

SUPREME COURT OF ARIZONA

In the Matter of a Member of the) Arizona Supreme Court
State Bar of Arizona) No. SB-14-0012-AP
)
GARY L. LASSEN,) Office of the Presiding
Attorney No. 5259) Disciplinary Judge
) No. PDJ20139068
Respondent.)
)
_____) **FILED 9/23/2014**

DECISION ORDER

Pursuant to Rule 59, Rules of the Supreme Court, Respondent Gary L. Lassen appealed the hearing panel's findings and imposition of a two year suspension. The Court has considered the parties' briefs and the record in this manner. With respect to Count One, the Court accepts the panel's determination that Lassen violated ERs 1.4(a)(3) and (4) and 1.16(d). We reject the panel's determination that Lassen violated ERs 1.3, 1.5, 3.1, and 8.4(d). We also reject the finding that he violated ER 1.16 by giving the client "little time to retain new counsel and file her appeal."

With respect to Count Two, the Court accepts that panel's determination that Lassen violated ERs 5.5 and 8.4(c), and Rule 54(c). We reject the panel's determination that Lassen violated ERs 1.3, 1.4(a)(3) and (4), 1.5, 1.16, and 3.2.

With respect to the sanction, the Court finds that a suspension of eighteen months is sufficient to satisfy the purposes of lawyer discipline. The Court accepts the orders of restitution and the imposition of costs and expenses.

IT IS ORDERED affirming the panel's determinations as set forth in this order and modifying the sanction to reflect an eighteen (18) month suspension.

DATED this 23rd day of September, 2014.

SCOTT BALES
Chief Justice

TO:

Gary L Lassen
Craig D Henley
Jennifer Albright
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Mary Pieper
Netz Tuvera
Lexis Nexis

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**GARY L. LASSEN,
Bar No. 005259**

Respondent.

PDJ-2013-9068

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar Nos. 11-3770 and 12-
2382]

FILED FEBRUARY 7, 2014

On December 18 and 19, 2013, the Hearing Panel ("Panel"), composed of Susan J. Burnell, a public member, Sandra E. Hunter, an attorney member, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a two day hearing pursuant to Rule 58(j), Ariz. R. Sup. Ct. Craig D. Henley appeared on behalf of the State Bar of Arizona ("State Bar"). James J. Belanger and Scott M. Bennett appeared on behalf of Mr. Lassen. Rule 615 of the Arizona Rules of Evidence, the witness exclusion rule, was invoked.¹ The Panel carefully considered the Complaint, Answer, the State Bar's Pre-hearing Statement, testimony including that of Mr. Lassen, and admitted exhibits. The Panel now issues the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz. R. Sup. Ct.

I. SANCTION IMPOSED:

¹ Consideration was given to sworn testimony of Julia Hutton, Alice Giannola, and Earl Washington.

RESPONDENT IS SUSPENDED FOR TWO YEARS AND UPON REINSTATEMENT, TWO YEARS OF PROBATION IMPOSED. RESTITUTION AND COSTS OF THESE DISCIPLINARY PROCEEDINGS ORDERED.

II. BACKGROUND AND PROCEDURAL HISTORY

Respondent, a lawyer licensed to practice law in the state of Arizona, was suspended on April 28, 2012 for thirty (30) days after violating ERs 1.3, 1.4(a)(2)-(4), 1.4(b), 2.1, 8.1, and 8.4(c). See Exhibits 144, 145. He was reinstated to the practice of law in Arizona on June 25, 2012. See Exhibit 146.

An Order of Probable Cause was filed on April 15, 2013. The State Bar filed its complaint on August 14, 2013. Respondent filed his Answer on September 19, 2013. An initial case management conference was held on October 1, 2013. By concurrence of the parties, firm hearing dates were set for November 25-26, 2013. The parties were directed to file a joint prehearing statement. Each party was ordered to file within that prehearing statement a final list of exhibits to be used at trial for any purpose and a list of witnesses intended to be used by each party during trial. It was ordered that "No witness shall be used at the trial other than those timely disclosed and listed, except for good cause."

An expedited status conference was held in this matter on November 1, 2013 at the request of Mr. Lassen. Karen Clark, *Adams & Clark*, specially appeared with Mr. Lassen for the limited purpose of the status conference. Ms. Clark requested a short continuance and two additional weeks to submit the Joint Prehearing Statement. Ms. Clark acknowledged on the record that the joint prehearing statement was known to be due that day and acknowledged that she had received the State Bar's portion of that statement. She requested two additional weeks to

submit their Joint Prehearing Statement. The hearing was continued until December 18-19, 2013.

Because Mr. Lassen would not cooperate in the preparing of the joint prehearing statement, the State Bar unilaterally filed its Prehearing Statement on November 15, 2013. Respondent filed an *untimely* prehearing statement on November 26, 2013. Mr. Lassen chose not to file his prehearing statement *pro se* until November 26, 2013. He was given until December 10, 2013 to give good cause for why his witnesses and exhibits should not be stricken. It is undisputed that the witnesses and exhibits in his joint prehearing statement were substantially different from his disclosure. For reasons stated, the joint prehearing statement was stricken by order of the PDJ on December 2, 2013, and the listed witnesses and exhibits of Mr. Lassen were excluded except those also listed by the State Bar. By Order of the PDJ filed December 16, 2013, both parties' pre-hearing memorandums were stricken.

The two count Complaint alleged violations of the following Arizona Rules of Professional Conduct: ER 1.3, ER 1.4(a)(3) and (4), ER 1.5(b), ER 1.16, ER 3.1, ER 3.2, ER 5.5(a), ER 8.4(c) and (d). The Complaint also alleged Mr. Lassen violated Rule 54(c) Ariz. R. Sup. Ct.

FINDINGS OF FACT

COUNT ONE (File no. 11-3770/Hutton)

Julia Hutton is the CEO and owner of Orca Communications Unlimited, LLC (Orca), a public relations firm that provides services in the United States and abroad. See Hutton Testimony; see also Exhibit 2, 3. Ms. Hutton entered into a contingency fee agreement with Respondent (the Agreement) for representation in claims against a former employee and others. Id.; see also Exhibit 21, 23 and 24. The Agreement set

out a billing schedule. Id. Respondent's billing was plagued with inaccuracies and incomplete accountings throughout the representation. See Exhibit 51, 74, 75 and 76; see also Giannola Testimony.

Respondent filed a complaint on behalf of Orca alleging breach of contract, breach of fiduciary duty and duty of loyalty, breach of covenant of good faith and fair dealing, fraud, tortious interference with business expectancies, and unfair competition. See Exhibit 2. The defendants filed a motion to dismiss the complaint. See Exhibit 1. Respondent and Ms. Hutton met about a month later to discuss an outline of how to proceed with the litigation. Ms. Hutton requested the outline on two occasions after the meeting and Respondent promised both times to send it the following day. See Exhibit 55; see also Hutton and Giannola Testimony. He finally did so after Ms. Hutton's second request. Id. Respondent also failed to respond to various requests from Ms. Hutton regarding the representation and billing. See Exhibit 57; see also Hutton and Giannola Testimony.

Following oral argument, the Court granted the motion to dismiss all six counts in the complaint but gave plaintiff leave to re-plead the fraud claim as a contract claim by March 15, 2011. After dismissal, defendant's counsel notified Respondent that they considered the claims meritless and intended to request attorney's fees and costs if Respondent pursued them. See Exhibit 11. In response, Respondent told opposing counsel that he asked his clients to "seriously consider" a settlement offer. See Exhibits 12, 13, 14 and 15; see also Hutton Testimony. However, Respondent never discussed with his clients the possibility of settling the matter or the defendant's assertions that the claims were meritless. See Exhibits 12, 13, 14 and 15; see also Hutton Testimony.

The Court filed the oral argument minute entry on February 22, 2011. See Exhibit 7. Respondent did not provide Ms. Hutton a copy of the Court's minute entry or the First Amended Complaint until the day the pleading was due, on March 15, 2011. As such, Ms. Hutton had only a few hours to review the documents for accuracy and thoroughness before she had to sign the pleading and return it to Respondent for filing. See Exhibit 8; see also Exhibit 66. The Court dismissed the First Amended Complaint by minute entry filed August 26, noting that it contained "mere conclusions of law or unwarranted deductions." See Exhibit 9. Respondent did not notify Ms. Hutton of the dismissal until September 20. See Exhibit 59. Respondent also failed to provide Ms. Hutton the Court's July 15, 2011 order dismissing Orca's "original" complaint and awarding the defendants' attorney fees until July 28, 2011. See Exhibits 70 and 72. Furthermore, the order was sent with no explanation and only after Ms. Hutton requested an updated status report that Respondent had previously promised to send. See Exhibit 71 and 72.

As a result of the dismissal of the First Amended Complaint, defendants filed another motion for attorneys' fees. See Exhibit 10. Almost two months later, Respondent advised Ms. Hutton that the motion for fees was still pending, and that a notice of appeal would be due within thirty days after a ruling on the motion. He offered to handle the appeal for a specified cost. However, two days after the Court granted the defendants' motion for fees, Respondent filed a motion to withdraw as counsel. See Exhibit 26, 28 and 77.

After Respondent's withdrawal as counsel, Ms. Hutton requested the return of all unused funds and an accounting of all costs and attorneys' fees. See Exhibit 46. A dispute arose regarding the accounting of a Ten Thousand Dollar prepaid fee for costs.

See Lassen, Hutton and Giannola Testimony. Respondent argued that the Ten Thousand Dollar amount was to be a retainer and that the terms of the Agreement were ambiguous. He urged resolution of the issue through fee arbitration, and stated that he would provide Bar Counsel with an "appendix" of additional information regarding the matter. He failed to do so. See Exhibit 48.

COUNT TWO (File no. 12-2382/Washington)

Respondent was suspended from the practice of law on April 28, 2012 and reinstated on June 25, 2012. Earl J. Washington and his wife sought legal advice regarding complaints against the City of Tempe Parks and Recreation Department for racial discrimination and harassment. See Washington and Lassen Testimony. On April 9, 2012, Mr. Washington met with Respondent to discuss the possibility of recovering damages and the removal of a City employee. See Exhibit 92; see also Washington and Lassen Testimony. Respondent expressed interest in representing Mr. Washington in the matter and promised to research the legal issues. See Exhibit 92; see also Washington Testimony.

On May 1, 2012, Respondent advised Mr. Washington that he would provide an analysis of possible courses of action against the City of Tempe within a week. See Exhibit 93 and 134; see also Washington Testimony. Mr. Washington provided Respondent a check for \$1,000 and requested establishing terms of the representation. Respondent agreed to perform records requests and to submit a notice of claim to the City of Tempe by June 1, but there is no record that representation terms were ever established. See Exhibit 97 and 134; see also Washington and Lassen Testimony. After failing to meet the June 1 date promised, Mr. Washington asked for a status update. Respondent informed Mr. Washington on June 11 that he was working on a

public records request, a status of internal investigation and/or action request, and a notice of claim for damages. See Exhibit 100; see also Washington Testimony. Following several more communication exchanges and failures by Respondent to provide documents to Mr. Washington by dates promised, Respondent finally sent the items promised. Respondent admitted to sending certain correspondence to Mr. Washington on Respondent's legal letterhead.

Respondent apparently arranged a meeting with the Tempe Deputy City attorney and agreed to meet with Mr. Washington beforehand to create an agenda for the meeting. See Exhibits 117 and 118. It is unclear whether such an agenda was ever created. Nonetheless, after the alleged meeting with the City attorney, and despite repeated requests, Respondent failed to provide Mr. Washington with a summary of the meeting or any documentation substantiating that it indeed took place. Nearly two weeks after the meeting supposedly took place, Respondent sent Mr. Washington three options for seeking relief and stated that costs and a formal fee agreement would be necessary before moving forward. However, Respondent did not identify any statute of limitations deadlines or set forth a rate at which fees/costs would be charged. See Exhibit 123.

On September 5, 2012, Mr. Washington filed a written bar charge with the State Bar after learning from other legal counsel that the statute of limitations had likely run on their claims against the City of Tempe. See Exhibit 91; see also Washington Testimony. Following the bar charge, Respondent emailed Mr. Washington claiming disagreements about the scope and object of the representation. For example, contrary to prior documented communications between the parties, Respondent claimed it was not until the end of the representation that he became aware that Mr.

Washington sought the firing of a city employee or monetary damages. These disagreements are the result of Respondent's failure to establish a fee agreement or to confirm in writing the scope of the representation at the inception of the representation. See Washington Testimony.

At no time did Mr. Lassen ever inform Mr. Washington that he had entered a consent agreement for discipline that would result in the suspension of his law license. At no time did Mr. Lassen ever inform Mr. Washington of his pending or actual suspension from the practice of law. When Mr. Lassen met with Mr. Washington and later Mr. and Mrs. Washington after his suspension began, the name of Mr. Lassen's law firm was listed in the lobby of the office complex and Mr. Lassen as an attorney was painted on his office entrance. At all times Mr. Washington believed Mr. Lassen was a licensed attorney.

We find the statements of Mr. Lassen to Mr. Washington were designed to leave the impression that he was actively practicing law during a time in which he was suspended. Regardless of whether or not Mr. Lassen practiced law at that time his statements alluded to, and such comments could only lead one to conclude that he was actively engaged in the practice of law in multiple other matters at that time. Those statements included his May 9, 2012, statement "I would like to get together, but I have a major argument in the 9th circuit Court of Appeals on Monday." See Exhibit 94.

There were multiple occasions on which he misled Mr. Washington. Mr. Lassen in his testimony acknowledged that he considered Mr. Washington to be a client at the time of their first meeting in April, 2012. He never sent him a written notice of his suspension in compliance with Supreme Court Rule 72. On May 1, 2012, he wrote Mr. Washington telling him he could expect from him an analysis of possible courses of

action to consider. However, he testified he was not working on that analysis. See Exhibit 93. Another example is that on June 11, 2012, Mr. Lassen informed his client he was working on three separate pieces of correspondence for him. See Exhibit 100. However, he testified he was not working on those documents. Mr. Lassen was untruthful to his client and we find he was intentionally misleading.

IV. CONCLUSIONS OF LAW AND DISCUSSION OF DECISION

A. Count One (Hutton)

The Panel finds clear and convincing evidence that Mr. Lassen violated the ethical rules detailed below and as alleged in paragraphs 43-48 of Count One of the Complaint.

ER 1.3

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.3, requiring a lawyer to provide act with reasonable diligence and promptness in representing a client. During the course of the representation Respondent did not act diligently by, among other things, promptly preparing and filing the First Amended Complaint, having left it for the day it was due to obtain the client's input and approval. The First Amended Complaint was subsequently dismissed, in part, because Respondent had not pled sufficient facts.

ER 1.4

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.4(a)(3) and (4), which provide that a lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Respondent did not keep Ms. Hutton reasonably informed of the status of the matter by, among other things, failing to promptly advise Ms.

Hutton of rulings on pending motions and to provide status updates when he promised to do so.

ER 1.5

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.5, which provides that a lawyer shall not collect an unreasonable fee or an unreasonable amount for expenses. For example, a review of the Respondent's invoices reflects that there were numerous errors and corrections made to them throughout the course of the representation. Ms. Hutton has identified time entries and invoices that contain false or duplicative entries. Charging a client twice and falsely, clearly amount to an unreasonable fee.

ER 1.16

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.16, which provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, . . . and refunding any advance payment of a fee that has not been earned. Mr. Lassen negotiated a fee arrangement for an appeal which he told Ms. Hutton would be due thirty days after the Court's ruling on defendant's motion for fees. However, two days after the ruling, Mr. Lassen moved to withdraw as counsel, leaving Ms. Hutton with little time to retain new counsel and file her appeal. Respondent also retained all of the fees and costs paid by Ms. Hutton, but failed to provide her with a full accounting despite being asked to do so on numerous occasions. Ms. Hutton has disputed the accuracy of the invoices and the amounts billed by Respondent.

ER 3.1

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 3.1, which provides that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law. Respondent prepared and filed an original complaint and a first amended complaint, both of which were dismissed by the Court as having no basis in fact or law, and for which the Court awarded attorneys fees to the defendants.

ER 8.4(d)

The Panel finds clear and convincing evidence that Mr. Lassen violated ER 8.4(d), which provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Respondent prepared and filed an original complaint and a first amended complaint, both of which were dismissed by the Court as having no basis in fact or law, and for which the Court awarded attorneys fees to the defendants.

B. Count Two (Washington)

The Panel finds clear and convincing evidence that Mr. Lassen violated the ethical rules detailed below and as alleged in paragraphs 87-94 of Count Two of the Complaint.

ER 1.3

Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client. During the course of the representation Respondent, among

other things, failed to send a notice of claim to the City of Tempe despite repeated promises that he would do so and failed to request additional public records from the City.

ER 1.4

Panel finds clear and convincing evidence that Mr. Lassen violated ERs 1.4(a)(3) and (4), which state that a lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Among other things, Respondent did not keep Mr. Washington reasonably informed of the status of the matter, including the deadline for filing a notice of claim against the City of Tempe. Nor did he respond to Mr. Washington's reasonable requests for information for, among other things, the substance of the meeting between Respondent and the City Attorney and the true status of documents that Respondent had agreed to prepare for the Mr. Washington.

ER 1.5

Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.5, which states that the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing. There is no evidence that Respondent ever communicated to Mr. Washington, in writing, the scope of the representation or the fees/expenses to be paid by the client. Respondent also collected an unreasonable fee for legal services as he accepted the representation and practiced law during a period of suspension.

ER 1.16

Panel finds clear and convincing evidence that Mr. Lassen violated ER 1.16, which states that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . refunding any advance payment of a fee that has not been earned. Respondent retained the \$1,000 paid by Mr. Washington, however he did not provide the services for which he was retained. Additionally, he accepted the retainer while he was suspended from the practice of law.

ER 3.2

Panel finds clear and convincing evidence that Mr. Lassen violated ER 3.2, which states that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Respondent failed to produce written work-product when promised to Mr. Washington and failed to promptly file a notice of claim with the City of Tempe as promised, thereby causing potential and actual harm to Mr. Washington.

ER 5.5

Panel finds clear and convincing evidence that Mr. Lassen violated ER 5.5(a), which states that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. During his period of suspension from the practice of law in Arizona, Respondent accepted a retainer from Mr. Washington; cashed the retainer check; and agreed to prepare various demand letters and public records requests, as well as to send a notice of claim to the City.

ER 8.4

Panel finds clear and convincing evidence that Mr. Lassen violated ER 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent led the Mr. Washington to believe that he could take on the legal representation when in fact, Respondent was suspended from the practice of law at the inception of the representation and until he was reinstated effective June 25, 2012.

Rule 54(c)

Panel finds clear and convincing evidence that Mr. Lassen violated Rule 54(c), Ariz. R. Sup. Ct., which states that grounds for discipline of members include a knowing violation of any rule or any order of the court. Respondent practiced law in Arizona during the period of his suspension from the practice of law and in violation of the order of the Arizona Supreme Court.

V. SANCTIONS

In determining an appropriate sanction, the Panel considered the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") as a guideline. Rule 58(k), Ariz. R. Sup. Ct. The appropriate sanction turns on the unique facts and circumstances of each case. *In re Wolfram*, 174 Ariz. 49, 59, 847 P.2d 94, 104 (1993).

Analysis under the ABA Standards

Generally, when weighing what sanction to impose, the Panel considers 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. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004). *See also Standard 3.0.*

Although the *Standards* do not account for multiple charges of lawyer misconduct, the sanction imposed should at least be consistent with the sanction for the most serious misconduct that has been found. *Theoretical Framework*, p. 7. Consideration is also given to the degree of harm caused by the misconduct. *Matter of Scholl*, 200 Ariz. 222, 224-225, 25, P.3d 710 (2001).

In these matters, Mr. Lassen knowingly violated his duties owed to the legal system, his former clients, and as a professional.

Standard 4.4, Lack of Diligence, is applicable to Respondent's violations of ERs 1.3 and 1.4. *Standard 4.42* provides:

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.

Mr. Lassen violated ER 1.3 by knowingly failing to promptly prepare and file the First Amended Complaint in Count One (the Hutton matter). ER 1.3 was also violated when Mr. Lassen knowingly failed to send a notice of claim to the City of Tempe, and when he knowingly failed to request additional public records from the City in Count Two (the Washington matter). Additionally, Mr. Lassen violated ER 1.4 by knowingly failing to provide Ms. Hutton with notice and advice throughout the representation regarding Court rulings, and by knowingly failing to inform Mr. Washington that he failed to send a notice of claim to the City of Tempe, failing to request additional public records from the City, and failing to timely respond to Mr. Washington's requests.

Standard 4.6, Lack of Candor is applicable to Respondent's violations of ERs 1.5(b), 8.4(c) and Rule 54(c). *Standard 4.62* provides:

Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client.

Mr. Lassen's billing records in Count One contained several errors and corrections, including entries that were knowingly false or duplicative in violation of ER 1.5. Furthermore, in Count Two Mr. Lassen knowingly failed to provide written rates of fees, violating ER 1.5(b), he misrepresented his ability to undertake the representation raising ER 8.4(c) violations, and knowingly practiced law while suspended in violation of ER 5.5.

Standard 6.2, Abuse of the Legal Process is applicable to Mr. Lassen's violations of ERs 3.1, 3.2, and 8.4(d). *Standard 6.22* provides:

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

ERs 3.1 and 8.4(d) were violated when Mr. Lassen knowingly filed meritless complaints, causing injury to his former clients. A violation of ER 3.2 occurred when Mr. Lassen knowingly failed to both provide Mr. Washington with the requested work product and to timely file a notice of claim.

Standard 7.0, Violation of Duties Owed as a Professional is applicable to Mr. Lassen's violations of ERs 1.16(d) and 5.5(a). *Standard 7.2* provides:

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.

Mr. Lassen knowingly failed to provide Ms. Hutton with an accurate accounting of all fees and failed to return any unearned fees, violating ER 1.16. Mr. Lassen received payment for legal services from Mr. Washington while he knew he was suspended and then failed to perform the legal services. The few legal services Mr. Lassen did

provide Mr. Washington were in violation of ER 5.5 because he was suspended during that time.

Given the facts of this matter and upon consideration of the *Standards* applied to Respondent's most serious misconduct, the Panel determined that the presumptive sanction is suspension. Mr. Lassen violated duties owed to his clients, the legal system and his duties as a professional. There was both actual injury to the clients and potential injury to the courts and legal profession. Mr. Lassen's mental state was knowing, which includes the requisite mental state for violations of ER 8.4(c) and Rule 54(c).

Standard 9.0, Aggravating and Mitigating Factors

In attorney discipline proceedings, aggravating factors need only be supported by reasonable evidence. *In re Matter of Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). The Panel finds the evidence supports the existence of the following aggravating factors: 9.22(a) prior disciplinary offense, 9.22(b) dishonest or selfish motive, 9.22(c) a pattern of misconduct, 9.22(d) multiple offenses, 9.22(g) refusal to acknowledge wrongful nature of conduct, 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution.

Mr. Lassen's disciplinary history is as follows:

Pursuant to an Agreement for Discipline by Consent, a 30 day suspension effective April 28, 2012, was imposed in PDJ 2011-9079 for violating ERs 1.3, 1.4(a), 1.4(b), 1.5(b), 2.1, 8.1 and 8.4(c). These prior violations are similar violations to the instant matter and further support the aggravating factor of 9.22(c) pattern of misconduct. By order of the PDJ, Mr. Lassen was reinstated without objection by the State Bar effective June 25, 2012. In addition,

Respondent was censured and placed on one year probation (MAP) in File 06-1529 effective December 14, 2009, for violating ER 8.4(b) and Rules 53(h)(1). Mr. Lassen pled no contest and was found guilty of extreme DUI, endangerment and leaving the scene of an injury accident. He was placed on probation for three years beginning November 7, 2006, and required to serve 10 days in the county jail on work release.

No evidence of mitigation was offered by M. Lassen or the State Bar. However, the 2012 Agreement for Discipline by Consent² reflects that Mr. Lassen was experiencing personal or emotional problems as a result of a conviction for extreme DUI. He was also being treated for depression. Lastly, he had recently opened a practice as a sole practitioner.

V. PROPORTIONALITY

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

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *See In re Peasley*, 208 Ariz. 27, 35, ¶ 33, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 41, 61,

² Judicial notice was taken of the prior Agreement as it was not an exhibit in this matter.

90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, ¶ 49, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In *In Re Wagner*, SB-5-0174-D, Wagner was disbarred. Wagner engaged in the unauthorized practice of law while summarily suspended for failure to comply with her mandatory continuing legal education requirements. Wagner appeared in court representing a father in a child-dependency case. Wagner also failed to comply with a court order regarding the preparation of a joint case management plan and failed to respond to an order to show cause or appear at the show cause hearing. Wagner also failed to cooperate with the State Bar's investigation. Wagner violated E.R.s. 1.4, 3.2, 3.4, 5.5, 8.1, and 8.4(d), and Rules 53(c), 53(d), and 53(f). Aggravating factors included *Standards*: 9.22(c) (pattern of misconduct), 9.22(e) (bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency), 9.22(g) (refusal to acknowledge wrongful nature of conduct), 9.22(h) (vulnerability of victim), and 9.22(j) (indifference to making restitution). The sole mitigating factor was *Standard* 9.32(k) (imposition of other penalties or sanctions).

In *In Re Green*, SB-08-0027-D, Green accepted an agreement for a two-year suspension, two years of probation, and fee arbitration arising out of eleven counts. Green failed to adequately communicate and diligently represent clients, failed to advise clients, the courts, and opposing counsel of an impending disciplinary suspension, and practiced law while he was suspended. Green violated E.R.s 1.2, 1.3, 1.4, 1.5, 1.8, 1.15, 3.2, 5.5, 8.4(c), 8.4(d), and Rules 31(b) and 72(a). Aggravating factors included *Standards*: 9.22(a) (prior disciplinary offenses), 9.22(b) (dishonest or selfish motive), 9.22(c) (pattern of misconduct), 9.22(d)

(multiple offenses), and 9.22(i) (substantial experience in the practice of law). Mitigating factors included *Standards*: 9.32(c) (personal or emotional problems), 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude toward proceedings), 9.32(g) (character or reputation), 9.32(l) (remorse), and 9.32(k) (imposition of other penalties or sanctions).

In *In Re Wahl*, SB-08-0017-D, Wahl was suspended for six months and one day and ordered to complete 15 hours of continuing legal education. Wahl practiced law while he was placed on administrative suspension for failure to comply with his mandatory continuing legal education requirements, including by filing one pleading while suspended and appearing in court. Wahl violated E.R.s 5.5, 8.1(b), 8.4(c) and (d), and Rule 53(f). Aggravating factors included *Standards*: 9.22(d) (multiple offenses), 9.22(e) (bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency), and 9.32(i) (substantial experience in the practice of law). The sole mitigating factor was *Standard* 9.32(a) (absence of a prior disciplinary record).

This case is similar to the above cases in that they all involve, among other things, the unauthorized practice of law. The above cases are distinguishable, however, in that there were mitigating factor(s). In the instant case, there are no mitigating factors in the record that are established by clear and convincing evidence.

VI. CONCLUSION

The Panel has weighed the facts and circumstances in this matter and has considered the applicable *Standards* including the aggravating and mitigating factors.

IT IS ORDERED Mr. Lassen is suspended from the practice of law for a period of two (2) years effective thirty (30) days from the date of this Report and Order.

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

RESTITUTION

Julia Hutton and/or Orca Communications Unlimited, LLC	\$9,044.04
Earl and Martha Washington	\$1,000.00

IT IS FURTHER ORDERED that upon reinstatement, Mr. Lassen shall be placed on two years of probation with LOMAP.

IT IS FURTHER ORDERED that Mr. Lassen shall obtain a MAP assessment prior to filing any application for reinstatement.

IT IS FURTHER ORDERED that Mr. Lassen shall pay costs associated with these disciplinary proceedings.

A final judgment and order will follow.

DATED this 7th day of February, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING

Susan J. Burnell

Susan J. Burnell, Volunteer Public Member

Sandra E. Hunter

Sandra E. Hunter, Volunteer Attorney Member

Original filed with the Disciplinary Clerk

of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 7th day of February, 2014.

Copies of the foregoing mailed/emailed
this 7th day of February, 2014, to:

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