

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**DEVIN ANDRICH,
Bar No. 023075**

Respondent.

PDJ-2014-9029

[State Bar File Nos. 12-0689, 12-0690, 12-2535, 13-3120, 13-3566]

FINAL JUDGMENT AND ORDER

FILED MAY 21, 2015

This matter having come on for hearing before the Hearing Panel of the Supreme Court of Arizona, it having duly rendered its decision, an appeal having been filed and the Supreme Court of Arizona having dismissed the appeal on April 23, 2015, accordingly,

IT IS HEREBY ORDERED Respondent **DEVIN ANDRICH**, is disbarred practice of law effective September 24, 2014, for conduct in violation of his duties and obligations as a lawyer as disclosed in the Hearing Panel's Decision and Order Imposing Sanctions filed on September 24, 2014. Mr. Andrich's name is hereby stricken from the roll of lawyers and he 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 Mr. Andrich 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 Respondent shall pay the following amounts in restitution to the following persons:

\$3,500.00 to Cheyenne Barcala (Count Three);

\$65,000.00 to Thomas Sanders (Count Four); and

\$70,000.00 to Andrea and Houston Mayfield (Count Five)

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$4,020.10.

DATED this 21st day of May, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 21st day of May, 2015, to:

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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

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

DEVIN ANDRICH,
Bar No. 023075

Respondent.

No. PDJ-2014-9029

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar Nos. 12-0689, 12-0690,
12-2535, 13-3120, 13-3566]

FILED SEPTEMBER 24, 2014

On August 25, 26, 2014, the Hearing Panel ("Panel"), composed of Carole Kemps, a public member, Boyd T. Johnson, an attorney member and retired judge, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a two day hearing pursuant to Rule 58(j), Ariz. R. Sup. Ct. Stacy L. Shuman appeared on behalf of the State Bar of Arizona ("State Bar"). Mr. Andrich appeared pro se. Rule 615 of the Arizona Rules of Evidence, the witness exclusion rule, was invoked. The Panel carefully considered the Complaint, Answer, the State Bar's Individual Prehearing Statement, State Bar's Individual Pre-Hearing Memorandum, testimony, admitted exhibits, closing arguments and proposed findings of fact.¹ Mr. Andrich invoked his Fifth Amendment rights and therefore his testimony was not considered.² The Panel

¹ Consideration was also given to sworn testimony of Tom Saunders, Steve Little, Cheyenne Barcala, J. Daryl Dorsey, Richard Peters, William Fischbach, Roger Cohen, Arthur Reichsfeld, Matthew Puzz, Robert Spurlock, and Megan Parish.

² For this reason, any factual assertions made during the hearing by Mr. Andrich were given no credence by the Panel. "A party cannot testify for his or her own advantage and then invoke the privilege and claim the right to be free from cross-examination." *Montoya v. Superior Court In and For County of Maricopa*, 173 Ariz. 129, 131, 840 P.2d 305, 307 (Ct. App. Div. 1, 1992)(citing *Brown v. United States*, 356 U.S. 148, 155-156 (1958)).

now issues the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz. R. Sup. Ct.

**I. SANCTION IMPOSED:
DISBARMENT AND COSTS OF THESE DISCIPLINARY PROCEEDINGS**

II. BACKGROUND AND PROCEDURAL HISTORY

An Order of Probable Cause was filed in this matter on February 24, 2014 and March 14, 2014. Mr. Andrich was placed on Interim Suspension by the PDJ on March 24, 2014. The State Bar filed its five count Complaint on March 28, 2014, alleging violations of ERs 1.15(a) (safekeeping property), 1.16(d) (termination of representation), 1.3 (diligence), 1.4(a)(3) and (4) (communication), 1.5(a) (fees), 1.16(d) (terminating representation), 3.1 (meritorious claims and contentions), 3.2 (expediting litigation), 4.4(a) (respect for rights of others), 8.1 (knowingly failure to respond for a lawful demand for information by a disciplinary authority), 8.1(a) (disciplinary matters), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), 8.4(d) (conduct prejudicial to the administrative of justice) and Rule 41(g) (duties and obligations of members), Rule 54(d) and (i) (grounds for discipline). Mr. Andrich filed his Answer and Counterclaim on May 27, 2014, and an initial case management conference was held on June 3, 2014. By the Presiding Disciplinary Judge's order on June 19, 2014, Mr. Andrich's counterclaim was struck.

The State Bar asserts disbarment and restitution is the appropriate sanction in this matter for Mr. Andrich's intentional misrepresentation, fraud, misappropriation and theft committed upon his clients, in addition to other misconduct.

Mr. Andrich has not provided a defense or explanation for his actions besides asserting this action is being taken against him by the State Bar because of some

vague animosity. Instead, he accuses other attorneys and firms of attorney misconduct in order to shift responsibility away from himself. His pleadings did not clearly set forth any defense and he declined to provide any explanation for his actions by invoking his Fifth Amendment rights during the hearing.

III. FINDINGS OF FACT

Mr. Andrich was licensed to the practice of law in the State of Arizona on March 2, 2006. [State Bar's Individual Prehearing Memorandum p. 2]. By order dated March 24, 2014, the Presiding Disciplinary Judge placed Mr. Andrich on interim suspension pending the outcome of this action. [*Id.*]

Count One File No. 12-0689 (State Bar of Arizona)

Complaint

On March 16, 2011, Mr. Andrich filed a complaint in the Maricopa County Superior Court on behalf of State Electrical Contractors, Inc. and Arthur and Colleen Reichsfeld (Plaintiffs) and against Jaburg & Wilk, P.C., GFAH Equity Lending, LLC (GFAH), Flash and the Boys, LLC, Gary Jaburg and Jane Doe Jaburg, Roger Cohen and Jane Doe Cohen, Lawrence Wilk and Jane Doe Wilk, John and Jane Does I-X, and XYZ, LLC (the Complaint) as case number CV2011-005277. [SBA Individual Prehearing Memo, p. 2; State Bar Exhibit 7, Bates SBA000174.] Mr. Andrich caused Flash and the Boys, LLC to be served as XYZ, LLC II. [*Id.*]

On May 19, 2011, Defendants Jaburg & Wilk, P.C., GFAH, Flash & the Boys, LLC, Gary Jaburg, Susan Donaldson, Roger Cohen, Victoria Cohen, Lawrence Wilk, and Susan Wilk filed a Motion to Dismiss the Complaint (Motion to Dismiss). [SBA Individual Prehearing Memo, p. 2; State Bar Exhibit 8, Bates SBA000194.] On July

29, 2011, the Motion to Dismiss was granted without prejudice. [State Bar Exhibit 11, Bates SBA000294.]

Sanctions Motion

The Motion to Dismiss and for Sanctions was filed August 31, 2011 by the Epstein/Weinflash Defendants. [State Bar Exhibit 12, Bates SBA000295.] The Sanctions Motion noted that “[n]ot only are these parties not named in the Verified Complaint, but the pleading contains no factual allegations against them, even by description, that might conceivably set forth a legally cognizable cause of action.” [Complaint p. 2; State Bar Exhibit 12, Bates SBA000298.] Yet when this was pointed out to Mr. Andrich he responded with the following communication to opposing counsel:

If Weinflash and Epstein have nothing to do with GFAH, then they are welcome to produce credible, verifiable information and the cases against them will be promptly-dismissed (sic). At present, their attorneys have made no effort. It is my understanding that the AG and ADFI are actively investigating Weinflash and Epstein in this matter, so that will be enough of the threats.

[State Bar Exhibit 12, Bates SBA000299.]

Plaintiffs thereafter terminated Mr. Andrich’s representation and on September 29, 2011, Mr. Andrich filed a Motion to Withdraw, which was granted. [State Bar Exhibit 15, 17, Bates SBA000325, SBA000333.] Mr. Andrich then filed a response to the sanctions motion on October 18, 2011, as well as a Cross-Motion for Sanctions, requesting attorney’s fees. [State Bar Exhibit 18, Bates SBA000336.] The trial court issued a minute entry on January 31, 2012. [State Bar Exhibit 22, Bates SBA000404-SBA000406.] In that ruling the trial court noted: “[w]hat is remarkable about [Mr. Andrich]’s account is that he is describing specific statements in conversations that

are not admitted by the participants and about which [Mr. Andrich] has no personal knowledge or the slightest direct evidence.” [Id. at SBA000405.] The trial court granted the motion to dismiss without prejudice as well as the Rule 11 sanctions motion, going on to state: “never has the court seen such an egregious circumstance where there is a willful refusal to dismiss in the face of a grossly inadequate complaint, coupled with an utter lack of factual basis other than speculation and no legal authority.” [Id. at SBA000406.]

Screening Letter

On March 19, 2012, the State Bar sent Mr. Andrich a screening letter asking him to respond to the allegations of the bar charge. [State Bar Exhibit 2, Bates SBA000010.] On April 23, 2012, Mr. Andrich responded to the screening letter, denying violation of ethical rules and stating that the trial court had “granted...leave to amend its complaint” and he had begun to do so, but had been terminated by the Plaintiffs before he could file it. [State Bar Exhibit 4, Bates SBA000015.] The trial court had dismissed the complaint without prejudice, meaning that Mr. Andrich would have been free to refile the complaint had he not been terminated by the Plaintiffs. [State Bar Exhibit 22, Bates SBA000406.]

The Panel finds that Mr. Andrich brought and defended the complaint against the opposing party without a good faith basis. The Panel further finds that in the face of obvious legal and factual inadequacies Mr. Andrich failed to dismiss the defendants. The Panel finds that these actions were taken by Mr. Andrich with a knowledge that they were prejudicial to the administration of justice. However, the Panel does not find that in his response to the State Bar, Mr. Andrich knowingly made

any false statements of material fact or engaged in dishonest, fraudulent, deceitful, or misrepresenting behavior.

Count Two File No. 12-0690 (State Bar of Arizona)

Matthew Puzz (Puzz) retained Mr. Andrich to file a complaint against his mortgage holder after multiple attempts to secure a loan modification failed. [Complaint p. 7.] Puzz paid Mr. Andrich a \$5,000 retainer and then paid Mr. Andrich \$800 a month to fund the litigation. [*Id.* at p. 8.] Mr. Andrich advised Puzz to name Tiffany & Bosco, P.A., Michael Bosco and his wife, and Mark Bosco and his wife, as defendants in the complaint (the Bosco Defendants), in addition to Chase Home Financial LLC (Chase), which held the mortgage/note. On May 12, 2010, Mr. Andrich filed a twelve (12) count complaint on behalf of Puzz with the Maricopa County Superior Court, Case No. CV2010-013585. [*Id.*]

At all relevant times, the Bosco Defendants were represented by Attorney William Fischbach of Tiffany & Bosco in the litigation. [*Id.*] On August 6, 2010, Tiffany & Bosco, P.A. cancelled the trustee's sale that had been scheduled for the Puzz home. [State Bar Exhibit 37, Bates SBA000725.] Instead of dismissing the complaint at this point, Mr. Andrich filed a fifteen count First Amended Verified Complaint, adding a new count alleging the defendants had violated the Fair Debt Collection Practices Act. [Complaint p. 8.]

District Court

On August 10, 2010, the defendants removed the case to Federal District Court, Case No. 2:10-cv-01699-GMS, and filed a motion to dismiss the complaint. Mr. Andrich obtained two (2) extensions of time from the District Court to respond to the

motion to dismiss, but never did so. [State Bar Exhibit 36, Bates SBA000591-SBA000592.]

On February 4, 2011, the District Court dismissed all but one of the 15 counts set forth in the complaint for failure to state a claim upon which relief could be granted. [State Bar Exhibit 36, Bates SBA000630.] The District Court awarded the Bosco Defendants their attorneys' fees of \$2,691.79 as provided for under A.R.S. § 33-807(E). [*Id.*] On March 7, 2011, Mr. Andrich filed a motion for leave to file a thirteen (13) count Second Amended Complaint, to which the Bosco Defendants filed an opposition. [SBA Individual Prehearing Memo, p. 8.] On April 12, 2011, the District Court granted Mr. Andrich's motion for leave to file a Second Amended Complaint and simultaneously dismissed Counts 1-12 of the complaint, *sua sponte*, for failure to state a claim. [State Bar Exhibit 36, Bates SBA000657-SBA000663.] The District Court then remanded Count 13 to the Maricopa County Superior Court because it alleged a violation of A.R.S. § 33-807.01. [*Id.*]

Superior Court

On May 9, 2011, the Bosco Defendants filed a motion to dismiss Count 13 of the complaint with the trial court, which was granted on July 22, 2011, after briefing and oral argument. [SBA Individual Prehearing Memo, p. 9.] On August 11, 2011, the Bosco Defendants filed an Application for Costs and Reasonable Attorneys' Fees against both Puzz and Mr. Andrich, which Mr. Andrich opposed on the grounds that since they had been represented by Tiffany & Bosco, they had not incurred any attorney's fees. [State Bar Exhibit 37, Bates SBA000707, SBA000750.]

On November 17, 2011, the trial court granted the application, awarding the Bosco Defendants \$591 in costs against Puzz and \$13,731.71 in attorneys' fees,

jointly and severally, against Puzz, Mr. Andrich and Mr. Andrich's firm. [State Bar Exhibit 36, Bates SBA000591-SBA000595.] In this order the trial court found the following: "[Mr. Andrich] knew he was doing all of these things, and intended as his goal to delay the inevitable and instead coerce the bank to do something it had no obligation to do: forgive plaintiff's default and modify the loan. *Id.* The price of having intentionally made himself an unwarranted thorn in the side of the Bosco Defendants is this fee award." [*Id.*] Mr Andrich even stated in an email sent to opposing counsel: "[e]ven if my client lost in litigation, it pours gas on the fire" and that more lawsuits were to come. [*Id.*]

Screening Letter

On March 19, 2012, the State Bar sent Mr. Andrich a screening letter, requesting a response to the allegations of the bar charge. [State Bar Exhibit 35, Bates SBA000581]. In his response to the State Bar's screening letter, Mr. Andrich asserted that Tiffany and Bosco Financial Services had been illegally foreclosing upon Arizonans and that the trial court judge "cannot identify with the average Arizona homeowner." [State Bar Exhibit 36, Bates SBA000585.] He went further to say that courts view his clients as "deadbeats" and "roll their eyes" at their complaints. [*Id.* at Bates SBA000589.] Similar claims were made at the hearing, but Mr. Andrich never addressed or explained his actions.

Mr. Andrich also had a troubling tendency to shift responsibility from himself onto other attorneys, the State Bar, and the court during all relevant times; frequently asking for "professional courtesy," [*Id.* at Bates SBA000583, SBA000592] but in his e-mails to opposing counsel frequently advising them of the "consequences" of their actions for simple errors, even threatening bar complaints. [State Bar's

Exhibit 36, 37, Bates SBA000613, SBA000721.] This shows a lack of good faith, an intention to harass opposing counsel by Mr. Andrich, and bespeaks a troubling lack of moral accountability.

The Panel finds that the State Bar has established that Mr. Andrich brought and defended a complaint in bad faith, in the face of obvious legal and factual inadequacies, and did so with the intent to coerce, delay, and harass the opposing party. The Panel finds that these actions were taken by Mr. Andrich with a knowledge that they were prejudicial to the administration of justice. The Panel further finds that Mr. Andrich did this to further his own interests and not the interests of his client, and, in doing so, he knowingly harmed the interests of his client.

Count Three File No. 12-2535 (Barcala)

Cheyenne Barcala (Barcala) hired Mr. Andrich in March 2010 to help her with an employment dispute. [State Bar Exhibit 42, Bates SBA000783.] Barcala paid Mr. Andrich a \$3,500 retainer, after paying him \$250 for an initial consultation. [*Id.* at Bates SBA000795.] Barcala told Mr. Andrich that the emails in her work email account would reflect all the work for which she was owed wages, but that her former employer had changed her password and she could not get copies of the emails. [*Id.* at Bates SBA000783.] Mr. Andrich told Barcala that he would subpoena the emails. [*Id.*] Mr. Andrich failed to subpoena the emails for Barcala. [Hearing Testimony of Cheyenne Barcala 08/25/2014 11:03:10 AM.]

Mr. Andrich told Barcala that he would send her a draft of a demand letter to be sent to her former employer for her review and comment. [State Bar Exhibit 42, Bates SBA000783.] Mr. Andrich never did so, although he told Barcala that he had both mailed and emailed her the draft. [*Id.* at Bates SBA000817.] Only after the

demand letter was sent to Barcala's former employer, did Barcala have an opportunity to review it. [State Bar Exhibit 42, Bates SBA000818.] The letter stated that Barcala was exclusively responsible for procuring all of the short sales for Coldwell Banker when in fact, she worked on a team that handled foreclosures. [*Id.* at Bates SBA000831.] Barcala demanded that Mr. Andrich retract the demand letter and send one with the correct information. [*Id.* at Bates SBA000820.] Mr. Andrich refused and told Barcala in an email that he "did not want to reveal all the legal theories I intend to pursue to recover [your] commissions" and that his goal was not "to impress or even intimidate" opposing counsel with the demand letter, so the factual errors in the letter were of no concern. [*Id.* at Bates SBA000821-SBA000822.]

By email dated April 27, 2010, Barcala directed Mr. Andrich to file a complaint to recover wages due and owing from her former employer. [*Id.* at Bates SBA000840.] Mr. Andrich repeatedly assured Barcala that he had sent her a draft of the complaint to review, citing problems such as e-mail size being too big and unsecured mailboxes. [*Id.* at Bates SBA000845-SBA000848.] Eventually, Barcala received an overnighted copy on May 14, 2010. [*Id.* at Bates SBA000851.] After several changes and concerns, Barcala emailed Mr. Andrich on May 26, 2010 and advised him that she had notarized the complaint and mailed it back to him on that date for filing. [*Id.* at Bates SBA000861.] On June 3, 2010, Mr. Andrich emailed Barcala stating that he had received the complaint and that he would let her know when all of the defendants had been served with the complaint. [*Id.* at Bates SBA000863.]

Barcala did not hear from Mr. Andrich for over two weeks. On June 21, 2010, Barcala emailed him and asked for a status update. [State Bar Exhibit 42, Bates SBA000864.] Mr. Andrich responded the next day stating that one of the defendants named in the complaint was avoiding service but that Mr. Andrich would file a motion to have the trial court permit him to serve the defendant by publication. [*Id.* at Bates SBA000865]. In reality, Mr. Andrich had yet to file the complaint. [State Bar Exhibit 45, Bates SBA001021.]

Once again, Barcala had to reach out to Mr. Andrich August 5, 2010 because she had not heard from him for a month. [State Bar Exhibit 42, Bates SBA000784.] He responded with short e-mails indicating they were still waiting on service. [*Id.* at Bates SBA000872-SBA000873.] On August 27, 2010, Mr. Andrich finally filed the complaint and a certificate of compulsory arbitration with the Pinal County Superior Court, Case No. CV-2010-003505, *Barcala v. Excellent Realty, L.L.C., et al.* [State Bar Exhibit 45, Bates SBA001021.] Mr. Andrich then emailed Barcala the following day, stating that he was in contact with opposing counsel and the matter would go forward unless there is an "acceptable settlement offer [Barcala deemed] appropriate." In fact service had yet to even be effectuated on any defendant. [State Bar Exhibit 48, Bates SBA001035.]

Between September 2010 and February 2011, Mr. Andrich fabricated several events in emails to Barcala before failing to communicate with her for three additional months. [State Bar Exhibit 42, Bates SBA000785.] On September 12, 2011, Barcala emailed Mr. Andrich and asked for a status update. He responded the next day and advised Barcala that there was a hearing set for September 27, 2011, but only attorneys were to attend and that it would deal with scheduling issues and a status

report for the court. [State Bar Exhibit 42, Bates SBA000888-SBA000890.] In reality, by order filed on August 26, 2011, the trial court set the case for Rule 4(i) Inactive Calendar Dismissal on September 27, 2011, at 9:00 a.m. because service of the complaint on the defendants had not been effectuated. [State Bar Exhibit 48, Bates SBA0001035.] On September 19, 2011, Mr. Andrich filed a Notice of Dismissal Without Prejudice with the trial court and the court dismissed the complaint on the 29th of that same month. [State Bar Exhibit 49-50, Bates SBA0001036-SBA0001037.] Mr. Andrich did not inform Barcala that it had been dismissed. [State Bar Exhibit 42, Bates SBA000785.]

In October 2011, Barcala received a letter from Mr. Andrich demanding that she pay an additional \$3,500 in attorney fees. According to Barcala, Mr. Andrich told her that the "statute of limitations [for her case] was almost up," and if she did not come up with the additional monies, she "might as well forget about the lawsuit because it would not be able to move forward after that." [State Bar Exhibit 42, Bates SBA000785-SBA000786, SBA000894.] On November 10, 2011, Barcala wired Mr. Andrich \$1,000.00. [*Id.* at Bates SBA000901.] Then, on November 22, 2011, she wired Mr. Andrich another \$2,500.00. [*Id.* at Bates SBA000908.]

Between January 2012 and April 2012, Mr. Andrich fabricated more tasks, such as asking for deposition dates, suggesting settlement amounts, and sending additional demand letters.

On July 20, 2012, Barcala and her husband decided to check the Pinal County Superior Court's website and found that the complaint had been dismissed in 2011. [State Bar Exhibits 42, 45, Bates SBA000787, SBA001021.] Barcala emailed Mr. Andrich stating: "I am VERY curious as to why the court website say [sic] that my

case was dismissed without prejudice on 9/29/11. Has my case been dismissed for almost 10 months???" [State Bar Exhibit 42, Bates SBA000935.]

Mr. Andrich told Barcala that the complaint had been dismissed because he had been unable to serve one of the defendants, but that it could be re-filed. Mr. Andrich complained that he did not have an address for the defendant. [*Id.* at Bates SBA000938.] She responded with an address that very day. [*Id.* at Bates SBA000939.]

On September 18, 2012, Mr. Andrich emailed Barcala stating that he would call her to discuss the fact that "[o]pposing council (sic) had informed me that you are not presently a licensed realtor" and that as such, Barcala could not recover a commission under A.R.S. § 32-2155. [*Id.* at Bates SBA000942.] Contrary to Mr. Andrich's representation to Barcala, the statute provides that payment cannot be made unless the realtor was licensed at the time the service was provided, as was Barcala's case. [*Id.* at Bates SBA000945.] Barcala pointed this out to Mr. Andrich and demanded to know opposing counsel's contact information. [*Id.*]

On September 19, 2012, Barcala terminated Mr. Andrich's representation, asked for an accounting of the time spent on the case, her client file and the return of \$3,500.00. [*Id.* at Bates SBA000953.] Mr. Andrich then engaged in a series of email messages intended to delay complying with Barcala's demand, including trying to shift responsibility onto Barcala by accusing her of bombarding him with profanity and not providing him with enough evidence for the case. [*Id.* at Bates SBA000967, SBA000973.] It was not until November 17, 2012 that Mr. Andrich provided Barcala with a check for \$3,500, a copy of the last billing statement, and a letter terminating his representation. [State Bar Exhibit 44, Bates SBA000995-SBA001002.] The letter

shifts all of the blame onto Barcala and states she already had a copy of her file. [State Bar Exhibit 44, Bates SBA000995.]

Screening Letter

By letter dated November 19, 2012, the State Bar sent Mr. Andrich a screening letter asking that he respond to the allegations of the bar charge. [State Bar Exhibit 43, Bates SBA000986.] By letter dated January 4, 2013, Mr. Andrich responded to the claims. [State Bar Exhibit 44, Bates SBA000988-SBA000991.] In the letter, he did not rebut specific allegations made by Barcala, but instead expressed doubt as to whether Barcala had a viable case. [*Id.*] He also stated that Barcala could have retained another attorney and that he should have been informed that she had been working with the State Bar since July 2012. [*Id.*] He also stated that he “[did his] best as a solo practitioner” and was “overwhelmed by [his] workload.” [*Id.*]

The Panel finds that the State Bar has established that Mr. Andrich was not diligent in representing his client. The Panel finds Mr. Andrich intentionally drew out litigation contrary to the interests of his client. The Panel finds that Mr. Andrich, in order to hide these failures, knowingly failed to reasonably communicate with his client. The Panel finds Mr. Andrich intentionally deceived both Barcala, on many instances, and the State Bar, in his response to the screening letter. The Panel finds Mr. Andrich intentionally charged Ms. Barcala an unreasonable fee for the scant services he provided. The Panel further finds Mr. Andrich intentionally defrauded Barcala with both the first and second retainer fee.

Count Four File No. 13-3120 (Sanders)

In late 2012, Thomas Sanders (Sanders) retained Mr. Andrich to effectuate the satisfaction of an outstanding judgment from his divorce. Mr. Sanders paid Mr.

Andrich a \$2,850.00 retainer for his services. On September 23, 2008, the Maricopa County Superior Court issued an order in Case No. FN2007-001473, wherein it entered a judgment against Sanders and in favor of his ex-wife, Kelly Lang (Lang), in the amount of \$82,616.09. On October 7, 2009, a Stipulated Judgment was filed with the United State Bankruptcy Court, District of Arizona, in Case No. 2:08-bk-15623-RTB, Adversary No. 2:09-ap-00331, for \$97,820.39 (as of August 14, 2009), which judgment continues to accrue interest until paid in full, at 10% per annum (the Stipulated Judgment). On May 3, 2013, Lang filed a Judgment Renewal Affidavit with the Maricopa County Superior Court stating that the then current balance owed under the Stipulated Judgment was \$105,354.99, plus accruing interest.

At that time, Sanders decided to sell his home in Chandler, Arizona in order to make a lump sum payment on the balance owed under the Stipulated Judgment. Sanders told Mr. Andrich that he was going to make a \$65,000 payment to Lang. Mr. Andrich told Sanders to transfer the funds to him so that Mr. Andrich could make the payment on his behalf. By email dated May 20, 2013, Mr. Andrich provided Sanders with wiring instructions to wire the funds into Mr. Andrich's operating account with MidFirst Bank, No. 2013015796 (the Operating Account). [State Bar Exhibit 60, Bates SBA001180.] There was no information provided to the Panel as why Mr. Andrich did not instruct Sanders to wire the funds into his IOLTA Trust Account, as he should have done. On May 20, 2013, Sanders wired \$65,000 into Mr. Andrich's Operating Account. [State Bar Exhibit 60, Bates SBA001183.]

Based upon his belief that Mr. Andrich had promptly forwarded the \$65,000 to Lang's attorneys, Sanders continued to make monthly payments on the balance that

he believed was still owed under the Stipulated Judgment until he decided to take out a home equity loan to pay off the balance. [State Bar Exhibit 60, Bates SBA001178.] By email dated June 6, 2013, Sanders asked Mr. Andrich about the status of the transfer of the \$65,000. [State Bar Exhibit 60, Bates SBA001181.] By email dated June 7, 2013, Mr. Andrich told Sanders that he would send the \$65,000 to Ms. Lang's attorney. [State Bar Exhibit 61, Bates SBA001185.]

Sanders arranged to close on the home equity loan on September 23, 2013. [State Bar Exhibit 60, Bates SBA001178.] However, a couple of days before the closing, he was advised by the credit union that there was a recorded judgment that was preventing the closing from taking place. [*Id.*] After Saunders had trouble getting Mr. Andrich to communicate clearly with him, he retained another attorney, Rich Peters with RJ Peters & Associates PC. At this point it became clear that Mr. Andrich had not sent the money to Lang. Mr. Andrich refused to provide proof that the check had cleared the bank and Lang's counsel, Mr. Dorsey, verified that he had not received the money in any form. [State Bar Exhibit 60, Bates SBA001178; Hearing Testimony of Darryl Dorsey 08/25/2014 1:29:30 PM.]

On November 1, 2013, Mr. Peters sent Mr. Andrich emails requesting immediate confirmation of the payment. [State Bar Exhibit 71, Bates SBA001364.] Mr. Andrich responded tersely that same day, accusing Mr. Peters of threatening him and ambushing him with untimely requests. [State Bar Exhibit 71, Bates SBA001363.] Eventually, Mr. Andrich sent to Saunders and Mr. Peters a letter which he claimed to have sent to Mr. Dorsey with the check. [State Bar Exhibit 60, Bates SBA001358.] Though Mr. Dorsey received the letter, he did not receive it at the

time Mr. Andrich claimed, and Mr. Dorsey never received the check supposedly enclosed with the letter. [Hearing Testimony of Dorsey 08/25/2014 1:28:27 PM]

Mr. Andrich, throughout this process, refused to provide proof that the money was spent or give any explanation. Instead, Mr. Andrich diverted Saunders by talking about misconduct by other attorneys, as well as negative comments about Mr. Peters. Mr. Andrich also threatened to file counter-claims against Mr. Peters if he filed a complaint against him. [State Bar Exhibit 71, Bates SBA001366]. The money was never transferred to Tiffany and Bosco and to this day the \$65,000 has not been located. [State Bar Exhibit 71, Bates SBA001345.]

Screening Letter

By letter dated December 11, 2013, the State Bar sent Mr. Andrich a screening letter asking that he respond to the allegations of the bar charge. [State Bar Exhibit 66, Bates SBA001294-SBA001295.] A second letter was then sent on December 27, 2013 because Mr. Andrich failed to respond, giving him an additional ten days to respond. [State Bar Exhibit 66, Bates SBA001292-SBA1293]. By letter dated April 7, 2014, Mr. Andrich responded to the claims. [State Bar Exhibit 65, Bates SBA001262-SBA001266.] In the letter, he did not rebut specific allegations but instead complained that he did not have enough time to respond to the screening letter. [*Id.*] He also stated that the Bar Counsel member “[could not] be trusted as a responsible, effective State Bar investigator or staff attorney.” [*Id.*] Instead of explaining his actions, once again Mr. Andrich shifted the blame from himself onto the State Bar and to Lang’s attorney.

The Panel finds that the State Bar has established that Mr. Andrich intentionally misappropriated Sanders’ \$65,000. The Panel further finds that Mr. Andrich

intentionally engaged in the following misconduct: failed to diligently transmit the monies with reasonable diligence, failed to communicate with Sanders where the \$65,000 was, refused to return the monies after Sanders terminated Mr. Andrich's representation, misled the State Bar and Saunders by producing a false letter which was never sent to Mr. Dorsey, and lied directly to the State Bar by stating that he had transmitted the \$65,000 in June 2013. The Panel further finds that Mr. Andrich did this knowing that his conduct was prejudicial to the administration of justice.

Count Five File No. 13-3566 (Parish)

In August 2012, Megan Parish (Parish) hired Mr. Andrich to help resolve issues relating to the sale of a condo located at 4647 N. 32nd St., Phoenix, Arizona 85018 (the Condo). (SBA's Individual Prehearing Memo. p. 24). Parish paid Mr. Andrich a retainer of \$2,250. [State Bar Exhibit 73, Bates SBA001379.] Parish's mother and stepfather, Andrea and Houston Mayfield (the Mayfields), had previously purchased the condo with cash, the title to which was placed in Parish's name, and then entered into an arrangement with Stewart Title whereby Parish would make payments to the Mayfields through Stewart Title. [SBA's Individual Prehearing Memo pp. 24.] Mr. Andrich prepared a Notice of Substitution of Trustee whereby he replaced Stewart Title as the Successor Trustee under the Deed of Trust for the Condo. (SBA's Individual Prehearing Memo p. 25; State Bar Exhibit 74, Bates SBA001386). The Notice of Substitution of Trustee was executed by the Mayfields and Mr. Andrich caused it to be recorded with the Maricopa County Recorder's Office on August 31, 2012. [*Id.*]

In November 2012, the Mayfields and Parish sold the condo. [SBA's Individual Prehearing Memo p. 25; State Bar Exhibit 73, Bates SBA001367.] By letter dated

November 21, 2012, Mr. Andrich provided Michele Flanigan at the Old Republic Title Agency with information necessary for her to wire the proceeds from the sale of the condo into Mr. Andrich's MidFirst Bank IOLTA Trust Account ending in 5826. [SBA's Individual Prehearing Memo p. 25; State Bar Exhibit 79, Bates SBA001408-1409.] Between January and May 2013, Mr. Andrich repeatedly told Parish that the sale would be completed soon and the Mayfields would receive a check for \$70,000. [State Bar Exhibits 80, 82, 84, Bates SBA001410, SBA001413, SBA001423, SBA001429, SBA001432, SBA001437.] Mr. Andrich continually fabricated reasons why the money had yet to be received. [*Id.*]

Parish finally demanded Mr. Andrich give a date by which the money would be received. [State Bar Exhibit 84, Bates SBA001444.] Mr. Andrich identified August 10, 2013, as that date and also stated he would refund \$1,500 of his retainer to Parish. [State Bar Exhibit 72, Bates SBA001367.] Mr. Andrich failed to deliver the \$70,000 to Mrs. Mayfield as promised on August 10, 2013. [*Id.*] He claimed that he had sent a check for \$1,500 to Parish and \$70,000 to Mrs. Mayfield and that Mrs. Mayfield's check had been cashed but Parish's had not. [*Id.* at Bates SBA001454.] Neither Parish nor Mrs. Mayfield received those check and so Parish questioned Mr. Andrich further. [*Id.* at Bates SBA001455.]

By email dated September 4, 2013, Mr. Andrich advised Parish that he had spoken with the bank earlier that day, that the bank was "reinstating the funds," and that it could take up to ten (10) business days. [*Id.* at Bates SBA001456.] By email dated September 20, 2013, Mr. Andrich advised Parish that he was "awaiting final approval this afternoon. But everything looks to be resolved." [*Id.*]

By email dated September 23, 2013, Parish demanded that Mr. Andrich explain the meaning of his email and asked "when can we actually expect to receive our funds?" [State Bar Exhibit 84, Bates SBA001462.]

By email dated September 24, 2013, Parish demanded that Mr. Andrich resolve the matter by September 27, 2013, and demanded to know the date upon which they would receive the funds. [*Id.*]

By email dated September 27, 2013, Mr. Andrich advised Parish that he had been informed by the State Bar that "there is a possible Arizona Rules of Professional Conduct E.R. 1.15 issue" and expressed his intention to seek an ethics opinion from the State Bar. [*Id.*]

Then, by letter dated September 28, 2013, Mr. Andrich sent a letter to the State Bar asking for an ethics opinion about his duty to hold funds in trust pending resolution of a "pending disputed claim to the funds" by the I.R.S. [State Bar Exhibit 85, Bates SBA001467.] Also in the letter, Mr. Andrich represented that he continued to hold the funds in trust, stating that Mrs. Mayfield and Parish "have instructed me to disburse the funds to them." [*Id.*] Notwithstanding their repeated demands that Mr. Andrich disperse the funds to them, Mr. Andrich stated that "it is my understanding that [Mrs. Mayfield] and [Parish] are in no immediate need to receive the funds." [*Id.*] No evidence was presented there had ever been a pending claim by the I.R.S. to the funds. [SBA Prehearing Memo p. 27.]

Mr. Andrich also emailed a copy of the letter to Parish claiming that he would "do whatever the State Bar instructs." [State Bar Exhibit 85, Bates SBA001464.] Parish responded the same day and again demanded that he release the monies and return the retainer to her. [State Bar Exhibit 85, Bates SBA001465.]

By email dated September 29, 2013, among other things, Mr. Andrich again represented to Parish that he was still holding the \$70,000 in trust stating: "I am not concerned about you and/or your mother waiving claims, when compared to the awesome ramifications posed from potentially both I.R.S., and State Bar, if I am required to hold the funds, pending the I.R.S. issuing a ruling or claim." [State Bar Exhibit 86, Bates SBA001470.]

Mr. Andrich told Parish that if he did not hear back from the State Bar that he would release the monies to her and Mrs. Mayfield by November 22, 2013. [State Bar Exhibit 72, Bates SBA001367]. On November 21, 2013, Mr. Andrich sent Parish an email stating that he had received a call from the State Bar and that he would follow up with her after he spoke with someone at the State Bar. [State Bar Exhibit 87, Bates SBA001473.] Parish has not had any contact with Mr. Andrich since; nor has she or the Mayfields received any portion of the \$70,000.00 [State Bar Exhibit 72, Bates SBA001367.]

Screening Letter

By letter dated January 10, 2014, the State Bar sent Mr. Andrich a screening letter asking that he respond to the allegations of the bar charge. [State Bar Exhibit 88, Bates SBA001475-SBA001476.] Mr. Andrich failed to respond to this screening letter.

The Panel finds Mr. Andrich intentionally misappropriated the \$70,000 from Parish. The Panel also finds that Mr. Andrich intentionally engaged in the following misconduct: failed to transmit the \$70,000 in a timely manner, lied to Parish about sending the checks out, refused to account for the funds, lied and misrepresented to Parish and the State Bar that the funds were being held in trust due to an obligation

owed to the I.R.S., and failed to respond to State Bar's screening letter. The Panel finds that Mr. Andrich did this knowing that his conduct was prejudicial to the administration of justice.

IV. CONCLUSIONS OF LAW AND DISCUSSION OF DECISION

The Panel finds clear and convincing evidence Mr. Andrich violated Rule 41(g) Rule 54(d) and (i), ERs 1.15(a) (safekeeping property), 1.16(d) (termination of representation), 1.3 (diligence), 1.4(a)(3) and (4) (communication), 1.5(a) (fees), 1.16(d) (terminating representation), 3.1 (meritorious claims and contentions), 3.2 (expediting litigation), 4.4(a) (respect for rights of others), 8.1 (knowing failure to respond for a lawful demand for information by a disciplinary authority), 8.1(a) (disciplinary matters), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and 8.4(d) (conduct prejudicial to the administrative of justice).

Count One

Mr. Andrich violated ERs 3.1 and 8.4(d) when he filed a complaint naming Epstein/Weinflash defendants without a good faith basis in law or fact. When this was pointed out to him, Mr. Andrich refused to dismiss them from the lawsuit unless the defendants proved they had nothing to do with the loan, which was not a burden he could impose upon them without meeting his own burden of proof. Therefore, he forced the Epstein/Weinflash defendants and the court to expend their resources dispatching a meritless claim.

Mr. Andrich did not violate ERs 8.1(a) or 8.4(c) when he told the State Bar that he had leave to amend his complaint. The complaint had been dismissed without prejudice, therefore, had Mr. Andrich's representation not been terminated, he would have been able to amend the complaint. The difference between the two

is slight and these rules were not meant for such technicalities. Therefore, the Panel finds Mr. Andrich did not violate these rules in Count One.

Count Two

Mr. Andrich violated ERs 3.1 and 8.4(d) by bringing complaints that were meritless and brought in bad faith. Each and every complaint was dismissed for failure to state a claim and sanction motions were granted against Mr. Andrich and his client. Both the court system and the defendants were burdened with multiple motions to dismiss and a motion for sanctions that would not have been necessary but for Mr. Andrich's misconduct. Further, Mr. Andrich did not respond to the motion to dismiss filed with the District Court, even after he obtained two (2) extensions of time within which to do so.

Mr. Andrich violated Rule 41(g) and ER 4.4(a) by bringing complaints that were meritless with the intent to delay, harass, and burden the defendants. The evidence shows that Mr. Andrich brought the complaints in order to coerce the defendants into forgiving his client's debt, something the defendants were not obligated to do. His actions resulted in sanctions under A.R.S. § 12-349 being imposed against his client and himself.

Mr. Andrich violated Rule 54(i) when he refused to dismiss the complaints when it was clear they were without merit. Instead, Mr. Andrich amended his complaint to include more meritless claims and obtained extensions of time which he did not utilize to respond to the motion to dismiss.

Count Three

Mr. Andrich violated ERs 1.3 and 3.2 when he failed to serve the complaint, dismissed the complaint without his client's knowledge, and failed to refile the complaint despite his client's request to do so.

Mr. Andrich violated ERs 1.4(a)(3) and (4) when he failed to keep his client informed on the status of her case, did not respond promptly to requests for information, and failed to inform his client that he had dismissed her claim.

Mr. Andrich violated ER 1.5(a) when he billed his client for representation that was not taking place. He fabricated events, such as a preliminary hearing, and billed his client for it. His client received no benefit from Mr. Andrich's representation, and therefore, his retainer fees were unreasonable.

Mr. Andrich violated ER 1.16(d) when he failed to provide his client a copy of her file upon termination of his representation and did not promptly refund unearned fees.

Mr. Andrich violated ER 8.1(a) when he produced to the State Bar a demand letter that he falsely claimed to have sent to opposing counsel on April 27, 2012. The letter was never sent or received. Therefore, Mr. Andrich intentionally made a false statement of material fact in response to the State Bar's screening letter.

Mr. Andrich violated ER 8.4(c) when he repeatedly fraudulently misrepresented to his client that proceedings were ongoing when the complaint had, in fact, been dismissed. Mr. Andrich also fraudulently misrepresented to the State Bar, in response to their screening letter, that he had sent a demand letter, which, in fact, had never been sent to opposing counsel.

Mr. Andrich violated ER 8.4(d) when he failed to serve defendants and the trial court was forced to place the case on the inactive calendar and set it for dismissal for lack of service.

Mr. Andrich violated Rule 54(d) when he fraudulently misrepresented to the State Bar, in response to their screening letter, that he had sent a demand letter, which, in fact, had never been sent to opposing counsel.

Count Four

Mr. Andrich violated ER 1.3 when he failed to transmit the \$65,000 that his client had given him for a settlement agreement.

Mr. Andrich violated ERs 1.4(a)(3) and (4) by failing to promptly respond to his client's requests for information regarding the status and location of the \$65,000. He also has never accounted for those funds.

Mr. Andrich violated ERs 1.15(a) and 1.16(d) when he refused to return, transmit, or account for the \$65,000 his client had given to him for satisfaction of a judgment. He also failed to provide any documentation showing where the money had gone.

Mr. Andrich violated ER 8.1(a) when he told the State Bar that he had transmitted the \$65,000 in June of 2013, when in fact he had not.

Mr. Andrich violated ER 8.4(c) when he intentionally defrauded his client of the \$65,000 by failing to transmit it as directed or return it to his client.

Mr. Andrich violated ER 8.4(d) when he intentionally defrauded his client of money meant to partially satisfy a judgment, refused to account for the funds with his client's subsequent counsel, and lied to the State Bar.

Mr. Andrich violated Rule 54(d) when he refused to respond to State Bar screening letters.

Count Five

Mr. Andrich violated ER 1.3 when he refused to transmit the \$70,000 from the sale of the condominium to his client.

Mr. Andrich violated ERs 1.4(a)(3) and (4) when he refused to respond to his client's numerous requests for information regarding the status and location of the \$70,000.

Mr. Andrich violated ER 1.15(a) when he intentionally misappropriated the \$70,000 from the sale of his client's condominium.

Mr. Andrich violated ER 1.16(d) when he failed to transmit his client's money or return his unearned retainer fee.

Mr. Andrich violated ER 8.4(c) and (d) when he, through fraud, deceit, dishonesty, and misrepresentation, intentionally misappropriated his client's \$70,000. He also lied to his clients and the State Bar in regards to the location and status of the money, which is no longer in his account, and about a nonexistent claim to the money by the I.R.S.

Mr. Andrich violated Rule 54(d) by failing to respond to the State Bar's screening letters and failing to account for his client's \$70,000.

Discussion

Having considered the testimony and exhibits in this matter, we find the State Bar has shown, by clear and convincing evidence, a pattern of intentional and fraudulent misconduct by Mr. Andrich. Further, when a party invokes their Fifth Amendment rights to avoid testifying in a civil case, the finder of fact may draw

negative inferences from such invocation in support of other evidence. *Montoya*, 173 Ariz. At 132, 840 P.2d at 308; *Buzard v. Griffin*, 89 Ariz. 42, 48, 358 P.2d 155, 158 (1960). Mr. Andrich's failure to testify on his own behalf was negatively inferred against him by the Panel as supporting the evidence the State Bar produced. Even without this inference, however, Mr. Andrich's failure to provide any contradicting evidence or pleadings forced the Panel to consider only the substantial evidence brought against him by the State Bar. This inevitably left Mr. Andrich at a self-inflicted disadvantage, making the outcome the same with or without the negative inference by the Panel.

The Panel finds most troubling Mr. Andrich's refusal to account for, or return, the missing \$135,000 of his clients' money. This misconduct caused actual and significant injury to his clients, regardless of whether they have administrative or civil recourse. His clients were forced to report him to the State Bar in order to attempt to get back property which is rightfully theirs. To this day, the money in question is wholly unaccounted for.

This is made worse by Mr. Andrich's deception. Though now Mr. Andrich simply refuses to account for the money, at first he hid his misappropriation by intentionally misleading his clients with fabrications, untruths, and omissions of information. His deceitful promises were multiple and intentional. When Mr. Andrich was not lying to his clients, it was often because he was not communicating with them for months at a time. In Counts Three, Four, and Five, Mr. Andrich was dishonest with his clients, the State Bar, and other attorneys on numerous occasions. Mr. Andrich fabricated meetings and motions in order to deceive his clients into the belief that he was resolving the issues he was retained to resolve. The truth, however, was that Mr.

Andrich never intended to do what his clients had retained him to do. Instead, he was content with taking his clients' monies and using delay tactics to fraudulently keep it. This was a pattern of intentionally deceitful actions meant to injure client interests in order to further his own.

Additionally troubling, Mr. Andrich in Counts One through Five, showed a lack of professionalism to all parties. He accused judge, attorney, and client alike of harming him through various actions, threatening to report them for misconduct. These allegations are, and have always been, the only defense Mr. Andrich offers. He consistently asked the Panel and the State Bar to look past his mistakes towards mistakes he perceived existed in others. He has provided no evidence that the alleged misconduct by other attorneys or the State Bar even occurred, let alone that it is at all relevant to his intentional misconduct. His actions reflect a pattern of fraudulent and dishonest behavior followed by a shifting of responsibility to other parties. Therefore, the alleged misconduct Mr. Andrich asserts as his defense is neither relevant to his stealing \$135,000 from his clients, nor credible in light of his consistently disingenuous nature.

VI. SANCTIONS

In consideration of an appropriate sanction, the Panel considered the following factors set forth in the American Bar Association *Standards for Imposing Lawyer Discipline (Standards)*:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors. *Standard 3.0.*

The Panel determined that a detailed discussion of the *Standards* on a count by count basis is not necessary and applies the *Standards* to Mr. Andrich's most egregious violations. See *In re Woltman*, 181 Ariz. 525, 892 P.2d 861 (1995).

Standard 5.1, Failure to Maintain Personal Integrity is applicable to Mr. Andrich's most serious misconduct in violation of ERs 8.1(a) and 8.4(c). In cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation, *Standard 5.11* provides Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

In Count Three, Mr. Andrich intentionally made a false statement of material fact in response to the State Bar's screening letter and repeatedly misrepresented to his client the status of the case.

In Count Four, Mr. Andrich lied to the State Bar when he stated he transmitted the \$65,000 in June of 2013, and intentionally defrauded his client of the \$65,000.

In Count Five, Mr. Andrich intentionally misappropriated his clients' \$70,000 and lied to his clients and the State Bar regarding the status and whereabouts of those funds.

Mr. Andrich has breached his most fundamental duty to the public, which is to maintain personal honesty and integrity. Mr. Andrich also breached his most fundamental duty to his clients, which is to advocate on behalf of their interests. Not just the misconduct but also the degree of the harm caused by this misconduct is to be considered. *Matter of Scholl*, 200 Ariz. 222, 224, 25 P.3d 71, 712 (1990). His misconduct caused serious harm to his clients and their interests. Not only did many of his clients suffer severe economic losses, but at least one of them described a complete mistrust of attorneys in general after her experience with Mr. Andrich. Beyond this, the breaching of these most fundamental responsibilities in a way that negatively and severely impacts client interests significantly harms the profession in general. Such activities create public mistrust and a cynicism that the administration of justice hinges upon money alone. As such, Mr. Andrich's actions caused a severe degree of harm to clients, the public, and the profession in general.

AGGRAVATION AND MITIGATION

The Panel determined that the following aggravating factors are supported by the record:

- 9.22(b) (selfish or dishonest motive). Mr. Andrich misappropriated client funds in Counts Four and Five.
- 9.22(c) (pattern of misconduct). Mr. Andrich engaged in repeated acts of fraudulent misconduct.
- 9.22(d) (multiple offenses). Mr. Andrich engaged in ethical misconduct in five separate matters.

- 9.22(e) (bad faith obstruction of disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency). Mr. Andrich failed to cooperate with the State Bar's investigation of these matters.
- 9.22(f) (submission of false evidence, false statements, or other deceptive practices during the disciplinary process). During the investigation, Mr. Andrich lied to Steve Little, bar counsel, about transmitting his client's funds to opposing counsel.
- 9.22(g) (refusal to acknowledge wrongful nature of misconduct). Mr. Andrich has refused to accept responsibility for his misconduct and continues to blame other attorneys.
- 9.22(j) (indifference to restitution). Mr. Andrich refuses to account for the misappropriated client funds.
- 9.22(k) (illegal conduct). Mr. Andrich was indicted on February 24, 2014, on charges of fraudulent schemes and artifices, a class 2 felony, theft, a class 2 felony, and forgery, a class 4 felony in regards to the misappropriation of the \$65,000 in Count Four. The criminal matter, File No. CR 2014-108114, is pending. Additionally, the Maricopa County Sheriff's Office is investigating the misappropriation of the \$70,000.00 in Count Five.

The Panel determined that one mitigating factor is present, 9.32(a) (absence of prior disciplinary record), however its presence does not justify a reduction in the presumptive sanction of disbarment.

VII. CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *In re Peasley*, 208 Ariz. 27,

38, 90 P.3d 764, 775 (2004). Based on the facts, conclusions of law, and application of the *Standards*, including aggravating and mitigating factors, the Panel determine that disbarment is the appropriate sanction. Accordingly,

IT IS ORDERED:

Mr. Andrich is disbarred from the practice of law effective immediately.

IT IS FURTHER ORDERED that Mr. Andrich shall pay the following amounts of restitution to the following individuals:

Restitution

\$3,500.00 to Cheyenne Barcala (Count Three);

\$65, 000.00 to Thomas Sanders (Count Four); and

\$70,000.00 to Andrea and Houston Mayfield (Count Five)

IT IS FURTHER ORDERED that Mr. Andrich shall pay costs and expenses in this matter.

A final judgment and order will follow.

DATED this 24th day of September, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING

Carole Kemps

Carole Kemps, Volunteer Public Member

Boyd T. Johnson

Judge Boyd T. Johnson (retired), Volunteer Attorney Member

Concurrence by Carole Kemps:

After seeing Mr. Andrich in action and hearing about his alleged ethical violations, I was disappointed and shocked at the unprofessional and incompetent behavior he exhibits both inside and outside the courtroom. His demeanor and actions fell far below the standard of any person, let alone a licensed attorney. Mr. Andrich in no way demonstrates the high level of ethical behavior required of a practicing attorney by the general public. In fact, the actions of Mr. Andrich gives the legal profession a bad name.

He intentionally ignored the statements of the Presiding Disciplinary Judge. Time after time the judge had to remind Mr. Andrich not to testify since he had invoked his Fifth Amendment rights. Throughout the hearing he questioned every witness about areas he had been told over and over he could not delve into. It slowed down the hearing and was an unnecessary expenditure of time. Mr. Andrich demonstrated both a lack of ethics and professionalism.

These proceedings demonstrated Mr. Andrich's lack of ability to effectively represent the public, and from a public member's view, he demonstrated a high level of incompetence and self-centeredness. Each client in each count put their trust in him to represent them honestly, properly and fairly. In one form or another he was dishonest, improper and unfair with each client.

The last two counts demonstrate this most clearly, as Mr. Andrich unabashedly stole his clients' money with no intention of using it as they hired him to do. He only used it for his own needs. Mr. Andrich has committed a real theft against his clients. During the hearing he kept coming back to a fund from which they could recoup their money. First, it is immaterial if they can retrieve it and his taking of it is unethical.

Second, his clients were harmed despite his arguments. In the meantime, for a very long time, they have to live without those funds. They are enduring great harm and hardship so Mr. Andrich could satisfy his needs, once again demonstrating his self-centeredness.

At no time did Mr. Andrich admit fault for any of the charges against him. I observed absolutely no remorse. All I observed was excuses for inexcusable conduct. No attorney is above the law and the public must be protected from any attorney who believes otherwise. I believe he meets the criteria for disbarment.

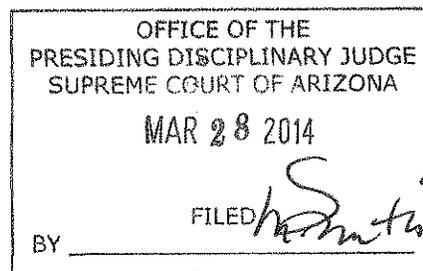
COPY of the foregoing e-mailed/mailed
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**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

**DEVIN ANDRICH
Bar No. 023075**

Respondent.

PDJ 2014-9029

COMPLAINT

State Bar Nos. 12-0689, 12-0690,
12-2535, 13-3120, 13-3566

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice on March 2, 2006.
2. By order dated March 24, 2014, the Presiding Disciplinary Judge placed Respondent on interim suspension.

COUNT ONE (File no. 12-0689/State Bar of Arizona)

3. On March 16, 2011, Respondent filed suit in the Maricopa County Superior Court on behalf of Arthur and Colleen Reichsfeld and State Electrical Contractors, Inc. (Plaintiffs) and against Jaburg & Wilk, P.C., GFAH Equity Lending, LLC (GFAH), Gary Jaburg and Jane Doe Jaburg, Roger Cohen and Jane Doe Cohen,

Lawrence Wilk and Jane Doe Wilk, and other John and Jane Does, case number CV2011-005277.

4. Respondent did not name Flash and the Boys, LLC as a defendant in the complaint, but he caused it to be served with the complaint as a John Doe defendant.

5. On May 19, 2011, Defendants Jaburg & Wilk, P.C., GFAH, Flash & the Boys, LLC, Gary Jaburg, Susan Donaldson, Roger Cohen, Victoria Cohen, Lawrence Wilk, and Susan Wilk filed a Motion to Dismiss the complaint (the Motion).

6. By order filed August 2, 2011, the trial court granted the Motion as to Flash & The Boys, LLC, which was dismissed from the action without prejudice.

7. On August 31, 2011, Defendants Howard and Christine Epstein and Scott and Laura Weinflash (the Epstein/Weinflash Defendants) filed a Motion to Dismiss and for Sanctions against Respondent (the Sanctions Motion). They filed a separate motion for sanctions against the Plaintiffs.

8. Respondent did not name the Epstein/Weinflash Defendants as defendants in the complaint, but he caused them to be served with the complaint as John and Jane Does. The Sanctions Motion was filed after their counsel tried to secure their dismissal from the lawsuit after the trial court dismissed Flash and the Boys, LLC. The Sanctions Motion noted that "[n]ot only are these parties not named in the Verified Complaint, but the pleading contains no factual allegations against them, even by description, that might conceivably set forth a legally cognizable cause of action." The Sanctions Motion recited one of Respondent's emails sent to the Epstein/Weinflash Defendants' counsel:

If Weinflash and Epstein have nothing to do with GFAH, then they are welcome to produce credible, verifiable information and the cases against them will be promptly-dismissed (sic). At present, their attorneys have made no effort. It is my understanding that the AG and ADFI are actively investigating Weinflash and Epstein in this matter, so that will be enough of the threats.

9. On September 30, 2011, the Plaintiffs terminated Respondent's representation.

10. On October 18, 2011, Respondent filed a response to the Sanctions Motion, as well as a Cross-Motion for Sanctions seeking attorneys' fees incurred in responding to the Sanctions Motion.

11. On October 19, 2011, the Plaintiffs through their successor counsel, Mick Levin, filed a response to the motion for sanctions that had been filed against them stating that the Plaintiffs had no objection to dismissing the Epstein/Weinflash Defendants and asking that the Court deny the request for sanctions. The Plaintiffs argued that because they had "no involvement in the prior discussions to dismiss Defendants Epstein and Defendants Weinflash," assessing sanctions against them would be "inappropriate." The Plaintiffs alleged that Respondent "single-handedly made the legal decision to keep Defendants Epstein and Defendants Weinflash in the litigation" and that it was Respondent's "obligation to reevaluate the lawsuit following the dismissal of Flash & the Boys and adjust accordingly."

12. Subsequent to the filing of the motion for sanctions, the Plaintiffs filed for federal bankruptcy protection. The automatic stay precluded the trial court from ruling on the motion.

13. On January 31, 2012, the trial court issued a minute entry granting the Sanctions Motion and sanctioning Respondent for the Epstein/Weinflash Defendants' reasonable costs of defense.

14. In its minute entry, the trial court described the substance of the Plaintiffs' complaint as follows: "a loan, in which they were the borrowers and GFAH[], was the lender, was fraudulent in various respects. Defendants Jaburg & Wilk are accused of having a conflict of interest and acting fraudulently in connection with the loan." The Court noted that the Epstein/Weinflash Defendants were members of Flash & the Boys, LLC, which was a member of GFAH. While Flash & the Boys, LLC and the Epstein/Weinflash Defendants were named as defendants, they were not referred to in the body of the complaint. Regardless, Respondent served the Epstein/Weinflash Defendants, who were then required to answer the complaint. Respondent subsequently agreed to dismiss them from the complaint only if they proved that they had nothing to do with the loan. The trial court observed that "[t]his is the reverse of [Respondent]'s Rule 11 obligation in naming them and serving them."

15. The trial court noted that during the oral argument on the Sanctions Motion, Respondent was asked how the Epstein/Weinflash Defendants could be liable for fraud in connection with the loan. Respondent's theory was that they provided money for the loan. However, Respondent "had no evidence of any direct contact or communication between the Plaintiffs and either Epstein or Weinflash. His surmise that they must have known because they were clients of Jaburg & Wilk does not rise above speculation."

16. The trial court observed that Respondent's "use of speculation is exemplified" in his response to the Motion for Sanctions in which he related details of an alleged conversation amongst the defendants. According to the trial court, "[w]hat is remarkable about [Respondent]'s account is that he is describing specific statements in conversations that are not admitted by the participants and about which [Respondent] has no personal knowledge or the slightest direct evidence."

17. According to the trial court, "[n]ot only did [Respondent] have no reasonable basis to name Epstein and Weinflash as having individual participation in the alleged fraud, his theory of disregarding the corporate entity to reach them for alleged corporate wrongs is woefully inadequate both factually and legally."

18. Finally, the trial court observed that "never has the court seen such an egregious circumstance where there is a willful refusal to dismiss in the face of a grossly inadequate complaint, coupled with an utter lack of factual basis other than speculation and no legal authority."

19. On February 24, 2012, the trial court granted the Epstein/Weinflash Defendants' motion to dismiss; granted their request for Rule 11 Sanctions against Respondent and ordered that Respondent pay their attorneys' fees of \$4,925.50, plus interest.

20. On March 19, 2012, the State Bar sent Respondent a screening letter asking him to respond to the allegations of the bar charge.

21. On March 27, 2012, Respondent filed a Motion for Reconsideration, which was denied by the trial court by order filed April 9, 2012.

22. By letter dated April 23, 2012, Respondent responded to the screening letter and denied violating any ethical rules during the course of his representation of the Plaintiffs.

23. In his response to the screening letter, Respondent stated that the trial court had "granted [Plaintiffs] leave to amend its Complaint," so he began drafting a "Motion for Leave to File the First Amended Complaint," but he was terminated by the Plaintiffs before he could file it.

24. However, the trial court never issued an order granting the Plaintiffs leave to file an amended complaint.

25. By engaging in the misconduct described above, Respondent violated several ethical rules including, but not limited to the following:

a) ER 3.1 [Meritorious Claims and Contentions] A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous. Respondent filed a complaint naming the Epstein/Weinflash Defendants as defendants without any factual or legal basis for doing so; he refused to dismiss them from the lawsuit unless they proved to him that they were not involved in the allegedly fraudulent loan; and he forced the Epstein/Weinflash Defendants to file the Sanctions Motion, which was ultimately granted by the trial court.

b) ER 8.1(a) [Disciplinary Matters] A lawyer in connection with a disciplinary matter, shall not knowingly make a false statement of material fact. In response to the State Bar's screening letter, Respondent stated that the trial court had "granted [Plaintiffs] leave to amend its Complaint," so he

began drafting a "Motion for Leave to File the First Amended Complaint," but he was terminated by the Plaintiffs before he could file it. However, the trial court never issued an order granting the Plaintiffs leave to file an amended complaint.

c) ER 8.4(c) [Misconduct] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. In response to the State Bar's screening letter, Respondent stated that the trial court had "granted [Plaintiffs] leave to amend its Complaint," so he began drafting a "Motion for Leave to File the First Amended Complaint," but he was terminated by the Plaintiffs before he could file it. However, the trial court never issued an order granting the Plaintiffs leave to file an amended complaint.

d) 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 filed a complaint naming the Epstein/Weinflash Defendants as defendants without any factual or legal basis for doing so; he refused to dismiss them from the lawsuit unless they proved to him that they were not involved in the allegedly fraudulent loan; and he forced the Epstein/Weinflash Defendants to file the Sanctions Motion. The trial court was forced to expended its finite resources on oral arguments on the Sanctions Motion, which it ultimately granted.

COUNT TWO (File no. 12-0690/State Bar of Arizona)

26. Matthew Puzz (Puzz) retained Respondent to a complaint against his mortgage holder after multiple attempts to secure a loan modification failed.

27. Puzz paid Respondent a \$5,000 retainer and then paid Respondent \$800 a month to fund the litigation. Respondent advised Puzz to name Tiffany & Bosco, P.A., Michael Bosco and his wife, and Mark Bosco and his wife, as defendants in the complaint (the Bosco Defendants), in addition to Chase Home Financial LLC (Chase), which held the mortgage/note.

28. On May 12, 2010, Respondent filed a twelve (12) count complaint on behalf of Puzz with the Maricopa County Superior Court, Case No. CV2010-013585.

29. At all relevant times, the Bosco Defendants were represented by Attorney William Fischback of Tiffany & Bosco in the litigation.

30. On August 6, 2010, Tiffany & Bosco, P.A. cancelled the trustee's sale that had been scheduled for the Puzz home.

31. On August 8, 2010, instead of dismissing the complaint, Respondent filed a fifteen (15) count First Amended Verified Complaint and added a new count alleging that the defendants had violated the Fair Debt Collection Practices Act (FDCPA).

32. On August 10, 2010, the defendants removed the case to Federal District Court, Case No. 2:10-cv-01699-GMS, and filed a motion to dismiss the complaint. Respondent obtained two (2) extensions of time from the District Court to respond to the motion to dismiss, but never did so.

33. On February 2, 2011, the District Court dismissed all but one of the 15 counts set forth in the complaint for failure to state a claim upon which relief could be granted. The District Court awarded the Bosco Defendants their attorneys' fees of \$2,691.79 as provided for under A.R.S. § 33-807(E).

34. On March 7, 2011, Respondent filed a motion for leave to file a thirteen (13) count Second Amended Complaint, to which the Bosco Defendants filed an opposition.

35. On April 12, 2011, the District Court granted Respondent's motion for leave to file a Second Amended Complaint and simultaneously dismissed Counts 1-12 of the complaint, *sua sponte*, for failure to state a claim. The District Court then remanded Count 13 to the Maricopa County Superior Court because it alleged a violation of A.R.S. §33-807.01.

36. On May 9, 2011, the Bosco Defendants filed a motion to dismiss Count 13 of the complaint with the trial court, which was granted on July 22, 2011, after briefing and oral argument.

37. On August 11, 2011, the Bosco Defendants filed an Application for Costs and Reasonable Attorneys' Fees against both Puzz and Respondent.

38. On August 30, 2011, Respondent filed a Response in Opposition to Application for Costs and Reasonable Attorneys' Fees. Respondent suggested that "the basis of Bosco Defendants' claims stems from the personal problems between Attorneys Fischback, Nelson and undersigned counsel" and suggested that the Court order the attorneys attend the State Bar's Course on Professionalism. Respondent's substantive argument in response to the application was largely that the Bosco Defendants could not recover attorney fees because they had not incurred any given that they were represented by Tiffany & Bosco.

39. By minute entry filed November 18, 2011, the trial court granted the Application for Costs and Reasonable Attorneys' Fees and assessed them against both Respondent and Puzz as provided for under A.R.S. § 12-341.01 (the Order).

40. In the Order, the trial court noted that when faced with foreclosure, Puzz "found an attorney who conjured up twelve(!) different theories against the bank and Bosco Defendants to fend off the inevitable." And, that "[i]n the face of motions to dismiss filed in this Court, plaintiff amended the complaint to contain fifteen(!) theories (and increase his request for damages to not less than \$10 million)" from the \$2 million that he originally sought. And, after the District Court dismissed all but one count, Respondent filed another twelve count complaint and increased the request for damages to \$25 million. The District Court then dismissed all but one of the counts and remanded the sole remaining count to the Court, which dismissed it.

41. The trial court also awarded attorneys' fees against Respondent, personally, as provided for under A.R.S. 12-349(A)(a), which permits a court to award fees against any attorney who brings or defends a claim without substantial justification. The trial court did so after considering the factors set forth under A.R.S. § 12-350 and concluding that six (6) of the seven (7) factors supported an award of attorneys' fees, and that the seventh factor was irrelevant under the facts.

42. The trial court also found that Respondent had brought claims solely or primarily for delay or harassment under A.R.S. § 12-349(A)(2) and unreasonably expanded or delayed the proceedings under A.R.S. § 12-349(A)(3). The trial court specifically found that Respondent "knew he was doing all of these things, and intended as his goal to delay the inevitable and instead coerce the bank to do something it had no obligation to do: forgive plaintiff's default and modify the loan. The price of having intentionally made himself an unwarranted thorn in the side of the Bosco Defendants is this fee award."

43. The trial court's final judgment ordered that Puzz take nothing on his claims; awarded the Bosco Defendants \$591 in costs against Puzz and \$13,731.71 in attorneys' fees, jointly and severally, against Puzz, Respondent and Respondent's firm.

44. On December 1, 2011, Respondent filed a Motion to Reconsider, which the trial court denied by order filed January 4, 2012.

45. Respondent did not advise Puzz that the trial court had sanctioned both him *and* Respondent.

46. By letter dated March 19, 2012, the State Bar sent Respondent a screening letter and asked that he respond to the allegations of the bar charge.

47. By letter dated April 24, 2012, Respondent responded to the screening letter. Respondent did not address the substance of the allegations in the bar charge. Instead, in response to the allegation that he had violated certain ERs during the course of his representation of Puzz, Respondent either made blanket claims of acting in good faith, accused Tiffany & Bosco of "deviat[ing] or otherwise ignor[ing] there [sic] standard foreclosure protocol and procedures; accused Tiffany & Bosco of embarrassing and harassing Puzz; stated that he strongly disagreed with the trial court's; and in response to the allegation that he violated Rule 41(g), Respondent claimed that Tiffany & Bosco Financial Services (a department of Tiffany & Bosco) had "illegally-foreclosed" upon Arizonans by doing so "without a license to act as a trustee."

48. By engaging in the misconduct described above, Respondent violated several ethical rules including, but not limited to the following:

- a. ER 3.1 [Meritorious Claims and Contentions] A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law. The trial court sanctioned Respondent as provided for under A.R.S. § 12-349, finding that Respondent had brought claims solely or primarily for delay or harassment and that he unreasonably expanded or delayed the proceedings. Every count of every complaint that Respondent filed on behalf of Puzz was dismissed for failure to state a claim. Respondent did not respond to the motion to dismiss filed with the District Court, even after he obtained two (2) extensions of time within which to do so. Only one count filed with the District Court survived a motion to dismiss, but it was later dismissed by the trial court, which noted that passing "the extraordinarily low hurdle of stating a claim for relief under Rule 12 [in the District Court] is a far cry from finding that it factually has any merit." The trial court observed that "both common sense and the application of straightforward legal principles demonstrate that plaintiff's claims were invalid."
- b. ER 4.4(a) [Respect for Rights of Others] In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person, or use methods of obtaining evidence that violate the legal rights of such a person. The trial court sanctioned Respondent as provided for under A.R.S. § 12-

349 finding that Respondent had brought claims solely or primarily for delay or harassment and that he unreasonably expanded or delayed the proceedings. Respondent repeatedly filed complaints that failed to state a claim upon which relief could be granted. Respondent's intention to harass the defendants until they capitulated are reflected in his email to opposing counsel in which he states: "Even if my client lost in litigation, it pours gas on the fire for all those classless, class-action firms, cowardly waiting for me to do their dirty work. I have lots more Chase cases ahead." And proclaims that he had no reason to back down because "Lender's attorneys' rarely get their fees from distressed buyers."

- c. 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 repeatedly filed complaints that failed to state a claim upon which relief could be granted. He did not respond to the motion to dismiss filed with the District Court despite having obtained two (2) extensions of time within which to do so. As the result of Respondent's misconduct, both the District Court and the trial court were forced to entertain numerous successful motions to dismiss, in addition to motions for sanctions, which were granted against Respondent and his client.
- d. Rule 41(g) [Duties and Obligations of Members] The duties and obligations of members shall be to avoid engaging in unprofessional conduct. Rule 31(a)(2)(E) defines "unprofessional conduct" as

substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona. The Creed provides that an attorney "will not utilize litigation or any other course of conduct to harass the opposing party" and "will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit." Respondent repeatedly filed complaints that failed to state a claim upon which relief could be granted. He did not respond to the motion to dismiss filed with the District Court despite having obtained two (2) extensions of time within which to do so. And, the trial court sanctioned Respondent under A.R.S. § 12-349 finding that he had brought claims solely or primarily for delay or harassment and that he unreasonably expanded or delayed the proceedings.

- e. Rule 54(i) [Grounds for Discipline] Grounds for discipline of members includes unprofessional conduct as defined in Rule 31(a)(2)(E). Rule 31(a)(2)(E) defines "unprofessional conduct" as substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona. The Creed provides that an attorney "will not utilize litigation or any other course of conduct to harass the opposing party" and "will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit." Respondent repeatedly filed complaints that failed to state a claim upon which relief could be granted. He did not respond to the motion to dismiss filed with the District Court despite having obtained two (2) extensions of time within which to do so. And, the trial court

sanctioned Respondent under A.R.S. § 12-349 finding that he had brought claims solely or primarily for delay or harassment and that he unreasonably expanded or delayed the proceedings.

COUNT THREE (File No. 12-2535/Barcala)

49. Cheyenne Barcala (Barcala) hired Respondent in March 2010 to pursue regarding a claim for wages from her previous employer. Barcala paid Respondent a \$3,500 retainer, after paying him \$250 for an initial consultation.

50. Barcala told Respondent that her work email account would reflect all of the work that she had done, but that her former employer had changed her password and she could not get copies of the emails. Respondent told Barcala that he would subpoena the emails. He never did so.

51. Barcala had problems with Respondent's representation almost from the beginning.

52. Respondent told Barcala that he would send her a draft of a demand letter to be sent to her former employer for her review and comment. Respondent never did so, although he told Barcala that he had both mailed and emailed Barcala the draft.

53. Respondent sent a demand letter to Barcala's former employer that contained numerous factual errors, including an incorrect description of the work performed by Barcala. The letter stated that Respondent was exclusively responsible for procuring all of the short sales for Coldwell Banker when in fact, she worked on a team that handled foreclosures.

54. Barcala demanded that Respondent retract the demand letter and send one with the correct information. Respondent refused and told Barcala in an email

that he "did not want to reveal all the legal theories I intend to pursue to recover [your] commissions" and that his goal was not "to impress or even intimidate" opposing counsel with the demand letter, so the factual errors in the letter were of no concern.

55. By email dated April 27, 2010, Barcala directed Respondent to file a Complaint to recover wages due and owing from her former employer.

56. Barcala then began experiencing difficulty communicating with Respondent regarding the status of the complaint. Respondent repeatedly assured Barcala that he had sent her a draft of the complaint to review, but Barcala did not receive one until May 14, 2010.

57. On May 26, 2010, Barcala emailed Respondent and advised him that she had notarized the complaint and mailed it back to him on that date for filing.

58. On June 3, 2010, Respondent emailed Barcala stating that he had received the complaint and that he would let her know when all of the defendants had been served with the complaint.

59. On June 21, 2010, Barcala emailed Respondent and asked for a status update. Respondent responded the next day stating that one of the defendants named in the complaint was avoiding service, but that Respondent would file a motion to have the trial court permit him to serve the defendant by publication. In reality, Respondent had not yet filed the complaint.

60. In July 2010, Barcala continued to ask Respondent about the status of the service of the complaint and the identity of the defendant who was avoiding service. Respondent did not respond to Barcala's requests for information.

61. On August 5, 2010, Barcala emailed Respondent and asked for a status update because she had not heard from him. Respondent responded that day and stated that he was "awaiting receipt of the Affidavits of Service to confirm the respective dates of service" of the complaint. In reality, Respondent had not yet filed the complaint.

62. On August 12, 2010, Respondent emailed Barcala and stated that that "Opposing Counsel indicated that I would hear from him, next week."

63. Barcala understood Respondent's August 12, 2010 email to mean that Respondent had received Affidavits of Service for all defendants named in the complaint.

64. On August 27, 2010, Respondent finally filed the complaint and a certificate of compulsory arbitration with the Pinal County Superior Court, Case No. CV-2010-003505, *Barcala v. Excellent Realty, L.L.C., et al.*

65. By email dated September 11, 2010, Respondent advised Barcala that he believed that the case would go to arbitration because the parties were "at an impasse."

66. By email dated November 13, 2010, Barcala asked Respondent for a status update. Respondent responded that day stating that he would check with the court the following Monday.

67. By email dated November 15, 2010, Respondent emailed Barcala and advised her that an arbitrator had not yet been selected nor had a date been set for the arbitration, but that he would keep her posted.

68. On February 20, 2011, Barcala emailed Respondent and asked for a status update. Respondent responded that day stating that he would check with the court.

69. Between February and June, 2011, Respondent did not communicate with Barcala.

70. By email dated June 20, 2011, Barcala asked Respondent for a status update. Respondent called Barcala in response and told her that there would be an arbitration hearing and asked Barcala to identify dates that she would be available in September 2011 for the hearing.

71. By order filed on August 26, 2011, the trial court set the case for Rule 4(i) Inactive Calendar Dismissal on September 27, 2011 at 9:00 a.m. because service of the complaint on the defendants had not been effectuated.

72. On September 12, 2011, Barcala emailed Respondent and asked for a status update. He responded the next day and advised Barcala that there was a hearing set for September 27, 2011, but only attorneys were to attend and that it would deal with scheduling issues and a status report for the court.

73. On September 19, 2011, Respondent filed a Notice of Dismissal Without Prejudice with the trial court.

74. Respondent did not tell Barcala that he filed the Notice of Dismissal Without Prejudice.

75. Respondent billed Barcala for 4.30 hours of attorney time to attend a preliminary hearing that was supposedly conducted on September 27, 2011. However, the Pinal County Superior Court docket does not reflect that a hearing was conducted on that date.

76. On September 27, 2011, Respondent emailed Barcala and stated that "[b]ased on today's [sic] hearing, it looks like November might be the month for a few depositions. Do you have availability that month?"

77. On September 29, 2011, the Court issued an order dismissing the complaint without prejudice.

78. Respondent did not tell Barcala that the trial court dismissed the complaint.

79. In October 2011, Barcala received a letter from Respondent demanding that she pay an additional \$3,500 in attorney fees. According to Barcala, Respondent told her that the "statute of limitations [for her case] was almost up," and if she did not come up with the additional monies, she "might as well forget about the lawsuit because it would not be able to move forward after that."

80. At that time, Barcala did not know that the complaint had already been dismissed or the significance of the statute of limitations. Barcala told Respondent that she needed time to come up with additional monies.

81. On November 10, 2011, Barcala wired Respondent \$1,000.00. Then, on November 22, 2011, she wired Respondent another \$2,500.00.

82. Barcala would not have sent Respondent the \$3,500 if she had known that the complaint had been dismissed.

83. On January 12, 2012, Respondent emailed Barcala and asked about a good time to speak with her about scheduling depositions.

84. On February 6, 2012, Respondent emailed Barcala and asked if April 25, 2012 at 1 pm would be a good date and time for a deposition.

85. On April 17, 2012, Barcala emailed Respondent and asked if they were "still on" for the deposition on April 25, 2012. The next day, Respondent emailed Barcala, told her that the case "may settle," and claimed that opposing counsel had asked him to "vacate the time [for the deposition] and await a proposal." Barcala responded that she wanted to "see a proposal before cancelling the deposition."

86. On April 20, 2012, Respondent replied to Barcala that her request "was not well-received" and asked when she had time to speak the next day. Respondent called Barcala the next day, told Barcala that she should make a settlement demand, and suggested that she ask for \$10,000.

87. On April 23, 2012, Barcala emailed Respondent and advised him that she would agree to make a settlement demand for \$35,000, plus attorney fees. Respondent acknowledged the email and said that he would send out a letter to convey the demand.

88. Respondent claims that he send a demand letter dated April 27, 2012, to opposing counsel.

89. Opposing counsel, Robert Spurlock and his associate at Bonnett, Fairborn, Friedman & Balint, P.C., reviewed the firm's files and their individual email correspondence. They do not have any receiving a letter from Respondent in 2012. They did not bill their client for any discussions with Respondent during 2012. And, they have no recollection of any conversations with Respondent in 2012.

90. On May 15, 2012, Barcala emailed Respondent and asked for a status update. Respondent told Barcala that time had almost expired for the opposing party to respond to his settlement demand.

91. On May 25, 2012, Respondent emailed Barcala and stated that he had not received a response to the settlement demand and that he would "proceed accordingly." Barcala responded and asked what Respondent meant by "proceed accordingly."

92. On May 29, 2012, Respondent emailed Barcala and discussed the possibility of taking a deposition "in [the] court's presence," and filing a motion for summary judgment.

93. On July 20, 2012, Barcala and her husband decided to check the Pinal County Superior Court's website and found that the complaint had been dismissed in 2011. Barcala emailed Respondent stating: "I am VERY curious as to why the court website say [sic] that my case was dismissed without prejudice on 9/29/11. Has my case been dismissed for almost 10 months???"

94. Barcala spoke with Respondent on that date. Respondent explained that the complaint had been dismissed because he had been unable to serve one of the defendants, but that it could be re-filed. Respondent complained that he did not have an address for the defendant. Barcala told him that if he had simply asked her, she could have secured the address. Respondent told Barcala that the complaint could be re-filed because there was a six (6) year statute of limitation. However, Respondent told Barcala in November 2011, when he asked for additional fees, that the statute of limitations was two (2) years and that if she did not pay him to proceed at that time, she would not be able to pursue her claim. Respondent claimed that the complaint included counts that were governed by different statutes of limitations and apologized for not asking Barcala about the defendant's address. Respondent told Barcala that if he had the address, he would have the defendant

served the next week. Barcala told him that she would get the address for him. She did so by simply checking the assessor's website.

95. On July 23, 2012, Respondent emailed Barcala thanking her for the address and stating that he would prepare a new summons and have the defendant served. Respondent did not re-file the complaint or take any other action on Barcala's behalf.

96. During July and August 2012, Respondent provided Barcala with updates regarding his alleged efforts to serve the defendant with the complaint. Then, the updates simply stopped.

97. On September 18, 2012, Respondent emailed Barcala stating that he would call her to discuss the fact that "[o]pposing council (sic) had informed me that you are not presently a licensed realtor" and that as such, Barcala could not recover a commission under A.R.S. § 32-2155. Contrary to Respondent's representation to Barcala, the statute provides that payment cannot be made unless the realtor was licensed at the time the service was provided, as was Barcala's case.

98. The "opposing counsel" referred to by Respondent deny any substantive, or even incidental, contact with Respondent in 2012.

99. Thereafter, Barcala terminated Respondent's representation, asked for an accounting of the time spent on the case, her client file and the return of \$3,500.00.

100. On September 20, 2012, Respondent acknowledged Barcala's demand by email.

101. Respondent then engaged in a series of email messages intended to delay complying with Barcala's demand.

102. By letter dated November 17, 2012, Respondent provided Barcala with a check for \$3,500 and a copy of the last billing statement that he sent to her. Respondent did not provide Barcala with a copy of her file.

103. By letter dated November 19, 2012, the State Bar sent Respondent a screening letter asking that he respond to the allegations of the bar charge.

104. By letter dated January 4, 2014, Respondent responded to the State Bar's screening letter. Respondent did not rebut the specific allegations made by Barcala.

105. By engaging in the misconduct described above, Respondent violated several ethical rules including, but not limited to the following:

- a) ER 1.3 [Diligence] A lawyer shall act with reasonable diligence and promptness in representing a client. Respondent failed to act with reasonable diligence in his representation. For example, he failed to conduct discovery and secure Bacala's work emails. Respondent failed to serve the complaint and dismissed it without his client's knowledge. Even though Barcala provided Respondent with an address at which he could serve a defendant, he failed to re-file the complainant despite having promised Barcala that he would do so.
- b) ER 1.4(a)(3) and (4) [Communication] A lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Respondent did not promptly comply with Barcala's requests for information and did not inform her of the status of the litigation or that he had dismissed the complaint and then failed to re-file it.

- c) ER 1.5(a) [Fees] A lawyer shall not . . . collect an unreasonable fee. Barcala paid Respondent \$7,500 for the representation. Respondent refunded \$3,500 to her after Barcala terminated the representation. However, Barcala derived no benefit from the representation. Respondent allowed the complaint to be dismissed, but did not tell his client. He billed her for 4.3 hours of time on September 27, 2011 to attend a "preliminary hearing," which never took place.
- d) 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 interests, 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 promptly provide the Barcala with a refund of unearned fees, nor did he provide Barcala with her file.
- e) ER 3.2 [Expediting Litigation] A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Respondent failed to serve the complaint on the defendants. He then dismissed the complainant and failed to re-file it despite having promised Barcala that he would do so.
- f) ER 8.1(a) [Disciplinary Matters] A lawyer in connection with a disciplinary matter, shall not knowingly make a false statement of material fact. In response to the State Bar's screening letter, Respondent produced a copy

of a demand letter that he claimed to have sent to opposing counsel on April 27, 2012. Opposing counsel denies ever having received the letter or of having any communication with Respondent in 2012.

g) ER 8.4(c) [Misconduct] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent did not tell the Barcala that he dismissed her complaint. Instead, he led her to believe that the litigation was active and ongoing. For example, after Respondent dismissed the complaint, he continued to tell Barcala that an arbitration hearing would be scheduled; that depositions would be taken; and that settlement negotiations were ongoing, when they were not. And, in response to the State Bar's screening letter, Respondent produced a copy of a demand letter that he claimed to have sent to opposing counsel on April 27, 2012. Opposing counsel denies ever having received the letter or of having any communication with Respondent in 2012.

h) 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 filed the complaint, but failed to serve the defendants. The trial court was forced to place the case on the inactive calendar and set it for dismissal for lack of service. Respondent then dismissed the complaint, without Barcala's knowledge and failed to re-file the complaint despite promising Barcala that he would do so.

i) Rule 54(d) [Grounds for Discipline] Grounds for discipline include the violation of any obligation pursuant to the rules governing a disciplinary

investigation or proceeding. In response to the State Bar's screening letter, Respondent produced a copy of a demand letter that he claimed to have sent to opposing counsel on April 27, 2012. Opposing counsel denies ever having received the letter or of having any communication with Respondent in 2012.

COUNT FOUR (File no. 13-3120/Sanders)

106. In late 2012, Thomas Sanders (Sanders) retained Respondent to effectuate the satisfaction of an outstanding judgment from his divorce. Mr. Sanders paid Respondent a \$2,850.00 retainer for his services.

107. On September 23, 2008, the Maricopa County Superior Court issued an order in Case No. FN2007-001473, wherein it entered a judgment against Sanders and in favor of his ex-wife, Kelly Lang (Lang), in the amount of \$82,616.09.

108. On October 7, 2009, a Stipulated Judgment was filed with the United State Bankruptcy Court, District of Arizona, in Case No. 2:08-bk-15623-RTB, Adversary No. 2:09-ap-00331, for \$97,820.39 (as of August 14, 2009), which judgment continues to accrue interest until paid in full, at 10% per annum (the Stipulated Judgment).

109. On May 3, 2013, Lang filed a Judgment Renewal Affidavit with the Maricopa County Superior Court stating that the then current balance owed under the Stipulated Judgment was \$105,354.99, plus accruing interest.

110. At that time, Sanders decided to sell his home in Chandler, Arizona in order to make a lump sum payment on the balance owed under the Stipulated Judgment.

111. Sanders told Respondent that he was going to make a \$65,000 payment to Lang. Respondent told Sanders to transfer the funds to him so that Respondent could make the payment on his behalf.

112. By email dated May 20, 2013, Respondent provided Sanders with wiring instructions to wire the funds into Respondent's operating account with MidFirst Bank, No. 2013015796 (the Operating Account). It is unclear why Respondent did not have Sanders wire the funds into his IOLTA Trust Account, as he should have done.

113. On May 20, 2013, Sanders wired \$65,000 into Respondent's Operating Account.

114. Based upon his belief that Respondent had promptly forwarded the \$65,000 to Lang's attorneys, Sanders continued to make monthly payments on the balance that he believed was still owed under the Stipulated Judgment until he decided to take out a home equity loan to pay off the balance.

115. By email dated June 6, 2013, Sanders asked Respondent about the status of the transfer of the \$65,000.

116. By email dated June 7, 2013, Respondent told Sanders that he would send the \$65,000 to Ms. Lang's attorney.

117. Sanders arranged to close on the home equity loan on September 23, 2013. However, a couple of days before the closing, he was advised by the credit union that there was a recorded judgment that was preventing the closing from taking place.

118. When Sanders was unable to get Respondent to communicate clearly with him regarding the status of the \$65,000 that Respondent was supposed to have

transferred to Lang's attorneys, he retained new counsel, Rich Peters with RJ Peters & Associates PC.

119. By October 17, 2013, it became clear to Sanders that Respondent's explanation of what he had done with the \$65,000 made no sense and could not be true.

120. On October 22, 2013, Sanders was again unable to close on the home equity loan because Respondent failed and refused to produce proof that he had sent the \$65,000 to Lang's attorneys and that the check had cleared the bank.

121. By letter dated October 31, 2013, Respondent sent Attorney Peters a copy of a June 4, 2013 letter by which he claimed to have transmitted a check made payable to Lang's attorneys for \$65,000.

122. On October 31, 2013, Lang's counsel advised Attorney Peters that neither he nor his client had received \$65,000 from Respondent.

123. On November 1, 2013, Sanders and Respondent exchanged a series of text messages in which Sanders demanded proof that the check for \$65,000 had cleared from Respondent's bank account. Respondent responded with text messages criticizing Sanders' new counsel.

124. By email dated November 1, 2013, Attorney Peters made a second request for proof that Respondent had transmitted the \$65,000 to Lang's attorney.

125. Respondent replied to the email stating, among other things, that he had mailed a copy of the transmittal letter to Attorney Peters the day before.

126. By email dated November 2, 2013, Attorney Peters told Respondent that he hoped that the letter included a copy of the canceled check so that he could "get on to the business of resolving the current, time sensitive issue."

127. By email dated November 3, 2013, Respondent told Attorney Peters that he had to order 6 months of bank statements before he could produce proof that check no. 1002, which Respondent had allegedly made payable to Lang's attorney for \$65,000, had been cashed. Respondent assured Attorney Peters that "[t]his can be resolved in 5-10 business days."

128. At all relevant times, Lang was represented by Attorney Darryl Dorsey at Tiffany and Bosco.

129. Attorney Dorsey and his firm reviewed three (3) months of receivables between June 2013 and August 2013 and confirmed that they did not receive a check for \$65,000 from Respondent during that period of time.

130. Attorney Dorsey also reviewed Lang's file and confirmed that he never received a letter from Respondent dated June 4, 2014, by which Respondent claims to have transmitted the check.

131. Sanders has contacted the Maricopa County Sheriff for assistance in recovering the \$65,000 that he believes Respondent misappropriated.

132. On November 7, 2013, Complainant contacted the Attorney Client Assistance Program for help in resolving the issue of the missing \$65,000.

133. Senior Bar Counsel Steve Little spoke with Complainant the next day about the missing \$65,000. Also on that date, Attorney Little spoke with Attorney Dorsey who stated that his firm had not received the \$65,000 from Respondent. Attorney Little then spoke with Respondent, who claimed that he had sent Attorney Dorsey's firm a check for \$65,000 in June 2013. Respondent stated that Complainant had requested that he produce a copy of the negotiated check, but claimed that the bank said that it would take five (5) to ten (10) business days to

get the copy." Attorney Little told Respondent to follow up with him as soon as he received a copy of the negotiated check. Respondent said that he would follow-up with Attorney Little on November 21, 2013. Attorney Little repeated that Respondent needed to follow-up as soon as he heard from the bank. Respondent never followed up with Attorney Little. Respondent has never produced a copy of the negotiated check to the State Bar.

134. By letter dated November 25, 2013, the State Bar sent Respondent a screening letter and requested that he respond to Sander's bar charge alleging that Respondent had misappropriated \$65,000. Respondent did not do so.

135. By letter dated December 27, 2013, the State Bar sent Respondent a ten (10) day reminder letter asking Respondent to respond to the bar charge. He did not do so.

136. Sanders never told Respondent that he could do anything with the \$65,000 other than to transmit the funds to Lang's counsel.

137. Lang's counsel never received the \$65,000 from Respondent.

138. Sanders does not know what Respondent did with the \$65,000 that he wired into Respondent's bank so that Respondent could transmit the funds to Lang's counsel.

139. The State Bar obtained copies of bank records for Respondent's operating and IOLTA trust accounts from May 2013 through November 2013, which records do not support Respondent's claim that he transmitted the \$65,000 to Lang's counsel.

140. Respondent misappropriated the \$65,000.

141. On February 26, 2014, Respondent was indicted on charges of fraudulent schemes and artifices, a class 2 felony, theft, a class 2 felony, and forgery, a class 4 felony. The criminal case is pending in the Maricopa County Superior Court, Case No. CR 2014-108114.

142. By engaging in the misconduct described above, Respondent violated several ethical rules including, but not limited to the following:

- a) ER 1.3 [Diligence] A lawyer shall act with reasonable diligence and promptness in representing a client. Respondent failed to act with reasonable diligence by failing to transmit the \$65,000 that Sanders wired into Respondent's operating account to Lang's counsel, as directed by Sanders.
- b) ER 1.4(a)(3) and (4) [Communication] A lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Respondent did not promptly comply with Sanders' repeated requests for information regarding the status of the \$65,000 that he directed Respondent to transmit to Lang's counsel. Respondent has continually failed or refused to account for those funds.
- c) ER 1.15(a) [Safekeeping Property] A lawyer shall hold property of clients . . . that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Complainant wired \$65,000 into Respondent's operating account for Respondent to transmit to Lang's counsel in partial satisfaction of a judgment entered against Sanders as part of a divorce action. Respondent never transmitted the funds and he

has failed and refused to account for those funds. Respondent provided Sanders' successor counsel with a copy of a transmittal letter and copy of a check by which he claims to have transmitted the \$65,000 to Lang's counsel. However, Lang's counsel denies receipt of same and a review of Respondent's relevant bank records does not support Respondent's claim.

d) ER 1.16(d) [Terminating Representation] Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, 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 promptly provide Sanders and his successor counsel with an accounting of the \$65,000 despite repeated requests for proof that Respondent had transmitted the funds to Lang's counsel. Respondent has refused and failed to provide Sanders with proof that he transmitted the funds and that the check that Respondent allegedly wrote to Lang's counsel was cashed. Having failed to transmit the funds to Lang's counsel as directed by his client, Respondent failed to return the \$65,000 to Sanders upon termination of the representation.

e) ER 8.1(a) [Disciplinary Matters] A lawyer in connection with a disciplinary matter, shall not knowingly make a false statement of material fact. Respondent made a false statement of material fact when he told Attorney Little that he transmitted the \$65,000 to Lang's counsel by check in June

2013. There is no evidence that he did so. Lang's counsel denies receipt of a check or the monies from Respondent. And, Respondent has failed and refused to produce a copy of a negotiated check for \$65,000.

f) ER 8.4(c) [Misconduct] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Sanders wired \$65,000 into Respondent's operating bank account. Sanders directed Respondent was to transfer the funds to Lang's counsel, in partial satisfaction of a judgment entered against him as part of a divorce action. Respondent ever did so and despite repeated demands, Respondent has failed and refused to account for the funds. Respondent provided Sanders' successor counsel with a copy of a cover letter and copy of a check by which he claims to have transmitted the funds to Lang's counsel. However, Lang's counsel never received the funds and a review of Respondent's relevant operating and IOLTA trust account bank records (which are sealed by order of the PDJ as of this date), does not support Respondent's claim. Additionally, Respondent lied to Senior Bar Counsel Little when he said that he transmitted the \$65,000 to Lang's counsel in June 2013. Respondent never transmitted the funds. Instead, he misappropriated the \$65,000. Respondent has been indicted on criminal charges of fraudulent schemes and artifices, a class 2 felony, theft, a class 2 felony, and forgery, a class 4 felony.

g) ER 8.4(d) [Misconduct] It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Sanders wired \$65,000 into Respondent's operating bank account.

Sanders directed Respondent was to transfer the funds to Lang's counsel, in partial satisfaction of a judgment entered against him as part of a divorce action. Respondent ever did so and despite repeated demands, Respondent has failed and refused to account for the funds. Respondent provided Sanders' successor counsel with a copy of a cover letter and copy of a check by which he claims to have transmitted the funds to Lang's counsel. However, Lang's counsel never received the funds and a review of Respondent's relevant operating and IOLTA trust account bank records (which are sealed by order of the PDJ as of this date), does not support Respondent's claim. Additionally, Respondent lied to Senior Bar Counsel Little when he said that he transmitted the \$65,000 to Lang's counsel in June 2013. Respondent never transmitted the funds. Instead, he misappropriated the \$65,000. Respondent has been indicted on criminal charges of fraudulent schemes and artifices, a class 2 felony, theft, a class 2 felony, and forgery, a class 4 felony.

- h) Rule 54(d) [Grounds for Discipline] Grounds for discipline include the violation of any obligation pursuant to the rules governing a disciplinary investigation or proceeding. Respondent has failed and refused to respond to the State Bar screening letters. Despite repeated requests by the State Bar, Respondent has failed and refused to account for the missing \$65,000.

COUNT FIVE (File no. 13-3566/Parish)

143. In August 2012, Megan Parish (Parish) hired Respondent to help resolve issues relating to the sale of condo located at 4647 N. 32nd St., Phoenix, Arizona 85018 (the Condo).

144. Parish's mother and stepfather, Andrea and Houston Mayfield (the Mayfields), had previously purchased the condo with cash, the title to which was placed in Parish's name, and then entered into an arrangement with Stewart Title whereby Parish would make payments to the Mayfields through Stewart Title.

145. Respondent prepared a Notice of Substitution of Trustee whereby he replaced Stewart Title as the Successor Trustee under the Deed of Trust for the Condo. The Notice of Substitution of Trustee was executed by the Mayfields and Respondent caused it to be recorded with the Maricopa County Recorder's Office on August 31, 2012.

146. In November 2012, the Mayfields and Parish sold the condo.

147. By letter dated November 21, 2012, Respondent provided Michele Flanigan at the Old Republic Title Agency with information necessary for her to wire the proceeds from the sale of the condo into Respondent's MidFirst Bank IOLTA Trust Account ending in 5826.

148. Between January and May 2013, Respondent repeatedly told Parish that the transaction should be completed in a few weeks and that the Mayfields should receive a check for \$70,000 from the sale.

149. Over the course of the next few months, Respondent "talk[ed] in circles" and never sent the Mayfields the \$70,000.

150. Parish finally demanded that Respondent identify a date certain upon which Mrs. Mayfield would receive the \$70,000. Respondent identified August 10, 2013 as that date. Respondent also promised to refund \$1,500 of his retainer to Parish.

151. Respondent failed to deliver the \$70,000 to Mrs. Mayfield as promised on August 10, 2013.

152. When Parish was finally able to speak with Respondent, he claimed that he had sent a check for \$1,500 made payable to Parish to the condominium that had been sold in November 2012 (even though Respondent had been sending correspondence to Parish's address in Prescott, Arizona) and that he had simply mailed the check for \$70,000 to Mrs. Mayfield.

153. When neither Parish or Mrs. Mayfield received a check from Respondent, Parish began emailing Respondent asking for information about the missing funds.

154. By email dated August 31, 2013, Respondent finally responded to Parish's emails and told her that the check that he allegedly sent to her had not been cashed, but that the check that he allegedly sent to Mrs. Mayfield had been. He promised to "look into the problem" and update Parish by September 4, 2013.

155. By email dated September 4, 2013, Respondent advised Parish that he had spoken with the bank earlier that day, that the bank was "reinstating the funds," and that it could take up to ten (10) business days.

156. By email dated September 20, 2013, Respondent advised Parish that he was "awaiting final approval this afternoon. But everything looks to be resolved."

157. By email dated September 23, 2013, Parish demanded that Respondent explain the meaning of his email and asked "when can we actually expect to receive our funds?"

158. By email dated September 24, 2013, Parish demanded that Respondent resolve the matter by September 27, 2013, and demanded to know the date upon which they would receive the funds.

159. By email dated September 27, 2013, Respondent advised Parish that he had been informed by the State Bar that "there is a possible Arizona Rules of Professional Conduct E.R. 1.15 issue" and expressed his intention to seek an ethics opinion from the State Bar.

160. Then, by letter dated September 28, 2013, Respondent sent a letter to the State Bar asking for an ethics opinion about his duty to hold funds in trust pending resolution of a "pending disputed claim to the funds" by the I.R.S. Also in the letter, Respondent represented that he continued to hold the funds in trust, stating that Mrs. Mayfield and Parish "have instructed me to disburse the funds to them." Notwithstanding their repeated demands that Respondent disperse the funds to them, Respondent stated that "it is my understanding that [Mrs. Mayfield] and [Parish] are in no immediate need to receive the funds."

161. There is no evidence that there has ever been a pending disputed claim to the funds by the I.R.S.

162. Respondent also emailed a copy of the letter to Parish claiming that he would "do whatever the State Bar instructs." Parish responded the same day and again demanded that Respondent release the monies and return the retainer to her.

163. By email dated September 29, 2013, among other things, Respondent again represented to Parish that he was still holding the \$70,000 in trust stating: "I am not concerned about you and/or your mother waiving claims, when compared to the awesome ramifications posed from potentially both I.R.S., and State Bar, if I am required to hold the funds, pending the I.R.S. issuing a ruling or claim."

164. Respondent knew that he had misappropriated the \$70,000 when he told Parish that he was holding it in trust.

165. Respondent told Parish that if he did not hear back from the State Bar that he would release the monies to her and Mrs. Mayfield by November 22, 2013.

166. On November 21, 2013, Respondent sent Parish an email stating that he had received a call from the State Bar and that he would follow up with her after he spoke with someone at the State Bar.

167. By email dated December 2013, Parish asked Respondent to an update regarding the funds. Respondent never responded to the email.

168. Parish has not heard from Respondent since the November 21, 2013 email.

169. During the week of January 13, 2014, the Chair and Vice-Chair of the Ethics Committee reviewed Respondent's request for an ethics opinion on the alleged I.R.S. lien and determined that it was not suitable for an opinion, but rather for ethics advice via the hotline.

170. Respondent did not transmit the \$70,000 to Mrs. Mayfield after receiving a response from the State Bar denying his request for an ethics opinion.

171. By letter dated January 10, 2014, the State Bar sent Respondent a screening letter and requested that he respond to Parish's bar charge alleging that Respondent had misappropriated the \$70,000. Respondent never did so.

172. Parish never told Respondent that he could do anything with the \$70,000 other than to transmit the funds to Mrs. Mayfield.

173. Mrs. Mayfield never received the \$70,000 from Respondent.

174. Parish does not know what Respondent did with the \$70,000.

175. The State Bar obtained copies of bank records for Respondent's operating and IOLTA trust accounts from May 2013 through November 2013, which records do not support Respondent's claim that he maintained the \$70,000 in either his operating or IOLTA trust bank accounts.

176. The Maricopa County Sheriff Office is currently investigating Respondent regarding the misappropriation of the \$70,000.

177. Respondent misappropriated the \$70,000.

178. By engaging in the misconduct described above, Respondent violated several ethical rules including, but not limited to the following:

a) ER 1.3 [Diligence] A lawyer shall act with reasonable diligence and promptness in representing a client. Respondent failed to act with reasonable diligence by failing to transmit the \$70,000 payoff from the sale of the condominium to Mrs. Mayfield as directed by Parish.

b) ER 1.4(a)(3) and (4) A lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Respondent did not promptly comply with Parish's repeated requests for information regarding the status of the

\$70,000 that Respondent was to transmit to Mrs. Mayfield. Respondent has continually failed or refused to account for those funds.

- c) ER 1.15(a) [Safekeeping Property] A lawyer shall hold property of clients . . . that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. The proceeds from the sale of Parish's condo were wired into Respondent's IOLTA Trust bank account. Respondent was directed to transfer those funds to Parish's mother, Mrs. Mayfield. Respondent did not do so. He has failed and refused to account for the missing \$70,000, despite repeated requests that he do so. Respondent's relevant operating and IOLTA Trust account bank records (which are sealed by order of the PDJ as of this date), does not support Respondent's claim that he still has the missing \$70,000.
- d) ER 1.16(d) [Terminating Representation] Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, 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. Despite repeated requests, Respondent has not provided Parish with a refund of the unearned fees or the \$70,000 that he was directed to transmit to Mrs. Mayfield. Respondent has never provided Parish with proof that he continues to hold \$70,000 in trust and a review of Respondent's relevant operating and IOLTA trust account bank records

(which are sealed by order of the PDJ as of this date), does not support Respondent's claim that he still has the \$70,000.

e) ER 8.1(a) [Disciplinary Matters] A lawyer in connection with a disciplinary matter, shall not knowingly make a false statement of material fact. Respondent made a false statement of material fact when he told the State Bar in seeking an ethics opinion that he was holding the \$70,000 in his IOLTA Trust Account. Respondent's relevant operating and IOLTA trust account bank records (which are sealed by order of the PDJ as of this date), do not support Respondent's claim that he was holding the \$70,000 in either account.

f) ER 8.4(c) [Misconduct] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. The proceeds from the sale of Parish's condo were deposited into Respondent's IOLTA Trust Account. Respondent was to transfer those funds to Parish's mother, Mrs. Mayfield. Respondent never did so and despite repeated requests, he has failed and refused to account for those funds. Respondent told Parish that he sent Mrs. Mayfield a check for \$70,000 and that the check had been cashed. There is no evidence that either occurred. Respondent wrote a letter to the State Bar seeking an ethics opinion about his duty to hold funds in trust due to a "pending disputed claim to the funds" by the I.R.S. There is no evidence that the I.R.S. ever asserted such a claim. In the request, Respondent represented to the State Bar that he was holding the \$70,000 in trust. However, Respondent's relevant operating and IOLTA Trust account bank

records (which are sealed by order of the PDJ as of this date), do not support Respondent's claim that he still has the \$70,000.

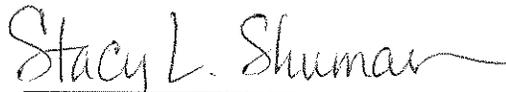
g) ER 8.4(d) [Misconduct] It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. The proceeds from the sale of Parish's condo were deposited into Respondent's IOLTA Trust Account. Respondent was to transfer those funds to Parish's mother, Mrs. Mayfield. Respondent never did so and despite repeated requests, he has failed and refused to account for those funds. Respondent told Parish that he sent Mrs. Mayfield a check for \$70,000 and that the check had been cashed. There is no evidence that either occurred. Respondent wrote a letter to the State Bar seeking an ethics opinion about his duty to hold funds in trust due to a "pending disputed claim to the funds" by the I.R.S. There is no evidence that the I.R.S. ever asserted such a claim. In the request, Respondent represented to the State Bar that he was holding the \$70,000 in trust. However, Respondent's relevant operating and IOLTA Trust account bank records (which are sealed by order of the PDJ as of this date), do not support Respondent's claim that he still has the \$70,000.

h) Rule 54(d) [Grounds for Discipline] Grounds for discipline include the violation of any obligation pursuant to the rules governing a disciplinary investigation or proceeding. Respondent has failed and refused to respond to the State Bar screening letters. Despite repeated requests by the State

Bar, Respondent has failed and refused to account for the missing \$70,000.

DATED this 28th day of March 2014

STATE BAR OF ARIZONA



Stacy L. Shuman
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 28th day of March, 2014.

by:


SLS:nj

FILED
FEB 26 2014
STATE BAR OF ARIZONA
BY *[Signature]*

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

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

**DEVIN ANDRICH,
Bar No. 023075**

Respondent.

No. 12-0689

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona (“Committee”) reviewed this matter on February 14, 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 to file a complaint against Respondent in File No. 12-0689.

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 24 day of February, 2014.

Lawrence F. Winthrop

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

¹ Committee member Bill Friedl did not participate in this matter.

Original filed this 26th day
of February, 2014, with:

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

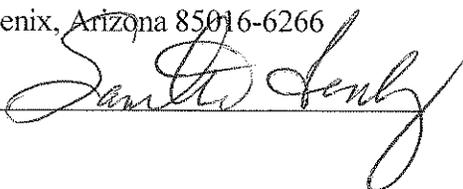
Copy mailed this 26th day
of February, 2014, to:

Devin Andrich
The Andrich Law Firm PC
4647 North 32nd Street,
Suite 135
Phoenix, Arizona 85018-3338
Respondent

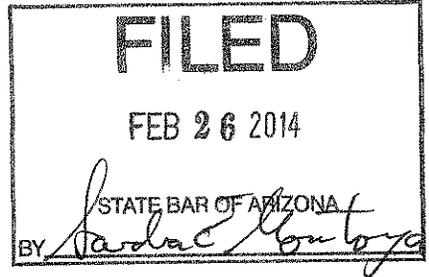
Copy emailed this 26th day
of February, 2014, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: 

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



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

No. 12-0690

DEVIN ANDRICH,
Bar No. 023075

PROBABLE CAUSE ORDER

Respondent.

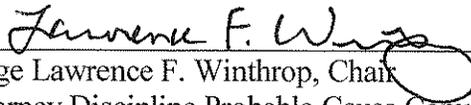
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on February 14, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 12-0690.

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 24 day of February, 2014.



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

¹ Committee member Bill Friedl did not participate in this matter.

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

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 20th day
of February, 2014, to:

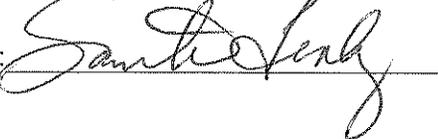
Devin Andrich
The Andrich Law Firm PC
4647 North 32nd Street,
Suite 135
Phoenix, Arizona 85018-3338
Respondent

Copy emailed this 20th day
of February, 2014, to:

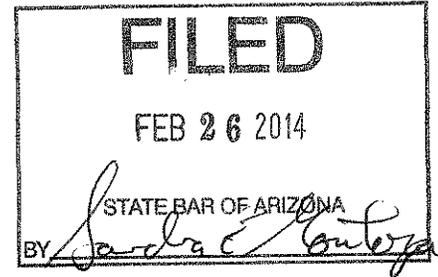
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by:



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



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

No. 12-2535

DEVIN ANDRICH,
Bar No. 023075

PROBABLE CAUSE ORDER

Respondent.

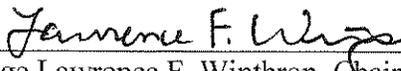
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on February 14, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 12-2535.

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 24 day of February, 2014.



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

¹ Committee member Bill Friedl did not participate in this matter.

Original filed this 26th day
of February, 2014, with:

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

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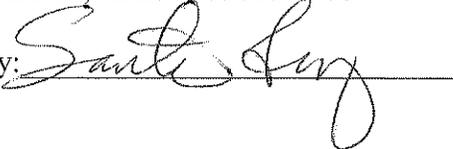
Devin Andrich
The Andrich Law Firm PC
4647 North 32nd Street,
Suite 135
Phoenix, Arizona 85018-3338
Respondent

Copy emailed this 26th day
of February, 2014, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by:



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



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

DEVIN ANDRICH,
Bar No. 023075

Respondent.

Nos. 13-3120 and 13-3566

PROBABLE CAUSE ORDER

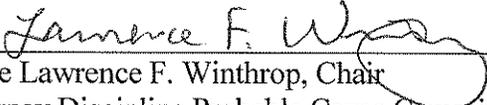
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona (“Committee”) reviewed this matter on March 14, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar’s Report of Investigation and Recommendation.

By a vote of 7-0-2¹, the Committee finds probable cause exists to file a complaint against Respondent in File Nos. 13-3120 and 13-3566.

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 14 day of March, 2014.



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

¹ Committee members Karen E. Osborne and Ben Harrison did not participate in this matter.

Original filed this 14th day
of March, 2014, with:

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 17th day
of March, 2014, to:

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Copy emailed this 17th day
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by: Rodney T. Bann