

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**JESSE SANTANA WULSIN,
Bar No. 025893**

Respondent.

PDJ-2015-9104

FINAL JUDGMENT AND ORDER

[State Bar Nos. 15-0070, 15-
0817, 15-1619]

FILED FEBRUARY 12, 2016

This matter was heard by a Hearing Panel which rendered its decision and no appeal has been timely filed; accordingly,

IT IS ORDERED Respondent, **Jesse Santana Wulsin, Bar No. 025893**, is suspended from the practice of law for a period of two (2) years effective February 18, 2016, for conduct in violation of his duties and obligations as a lawyer as stated in the Hearing Panel's Decision and Order Imposing Sanctions filed January 19, 2016.

IT IS FURTHER ORDERED Mr. Wulsin shall pay restitution in the total amount of \$4,500.00, allocated as follows:

- a. \$500.00 to Jeffrey Matz.
- b. \$3,000.00 to Dave Eddy.
- c. \$1,000.00 to Lee Olson.

IT IS FURTHER ORDERED Mr. Wulsin shall pay the costs and expenses of the State Bar of Arizona in the amount of \$2,137.00. There are no costs or

expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

IT IS FURTHER ORDERED upon reinstatement, Mr. Wulsin shall be placed on such terms and conditions to be determined at the time of reinstatement.

IT IS FURTHER ORDERED pursuant to Rule 72 Ariz. R. Sup. Ct., Mr. Wulsin shall immediately comply with the requirements relating to notification of clients and others.

DATED this 12th day of February, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing
e-mailed this 12th day of February, 2016,
mailed this 16th day of February, 2016, to:

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

Jesse Santana Wulsin
Law Offices of Jesse S. Wulsin
2575 E. Camelback Road, Suite 450
Phoenix, Arizona 85016-9288
Email: jwulsin@wulsinlaw.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
JUDGE**

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

**JESSE SANTANA WULSIN,
Bar No. 025893**

Respondent.

PDJ 2015-9104

**DECISION AND ORDER IMPOSING
SANCTIONS**

State Bar Nos. 15-0070, 15-0817, 15-
1619

FILED JANUARY 19, 2016

PROCEDURAL HISTORY

The State Bar of Arizona (SBA) filed its complaint on September 30, 2015. On October 1, 2015, the complaint was served on Mr. Wulsin by certified, delivery restricted mail, as well as 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. A notice of default was properly issued on November 2, 2015. Mr. Wulsin did not file an answer or otherwise defend against the Complainants' allegations and default was properly effective on December 2, 2015. On that date the disciplinary clerk sent a notice of the aggravation and mitigation hearing scheduled for December 30, 2015, at 9:30 am at the State Courts Building, 1501 West Washington Street, Phoenix, Arizona 85007-3231. On December 30, 2015, the hearing took place before the Hearing Panel, comprised of attorney member, James Marovich, and volunteer public member, Brett Eisele. The State Bar requested a long term suspension and restitution be imposed. Bar counsel also stated the State Bar's numerous and unsuccessful attempts to locate Mr. Wulsin.

FINDINGS OF FACT

The facts listed below are those set forth in the SBA's complaint and were deemed admitted when the default against Respondent was effective. A respondent against whom a default is effective no longer has the right to litigate the merits of the factual allegations, but retains the right to appear and participate in the hearing that will determine his sanctions. Included with that right to appear is the right to testify and the right to cross-examine witnesses, in each instance only to establish facts related to aggravation and mitigation. Mr. Wulsin did not appear.

1. At all times relevant, Mr. Wulsin was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on January 7, 2008.

COUNT ONE (File no. 15-0070/Matz)

2. In November 2014, Jeffrey Matz ("Mr. Matz") hired Mr. Wulsin to represent him in restraining order proceedings in Justice Court.

3. Mr. Matz paid Mr. Wulsin \$500.00 for the representation.

4. Mr. Wulsin promised to send Mr. Matz a written fee agreement for signature.

5. Mr. Wulsin never sent Mr. Matz a written fee agreement.

6. Mr. Wulsin appeared for one hearing on behalf of Mr. Matz.

7. Mr. Wulsin failed to remain in contact with Mr. Matz after the hearing.

8. Mr. Matz placed a number of phone calls to Mr. Wulsin however, he failed to return any phone calls to Mr. Matz or communicate with him otherwise.

9. Mr. Matz could not reach Mr. Wulsin to terminate the representation and request his file.

10. Mr. Matz was forced to settle his case because he did not have access to necessary documents in the case file.

11. Mr. Matz filed a complaint with the State Bar in April 2015.

12. The State Bar sent a screening letter to the address of record for Mr. Wulsin on August 6, 2015.

13. Mr. Wulsin failed to respond to the screening letter.

14. Mr. Wulsin's conduct in this Count violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5(b), 1.16(c)(d), 3.2, and Rule 54(d), Ariz. R. Sup. Ct.

COUNT TWO (File no. 15-0817/Eddy)

15. Dave Eddy ("Mr. Eddy") hired Tim Mackey in 2014 to represent him in a property dispute.

16. Mr. Eddy paid Mr. Mackey \$3,700.00.

17. Mr. Mackey transferred Mr. Eddy's case to Mr. Wulsin in June 2014.

18. Mr. Eddy paid Mr. Wulsin \$3,000.00 for the representation.

19. Mr. Wulsin filed his substitution of counsel on July 29, 2014.

20. Mr. Wulsin stopped communicating with Mr. Eddy in October 2014.

21. Mr. Eddy attempted to contact Mr. Wulsin however, he failed to return any phone calls to Mr. Eddy or communicate with him otherwise.

22. Mr. Wulsin failed to appear at a hearing on February 23, 2015, on behalf of Mr. Eddy.

23. The case was placed on the inactive calendar in March or April 2015 due to Mr. Wulsin's failure to prosecute.

24. Mr. Eddy had to hire a new lawyer because Mr. Wulsin failed to remain in communication and failed to prosecute the case.

25. Mr. Eddy paid the subsequent lawyer \$1,500.00.
26. With the assistance of subsequent counsel, Mr. Eddy's case settled for \$5,000.00.
27. Mr. Eddy's total legal fees were \$8,200.00.
28. Mr. Eddy attempted to contact Mr. Wulsin to request a refund, however, Mr. Eddy was unable to reach Mr. Wulsin.
29. Mr. Eddy filed a charge with the State Bar in April 2015.
30. The State Bar sent a screening letter to Mr. Wulsin on May 28, 2015.
31. The State Bar sent the screening letter to 2575 E. Camelback Road, Suite 450, Phoenix, AZ, 85016, which is Mr. Wulsin's address of record.
32. Mr. Wulsin failed to respond to the State Bar's letter.
33. Mr. Wulsin's conduct in this Count violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5(a), 1.16(c)(d), 3.2, and Rule 54(d), Ariz. R. Sup. Ct.

COUNT THREE (File no. 15-1619/Olson)

34. Lee Olson ("Mr. Olson") hired Timothy Mackey in April of 2014, to represent him in a bankruptcy case.
35. Mr. Olson paid Mr. Mackey \$1,500.
36. Without telling Mr. Olson, Mr. Mackey turned the case over to Mr. Wulsin.
37. Mr. Wulsin collected an additional \$1,000 from Mr. Olson.
38. Mr. Wulsin filed Mr. Olson's petition for bankruptcy in September 2014.
39. Mr. Wulsin failed to remain in contact with Mr. Olson after September 2014.

40. Mr. Olson attempted to contact Mr. Wulsin however, he failed to return any phone calls to Mr. Olson or communicate with him otherwise.

41. On February 4, 2015, the Court ordered Mr. Olson to disclose documents requested by the US Trustee in an application for a Rule 2004 examination.

42. The Court also ordered Mr. Wulsin and Mr. Olson appear for the examination on February 20, 2015.

43. The Court gave the US Trustee permission to upload an Order To Dismiss if the documents were not produced or Mr. Olson and Mr. Wulsin failed to attend the February hearing.

44. The Order was sent to Mr. Wulsin via email and Mr. Olson via regular mail.

45. Mr. Wulsin failed to contact Mr. Olson regarding the Order.

46. Mr. Olson attempted to contact Mr. Wulsin via phone about the order but was unable to reach Mr. Wulsin.

47. Mr. Olson was forced to hire another attorney to prevent his case from being dismissed.

48. After hiring new counsel, Mr. Olson attempted to contact Mr. Wulsin to request a refund.

49. Mr. Olson was unable to reach Mr. Wulsin to request a refund.

50. Mr. Olson filed a charge with the State Bar in June 2015.

51. The State Bar sent a screening letter to Mr. Wulsin on June 26, 2015.

52. The State Bar sent the screening letter to 2575 E. Camelback Road, Suite 450, Phoenix, Arizona, 85016, which is Mr. Wulsin's address of record.

53. Mr. Wulsin failed to respond to the screening letter.

54. Mr. Wulsin's conduct in this Count violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5(a), 1.16(c)(d), 3.2, and Rule 54(d), Ariz. R. Sup. Ct.

CONCLUSIONS OF LAW

Mr. Wulsin failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Although the allegations are deemed admitted by default, there has also been an independent determination by the Hearing Panel that the State Bar has proven by clear and convincing evidence Mr. Wulsin violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5(a) & (b), 1.16(c) & (d), 3.2, and Rule 54(d), 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, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors.

Duties violated:

Mr. Wulsin violated his duty to clients by violating E.R.s 1.2, 1.3, 1.4, 1.5 and 1.16. Mr. Wulsin violated his duty to the legal system by violating E.R. 3.2. Mr. Wulsin also violated his duty owed as a professional by violating Rule 54(d).

Mental State and Injury:

Mr. Wulsin violated his duty to clients, thereby 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.

Standard 4.42 states:

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

In this matter, Mr. Wulsin abandoned his practice, knowingly failed to perform services for clients, and engaged in a pattern of neglect, all of which caused actual injury to clients. Therefore, *Standard 4.42* is applicable.

Mr. Wulsin also violated his duty owed as a professional, which implicates *Standard 7.0*. *Standard 7.1* states, "Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system." *Standard 7.2* states, "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."

In this matter, Mr. Wulsin failed to respond to the SBA's investigation. There is no evidence Mr. Wulsin intended to obtain a benefit by failing to respond, therefore, *Standard 7.1* is applicable.

AGGRAVATING AND MITIGATING FACTORS

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

- Standard 9.22(c) – Pattern of misconduct
- Standard 9.22(d) – Multiple offenses
- Standard 9.22(e) – Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency
- Standard 9.22(g) – Refusal to acknowledge the wrongful nature of the conduct
- Standard 9.22(h) – Vulnerability of the victim
- Standard 9.22(j) – Indifference to making restitution

The Hearing Panel finds the following mitigating factor applies:

- Standard 9.32(a) - Absence of a prior disciplinary record

The Hearing Panel finds the sole mitigating factor does not outweigh the aggravating factors. A suspension of two (2) years and an order of restitution is appropriate.

PROPORTIONALITY

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)).

In *In re Hughes*, PDJ 2014-9087 (2014), Robert F. Hughes Jr., was suspended for four years and ordered to pay \$1,927 in restitution for violating Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 1.4, 1.5, 1.15(d), 1.16(d), 3.2, and 8.1, and Rule 54, Ariz. R. Sup. Ct.

A Pennsylvania attorney hired Mr. Hughes to initiate ancillary probate proceedings in Arizona. The attorney paid Mr. Hughes \$1,927 for the representation. Thereafter Mr. Hughes took no action in the case and did not respond to the attorney's requests for a case status or accounting information. Mr. Hughes did not respond to the State Bar's screening investigation, file an answer to the State Bar's complaint, or otherwise participate in the formal proceedings. The judgment and order of suspension was entered by default.

The Court found the following aggravating factors: prior disciplinary offenses, dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad-faith obstruction of the disciplinary proceeding, refusal to acknowledge wrongful nature of conduct, vulnerability of victim, substantial experience in the practice of law, and indifference to making restitution, and the following mitigating factor: remoteness of two of Mr. Hughes' prior offenses.

In *In re Chang*, PDJ 2013-9083 (2013), the respondent was suspended for two years and ordered to pay restitution for violations of Rule 42, Ariz. R. Sup. Ct., specifically ER 1.2(a), ER 1.3, ER 1.4(a)(2), (3) & (4), ER 1.5(a), ER 1.15(d), ER 1.16(d), ER 3.2, ER 3.4(c), ER 8.1(b), and ER 8.4(d), and Rules 32(c)(3), 54(c), and 54(d)(1) and (2), Ariz. R. Sup. Ct.

In one case, Mr. Chang failed to provide his client with copies of court orders, failed to respond to his client's numerous requests for information, and failed to keep his client reasonably informed about the status of his case. Mr. Chang failed to adequately represent his client in a post-conviction-relief proceeding and failed to help his client prepare a pro se petition, as ordered by the court. Mr. Chang failed, at the conclusion of representation, to promptly deliver a copy of his entire file to his client.

Regarding a second client, Mr. Chang failed to timely file an opening brief, failed to adequately communicate with his client, failed to respond to his client's attempts to communicate with him, and failed to keep him reasonably informed about the status of his case. Mr. Chang charged or collected an unreasonable amount for expenses, stopped representing his client without notice, and failed to promptly deliver his file to his client or his subsequent counsel.

Mr. Chang failed to respond to some requests for information and documents during the State Bar's investigation and failed to report a current address to the State Bar within thirty (30) days of the effective date of his address change. In addition, Mr. Chang failed to file an answer to the State Bar's complaint, which resulted in the entry of default.

The Court found the following aggravating factors: dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, vulnerability of the victims, and substantial experience in the practice of law, and the following mitigating factors: absence of a prior disciplinary record, personal, or emotional problems, and remorse.

This case is similar to the above listed cases, in that in all of the cases involved abandoned clients, actual injury to the client, and failure to cooperate with the State Bar.

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 has made the above findings of fact and conclusions of law. The Hearing Panel has determined the appropriate sanction using the facts deemed admitted, the Standards, the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. Based on the above, the Hearing Panel orders as follows:

1. Mr. Wulsin shall be suspended from the practice of law for two (2) years effective thirty (30) days from the date of this Decision.
2. Mr. Wulsin shall pay all costs and expenses incurred by the SBA and the Office of the Presiding Disciplinary Judge in this proceeding.
3. Mr. Wulsin shall pay restitution in the total amount of \$4,500.00, allocated as follows:
 - a. \$500.00 to Jeffrey Matz.
 - b. \$3,000.00 to Dave Eddy.
 - c. \$1,000.00 to Lee Olson.

A final judgment and order will follow.

DATED this 19th day of January 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Brett Eisele

Brett Eisele, Volunteer Public Member

James M. Marovich

James Marovich, Volunteer Attorney Member

Copy of the foregoing mailed/e-mailed
this 19th day of January 2016, to:

Jesse Santana Wulsin
Law Offices of Jesse S. Wulsin
2575 E. Camelback Road, Suite 450
Phoenix, Arizona 85016-9288
Email: jwulsin@wulsinlaw.com
Respondent

Bradley F. Perry
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

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

by: AMcQueen