

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAR 11 2013

FILED

BY

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

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

Raya Tahan,

Bar No. 022723,

Respondent.

PDJ-2013-9004

**REPORT AND ORDER IMPOSING
SANCTIONS**

State Bar Nos. 12-0706, 12-0826,
12-1618

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on January 9, 2013. On January 10, 2013, the complaint was served on Respondent by certified, delivery restricted mail, as well as by regular first class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. A notice of default was properly issued on February 5, 2013, given Respondent's failure to file an answer or otherwise defend. Respondent did not file an answer or otherwise defend against the complainant's allegations and default was properly entered on February 21, 2013, at which time a notice of aggravation and mitigation hearing was sent to all parties notifying them the aggravation mitigating hearing was scheduled for March 11, 2013 at 10:30 a.m. at 1501 West Washington, Room 109, Phoenix, Arizona 85007-3231. On March 11, 2013, the Hearing Panel composed of attorney member, Richard J. Stern and public member, Linda S. Smith, heard argument.

FINDINGS OF FACT

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

1. Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on December 16, 2003.

2. On June 19, 2012, Respondent was administratively suspended for non-payment of dues.

COUNT ONE (File no. 12-0706/Rich)

3. Respondent was counsel of record in *Scola v. Stallard*, CV2012-023688. Respondent represented Defendant/Counter-Plaintiff Cynthia Stallard (the Client) in the litigation, which appears to have been a dispute between the Client and her former partner, Mr. Scola, relating to certain real property held jointly between the parties.

4. In February 2011, the Client paid Respondent a retainer and Respondent filed an answer/counter-claim on February 14, 2011.

5. By letter dated August 9, 2011, Mr. Scola's counsel, Brian Stines, attempted to resolve pending discovery disputes, namely, the fact that the Client had not responded to Requests for Production of Documents and Non-Uniform Interrogatories served on June 13, 2011, nor had she filed an Initial Disclosure Statement and/or filed a request for extension of time within which to do so.

6. By email dated August 15, 2011, Respondent advised Stines that the Client had suffered a stroke in or about June 2011, and that Respondent would not be able to file an Initial Disclosure Statement until the Client had "her full mental

energy capacity back.” It appears from the email that the case would have been dismissed from the inactive calendar but for a request by Mr. Scola’s counsel.

7. By email dated January 4, 2012, Stines reminded Respondent that he had not heard from her regarding the pending matter since October 4, 2011. He advised Respondent that absent the filing of an Initial Disclosure Statement and responses to the outstanding discovery requests, he would file a Motion to Compel, which he subsequently did on January 24, 2012.

8. On January 30, 2012, Stephen C. Rich was assigned to act as *pro tem* settlement judge in *Scola v. Stallard*. According to Mr. Rich, Stines advised him that he had been unable to make contact with Respondent. Mr. Rich made numerous attempts to contact Respondent by letter, telephone and email to schedule a settlement conference. He was never able to reach Respondent.

9. In February, the Client contacted Stines directly and suggested that they speak with Mr. Rich about scheduling the settlement conference. During that conversation, the Client stated that she had been unable to reach Respondent to discuss her case. According to the Client, Respondent never spoke to her about the status of the case after February 2011, despite her attempts to contact Respondent.

10. On March 2, 2012, the Client passed away.

11. On March 22, 2012, the Court set the case for a status conference on April 19th to determine the status of the case and whether Respondent had failed to respond to Mr. Rich. The Court ordered Respondent to appear in person.

12. By letter dated April 12, 2012, Bar Counsel sent Respondent a screening letter to Respondent's address of record with the State Bar asking that she respond to the bar charge. Respondent did not respond.

13. On April 19, 2012, the Superior Court conducted a status conference during which it dismissed the underlying litigation. The Court found that Respondent "knew or should have known" of the hearing and found her to be in contempt of court for failing to appear as ordered in the Court's March 22, 2012 minute entry. The Court further ordered that the minute entry be referred to the State Bar for investigation into Respondent's failure to appear at the hearing and "to participate in this litigation on behalf of her client." Finally, the Court granted the plaintiff's request for sanctions and ordered Respondent to pay \$750.00 to plaintiff.

14. By letter dated May 10, 2012, Bar Counsel sent Respondent a reminder letter stating she had not received a response from Respondent to the bar charge. Respondent did not respond.

15. By letter dated May 25, 2012, Bar Counsel sent Respondent a copy of the Court's April 19, 2012 minute entry and requested that she respond to the Court's findings within ten (10) days. Respondent did not respond.

16. State Bar Investigator April Landry attempted to reach Respondent at a telephone number identified as her cell phone number on June 20, June 22 and July 2, 2012. Ms. Landry left voice mail messages each time, none of which were returned by Respondent.

17. On June 22, 2012, Ms. Landry attempted to reach Respondent at her telephone number of record with the State Bar, as well as a telephone number identified as that of her law office. Both numbers have been disconnected.

18. On July 2, 2012, Ms. Landry sent a letter to Respondent seeking contact at her address of record with the State Bar: 4307 N. 35th St., Phoenix, Arizona, as well as email messages to: rayatahan@yahoo.com and rt@tahanlaw.com. Respondent never responded.

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

a. E.R. 1.2 [Scope of Representation and Allocation of Authority between Client and Lawyer]. Respondent failed to consult with the Client regarding the means by which she was to secure the division of the property in question, specifically participating in mandatory arbitration.

b. E.R. 1.3 [Diligence]. Respondent failed to act with reasonable diligence and promptness in representing the Client. Respondent abandoned the Client, failed to respond to the order for mandatory arbitration, and ultimately the Client died before she was able to secure the division of the property in question.

c. E.R. 1.4 [Communication]. Respondent failed to reasonably consult with the Client about the means by which she was to secure the client's objective, which was the division of the property in question. She failed to keep the Client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information from the Client.

d. E.R. 1.16 [Terminating Representation]. Upon terminating the representation, Respondent failed to take reasonably practicable steps to protect

the Client's interests. Respondent abandoned the Client, failed to return the Client's files and failed to refund any unearned fees.

e. E.R. 3.2 [Expediting Litigation]. Respondent failed to make reasonable efforts to expedite litigation consistent with the Client's interests. Respondent abandoned the Client and failed to respond to an order for mandatory arbitration. As a result, the Client died before she was able to secure the division of the property.

f. E.R. 3.4(c) [Fairness to Opposing Party and Counsel]. Respondent knowingly disobeyed an obligation under the rules of a tribunal. Respondent failed to appear at the April 19, 2012 status conference despite being ordered to do so. As a result, the Court found Respondent to be in contempt.

g. E.R. 8.1(b) [Disciplinary Matters]. Respondent failed to respond to a lawful demand for information from the disciplinary authority. Respondent failed to respond to the screening letters sent to Respondent's address of record with the State Bar.

h. E.R. 8.4(d) [Misconduct]. Respondent engaged in conduct that was prejudicial to the administration of justice. Respondent abandoned the Client, which resulted in unnecessary and repetitive hearings and the Court finding Respondent to be in contempt.

i. Rule 54(c) [Grounds for Discipline]. Respondent violated an order of the Court. Respondent failed to appear at the April 19, 2012 status conference, despite having been ordered to do so. The Court found Respondent to be in contempt.

j. Rule 54(d)(1) and (2) [Grounds for Discipline]. Respondent refused to cooperate with State Bar staff and failed to furnish information upon inquiry from Bar Counsel. Respondent failed to respond to screening letters sent to her by Bar Counsel and telephone calls from the State Bar Investigator.

COUNT TWO (File no. 12-0826/State Bar of Arizona)

20. At all relevant times, Respondent was counsel of record for the Town of Superior (the Client) in the case of *Town of Superior v. Dr. Glenn Wilt*, TJ2010-000180 (the Litigation).

21. In 2009, Dr. Wilt received several citations from the Client for alleged criminal misdemeanor violations of the Town of Superior Code relating to property maintenance. He was tried in absentia in the Superior Magistrate Court on November 19, 2009, and found guilty. On December 17, 2009, he was ordered to pay a fine totaling \$18,520.00, to be paid in monthly installments of \$1,000.00 (the Judgment). Dr. Wilt timely appealed.

22. During the ensuing appeal, on August 4, 2010, Respondent filed a Notice of Filing Municipal Judgment with the Maricopa Superior Court to collect on the Judgment (the Collection Action) on behalf of the Client. However, the notice did not indicate that it was a criminal judgment and Respondent did not obtain a criminal restitution order from the magistrate court before it tried to civilly enforce the Judgment.

23. Shortly thereafter, Dr. Wilt appeared at an Order to Show Cause/Status Conference hearing in the Magistrate Court at which time the Court inquired as to the status of his payments and appeal. The Court set a further hearing for roughly one month later.

24. A few days later, Dr. Wilt was served with a subpoena and ordered to appear at a judgment debtor's examination in the Collection Action set for September 10, 2010 (the Debtor's Exam). Dr. Wilt appeared without benefit of counsel.

25. At the hearing, Dr. Wilt asked Respondent why he was being asked to appear in Maricopa County when his appeal of the order of the Magistrate Court was pending in Pinal County Superior Court. Respondent stated that the one had nothing to do with the other.

26. At the beginning of the Debtor's Exam, after learning that Dr. Wilt had not brought the documentation requested in the subpoena, Respondent stated that he was in contempt of the Superior Court's order. However, no court had ever found Dr. Wilt to be in contempt.

27. During the Debtor's Exam, Respondent did not ask Dr. Wilt about his assets and liabilities. Instead, she inquired about the condition of his other properties in Superior and whether they were in compliance with the Town of Superior Code and zoning ordinances.

28. Dr. Wilt refused to answer questions about the other properties and stated that he was ready to settle the case, but that he did not know which court had jurisdiction over the matter.

29. Respondent telephoned the Court to complain that Dr. Wilt was refusing to answer "just the standard questions asked during a judgment debtor exam." However, a majority of the questions related to Dr. Wilt's other properties and their compliance with the Town of Superior Code. Dr. Wilt advised the Court that his case was on appeal in Pinal County. Respondent advised the Court that her

client had never seen "any sort of appellate documents," despite having filed a response to Dr. Wilt's appellate memorandum. The Court ordered Dr. Wilt to continue to answer questions, which he did.

30. On September 17, 2010, Respondent, on behalf of the Client, filed an Application for Writ of Garnishment in the Collection Action.

31. On September 23, 2010, the Magistrate Court conducted another OSC/Status Hearing and ordered Dr. Wilt to start making monthly payments of \$1,000.00 on October 1, 2010. Dr. Wilt complied and continued to make payment to the Court pending his appeal after his request to post a surety bond was denied.

32. Respondent, on behalf of the Client, filed motions to compel disclosure and for costs and attorneys fees on October 11th and 26, 2010.

33. On November 3, 2010, Dr. Wilt's newly retained counsel filed a Motion to Stay Collection Proceedings on the Judgment Pending Appeal Resolution and to Quash Plaintiff's Subpoena, as well as a Response in Opposition to Plaintiff's Request for Attorney's Fees.

34. On November 5, 2010, the Court granted the motion for an order compelling disclosure and set a hearing on the issue of attorney's fees.

35. On November 22, 2010, Dr. Wilt paid in full the outstanding balance owed on the Judgment by check provided to Respondent. The payment was made in protest and solely to prevent Dr. Wilt from being held in contempt of court.

36. Respondent did not promptly file a satisfaction of judgment claiming that the judgment had not been satisfied because the Court had not yet ruled on the motion for attorney's fees.

37. On December 15, 2010, counsel for Dr. Wilt sent Respondent a letter demanding that she file a satisfaction of judgment and pointing out that Dr. Wilt's wages continued to be garnished, despite that no further money was owed on the judgment.

38. Respondent, on behalf of the Client, recorded a satisfaction of judgment on that date, but refused to quash the ongoing garnishment order claiming that the wages were being placed in Respondent's trust account "pending the Court's decision" on the issue of fees.

39. On November 30, 2010, Dr. Wilt filed a Motion to Stay Order Compelling Disclosure.

40. Approximately two weeks after the Debtor's Exam, six of Dr. Wilt's properties (each of which was the subject of questioning by Respondent during the Debtor's Exam) were cited for alleged Town zoning ordinance violations. The case was set for trial on January 20, 2011.

41. Respondent's time record for the date of the Debtor's Exam reflect that one of the purposes of the hearing was to obtain information for future proceedings against Dr. Wilt.

42. On January 9, 2011, Respondent advised Dr. Wilt's counsel, in advance of the criminal trial scheduled for January 20th on the citations issued after the Debtor's Exam, that she intended to use the transcript of the Debtor's Exam as evidence and that the Client intended to ask the Magistrate Court to impose six months jail time per alleged violation. Ultimately, the Client dropped the charges after acknowledging that the ordinances had not been properly enacted.

43. On January 10, 2011, the Maricopa Superior Court held a hearing on the Client's request for fees and Dr. Wilt's request to stay the order compelling disclosure and to quash the garnishment. At the hearing, the issue of the Court's jurisdiction over the Collection Action was raised and the Court requested that the parties brief the issue. The parties did so.

44. On February 28, 2011, the Court issued a minute entry order finding that it lacked jurisdiction over the Collection Action because the Magistrate Court judgment was a criminal judgment and the Client had failed to file for a criminal restitution order pursuant to A.R.S. § 13-805. The Court further ordered that the subpoena and garnishment be quashed and denied the Client's request for fees. It also permitted Dr. Wilt to resubmit his request for fees along with evidence that Respondent had acted improperly by using the Debtor's Exam to collect on the judgment and to aid in a criminal investigation.

45. Despite the Court's order, Dr. Wilt's wages continued to be garnished for another two months because Respondent did not provide written notice to Dr. Wilt's employer that the garnishment had been quashed until April 29, 2011.

46. On August 8, 2011, the Court found that Dr. Wilt's Consolidated Application for Order to Show Cause established a prima facie case for sanctions against both Respondent and the Client, set a show cause hearing and ordered both Respondent and the Client to appear and show why they should not jointly and severally be sanctioned.

47. On January 18, 2012, the Court held a hearing on the Order to Show Cause. Respondent did not attend the hearing, although she was represented by counsel who withdrew from further representation at the conclusion of the hearing.

48. On March 20, 2012, the Court entered an order imposing sanctions against Respondent and the Client, jointly and severally, in the amount of \$125,000.00 for Dr. Wilt's attorney fees.

49. The Town of Superior, with successor counsel, appealed from the order, which appeal is currently pending before Division One of the Arizona Court of Appeals, Cause No. 1-CA-CV-12-0366. The Town of Superior is arguing, in part, that it "neither directed nor was aware of" Respondent's alleged unethical conduct.

50. By letter dated April 12, 2012, Bar Counsel sent Respondent a screening letter to Respondent's address of record with the State Bar asking that she respond to the bar charge. Respondent did not respond.

51. By letter dated May 10, 2012, Bar Counsel sent Respondent a reminder letter stating the she had not received a response from Respondent to the bar charge. Respondent did not respond.

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

a. E.R. 1.2 [Scope of Representation and Allocation of Authority between Client and Lawyer]. Respondent failed to consult with the Client regarding the means by which she pursued the objective of the representation, i.e., the enforcement of criminal misdemeanor violations. As a result, the Court imposed sanctions on both Respondent and the Client.

b. E.R. 1.4 [Communication]. Respondent failed to reasonably consult with the Client regarding the means by which Respondent sought to enforce the criminal misdemeanor violations and failed to keep the client reasonably

informed about the status of the matter. As a result, the client imposed sanctions on both Respondent and the Client.

c. E.R. 1.16 [Terminating Representation]. Upon terminating the representation, Respondent failed to take reasonably practicable steps to protect the Client's interests. Respondent abandoned the Client, failed to return the Client's files and failed to refund any unearned fees.

d. E.R. 3.1 [Meritorious Claims and Contentions]. Respondent brought a proceeding for which there was no good faith basis in law and fact. Respondent attempted to enforce the Magistrate Court's judgment without first securing a criminal restitution order as provided for under A.R.S. § 13-805. Respondent improperly used the Debtor's Exam to collect on the judgment and to aid in a criminal investigation.

e. E.R. 3.3(a) [Candor Toward the Tribunal]. Respondent knowingly made a false statement of fact or law to a tribunal. During the Debtor's Exam, Respondent advised the Court that Dr. Wilt was refusing to answer "just the standard questions asked during a judgment debtor exam." This was false. A majority of the questions that Respondent was asking related to Dr. Wilt's other properties and to their compliance with the Town of Superior Code.

f. E.R. 3.4(c) [Fairness to Opposing Party and Counsel]. Respondent knowingly disobeyed an obligation under the rules of a tribunal. Respondent failed to appear at the January 18, 2012 hearing on the Order to Show Cause despite being ordered to do so. As a result, the Court sanctioned Respondent.

g. E.R. 4.1 [Truthfulness in Statements to Others]. In the course of representing the Client, the Respondent knowingly made a false statement of material fact or law to a third person. During the Debtor's Exam, Respondent stated that Dr. Wilt was in contempt of the Superior Court's order, when the Court had never found Dr. Wilt to be in contempt.

h. E.R. 8.1(b) [Disciplinary Matters]. Respondent failed to respond to a lawful demand for information from the disciplinary authority. Respondent failed to respond to the screening letters sent to Respondent's address of record with the State Bar.

i. E.R. 8.4(d) [Misconduct]. Respondent engaged in conduct that was prejudicial to the administration of justice. Respondent abandoned the Client, which resulted in unnecessary and repetitive hearings, as well as an appeal to the Arizona Court of Appeals from sanctions assessed against both Respondent and the Client.

j. Rule 54(c) [Grounds for Discipline]. Respondent violated an order of the Court. Respondent failed to appear at the January 18, 2012 hearing on the Order to Show Cause despite having been ordered to do so. The Court sanctioned Respondent.

k. Rule 54(d)(1) and (2) [Grounds for Discipline]. Respondent refused to cooperate with State Bar staff and failed to furnish information upon inquiry from Bar Counsel. Respondent failed to respond to screening letters sent to her address of record with the State Bar by Bar Counsel and calls from the State Bar Investigator.

COUNT THREE (File no. 12-1618/Bauman)

53. In 2011, Complainant Debra Baumann (the Client) hired Respondent to represent her in an action to foreclose certain real property in Maricopa County, Arizona. The Client, owner of the real property, had been financing the sale of the property to the purchasers, Gregory J. Simms, Kelly A. Simms, Gordon R. Simms, and Mary L. Simms (collectively the Simms). The Client paid Respondent \$1,250.00 for the representation.

54. During the representation, the Client agreed to accept a Warranty Deed in Lieu of Foreclosure (the Deed), which Respondent prepared.

55. In August 2011, counsel for the Simms sent the original, executed Deed to Respondent for her to file with the Maricopa County Recorder's Office.

56. By email dated September 19, 2011, Respondent advised the Client that she had received the Deed and that she was going to have it recorded. She advised the Client that title to the real property was "now in your name, meaning you own the property again." Respondent also stated that she was sending the Client a check for \$625.00, which represented unearned fees. Respondent did refund \$625.00 to the Client.

57. By emails dated September 21 and October 7, 2011, the Client asked for Respondent's assistance with another foreclosure matter.

58. By email dated October 11, 2011, Respondent advised the Client regarding options for the second foreclosure matter. The Client never heard from Respondent again.

59. In or about June 2012, the Client checked the Maricopa County Recorder's website and was unable to locate the Deed.

60. By letter dated June 15, 2012, Bar Counsel sent Respondent a screening letter to Respondent's address of record with the State Bar asking that she respond to the bar charge. Respondent did not respond.

61. On June 20, 2012, Bar Counsel called Respondent's telephone number listed on a pleading filed by Respondent on June 1, 2012, specifically 602-274-5122. The number had been disconnected.

62. According to the Client, the Simms have refused to re-sign the Deed. Therefore, she will have to retain another attorney to foreclose on the real estate.

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

a. E.R. 1.2 [Scope of Representation and Allocation of Authority between Client and Lawyer]. Respondent failed to abide by the Client's decisions concerning the objective of the representation. Respondent failed to file the Deed, which would have resulted in the Client securing title to the real property.

b. E.R. 1.3 [Diligence]. Respondent failed to act with reasonable diligence and promptness in representing the Client. Respondent abandoned the client and failed to file the Deed. The Client must now retain new counsel in order to exercise her rights to the real property.

c. E.R. 1.4 [Communication]. Respondent failed to keep the Client reasonably informed about the status of the matter and promptly comply with reasonable requests for information from the Client. Respondent ultimately abandoned the client.

d. E.R. 1.5 [Fees]. Respondent collected an unreasonable fee from the Client because she failed to provide the services for which she was paid.

Respondent refunded \$625.00 of the \$1,200.00 paid by the Client because she was able to negotiate a resolution through the execution of the Deed. However, Respondent then failed to either file the Deed or give the Client the Deed to file herself. The Client, therefore, received nothing in exchange for the attorney fees that she paid to Respondent.

e. E.R. 1.16 [Terminating Representation]. Upon terminating the representation, Respondent failed to take reasonably practicable steps to protect the Client's interests. Respondent abandoned the Client, failed to return the client's files, and failed to refund any unearned fees.

f. E.R. 8.1(b). [Disciplinary Matters]. Respondent failed to respond to a lawful demand for information from the disciplinary authority. Respondent failed to respond to the screening letters sent to Respondent's address of record with the State Bar.

g. Rule 54(d)(1) and (2) [Grounds for Discipline]. Respondent refused to cooperate with State Bar staff and failed to furnish information upon inquiry from Bar Counsel. Respondent failed to respond to screening letters sent to her address of record with the State Bar and telephone calls from Bar Counsel.

CONCLUSIONS OF LAW

Respondent failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Respondent violated the following: Rule 42, Ariz. R. Sup.

Ct., specifically E.R.s 1.2, 1.3, 1.4, 1.5, 1.16, 3.1, 3.2, 3.3(a), 3.4(c), 4.1, 8.1(b), 8.4(d) and Rule 54(c), (d)(1) and (2).

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should consider: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard* 3.0.

Duties violated:

Respondent violated her duty to her clients by violating E.R.s 1.2, 1.3, 1.4, 1.5 and 1.16. Respondent violated her duty to the legal system by violating E.R.s 3.1, 3.2, 3.3(a), 3.4(c), and 4.1. Respondent also violated her duty owed as a professional by violating E.R.s 8.1(b) and 8.4(d), as well as Rule 54(c), (d)(1) and (2).

Mental State and Injury:

Respondent violated her duty to clients, thereby implicating *Standard* 4.4. *Standard* 4.41 states:

Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client;
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Standard 4.42 states:

Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

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

Respondent also violated her duty owed as a professional, which implicates *Standard 7.0*. *Standard 7.1* states, "Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system." *Standard 7.2* states, "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."

In this matter, Respondent failed to substantively respond to the SBA's investigation. Further, Respondent's actions were taken with the intent to obtain a personal benefit. *Standard 7.1*, therefore, is applicable.

AGGRAVATING AND MITIGATING FACTORS

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

- *Standard 9.22(b)* - dishonest or selfish motive: Respondent took monies from clients as retainers, performed little or no work and retained the monies for her own benefit. Respondent also failed to substantively respond to the SBA's investigation to cover up her misdeeds.

- *Standard 9.22(c)* - pattern of misconduct. Respondent has several open disciplinary cases involving similar misconduct.

- *Standard 9.22 (d)* - multiple offenses: Respondent knowingly took monies from clients as retainers, performed little or no work and retained the monies for her own benefit. Respondent also failed to substantively respond to the SBA's investigation to cover up her misdeeds.

- *Standard 9.22 (e)* - bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency: Respondent did not substantively respond in the SBA's investigation nor did she speak to SBA investigators. "Failure to cooperate with disciplinary authorities is a significant aggravating factor." *Matter of Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1172 (1988).

- *Standard 9.22(j)* - indifference to making restitution: Respondent has taken no steps to make restitution to clients. She simply abandoned them to deal with the damage caused by her misdeeds.

The Hearing Panel finds the following mitigating factor applies:

- *Standard 9.32(a)* absence of a prior disciplinary record: Respondent has no prior discipline.

The Hearing Panel finds the sole mitigating factor does not outweigh the aggravating factors. Disbarment is appropriate.

PROPORTIONALITY

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

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

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

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

In *In re Camacho*, SB-96-0079-D (1997), Camacho was disbarred. Camacho allowed summary judgment of over \$15,000 to be entered against clients without taking any steps to have it set aside or inform the clients and intentionally misled clients by stating they could still present their case. The clients agreed to a maximum settlement amount of \$2,500. Camacho, however, subsequently made and agreed to a \$5,000 offer on his clients' behalf without their knowledge or consent. Camacho also converted \$3,047.75 of settlement funds owed to Medicare for his own purpose. Lastly, Camacho failed to respond in the SBA's investigation. The six aggravating factors were: *Standards* 9.22(a) prior disciplinary offenses, 9.22(b) dishonest or selfish motive, 9.22(c) a pattern of misconduct 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution. Mitigating factors were discussed, but the Commission's report

does not specifically identify ones that were found except for *Standard* 9.32(I) remorse.

This case is similar to the above in that they all involve, among other things, abandonment of the practice of law.

CONCLUSION

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

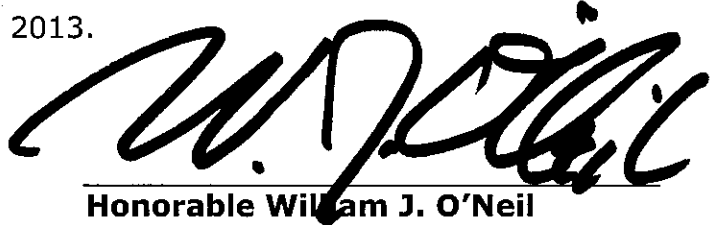
The Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the appropriate sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. Therefore,

IT IS ORDERED:

1. Respondent shall be disbarred from the practice of law effective immediately.
2. Respondent shall pay all costs and expenses incurred in this proceeding pursuant to Rule 60, Ariz.R.Sup.Ct.

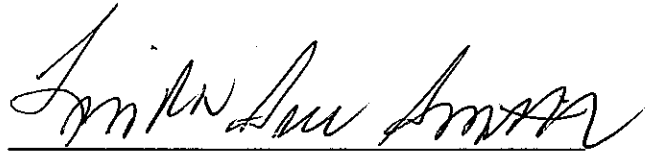
3. Respondent shall pay the following in restitution: Six Hundred and Twenty-Five Dollars (\$625.00) to Debra Baumann.

DATED this 11 day of March, 2013.



**Honorable William J. O'Neil
Presiding Disciplinary Judge
Of the Supreme Court of Arizona
Chair of the Hearing Panel**

CONCURRING



**Linda Sue Smith
Volunteer Public Member**



**Richard Joel Stern
Volunteer Attorney Member**

Original filed with the Disciplinary Clerk
Of the Office of the Presiding Disciplinary Judge
Of the Supreme Court of Arizona
This 11th day of March, 2013.

Original plus copies filed this 11th day
Of March, 2013, with:

Clerk of the Supreme Court of Arizona
1501 W. Washington Street
Phoenix, Arizona 85007-3231

Copies of the foregoing mailed/emailed
This 11th day of March, 2013, to:

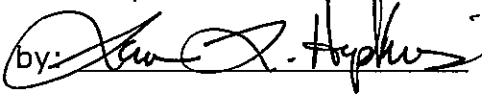
Raya Tahan
Tahan Law Office PLLC
4307 N 35th St
Phoenix, AZ 85018-3933
Email: re@tahanlaw.com
Respondent

Copy of the foregoing hand-delivered
This 11th day of March, 2013, to:

Stacy L. Shuman
Bar Counsel
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

Sandra Montoya
Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

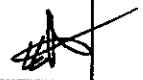
by:



OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

APR 09 2013

FILED
BY _____



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

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

RAYA TAHAN,
Bar No. 022723

Respondent.

PDJ-2013-9004

FINAL JUDGMENT AND ORDER

[State Bar File Nos. 12-0706, 12-0826, 12-1618]

This matter having come on for an aggravation/mitigation hearing before a Hearing Panel of the Supreme Court of Arizona and a decision in this matter having been duly rendered on March 11, 2013; and no appeal having been filed and the time for appeal having passed, now accordingly:

IT IS HEREBY ORDERED that Respondent, **RAYA TAHAN, Bar No. 022723**, is disbarred for conduct in violation of the Arizona Rules of Professional Conduct, **effective immediately**. Raya Tahan is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the court. Raya Tahan shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED that Raya Tahan shall pay restitution in the amount of \$625.00 to Debra Baumann.

IT IS FURTHER ORDERED that no further disciplinary action shall be taken in reference to the matters that are the subject of the charges upon which this Judgment and Order of Disbarment are based.

IT IS FURTHER ORDERED, that Raya Tahan pay the costs and expenses of the State Bar of Arizona, which are hereby approved in the amount of \$2,019.35.

DATED this 9th day of April, 2013.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 9th day of April, 2013.

Copies of the foregoing mailed/emailed
this 9th day of April, 2013, to:

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Respondent

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by: 