

**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

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

**RONALD S. MATHENY,  
Bar No. 013951**

Respondent.

**PDJ-2013-9118**

**REPORT AND ORDER IMPOSING  
SANCTIONS**

[State Bar Nos. 13-0458, 13-0601,  
and 13-1735]

**FILED MARCH 12, 2014**

**PROCEDURAL HISTORY**

The State Bar of Arizona ("State Bar") filed its complaint on December 10, 2013. On December 13, 2013, the complaint was served on Mr. Matheny 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.<sup>1</sup> The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. As a result of the failure of Mr. Matheny to file an answer or otherwise defend, a notice of default was properly issued January 9, 2014. That notice cautioned Mr. Matheny 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, Mr. Matheny did not file an answer or otherwise defend against the allegations in the complaint and

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<sup>1</sup> All references to rules are to the Arizona Rules of the Supreme Court.

the default entered by the Disciplinary Clerk was effective on January 30, 2014. An aggravation and mitigation hearing was then scheduled for February 18, 2014 at 1:30 p.m., at the State Courts Building, 1501 West Washington, Hearing Room 109, Phoenix, Arizona 85007-3231.

Mr. Matheny's failure to answer is deemed an admission to the allegations contained within the complaint pursuant to Rule 58(d), Ariz. R. Sup. Ct. The purpose of the aggravation/mitigation hearing is not only to weigh mitigating and aggravating factors, but also to assure there is a causal connection or nexus between a Mr. Matheny's conduct deemed admitted by default and the merits of the State Bar's case.

A respondent who has defaulted, no longer has the right to litigate or present a defense to the merits of the factual allegations of the complaint. However, the respondent retains the right to appear at the aggravation/mitigation hearing concerning that nexus and address the sanctions sought. Included with that right to appear at the aggravation/mitigation hearing is the right to dispute the allegations relating to aggravating circumstances and to offer evidence in mitigation. Mr. Matheny was afforded these rights.

Due process requires a hearing panel to independently determine whether the requisite burden of proof, based on the facts deemed admitted by default, has been met. The hearing panel must also exercise its discretion in imposing sanctions and consults the *ABA Standards for Imposing Lawyer Sanctions* as a guideline. If the hearing panel finds that sanctions are warranted, it independently imposes an appropriate sanction as set forth in Rule 60, Ariz. R. Sup. Ct. The

hearing panel does not endorse or “rubber stamp” the State Bar’s request for sanctions.

On February 18, 2014, the Hearing Panel, composed of Douglas S. Pilcher, public member, and Scott I. Palumbo, attorney member held the hearing. The Panel carefully considered the Complaint, the State Bar’s Pre-hearing Statement, admitted exhibits, and offer of testimony. The Panel now issues the following “Report and Order Imposing Sanctions,” pursuant to Rule 58(k), Ariz. R. Sup. Ct.

**FINDINGS OF FACT**

The facts listed below are those set forth in the State Bar’s complaint and were deemed admitted by Respondent’s default. At all times relevant, Mr. Matheny was a suspended lawyer. He had been admitted and licensed to practice in Arizona on October 26, 1991. Mr. Matheny was suspended for one year in 2008 and again for 150 days in 2012, without being reinstated after either suspension.

**COUNT ONE of THREE (File no. 13-0458/State Bar of Arizona)**

On February 20, 2013 at 10:15 p.m., in a Panda Express parking lot in Glendale, AZ, officers of the Glendale Police Department (“P.D.”) apprehended Mr. Matheny and a female friend in a car with a tin foil makeshift pipe smoking heroin. Both Mr. Matheny and his companion confessed to the crimes and Mr. Matheny admitted further that he had been smoking heroin for four months. Mr. Matheny also had an outstanding Maricopa County Superior Court warrant for nonpayment of child support and was booked into the Glendale City Jail.

The Glendale Police Department sent the suspected heroin to an Arizona Department of Public Safety laboratory for analysis. The results of the lab analysis confirmed that the substance obtained from Mr. Matheny and his friend consisted of

90 milligrams, a usable quantity, of heroin and methamphetamine. My Matheny entered an agreement for deferred prosecution. He failed to abide by the terms of deferred prosecution and a criminal complaint has been filed against him.

On March 12, 2013, Mr. Matheny was sent a screening letter by mail and email to his various addresses known to the State Bar. Mr. Matheny was asked to respond to the allegations within 20 days but he failed to do so. By letter dated April 9, 2013, sent to his various mail and email addresses, Mr. Matheny was reminded of his obligation to respond to the State Bar's earlier letter and was asked to respond within ten days. Mr. Matheny failed to do so.

By knowingly failing to respond to a lawful demand for information from a disciplinary authority, and by refusing to cooperate with officials and staff of the state bar and failing to furnish information or respond promptly to inquiries or requests from bar counsel, Mr. Matheny violated Rule 42 ER 8.1(b), and Rule 54. By committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, Mr. Matheny violated Rule 42 ER 8.4(b).

**COUNT TWO of THREE (File no. 13-0601/Blumberg)**

Complainant Sheri Blumberg's father and step-mother were Stephen and Mary Schlueter. The Schlueters lived in Missouri before moving to Arizona where they lived for about six months before Mr. Schlueter suddenly died. Mr. Schlueter had a bank account in Missouri with a balance of about \$59,000. Mary Schlueter contacted Alison Cloud, the non-lawyer owner of Elite Estate Planning, to help Mrs. Schlueter get appointed Personal Representative of Mr. Schlueter's estate and obtain her share of the Missouri bank account. Ms. Cloud was Mr. Matheny's

romantic interest and business associate. Mary Schlueter wanted the Missouri bank account to be treated as Arizona community property; Complainant did not. Missouri is not a community property state. Sheri Blumberg paid Mr. Matheny \$2,000 as attorney fees.

Mr. Matheny tried to persuade Complainant to sign over her rights to the account but she refused and hired an attorney, David Estes, to deal with Mr. Matheny. Mr. Matheny led Complainant, Mary Schlueter, and Mr. Estes to believe he is an attorney. Mr. Matheny argued legal positions, expressed legal opinions, and threatened court action.

When Complainant told Mr. Matheny that several attorneys with whom she spoke said that Mr. Matheny was wrong in his assessment that the Missouri bank account was community property, he laughed at her and told her that he had been a lawyer for 20 years and knew more than the people with whom Complainant spoke.

Mr. Matheny sent Mary Schlueter an email stating "here is the black letter law that allows you the \$18,000.00 homestead exemption (A.R.S. 14-2402)." Mr. Matheny exchanged emails with Mr. Estes that clearly articulate negotiations over Complainant and Mary Schlueter's claims. Ultimately, Mr. Matheny conceded that the Missouri bank account was not community property. Complainant was forced to hire counsel to deal with Mr. Matheny's false assertions that the Missouri bank account was community property.

The State Bar sent investigative screening and follow-up letters to Mr. Matheny on May 20 and June 18, 2013, respectively, but he failed to respond to either.

By knowingly failing to respond to a lawful demand for information from a disciplinary authority, and by refusing to cooperate with officials and staff of the state bar and failing to furnish information or respond promptly to inquiries or requests from bar counsel, Mr. Matheny violated Rule 42 ER 8.1(b), and Rule 54. By holding himself out to the public as an attorney, Mr. Matheny engaged in the unauthorized practice of law in violation of Rule 31 and Rule 42 ER 5.5. By failing to respond to a lawful demand for information from the State Bar, Mr. Matheny violated Rule 42 ER 8.1, and Rule 54.

**COUNT THREE of THREE (File no. 13-1735/Swearingen)**

Approximately twenty years ago Mr. Matheny wrote an estate plan for Complainants Duane and Nancy Swearingen. In July 2013, while suspended, Mr. Matheny contacted Complainants "wondering if we were still around as he was going through his past files and came across ours." In a follow-up letter to Complainants dated July 10, 2013, Mr. Matheny wrote: "In that we created your estate plan several years ago, I'm very anxious to review it with you to make sure it continues to provide everything needed to fulfill your estate planning objectives. I am happy to extend my services for the review on a complimentary basis." The letterhead on which Mr. Matheny wrote his July 10, 2013, letter reads, "Law Offices" "Ronald S. Matheny" "Attorney at Law" "Admitted in Arizona and Alberta, Canada".

Mr. Matheny and Ally Cloud (his assistant, office manager, and fiancé) made an appointment for July 17, 2013, to see Complainants in their home to re-do Complainant's estate plan. Mr. Matheny and Cloud arrived at 7:00 p.m., an hour late. Mr. Matheny asked for some financial and other information that was not "out

of line" (per Complainants), but he requested other information that Complainants thought inappropriate. That, plus Mr. Matheny's late arrival, at Complainants' home, with his assistant, prompted Complainants later to Google Mr. Matheny's name and investigate. Complainants learned that Mr. Matheny was suspended and had been arrested. Complainants submitted this charge and asked for assistance retrieving their case files and legal papers from Mr. Matheny. They have not been returned and we find they have been seriously harmed by Mr. Matheny retaining their financial records.

On July 24, 2013, the State Bar sent a screening letter to Mr. Matheny asking that he address unauthorized practice of law violations. Bar counsel also demanded that Mr. Matheny immediately return to Complainants their case files and papers.

Mr. Matheny failed to respond to the State Bar's screening letter or follow-up letter dated August 23, 2013, and also failed to return to Complainants their documents. By holding himself out to the public as an attorney, Mr. Matheny engaged in the unauthorized practice of law in violation of Rule 31 and Rule 42 ER 5.5. By failing to respond to a lawful demand for information from the State Bar, Mr. Matheny violated Rule 42 ER 8.1 and Rule 54.

### **CONCLUSIONS OF LAW**

Mr. Matheny failed to file an answer or otherwise defend against the allegations in the State Bar's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d). Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Mr. Matheny violated the following: Rules 31 and 54, and Rule 42 ERs 5.5, 8.1(b), and 8.4(b).

**ABA STANDARDS ANALYSIS**

In a lawyer discipline case, sanctions are imposed in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* ("Standards"). Rule 58(k). In imposing a sanction, the following factors should consider: (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*.

**(1) Duties violated:**

**Rule 31 and Rule 42 ER 5.5 – Unauthorized Practice of Law.**

Mr. Matheny violated his duties as a professional by engaging in the unauthorized practice of law.

Rule 31. Regulation of the Practice of Law

\* \* \*

2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

- (1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
- (2) preparing or expressing legal opinions . . .
- or
- (5) negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

- (1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or
- (2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that



the person or entity is authorized to engage in the practice of law in this state.

\* \* \*

(b) Authority to Practice. Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.

(c) Restrictions on Disbarred Attorneys' and Members' Right to Practice. No member who is currently suspended . . . shall practice law in this state or represent in any way that he or she may practice law in this state.

Rule 42 ER 5.5 – Unauthorized Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

**Rule 54 and Rule 42 ER 8.1(b) – Knowing Failure to Respond to a**

**State Bar Investigation.**

Mr. Matheny violated his duties as a professional by his knowing failure to respond in connection with a State Bar investigation.

Rule 54. Grounds for Discipline

Grounds for discipline of members and non-members include the following:

(a) Violation of a rule of professional conduct. This includes violations of professional conduct rules in effect in any jurisdiction.

\* \* \*

(c) Knowing violation of any rule or any order of the court. This includes court orders issuing from a state, tribe, territory or district of the United States, including child support orders.

(d) Violation of any obligation pursuant to these rules in a disciplinary or disability investigation or proceeding. Such violations include, but are not limited to, the following:

1. Evading service or refusal to cooperate. Evading service or refusal to cooperate with officials and staff of the state bar, the committee, the presiding disciplinary judge, a hearing panel, or a conservator appointed under these rules acting in the course of that person's duties constitutes grounds for discipline.

2. Failure to furnish information. The failure to furnish information or respond promptly to any inquiry or request from bar counsel, the board, the committee, the presiding disciplinary judge, a hearing panel, or this court, made pursuant to these rules for information relevant to pending charges, complaints or matters under investigation concerning conduct of a lawyer, or failure to assert the ground for refusing to do so constitutes grounds for discipline. . . . Upon such inquiry or request, every lawyer:

A. shall furnish in writing, or orally if requested, a full and complete response to inquiries and questions . . . .

ER 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

\* \* \*

(b) . . . knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority . . . .

**Rule 42 ER 8.4(b) – Criminal Act.**

Mr. Matheny violated his duty owed to the public by committing a crime that reflects adversely on his honesty, trustworthiness or fitness as a lawyer.

ER 8.4. Misconduct

It is professional misconduct for a lawyer to:

\* \* \*

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

**(2) Mental State:** Mr. Matheny intentionally or knowingly committed the foregoing violations.

**(3) Injury:** Mr. Matheny caused actual and potential injury and serious injury to the public and as a professional.

Based on the foregoing, the following *Standards* are implicated:

ERs 5.5 and 8.1(b), and Rules 31 and 54

*Standard 7.1*

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.

ER 8.4(b)

*Standard 5.11(a)*

Disbarment is generally appropriate when: (a) a lawyer engages in serious criminal conduct, a necessary element of which includes . . . the sale, distribution or importation of controlled substances; . . . or an attempt or conspiracy or solicitation of another to commit any of these offenses . . . .

Based on the *Standards*, disbarment is the presumptive sanction.

#### **(4) Aggravating and Mitigating Factors**

The Hearing Panel finds the following aggravating factors are present:

*Standard 9.22(a)*, prior disciplinary offenses-

- January 24, 2012, State Bar no. 11-1804, PDJ-2012-9005, Suspension for 150 days, Rules 32(c) and 54(c), and ERs 1.4, 5.5, and 8.1(b).

- April 22, 2008, State Bar no. 06-0215, Supreme Court no. SB-08-0033-D, Suspension for one year, ERs 1.1, 1.2(d), 1.5(b), 1.7, 3.3, 8.4(c), and 8.4(d).

- February 18, 1999, State Bar no. 98-0565, Informal Reprimand (currently, Admonition) and Probation, ERs 1.3 and 1.4.

- February 18, 1999, State Bar no. 97-1358, Informal Reprimand (currently, Admonition), ERs 1.2(a), 1.4(b), 5.3(c), and 7.3(a).

*Standard 9.22(b)*, dishonest or selfish motive;

*Standard 9.22(c)*, a pattern of misconduct;

*Standard 9.22(d)*, multiple offenses;

*Standard 9.22(e)*, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency;

*Standard 9.22(g)*, refusal to acknowledge wrongful nature of conduct;

*Standard 9.22(i)*, substantial experience in the practice of law;

*Standard 9.22(k)*, illegal conduct, including that involving the use of controlled substances.

The Hearing Panel finds there are no mitigating factors.

### **CONCLUSION**

The objective of 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 public confidence in the integrity of the bar; foster confidence in the legal profession and the self-regulatory process; 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); *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 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, the mitigating factors, and the goals of the attorney discipline system.

### **IT IS ORDERED:**

1. Ronald S. Matheny, Bar No. 013951, is disbarred from the practice of law effective immediately;

2. Mr. Matheny shall pay all costs and expenses incurred in this proceeding.

3. Mr. Matheny shall immediately return all case files and legal papers of Complainants Duane and Nancy Swearingen and pay restitution in the amount of \$2,000 for the attorney fees paid him by Ms. Sheri Blumberg.

4. Mr. Matheny shall comply with Rule 72, Ariz.R.Sup.Ct. including notice to clients and others.

5. A final judgment and order will follow.

**DATED** this 12<sup>th</sup> day of March 2014.

*William J. O'Neil*

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**William J. O'Neil,  
Presiding Disciplinary Judge**

*Douglas L. Pilcher*

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**Douglas S. Pilcher  
Volunteer Public Member**

*Scott I. Palumbo*

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**Scott I. Palumbo  
Volunteer Attorney Member**

Copy of the foregoing emailed/mailed  
this 12<sup>th</sup> day of March 2014, to:

David L. Sandweiss  
Senior Bar Counsel  
State Bar of Arizona  
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Respondent

Sandra Montoya  
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by: MSmith

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

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

**RONALD S. MATHENY,**  
**Bar No. 013951**

Respondent.

**PDJ-2013-9118**

[State Bar File Nos. 13-0458, 13-0601, 13-1735]

**FINAL JUDGMENT AND ORDER  
OF DISBARMENT**

**FILED APRIL 2, 2014**

This matter having come on for an aggravation/mitigation hearing before the Hearing Panel of the Supreme Court of Arizona, the Panel having duly rendered its decision and no notice of appeal having been filed, accordingly:

**IT IS HEREBY ORDERED** that Respondent, **Ronald S. Matheny, Bar No. 013951**, is disbarred from the State Bar of Arizona and his name is hereby stricken from the roll of lawyers, effective March 12, 2014, for conduct in violation of his duties and obligations as a lawyer, as disclosed in the Hearing Panel's Report and Order Imposing Sanctions. Respondent is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the court.

**IT IS FURTHER ORDERED** that Respondent 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 Mr. Matheny shall pay restitution to Ms. Sheri Blumberg in the amount of \$2,000.00.

**IT IS FURTHER ORDERED** that Mr. Matheny shall immediately return all case filed and legal papers of Complainants Duane and Nancy Swearingen.

**IT IS FURTHER ORDERED** that Mr. Matheny pay the costs and expenses awarded to the State Bar of Arizona in the amount of \$2,000.00. 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 2<sup>nd</sup> day of April, 2014.

*William J. O'Neil*

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**The Honorable William J. O'Neil  
Presiding Disciplinary Judge**

Original filed with the Disciplinary Clerk  
this 2<sup>nd</sup> day of April, 2014.

COPY of the foregoing e-mailed/mailed  
this 2<sup>nd</sup> day of April, 2014, to:

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