

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
MAY 03 2013
BY _____ FILED *[Signature]*

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

**MONIQUA KENYATTA LANE,
Bar No. 023324,**

Respondent.

PDJ-2013-9012

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar No. 12-2451]

FILED MAY 3, 2013

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on January 29, 2013. On February 1, 2013, 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. As a result of the failure of Ms. Lane to file an answer or otherwise defend, a notice of default was properly issued on February 27, 2013 given Ms. Lane's failure to file an answer or otherwise defend against the complaint's allegations which became effective on March 18, 2013. A notice of aggravation and mitigation hearing was then sent to all parties, notifying them that an aggravation/mitigation hearing was scheduled for April 8, 2013 at 10:30 a.m. at 1501 West Washington, Court of Appeals, CR 2, Phoenix, Arizona 85007-3231.

On April 5, 2013 Respondent's counsel filed a Notice of Appearance and an expedited Request for Extension of Aggravation/Mitigation Hearing. The PDJ granted the request and the hearing was rescheduled. On April 16, 2013, the aggravation/mitigation hearing was heard by a Hearing Panel composed of the PDJ,

attorney member Richard L. Brooks, and public member Mark E. Salem. That morning, Respondent filed a Rule 58(d) Motion to Set Aside Default Judgment and Motion for the Admission of Letters Character/Reference Rather Than Live Testimony, or, in the Alternative, For Telephonic Testimony. The PDJ granted Respondent's motion to admit character letters.

The State Bar seeks a suspension of six months and one day and probation upon reinstatement. Respondent asserts that reprimand, or a short term of suspension at most, is the appropriate sanction.

FINDINGS OF FACT

The facts listed below are those that were set forth in the SBA's complaint and were deemed admitted by Respondent's default.

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on November 12, 2004.

COUNT ONE (File no. 12-2451/Fricks)

2. On July 2, 2011, Scott Fricks ("Mr. Fricks") consulted with Respondent about obtaining assistance with the trustee of his mother's estate. Mr. Fricks informed Respondent that the trustee was not communicating with him. Additionally, Mr. Fricks' sister intended to purchase his mother's property and Respondent agreed to draft and finalize a sales agreement.

3. Mr. Fricks provided Respondent a check in the amount of \$1,400.00 dated July 23, 2011.

4. Mr. Fricks met with Respondent again in July of 2011 and provided her with certain trust-related documents.

5. On September 8, 2011, Respondent forwarded Mr. Fricks an engagement letter which provides for a billing rate of \$200.00 per hour.

6. On September 14, 2011, Respondent sent an email to Mr. Fricks, his sister, and his brother requesting that they review and sign the engagement letter and a "mutual representation" letter.

7. On December 1, 2011, Mr. Fricks contacted Respondent requesting an update. Mr. Fricks also asked about a fax he sent to Respondent. Respondent replied and stated that she did not look at the fax yet because she was busy moving offices.

8. On January 16, 2012, after Mr. Fricks contacted her again, Respondent informed Mr. Fricks that she was still in the process of moving her office and did not have a chance to send a letter to the trustee but hoped to have a draft completed by the end of the week. Respondent and Mr. Fricks also corresponded the same day regarding the trustee having to approve of any sale of the property.

9. Respondent scheduled a meeting with Mr. Fricks on February 3, 2012. Respondent failed to attend the meeting.

10. On February 11, 2012, Mr. Fricks sent an email to Respondent stating that he received a letter from the trustee. Mr. Fricks further stated: "I am under pressure from my brother and sister. They know I retained you in late July. I told them the lack of progress was my fault for not getting you everything you needed to proceed. I told them you had everything in early December. . . . With my sister wanting to buy the house . . . , the pressure is on me to deal with . . . [the trustee]. If you want[,] I could contact . . . [the trustee] and see if she would be OK with the sale to my sister. Have you worked on the letter yet?"

11. Respondent replied two days later that Mr. Fricks should send her the letter that he received from the trustee.

12. On February 14, 2012, Mr. Fricks sent an email to Respondent stating "Will I hear from you today?" and inquiring as to whether he should just respond to the trustee's letter. Respondent replied that Mr. Fricks did not need to respond to the trustee because "[i]t's what you paid me to do."

13. On February 15, 2012, Respondent sent the trustee an email explaining that she represented Mr. Fricks and wanted to discuss the trust with her.

14. On February 16, 2012, Respondent informed Mr. Fricks that she had a "teleconference" scheduled with the trustee that day and would provide him an update after she spoke with the trustee. Mr. Fricks responded by stating "[p]lease update me as soon as possible" as "I have a brother and sister pushing me several times a day for progress reports."

15. The next day, Mr. Fricks asked Respondent about the teleconference. Respondent informed Mr. Fricks that it was rescheduled for that day but that the trustee "stood me up."

16. On February 20, 2012, Mr. Fricks again followed up with Respondent. Respondent informed Mr. Fricks that the sale could occur without the trustee's consent but that the trustee is the only person who can sign the deed. Respondent further informed Mr. Fricks she still had not heard from the trustee despite repeated phone calls to the trustee.

17. In late February, Mr. Fricks and Respondent corresponded regarding drafting a purchase agreement for the sale of the property to his sister.

18. On March 2, 2012, Mr. Fricks asked whether Respondent had spoken to the trustee. Respondent replied that she had not spoken with her yet but "I sent her written notice of your . . . intentions with the house, which is all she required. I'll keep trying to get ahold [sic] of her because, again, she'll have to sign the sales agreement. I suspect she'll respond once she receives it."

19. On March 12, 2012, Mr. Fricks again followed up about whether Respondent contacted the trustee.

20. On March 26, 2012, the trustee sent an email to Respondent stating that she attempted to contact Respondent by phone but never received a response.

21. On April 2, 2012, Respondent informed Mr. Fricks that she spoke with the trustee and that "we're good to go."

22. At the end of April and beginning of May of 2012, Mr. Fricks and Respondent corresponded regarding a closing date for the property and sending certain accounting documentation to the trustee.

23. On May 22, 2012, Mr. Fricks asked Respondent about potential next steps.

24. On May 24, 2012, the trustee sent Respondent an email stating: "I have not received the confirmation detail for the purchase of the Trust property..." The trustee requested from Respondent the "real property purchase detail" and a full accounting so that she "could get started on the transfer requirements and agreement of beneficiaries to transfer and accounting."

25. On May 29, 2012, Mr. Fricks requested from Respondent "an accounting of the retainer we gave you". Mr. Fricks further stated: ". . . we are frustrated with the service we have received from you. . . . We realize that you

have had some contact with . . . [the trustee]. Please send us copies of any correspondence. . . .”

26. Respondent replied the next day, apologized, promised to send the accounting, and stated that the retainer “had been used” but that she continued working without charge and would continue to do so if Mr. Fricks permitted her to do so.

27. On June 7, 2012, Respondent sent an email to the trustee stating “excuse my delay in responding”, that they provided her the accounting information, and asking if she wanted a written contract of sale.

28. On June 8, 2012, Mr. Fricks sent Respondent an email again inquiring as to whether Respondent heard from the trustee regarding the sales agreement.

29. Respondent replied that she had not “received terms” from the trustee. Respondent stated, however, that they should proceed by Mr. Fricks and his siblings “waiving an accounting and releasing her [the trustee] from liability for that and then just distributing the house to each of you in thirds and then . . . [the sibling purchaser] can purchase from you and . . . [your sibling].”

30. Mr. Fricks agreed with this approach and Respondent then stated that she would draft the release of accounting.

31. Mr. Fricks also had a telephone conversation with Respondent on the same date in which Respondent reiterated that she would provide an accounting and her work product, and requested two weeks “to get this wrapped up.”

32. On June 15, 2012, Mr. Fricks requested an update, an accounting, and any correspondence that Respondent had with the trustee.

33. On June 29, 2012, Mr. Fricks informed Respondent that he was terminating her, including because Respondent failed to provide an accounting and failed to provide the requested correspondence. Mr. Fricks informed Respondent that he would stop by her office to retrieve the correspondence. Respondent replied "OK".

34. On July 2, 2012, Mr. Fricks went to Respondent's office. Respondent left Mr. Fricks a packet that included a refund check, the documents that Mr. Fricks provided Respondent, and the engagement letters. The packet did not include any correspondence between Respondent and the trustee or any of Respondent's work product.

35. On July 12, 2012, Mr. Fricks informed the trustee that they were no longer represented by Respondent. The trustee has since drafted the sales agreement.

36. Mr. Fricks subsequently attempted to cash the refund check that Respondent provided to him. The bank, however, returned the check for insufficient funds and charged Mr. Fricks a fee for the same.

37. On August 20, 2012, Mr. Fricks informed Respondent that her check was returned. Mr. Fricks further informed Respondent that he was "very disappointed that you did not provide your work product in the packet I picked up."

38. Respondent replied that she would mail Mr. Fricks a cashier's check. Mr. Fricks responded "[w]ill you address the work product issue?" Respondent did not respond to Mr. Frick's inquiry regarding the work product.

39. On August 23, 2012, Mr. Frick's sister advised Respondent that they had not received the replacement cashier's check.

40. On August 24, 2012, Respondent replied and misrepresented that she had already "mailed a cashier's check" to Mr. Fricks.

41. On August 28, 2012, Mr. Frick's sister informed Respondent that they had not yet received the cashier's check.

42. Mr. Fricks subsequently contacted the State Bar and, on September 7, 2012, Respondent misrepresented to the State Bar that she sent Mr. Fricks a replacement check.

43. Mr. Fricks never received a replacement check. Respondent also failed to provide Mr. Fricks any of her work product, an accounting, or any correspondence between her and the trustee. (These are admitted facts from the complaint. Ms. Lane has since paid Mr. Fricks. Ms. Lane acknowledged she performed virtually no billable work that generated work product or correspondences and as a result has nothing to account for. These are discussed below.)

44. Respondent's failure to complete the sales agreement forced Mr. Fricks to incur expenses on the property and delayed Mr. Fricks from receiving a profit on the sale of the property.

45. On September 21, 2012, the State Bar sent Mr. Frick's bar charge to Respondent and asked Respondent to respond within 20 days and include a complete copy of her file relating to Mr. Fricks with her response.

46. Respondent did not respond to the bar charge within the requested time. Accordingly, on October 18, 2012, the State Bar sent Respondent a second letter seeking a response to the September 21, 2012 letter within ten days. Respondent did not respond to this second letter.

47. After attempting to reach Respondent by phone and email, on November 19, 2012, Respondent indicated that she would respond to the bar charge by November 30, 2012. Respondent, however, again failed to respond to the bar charge.

48. Respondent likewise failed to respond to a November 20, 2012 email from the State Bar inquiring as to whether she deposited Mr. Frick's retainer in her trust or operating accounting and asking for documents regarding the same.

49. Respondent violated ER 1.3, which requires that a lawyer act with reasonable diligence and promptness in representing a client, by failing to communicate with the trustee and failing to draft the sales agreement.

50. Respondent violated ER 1.4, which requires a lawyer to reasonably communicate with his client, by failing to keep Mr. Fricks and his siblings reasonably informed about the status of the matter and by failing to promptly comply with Mr. Frick's reasonable requests for information.

51. Respondent violated ER 1.15(d), which requires that a lawyer promptly render a full accounting upon the request of a client, by failing to provide Mr. Fricks an accounting of his retainer.

52. Respondent violated ER 1.16(d), which requires that a lawyer take steps to protect a client's interests upon termination of representation, by failing to provide Mr. Fricks with a complete copy of the file that included her work product and correspondence with the trustee.

53. Respondent violated ER 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent provided Mr. Fricks a check that was returned for nonsufficient funds

and misrepresented to the State Bar, Mr. Fricks, and Mr. Frick's sister that she sent Mr. Fricks a replacement check. Respondent was repeatedly untruthful in her communications to Mr. Fricks. She further misrepresented the frequency of her correspondence with the trustee to Mr. Fricks.

54. Respondent violated ER 8.1(b) and Rule 54(d), which provides that the failure to furnish information or respond promptly to any inquiry or request from bar counsel constitutes grounds for discipline and provides that a lawyer shall not knowingly fail to respond to a lawful demand for information from disciplinary authority. Respondent failed to respond to the bar charge and further failed to respond to the State Bar's other requests for information and documentation.

55. Pursuant to Rule 43(d)(3), there is a rebuttable presumption that Respondent violated Rule 43(a) and ER 1.15(a), which provide that a lawyer shall hold a client's property and funds separate from the lawyer's own property and funds.

ADDITIONAL FINDINGS FROM THE HEARING

56. Ms. Lane was employed in the Tucson office of the law firm of *Snell and Wilmer* shortly after she graduated from law school and passed the bar examination. She worked there for approximately two years.

57. Thereafter Ms. Lane left the practice of law for two to three years to do development work and work to raise funds in the private sector.

58. Ms. Lane returned to the active practice of law working with another practitioner for approximately one year; then started a solo practice within her home for approximately one year; then formed a partnership thereafter.

59. In 2009 Ms. Lane's marriage began to collapse, and in 2010 her husband left their home and divorce proceedings began. In 2011 the divorce became final. Ms. Lane had been married for approximately nine years.

60. At the hearing, Ms. Lane admitted she was wrong in this matter and did unethical acts. She acknowledged she knowingly failed to do work for her client, knew he was unhappy, and told the Hearing Panel that she felt horrible and "really bad" about her actions.

61. Ms. Lane also admitted that she did not have the knowledge or legal competence to know how to remove a trustee or perform the other legal services her client hired her to do. She added this legal competency was "beyond my scope." She admitted that rather than seek assistance from other attorneys or inform her client of her inabilities, she did nothing. She was repeatedly untruthful to her client.

62. Ms. Lane had actual knowledge of her obligations to cooperate with the State Bar because she had another matter pending during this same time period. She admittedly did not respond to the State bar's written inquiries or otherwise cooperate.

63. Ms. Lane failed to refund the monies owed to her client for many months, and did not return the monies until after the formal complaint was filed, default was entered and effective and her counsel in this matter instructed her to.

62. Ms. Lane's explanations for her failure to perform the promised services for her client, her failure to return funds owed to her client despite telling him "the check was in the mail," and her inaction regarding the State Bar inquiry are neither credible nor plausible.

63. Ms. Lane failed to overcome the rebuttable presumption of Rule 43(d)(3), that she violated Rule 43(a) and ER 1.15(a), which provide that a lawyer shall hold a client's property and funds separate from the lawyer's own property and funds.

CONCLUSIONS OF LAW

The State Bar bears the burden of proof by clear and convincing evidence that the Respondent committed the violations charged. Respondent failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and effective. Ms. Lane's failure to answer is therefore deemed admitted 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 nexus between a respondent's judicially admitted behavior and the merits of the State Bar'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 cross-examine witnesses, but only for the limited purpose of disputing the factual allegations relating to aggravation/mitigation. Ms. Lane was afforded these rights.

The Hearing Panel does not operate in a vacuum. The State Bar properly demanded documents and records from Ms. Lane. She admittedly knew of her duty to respond and did not. The testimony of a defaulted respondent is not a reliable substitute for documents and records that were required to be disclosed but were

not. A Hearing Panel is not precluded from considering the failure to cooperate or disclose records or documents.

For a defaulted respondent, the failure to cooperate and disclose is compounded in a practical sense when, as in this matter, a respondent indirectly attempts to raise factual issues regarding records or documents that were not disclosed due to a failure to cooperate. The Hearing Panel is not blind to the fact that parts of Ms. Lane's testimony may have been rebutted by the documents and records she failed to supply to the State Bar despite multiple requests and the filing of the complaint. The failure to disclose the requisite foundation of records and documents inevitably increases the risk that any Hearing Panel would question the credibility of a respondent and conclude such testimony was grounded upon the shifting sand of rhetoric and hyperbole.

Any defaulted respondent would do well to review *Ariz. Dep't of Revenue v. Superior Court ex rel. Ariz. Tax Court*, 165 Ariz. 47, 49, 796 P.2d 479, 481 (App. 1990). There the defaulted party "refused to review settlement offers". The defaulted party apparently also did not disclose exhibits or witnesses nor give any indication "that they intended to offer evidence at all..." The opinion makes clear that the law does not preclude a court "from considering such factors in determining the participation at default hearing of the party in default." Counsel for Respondent properly gave notice of her mitigation, which the Hearing Panel appreciates. Despite the less than credible aspects of part of the testimony of Respondent, we weigh favorably the mitigating evidence disclosed by her counsel.

Regardless, due process requires the 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 a Hearing Panel to simply endorse or "rubber stamp" any request for sanctions.

Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Respondent violated the following: Rule 42, Ariz. R. Sup. Ct., and specifically ERs 1.3, 1.4, 1.15(a), 1.15(d), 1.16(d), 8.4(c), 8.1(b), and Rules 43(a) and 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:

Ms. Lane violated her duty to her clients by violating ERs 1.3, 1.4, 1.15(a), (d), and 8.4(c). Respondent also violated the duty she owed to the public by violating E.R. 8.4(c). Respondent also violated her duty owed as a professional by violating also ERs 1.16(d), 8.1(b) and Rule 54(d).

Mental State and Injury:

Ms. Lane violated her duty to clients, thereby implicating *Standard 4.4.*

Standard 4.42 states:

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.

In this matter, Ms. Lane knowingly failed to perform services for a client, which caused injury or potential injury to her client. Ms. Lane's client retained her in July 2011. Despite her client's repeated requests for status updates, Ms. Lane performed almost no work for her client. When her client was successful in contacting her, she was repeatedly dishonest and on one occasion failed to appear for her appointment with him.

Ms. Lane violated her duties to the public, thereby implicating *Standard 5.1.* *Standard 5.12* provides: "Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit or misrepresentation and that adversely reflects on the lawyer's fitness to practice law." Ms. Lane was untruthful regarding the work she had done or even attempted to do. She was dishonest in telling her client that the retainer was exhausted and she was doing work for free. Ms. Lane misrepresented to both the State Bar and to her client that she had mailed her client a second refund check after the first refund check she sent to her client was returned for non-sufficient funds.

Ms. Lane also violated her duty owed as a professional, which implicates *Standard 7.0*. *Standard 7.2* states, "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." In this matter, Ms. Lane substantially failed to respond to or otherwise cooperate with the SBA's investigation. *Standard 7.2*, therefore, is applicable.

AGGRAVATING AND MITIGATING FACTORS

Aggravating factors are circumstances that may justify an increase in the degree of discipline to be imposed. Overall, the record in this matter clearly supports the conclusion that the presumptive sanction is suspension.

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

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: Respondent did not respond to the SBA's investigation, despite the fact that she was in Diversion for similar misconduct.

The Hearing Panel finds that the following mitigating factors are present:

Standard 9.32(a) absence of a prior disciplinary record: Ms. Lane has no prior disciplinary record but has been ordered to participate in diversion in File No. 12-0642 for similar misconduct.

Standard 9.32(c) personal or emotional problems: Ms. Lane stated she experienced some emotional and residual effects from her divorce in 2011 and is currently in the process of obtaining professional counseling to work through those issues. [Respondent's Exhibit 11]

Standard 9.32(g) character or reputation. Ms. Lane provided five character reference letters in support of this factor. [Respondent's Exhibit 10]

In addition, Ms. Lane is actively involved in her community, serves on the board of charitable organizations, and performs legal work for non-profits pro bono.

DISCUSSION

The applicable *Standards* underscore our conclusion that suspension is warranted. The *Standards* clearly justify the position of the State Bar that suspension for six months and one day is warranted. Ms. Lane's actions were more than misleading, they were dishonest. She was not competent. In a practical sense she had also abandoned her client but kept assuring him she had not. While close in time her failing in the prior disciplinary matter concerns us that there is a fundamental problem existent.

Her defense in part is that she intended to do the work, didn't know how to and became overwhelmed, scared and unsure of how to proceed. When she finally determined to return her client's money, she states she had the funds available to repay the client, but again became overwhelmed, scared and unsure of how to proceed with the task of returning her client's money until after the State Bar filed its complaint and Respondent retained counsel. We again note that the record is devoid of any evidence, i.e. bank statements, to support the truth of her statement. Although she gave excuses at the hearing, those excuses are simply not plausible or credible.

We are concerned that it may be facile to even suggest that a bar program will upend what appears to be an underlying consistency of becoming overwhelmed, scared and unsure of how to proceed. We fear that her failings in her office

practices are merely the fruit of a deeper issue that LOMAP cannot resolve and that clearly puts the public at risk. Ms. Lane admitted that she was wrong and did not provide the services promised for her client, was repeatedly untruthful, did not return her client's money and did not cooperate with the State Bar. We are perplexed with her testimony that she did not *understand* the severity of her misconduct.

Ms. Lane admits she had no competence to proceed with the matters she was retained to proceed with. She admits she sought no assistance from any professional to understand these legal matters. She admits she was dishonest with her client in her communications regarding the work she had done. She admits she was dishonest in telling her client she had exhausted the retainer and was working for free. She admits she had no reluctance in being untruthful on multiple occasions about various matters with her client. She admits that she had virtually no work product to deliver to her client. She admits she earned no fee as the matter was beyond her scope. She admits she knew the check she had written had been rejected for insufficient funds but took no steps to return those funds or any part of them. She had actual knowledge and knew of her responsibility to cooperate with the State Bar but did not. We are more than troubled that in light of the multiple levels of violations, that she does not appreciate the severity of her actions and inactions.

We understand her desire to accept her punishment and put this matter behind her. We also fully understand the position of the State Bar in requesting a suspension of six months and one day. We find the position of the State Bar to be entirely reasonable.

Ms. Lane also testified about the personal and emotional issues she was experiencing during the representation. She stated she was divorced in 2011 and raising a daughter on her own with no child support. She said she felt isolated from the legal community as a sole practitioner, and was scared and embarrassed by her misconduct. Ms. Lane advised the Hearing Panel that she is currently seeking a counselor to help her work through her personal issues. However, once again no documentation supporting that assertion was disclosed or offered to the Hearing Panel.

Ms. Lane stated that in her current law partnership she now has structure and has implemented procedures recommended by LOMAP through her diversion contract which involve the returning of phone calls within 24 hours, setting up a filing and support system for handling paperwork, and implementing an e-mail filing system. She stated that she met with LOMAP staff in December and signed her contract on January 14, 2013. She said that because she is no longer a sole practitioner, she is now more focused, has better resources in her current employment, and has learned to reach out to colleagues when she needs help rather than promising to perform services things that she cannot do. We have our doubts.

Notwithstanding our serious concerns, we also recognize the value and importance of the mitigation submitted by Ms. Lane through her attorney. We also recognize that the apparent efforts that are listed above may begin to address our concerns for the protection of the public. Because of her mitigation and these latter positive efforts, the Hearing Panel determined that a suspension of six months and one day, which would require Ms. Lane to submit formal reinstatement proceedings

pursuant to Rule 65 Ariz.R.Sup.Ct., is not necessary to protect the public. We hope we are correct. However, in so finding we do rely heavily upon her testimony of the truth of these matters including, but not limited to, that she will follow through with her counseling sessions and her sworn testimony that when she wrote the NSF check she thought her bank account had sufficient funds to cover the check.

We encourage Ms. Lane to objectively consider her actions in this matter. Change requires self-understanding. That may involve much raw material that she would prefer not to address. Real change also requires determination and hard work.

CONCLUSION

Our Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *Alcorn*, 202 Ariz. 62, 74, 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, 187, 859 P.2d 1315, 1320 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 24, 881 P.2d 352, 356 (1994).

The Hearing Panel has reached its decision as to the appropriate sanction considering the facts deemed admitted, the *Standards*, the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. Therefore based upon the above,

IT IS ORDERED:

1. Respondent shall be suspended from the practice of law for 100 days effective 30 days from the date of this Report and Order.

2. Respondent shall immediately comply with the State Bar's prior request for the submission of office documents, bank records and other papers. Such submission shall at a minimum verify that she had in her bank account funds available to pay her client as she testified at the hearing.

3. Upon reinstatement, Respondent shall be placed on probation for two years (LOMAP). Because Respondent is currently in Diversion with LOMAP, however, at the discretion of LOMAP staff, her current contract may be continued for an additional two years or a new contract executed. Respondent shall comply with all recommendations from LOMAP. The terms and conditions of the LOMAP contract shall be incorporated herein and Respondent shall be responsible for the costs associated with LOMAP.

4. Within 30 days from the date of reinstatement, Respondent shall obtain a MAP assessment and if appropriate, enter into a therapeutic MAP contract based on the recommendations by MAP and shall comply with all recommendation of MAP. Any terms and conditions of a MAP contract shall be incorporated herein and Respondent shall be responsible for costs associated with MAP.

5. In the event that Respondent fails to comply with any of the foregoing probation terms, and that information is received by the State Bar, Bar Counsel shall file a notice of noncompliance with the PDJ, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The PDJ may conduct a hearing within 30 days thereafter to determine whether a term of probation has been breached and, if so, to

recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove noncompliance by a preponderance of the evidence.

6. Respondent shall pay all costs and expenses incurred by the State Bar of Arizona and the Office of the Presiding Disciplinary Judge in this proceeding.

7. Respondent shall pay the following in restitution: One Thousand Four Hundred and Twelve Dollars (\$1,412.00) to Robert Scott Fricks, which has been testified was paid.

DATED this 3rd day of May 2013.

/s/William J. O'Neil

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

/s/Mark E. Salem

**Mark E. Salem
Volunteer Public Member**

/s/Richard L. Brooks

**Richard L. Brooks
Volunteer Attorney Member**

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 3rd day of May 2013.


Copies of the foregoing mailed/emailed
this 3rd day of May 2013, to:

Denise M. Quinterri
The Law Office of Denise M. Quinterri, PLLC
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Respondent's Counsel

Nicole S. Kasetta
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

Copy of the foregoing hand-delivered
this 3rd day of May 2013, to:

Sandra Montoya
Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

by: M. Smith 

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DATED this 3rd day of May 2013.

Honorable William J. O'Neil
Presiding Disciplinary Judge



Mark E. Salem
Volunteer Public Member

Richard L. Brooks
Volunteer Attorney Member

Original filed with the Disciplinary Clerk
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of the Supreme Court of Arizona
this 3rd day of May 2013.

recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove noncompliance by a preponderance of the evidence.

6. Respondent shall pay all costs and expenses incurred by the State Bar of Arizona and the Office of the Presiding Disciplinary Judge in this proceeding.

7. Respondent shall pay the following in restitution: One Thousand Four Hundred and Twelve Dollars (\$1,412.00) to Robert Scott Fricks, which has been testified was paid.

DATED this 3rd day of May 2013.

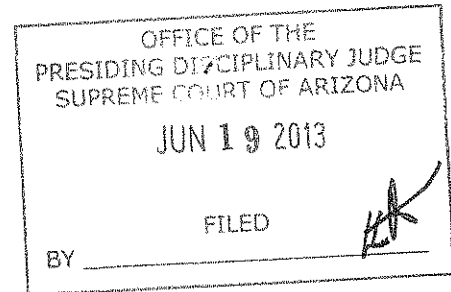
Honorable William J. O'Neil
Presiding Disciplinary Judge

Mark E. Salem
Volunteer Public Member



Richard L. Brooks
Volunteer Attorney Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 3rd day of May 2013.



**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

MONIQUA KENYATTA LANE,
Bar No. 023324

Respondent.

PDJ-2013-9012

[State Bar File Nos. 12-2451]

**AMENDED
FINAL JUDGMENT AND ORDER**

FILED JUNE 19, 2013

This matter having come on for hearing before the Hearing Panel of the Supreme Court of Arizona, it having duly rendered its decision; and no appeal having been filed and the time for appeal having passed, accordingly,

IT IS HEREBY ORDERED that **MONIQUA KENYATTA LANE**, is suspended from the practice of law for a period of one hundred days (100) days effective **June 3, 2013**, for conduct in violation of her duties and obligations as a lawyer, as disclosed in the Hearing Panel's Report.

IT IS FURTHER ORDERED that Ms. Lane 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 upon reinstatement Ms. Lane shall be placed on probation for a period of two (2) years with the State Bar Law Office Management Assistance Program ("LOMAP"). The terms and conditions of probation are as follows:

Terms and Conditions

1. Within thirty (30) days of reinstatement, Respondent shall contact LOMAP and schedule an assessment. Respondent shall comply with all recommendations from LOMAP. The terms and conditions of the LOMAP contract shall be incorporated herein and Respondent shall be responsible for the costs associated with LOMAP.

2. Within 30 days from the date of reinstatement, Respondent shall obtain a MAP assessment and if appropriate, enter into a therapeutic MAP contract based on the recommendations by MAP and shall comply with all recommendation of MAP. Any terms and conditions of a MAP contract shall be incorporated herein and Respondent shall be responsible for the costs associated with MAP.

3. In the event that Respondent fails to comply with any of the foregoing probation terms, and that information is received by the State Bar, Bar Counsel shall file a notice of noncompliance with the PDJ, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The PDJ may conduct a hearing within 30 days thereafter to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent shall pay the following in restitution:

One Thousand Four Hundred and Twelve Dollars (\$1,412.00) to Robert Scott Fricks, which has been paid.

IT IS FURTHER ORDERED granting Judgment to the State Bar of Arizona for costs in the amount of \$2,000.00, with interest as provided by law.

IT IS FURTHER ORDERED that Ms. Lane pay those costs and expenses awarded to the State Bar of Arizona in the amount of \$2,000.00, within thirty (30) days from the date of service of this Order. 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 19th day of June, 2013.

/s/ William J. O'Neil

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

Original filed with the Disciplinary Clerk
this 19th day of June, 2013.

COPY of the foregoing e-mailed/mailed
This 19th day of June, 2013, to:

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by: MSmith