent at his request during the course of the representation.

12. ER 3.2 [Expediting Litigation]. A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Respondent did not

effectuate service of the complaint, which resulted in its dismissal. Nor did he seek an extension of time within which to do so. Given that the accident occurred in 2010, the statute of limitations has likely run thereby precluding Ms. Borunda from seeking damages from the driver of the car involved in the accident.

13. ER 8.1(b) [Disciplinary Matters]. A lawyer in connection with a disciplinary matter, shall not knowingly fail to respond to a lawyer demand for information from a disciplinary authority. Respondent has not responded to the screening letters that Bar Counsel sent to him at his address of record with the State Bar.

14. ER 8.4(d) [Misconduct]. It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Respondent did not effectuate service of the complaint and as a result, Ms. Borunda's personal injury complaint was dismissed by the Court. Given that the accident occurred in 2010, the statute of limitations has likely run thereby precluding Ms. Borunda from seeking damages from the driver of the car involved in the accident.

15. Rule 54(d)(2) [Grounds for Discipline]. Grounds for discipline include the failure to furnish information or respond promptly to any inquiry or request from bar counsel made pursuant to these rules for information relevant to pending charges, complaints or matters under investigation concerning conduct of a lawyer. Respondent has not responded to the screening letters that Bar Counsel sent to him.

### **ABA STANDARDS ANALYSIS**

The American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the

following factors should be considered: (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:**

Respondent violated his duty to his clients by violating ERs 1.3, 1.4(a)(2) and (3), 1.5(b), and 1.16(d). He violated his duty to the public by violating ER 8.1(b) and his duty to the legal system by violating ERs 3.2 and 8.4(d). Finally, Respondent violated his duty owed as a professional by violating ER 8.1(b) and Rule 54(d).

**Mental State and Injury:**

Respondent violated his duty to clients, thereby implicating *Standard 4.4*.

*Standard 4.41* states:

Disbarment is generally appropriate when:

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

In this matter, Respondent abandoned the practice, knowingly failed to perform services for clients and engaged in a pattern of neglect of client matters, all which caused serious or potentially serious injury to clients. Therefore, *Standard 4.41* is applicable.

Respondent violated his duty owed as a professional, which implicates *Standard 7.0*. *Standard 7.1* states, "Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a

professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.” In this matter, Respondent’s actions were taken with the intent to obtain a personal benefit, namely monies paid to him by the client that he abandoned. Respondent also failed to respond to the SBA’s investigation. Therefore, *Standard 7.1* is applicable.

### **AGGRAVATING AND MITIGATING FACTORS**

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

1. *Standard 9.22(b)*. Dishonest of selfish move. As discussed *supra*, Respondent abandoned his clients and caused them actual harm.
2. *Standard 9.22(c)*. A pattern of misconduct. As discussed *supra*, Respondent abandoned more than one client and caused them actual harm.
3. *Standard 9.22(d)*. Multiples offenses. As discussed *supra*, Respondent abandoned more than one client and caused them actual harm.
4. *Standard 9.22(e)*. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. As discussed *supra*, Respondent failed and refused to cooperate with the State Bar in its investigation of this case.
5. *Standard 9.22(g)*. Refusal to acknowledge wrongful nature of conduct. Respondent failed and refused to cooperate with the State Bar in its investigation of this case. Respondent has also made no efforts to mitigate the actual harm that he did to his clients when he abandoned them.

6. *Standard* 9.22(i). Substantial experience in the practice of law. Respondent was admitted to practice law on May 21, 1988.

7. *Standard* 9.22(j). Indifference to making restitution. Respondent has made no efforts to mitigate the actual harm that he did to his clients when he abandoned them.

The Hearing Panel finds that after considering the Standards, including aggravating factors.

### **PROPORTIONALITY**

In the past, the Supreme Court has consulted similar cases in an attempt to assess the proportionality of the sanction recommended. *See In re Struthers*, 179 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept or proportionality review is “an imperfect process.” *In re Owens*, 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases “are ever alike.” *Id.*

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *See In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In *In re Johnson*, SB-10-0037-D, Johnson was disbarred and ordered to pay restitution for failing to adequately communicate with and diligently represent clients. Respondent also knowingly violated a court order and practiced law while suspended

as well as failed to provide the State Bar with a current address, and failed to return client property including certain funds belonging to the client. Respondent further failed to respond or cooperate with the State Bar's investigation. The five aggravating factors were: *Standards* 9.22(a) prior disciplinary offenses, 9.22(b) dishonest or selfish motive, 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceedings by failing to comply with the rules or orders of the disciplinary agency and 9.22(i) substantial experience in the practice of law. No mitigating factors were presented.

In *In re Camacho*, SB-96-0079-D (1997), Camacho was disbarred. Camacho allowed summary judgment of over \$15,000 to be entered against clients without taking any steps to have it set aside or inform the clients and intentionally misled clients by stating they could still present their case. The clients agreed to a maximum settlement amount of \$2,500. Camacho, however, subsequently made and agreed to a \$5,000 offer on his clients' behalf without their knowledge or consent. Camacho also converted \$3,047.75 of settlement funds owed to Medicare for his own purpose. Lastly, Camacho failed to respond in the SBA's investigation. The six aggravating factors were: *Standards* 9.22(a) prior disciplinary offenses, 9.22(b) dishonest or selfish motive, 9.22(c) a pattern of misconduct 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution. Mitigating factors were discussed, but the Commission's report does not specifically identify ones that were found except for *Standard* 9.32(l) remorse.

## **CONCLUSION**

The Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). And, it is a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the appropriate sanction using the facts deemed admitted, the *Standards*, the aggravating factors, and the goals of the attorney discipline system. Based upon the above, the Hearing Panel orders as follows:

1. Respondent shall be disbarred from the practice of law.
2. Respondent shall pay restitution in the following amounts Matthew Jimenez: \$2,500 for attorney's fees paid to Respondent and \$10,543.89, Which is the judgment amount enter entered against Mr. Jimenez for his ex-wife's attorney's fees/ The total restitution shall be \$13,043.89 with interest at the legal rate.
3. Respondent shall pay all costs and expenses incurred by the SBA.

4. A Final Judgment and Order will follow.

**DATED** this 24th day of September 2014.

*William J. O'Neil*

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

*Brett Eisele*

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**Volunteer Public Member**

*Robert D. Myers*

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**Volunteer Attorney Member (retired Judge)**

Copies of the foregoing mailed/emailed  
this 24th day of September, 2014.

Mr. Gustavo Toledo  
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Respondent

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by: [JAlbright](#)

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

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

**GUSTAVO TOLEDO,**  
**Bar No. 012000**

Respondent.

**No. PDJ 2014-9053**

**ENTRY OF DEFAULT**

[State Bar No. 12-1165, 13-3264]

**FILED AUGUST 14, 2014**

Gustavo Toledo was served with a copy of the Compliant in this action on June 26, 2014. On July 24, 2014, a Notice of Default and Entry of Default was filed. The time to plead or otherwise defend having expired and no answer having been filed,

**NOTICE IS HEREBY GIVEN** that the Default of Respondent is hereby entered.

The allegations in the complaint shall be deemed admitted. An effective entry of default shall not be set aside except in cases where such relief would be warranted under Rule 60(c) of the Arizona Rules of Civil Procedure.

DATED this 14th of August, 2014.

*Michele Smith*

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Michele Smith, Acting Disciplinary Clerk  
Office of the Presiding Disciplinary Judge

COPY of the foregoing mailed  
this 14th day of August, 2014, to:

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By: JAlbright