

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MICHAEL A. BURKHART,**  
**Bar No. 018258**

Respondent.

**PDJ 2021-9026**

**DECISION AND ORDER  
IMPOSING SANCTIONS**

[State Bar Nos. 20-2541 and 20-2693]

**FILED JUNE 30, 2021**

The State Bar of Arizona filed a two-count formal complaint against Respondent Michael A. Burkhardt on April 16, 2021. On April 20, 2021, the complaint was served on Respondent by certified, delivery restricted mail, as well as by regular first-class mail, pursuant to Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct. A notice of default issued on May 18, 2021, due to Respondent's failure to file an answer or otherwise defend. Respondent did not cure the deficiency during the default period, and default was entered on June 7, 2021. On that date, notice of an aggravation/mitigation hearing on June 29, 2021, at 10:00 a.m. via Zoom was sent to all parties.

On June 29, 2021, a hearing panel comprised of Presiding Disciplinary Judge Margaret H. Downie, attorney member Richard A. Cruz, and public member Richard L. Westby conducted an aggravation/mitigation hearing. Senior Bar Counsel Hunter F. Perlmeter appeared on behalf of the State Bar. Mr. Burkhardt did not appear. Exhibits 1-28 were admitted into evidence.

## FINDINGS OF FACT

The facts set forth below were included in the State Bar's complaint and have been deemed admitted by virtue of Respondent's default.

1. Respondent was admitted to the State Bar of Arizona on March 17, 1998. He was summarily suspended from the practice of law due to non-compliance with mandatory continuing legal education requirements, effective February 26, 2021.

### **COUNT ONE (File no. 20-2541/Mark Kashimba)**

2. On February 8, 2019, Complainant Mark Kashimba entered into a \$2,500 flat fee agreement with Respondent for representation on reckless driving charges pending in the Desert Ridge Justice Court.

3. On December 17, 2019, Mr. Kashimba's fiancé sent a text message to Respondent stating, "we have not gotten an update of his case for many months. Can you please send over asap?" Respondent did not respond.

4. On December 19, 2019, Mr. Kashimba's fiancé sent another message to Respondent: "So disappointing that we haven't heard from you, Michael. I'll be posting a review on Yelp shortly, so if you could please reach out to Mark asap with an update, we'd appreciate it."

5. On December 20, 2019, Respondent emailed Mr. Kashimba an analysis of the case and an update concerning his attempt to obtain a better offer from the prosecutor.

Respondent also advised Mr. Kashimba that trial had been set for February, but he did not provide a specific date.

6. Respondent failed to appear for the February 2020 trial or to advise Mr. Kashimba of his failure to appear. Because Mr. Kashimba did not appear for trial, the court issued a warrant for his arrest.

7. Mr. Kashimba did not learn of the warrant until November of 2020, when he received a letter from the Motor Vehicle Division (“MVD”).

8. Mr. Kashimba and his fiancé sent text messages to Respondent on November 9, 10, and 12, 2020, advising him of the letter from the MVD. Respondent did not respond.

9. On November 13, 2020, Mr. Kashimba’s fiancé emailed Respondent again. Respondent did not respond.

10. On November 16, 2020, Mr. Kashimba sent Respondent an email asking, “any update on this Michael? At the moment my car registration is expired, and I can’t drive my car as registration renewal is blocked until I get this resolved.”

11. On November 19, 2020, Mr. Kashimba’s fiancé texted Respondent the following: “Mark just called the courts, since you aren’t returning our emails or texts, and found out he has a warrant out for his arrest. This is totally unacceptable. We gave you a lot of money and a lot of time, but we’re filing a complaint with the AZ Bar Association

now. I can't imagine they'll be okay with how you've handled Mark's case." Respondent immediately responded, "I am going to the court today to take care of this. Things got crazy with Covid ... We can change the plea on Dec. 16 or Jan 13." Later the same day, Respondent wrote, "The warrant is quashed."

12. On November 23, 2020, Mr. Kashimba wrote to Respondent, "The warrant for my arrest is still in place. Whatever paperwork you filed is still not signed off yet." Respondent did not respond.

13. On November 25, 2020, Mr. Kashimba's fiancé wrote, "Hi, Michael. When we checked yesterday, the warrant still showed up as being active. Can you please get with the judge today on this to get this removed before Thanksgiving?" Respondent responded, "Yes, I put in a call this morning already to the woman who told me it was quashed. I will call her again shortly." That afternoon, the warrant was quashed, and Mr. Kashimba's fiancé thanked Respondent via text.

14. On December 16, 2020, Mr. Kashimba pled guilty to the original charges.

15. Mr. Kashimba received no benefit from Respondent's services.

16. Respondent failed to respond to the State Bar's December 30, 2020 screening letter, which required a response by January 19, 2021. Thereafter, he failed to respond to the State Bar's January 27, 2021 letter, which noted the prior failure to respond and requested a response within 10 days.

**COUNT TWO (File no. 20-2693/Chad Stevens)**

17. Complainant Chad Stevens filed a brief bar charge, generally indicating that Respondent had not been diligent or communicative in a criminal case in the Phoenix Municipal Court.

18. A review of the docket indicated that Mr. Stevens had missed his appeal deadline. Thereafter, Mr. Stevens, through post-conviction relief (PCR) counsel, argued that Respondent had failed to advise him of the appeal deadline. PCR counsel provided the court with an email in which Respondent stated: “[I]t’s possible that he [Mr. Stevens] thought he made it clear to me that he wanted me to file the appeal for him although I did not have that understanding at all.”

19. On February 27, 2020, the court denied Mr. Stevens’ attempt to obtain relief due to the missed appeal deadline, but later revisited the ruling and granted relief after an in-chambers meeting with the prosecutor and PCR counsel. Mr. Stevens has hearing difficulty, which may have contributed to the decision.

20. State Bar intake counsel attempted to contact Respondent about Mr. Stevens’ matter, but Respondent failed to respond. The matter was therefore referred to litigation counsel.

21. Respondent failed to respond to the State Bar’s January 26, 2021 screening letter, which requested a response by February 15, 2021.

22. On February 18, 2021, a State Bar investigator left a voicemail message for Respondent. The message system indicated that the voice mailbox belonged to Respondent, but Respondent did not return the call.

23. On February 22, 2021, the investigator called Respondent and left another message. The investigator also emailed Respondent, requesting a return phone call. Respondent did not respond.

#### **CONCLUSIONS OF LAW**

1. Respondent's conduct in Count One violated the following ERs: 1.1 (competence); 1.3 (diligence); 1.4 (communication); 1.5 (fees); 3.4(c) (knowing violation of court order); 8.4(c) (dishonesty); 8.4(d) (conduct prejudicial to the administration of justice); and Rule 54(d) (failure to respond to the State Bar).

2. Respondent's conduct in Count Two violated Rule 54(d) (failure to respond to the State Bar).

#### **ABA STANDARDS ANALYSIS**

Sanctions imposed against lawyers "shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions*" ("ABA Standards"). Rule 58(k), Ariz. R. Sup. Ct. In fashioning an appropriate sanction, the hearing 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. *See In re Scholl*, 200 Ariz. 222, 224 (2001).

In Count One, Respondent violated duties owed to his client, implicating Standard 4.4 -- Lack of Diligence. Standard 4.42 states: "Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury to a client."

#### **AGGRAVATING AND MITIGATING FACTORS**

The hearing panel finds that the following aggravating factors have been established by reasonable evidence:

1. 9.22(b) (dishonest or selfish motive): Respondent did not disclose his failure to appear for trial to his client in Count One.
2. 9.22(c) (a pattern of misconduct): Respondent repeatedly failed to adequately communicate with his client in Count One and failed to diligently litigate his client's case by failing to appear at trial and then failing to timely remedy the arrest warrant that had issued for his client.
3. 9.22(d) (multiple offenses): Respondent violated numerous ethical rules.
4. 9.22(e) (bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency): Respondent failed to respond to numerous communications from the State Bar and failed to

answer the formal complaint. "Failure to cooperate with disciplinary authorities is a significant aggravating factor." *In re Pappas*, 159 Ariz. 516, 527 (1988).

5. 9.22(i) (substantial experience in the practice of law): Respondent was admitted to the State Bar of Arizona in 1998.

Only one mitigating factor is apparent from the record: Standard 9.32(a) - absence of prior discipline

The aggravating factors substantially outweigh the one factor in mitigation. The State Bar recommends that Respondent be suspended for a minimum of six months and one day and be ordered to pay restitution to his client in Count One. The hearing panel concurs with these recommendations. A suspension of six months and one day is necessary to protect the public and ensure that Respondent establishes rehabilitation and the other factors set forth in Rule 65 should he desire to practice law in Arizona again.

### CONCLUSION

"Lawyer discipline serves two main purposes: (1) to protect the public and the courts and (2) to deter the attorney and others from engaging in the same or similar misconduct." *In re Zawada*, 208 Ariz. 232, 236 (2004). Attorney discipline also aims "to instill public confidence in the Bar's integrity." *In re Phillips*, 226 Ariz. 112, 117 (2010).

Based on the foregoing, the hearing panel orders as follows:

- a) Respondent Michael A. Burkhart is suspended from the practice of law for six months and one day, effective immediately.
- b) Respondent shall pay restitution to complainant Mark Kashimba in the amount of \$2,500.
- c) Respondent shall pay all costs and expenses incurred by the State Bar. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

A final judgment and order will follow.

**DATED** this 30th day of June 2021.

Signature on File  
**Margaret H. Downie, Presiding Disciplinary Judge**

Signature on File  
**Richard A. Cruz, Attorney Member**

Signature on File  
**Richard L. Westby, Public Member**

Copy of the foregoing emailed  
this 30th day of June, 2021, to:

Michael A. Burkhart  
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by: SHunt

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MICHAEL A. BURKHART,**  
**Bar No. 018258**

Respondent.

**PDJ 2021-9026**

**FINAL JUDGMENT AND  
ORDER**

[State Bar Nos. 20-2541, 20-2693 ]

**FILED AUGUST 3, 2021**

The hearing panel issued its decision on June 30, 2021 imposing a suspension and the payment of restitution and costs. No appeal has been filed pursuant to Rule 59, Ariz. R. Sup. Ct. The State Bar filed its Statement of Costs and Expenses on June 30, 2021 pursuant to Rule 60(d). No objection has been filed.

**IT IS THEREFORE ORDERED** that Respondent **MICHAEL A. BURKHART, Bar No. 018258**, is suspended from the practice of law in Arizona for six months and one day effective June 30, 2021, for his conduct in violation of the Arizona Rules of Professional Conduct.

**IT IS FURTHER ORDERED** that Respondent shall pay restitution to complainant Mark Kashimba in the amount of \$2,500.

**IT IS FURTHER ORDERED** that Respondent shall pay the costs and expenses of the State Bar of Arizona in the sum of \$2,000.00. There are no costs or

expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

**DATED** this 3<sup>rd</sup> day of August 2021.

*Margaret H. Downie*

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**Margaret H. Downie**  
**Presiding Disciplinary Judge**

COPY of the foregoing e-mailed  
on this 3<sup>rd</sup> day of August 2021, to:

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