

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

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

**ALAN E. GOODING,
Bar No. 023060**

Respondent.

PDJ-2012-9070

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar File Nos. 11-0421, 11-0976, 11-2125, 11-2369, 11-2412, 11-2526, 11-2686, 11-2763, 11-2960, 11-3628, 11-3909]

On September 28, 2012, the Hearing Panel ("Panel"), composed of Mark Salem, a public member from Maricopa County, James Marovich, an attorney member from Maricopa County, and the Honorable William J. O'Neil, Presiding Disciplinary Judge ("PDJ"), held a one day aggravation/mitigation hearing pursuant to Supreme Court Rule 58(k), Ariz.R.Sup.Ct. Shauna Miller appeared on behalf of the State Bar of Arizona ("State Bar") and the Mr. Gooding appeared *pro per*. The Rule was invoked.

Default was previously entered. The formal entry of default by the Disciplinary Clerk resulted in the allegations of the complaint being "deemed admitted" pursuant to Rule 58(d). An aggravation/mitigation hearing was conducted before a Hearing Panel. The purpose of the aggravation/mitigation hearing is not only to weigh the mitigating and aggravating factors, but the hearing also serves to assure there is a nexus between the respondent's judicially admitted

actions and the merits of the case. A respondent against whom a default has been entered no longer has the right to litigate the merits of the factual allegations, but retains the right to appear and participate in the hearing concerning that nexus and the sanctions sought. Included with that right to appear is the right to cross-examine witnesses but not for the purpose of disputing the factual allegations. The Panel considered the admitted exhibits, the State Bar Prehearing Statement, and the testimony of four witnesses regarding restitution.¹

Due process requires the Hearing Panel to independently determine whether under the facts deemed admitted ethical violations have been proven by clear and convincing evidence. The Hearing Panel must also exercise discretion in deciding whether sanctions should issue for the conduct and, if sanctions are warranted, which sanctions should issue. It is not the function of a Hearing Panel to simply endorse or “rubber stamp” any request for sanctions. The State Bar recommended that Mr. Gooding be disbarred. The Panel agrees his conduct was egregious and that the recommendation was reasonable. For the reasons set forth hereinafter, however, the Panel chose not to follow that recommendation. There has been an independent determination by the Hearing Panel that the State Bar has, by clear and convincing evidence, proven that the actions of Mr. Gooding are in violation of the ethical rules.

The Panel now issues the following Report and Order Imposing Sanctions, ordering that Mr. Gooding is suspended for a period of three years.

¹ Telephonic testimony was heard from Mrs. Marcia Valenzuela, Mr. Corey Larson, Mr. Steven L. Nannini, and Mrs. Delores O’Leary on the matter of restitution. Respondent also testified.

I. PROCEDURAL HISTORY

The State Bar of Arizona filed its complaint in this matter on July 31, 2012. On August 7, 2012, the Presiding Disciplinary Judge ("PDJ") was assigned and a notice issued that an initial case management conference would be held on August 29, 2012. Because Mr. Gooding failed to file an answer, a Notice of Default was issued by the Disciplinary Clerk on that same day. Mr. Gooding and Ms. Miller for the State Bar appeared for the telephonic initial case management conference. Mr. Gooding was cautioned in that conference that a Notice of Default had been issued, and that if Default was entered the allegations in the complaint would be deemed admitted. Mr. Gooding did not file an answer or otherwise defend against the State Bar's allegations. Default was properly entered on September 11, 2012. Notice of Aggravation/Mitigation Hearing was contingently set in the Initial Case Management Conference Orders and scheduled for and heard on September 28, 2012, at 9:00 a.m. On September 26, 2012, the State Bar filed its Prehearing Statement. Mr. Gooding did not file any prehearing documents.

II. FINDINGS OF FACT

1. Alan E. Gooding was still under suspension pursuant to an Order of the Presiding Disciplinary Judge arising from an Agreement for Discipline by Consent when the current complaint was filed on July 31, 2012. [Complaint]

2. Mr. Gooding was eligible to apply for reinstatement beginning in November of 2011. He had not done so because he felt he had not yet been rehabilitated. [Mr. Gooding's testimony]

3. Although Mr. Gooding defaulted on the formal complaint in this matter, he appeared *pro per* at both the telephonic ICMC conference and the aggravation/mitigation hearing. [State Bar's Prehearing Statement, Hearing]

4. The State Bar recommended in its Prehearing Statement and at the aggravation/mitigation hearing that Mr. Gooding be disbarred. [State Bar Prehearing Statement and Hearing Opening/Closing Statements]

5. The underlying allegations in the ten-count complaint as detailed below in items 6 through 209, are deemed admitted by Default. [Entry of Default]

6. At all times relevant, the license of Mr. Gooding to practice law in Arizona was suspended. He was originally admitted to the practice on September 17, 2004.

COUNT ONE

(File No. 11-0421/Valenzuela)

Rock Roofing, L.L.C. v. Dorn Homes, Inc., et al., Pima County Superior Court file no. C20099068

7. In 2006, Ms. Valenzuela hired Mr. Gooding to represent her business, Rock Roofing LLC, in a litigation matter against Dorn Homes.

8. Ms. Valenzuela's company installed a new \$10,600.00 roof on Mr. Gooding's home in lieu of a cash payment for Mr. Gooding's legal representation of her business in the litigation matter against Dorn Homes.

9. Mr. Gooding indicated to Ms. Valenzuela that he was going to file a lawsuit on her behalf, but he failed to do so for several years.

10. On March 16, 2009, Mr. Gooding filed suit against Dorn Homes.

11. On March 27, 2009, Mr. Gooding served the complaint on the defendant.

12. On April 16, 2009, the defendant filed an answer and a counterclaim.

13. On December 11, 2009, the court placed the matter on the inactive calendar.

14. On March 16, 2010, the court dismissed the matter for lack of prosecution.

15. In the fall of 2010, Ms. Valenzuela hired another attorney, Corey Larson. Mr. Larson informed Ms. Valenzuela that the Dorn Homes lawsuit was dismissed for lack of prosecution.

16. In September 2010, Mr. Larson began trying to obtain Ms. Valenzuela's file from Mr. Gooding. He telephoned and emailed Mr. Gooding numerous times, until Mr. Gooding eventually provided the file to him over a year later on October 22, 2011.

17. Mr. Larson reviewed the file and determined that Mr. Gooding's involvement in the case was limited to filing the complaint. In Mr. Larson's opinion, the value of the legal services Mr. Gooding provided is \$1,000.00 to \$2,000.00 and Mr. Gooding should provide a "refund" based on the value of the roof installed by Ms. Valenzuela's company.

Rock Roofing LLC/Smith Construction

18. In October 2005, Ms. Valenzuela also hired Mr. Gooding to represent Rock Roofing against Smith Construction. Ms. Valenzuela believed that a lawsuit was filed by her through Mr. Gooding on the company's behalf. Ms. Valenzuela later learned that no such lawsuit was ever filed.

19. Mr. Larson also took over this representation. Ms. Valenzuela did not have the original documents and Mr. Gooding did not respond to Mr. Larson's requests to provide the original documentation. This hampered Mr. Larson's efforts on behalf of Ms. Valenzuela's company.

20. Upon information and belief Mr. Gooding still has the original case documents.

21. Mr. Larson negotiated a settlement in the matter.

Screening Investigation

22. Ms. Valenzuela submitted a bar charge regarding Mr. Gooding's conduct and the State Bar began an investigation.

23. Mr. Gooding was asked to provide a response to the bar charge in letters dated March 18, April 18, and May 5, 2011.

24. Mr. Gooding failed to provide a written response.

25. Bar counsel asked a State Bar staff investigator ("the staff investigator") to contact Mr. Gooding, who was interviewed on September 1, and September 8, 2011.

26. Mr. Gooding stated to the staff investigator that he did not provide the requested written response because he was gathering information to respond.

27. Mr. Gooding never provided a written response to the State Bar.

28. Mr. Gooding violated ER 1.2(a) when he failed to abide by Ms. Valenzuela's decisions to initiate a lawsuit in the Smith Construction matter and when he failed to pursue the Dorn Homes matter.

29. Mr. Gooding violated Rule 42, Ariz. R. Sup. Ct., ER 1.3, when he failed to diligently pursue the Smith Construction and Dorn Homes matters.

30. Mr. Gooding violated Rule 42, Ariz. R. Sup. Ct., ER 1.4(a)(3), when he failed to inform Ms. Valenzuela about the dismissal of the Dorn Homes matter.

31. Mr. Gooding violated Rule 42, Ariz. R. Sup. Ct., ER 1.8(a), when he accepted a new roof instead of cash as payment for his legal fees and failed to put the transaction into writing.

32. Mr. Gooding violated ER 1.15(d), when he failed to promptly provide a copy of the Dorn Homes file to subsequent counsel and when he failed to provide any original copies of documents to subsequent counsel in the Smith Construction matter.

33. Mr. Gooding violated ER 3.2, when he failed to take reasonable efforts to expedite the Dorn Homes matter.

34. Mr. Gooding violated ER 8.1(b), when he knowingly failed to respond to the State Bar's requests for a written response.

35. Mr. Gooding violated ER 8.4(d), when he engaged in conduct that was prejudicial to the administration of justice by failing to prosecute the Dorn Homes matter, causing it to be dismissed rather than litigated on its merits.

36. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to furnish the requested written response to the bar charge.

37. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.3, 1.4(a)(3), 1.8(a), 1.15(d), 3.2, 8.1(b), 8.4(d) and Rule 54(d)(2), Ariz.R.Sup.Ct.

COUNT TWO

(File No. 11-0976/Hunnicuttt)

38. In November 2009, John and Loretta Hunnicutt ("the Hunnicutts") retained Mr. Gooding to represent them in a breach of contract matter in which the Hunnicutts' loaned money to a company called Oncaldera.

39. On November 20, 2009, Mr. Gooding filed suit against Mashih Madani ("Mr. Madani"), his company Oncaldera, and various other defendants, *Loretta G. Hunnicutt v. Mashih Madani, et al.*, Pima County Superior Court file no. C20099068 ("Oncaldera matter"). All defendants were served.

40. On January 7, 2010, counsel for Oncaldera filed an answer.

41. Also on January 7, 2010, counsel for the remaining defendants filed a motion to dismiss for failure to state a claim.

42. On January 15, 2010, Mr. Gooding emailed the Hunnicutts informing them about Oncaldera's answer and the motion to dismiss. Mr. Gooding told them he would subpoena financial records in an effort to amend the complaint and overcome the motion to dismiss.

43. Mr. Gooding failed to subpoena the financial records or amend the complaint.

44. The response to the motion to dismiss was due on or about January 26, 2010. On February 12, 2010, the court granted the motion to dismiss, noting there was no response from Mr. Gooding.

45. On February 12, 2010, at 4:35 p.m., Mr. Gooding filed a response to the motion to dismiss.

46. Counsel for the dismissed defendants filed a motion seeking attorney's fees. Mr. Gooding did not file a response objecting to the motion.

47. On March 29, 2010, the court granted the motion and awarded the dismissed defendants \$1,980.00 in attorney fees. Mr. Gooding paid the amount himself, but he told the Hunnicutts he would try to get the award set aside.

48. On April 27, 2010, the Hunnicutts emailed Mr. Gooding asking for a copy of the motion for summary judgment Mr. Gooding promised to file in March. The Hunnicutts also asked about when they could meet. Mr. Gooding did not respond.

49. On May 1, 2010, the Hunnicutts emailed Mr. Gooding asking what was going on with the current litigation. They had also tried calling Mr. Gooding several times in the past three weeks with no response. The email closed with a request for a return phone call.

50. On May 5, 2010, the Hunnicutts sent an email asking if Mr. Gooding was still alive.

51. On May 6, 2010, the Hunnicutts sent an email asking Mr. Gooding to return their phone calls.

52. On May 10, 2010, Mr. Gooding emailed the Hunnicutts stating he was having "administrative difficulties" that caused the motion for summary judgment not to be filed. Mr. Gooding blamed a contract attorney for the motion for summary judgment not being filed. Mr. Gooding promised, "[I] am going to personally finish the document and get it to the court house today. I will drive down and file it myself and serve opposing counsel. Please accept my apologies."

53. The motion for summary judgment was not filed that day or the next day.

54. On June 1, 2010, the Hunnicutts emailed Mr. Gooding inquiring about the status of the motion for summary judgment.

55. On June 3, 2010, Mr. Gooding replied saying he received the motion from the courier and, "it had gotten lumped in with a file that was to be served, not filed." Mr. Gooding promised he was revising the motion to correct the date and would file the motion later in the day.

56. On June 7, 2010, Mr. Gooding stated he "pocketed" the motion for summary judgment because he spoke to the opposing counsel and they would consider consenting to a judgment against Oncaldera. Mr. Gooding promised he would file the motion by the end of the day if there was no progress.

57. On June 15, 2010, the Hunnicutts emailed Mr. Gooding and asked Mr. Gooding to acknowledge that he received the email. Mr. Gooding read the email the same day, but did not respond.

58. On June 30, 2010, the Hunnicutts emailed Mr. Gooding stating that they have been "presented with a subpoena for a judgment against us by Madani. Nothing has been filed that you said would be filed time and time again. We now owe money to a man that we lent money to." The Hunnicutts asked Mr. Gooding to, "Please do the right thing." Mr. Gooding read the email a few hours after it was sent, but he did not respond.

59. On July 1, 2010, Mr. Gooding emailed the Hunnicutts stating, "I think what happened is that they go [sic] an award of attorneys fees for the dismissal of the contract claims against the other entities. ... I was not aware they asked for an award or that they got one, but I think that is what happened."

60. While Mr. Gooding was representing the Hunnicutts in the breach of contract matter, Mr. Madani responded by defaming the Hunnicutts on the internet.

61. On August 20, 2010, Mr. Gooding emailed the Hunnicutts saying he had filed the defamation suit against Madani, which he had not.

62. On September 21, 2010, Mr. Gooding, filed suit against Mr. Madani, *John Hunnicutt, et al. v. Masih Madani, et al.*, Pima County Superior Court file no. C20107460 ("the defamation matter") alleging defamation and other related torts committed by Mr. Madani against the Hunnicutts. Mr. Gooding stated he had difficulty in serving the defendant. Mr. Gooding did not move the court to serve by alternative methods.

63. The complaint in the defamation matter was not served on Mr. Madani and ultimately dismissed by the court for lack of service on February 2, 2011.

64. On October 5, 2010, Mr. Gooding finally filed the previously promised motion for summary judgment in the Oncaldera matter.

65. On December 7, 2010, the court in the Oncaldera matter signed an order granting the Hunnicutts a monetary award and Mr. Gooding's attorney fees.

66. On January 18, 2011, the Hunnicutts emailed Mr. Gooding asking a question pertaining to the defamation matter. Complainants' say Mr. Gooding failed to respond to the Hunnicutts request for information.

67. On March 18, 2011, Mr. Gooding replied to an email with the subject line of "status Defamation suit?????" writing, "I am going by the judge's chambers to check on it this morning."

68. The Hunnicutts submitted a bar charge regarding Mr. Gooding's conduct. On March 28, 2011, the State Bar began an investigation.

69. On March 31, April 11, and May 5, 2011, the State Bar mailed letters to Mr. Gooding's address of record asking for a written response. Mr. Gooding failed to provide the requested written response.

70. On September 9, 2011, Mr. Gooding was interviewed by a staff investigator; however the interview was not completed. Mr. Gooding promised to continue the interview on September 12, 2011, at 10:30 a.m. with Mr. Gooding initiating the call. Mr. Gooding failed to call the investigator on September 12, 2011.

71. The staff investigator called Mr. Gooding on his office phone and cell phone on September 13, 14, and 15, 2011. Mr. Gooding failed to call the staff investigator.

72. On September 19, 2011, the staff investigator called Mr. Gooding's home phone and left a message requesting a return call.

73. On November 8, 2011, the staff investigator was able to complete the interview after additional efforts to locate Mr. Gooding were undertaken.

74. Mr. Gooding violated ER 1.3, when he failed to diligently pursue the promised motion for summary judgment in the Oncaldera matter and failed to litigate the defamation matter in a diligent manner.

75. Mr. Gooding violated ER 1.4(a)(4), when he failed to respond to the Hunnicutts' reasonable requests for information.

76. Mr. Gooding violated Rule ER 3.2, when he failed to expedite litigation by failing to timely file a response to the motion to dismiss, by failing to timely file the promised motion for summary judgment in the Oncaldera matter, and by failing to serve the defendant in the defamation matter.

77. Mr. Gooding violated ER 8.1(b), when he knowingly failed to provide the requested written response or complete the investigator's interview in a timely manner.

78. Mr. Gooding violated ER 8.4(c), when he told the Hunnicutts many things that later turned out to be false.

79. Mr. Gooding violated ER 8.4(d), when he failed to serve the defamation lawsuit and the matter was not adjudicated on its merits.

80. Mr. Gooding violated Rule 54(d)(1) and (2), Ariz. R. Sup. Ct., when he refused to cooperate with the State Bar by failing to provide the written response or complete the interview in a timely manner.

81. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4(a)(4), 3.2, 8.1(b), 8.4(c) and (d) and Rule 54(d)(1) and (2), Ariz.R.Sup.Ct.

COUNT THREE

(File No. 11-2125/Jones)

82. On February 22, 2011, Geraldine Solomon ("Ms. Solomon") died. Carolyn Jones ("Mrs. Jones") was named the personal representative ("PR"). Mr. Gooding was hired to probate the matter since Mr. Gooding had performed previous legal work for Ms. Solomon.

83. On March 2, 2011, Mr. Gooding filed an application with the Pima County Superior Court requesting to informally probate the will and appoint Mrs. Jones as PR in *In the Matter of the Estate of Geraldine Powdrill Soloman*, Pima County Superior Court file no. PB20110235.

84. On March 4, 2011, Mr. Gooding filed a pleading indicating Mrs. Jones agreed to the appointment as PR, a verified statement that the PR is not a private fiduciary and will not charge a fee, a statement of appointment of the PR, and lodged a general order to the PR with the court. Mr. Gooding did not file anything else with the court in the matter.

85. On April 14, 2011, Mr. Gooding and the State Bar executed and filed an Agreement for Discipline by Consent in PDJ-2011-9001 whereby the parties agreed to a six month and one day suspension.

86. On April 20 and 21, 2011, Mrs. Jones and Mr. Gooding spoke about the estate's property. This was the last conversation Mrs. Jones had with Mr. Gooding despite numerous phone calls and emails.

87. On April 22, 2011, the Presiding Disciplinary Judge ("PDJ") in PDJ-2011-9001 entered an order accepting the agreement and ruled the effective date of the suspension to be May 22, 2011. Mr. Gooding did not file a motion to withdraw as the PR's attorney or otherwise notify the probate court of his suspension.

88. On June 25, 2011, Mr. Gooding was chastised for his lack of communication, despite Mrs. Jones repeated calls.

89. Subsequently, other counsel was hired and a bar charge was filed regarding Mr. Gooding's conduct.

90. In July 2011, the State Bar began an investigation and requested that Mr. Gooding provide a written response to the bar charge in letters dated July 28, and September 7, 2011. Mr. Gooding received the letters, but did not provide a

written response. Mr. Gooding could not explain why he did not respond other than he was having a difficult time, "figuring out how to get all of this together."

91. On October 4, 5, and 13, 2011, the staff investigator called Mr. Gooding for an interview. Mr. Gooding did not timely respond to the staff investigator's calls; however, Mr. Gooding was eventually interviewed on November 8, 2011.

92. Mr. Gooding violated ER 1.4(a)(1) and (4), when he failed to keep Mrs. Jones informed about the matter or return numerous telephone calls; when Mr. Gooding failed to promptly inform Mrs. Jones about his suspension from the practice of law, thereby precluding Mrs. Jones from making the decision to find subsequent counsel in a timely manner; and when Mr. Gooding failed to respond many times when a response was requested.

93. Mr. Gooding violated ER 8.1(b), when he knowingly failed to provide a written response to the State Bar's request for information and a written response.

94. Mr. Gooding violated Rule 54(d)(1) and (2), Ariz. R. Sup. Ct., when he failed to cooperate with the State Bar's request to provide a written response to the bar charge and when he failed to comply with the State Bar's requests for an interview.

95. Mr. Gooding violated Rule 72(a), Ariz. R. Sup. Ct., when he failed to timely file a motion to withdraw as counsel of record or notify Mrs. Jones of his suspension.

96. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.4(a)(1) and (4), 8.1(b), Rules 54(d)(1) and (2), and Rule 72(a) Ariz.R.Sup.Ct.

COUNT FOUR

(File Nos. 11-2369/State Bar of Arizona, and 11-2412/Qualls)

97. In March 2011, Rudy Qualls ("Mr. Qualls") hired Mr. Gooding to represent his company Qualls construction in an unjust enrichment and breach of contract matter.

98. On March 30, 2011, Mr. Gooding filed a complaint on behalf of Qualls Construction in *Qualls Construction & Design Inc. v. David M. Around, et al.*, Pima County Superior Court file no. C20102580 ("Qualls' matter").

99. In April 2011, Mr. Gooding contacted Mr. Qualls the night before Mr. Qualls's scheduled deposition, informing him for the first time about his deposition the next day.

100. On April 11, 2011, the court conducted a status conference in the Qualls matter. At the conference, the court rescheduled the trial from June 7, 2011, to September 13, 2011.

101. On April 14, 2011, Mr. Gooding and the State Bar executed and filed an Agreement for Discipline by Consent in PDJ-2011-9001 whereby the parties agreed to a six month and one day suspension.

102. On April 22, 2011, the PDJ in PDJ-2011-9001 entered an order accepting the agreement and ruled the effective date of the suspension to be May 22, 2011.

103. On May 19, 2011, counsel for the defendants in the Qualls matter filed a motion for summary judgment.

104. Mr. Gooding did not file a motion to withdraw as counsel of record in the matter due to his suspension nor did he mail the court a letter regarding his suspension.

105. Mr. Gooding failed to notify opposing counsel about the suspension.

106. Mr. Gooding failed to notify Mr. Qualls of his suspension.

107. Mr. Gooding failed to respond to the motion for summary judgment.

108. On July 7, 2011, counsel for the defendants requested that the court grant the unopposed motion for summary judgment.

109. On July 8, 2011, the court granted the defendants' motion for summary judgment.

110. On July 25, 2011, counsel for the defendants filed a notice regarding Mr. Gooding. In the notice, counsel stated he learned of Mr. Gooding's suspension while reading the *Arizona Attorney* magazine. Additionally, counsel wrote, "The undersigned counsel does not believe Mr. Gooding complied with Rule 72(a), Rules of the Supreme Court, as he received no notice of the April 22, 2011 order."

111. On July 26, 2011, the court issued a ruling regarding summary judgment and Mr. Gooding's conduct. Specifically, the court wrote, "A review of the file shows Mr. Gooding provided neither the Court nor opposing counsel notice of the then-pending matter prior to April 22, 2011. He also failed to notify the court and opposing counsel that his license had been suspended after disciplinary action was ultimately taken."

112. The court scheduled a status conference on August 15, 2011 to determine whether the court should let the summary judgment order stand. The court mailed a copy of its order to Mr. Gooding and Mr. Qualls. Ultimately, the

court let stand its summary judgment ruling because no one appeared on the plaintiff's behalf in a subsequent court hearing.

113. The court notified the State Bar regarding Mr. Gooding's conduct and the State Bar began an investigation, and assigned the investigation with 11-2369. The State Bar mailed letters addressed to Mr. Gooding's address of record on August 1, and September 7, 2011, requesting a written response to the bar charge. Mr. Gooding did not provide such a written response.

114. Mr. Qualls submitted a bar charge regarding Mr. Gooding's conduct and the State Bar began an investigation.

115. The State Bar mailed letters addressed to Mr. Gooding's address of record on October 3, and November 1, 2011, requesting a written response to the bar charge. Mr. Gooding did not provide the requested written response.

116. On October 4, 5, and 13, 2011 the staff investigator called Mr. Gooding to conduct an interview regarding this matter. Mr. Gooding did not promptly return those calls.

117. On November 9, 2011, Mr. Gooding was interviewed regarding this matter. During the interview, Mr. Gooding admitted to not notifying the court or opposing counsel in the Qualls matter. Mr. Gooding also admitted to having difficulties in communicating with Mr. Qualls and by the time he reached Mr. Qualls, he already knew about the suspension. Mr. Gooding stated that he believed Mr. Qualls learned of the suspension from the opposing counsel.

118. In the November 9, 2011 interview, Mr. Gooding further admitted to not moving to withdraw as counsel of record. Additionally, Mr. Gooding admitted

he received the State Bar's letters requesting a response to the bar charge and failed to respond.

119. Mr. Gooding violated ER 1.3, when he failed to act in a diligent manner by not withdrawing as attorney of record in the Qualls matter and when he failed to timely and diligently notify Mr. Qualls of his deposition.

120. Mr. Gooding violated ER 1.4(a)(1), when he failed to promptly inform Mr. Qualls about his suspension and he failed to keep Mr. Qualls reasonably informed about the status of the matter.

121. Mr. Gooding violated ER 8.1(b), when he knowingly failed to provide the requested information and a written response to the State Bar.

122. Mr. Gooding violated ER 8.4(d), when his conduct caused an additional burden on the court, the opposing counsel and the opposing party in the Qualls matter.

123. Mr. Gooding violated Rule 54(d)(1) and (2), Ariz. R. Sup. Ct., when he refused to cooperate with the State Bar's request to provide a written response to the bar charge or promptly comply with the State Bar's requests for an interview.

124. Mr. Gooding violated Rule 72, Ariz. R. Sup. Ct., when he failed to timely file a motion to withdraw as counsel of record; and he failed to adequately notify Mr. Qualls, opposing counsel, or the court of his suspension.

125. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4(a)(1), 8.1(b), Rules 54(d)(1) and (2), and Rule 72(a) Ariz.R.Sup.Ct.

COUNT FIVE

(File No. 11-2526/O'Leary)

126. On May 20, 2009, Dolores O'Leary ("Ms. O'Leary") hired Mr. Gooding for representation in a construction default matter and paid him \$500. There was no signed fee agreement. Ms. O'Leary also made two separate payments on invoices that Mr. Gooding billed for a total of \$1,618.80.

127. The representation was to include the investigation and filing of charges against Carrera Custom Homes ("Carrera") regarding construction by Carrera in a lot behind her 26-year-old home which resulted in damage to her house's walls and floors.

128. At the first meeting Ms. O'Leary had with Mr. Gooding, he stated that time was not a factor.

129. On November 6, 2009, Mr. Gooding filed the Complaint in *O'Leary v. Carrera Custom Homes, Inc., et al.*, Pima County Superior Court file no. C20098692.

130. A couple of months later, Mr. Gooding suggested arbitration.

131. The arbitration was set for November 3, 2010. Ms. O'Leary observed that Mr. Gooding did not appear "prepared whatsoever" for the arbitration.

132. At the arbitration, Carrera's lawyer argued that the statute of limitations had run on the matter. The arbitrator found that the statute of limitations ran out in "either Fall 2009 or Fall 2010." The arbitrator informed Ms. O'Leary that if Mr. Gooding had done "a little research," he would have known that the statute of limitation had run.

133. On November 5, 2012, the arbitrator sent a bill to Mr. Gooding for the arbitration. When Ms. O'Leary later called the arbitrator's office to request a copy of her paper work she learned that Mr. Gooding had not paid the bill.

134. Complainant was also under the impression that Mr. Gooding filed a complaint with the Registrar of Contractors ("ROC"). A State Bar staff investigator contacted the ROC and no complaint was filed.

135. Mr. Gooding failed to notify Ms. O'Leary of his suspension. Ms. O'Leary learned of his suspension in July 2011, when she called the State Bar.

136. Ms. O'Leary submitted a bar charge regarding Mr. Gooding's conduct and the State Bar began an investigation.

137. Mr. Gooding was sent a charging letter on August 30, 2011. When he failed to respond, another letter was sent on October 4, 2011. He again failed to respond. A staff investigator was assigned to contact him and was finally able to talk to Mr. Gooding on November 9, 2011.

138. In the November 9, 2011 interview with the staff investigator, Mr. Gooding stated he felt that he communicated adequately with Ms. O'Leary and he accomplished what he was hired to do. In addition, Mr. Gooding stated that he did not notify the court of his suspension because he had difficulty dealing with all of the deadlines imposed by the Court.

139. Further, Mr. Gooding acknowledged that he received the letters from the State Bar requesting a response to the bar charge. Mr. Gooding stated that he does not have a "good reason" for not responding, except that he had difficulty collecting all of the data needed to respond.

140. Mr. Gooding violated ER 1.3, when he filed the complaint after the statute of limitations had run, and when he was hard to reach in order to set up the arbitration.

141. Mr. Gooding violated ER 1.4(a)(1), when he failed to keep Ms. O'Leary informed about the matter, failed to return her phone calls, and failed to discuss the ROC issue with her.

142. Mr. Gooding violated ER 8.1(b), when he knowingly failed to provide the requested written response from the State Bar.

143. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he refused to cooperate with the State Bar's request to provide a written response to the bar charge

144. Mr. Gooding violated Rule 72, Ariz. R. Sup. Ct., when he failed to notify his client, opposing counsel, or the court of his suspension.

145. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.3, 1.4(a)(1), 8.1(b), Rules 54(d)(1) and (2), and Rule 72(a) Ariz.R.Sup.Ct.

COUNT SIX

(File No. 11-2686²/Shinn)

146. Mark L. Shinn ("Mr. Shinn") works for a realty company. Buyers bought a house from Mr. Shinn's client ("the seller"). Issues with the house's walls developed when the buyers started remodeling the house.

147. Mr. Gooding represented the buyers and was threatening to sue.

² File No. 11-2686 is related to file no. 11-2960.

148. In August 2011, Mr. Gooding called Mr. Shinn, to push Mr. Shinn into arbitration.

149. Thereafter, Mr. Shinn learned of Mr. Gooding's suspension.

150. Mr. Gooding left Mr. Shinn a voice message on August 16, 2011, asking for the name of his attorney and indicating who a good arbitrator for the matter would be.

151. In the August 16, 2011, voice message, Mr. Gooding does not indicate that he has been suspended and through this omission, held himself out as the buyer's attorney.

152. Mr. Shinn submitted a bar charge regarding Mr. Gooding's conduct and the State Bar began an investigation.

153. On January 13, 2012, Mr. Gooding was sent a copy of Mr. Shinn's allegations and asked to provide a written response within twenty days. Mr. Gooding failed to respond. On February 16, 2012, a second letter was sent to Mr. Gooding giving him ten days to respond. Mr. Gooding again failed to respond.

154. Mr. Gooding violated Rule 42, Ariz. R. Sup. Ct., ER 8.1(b), when he failed to provide the requested written response to the State Bar.

155. Mr. Gooding violated Rule 31(a) and (b), Ariz. R. Sup. Ct., when he held himself out as a practicing lawyer while suspended.

156. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to provide the requested written response.

157. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), Rules 31(a) and 54(d)(2) Ariz.R.Sup.Ct.

COUNT SEVEN

(File No. 11-2763/State Bar of Arizona)

158. On May 4, 2010, Mr. Gooding filed a complaint on behalf of Crimar Holdings, LTD³. The matter was assigned to Judge Jan Kearney.

159. A trial date was set for September 13, 2011.

160. Mr. Gooding was notified on March 9, 2011, that a pretrial conference was schedule for July 25, 2011.

161. On July 25, 2011, Mr. Gooding failed to appear at the pretrial conference. He had not communicated in any way with the court before the scheduled conference.

162. On July 25, 2011, the court's judicial assistant telephoned Mr. Gooding shortly after the start time of the conference. Mr. Gooding answered the telephone and said that he thought another attorney had substituted in for him on the case. Mr. Gooding failed to mention to the judicial assistant that he was suspended from the practice of law.

163. Shortly thereafter, the court learned that Mr. Gooding had been suspended on May 22, 2011.

164. Judge Kearney ordered Mr. Gooding to appear at an August 8, 2011, hearing to determine if sanctions should be imposed.

165. At the hearing on August 8, 2011, Mr. Gooding acknowledged that he had not provided the court with any notice of his suspended status as required by

³ *Crimar Holdings, Ltd. vs. Taddei Enterprises, et al.*, Pima County Superior Court file no. C-20103538

Rule 72, Ariz. R. Sup. Ct., and had not informed his client, even though a trial date was near at hand and would occur during his period of suspension.

166. As a result, Mr. Gooding's client had to retain other counsel and the hearing date had to be reset.

167. The court's minute entry regarding the August 8, 2011 hearing states in part, "At any time, failure to advise the Court of a revocation or suspension causes significant difficulties from the Court's point of view. But in this case, [Mr. Gooding's] complete failure to advise the Court, opposing counsel, and especially his client, in the face of a looming trial date, gives me [Judge Kearney] a great cause for concern."

168. On August 30, 2011, the State Bar sent Mr. Gooding a copy of the misconduct allegations regarding his conduct in *Crimar v. Taddei* and asked him to respond within twenty days. Mr. Gooding failed to respond. On October 4, 2011, a second letter was sent to Mr. Gooding giving him ten days to respond. Mr. Gooding failed to respond.

169. Mr. Gooding violated ER 8.1(b), when he knowingly failed to respond to the State Bar's request for a written response.

170. Mr. Gooding violated Rule 31(a) and (b), Ariz. R. Sup. Ct., when he held himself out as a practicing lawyer while suspended.

171. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to provide the requested written response and promptly comply with the State Bar's request for an interview.

172. Mr. Gooding violated Rule 72(a) and (b), Ariz. R. Sup. Ct., when he failed to notify the appropriate people/parties that he was suspended May 22, 2011.

173. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), Rules 31(a) and 54(d)(2), and 72(a) and (b), Ariz.R.Sup.Ct.

COUNT EIGHT

(File no. 11-2960⁴/Hannah)

174. Nathan B. Hannah ("Mr. Hannah") represents Theresa Zapotocky ("the seller") in a dispute concerning the sale of a residence to Michael and Melissa Bishop ("the buyers"), who were represented by Mr. Gooding.

175. Mr. Hannah wrote to the seller on July 25, 2011, to inform her that according to a report in the July/August, 2011, issue of the Arizona Attorney, Mr. Gooding had been suspended from the practice of law effective May 22, 2011.

176. On August 18, 2011, Mr. Hannah received a telephone call from Mr. Gooding. During the call, Mr. Gooding stated that the buyers wanted the dispute with the seller to proceed to arbitration and that he would send Mr. Hannah a written request that the arbitration be held under the rules of the Arizona Department of Real Estate. Mr. Gooding failed to inform Mr. Hannah of his suspension from the practice of law.

177. After the telephone call from Mr. Gooding, Mr. Hannah consulted with the firm's "ethics" partner concerning his obligation to report misconduct to the State Bar.

⁴ File No. 11-2960 is related to file no. 11-2686.

178. On August 25, 2011, the seller emailed Mr. Hannah that Mr. Gooding had contacted a potential witness in the dispute between the buyers and the seller. The witness reported this contact to the State Bar.

179. Mr. Hannah submitted a bar charge regarding Mr. Gooding's conduct and the State Bar began an investigation. Mr. Gooding responded only after a warning letter was sent to him.

180. Mr. Gooding violated ER 5.5(a), when he knowingly practiced law while suspended from the practice of law.

181. Mr. Gooding violated Rule 54(d)(2), Ariz.R.Sup.Ct., when he failed to timely provide the requested written response to the State Bar.

182. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 5.5(a) and Rule 54(d)(2), Ariz.R.Sup.Ct.

COUNT NINE

(File No. 11-3628/Nannini)⁵

183. Mr. Gooding was hired on June 29, 2010, to work with Steve L. Nannini's ("Mr. Nannini") current lawyers, Dan O'Connell of O'Connell & Associate, who represented Mr. Nannini and the other beneficiaries in the settlement of his dad's estate, the William Nannini Trust⁶, ("the Trust case").

⁵ Mr. Nannini testified at the Hearing that he was mistaken and does not have a claim for restitution against Respondent. It was not clear if he was withdrawing his charge altogether.

⁶ *In the Matter of the Estate of William M. Nannini*, Pima County Superior Court file no. PB20090990

184. Mr. Gooding was also hired to defend Mr. Nannini against a lawsuit brought by Northern Trust Bank ("NTB")⁷. NTB was the trustee of the William Nannini Trust and at some point Mr. Nannini had borrowed \$300,000.00 from the trust, ("the Note case").

185. In the Trust case, Mr. Nannini signed a fee agreement with Mr. Gooding on August 23, 2010, which Mr. Gooding claims is the authority under which he billed Mr. Nannini an additional \$5,253.50. Mr. Nannini disputes the additional fee.⁸ The fee agreement states that in the event of a dispute over fees, the issue shall be resolved through the State Bar's Fee Arbitration Program. There was no fee agreement in the Note case.

186. Mr. Gooding acknowledged to Mr. Nannini that he had received his pro-rata share of the legal fees paid in the Trust case. Mr. Gooding was paid \$6,720.00 and then demanded an additional \$5,253.50, which Mr. Nannini says is unreasonable and beyond what he is due. Mr. Gooding threatened Mr. Nannini with a civil lawsuit if he didn't pay the outstanding balance.

187. In letter dated June 29, 2011, sent by Mr. Gooding to Mr. Nannini regarding the fee dispute the letter head still contained the "Gooding Law Firm, PLLC" caption even though Mr. Gooding was suspended from the practice of law as of May 22, 2011.

⁷ *Northern Trust v. Steven L. Nannini*, Pima County Superior Court file no. C20103635

⁸ Mr. Nannini appeared telephonically at the Aggravation/Mitigation hearing and stated that after meeting with his accountant he realized he was mistaken about the fees he felt were double-billed. He stated that he has no claim for restitution against Mr. Gooding.

188. Mr. Gooding sent emails to Mr. Nannini on November 14, 2011, and again on December 13, 2011, indicated it was from alangooding@goodinglaw.net, and was signed "Alan E. Gooding, Esq." Mr. Gooding again threatened to file a civil lawsuit to collect the fees he alleged Mr. Nannini still owed.

189. Mr. Nannini submitted a bar charge regarding Mr. Gooding's conduct. In his bar charge Mr. Nannini informed that for a period of over a year, Mr. Gooding caused delay and lacked diligence in performing his duties. Further, Mr. Gooding failed to respond to, "e-mails or phone calls; sometimes for several weeks on issues that were extremely important. In fact, most of the time [Mr. Gooding's] voice mail was "full" and [Mr. Nannini] could not leave a message." In addition Mr. Nannini indicated that Mr. Gooding at some point decided that it was no longer necessary for him to obtain Mr. Nannini's approval in negotiating the settlement of the Estate.

190. The State Bar began an investigation and on November 22, 2011, Mr. Gooding was sent a copy of Mr. Nannini's allegations and asked to respond within twenty days. Mr. Gooding failed to respond.

191. On December 16, 2011, a second letter was sent to Mr. Gooding giving him ten days to respond. Mr. Gooding responded on December 19, 2011.

192. The staff investigator attempted to set up an interview with Mr. Gooding by leaving messages for him on January 4, 6, and 10, 2012. His office number had the following greeting: "You have reached the desk of Alan Gooding with the Gooding Law Firm...."

193. On January 10, 2012, the staff investigator attempted to leave a message on Mr. Gooding's office phone, but the voice mail box was full and would not accept any more messages.

194. On January 31, 2012, staff investigator sent a letter to Mr. Gooding requesting he contact her to set up an interview. Mr. Gooding never responded.

195. Mr. Gooding violated Rule 42, Ariz. R. Sup. Ct., ER 8.1(b), when he knowingly failed to provide a written response to the State Bar until the second warning letter was sent to him. Mr. Gooding then failed to respond to a request for a follow up interview.

196. Mr. Gooding violated Rule 31(a) and (b), Ariz. R. Sup. Ct., when he held himself out as a practicing lawyer while suspended from the practice of law.

197. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to timely respond to the State Bar.

198. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), Rules 31(a) and Rule 54(d)(2), Ariz.R.Sup.Ct.

COUNT TEN

(File No. 11-3909/State Bar of Arizona)

The State Bar received a Minute Entry ("ME") from Judge Gordon's court in *Bank of the West v. Tucson Land & Realty Advisors L.L.C., et al.*, Pima County Superior Court file no. C20109296, dated November 14, 2011.

199. In the ME Judge Gordon noted that Mr. Gooding was suspended and when he asked Mr. Gooding's client if she was aware of the suspension, she responded that she was not.

200. On December 14, 2011, Mr. Gooding was sent a copy of the November 14, 2011 ME and was asked to respond within twenty days. Mr. Gooding failed to respond.

201. On January 13, 2012, a second letter was sent to Mr. Gooding giving him ten days to respond. Mr. Gooding failed to respond.

202. Opposing counsel in C20109296, was unaware of Mr. Gooding's May 22, 2011, suspension. Judge Gordon's office was not notified of Mr. Gooding's suspension.

203. The staff investigator attempted to contact Mr. Gooding on his cell phone and office phone on January 30, 2012. Both numbers indicated that the "service is temporarily unavailable."

204. On January 31, 2012, the staff investigator sent a letter to Mr. Gooding requesting he contact her to set up an interview, but Mr. Gooding never responded.

205. On January 31, 2012, staff investigator emailed Mr. Gooding to set up an interview, but Mr. Gooding never responded.

206. Mr. Gooding violated ER 8.1(b), when he knowingly failed to provide the requested written response to the State Bar.

207. Mr. Gooding violated Rule 54(d)(2), Ariz. R. Sup. Ct., when he failed to timely respond to the State Bar's request for information.

208. Mr. Gooding violated Rule 72(a) and (b), Ariz. R. Sup. Ct., when he failed to notify the appropriate people/parties that he was suspended from the practice of law as of May 22, 2011.

209. Mr. Gooding's conduct in this count violated Rule 42, Ariz.R.Sup.Ct., specifically ER 8.1(b), and Rules 31(a), 54(d)(2) and 72(a) and (b), Ariz.R.Sup.Ct.

Testimony of Witnesses

Testimony of Marcia Valenzuela

Ms. Valenzuela hired Mr. Gooding to file suit against Dorn Homes on behalf of her company, Rock Roofing, and also to assist her with estate planning. She paid Mr. Gooding \$1,620 for the estate planning services. She never received any final documents. Instead she received only drafts that were replete with errors and subsequently never heard back from him. As to the Dorn Homes suit, Ms. Valenzuela agreed to exchange a roof for his home for her deposit on these services. The value of the roof was \$9,550 for the roof, plus \$1,715 for a recover board, for a total of \$11,270. Mr. Gooding and she agreed the providing of the roof was a general retainer for the services Mr. Gooding might provide. Mr. Gooding filed only the complaint and never detailed his hours by billing. He soon ceased responding to her. Ms. Valenzuela engaged another lawyer to assist her. That lawyer (Mr. Corey Larson) discovered that the case was dismissed due to inactivity. He informed her she would have to re-file. Ms. Valenzuela requested her files from Mr. Gooding. He never delivered them. She eventually received them but only after Mr. Larson went to Mr. Gooding's office and demanded them. There was no work product in the files but rather only the information she had provided to Mr. Gooding.

She acknowledged that Mr. Gooding had represented her and her husband in matters before the registrar of contractors. She and Mr. Gooding went to court three times together. She testified she was initially paying Mr. Gooding in cash, but because they were running out of funds they discussed providing the roof as a

retainer for the services he would provide. The exchange of the roof for legal services took place after the registrar matters.

Testimony of Corey Larson

Mr. Larson has been a member of the State Bar of Arizona for 9 years. He represented Ms. Valenzuela and Rock Roofing, LLC in connection with her lawsuit against Dorn Homes. The Valenzuelas hired him to take over the lawsuit when Mr. Gooding stopped responding to their multiple attempts to contact him. Mr. Larson stated that he tried multiple times to contact Mr. Gooding to retrieve files and to replace him as counsel. In the course of becoming engaged he discovered that the matter had been administratively dismissed and that several warnings from the court had been sent to Mr. Gooding. He filed a new complaint. The file he ultimately obtained from Mr. Gooding did not contain any pleadings; it contained only the original client records of approximately 500 pages of documents relating to the underlying construction project.

Mr. Larson is an experienced attorney and has handled over 50 litigation matters involving construction payment disputes. In his opinion the four-page complaint filed by Mr. Gooding was a very basic complaint for money damages, but was general and did not develop specific numbers regarding damages nor contain contract language. When asked for his opinion on the value of the work provided by Mr. Gooding, Mr. Larson stated that an experienced attorney would bill approximately \$1,500 for the services rendered. He does not believe that Respondent provided any value to the Valenzuelas because the work had to be done again, and they had to pay Mr. Larson to obtain the files, draft new pleadings, and do the work.

Testimony of Steven L. Nannini

Mr. Nannini hired Mr. Gooding to assist another lawyer (Dan O'Connell) in a case related to the estate of his father. Mr. Nannini also hired Mr. Gooding to represent him in a separate matter regarding his own trust. Mr. Nannini initially believed that the payments he listed totaling \$4,100 were made for his father's case. He reviewed them with his accountant and in fact those payments were made for his own case. He erred in his letter dated August 9. He does not believe that he has any claim against Mr. Gooding.

Testimony of Delores O'Leary

Mrs. O'Leary hired Mr. Gooding to represent her in a case where a new home that was built behind her home caused drainage problems, damaging her floors and walls. She retained Mr. Gooding to file a lawsuit on her behalf. Ms. O'Leary paid Mr. Gooding \$1,518.80, to do research and file a complaint with the Registrar of Contractors. On Mr. Gooding's advice, however, they proceeded straight to arbitration. Mr. Gooding appeared but was completely unprepared. Ms. O'Leary had hired her own expert witnesses, which she states was the only information presented at the arbitration. Further, she later spoke with Mr. Trachta, the arbitrator, who reviewed her file and advised her that the lawsuit should never have gone forward given that her claim was outside the statute of limitations period. Ms. O'Leary paid Mr. Trachta directly for the fees that had been billed to Mr. Gooding but were never paid. Ms. O'Leary also incurred costs for her witnesses, and was required to pay \$5,000 to defendant's lawyer for the arbitration. The total she seeks in restitution is \$7,918.80.

Mrs. O'Leary acknowledges that Mr. Gooding and she had discussed several different causes of action, and that one approach they discussed was nuisance. Mrs. O'Leary stated that her house was 27 years old, and that they had not experienced these problems until the other house was built. The other house was built in 2005, and according to her expert the problem would have taken several years to surface. She also acknowledges she was very cost conscious and did not want to spend a great deal of money on the suit. She also acknowledged that Mr. Gooding told her of the risk of losing the action. She was insistent that they move forward. Mr. Gooding never forwarded to her the written decision of the arbitrator. She confirmed she paid the \$5,000 payment she was ordered to pay to the opposing side's counsel.

Testimony of Carolyn Jones

Ms. Jones described hiring Mr. Gooding to assist her in her duties as personal representative of the estate of Geraldine Solomon. She confirmed that Exhibit 1 was her response to the State Bar, but wished to correct the \$16,000 amount provided for mortgage payments to \$1,600. That noted, she believes that restitution to the estate should be \$9,072 resulting from four months of additional costs to the estate because of delay, plus \$2,296 for the new attorney she hired to review the case Mr. Gooding left unfinished. Ms. Jones explained that the requested amount consists of mortgage payments of \$1,654 per month, HOA dues of \$284 per month, electricity totaling \$219, gas totaling \$324, and water totaling \$776. The new attorney billing was \$4,487, but the initial bill of \$2,296 was to go through Mr. Gooding's work to determine what occurred. The total due the estate should therefore be \$11,368.

Mr. Gooding failed to send creditor notices which delayed her ability to close the estate, after he repeatedly assured her that the estate would be wound up by the end of June or in early July. He simply stopped responding to her at all. She learned that he had been suspended, but not from him. She hired another attorney who told her creditor notices had not been sent. She believes she should be reimbursed for the mortgage payments made during the delay. The house was subsequently deeded, subject to the mortgage, to the granddaughter who also inherited the residue of the estate. Ms. Jones noted that she believed that Mr. Gooding had handled the previous case for Geraldine Solomon very well, and that he was nice young man and she was confident that he was qualified. She does not know what happened to him that he would then let everybody down so badly.

She acknowledges that as both the residual estate and the house had gone to the granddaughter, there was no resulting loss to the estate when it made the payments. Ms. Jones stated the granddaughter has let the house go to foreclosure.

State Bar Closing Statement

In conclusion, the State Bar noted that Mr. Gooding has not been a participant in the matters before the Bar, making it difficult for the Bar to gather information. This includes the fact that Ms. Miller was not even aware Mr. Gooding would attend the hearing. No explanation has ever been provided as to why Respondent failed his clients and the State Bar. The State Bar recommended disbarment because Mr. Gooding abandoned his clients and caused problems for many people. He failed to notify not only his clients when he went on suspension, but also opposing parties and the courts. Mr. Gooding also has a prior disciplinary offense as an aggravating factor, as well as a pattern of misconduct because of the

number of clients and offenses. Ms. Miller also stated that Mr. Gooding failed to respond to the State Bar investigation and refused to acknowledge the wrongful nature of his conduct. He has still given no reason or explanation as to why the conduct occurred. Mr. Gooding has not attempted to make clients whole prior to this point, and Ms. Miller stated that if restitution is ordered she hopes he will take it seriously. The State Bar found no mitigating factors.

Finally, Ms. Miller noted that although they do not rely that much on proportionality any longer, she has listed three very similar cases in her Prehearing Brief that indicate that disbarment is warranted in these types of cases. She argued based on what he failed to do for his clients, and on his own behalf in his duties to the State Bar and the courts, it appears that he cannot function the way that he should in this setting.

Mr. Gooding's Testimony

Mr. Gooding prepared to give his closing statement, but as he began to speak it became evident that he was going to address the underlying issues. The PDJ determined that in fact Mr. Gooding would be testifying, so he was sworn in.

Mr. Gooding asked the PDJ and panel to consider that for the last three years or so he has been suffering from anxiety and depression. He has tried medications, none of which worked as well as he hoped and additionally they had side effects. Mr. Gooding states that he does not have a complete understanding of what is going on; he recognizes that something has changed and that in the last three years he has not been a good attorney in some instances. In the last week he has begun a new medication (Escitalopram), an SSRI which is hoped will not have the same side effects as other medications he has taken. Mr. Gooding is seeing Nurse

Practitioner Helen Hess in Tucson, whom he states “specializes in this”, and that prior to that he had been seeing his general practitioner. In addition, Mr. Gooding has been in counseling for approximately 6 months. A separation from his wife that began in May has been resolved; they are reconciled and working through things.

Mr. Gooding also noted that his younger brother passed away this summer (July 4th), which made dealing with the other issues in his life more difficult. Mr. Gooding is currently not practicing law, and he has no plans in the near future to do so. He has not applied for reinstatement, as he believes that he is not yet in the position to “do what he needs to do.” Mr. Gooding noted that in his previous practice he was a general practitioner, and that it was not a good practice for him. He took on too many things with which he was not familiar. He notes he did certain things well, notably real estate transactions and business law. He is currently working as a paralegal on these types of transactions for Dan O’Connell, who was co-counsel on the Nannini case in this complaint. He states that Dan has been a very good mentor to him and is fully informed as to what has occurred.

Mr. Gooding noted that he has learned the wisdom of doing a more limited range of transactions, and being good at those. If he does practice law again he would do so in a law office, probably Mr. O’Connell’s, limiting his work to real estate and business transactions. He feels he does those well. If and when he does engage in the practice of law again, it will be when he can get his personal life in order and handle the stress he used to be able to handle very well, and provide a valuable service to clients. He asks the panel to consider those mitigating factors, and that he has no immediate plan to reinstate himself into the practice of law. His suspension is six months but he knows it will take longer than that for him to

recover and seek reinstatement. He hopes to do it in the next five years, but if it takes him longer than that and he does have to retake the bar exam then he will do so.

None of his testimony was supported by any documentation.

III. CONCLUSIONS OF LAW

Mr. Gooding 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 Mr. Gooding violated the following: Rule 42, ERs 1.2(a), 1.3, 1.4(a)(1) and (4), 1.8(a), 1.15(d), 3.2, 5.5(a), 8.1(b), 8.4(c), and 8.4(d); and Rules 31(a), 54(d)(1) and (2), and 72(a) and (b), Ariz. R. Sup. Ct.

IV. Sanction and ABA Standards

The only issue for the Hearing Panel to decide is the sanction to be imposed. Pursuant to Rule 58(k), a panel shall consult the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* in determining an appropriate sanction. Consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. *Standard 3.0; In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). A Hearing Panel also may conduct a proportionality analysis "if appropriate." Rule 58(k), Ariz. R. Sup. Ct.

Duty Violated

Mr. Gooding's conduct violated his duties to his clients, the profession, and the legal system. The most important ethical duties are those obligations which a

lawyer owes to his clients. *Standards*, II. Theoretical Framework. Here, Mr. Gooding's client violations centered on his duty of diligence (4 counts), and communication (5 counts), paralleling his previous discipline. Disturbingly, in the instant matter Mr. Gooding compounded the ethical misconduct by misrepresenting his actions to a client, and violating his duties to the legal system and the profession when he failed to notify of his suspension and did not respond to the State Bar.

Mental State

A lawyer's mental state is reviewed to determine if the ethical lapses were committed intentionally, knowingly, or negligently. Here, Mr. Gooding's mental state was "knowing," as he was aware of his suspended status, the new disciplinary charges, and his obligation to respond to the State Bar. Mr. Gooding also acted knowingly in the underlying charges.

Extent of Injury

Evidence shows that Mr. Gooding caused actual harm to his clients and the legal profession. Examples include the actual harm he caused to Ms. Jones in Count Three, requiring her to pay \$2,296 in duplicate fees to another lawyer to do the work he was paid to do. He also inflicted harm on the legal system by not complying with Rule 72(a). Clients, opposing counsel, and courts were each affected by his failure to notify of his suspension. Cases were delayed, and judicial and legal system resources were wasted because of client's lack of notification of his suspension and his failure to withdraw.

Aggravating/Mitigating Circumstances

The State Bar argues aggravating factors under Standard 9.2 of: (a) prior disciplinary offenses, and that Mr. Gooding is currently suspended; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding; (g) refusal to acknowledge wrongful nature of conduct; (i) substantial experience in the practice of law; and (j) indifference to making restitution.

Mr. Gooding's testimony appears to indicate that *Standard 9.32(c)* personal or emotional problems, is a mitigating factor, as he states he suffers from anxiety and depression and has experienced problems in his personal life. Mr. Gooding offered proof of medication for such concerns in his prior Consent to Discipline, and said that he is currently seeing a Nurse Practitioner and undergoing counseling. However Mr. Gooding did not supply undergirding proof related to these matters.

Standards

It is noted that the *Standards* provide in each case that "absent aggravating or mitigating circumstances," the sanctions provided are "generally appropriate." *Standards, II. Theoretical Framework.* They are designed as guidelines to give the courts a framework, but flexible such that the court may impose the appropriate sanction based on the specific circumstances of each case. *Standards, 1.3.*

Standard 4.41 (Lack of Diligence) is applicable to Mr. Gooding's violations of the duties to his clients, which are ERs 1.2(a), 1.3 and 1.4. This *Standard* provides that disbarment is generally appropriate when:

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

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

In contrast, *Standard 4.42* provides that 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.

The difference between the disbarment and suspension standard under 4.4 primarily rests on the degree of injury that occurred; serious or potentially serious injury is required to apply the disbarment standard.

Standard 4.6 (Lack of Candor) is applicable to Mr. Gooding's violation of ER 8.4(c). *Standard 4.61* provides that disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client. Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client. *Standard, 4.62.*

Standard 7.0 (Violation of Duties owed as a Professional) is applicable to Mr. Gooding's violation of ERs 5.5 and 8.1(b). *Standard 7.1* provides that 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* provides that 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.

Discussion

In this instance, the underlying client matters involve knowing failures to diligently represent clients and communicate regarding the status of their cases. Mr. Gooding's failures were myriad and occurred somewhat contemporaneously with the violations of his previous suspension. In this instance, Mr. Gooding exacerbated the situation by failing to notify his clients, the courts, and opposing counsel of his suspension from the practice of law, and failing to withdraw from cases. Mr. Gooding continued to act as a lawyer in some counts despite his suspension, with an apparent disregard for the disciplinary process. While it appears that Mr. Gooding's continued practice was for clients he already represented prior to his suspension, the record is inadequate to support this conclusion for Counts 6, 8, and 10. What is perfectly clear, however, is that Mr. Gooding continued to represent clients during his suspension, and in a manner that resulted in additional ethical violations.

In addition, Mr. Gooding violated Supreme Court rules when he knowingly failed to respond to State Bar screening in the many complaints. These violations are serious instances of misconduct toward the profession when considered in tandem with his conduct. A Hearing Panel should always concern itself with the reasons why one acts unethically for mitigation. We empathize when human frailties cause ethical blunders. But when one enters an agreement to be suspended and ignores that agreement, any explanations are made shallow in light of the conduct.

Mr. Gooding acknowledges he is not currently able to practice law in the manner required to benefit his clients and meet the standards of the profession. He argues he has continuing issues with anxiety and depression, which he says he is attempting to control via medication and counseling. But he offered no supporting documentation for such statements. Further, Mr. Gooding avers that he has no near-term intention of seeking reinstatement to the active practice of law. He acknowledges that one of his errors was to practice too broadly, and that if he practices again he will confine himself to real estate and business transactions.

The State Bar maintains that the presumptive sanction in this case is disbarment, based on *Standard* 4.41.⁹ The Panel does not agree. *Standards* 4.41 and 7.1 require that *serious injury or potentially serious injury* result from the lawyer's unethical conduct. While the record reflects actual injury, no proof of serious injury or potentially serious injury has been established. For instance, no case was made in any count that a client forfeited all rights and remedies or suffered substantial loss of funds because of Mr. Gooding's actions. Therefore the appropriate *Standards* are 4.42 and 7.2, establishing suspension, and what must be determined is the appropriate length of that suspension.

Here, Mr. Gooding's conduct was aggravated by his previous disciplinary order to stop practicing for six months and one day. He refused to adhere to that order or simply ignored it. His prior actions as an attorney were fraught with the same lack of diligence and non-communication which resulted in the underlying charges in this complaint. Also aggravating the sanction is his complete failure to

⁹ The State Bar's Prehearing Statement erroneously refers to Standard 4.43, Reprimand, however the language is that of 4.41, Disbarment.

respond to State Bar screening. No mitigation was shown apart from Mr. Gooding's alleged continued battle with anxiety and depression.

A Hearing Panel may conduct a proportionality analysis "if appropriate." Rule 58(k). For proportionality purposes, the State Bar offers three cases, each of which resulted in disbarment. The "obligation is to tailor the discipline in each situation to the facts of the case." *Matter of Murray*, 159 Ariz. 280, 283, 767 P.2d 1, 4 (1988). Lawyer discipline is not to punish a lawyer but, rather, to protect the public, the profession, and the administration of justice; deter similar conduct among other lawyers; preserve confidence in the integrity of the Bar; foster confidence in the legal profession and the self-regulatory process; maintain the integrity of the profession in the eyes of the public; and assist, if possible, in the rehabilitation of an errant lawyer. *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004); *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001); *In re Walker*, 200 Ariz. 155, 24 P.3d 602 (2001) (1,4,5); *In re Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990); *In re Hoover*, 161 Ariz. 529, 779 P.2d 1268 (1989); and *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985).

The Panel finds that a three-year suspension is the appropriate sanction in this matter and comports with the purposes of discipline while reflecting the severity of Mr. Gooding's behavior. There being no disbarment, Mr. Gooding's verbal request to brief the cases offered by the State Bar is not required and is denied.

It is troubling that during Mr. Gooding's testimony, he admitted taking on cases outside of his comfort zone and area of expertise despite the multiple problems he had previously admitted. He acknowledged this had also had been a

factor that contributed to a performance that fell below the standard of practice required of an attorney. The Hearing Panel believes that the process used by hospital physician peer review and discipline is instructive here. Specifically, when a hospital peer review committee finds that a physician has engaged in a practice that the physician is not competent in, the hospital may restrict and limit the physician's privileges in that area of practice. Following that example, the Hearing Panel has determined that Mr. Gooding as a term of probation must demonstrate his competence in all areas in which he intends to practice.

Considering the length of this present suspension and the prior suspension he substantively ignored, the panel also orders Mr. Gooding to pass the Arizona Bar Examination prior to being readmitted. Upon Reinstatement, Mr. Gooding shall be placed upon probation for two years subject to conditions described below.

V. Conclusion

In accordance with the above findings of fact and conclusions of law, the Hearing Panel has determined the appropriate sanction based on the facts deemed admitted, the *Standards*, the aggravating factors, and the goals of the attorney discipline system.

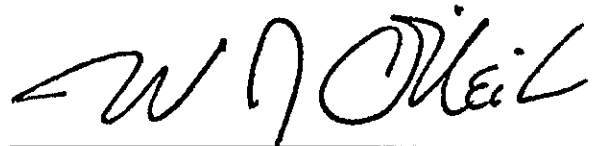
The Hearing Panel now orders as follows:

IT IS ORDERED:

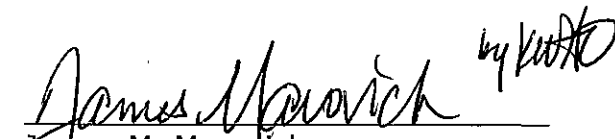
1. Mr. Gooding is suspended from the practice of law for a period of three years, such suspension to be effective immediately.
2. Prior to applying for readmission Mr. Gooding shall successfully pass the Arizona Bar examination.

3. Upon reinstatement Mr. Gooding will be on probation for two years subject to LOMAP and a practice monitor, with other restrictions to be determined at the time of reinstatement. Specific terms and conditions of probation may include restrictions on his area of practice, if deemed appropriate.
4. Respondent shall pay all costs and expenses incurred by the State Bar and the Office of the Presiding Disciplinary Judge in this proceeding.
5. Respondent shall pay restitution of Two Thousand Two Hundred and Ninety Six Dollars (\$2,296.00) to the estate of Geraldine Solomon.

DATED this 29th day of October, 2012.


The Honorable William J. O'Neil
Presiding Disciplinary Judge

CONCURRING:


James M. Marovich
Volunteer Attorney Member


Mark Salem
Volunteer Public Member

Original filed with the Disciplinary Clerk
this 29th day of October, 2012.

Copies of the foregoing mailed
this 29th day of October, 2012, to:

Mr. Alan Gooding
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Copy of the foregoing hand-delivered/emailed
this 29th day of October, 2012, to:

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Lawyer Regulation Records Manager
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by: 