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, **JEANNE M. ZINGSHEIM,** **Bar No. 022778** Respondent.	**PDJ-2013-9113** **REPORT AND ORDER IMPOSING SANCTIONS** [State Bar No. 13-1317] **FILED FEBRUARY 27, 2014**

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on December 2, 2013. On December 4, 2013, the complaint was served on Jeanne M. Zingsheim ("Ms. Zingsheim" or "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. On December 5, 2013, the Presiding Disciplinary Judge ("PDJ") was assigned to the matter. A notice and entry of default was properly issued on January 2, 2014. That notice cautioned her that "[a]n effective entry of default shall not be set aside except in cases where such relief would be warranted under Rule 60(c) of the Arizona Rules of Civil Procedure." Despite that notice, Ms. Zingsheim did not file an answer or otherwise defend against the allegations in the complaint and the default entered by the Disciplinary Clerk became effective on January 2, 2014.

A notice was filed on January 22, 2014, and sent to all parties notifying them that the aggravation/mitigation was scheduled for February 6, 2014, at 1:30 p.m. at 1501 West Washington, Room 109, Phoenix, Arizona 85007-3231. That notice again cautioned Ms. Zingsheim that "[d]efault shall not be set aside except in cases where such relief would be warranted under Rule 60(c) of the Arizona Rules of Civil Procedure." Ms. Zingsheim's failure to answer is deemed an admission to the allegations contained within the complaint pursuant to Rule 58(d), Ariz. R. Sup. Ct.

On February 6, 2013, the Hearing Panel, composed of David W. Garbarino, attorney member, Mark Salem, public member, and William J. O'Neil, Presiding Disciplinary Judge, heard argument. Craig D. Henley appeared on behalf of the SBA. Ms. Zingsheim did not appear.

The purpose of the aggravation/mitigation hearing is not only to weigh mitigating and aggravating factors, but also to assure there is a nexus between a respondent's conduct deemed admitted and the merits of the SBA's case. A respondent against whom a default has been entered no longer has the right to litigate the merits of the factual allegations of the complaint. However, the respondent 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 dispute the allegations relating to aggravation and to offer evidence in mitigation. Ms. Zingsheim was afforded these rights.

Due process requires a 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 respondent's misconduct. If the hearing

panel finds that sanctions are warranted, then it independently determines which sanctions should be imposed. It is not the function of the hearing panel to simply endorse or "rubber stamp" any request for sanctions.

FINDINGS OF FACT

The Hearing Panel hereby adopts and incorporates by reference the factual background of this case, as fully admitted in the complaint. At all times relevant, Ms. Zingsheim was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on August 5, 2004.

1. On or about December 10, 2012, Respondent entered a Notice of Appearance on behalf of Complainant in the Maricopa County Superior Court Family Court lawsuit of *Soucy v. Soucy*, FC2012-051769. Respondent contemporaneously filed a response and related pleadings to a motion for temporary orders regarding custody and parenting time.

2. On or about December 11, 2012, the Court held a hearing on temporary orders and was informed that the parties reached a partial agreement on some issues but needed a Resolution Management Conference regarding remaining issues. The Court scheduled a Resolution Management Conference for February 5, 2013.

3. On February 5, 2013, the Court held the scheduled Resolution Management Conference. The parties again informed the Court that they reached an agreement on a number of issues. The Court scheduled a Telephonic Status Conference for April 10, 2013, and Trial for June 3, 2013.

4. On April 2, 2013, Complainant mailed Respondent an e-mail stating, in pertinent part, "I was wondering are you still representing me? I've text (sic) you

and you said that you would call me and I'm still waiting. I've sent e-mails hoping to hear back with a response still waiting...I haven't heard from you in (sic) while. I know that your (sic) going to have a phone conference with the judge (4/10/13) to see if anything has been resolved." To date, Respondent has not responded to this e-mail.

5. On April 10, 2013, the Court unsuccessfully attempted to contact Respondent by phone and eventually held the Status Conference without Respondent's participation. The Court further reaffirmed the trial date of June 3, 2013.

6. Client contacted successor counsel, Laura E. Gillis ("Gillis"), panicked and requested representation.

7. After several unsuccessful attempts to contact Respondent, Gillis contacted the SBA regarding obtaining the client's file from Respondent.

8. A couple of days later, the client's file was unexpectedly found at the front door of Gillis's office.

9. On April 25, 2013, Gillis filed a stipulation for substitution of counsel.

10. On June 3, 2013, the Court held a Trial in this matter. While the parties resolved some issues, they proceeded to trial on the remaining issues. The Court took the matter under advisement, and apparently no final ruling has issued on the remaining issues.

11. On July 2, 2013, the SBA mailed Respondent an initial screening letter to Respondent's last known address with Membership Services and requested that a response be submitted to the SBA within twenty (20) days. The letter reminded Respondent of her obligation to submit a timely response pursuant to Rule 41, ER

8.1(b) and Rule 54(d) of the *Arizona Rules of the Supreme Court* and further stated that a failure to timely respond would result in additional discipline.

12. On July 30, 2013, the SBA mailed Respondent a second letter to Respondent's last known address with Membership Services and requested that a response be submitted to the SBA within ten (10) days. The letter again stated that the SBA would seek additional discipline for her failure to timely comply.

13. On August 23, 2013, SBA counsel attempted to contact Respondent at the last known phone number with Membership Services. A voice message was left requesting that Respondent contact the SBA counsel immediately.

14. To date, Respondent has not provided any response to the SBA regarding this matter.

VIOLATIONS

1. By engaging in the above referenced conduct, Respondent violated Rule 42, Ariz. R. Sup. Ct.:

    a. ER 1.2 (scope of representation) – Respondent failed to comply with the client's directions and authority regarding the representation;

    b. ER 1.3 (diligence) – Respondent failed to diligently represent client during the representation and abandoned the case prior to the April 10, 2013 Telephonic Status Conference;

    c. ER 1.4 (communication) – Respondent failed to reasonably communicate with the client during the representation and later abandoned the client without notice;

    d. ER 1.16 (declining/terminating representation) – Respondent failed to provide the client with reasonable notice of Respondent's unilateral termination of the representation and failed to properly surrender the client's file to successor attorney;

    e. ER 8.1(b) (failure to respond to disciplinary authority) – Respondent failed to respond to the lawful requests of the SBA;

f. ER 8.4(d) (conduct prejudicial to the administration of justice) – Respondent's failure to attend the April 10, 2013 Telephonic Status Conference was prejudicial to the administration of justice.

2. By failing to promptly respond or furnish any information requested by the SBA as part of the investigation into the above-referenced allegations of misconduct, Respondent violated Rule 54(d), Ariz. R. Sup. Ct.

CONCLUSIONS OF LAW

Ms. Zingsheim failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Respondent violated the following: Count 1: Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 1.4(a)(1-4), 1.16, 8.1, 8.4(d) and Rule 54(d).

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions ("Standards")* are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should 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:

Respondent violated her duty to clients by violating ERs 1.2, 1.3, 1.4(a)(1-4) and 1.16. Respondent violated her duty to the public and the legal system by

violating ER 8.4(d). Respondent also violated her duty owed as a professional by violating ER 8.1 and Rule 54(d).

Mental State and Injury:

ERs 1.2, 1.3, 1.4: Authority/Diligence/Communication

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."

ER 8.4(d): Conduct Prejudicial to the Administration of Justice

Standard 6.22 provides that: "Suspension is generally 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 8.1, Rule 54 (c) and (d): Failure to Respond/Cooperate with Disciplinary Investigation and Proceedings

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."

Ms. Zingsheim knowingly violated her duties clients, the legal system, the public, and her duties as a professional causing injury or potential injury. Therefore, the presumptive sanction in this matter is suspension.

Aggravating and Mitigating Factors:

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

- *Standard* 9.22(c) pattern of misconduct
  a) The Attorney Discipline Probable Cause Committee found probable cause for similar violations of Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 8.1, 8.4(d) and Rule 54(d) in SBA file number 13-2419;
  b) While not a prior sanction but considered for the sole purpose of demonstrating Respondent's knowledge of her obligations as set forth in Rule 42, Ariz. R. Sup. Ct., ERs 1.3 and 1.16, Respondent was placed on diversion in SBA file number 11-0334 for two (2) years with the SBA's Member Assistance Program ("MAP") by order dated April 24, 2012 (the "Order of Diversion"), for failing to diligently fulfill the terms of representation and failing to properly withdraw from the representation.

SBA counsel stated that Ms. Zingsheim's diversion has not been completed. She is currently not in compliance with diversion because has never contacted MAP pursuant to the Order of Diversion. Furthermore, probable cause has been found in a separate matter and therefore, a notice of non-compliance has not been filed in this matter. However, while insightful, the Hearing Panel declines to consider such conclusory statements by SBA counsel. There has been no notice of non-compliance filed. No evidence is submitted that Ms. Zingsheim was given notice of such non-compliance. Accordingly, we decline to consider such allegations.

- *Standard* 9.22(e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules or orders of the disciplinary agency.

The Hearing Panel finds mitigating factor 9.32(a) (absence of prior disciplinary record) is present in this matter. Ms. Zingsheim has no prior formal disciplinary history.

SBA counsel advises that great effort was made to locate Ms. Zingsheim. SBA investigators went to Ms. Zingsheim's last known address of record and spoke directly with Ms. Zingham's mother, who confirmed that she presently lives there. She however, refused to provide any information about her daughter. SBA counsel stated that mail sent to Ms. Zingsheim's address of record by the SBA has not been returned and e-mails have not come back as undeliverable. The Hearing Panel also notes that notices and pleadings sent by the disciplinary clerk have not been returned as undeliverable.

Sanction:

The SBA requests disbarment in this matter, or in the alternative, a three-year suspension. For disbarment, Ms. Zingsheim's misconduct in knowingly failing to perform the legal services for which she was retained or engaging in a pattern of neglect would need to cause *serious* or potentially *serious* injury. While we agree that ample evidence has been submitted of injury or potential injury, on this record, however, no serious injury or potentially serious injury has been established by clear and convincing evidence. The client in this matter was able to obtain subsequent counsel and while there may have been some delay, the client's file was ultimately delivered to subsequent counsel. *See Standard* 4.41.

Additionally, Ms. Zingsheim's pattern of neglect has been established in aggravation. *See Standard* 4.41 and 9.22(c).

Further, we appreciate the candor of SBA counsel in informing the Hearing Panel that the SBA has some knowledge that Ms. Zingsheim is experiencing mental health issues, hence the Order of Diversion entered in 2012 requiring MAP participation. The absence of clear and convincing evidence of serious injury precludes the Hearing Panel from considering disbarment at this time. The mere potential of mental health issues is neither a mitigating nor aggravating factor. We recognize that client abandonment is serious misconduct and often disbarment is warranted. Nonetheless, the Hearing Panel is satisfied that in this matter, the public will be protected by a suspension of six (6) months and one (1) day, which will require Ms. Zingsheim to submit to formal reinstatement proceedings should she seek to practice law again. Ms. Zingsheim will also be required to obtain a MAP assessment prior to filing any application for reinstatement.

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.'" *In re Alcorn*, 202 Ariz. 62, 74 ¶ 41, 41 P.3d 600, 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. *In re Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

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

IT IS ORDERED:

1. Ms. Zingsheim shall be suspended from the practice of law for six (6) months and one (1) day, effective thirty (30) days from the date of this Report and Order;
2. Ms. Zingsheim shall obtain an MAP assessment prior to filing any application for reinstatement;
3. If reinstated, Ms. Zingsheim shall be placed on probation for a period of two (2) years with the SBA's Law Office Management Program ("LOMAP") and MAP, with specific terms and conditions to be determined at the time of reinstatement;
4. Ms. Zingsheim shall pay all costs and expenses incurred in these proceedings; and

5. A final judgment and order will follow.

DATED this 27th day of February, 2014.

William J. O'Neil
Presiding Disciplinary Judge

Mark Salem
Volunteer Public Member

David W. Garbarino
Volunteer Attorney Member

Original filed with the Disciplinary Clerk
this 27th day of February, 2014.

Copies of the foregoing mailed/emailed
this 27th day of February, 2014, to:

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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, **JEANNE M. ZINGSHEIM, Bar No. 022778** Respondent.	**PDJ-2013-9113** **FINAL JUDGMENT AND ORDER** [State Bar No. 13-1317] **FILED MARCH 21, 2014**

This matter having come on for an aggravation/mitigation hearing before a Hearing Panel of the Supreme Court of Arizona and a decision in this matter having been duly rendered on February 27, 2014, no appeal having been filed and the time for appeal having expired, accordingly,

IT IS HEREBY ORDERED that Respondent, **Jeanne M. Zingsheim**, is hereby suspended for six (6) months and one (1) day for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the Report and Order Imposing Sanctions. The suspension is effective the date of this Order.

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

IT IS FURTHER ORDERED that upon reinstatement Ms. Zingsheim shall be placed on probation for a period of two (2) years with the State Bar's Law Office Management Program and Member Assistance Program, with specific terms and conditions to be determined at the time of reinstatement.

IT IS FURTHER ORDERED that Ms. Zingsheim shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED that Ms. Zingsheim pay the costs and expenses of the State Bar of Arizona in the amount of $2,016.80. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 21th day of March, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 21st day of March, 2014.

Copies of the foregoing mailed/emailed
this 21st day of March, 2014 to:

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