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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

AUG 21 2019

FILED

BY 

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**MARK A. WERNER,
Bar No. 021630,**

Respondent.

PDJ 2019- 9061

COMPLAINT

[State Bar No. 18-2539]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

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 July 9, 2002.

COUNT ONE (File No. 18-2539/Budkey)

I. Respondent made an agreement for, charged, and/or collected an unreasonable fee and an unreasonable amount for expenses.

2. Jason Budkey hired Respondent to represent him in a family court matter involving a potential divorce action after two years of marriage and issues of custody and support for the couple's one minor child in common.

3. Mr. Budkey paid Respondent \$295.00 for an initial consultation on July 9, 2018, and paid Respondent \$2,350.00 as a "non-refundable fee payment" after signing a Client Services Contract on July 10, 2018.

4. The Client Services Contract ("CSC") specified that the scope of the "agreement includes only services for representation in family law matters for a Resolution Management Conference" and would not include other legal services.

5. The CSC listed additional non-refundable fees and costs to include "a \$300.00 non-refundable file establishment fee, an administrative non-refundable fee of one and one-half (1 ½) percent of your statement balance, and a \$100.00 file closeout non-refundable fee."

6. On July 14, 2018, opposing counsel ("OC") forwarded Mr. Budkey the Petition for Dissolution, requesting that Mr. Budkey's spouse ("Wife") be awarded sole legal decision-making authority and primary residence of their minor child and that Mr. Budkey's visitation be supervised. The Petition also requested

that Mr. Budkey undergo a domestic violence and alcohol/substance abuse assessment.

7. On July 17, 201, Respondent forwarded Mr. Budkey a billing statement reflecting a total of \$2,611.34 for legal services performed between July 9th and July 17th. This amount included the \$300.00 file establishment fee, which was in addition to a charge of \$74.75 for Respondent's assistant to "create new client files and accounts; client database; enter client information," and the 1 ½ percent administrative fee in the amount of \$38.59, which was in addition to a charge for photocopies in the amount of \$17.00.

8. In a letter to Mr. Budkey that accompanied the billing statement, Respondent wrote: "You now have a non-refundable payment due an (sic) owing as indicated on the last page of your statement. Services by this office are now suspended until receipt of your non-refundable payment as indicated below." Respondent also noted in the letter that if Mr. Budkey wanted Respondent to request a Temporary Orders Evidentiary Hearing ("TOEH"), new representation terms would need to be negotiated.

9. On July 19, 2018, Mr. Budkey remitted a non-refundable payment in the amount of \$2,367.00 to Respondent in accordance with the requirements of the July 17th billing statement.

10. Respondent sent Mr. Budkey a sample of his trial terms on July 25th, reflecting a higher rate of attorney compensation to represent him at a TOEH.

11. After a phone conference on July 26th, Respondent forwarded Mr. Budkey his second billing statement, which reflected services performed between July 20th and July 26th for a total billed of \$2,724.26, with \$40.26 representing the administrative fee and \$45.75 representing the cost of photocopies. The billing statement showed that Mr. Budkey's prior payment of \$2,367.00 was exhausted.

12. Respondent required a non-refundable payment in the amount of \$2,736.35 to continue working on Mr. Budkey's case, and Mr. Budkey provided the funds on July 27th.

13. Respondent sent Mr. Budkey a letter on July 27th and referenced the "multiple emails" that Mr. Budkey would send in a day, including three emails sent by Mr. Budkey on July 19th when two of those emails were in response to messages from Respondent's assistant regarding payment of legal fees.

14. Respondent told Mr. Budkey that he could save money by printing and mailing correspondence drafted to OC. Respondent instructed Mr. Budkey to use trackable services for the correspondence mailed to OC and to scan and email proof of the same to Respondent.

15. On July 28th, Respondent filed his Notice of Limited Scope Representation (“NOLSR”) and Notice of Unavailability of Counsel (“NOUOC”). Respondent emailed copies to Mr. Budkey with directions to print and mail to OC.

16. Respondent sent a billing statement to Mr. Budkey on July 30th that reflected a total billed between July 27th and July 30th of \$1,828.52, with \$27.02 in administrative fees and \$24.50 in photocopies.

17. Mr. Budkey’s previous payment of \$2,736.00 was exhausted, and Respondent requested an additional non-refundable payment of \$2,374.50 in order to continue working on Mr. Budkey’s case. Mr. Budkey remitted payment on July 31st.

18. Respondent sent a billing statement to Mr. Budkey on August 10th and billed a total of \$1,983.31, with \$29.31 in administrative fees and \$63.75 in photocopies. Respondent requested an additional payment in the amount of \$2,413.75, which Mr. Budkey paid on August 13th.

19. Respondent filed a Motion for Temporary Orders on August 16th, and after the Court set the hearing for September 13th, Respondent informed Mr. Budkey that his attorney rate for representation to prepare for and attend the hearing would need to increase to \$350.00 per hour.

20. Mr. Budkey consented to Respondent's higher attorney rate on August 21st, and Respondent sent a new billing statement on August 23rd that reflected the higher compensation for a total billed of \$2,606.00, with \$38.31 in administrative fees and \$97.25 in photocopies. Mr. Budkey met with Respondent on August 25th and paid him \$3,000.00

21. During a meeting with Respondent on August 30th, Mr. Budkey questioned Respondent's "cost-saving measures" considering that Mr. Budkey had already paid Respondent over \$15,000.00 for the representation. Respondent told Mr. Budkey to retain another attorney.

22. Respondent sent Mr. Budkey a letter after the meeting and stated that he was "no longer willing to represent" Mr. Budkey. Respondent told Mr. Budkey that he would be refunded any unearned portion of the non-refundable fees once the Court relieved Respondent.

23. Respondent provided Mr. Budkey with an *Application to Withdraw With Client Consent*. Mr. Budkey responded by requesting an accounting of the \$3,000.00 he had recently paid to Respondent.

24. On August 31st, Respondent filed an *Application to Withdraw Without Client Consent*, and on September 5th he sent Mr. Budkey a letter to inform him that earlier filed motions had been file stamped by the Court. Respondent also enclosed a billing statement that included charges to draft two versions of the application to withdraw, letters to Mr. Budkey about termination of representation, and the September 5th letter to Mr. Budkey.

25. On September 27th, Respondent sent Mr. Budkey a letter with an enclosed copy of the signed *Order to Withdraw*, which the Court had signed on September 6th. Respondent noted in the letter that if Mr. Budkey wanted Respondent to prepare a copy of Mr. Budkey's client file, Mr. Budkey's "account must be current and prepayment must take place for that service to be performed by this office."

26. Respondent also included a final billing statement that concluded that Mr. Budkey's \$3,000.00 non-refundable payment made on August 25th was exhausted, and Mr. Budkey owed Respondent \$146.95. The billing statement

reflected charges for work performed between August 23rd and September 25th, for a total of \$3,627.86. Of the total amount billed, \$769.75 was billed for work performed after Respondent told Mr. Budkey to get another attorney. This included charges for Respondent's time to prepare and file his application to withdraw and time for Respondent's assistant to look for and retrieve the Court's signed Order to Withdraw. The final bill also included a \$100.00 file closing fee and a \$54.00 charge for photocopies.

27. Respondent acknowledged in an email to Bar Counsel and Mr. Budkey on October 1, 2018, that Mr. Budkey had paid him a total of \$15,536.60 in legal fees and costs. Respondent asked if refunding the total amount to Mr. Budkey and waiving the outstanding balance would result in a dismissal of the charges.

28. Bar Counsel informed Respondent that a refund would not cause the case to be dismissed.

29. Mr. Budkey responded that he would be interested in a full refund from Respondent. Respondent did not reply and did not provide a refund to Mr. Budkey.

II. Respondent revealed confidential information relating to the representation of his client, putting his own interests before those of his client, and he acted unprofessionally toward his client.

30. When meeting on August 30, 2018, to discuss the upcoming TOEH, Respondent engaged in unprofessional conduct by interrupting Mr. Budkey, telling Mr. Budkey that he did not “care” when Mr. Budkey tried to explain his efforts at collecting documentation, and saying to Mr. Budkey “I am going to talk to you like I do my child.”

31. Later that afternoon, Respondent emailed Mr. Budkey an *Application to Withdraw With Client Consent* and a letter that threatened to reveal confidential information as follows (Errors in original): “I have a duty to inform you that if our relationship turns adversarial then the attorney client privilege you currently enjoy with me is destroyed. This means I may be able to use any and all information you have provided to me by you to defend myself from and/or against you and/or your attorney. Therefore all your comments and information you provided to me will no longer be confidential. This means all the information you provided to me about mental health struggles, substance abuse/addiction, criminal activity, etc. may be

made public and available to your judge and more importantly the opposition to do with as they see fit. If made a matter of public record the information you have provided me could have far reaching implications regarding not only your access with [Mr. Budkey's minor child] but also your employment. If our relationship remains non-adversarial all the comments and information you have provided to me remains confidential. I urge you to use extreme caution in how you proceed."

32. When Respondent did not receive a signed copy of the *Application to Withdraw With Client Consent* by the following day, he filed an *Application to Withdraw Without Client Consent* and *Proposed Form of Order*.

33. Respondent sent a copy of the filed application and a letter to Mr. Budkey on August 31st. Though Mr. Budkey had never threatened Respondent with physical violence and had only contacted Respondent one time since the meeting to ask for an accounting of legal fees, Respondent stated in the letter (Errors in original), "Once again, I reiterate that due to your hostile tone during our office meeting on August 31, 2018, I request, and hereby demand, that all communication to this office be in writing by email to the above listed email address. DO NOT CONTACT THIS OFFICE BY PHONE OR IN PERSON. Additionally, I request and hereby demand that you never again personally appear

at any of my client meeting locations, my private office nor my residence. YOU ARE ON NOTICE TO HAVE NO PERSONAL CONTACT WITH THIS OFFICE, ME OR MY FAMILY. Be advised that I will not hesitate in seeking judicial relief to stop any harassment directed at this office or my family by you.”

34. In the *Application to Withdraw Without Client Consent*, Respondent allowed his own interests to interfere with his duty of loyalty to his client by writing that “the attorney client relationship has turned adversarial,” and Respondent “has serious concerns for his personal safety,” so he would “no longer have any in person contact, whether behind court security screening or not.”

35. Respondent revealed information relating to the representation of Mr. Budkey to the Court by writing that Mr. Budkey “failed to cooperate in his representation by failing to: 1. Return Client Intake Information; 2. Return an Affidavit of Financial Information; 3. Provide redacted financial information. 4. Provide year to date paystubs and/or income information; 5. Provide documents required pursuant to Rule 49 for disclosure; 6. Provide trial exhibits; 7. Timely respond to correspondence from undersigned counsel.”

36. Respondent further alleged that Mr. Budkey made “serious and unfounded accusations regarding undersigned counsel’s professionalism and ethics, and demonstrated unacceptable behavior.”

37. Respondent’s statements in his *Application to Withdraw without Client Consent* were made without his client’s authorization and were averse to his client’s interests as evinced by their use in subsequent pleadings filed by the opposing party.

38. Respondent’s *Application to Withdraw Without Client Consent* was cited by OC in a Joint Pre-Trial Statement (“JPS”) in support of Wife’s request for final decision-making authority. Mr. Budkey also referenced Respondent’s *Application* in the JPS by denying that he did anything to Respondent.

39. OC referenced Respondent’s *Application* in a later briefing that requested Mr. Budkey be ordered to pay Wife’s legal fees because Mr. Budkey’s “own lawyer had to withdraw from representing [him] due to the lawyer concerned for the lawyer’s own safety.”

III. Respondent acted unprofessionally toward opposing counsel Jon Parchman.

40. On July 23, 2018, Respondent forwarded OC an *Initial Letter* and a *Demand for Disclosure*. In the *Demand for Disclosure*, Respondent addressed Wife's request that Mr. Budkey's time with his child be supervised by asking OC to provide him with the legal and factual basis "indicating abuse by my client upon his child that forms the basis for this position by email" in one week's time.

41. After noting in the *Demand for Disclosure* that Respondent's client considered the request for supervised visitation "outrageous and unreasonable," Respondent wrote the following unprofessional statements, "Absent such documentation (sic) your counseling of your client to proceed in such a manner is unprofessional, unethical, contrary to law and contrary to the best interests of the minor child. Never would I file such a pleading as you have filed without attaching Medical Reports, Police Reports or CPS Reports indicating that your client caused physical harm to the minor child. Clearly we have different ethics."

42. On August 13th, Respondent filed a *Response to the Petition for Dissolution* that requested Mr. Budkey be awarded sole legal decision making, be designated the primary residential parent, and that Wife only be allowed supervised access to the minor child because it was believed that "Petitioner/Mother is a risk to her child due to excessive drinking while the child

is in her care.” Respondent did not attach medical reports, CPS records, or police reports to his pleading to support this request.

43. In his letter to OC dated July 23, 2018, Respondent made the following threat, “If you fail to either provide the aforementioned requested information or the contact information for your client and the minor child, my client will be requesting not only his attorney fees from you personally caused by your actions, but that you be personally sanctioned by the Court and for this matter to be referred to the State Bar for investigation of your conduct.”

44. In the same July 23rd letter, Respondent disparaged OC by writing, “it appears you have been licensed to practice law in Arizona for approximately one (1) month. You should really consider if you want to earn a reputation of representing parties that withhold children and request spousal maintenance for a marriage of 29 months. I have been practicing Family Law in Maricopa County for over 16 years and have never filed a pleading such as the Petition you filed. Reputations are quickly earned but never forgotten. Proceed as you see fit.”

45. OC responded to the demand letter by requesting a phone conference and stated, “I think reaching a settlement will be easier without the personal attacks and wild allegations made in your letter. You might want to tone it down a

notch. I don't think threatening me with bar complaints is very effective and may lead to more issues for you."

46. OC emailed Respondent on July 23, 2018, to ask if Respondent would accept service on Mr. Budkey's behalf, and he emailed Respondent on July 24th with a list of property that his client wanted to retrieve from Mr. Budkey's home. Respondent's assistant responded with an email that stated, "Please see the attached." OC replied that he could not open the attachment, he asked if Respondent had his own email that he could use to send and receive messages, and he requested that Respondent call him or that the contents of the attachment be pasted into an email.

47. On July 25th, Respondent's assistant sent OC another email that read, "Please see the attached." In the attached letter, Respondent disparaged OC again by writing, "I understand that you only have been licensed to practice law in Arizona for one (1) month. However, your inability to open a PDF file is not a problem of mine or my client. Correspondence will continue to be sent to you in PDF format which is also the format the Court delivers Minute Entries to attorneys. I do have a personal email. I will not be providing you that email. You

will communicate with this office using the same email that is provided to the Court: mawlaw@cox.net.”

48. OC informed Respondent, “I can’t open these attachments for some reason. I was unable to open your last attachment or this one. I’m sorry I won’t be able to communicate that (sic) way you are attempting to and find your approach in treating opposing counsel appalling.”

49. Despite OC’s expressed inability to open Respondent’s attachments, Respondent sent OC three emails on July 31st, and all three emails simply stated, “Please see the attached.”

50. The first of these emails was sent at 5:18 p.m., and the attached letter referenced an email sent by OC on July 29th. Respondent wrote in part, “In your email you state, ‘Please tell your client to not email directly.’ My client has no interest in your attempt to give this office instruction how to practice law given your inexperience. In the future, similar instructions will be ignored by this office as was the aforementioned. Please refrain from such remarks in the future.”

51. The second email was sent at 5:33 p.m., and the attached letter referenced an email sent by OC on July 30th. Respondent wrote in part, “In your email you state ‘I expect a reply within 24 hours.’ Mr. Budkey is not interested in

what you 'expect.' Please limit your future comments to productive dialogue that enhances the opportunity for negotiated resolution. In your email you state 'Please just type in the email as I'm having trouble opening your last three attachments.' I understand that you only have been licensed to practice law in Arizona for one (1) month. However, your inability to open a PDF file is not a problem of mine or my client. Correspondence will continue to be sent to you in PDF format which is also the format the Court delivers Minute Entries to attorneys."

52. The third email was sent at 5:45 p.m. and included copies of Respondent's *Notice of Limited Scope Representation* and *Notice of Unavailability of Counsel*.

53. OC responded with another request that the contents be pasted into an email or faxed because he could not open Respondent's attachments.

54. Respondent sent OC an email on August 1st with an attached letter. The letter references an email sent by OC on July 24th, and in the letter, Respondent wrote in part, "In your email you state 'I'm willing to work out some access of the child for your client but she is breastfeeding and does not feel comfortable leaving her 4 month old alone.' Mr. Budkey is not interested in how your client 'feels'." Respondent also remarked that OC's grammar was

“problematic,” and he disparaged OC by stating, “I realize you have only been licensed to practice law in Arizona one (1) month but I have no interest in teaching you how to practice law in Arizona.”

55. Respondent’s statements to OC were uncivil, discourteous, and necessary.

IV. Respondent failed to respond promptly to bar counsel’s inquiry.

56. Intake Bar Counsel Nicole Kasetta scheduled a phone appointment with Respondent on September 5th to discuss allegations that Respondent engaged in unprofessional behavior and charged unreasonable fees.

57. During the telephonic conference, Respondent refused to furnish information to Mr. Kasetta upon request.

58. Respondent refused to tell Ms. Kasetta if his fee agreement included a fee arbitration clause.

59. Respondent refused to provide a copy of his fee agreement to Ms. Kasetta.

60. Respondent would not tell Ms. Kasetta how much Mr. Budkey had paid him to date for his legal services.

61. Respondent told Ms. Kasetta that he would not reveal anything about his August 30th meeting with Mr. Budkey other than a statement that he feared for his safety and left the McDonalds.

V. The totality of Respondent's conduct was prejudicial to the administration of justice.

62. Respondent's hostile tone in communications with the OC and his refusal to comply with OC's reasonable requests to include the content of his letters in the body of his emails resulted in unnecessary frustration and delay.

63. Respondent's inflammatory statements and accusations in his *Application to Withdraw Without Client Consent* interfered with the administration of justice by fueling requests that Mr. Budkey have supervised visitation and be ordered to pay an opposing party's legal fees, which then necessitated a response by Mr. Budkey in his own defense.

64. Respondent's conduct in this Count violated Rule 42, Ethical Rules 1.5, 1.6, 1.7, and 8.4(d), Rule 41(g), and Rule 54(d)(2).

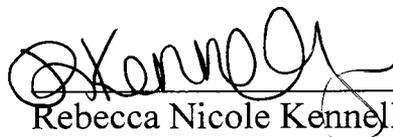
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DATED this 21st day of August, 2019.

STATE BAR OF ARIZONA

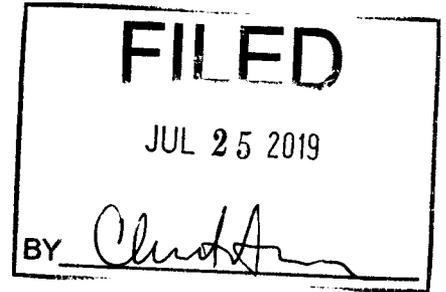


Rebecca Nicole Kennelly
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 21st day of August, 2019.

by: 
RNK/sab

**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**



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

No. 18-2539

**MARK A. WERNER,
Bar No. 021630,**

PROBABLE CAUSE ORDER

Respondent.

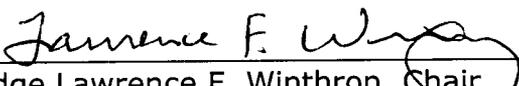
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on July 12, 2019, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 6-0-3¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-2539.

IT IS THEREFORE ORDERED pursuant to Rule 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 25 day of July, 2019.



Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

¹ Committee members Jeffrey Pollitt, Daisy Flores and JoJene Mills did not participate in this matter.

Original filed this 25th day
of July, 2019, with:

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

Copy mailed this 26th day
of July, 2019, to:

Mark A. Werner
The Law Office of Mark A. Werner
P.O. Box 93731
Phoenix, Arizona 85070-3731
Respondent

Copies mailed this 26th day
of July, 2019, to:

Attorney Discipline Probable Cause Committee
Of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
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Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

By:  _____

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**MARK A. WERNER,
Bar No. 021630**

Respondent.

PDJ 2019-9061

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar No. 18-2539]

FILED MARCH 2, 2020

I. SUMMARY

In 2018, Respondent represented a client in a family law matter. Respondent charged unreasonable fees and unreasonable amounts for expenses and refused to provide the client a refund unless he agreed to dismiss the bar investigation arising from his charge. When the client requested an accounting of fees, Respondent told him to retain another attorney and sent the client a letter stating he was no longer willing to represent him. He threatened his client.

He declared that if his client did not “IMMEDIATELY” sign and return his application to withdraw that “all your comments and information you provided to me will no longer be confidential.” (Capitalized in original). He directly threatened that all information he had obtained from the attorney-client relationship “may be made

public” by Respondent “available to the judge and more importantly the opposition to do with as they seem fit.” (Exhibit 6, page.42; Exhibit 13 page 1197).

When filing his application to withdraw from representation without client consent, Respondent fulfilled that threat by revealing confidential information in the motion to withdraw related to his representation to the court to disparage his client to the court.

Respondent engaged in unprofessional conduct towards his client and opposing counsel in that family law matter. He failed to furnish information to the State Bar in its investigation of this matter. His conduct was prejudicial to the administration of justice.

By Order of the Presiding Disciplinary Judge, a default was entered based on Respondent’s failure to comply with discovery rules and the allegations in the complaint were deemed admitted. Respondent’s conduct violated ERs 1.5 (fees), 1.6 (confidentiality of information), 1.7 (conflict of interest), 8.4(d) (conduct prejudicial to the administration of justice), Rule 41(g) (unprofessional conduct), and Rule 54(d)(2) (failure to furnish information).

II. PROCEDURAL HISTORY

The State Bar of Arizona (“SBA”) filed its Complaint on August 21, 2019. On September 10, 2019, Respondent filed his Answer. On December 6, 2019, the SBA filed a Notice of Failure to Comply with Discovery Rules and Motion for

Sanctions (“Notice”) alleging that Respondent failed to comply with the discovery rules during the attempted deposition of Respondent. The motion was granted, and sanctions issued for the reasons stated in an order of December 18, 2019.

On January 21, 2020, the Hearing Panel comprised of the Presiding Disciplinary Judge, William J. O’Neil, voluntary attorney member, Judge John Nelson (retired) and volunteer public member, Howard Weiske heard the matter and considered the evidence. Exhibits 1-37 were admitted. The State Bar argued for not less than a six-month suspension and two years of probation with the State Bar’s Member Assistance Program (MAP) and continuing legal education.

III. FINDINGS OF FACT

Preface

The facts listed below are those set forth in the SBA’s Complaint and were deemed admitted by the entry of the default judgment against Mr. Werner. The State Bar exhibits were admitted and supported the allegations within the complaint. We also note where the answer of Mr. Werner repeatedly and unequivocally conflicted with the exhibits often generated from his own office.

Civil Rule 8(c) is made applicable to these proceedings pursuant Rule 48(b), Ariz. R. Sup. Ct. The terms are clear. Mr. Werner was to have “stated in short and plain terms” his defenses. The State Bar complaint comprised twenty-two pages. The answer of Mr. Werner was fifty-six pages.

The answer of Mr. Werner was required “to fairly address the substance of the allegation.” Civil Rule 11(b) is also applicable to these proceedings pursuant to Rule 48(b), Ariz. R. Sup. Ct. It states that by “signing a pleading...the attorney or party certifies that to the best of the person's knowledge, information, and belief formed after reasonable inquiry: (4) the denials of factual contentions are warranted on the evidence.” Of the sixty-three numbered factual allegations in the complaint, Mr. Werner admitted allegation 1 and allegation 52. Mr. Werner denied entirely the other sixty-one allegations with the single word “Deny”.

Mr. Werner intentionally made no attempt in his answer to “fairly address the substance of the allegation” as written. For brevity we demonstrate this by reviewing only the first ten complaint allegations. We then identify how Mr. Werner’s own documents conflict with his denial in each instance. The complete denials by Mr. Werner of allegations 12 through 20 are all impeached by his own documents.

When an action is performed intentionally, it implies the willingness or aim of a person to do so rather than negligence, an accident or mistake. We are less interested in Mr. Werner’s motive for his actions. Motive only clarifies the accused reasons for acting in a specific manner. Intent is determined by the use of particular means. Mr. Werner acted with intent.

Facts deemed admitted

1. Mr. Werner admitted he has been a licensed lawyer since July 9, 2002.

COUNT ONE (File No. 18-2539/Jason Budkey)

2. Jason Budkey hired Respondent to represent him in a family court matter involving a potential divorce action after two years of marriage and one minor child in common. (Exhibits 9, 18).

Misrepresentation. We note Mr. Werner denied he was hired by Mr. Budkey to represent him in a family court matter. The exhibits demonstrate his certified denial is untrue. We note he also affirmatively certified that Complaint allegation 2 by the State Bar “misrepresented” that the matter was “a simple divorce.” Complaint allegation 2 speaks for itself. It contains no such statement.

Unreasonable Fees and Expenses

3. Mr. Budkey paid Respondent \$295.00 on July 9, 2018, for an initial consultation set for July 9, 2018. (Exhibit 10 at pages 78). Mr. Budkey paid Respondent \$2,350.00 as a “non-refundable fee payment” after signing a Client Services Contract (“CSC”) on July 10, 2018. (Exhibits 9/239; Exhibit 10 at p. 80).

Misrepresentation. We note Mr. Werner denied that Mr. Budkey paid him these funds. Exhibit 10 is Mr. Werner’s Billing Statement to Mr. Budkey. It reports Mr. Budkey paid Mr. Werner \$295. (Id. at page 80). It reports Mr. Budkey paid Mr. Werner \$2,350 as a non-refundable fee payment. (Id. at p. 81.)

4. The CSC specified that the scope of the “agreement includes only services for representation in family law matters for a Resolution Management Conference” and would not include other legal services. (Exhibit 9 at p. 71).

Misrepresentation. We note Mr. Budkey denied that his agreement contained this language. The quotation is found under sub-section II “SCOPE OF REPRESENTATION” subsection A in the first sentence. (Id.)

5. The CSC listed additional non-refundable fees and costs to include “a \$300.00 non-refundable file establishment fee, an administrative non-refundable fee of one and one-half (1 ½) percent of your statement balance, and a \$100.00 file closeout non-refundable fee.”

Misrepresentation. We note Mr. Werner denied that his agreement contained this language. That language is under sub-section V(E). (Id. at p. 73.)

6. On July 12, 2018, Mr. Budkey’s spouse, (“Wife”), filed a Petition for Dissolution with the assistance of opposing counsel (“OC”). In the Petition, Wife requested sole legal decision-making authority and primary residence of their minor child and that Mr. Budkey’s visitation be supervised. The Petition also requested that Mr. Budkey undergo a domestic violence and alcohol/substance abuse assessment. (Exhibit 18, p. 1263).

Misrepresentation. We note Mr. Werner denied this allegation. Exhibit 18 is a copy of the filed petition. It is date stamped by the Clerk of the Superior Court as

filed on July 12, 2018. Sole legal decision-making authority and to be the primary residential parent of the child at paragraph 13 of the petition. (Id.) The requested assessment is at paragraph 14 of that same page.

7. Respondent sent his first billing statement to Mr. Budkey on July 17, 2018, and it included the \$300.00 file establishment fee, which was in addition to a charge of \$74.75 for Respondent's assistant to "create new client files and accounts; client database; enter client information," and an administrative fee in the amount of \$38.59, which was in addition to a charge for photocopies in the amount of \$17.00. (Exhibits 10.)

Misrepresentation. We note Mr. Werner denied this allegation. The \$300 file establishment fee and the charge of \$74.75 for Respondent's assistant is found in his fee agreement at Exhibit 10, page 78. The \$38.59 administrative fee and the photocopy fee of \$17.00 is found in Exhibit 10, p. 80.

8. In a letter to Mr. Budkey that accompanied the billing statement, Respondent wrote: "You now have a non-refundable payment due an (sic) owing as indicated on the last page of your statement. Services by this office are now suspended until receipt of your non-refundable payment as indicated below." Respondent also noted in the letter that if Mr. Budkey wanted Respondent to request a Temporary Orders Evidentiary Hearing ("TOEH"), new representation terms would need to be negotiated. (Exhibit 13 at pp. 393-394).

Misrepresentation. We note Mr. Werner denied that his letter contained these statements despite the clear objective proof of that language in his letter. (*Id.*)

9. Mr. Budkey complied with the requirements of the billing statement by remitting payment of \$2,367.00 on July 19, 2018. (Exhibit 10 at p. 84; Exhibit 13 at pp. 405-406).

Misrepresentation. We note Mr. Werner denied that Mr. Budkey remitted a payment of this sum on July 19, 2018. His billing statements proves he knew he had been paid by Mr. Budkey. (Exhibit 10 supra). It also proves the payment was prior to the payment demand date (July 20) stated in his letter. (Exhibit 13 at p. 394.)

10. On July 25, 2018, Respondent sent Mr. Budkey a sample of his trial terms to reflect his higher rate of attorney compensation for representation at a TOEH. (Exhibit 13 at pp. 474-480).

Misrepresentation. We note Mr. Budkey denied this allegation. His own letter impeaches that certification. (*Id.*)

11. On July 26th, Respondent forwarded Mr. Budkey his second billing statement, which reflected services performed between July 20th and July 26th for a total billed of \$2,724.26, with \$40.26 representing the administrative fee and \$45.75 representing the cost of photocopies. The billing statement showed that Mr. Budkey's prior payment of \$2,367.00 was exhausted. (Exhibit 10 at pp. 81-84; Exhibit 13 at 527).

Misrepresentation. We note Mr. Werner's own billing statements prove the accuracy of this State Bar allegation.

12. Respondent required a non-refundable payment in the amount of \$2,736.35 to continue working on Mr. Budkey's case, and Mr. Budkey provided the funds on July 27, 2018. (Exhibit 10 at pp. 84 and 87).

13. Respondent sent Mr. Budkey a letter on July 28th and referenced the "multiple emails" that Mr. Budkey would send in a day, including three emails sent by Mr. Budkey on July 19th when two of those emails were in response to messages from Respondent's assistant regarding payment of legal fees. (Exhibits 13 at pp. 405-417, 573-575 & Exhibits 73-74, 76, 125).

14. Respondent told Mr. Budkey that he could save money by printing and mailing correspondence drafted to OC. Respondent instructed Mr. Budkey to use trackable services for the correspondence mailed to OC and to scan and email proof of the same to Respondent. (Exhibits 13 at pp. 548-550).

15. On July 28th, Respondent filed his Notice of Limited Scope Representation ("NOLSR") and Notice of Unavailability of Counsel ("NOUOC"). Respondent emailed copies to Mr. Budkey with directions to print and mail to OC. (Exhibit 13 at pp. 548-550; Exhibits 23-24).

16. Respondent sent a billing statement to Mr. Budkey on July 30th that reflected a total billed between July 27th and July 30th of \$1,828.52, with \$27.02 in administrative fees and \$24.50 in photocopies. (Exhibit 10 at pp. 85-87.)

17. Mr. Budkey's previous payment of \$2,736.00 was exhausted, and Respondent requested an additional non-refundable payment of \$2,374.50 in order to continue working on Mr. Budkey's case. (Id.).

18. Mr. Budkey remitted payment of \$2,374.50 on July 31, 2018. (Exhibit 10 at p. 91).

19. Respondent sent a billing statement to Mr. Budkey on August 10th and billed a total of \$1,983.31, with \$29.31 in administrative fees and \$63.75 in photocopies. Respondent requested an additional payment in the amount of \$2,413.75. (Exhibit 10 at pp. 88-91).

20. Mr. Budkey remitted payment of \$2,413.75 on August 13, 2018. (Exhibit 10 at p. 95).

21. Respondent filed a Motion for Temporary Orders on August 16th. (Exhibits 27/228).

22. After the Court set the hearing for September 13th, Respondent informed Mr. Budkey that his attorney rate for representation to prepare for and attend the hearing would need to increase to \$350.00 per hour. (Exhibit 13 at pp. 1038-1041/Exhibit 190).

23. Mr. Budkey consented to Respondent's higher attorney rate on August 21st. (Exhibit 13 at pp. 1042-1046/Exhibit 191).

24. Respondent sent a new billing statement on August 23rd that reflected the higher compensation for a total billed of \$2,606.00, with \$38.31 in administrative fees and \$97.25 in photocopies. (Exhibit 13 at pp. 92-95/Exhibit 246).

25. Mr. Budkey met with Respondent on August 25th and paid him \$3,000.00. (Exhibit 10 at page 100/Exhibit 247 at page 2881; Exhibit 13 at page 1157/Exhibit 205 at p. 2585).

26. During a meeting with Respondent on August 30th, Mr. Budkey questioned Respondent's "cost-saving measures" considering that Mr. Budkey had already paid Respondent over \$15,000.00 for the representation. Respondent told Mr. Budkey to retain another attorney. (Exhibit 3 at p. 22).

27. Respondent sent Mr. Budkey a letter after the meeting and stated that he was "no longer willing to represent" Mr. Budkey. Respondent told Mr. Budkey that he would be refunded any unearned portion of the non-refundable fees once the Court relieved Respondent. (Exhibit 13 at pp. 1196-1199).

28. Respondent provided Mr. Budkey with an Application to Withdraw with Client Consent, proposed Order to Withdraw as Attorney of Record, and correspondence to be sent to OC. (Exhibit 13 at pp. 1200-1204).

29. Mr. Budkey responded by requesting an accounting of the \$3,000.00 he had recently paid to Respondent. (Exhibit 13 at p. 1206).

30. On August 31st, Respondent filed an Application to Withdraw Without Client Consent. (Exhibit 34). He intentionally sent a copy of his application to opposing counsel. (Id. at p. 1395.)

31. On September 5th, Respondent sent Mr. Budkey a letter to inform him that earlier filed motions had been file stamped by the Court. Respondent also enclosed a billing statement that included charges to draft two versions of the application to withdraw, letters to Mr. Budkey about termination of representation, and the September 5th letter to Mr. Budkey. (Exhibit 13 at pp. 1219-1232).

32. On September 27th, Respondent sent Mr. Budkey a letter with an enclosed copy of the signed Order to Withdraw, which the Court had signed on September 6th. Respondent noted in the letter that if Mr. Budkey wanted Respondent to prepare a copy of Mr. Budkey's client file, Mr. Budkey's "account must be current and prepayment must take place for that service to be performed by this office." (Exhibit 13 at pp. 1236-1239).

33. Respondent also included a final billing statement that concluded that Mr. Budkey's \$3,000.00 non-refundable payment made on August 25th was exhausted, and Mr. Budkey owed Respondent \$146.95. The billing statement reflected charges for work performed between August 23rd and September 25th, for

a total of \$3,627.86. Of the total amount billed, \$769.75 was billed for work performed after Respondent told Mr. Budkey to get another attorney. This included charges for Respondent's time to prepare and file his application to withdraw and time for Respondent's assistant to look for and retrieve the Court's signed Order to Withdraw. The final bill also included a \$100.00 file closing fee and a \$54.00 charge for photocopies. (Exhibit 13 at pp. 1240-1245).

34. Respondent acknowledged in an email to Bar Counsel and Mr. Budkey on October 1, 2018, that Mr. Budkey had paid him a total of \$15,536.60 in legal fees and costs. Respondent asked if refunding the total amount to Mr. Budkey and waiving the outstanding balance would result in a dismissal of the charge. (Exhibit 14 at pp. 1247-1248).

35. Bar Counsel informed Respondent that a refund would not cause the case to be dismissed. (Exhibit 14 at p. 1246).

36. Mr. Budkey responded that he would be interested in a full refund from Respondent. Respondent did not reply and did not provide a refund to Mr. Budkey. (Exhibit 7).

37. Below is a table summarizing the billings:

Date	Legal Fees Paid	Billed	Description
7/9/18	\$295.00		Initial consultation

7/10/18	\$2,350.00		Non-refundable fee payment due after signing client services contract
7/17/18		\$2,611.34	Legal services 7/9-7/17; \$300 file establishment fee; \$74.75 fee for assistant to "create new client files and accounts"; \$38.59 admin fee; \$17 photocopies
7/19/18	\$2,367.00		Non-refundable fee payment
7/26/18		\$2,724.26	Legal services 7/20-7/26; \$40.26 admin fee; \$45.75 photocopies
7/27/18	\$2,736.35		Non-refundable fee payment
7/30/18		\$1,828.52	Legal services 7/27-7/30; \$27.02 admin fee; \$24.50 photocopies
7/31/18	\$2,374.50		Non-refundable fee payment
8/10/18		\$1,983.31	Legal services 7/30-8/10; \$29.31 admin fee; \$63.75 photocopies
8/13/18	\$2,413.75		Non-refundable fee payment
8/23/18		\$2,606.00	Legal services 8/10-8/23; \$38.31 admin fee; \$97.25 photocopies
8/25/18	\$3,000.00		Non-refundable fee payment
9/27/18		\$3,627.86	Legal services 8/23-9/25—including \$769.75 billed for work performed after Respondent told Mr. Budkey to get another lawyer; \$100 closeout fee; \$54 photocopies; balance due=\$146.95

38. Between July 9, 2018, and August 25, 2018, Respondent charged and collected \$15,536.60. During that time, Respondent did not appear in Court on Mr. Budkey's behalf.

Unprofessional Conduct and Disclosure of Confidential Information

39. When meeting on August 30, 2018, to discuss the upcoming TOEH, Respondent engaged in unprofessional conduct by interrupting Mr. Budkey, telling Mr. Budkey that he did not “care” when Mr. Budkey tried to explain his efforts at collecting documentation, and saying to Mr. Budkey, “I am going to talk to you like I do my child.” (Exhibit 3 at pp. 21-22).

40. Later that afternoon, Respondent emailed Mr. Budkey an Application to Withdraw With Client Consent and a letter that threatened to reveal confidential information as follows (Errors in original): “I have a duty to inform you that if our relationship turns adversarial then the attorney client privilege you currently enjoy with me is destroyed. This means I may be able to use any and all information you have provided to me by you to defend myself from and/or against you and/or your attorney. Therefore all your comments and information you provided to me will no longer be confidential. This means all the information you provided to me about mental health struggles, substance abuse/addiction, criminal activity, etc. may be made public and available to your judge and more importantly the opposition to do with as they see fit. If made a matter of public record the information you have provided me could have far reaching implications regarding not only your access with [Mr. Budkey’s minor child] but also your employment. If our relationship remains non-adversarial all the comments and information you have provided to me

remains confidential. I urge you to use extreme caution in how you proceed.”
(Exhibits 1).

41. When Respondent did not receive a signed copy of the Application to Withdraw With Client Consent by the following day, he filed an Application to Withdraw Without Client Consent and Proposed Form of Order.” (Exhibit 34).

42. Respondent sent a copy of the filed application and a letter to Mr. Budkey on August 31st. (Exhibits 2).

43. Though Mr. Budkey had never threatened Respondent with physical violence and had only contacted Respondent one time since the meeting to ask for an accounting of legal fees, Respondent stated in the letter (Errors in original), “Once again, I reiterate that due to your hostile tone during our office meeting on August 31, 2018, I request, and hereby demand, that all communication to this office be in writing by email to the above listed email address. DO NOT CONTACT THIS OFFICE BY PHONE OR IN PERSON. Additionally, I request and hereby demand that you never again personally appear at any of my client meeting locations, my private office nor my residence. YOU ARE ON NOTICE TO HAVE NO PERSONAL CONTACT WITH THIS OFFICE, ME OR MY FAMILY. Be advised that I will not hesitate in seeking judicial relief to stop any harassment directed at this office or my family by you.” (*Id.*).

44. In the Application to Withdraw Without Client Consent, Respondent allowed his own interests to interfere with his duty of loyalty to his client by writing that “the attorney client relationship has turned adversarial,” and Respondent “has serious concerns for his personal safety,” so he would “no longer have any in person contact, whether behind court security screening or not.” (Exhibit 34 at page 1393).

45. Respondent revealed information relating to the representation of Mr. Budkey to the Court by writing that Mr. Budkey “failed to cooperate in his representation by failing to: 1. Return Client Intake Information; 2. Return an Affidavit of Financial Information; 3. Provide redacted financial information. 4. Provide year to date paystubs and/or income information; 5. Provide documents required pursuant to Rule 49 for disclosure; 6. Provide trial exhibits; 7. Timely respond to correspondence from undersigned counsel.” (*Id.*).

46. Respondent further alleged that Mr. Budkey made “serious and unfounded accusations regarding undersigned counsel’s professionalism and ethics and demonstrated unacceptable behavior.” (*Id.*).

47. Respondent’s statements in his Application to Withdraw without Client Consent were made without his client’s authorization and were averse to his client’s interests as evinced by their use in subsequent pleadings filed by the opposing party. (Exhibits 7).

48. Respondent's Application to Withdraw Without Client Consent was cited by OC in a Joint Pre-Trial Statement ("JPS") in support of Wife's request for final decision-making authority. Mr. Budkey also referenced Respondent's Application in the JPS by denying that he did anything to Respondent. (Exhibit 36 at pp. 1404-1405 and 1414-1415).

49. OC referenced Respondent's Application in a later briefing that requested Mr. Budkey be ordered to pay Wife's legal fees because Mr. Budkey's "own lawyer had to withdraw from representing [him] due to the lawyer concerned for the lawyer's own safety." (Exhibit 37 at 1430).

Unprofessional Conduct Directed at OC

50. On July 14, 2018, Mr. Budkey forwarded Respondent a copy of the Petition for Dissolution filed by opposing counsel ("OC"). (Exhibit 13 at page 382).

51. On July 23, 2018, Respondent forwarded OC an Initial Letter and a Demand for Disclosure. (Exhibit 12 at pages 110-114).

52. In the Demand for Disclosure, Respondent addressed Wife's request that Mr. Budkey's time with his child be supervised by asking OC to provide him with the legal and factual basis "indicating abuse by my client upon his child that forms the basis for this position by email" in one week's time. (Exhibit 12 at p. 113).

53. After noting in the Demand for Disclosure that Respondent's client considered the request for supervised visitation "outrageous and unreasonable,"

Respondent wrote the following unprofessional statements, "Absent such documentation (sic) your counseling of your client to proceed in such a manner is unprofessional, unethical, contrary to law and contrary to the best interests of the minor child. Never would I file such a pleading as you have filed without attaching Medical Reports, Police Reports or CPS Reports indicating that your client caused physical harm to the minor child. Clearly we have different ethics." (Id.).

54. However, Respondent did file a pleading with language similar to that of OC's on August 13th in his Response to the Petition for Dissolution, which requested that Mr. Budkey be awarded sole legal decision making, be designated the primary residential parent, and that Wife only be allowed supervised access to the minor child because it was believed that "Petitioner/Mother is a risk to her child due to excessive drinking while the child is in her care." Respondent did not attach medical reports, CPS records, or police reports to his pleading to support this request. (Exhibit 25 at p. 1287).

55. In his letter to OC dated July 23, 2018, Respondent made the following threat, "If you fail to either provide the aforementioned requested information or the contact information for your client and the minor child, my client will be requesting not only his attorney fees from you personally caused by your actions, but that you be personally sanctioned by the Court and for this matter to be referred to the State Bar for investigation of your conduct." (Exhibit 12 at p. 113).

56. In the same July 23rd letter, Respondent disparaged OC by writing, “it appears you have been licensed to practice law in Arizona for approximately one (1) month. You should really consider if you want to earn a reputation of representing parties that withhold children and request spousal maintenance for a marriage of 29 months. I have been practicing Family Law in Maricopa County for over 16 years and have never filed a pleading such as the Petition you filed. Reputations are quickly earned but never forgotten. Proceed as you see fit.” (Exhibit 12 at p. 114).

57. OC responded to the demand letter by requesting a phone conference and stated, “I think reaching a settlement will be easier without the personal attacks and wild allegations made in your letter. You might want to tone it down a notch. I don’t think threatening me with bar complaints is very effective and may lead to more issues for you.” (Exhibit 12 at p. 115).

58. OC emailed Respondent on July 23, 2018, to ask if Respondent would accept service on Mr. Budkey’s behalf, and he emailed Respondent on July 24th with a list of property that his client wanted to retrieve from Mr. Budkey’s home. (Exhibit 12 at pp. 109 and 118).

59. Respondent’s assistant responded to OC on July 24, 2018, with an email that stated, “Please see the attached.” (Exhibit 12 at pp. 120-121).

60. OC replied that he could not open the attachment, he asked if Respondent had his own email that he could use to send and receive messages, and

he requested that Respondent call him or that the contents of the attachment be pasted into an email. (Exhibit 12 at p. 122).

61. On July 25th, Respondent's assistant sent OC another email that read, "Please see the attached." (Exhibit 12 at p. 124).

62. In the attached letter, Respondent disparaged OC again by writing, "I understand that you only have been licensed to practice law in Arizona for one (1) month. However, your inability to open a PDF file is not a problem of mine or my client. Correspondence will continue to be sent to you in PDF format which is also the format the Court delivers Minute Entries to attorneys. I do have a personal email. I will not be providing you that email. You will communicate with this office using the same email that is provided to the Court: mawlaw@cox.net." (Exhibit 12 at p. 125).

63. OC informed Respondent, "I can't open these attachments for some reason. I was unable to open your last attachment or this one. I'm sorry I won't be able to communicate that (sic) way you are attempting to and find your approach in treating opposing counsel appalling." (Exhibit 12 at p. 127).

64. Despite OC's expressed inability to open Respondent's attachments, Respondent sent OC three emails on July 31st, and all three emails simply stated, "Please see the attached." (Exhibit 12 at pp. 135-151).

65. The first of these emails was sent at 5:18 p.m., and the attached letter referenced an email sent by OC on July 29th. Respondent wrote in part, “In your email you state, ‘Please tell your client to not email directly.’ My client has no interest in your attempt to give this office instruction how to practice law given your inexperience. In the future, similar instructions will be ignored by this office as was the aforementioned. Please refrain from such remarks in the future.” (Exhibit 12 at p. 136).

66. The second email was sent at 5:33 p.m., and the attached letter referenced an email sent by OC on July 30th. Respondent wrote in part, “In your email you state ‘I expect a reply within 24 hours.’ Mr. Budkey is not interested in what you ‘expect.’ Please limit your future comments to productive dialogue that enhances the opportunity for negotiated resolution. In your email you state ‘Please just type in the email as I’m having trouble opening your last three attachments.’ I understand that you only have been licensed to practice law in Arizona for one (1) month. However, your inability to open a PDF file is not a problem of mine or my client. Correspondence will continue to be sent to you in PDF format which is also the format the Court delivers Minute Entries to attorneys.” (Exhibit 12 at p. 142).

67. The third email was sent at 5:45 p.m. and included copies of Respondent’s Notice of Limited Scope Representation and Notice of Unavailability of Counsel. (Exhibit 12 at pp. 144-151).

68. OC responded with another request that the contents be pasted into an email or faxed because he could not open Respondent's attachments. (Exhibit 12 at p. 139).

69. Respondent sent OC an email on August 1st with an attached letter. The letter references an email sent by OC on July 24th, and in the letter, Respondent wrote in part, "In your email you state 'I'm willing to work out some access of the child for your client but she is breastfeeding and does not feel comfortable leaving her 4 month old alone.' Mr. Budkey is not interested in how your client 'feels'." Respondent also remarked that OC's grammar was "problematic," and he disparaged OC by stating, "I realize you have only been licensed to practice law in Arizona one (1) month but I have no interest in teaching you how to practice law in Arizona." (Exhibit 12 at pp. 153-159).

70. Respondent's statements to OC were uncivil, discourteous, and unnecessary. (Exhibit 12 at p. 115; Exhibit 12 at p. 127).

Failure to Furnish to SBA

71. Intake Bar Counsel Nicole Kasetta conducted a scheduled phone conference with Respondent on September 5th to discuss allegations that Respondent engaged in unprofessional behavior and charged unreasonable fees. (Exhibits 262-263).

72. During the telephonic conference, Respondent refused to furnish information to Mr. Kasetta upon request. (Complaint at page 18).

73. Respondent refused to tell Ms. Kasetta if his fee agreement included a fee arbitration clause. (Id.).

74. Respondent refused to provide a copy of his fee agreement to Ms. Kasetta. (Id.).

75. Respondent would not tell Ms. Kasetta how much Mr. Budkey had paid him to date for his legal services. (Id.).

76. Respondent told Ms. Kasetta that he would not reveal anything about his August 30th meeting with Mr. Budkey other than a statement that he feared for his safety and left the McDonalds. (Id. at p. 19).

Conduct Prejudicial to Administration of Justice

77. Respondent's hostile tone in communications with the OC and his refusal to comply with OC's reasonable requests to include the content of his letters in the body of his emails resulted in unnecessary frustration and delay. (Id.).

78. Respondent's inflammatory statements and accusations in his Application to Withdraw Without Client Consent interfered with the administration of justice by fueling requests that Mr. Budkey have supervised visitation and be ordered to pay an opposing party's legal fees, which then necessitated a response by Mr. Budkey in his own defense. (Id.).

IV. CONCLUSIONS OF LAW

The Hearing Panel finds by clear and convincing evidence that Respondent violated the following: Rule 42, Ariz. R. Sup. Ct., Ethical Rules 1.5 (fees), 1.6 (terminating representation), 1.7 (conflict of interest), 8.4(d) (conduct prejudicial to the administration of justice), Rule 41(g) (unprofessional conduct), Ariz. R. Sup. Ct., and Rule 54(d)(2) (failure to furnish information), Ariz. R. Sup. Ct.

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 (1990). See also Rule 58(k), Ariz. R. Sup. Ct. 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. In re Abrams*, 277 Ariz. 248 (2011).

"The standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations." (*Standards II Theoretical Framework*, at 7.)

An attorney's most important ethical duties include those obligations owed to clients. *Standards II Theoretical Framework* (4), "In determining the nature of the

ethical duty violated, the standards assume that the most important ethical duties are those obligations which a lawyer owed to *clients*.” (Emphasis in original). See also *In re Galusha*, 164 Ariz. 503 (1990) and *Matter of Elowitz* 177 Ariz. 240 (1994). We therefore focus on his violation of his duty to his client as the most serious violation.

Duties violated:

Respondent violated his duty to his client by violating ERs 1.5, 1.6, and 1.7. Additionally, Respondent violated his duty to the legal system by violating ER 8.4(d) and these violations also constituted a violation of his duty to the profession by violating Rule 41(g) and Rule 54(d)(2).

Mental State and Injury:

Respondent intentionally violated his duties to his client, which implicate *Standards* 4.21 and 4.31. *Standard* 4.21 provides, “Disbarment is generally appropriate when a lawyer with the intent to benefit the lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.”

The intentionality of Respondent’s conduct is established by the fact that he first threatened client to do that which he then did. He assured his client that all information he had obtained from the attorney-client relationship “may be made

public” by Respondent “and available to the judge.” (Exhibit 6, Pg.42). He filed an *Application to Withdraw Without Client Consent* that revealed information relating to his attorney-client communications with Mr. Budkey. As promised Respondent revealed the information to opposing counsel knowing that it would cause injury or potential injury to Mr. Budkey and negatively impact Mr. Budkey’s ability to get visitation and custody of his child and otherwise weaken his client’s position in the family court matter.

Standard 4.31 provides, “Disbarment is generally appropriate when a lawyer, without the informed consent of client (a) engages in representation of a client knowing that the lawyer’s interests are adverse to the client’s with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client.”

The context of the statements in his motion to withdraw is the petition for temporary orders he filed with the court. In the initial draft he gave his client he had underscored that the mother drinking alcohol was contrary to the best interests of the child. The petition Respondent filed with the court stated, “Finally, respondent believes that the Petition/Mother is a risk to her child due to excessive drinking while the child was in her care. This is contrary to the best interests of the minor child.” (Exhibit 25 at p. 1287.)

When Respondent had a conflict with his client he threatened the client in stark language that he would release *all* the confidential communications between Respondent and his client.

Therefore all your comments and information you provided to me will no longer be confidential. This means all the information you provided to me about mental health struggles, substance abuse/addiction, criminal activity, etc., may be made public and available to your judge and more importantly, the opposition to do with as they see fit. If made a matter of public record the information you have provided me could have far reaching implications regarding not only your access with Kaylee but also your employment. If our relationship remains non-adversarial all the comments and information you have provided to me remains confidential. Ex. 13 at p. 1197.

Respondent did not have the informed consent of his client to release any of his attorney client privileged communications and information. Respondent intentionally sought to benefit himself and the opposing party if his client did not sign and return the motion by noon the following day. Respondent intentionally engaged in a conflict of interest when he threatened to reveal information about his client's "mental health struggles, substance abuse/addiction, criminal activity, etc." with the intent to impact the judicial outcome of the case and even his employment.

This threat had multiple levels of intentional infliction of harm if Mr. Budkey did not sign Respondent's *Application to Withdraw With Client Consent*.

We also find the Respondent also intentionally violated his duty to the legal system, implicating *Standard 6.11*. It provides, "Disbarment is generally appropriate when a lawyer, with the intent to deceive the court...improperly withholds material information and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding."

Respondent had a conflict with his client. Mr. Werner acknowledged that his expressed conflict involved a claim of impropriety on Respondent's part involving Respondent's "professionalism, ethics" and other "representation" which Respondent disputed. (Ex. 13 at page 1196.) The context was intentionally withheld from the judge to benefit Respondent. of this was disclosed to the judge. We find this was intentional on the part of Respondent to bring to affect his threat that harm would befall his client unless that client did as Respondent told him.

We note the irony of his 24-hour deadline in context of the letter he wrote to opposing counsel who had also imposed a 24-hour deadline. Mr. Werner trained his client that the way lawyers respond to deadlines is as he stated. Werner wrote opposing counsel that "In your email you state, 'I expect a reply within 24 hours.' Mr. Budkey is not interested in what you 'expect'." (Ex. 13 at p. 978.)

Respondent alleged his in *Application to Withdraw Without Client Consent* that he had “serious concerns for his personal safety,” and he therefore would “no longer have any in person contact, whether behind court security screening or not” with Mr. Budkey. The allegation in the complaint is that Mr. Budkey had never physically harmed Respondent or even threatened Respondent with physical harm. Respondent’s careless accusations were then referenced by Mr. Budkey’s opposing counsel in subsequent filings in his family law case, necessitating responses from Mr. Budkey’s successor counsel.

We note that the aggravation/mitigation hearing began with Respondent asking the PDJ if he had contempt powers. When asked why, he stated his fear that the PDJ would lock him up yet staring defiantly. His claims of fear are questionable and even if existent offer no defense to his conduct.

Respondent violated his duty to the profession, implicating *Standard 7.2*. *Standard 7.2* provides, “Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.”

Respondent made unprofessional and demeaning statements in his correspondence with opposing counsel, refused to communicate with opposing counsel in a manner that was accessible to opposing counsel, was unprofessional

when interacting with Mr. Budkey, and failed to cooperate with the Bar when initially questioned by Intake Bar Counsel Nicole Kasetta.

We also find his fee agreement and charges unreasonable. The fee agreement charges a 1.5% charge for billed sums before the client even knows the sum is due. (Exhibit 13 at page 73.) Respondent required his client to communicate primarily by email. (Id. at page 72(V)(C). He charged a fixed minimum rate for every email of 2/10s of an hour. (Id at 71(III A.))

As detailed herein, Respondent's ethical violations are not isolated to a single incident of misconduct, but instead pervaded the whole of Respondent's representation of Mr. Budkey and continued after the representation was terminated and the State Bar of Arizona became involved.

V. AGGRAVATING AND MITIGATING FACTORS

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

- 9.22(b) dishonest or selfish motive. To secure his withdrawal from the case, Respondent put his own interests before those of his client by threatening to reveal client attorney privileged information to hurt his client and then carrying out his threat.
- 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 produce his fee agreement or disclose the amount he had been paid during the intake screening process, failed to participate in filing a joint prehearing statement, and refused to answer any questions during his deposition. (See SBA's Prehearing Statement filed November 15, 2019; SBA's Notice filed December 6, 2019; and Orders Re: Sanctions Filed December 18, 2019). "Failure to cooperate with disciplinary authorities is a significant aggravating factor." *Matter of Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1172 (1988).

- 9.22(g) refusal to acknowledge wrongful nature of conduct. Respondent has consistently denied that he violated any ethical rules. (See Response to Complaint filed September 10, 2019; Response to the State Bar's Objection to the Introduction of Evidence filed November 21, 2019; Motion to Quash Corrected Order Setting Hearing filed December 2, 2019; and Respondent's Prehearing Memorandum filed December 5, 2019). At hearing, Respondent repeatedly referenced "war". He threatened his client when the client requested an accounting of fees paid. We find no remorse for his conduct.
- 9.22(h) vulnerability of victim. Mr. Budkey hired Respondent at the outset of his divorce proceedings and was reliant on Respondent to protect his interests.
- 9.22(i) substantial experience in the practice of law. Respondent has been licensed in Arizona since July 9, 2002.

- 9.22(j) indifference to making restitution. Mr. Budkey inquired about requesting a refund when communicating with Intake Bar Counsel Nicole Kaseta on September 27, 2018. (Exhibit 3 at page 21/Exhibit 297). Respondent emailed Mr. Budkey and undersigned on October 1, 2018, with an offer to fully refund Mr. Budkey *if* the bar charges were dismissed, Mr. Budkey could not object to the dismissal, and no other proceedings could potentially arise against Respondent in any forum relating to the charges. (Exhibits 14/265). Respondent was informed that a refund would not result in a dismissal. (Exhibit 14). Respondent did not issue Mr. Budkey a refund.

The Hearing Panel finds the following mitigating factor applies:

- 9.32(a) absence of a prior disciplinary record.

The Hearing Panel finds the sole mitigating factor does not outweigh the aggravating factors. Disbarment followed by a term of Probation is the appropriate sanction under the *Standards*. Notwithstanding, because of the concern this hearing panel has with the stability of Mr. Werner we order a two year suspension with reinstatement conditioned on a MAP evaluation conducted by Dr. Levitt prior to any application for reinstatement (or such other physician as approved by the State Bar) to be followed by two years of probation upon reinstatement with terms of probation under the MAP program.

VI. DISCUSSION

In the past, the Supreme Court has consulted similar cases in an attempt to assess the proportionality of the sanction recommended. *See In re Struthers*, 179 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept or proportionality review is “an imperfect process.” *In re Owens*, 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases “are ever alike.” *Id.*

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *See In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

The rule goes beyond attorney-client privileged communications. A lawyer is prohibited from disclosing any “information relating to the representation of a client.” *See, e.g. People v. Albani*, 276 P.3d 64 (Colo. O.P.D.J. 2011) The lawyer’s duty to preserve client confidences continues after the lawyer-client relationship has concluded (Comment [20]). *See Restatement (Third) of the Law Governing Lawyers* § 60 cmt. (e) (2000).

Comment 2 to ER 1.6 is clarion. “A fundamental principle in the client-lawyer relationship is that in the absence of the client’s informed consent, the lawyer must not reveal information relating to the representation.” Mr. Werner intentionally disregarded this to place his interests first. Comment 18 clarifies that “the disclosure of any information is prohibited if it would comprise the attorney-client privilege *or otherwise prejudice the client.*” Mr. Werner knew he could prejudice his client and stated his express intention to do so. Comment 19 directs that if there is to be a disclosure that the disclosure “limits access to the information” from opposing counsel.

“Informed consent” is defined as “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonable available alternatives to the proposed course of conduct.” ER 1.0(e). For Mr. Werner the explanation was nothing short of a threat with a deadline.

This duty of non-disclosure derives from both the the law of agency and the law of evidence. See *Restatement (Third) of Agency* § 805, *Restatement (Third) of the Law Governing Lawyer* sections §§ 59-67, 68-86 (200).

VII. 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.”” *Alcorn*, 202 Ariz. at 74, 41 P.3d at 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. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Hearing Panel orders the Hearing Panel orders as follows:

- a) Respondent shall be suspended from the practice of law for a period of two (2) years effective immediately.¹
- b) Reinstatement shall be preceded by a State Bar’s Member Assistance Program (MAP)² evaluation with Dr. Levitt or such other physician as approved by the State Bar within two months prior to a timely application for reinstatement by Respondent.
- c) Upon reinstatement Mr. Werner shall be placed on probation for two (2) years with the State Bar’s Member Assistance Program (MAP)³ and

¹ At hearing, Respondent stated he currently has no clients.

² Respondent shall submit to a MAP assessment as a condition to filing an application for reinstatement. Thereafter, the Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein.

³ Respondent shall submit to a MAP assessment as a condition to filing an application for reinstatement. Thereafter, the Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein.

complete the State Bar's professionalism course, and the CLE titled "Candor, Courtesy, and Confidences: Common Courtroom Conundrums."

d) Respondent shall pay all costs and expenses incurred by the SBA. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

e) Respondent shall initiate fee arbitration within thirty (30) days of the entry of the final judgment and order and comply with any order issued by the arbitrator. The Arbitrator shall receive a copy of this decision upon his appointment.

A final judgment and order will follow.

DATED this 2nd day of March 2020.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

John Nelson

Judge John Nelson (Retired), Attorney Member

Howard Weiske

Howard Weiske, Public Member

Copy of the foregoing emailed
this 3rd day of March, 2020, to:

Mark A. Werner
The Law Office of Mark A. Werner
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Respondent

Rebecca N. Kennelly
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4201 N. 24th Street, Suite 100
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Email: LRO@staff.azbar.org

by: MSmith

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

MARK A. WERNER,
Bar No. 021630

Respondent.

PDJ-2019-9061

**FINAL JUDGMENT AND
ORDER OF SUSPENSION**

[State Bar No. 18-2539]

FILED APRIL 1, 2020

This matter came for hearing before the hearing panel (Panel) which rendered its decision on March 2, 2020 and ordered the immediate suspension of Mark A. Werner. The decision of the hearing panel is final under Rule 58(k), Ariz. R. Sup. Ct. No request for stay or notice of appeal was filed under Rule 59, Ariz. R. Sup. Ct., and the time now having expired and no objection to the State Bar's Statement of Costs and Expenses having been filed,

IT IS ORDERED suspending **MARK A. WERNER, Bar. No. 021630** from the practice of law for two (2) years effective March 2, 2020 for his conduct in violation of the Arizona Rules of Professional Conduct.

IT IS FURTHER ORDERED reinstatement shall be preceded by a State Bar Member Assistance Program (MAP) evaluation with Dr. Lett or other such physician as approved by the State Bar within two months prior to submitting a timely application for reinstatement by Respondent.

IT IS FURTHER ORDERED upon reinstatement, Mr. Werner shall be placed on probation for two years with MAP and complete the State Bar’s professionalism course, and the CLE course entitled “Candor, Courtesy, and Confidences: Common Courtroom Conundrums.”

IT IS FURTHER ORDERED Mr. Werner shall initiate fee arbitration within thirty (30) days of the date of this order and comply with any order issued by the arbitrator.

IT IS FURTHER ORDERED Mr. Werner shall 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 Mr. Werner shall pay the costs and expenses of the State Bar of Arizona totaling \$2,309.19 pursuant to Rule 60(b), Ariz. R. Sup. Ct. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

DATED this 1st day of April 2020.

William J. O’Neil

William J. O’Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 1st day of April 2020 to:

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Respondent

by: BEnsign