

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**SCOTT MICHAEL FORRESTER,
Bar No. 029252**

Respondent.

PDJ 2020-9120

**DECISION AND
ORDER IMPOSING SANCTIONS**

[State Bar No. 19-0223]

FILED MAY 5, 2021

SUMMARY

Mr. Forrester represented a client in 2018 in a bankruptcy matter. The client paid Mr. Forrester \$4,500 to file the bankruptcy petition. Within a few days, the client decided not to use Mr. Forrester's legal services. Mr. Forrester continued to charge the client's credit card without permission. He was untruthful to the client's credit card company regarding the charges and provided information contrary to Arizona law asserting that a client is not entitled to a refund once a fee agreement is executed. He intentionally misrepresented that the client signed a fee agreement when he did not. Mr. Forrester further misrepresented that his office provided the client a month of representation, thus earning the fees. His untruthful statements caused the fraudulent credit card charges to be reinstated. Mr. Forrester then failed to participate in voluntary fee arbitration with the client and avoid service of the

State Bar's Subpoena. The client filed a complaint with the Attorney General's Office and Mr. Forrester was untruthful in his response.

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on December 14, 2020. On December 16, 2020, the Complaint was served on Mr. Forrester by certified, delivery restricted mail, and 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.

A settlement conference was scheduled for April 13, 2021, at 2:00 p.m. The settlement conference officer was Paul D. Friedman. Mr. Forrester failed to provide Mr. Friedman with a settlement conference memo and then failed to attend the settlement conference. Mr. Friedman, through Bar Counsel, notified the Court of Mr. Forrester's failure to participate and opined that Mr. Forrester was not acting in good faith.

On April 19, 2021, the PDJ entered an Order of Contempt, struck Mr. Forrester's Answer, and set the matter for an aggravation/mitigating hearing on May 4, 2021. Mr. Forrester was given the opportunity to purge that Order by moving for reconsideration no later than April 26, 2021. As of this date Mr. Forrester has still not filed a motion.

The Hearing Panel on May 4, 2021 comprised volunteer public member W. Keith Turner, volunteer attorney member, Ralph J. Wexler, and the PDJ, William J.

O'Neil. Bar Counsel, Bradley F. Perry. Mr. Forrester did not appear. Exhibits 1-18 were admitted Exhibits 2 and 18 are sealed.

FINDINGS OF FACT

The deemed admitted facts stated in the complaint

1. Mr. Forrester was a lawyer licensed to practice law in Arizona having been first admitted to practice in Arizona on March 27, 2012.

COUNT ONE (File No. 19-0223/Rodney Shearer)

1. Rodney Shearer hired Mr. Forrester on or about November 27, 2018, to represent him in a bankruptcy matter.

2. Mr. Forrester charged Mr. Shearer \$4,500 for the representation. [EX 1, Bates 11].

3. Mr. Shearer paid Mr. Forrester \$2,500 on November 28, 2018, with his Capital One credit card. A second payment of \$2,000 was made on the same day with the same card. [EX 2, Bates 25].

4. Mr. Forrester provided a writing claiming it evidenced the scope of the representation and the fee. He did not obtain a signed representation agreement from Mr. Shearer as he later claimed. [EX 1, Bates 1-4].

5. On November 30, 2018, Mr. Shearer decided not to use Mr. Forrester's services. On the same day, Mr. Shearer contacted Capital One to reverse the charges. [EX 2, Bates 29-30].

6. On or about December 21, 2018, Capital One informed Mr. Shearer that the charges had been reversed and credited back to his account. [EX 2, Bates 31-32].

7. On or about December 26, 2018, Mr. Forrester charged Mr. Shearer's Capital One card \$2,500 without Mr. Shearer's permission. [EX 2, Bates 26].

8. On or about December 28, 2018, Mr. Forrester charged Mr. Shearer's Capital One card \$2,000 without Mr. Shearer's permission. [EX 2, Bates 26].

9. On or about January 14, 2019, Mr. Shearer received notice from Capital One that Mr. Forrester provided documentation supporting the original November 2018 charges. Both charges, totaling \$4,500, were reinstated. [EX 2, Bates 33-34].

10. The information provided by Mr. Forrester to Capital One was untruthful. The information, contrary to Arizona law, that a client is not entitled to a refund once a fee agreement is executed with Mr. Forrester's office. [EX 3, Bates 44].

11. Mr. Forrester further misrepresented that Mr. Shearer signed a fee agreement when he did not. [EX 1, Bates 1-4; EX 3, Bates 44].

12. Mr. Forrester further misrepresented that his office provided Mr. Shearer a month of representation, thus earning the fees. However, Mr. Forrester was hired to file a bankruptcy petition on behalf of Mr. Shearer and had not done so when he explained to Capital One that he had earned Mr. Shearer's fee. [EX 3, Bates 44].

13. Mr. Forrester's representation agreement states that all fees are earned upon receipt but does not contain the mandatory ER 1.5(d)(3) language alerting clients that a refund can be obtained based on the work performed. [EX 1, Bates 1-4].

14. On or about January 21, 2019, Capital One credited Mr. Shearer for the two fraudulent charges made by Mr. Forrester on December 26 and 28, 2018. [EX 2, Bates 35-36].

15. On or about February 8, 2019, Capital One closed Mr. Shearer's claims regarding the November 2018 charges. [EX 2, Bates 37-38].

16. Between February and March 2019, Mr. Forrester caused the fraudulent December 26 and December 28, 2018, charges to be reinstated. [EX 2, Bates 28].

17. As of March 2019, Mr. Forrester had taken \$9,000 from Mr. Shearer (11/28/18 \$2,500; 11/28/18 \$2,000; 12/26/18 \$2,000; 12/28/18 \$2,500). [EX 2, Bates 15-43; *See* EX 5, Bates 46 wherein Mr. Forrester admits Mr. Shearer was charged twice].

18. Mr. Forrester had performed no work to earn the fees, which were double what he informed Mr. Shearer he would charge for the representation. [EX 1, Bates 1-11].

19. On April 19, 2019, Mr. Shearer filed for State Bar fee arbitration to contest the charges. [EX 11, Bates 70].

20. On April 23, 2019, Mr. Forrester credited Mr. Shearer's Capital One card \$4,500. This was only done because Mr. Shearer contacted the Bar. [EX 2, Bates 24].

21. Mr. Forrester ultimately chose not to participate in voluntary fee arbitration. [EX 12, Bates 71].

22. In May 2019, Mr. Shearer filed a complaint against Mr. Forrester with the Arizona Attorney General's Office. [EX 4, Bates 45].

23. Mr. Forrester made knowing, material misrepresentations in his response to the AG complaint. [EX 5, Bates 46-47].

24. Mr. Forrester told the AG that the charge disputes were decided in his favor by Capital One. Mr. Forrester did not inform the AG that he knowingly provided false information to Capital One to prevail on the disputes. [EX 5, Bates 46-47].

25. Mr. Forrester stated to the AG that Mr. Shearer's fees were earned upon receipt pursuant to their fee agreement. Mr. Forrester did not inform the AG that the Arizona Rules of Professional Responsibility allow for refunds of earned upon receipt fees. Mr. Forrester also failed to inform the AG that Mr. Shearer never signed a fee agreement. [EX 5, Bates 46-47].

26. In July 2019, Mr. Shearer contacted the Bar to file a complaint against Mr. Forrester.

27. In August 2019, Mr. Forrester informed A/CAP counsel that he would participate in fee arbitration to resolve the issue. [EX 10, Bates 67].

28. Between August 2019 and October 2019, Mr. Forrester informed the fee arbitration coordinator that he would respond to Mr. Shearer's fee arbitration application but failed to do so. [EX 13, Bates 72-79]

29. On August 14, 2019, Mr. Forrester informed the Fee Arbitration Coordinator that he was almost finished with the requisite paperwork but thereafter failed to submit the necessary documents. [EX 13, Bates 73].

30. On September 24, 2019, Mr. Forrester again told the Fee Arbitration Coordinator that he was almost finished with the requisite paperwork but thereafter failed to submit the necessary documents. [EX 13, Bates 79].

31. On October 7, 2019, the Fee Arbitration Coordinator again reached out to Mr. Forrester to see if the paperwork was complete. Mr. Forrester simply responded, "Got it, thanks!" [EX 13, Bates 75].

32. Later in October 2019, A/CAP counsel contacted Mr. Forrester to inform him that the matter was being sent to screening because Mr. Forrester failed to follow through with his promise to arbitrate. Mr. Forrester, via email, stated: "Okay, I still fully intend to arbitrate, I'm just beyond busy right now. But I'm okay with a screening." [EX 10, Bates 69].

33. The Bar screened Mr. Forrester on or about November 21, 2019. Mr. Forrester failed to meet the deadline for a response. [EX 14, Bates 80-81].

34. The Bar sent a reminder and courtesy extension on or about December 17, 2019, to which Mr. Forrester did not respond. [EX 15, Bates 83].

35. The Bar reminded Mr. Forrester again in May 2020 that he had not yet submitted a written response. Mr. Forrester thereafter again failed to respond to the bar charge. [EX 16, Bates 84-85].

36. The Bar subpoenaed a written response and supporting documents in July 2020. [EX 6, Bates 48-53].

37. Mr. Forrester attempted to avoid service of the subpoena. The SBA investigator who served the subpoena noted, "I just left the SDT with Forrester's wife at their home (I sent Amy Ralston the info). Forrester hasn't been communicative. Here's Rose's and my efforts prior to serving his wife: I left voice mails on two numbers identifying them as Forrester Law – 602-889-5778 on 7/17 at 1:05 PM and 602-900-9142 on 7/17 at 2:46 PM. Rose did the same on 7/20 at 9:40 AM. He didn't return any of the four calls. Rose tried serving him at his home on 7/20 at 5:45 PM, but no one answered the door. I went to his office at 330 N. 2nd Ave. today at 10:45 AM. I talked with Valerie, a receptionist for attorney Matthew Cunningham. She said Forrester is up on the 2nd floor of this home and went upstairs to see if he was in, which he wasn't. She also said she hasn't seen Forrester in about

a week and that at times some of his clients have come in looking for him because he hasn't returned their calls." [EX 17, Bates 86-88].

38. Mr. Forrester provided a response to the subpoena that did not include all requested information. [EX 7, Bates 54-55].

39. Bar Counsel contacted Mr. Forrester and asked for a supplemental response, which Mr. Forrester later provided. The supplemental response still did not include all requested information. [EX 7, Bates 54-55; EX 8, 61-62].

40. Mr. Forrester failed to provide information for these requests:

- a. "Any and all files related to the representation of Rodney Shearer in all matters related to Rodney Shearer including, but not limited to: Client file, including all correspondence (mailings, emails, text messages, etc.), phone logs, representation agreements, motions, attorney notes, etc., organized in a navigable manner. You may provide a hard or electronic copy of the file. If you choose to provide a hard copy, please provide one-sided copies only."
- b. "All document filed on behalf of Mr. Shearer."
- c. "All documents obtained from Mr. Shearer."
- d. "Copies of law firm bank accounts showing all payments made by Mr. Shearer."
- e. "The applicable representation agreement or other confirmatory writing explaining the scope of services and fee charged for those services. If no signed representation agreement exists, please explain why. If no signed representation agreement exists, please explain why you told Capital One "Rodney Shearer signed a contract that makes it very clear that we do not issue refunds..."
- f. "All information provided to credit card company re: charge dispute."

41. Mr. Forrester provided a look-back accounting of all work performed as part of his response to the subpoena. The accounting shows Mr. Forrester included 3.6 hours of attorney work to respond to Mr. Shearer's AG's complaint, totaling \$1,260. [EX 7, Bates 60].

42. Mr. Forrester's conduct violated Rule 42, Ariz. R. Sup. Ct., ERs 1.5(a), (b) and (d)(3), 1.16(d), 8.1(b), and 8.4(c), and Rule 54(d)(1) and (2), Ariz. R. Sup. Ct.

CONCLUSIONS OF LAW

Based upon the record, the Hearing Panel finds by clear and convincing evidence that Mr. Forrester violated: Rule 42, Ariz. R. Sup. Ct., ERs 1.5(a), (b) and (d)(3), 1.16(d), 8.1(b), and 8.4(c), and Rule 54(d)(1) and (2), Ariz. R. Sup. Ct.

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, these factors should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard* 3.0.

Duties violated:

Mr. Forrester violated his duty to his clients by violating ERs 1.5 and 8.4(c) under *Standard* 4.6. Mr. Forrester violated his duty to the public by violating ERs 8.1(b) and 8.4(c) under *Standard* 5.1. Mr. Forrester also violated his duty owed as a professional by violating ERs 1.5, 1.16, and 8.1(b) under *Standard* 7.0.

Mental State:

Mr. Forrester's conduct was intentional, implicating *Standard* 5.11.

Knowing conduct may be inferred from intentional conduct, implicating *Standards* 4.61, 4.62, 5.12, 7.1, and 7.2.

Injury:

Mr. Forrester's conduct caused serious injury to client Rodney Shearer. Mr. Shearer, a bankruptcy client, was charged \$9,000 for a bankruptcy petition that was never filed. While Mr. Forrester eventually refunded \$4,500, Mr. Shearer was left with the initial \$4,500 charge, on which he has been paying interest since November 2018. [See Exhibit 18, Bates 89-90 showing Mr. Shearer's current credit card balance which includes Mr. Forrester's \$4,500.]

Appropriate Standard:

Mr. Forrester's conduct implicates *Standards* 4.61, 4.62, 5.11, 5.12, 7.1 and 7.2.

The appropriate *Standard* to apply must be related to Mr. Forrester's most serious misconduct: dishonesty. The appropriate *Standard* must also reflect Mr.

Forrester's intentional mental state. *Standards* 4.61, 4.62, 5.12, 7.1, and 7.2 only require a "knowing" mental state. *Standard* 5.11 is the only applicable *Standard* that contemplates intentional conduct.

Standard 5.11(b) states: "Disbarment is generally appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on a lawyer's fitness to practice." *Standard* 5.11(b) is the appropriate *Standard* to apply.

AGGRAVATING AND MITIGATING FACTORS

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

1. 9.22(b) dishonest or selfish motive. Mr. Forrester engaged in misconduct to benefit himself financially. He took payment of Mr. Shearer's fee, performed no services, continued to charge Mr. Shearer's credit card while in a formal fee dispute through Capital One, and misled both Capital One and the Attorney General's Office in order to keep the money he did not earn.

2. 9.22(e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency. Mr. Forrester did not timely respond to the State Bar's initial screening letter or complementary 10-day extension letter. [Exs. 14-16.] Mr. Forrester then attempted to evade service of a valid subpoena [Ex. 17] and provided an incomplete response to that subpoena after service was effectuated. Mr. Forrester filed his Answer only

after entering the 10-day default grace period, did not timely provide an initial disclosure statement until reminded by Bar Counsel [EX 9, Bates 63-34], failed to provide a settlement conference memorandum, and ultimately failed to attend the court-ordered settlement conference.

3. 9.22(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process. Mr. Forrester made false statements to both Intake Manager Tom McCauley and Fee Arbitration Coordinator Lisa Casablanca regarding his willingness to participate in fee arbitration. Mr. Forrester strung Ms. Casablanca along for approximately 3 months by telling her he was “almost finished” and “essentially done” with the paperwork necessary to begin the fee arbitration process. Mr. Forrester’s false statements were designed to prevent the bar charge from being escalated to a formal screening investigation while simultaneously delaying resolution through fee arbitration.

4. 9.22(g) refusal to acknowledge wrongful nature of conduct. Mr. Forrester maintains he has earned the \$4,500 fee despite having no work product to support the claim while intentionally misleading the State Bar regarding arbitration.

5. 9.22(i) substantial experience in the practice of law. Mr. Forrester was admitted to the practice of law in 2012. Mr. Forrester had been practicing for over six years when originally hired by Mr. Shearer and approximately 9 years when he failed to attend the court-ordered settlement conference.

6. 9.22(j) indifference to making restitution. Mr. Forrester has not offered to refund even a portion of Mr. Shearer's \$4,500. Mr. Forrester also intentionally thwarted the fee arbitration process to avoid being ordered to refund Mr. Shearer.

The Hearing Panel finds there are no mitigating factors.

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 orders:

- a) Mr. Forrester shall be disbarred from the practice of law effective immediately.
- b) Mr. Forrester shall pay all costs and expenses incurred by the SBA. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in this proceeding.

c) Mr. Forrester shall pay Restitution for \$4,500, to Rodney Shearer within ten (10) days of entry of the Final Judgment and Order.

A final judgment and order shall follow separately.

DATED this 5th day of May 2021.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Signature on File

Ralph J. Wexler, Volunteer Attorney Member

Signature on File

W. Keith Turner, Volunteer Public Member

Copies of the foregoing were emailed
This 5th day of May, 2021, to:

Bradley F. Perry
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Scott Michael Forrester
Forrester Law Practice
67 E. Weldon Avenue, Suite 104
Phoenix, Arizona 85012-2043
AND
330 N. 2nd Ave.
Phoenix, AZ 85003-1517
Email: scott@forresterlawpractice.com
Respondent

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

SCOTT MICHAEL FORRESTER,
Bar No. 029252

Applicant.

PDJ 2020-9120

**ORDER DENYING
APPLICATION FOR STAY**

[State Bar No. 19-0223]

FILED JUNE 2, 2021

The hearing panel issued its Decision and Order Imposing Sanctions on May 5, 2021 immediately disbaring Respondent Scott Michael Forrester. Mr. Forrester filed a timely notice of appeal and application for stay pursuant to Rule 59(c), Ariz. R. Sup. Ct. The State Bar responded in opposition to the stay request.

The three members of the hearing panel have considered the stay request, including Judge William J. O'Neil, who has since retired as Presiding Disciplinary Judge.

Rule 59(c), Ariz. R. Sup. Ct. states that a stay application shall be granted, subject to appropriate conditions of supervision, *except* when the hearing panel, in its discretion, determines no conditions of supervision will protect the public while the appeal is pending. Mr. Forrester has not proposed any terms of supervision, and the hearing panel agrees with the concerns identified in the State Bar's response. Concluding that no conditions of supervision will protect the public while the appeal is pending,

IT IS ORDERED denying Respondent's application for a stay of the disbarment order.

DATED this 2nd day of June 2021.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

COPY of the foregoing e-mailed this
2nd day of June 2021 to:

Bradley F. Perry
Bar Counsel
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: lro@staff.azbar.org

Scott Michael Forrester
67 E. Weldon Avenue, Suite 104
Phoenix, AZ 85012
Email: scott@forresterlawpractice.com
Respondent

by: SHunt