

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**MICHAEL R. GOLDER,
Bar No. 011497**

Respondent.

PDJ-2016-9031

**FINAL JUDGMENT AND ORDER
OF DISBARMENT**

[State Bar Nos. 15-2420 & 15-2426]

FILED AUGUST 23, 2016

This matter came for hearing before the Hearing Panel, which rendered its decision on July 20, 2016. No appeal has been filed and the time for appeal has passed.

Now Therefore,

IT IS ORDERED Respondent, **MICHAEL R. GOLDER, Bar No. 011497**, is disbarred from the State Bar of Arizona and his name is stricken from the roll of lawyers effective July 20, 2016, as set forth in the Decision and Order Imposing Sanctions filed on July 20, 2016. Mr. Golder is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court.

IT IS FURTHER ORDERED Mr. Golder 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 granting Judgment to the State Bar of Arizona for costs in the amount of \$4,133.68 with interest as provided by law. 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 23rd day of August 2016.

William J. O'Neil

William J. O'Neil
Presiding Disciplinary Judge

COPY of the foregoing e-mailed on August 23, 2016, and mailed on August 24, 2016, to:

Counsel for State Bar

Hunter F. Perlmeter
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Respondent

Michael R. Golder
1049 W. Woodman Drive
Tempe, AZ 85283
Email: michael@golderlaw.com

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY
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**IN THE MATTER OF A
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THE STATE BAR OF ARIZONA,**

**MICHAEL R. GOLDER,
Bar No. 011497**

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PDJ 2016-9031

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar No. 15-2420 and 15-2426]

JULY 20, 2016

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on March 29, 2016. On March 31, 2016, the complaint was served on Respondent Michael Golder by certified, delivery restricted mail, and by regular first class mail, under Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. Mr. Golder filed his answer on April 25, 2016, admitting to all allegations. Because all allegations were admitted, the PDJ set an aggravation and mitigation hearing for July 7, 2016 and ordered the parties to participate in a settlement conference prior to July 1, 2016 at Mr. Golder's request. Mr. Golder failed to respond to multiple emails by the hearing officer requesting that he participate in the settlement process; the settlement conference could not be conducted. Mr. Golder also failed to appear for a prehearing conference with the PDJ on July 5, 2016.

On July 7, 2016, the Hearing Panel ("Panel"), comprised of the PDJ, Paul D. Friedman, attorney member, and Howard M. Weiske, public member, heard oral argument.¹ The State Bar requested disbarment; Mr. Golder requested a continued suspension and participation in the State Bar's aftercare program.

¹ Complainants Mr. and Mrs. Stone, as well as their son, were also present at the hearing and gave comment regarding the degree of harm incurred.

FINDINGS OF FACT

The facts listed below are those set forth in the SBA's complaint and admitted to by Mr. Golder in his answer.

1. Mr. Golder was a lawyer licensed to practice law in Arizona having been first admitted to practice in Arizona on October 24, 1987.

COUNT ONE (File no. 15-2420/Stone)

2. Mr. Golder represented complainants June and Robert Stone (The Stones) as personal injury plaintiffs in Maricopa County Superior Court case numbers CV2015-001977 (case 1) and CV2015-001986 (case 2). Representation in the respective cases began in approximately March of 2015.

3. Mr. Golder filed a complaint in case 1 on April 8, 2015.

4. On July 15, 2015, the court issued a Notice of Intent to Dismiss case 1 because of Mr. Golder's failure to serve the complaint. Mr. Golder did not notify the Stones of the Notice.

5. In August of 2015, Mr. Golder filed a summons and affidavit of service, but failed to notify the Stones he had done so.

6. In case 2, Mr. Golder filed a complaint on April 17, 2015.

7. In case 2, on July 22, 2015, the court issued a Notice of Intent to Dismiss for Lack of Service. Mr. Golder did not notify the Stones.

8. On October 14, 2015, case 2 was dismissed for lack of service. Mr. Golder did not notify the Stones.

9. Mr. Golder failed to respond to the State Bar's screening letter and failed to respond to at least one message left with the attorney with whom he shares an office.

10. Bar counsel deposed Mr. Golder on January 19, 2016. During the deposition, Mr. Golder indicated that his cocaine use had affected his ability to represent the Stones. Mr. Golder also indicated that he had used cocaine the day prior to the deposition.

11. Mr. Golder's conduct in Count One violated ERs 1.3, 1.4, 3.2, 3.4(c), 8.4(b), 8.4(d), and Rule 54(d)(2).

COUNT TWO (File no.15-2426/State Bar)

12. Eva Burns hired Mr. Golder in February 2014 to assist her in a medical malpractice case (Maricopa County Superior Court Case No. CV2015-001723). She had already negotiated a settlement with the defendant's insurance company for \$37,500.00, but hired Mr. Golder when she decided that she wanted assistance in reviewing settlement documents before signing them.

13. The insurance company moved for summary judgment, but Mr. Golder failed to file a response to the motion. He did not communicate with Burns concerning his failure to respond.

14. On September 18, 2015, Burns checked the court docket and noticed that a ruling had been issued in favor of the insurance company noting that plaintiff had failed to file a response to the insurer's motion for summary judgment.

15. Mr. Golder never communicated with Burns concerning the adverse ruling.

16. Mr. Golder failed to respond to the State Bar's screening letter and failed to respond to at least one message left with the attorney with whom he shares an office, and to an email containing the screening letter. (Exhibits 16, 18, 19).

17. Bar counsel deposed Mr. Golder on January 19, 2016. During the deposition, Mr. Golder indicated that his cocaine use had affected his ability to represent Ms. Burns. Mr. Golder also admitted to using cocaine the day before the deposition.

18. Mr. Golder's conduct in Count Two violated ERs 1.3, 1.4, 3.2, 3.4(c), 8.4(b), 8.4(d), and Rule 54(d)(2).

CONCLUSIONS OF LAW

Mr. Golder admitted to all counts of the Complaint. Based upon the facts deemed admitted, the Panel finds by clear and convincing evidence that Mr. Golder violated: Rule 42, Ariz. R. Sup. Ct., specifically ER's 1.3, 1.4, 3.2, 3.4(c), 8.4(b), 8.4(d) and Rule 54(d)(2).

The comment to ER 1.3 outlines that "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor." The comment to ER 1.4 clarifies that "reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation." A violation of ER 3.2 "brings the administration of justice into disrepute." [Comment to ER 3.2.] ER 3.2 recognizes that a lawyers' dilatory tactics may impede the administration of justice, burdening opposing parties and wasting public resources. See *Roadway Express v. Piper*, 447 U.S. 752 (1980).

ER 3.4 explains the lawyer's duties to adverse parties and counsel to ensure litigation is conducted fairly. As Comment [1] notes, "[t]he procedure of the adversary system contemplates that the evidence in a case is to be marshaled

competitively by the contending parties.” ER 8.4(b) subjects a lawyer to discipline for certain types of criminal conduct. Unlike the predecessor Model Code, which prohibited illegal conduct involving “moral turpitude” (DR 1-102(A)(3)), ER 8.4(b) prohibits criminal conduct when it reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer. As Comment [2] explains, “[o]ffenses involving breach of trust, or serious interference with the administration of justice are in that category.”

It is not necessary for a lawyer to be convicted of, or even charged with, a crime to violate E.R. 8.4(d). See, e.g., *People v. Odom*, 941 P.2d 919 (Colo. 1997) (lawyer disciplined for committing crime for which he never was charged). Crimes involving alcohol and drugs are generally deemed to fall within Rule 8.4(b). See *In re Quinn*, 696 N.E.2d 863 (Ind. 1998) (“Criminal offenses reflect adversely on one’s fitness as an attorney because such conduct tends to indicate a general indifference to legal standards of conduct. Lawyers who violate controlled-substance laws “demonstrate a disrespect for the law, denigrate the entire profession, and destroy public confidence in the practicing bar” *In re Musto*, 704 A.2d 6 (N.J. 1997).

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). When 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*.

I. Duties violated:

Mr. Golder violated his duty to his clients.

II. Mental State and Injury:

Mr. Golder violated his duty to clients, implicating *Standard 4.4*. *Standard 4.41* states:

Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client;
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Mr. Golder abandoned the practice, knowingly failed to perform services for clients, and engaged in a pattern of neglect of client matters, all of which caused serious or potentially serious injury to clients. Therefore, *Standard 4.41* applies and disbarment is the presumptive sanction.

III. Aggravating and Mitigating Factors:

The Panel finds the following aggravating factors are present:

- *Standard 9.22(c)* a pattern of misconduct
- *Standard 9.22(d)* multiple offenses
- *Standard 9.22(h)* vulnerability of the victims (Mr. Stone is 84 years old.)
- *Standard 9.22(i)* substantial experience in the practice of law
- *Standard 9.22(k)* illegal conduct, including that involving the use of controlled substances

The Panel does not find *Standard 9.22(e)*, bad faith obstruction of the disciplinary proceeding, as an aggravating factor. Dishonest or selfish motive “speaks in terms of ‘motive,’ not conduct.” *Matter of Shannon*, 179 Ariz. 52, 69, 876 P.2d

548, 565 (1994). Although Mr. Golder failed to timely respond to State Bar requests on at least three (3) occasions (Exhibits 16, 19, 20), Mr. Golder sufficiently demonstrated his conduct is explained by poor management skills and not accompanied by a dishonest or selfish motive.

The Panel finds the following mitigating factors are present:

- *Standard 9.32(a)* absence of a prior disciplinary record

The Panel declined to find *Standard 9.32(c)*, personal or emotional problems, as a mitigating factor. Uncorroborated and self-serving testimony about undisclosed personal or emotional problems is not weighed as a mitigating factor. For example in *In re Augenstein*, the respondent testified to suffering from depression, among other emotional problems, but offered no medical evidence to corroborate the claims. *In re Augenstein*, 178 Ariz. 133, 137-38, 871 P.2d 254, 258-59 (1994). The court held that personal and emotional problems was not a mitigating factor. *Id.* at 138, 871 P.2d 254, 259. The court reasoned that the respondent's testimony was self-serving, because it was not corroborated by evidence. *Id.*

Mr. Golder testified to various issues regarding his physical and mental health but disclosed none of these issues before hearing. Mr. Golder also offered no corroborating evidence. Like the respondent's testimony in *Augenstein*, which did not support a finding of *Standard 9.32(c)* because the testimony was uncorroborated and self-serving, Mr. Golder's testimony is also uncorroborated and self-serving. While the Panel is sympathetic to Mr. Golder's physical and mental health, Mr. Golder's testimony about undisclosed personal and emotional problems, and Mr. Golder's outward appearance at the hearing, does not favor mitigation.

The Panel also does not find that *Standard* 9.32(l), remorse, is a mitigating factor. In seeking mitigation relief based upon remorse, a respondent must present a showing of more than having said they are sorry. *Id.* at 137, 871 P.2d 254, 258. Rather, the best evidence of genuine remorse is an affirmative effort to make the injured client whole. *Id.*

Mr. Golder only said he was sorry to the Stones through a disingenuous verbal apology at the hearing. Mr. Golder has made no affirmative effort to make the Stones whole. Mr. Golder has repeatedly failed to meet the Stones' requests to return medical files that might allow the Stones to seek effective legal representation elsewhere. Mr. Golder made an affirmative statement at hearing that he possesses a digital copy of the Stones' case file, including medical records, and made an affirmative commitment to return that case file to the State Bar.

Mr. Golder has not made amends with the Stones and did not commit to making amends in the future. Mr. Golder also does not have malpractice insurance that will compensate the Stones.

Absence of a prior disciplinary record, by itself, is not proof of good conduct. *See In re Levine*, 174 Ariz. 146, 847 P.2d 1093 (1993). The Panel finds that the sole mitigating factor, 9.32(c), does not outweigh the aggravating factors. Disbarment is appropriate.

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

IT IS ORDERED Mr. Golder shall be disbarred from the practice of law effective the date of this order.

IT IS FURTHER ORDERED Mr. Golder shall pay all costs and expenses incurred by the SBA and the Office of the Presiding Disciplinary Judge in this proceeding.

IT IS FURTHER ORDERED Mr. Golder shall immediately return all documents provided to him by Mr. and Mrs. Stone to the State Bar.

DATED this 20th day of July 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Howard M. Weiske

Howard M. Weiske, Volunteer Public Member

Paul D. Friedman

Paul D. Friedman, Volunteer Attorney Member

Copy of the foregoing emailed and mailed
this 20th day of July, 2016, to:

Hunter F. Perlmeter
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Michael R Golder
Law Offices of Michael R Golder PLLC
1049 W Woodman Dr
Tempe, AZ 85283-5445
Email: michael@golderlaw.com
Respondent

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

by: AMcQueen

Hunter F. Perlmeter, Bar No. 024755
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7278
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAR 29 2016

FILED

[Signature]

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JUDGE**

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

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Bar No. 011497,**

Respondent.

PDJ 2016-9031

COMPLAINT

State Bar No. 15-2420, 15-2426

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 October 24, 1987.

COUNT ONE (File no. 15-2420/Arizona)

2. Respondent represented complainants June and Robert Stone (The Stones) as personal injury plaintiffs in Maricopa County Superior Court case numbers CV2015-001977 (case 1) and CV2015-001986 (case 2). Representation in the respective cases began in approximately March of 2015.

3. Respondent filed a complaint in case 1 on April 8, 2015.

4. On July 15, 2015, the court issued a Notice of Intent to Dismiss as a result of Respondent's failure to serve the complaint. Respondent did not notify the Stones of the Notice.

5. In August of 2015, Respondent filed a summons and affidavit of service, but failed to notify the Stones that he had done so.

6. In case 2, Respondent filed a complaint on April 17, 2015.

7. On July 22, 2015, the court issued a Notice of Intent to Dismiss for Lack of Service. Respondent did not notify the Stones.

8. On October 14, 2015, the matter was dismissed for lack of service. Respondent did not notify the Stones.

9. Respondent failed to respond to the State Bar's screening letter and failed to respond to at least one message left with the attorney with whom he shares an office.

10. Bar counsel deposed Respondent on January 19, 2016. During the deposition Respondent indicated that his cocaine use had impacted his ability to effectively represent the Stones. Respondent also indicated that he had used cocaine the day prior to the deposition.

11. Respondent's conduct in Count 1 violated ERs 1.3, 1.4, 3.2, 3.4(c), 8.4(b), 8.4(d), and Rule 54(d)(2).

COUNT TWO (File no. 15-2426)

12. Eva Burns, hired Respondent in February 2014 to assist her in a medical malpractice case (Maricopa County Superior Court Case No. CV2015-001723). She had already negotiated a settlement with the defendant's insurance company for

\$37,500.00, but hired Respondent when she decided that she wanted assistance in reviewing settlement documents before signing them.

13. The insurance company later moved for summary judgment in the lawsuit, but Respondent failed to file a response. He did not communicate with Burns concerning his failure to respond.

14. On September 18, 2015, Burns checked the court docket and noticed that a ruling had been issued in favor of the insurance company noting that plaintiff had failed to file a response to the insurer's motion for summary judgment.

15. Respondent never communicated with Burns concerning the adverse ruling.

16. Respondent failed to respond to the State Bar's screening letter and failed to respond to at least one message left with the attorney with whom he shares an office, and to an email containing the screening letter.

17. As noted in Count One, bar counsel deposed Respondent on January 19, 2016. During the deposition Respondent indicated that his cocaine use had impacted his ability to effectively represent Ms. Burns. Respondent also admitted to using cocaine the day before the deposition.

18. Respondent's conduct in Count Two violated ERs 1.3, 1.4, 3.2, 3.4(c), 8.4(b), 8.4(d), and Rule 54(d)(2).

DATED this 29th day of March, 2016

STATE BAR OF ARIZONA



Hunter F. Perlmeter
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 2nd day of March, 2016.

by: Jackie Jewett
HFP:jld