

SUPREME COURT OF ARIZONA

In the Matter of a Member of the ) Arizona Supreme Court  
State Bar of Arizona ) No. SB-17-0041-AP  
)  
SCOTT K. HENDERSON, ) Office of the Presiding  
Attorney No. 10002 ) Disciplinary Judge  
) No. PDJ20169089  
Respondent. )  
\_\_\_\_\_ ) **FILED 05/11/2018**

D E C I S I O N O R D E R

Pursuant to Rule 59, Rules of the Supreme Court, the State Bar appealed and Respondent SCOTT K. HENDERSON cross-appealed the Disciplinary Hearing Panel's "Decision and Order Imposing Sanctions." The Court has considered the parties' briefs and the record in this matter.

In disciplinary proceedings, this Court is the ultimate trier of fact and law. *In re Abrams*, 227 Ariz. 248, 251 ¶ 21 (2011). We accept the Hearing Panel's factual findings unless they are not supported by reasonable evidence and are clearly erroneous. *In re Alexander*, 232 Ariz. 1, 5 ¶ 11 (2013).

The Hearing Panel found by clear and convincing evidence that Respondent's conduct violated ERs 1.15 (safekeeping property) and 5.5 (unauthorized practice of law) and Supreme Court Rule 43 (trust accounts), and it additionally found that his conduct caused harm or potential harm. These findings are supported by the record, and this Court defers to the Panel's findings.

The record does not support the Hearing Panel's finding that Respondent, while suspended from practice, was merely negligent in practicing law by negotiating a legal dispute for a client and failing to follow trust account rules. We find that Respondent's conduct was knowing. See *In re Non-Member of the State Bar of Arizona, Van Dox*, 214 Ariz. 300, 305 ¶ 21 (2007) (knowledge is "the conscious awareness of the nature or attendant circumstances of the conduct," such as when a lawyer was aware of his suspension and knew he should not be practicing law, within the meaning of Supreme Court Rule 31); see also *In re Abrams*, 227 Ariz. at 252 ¶ 22 (though he did not concede as much, the record established that respondent knowingly engaged in misconduct).

The record shows that, during his probation, Respondent met with a client alone and unsupervised, drafted an engagement letter for the client's signature, signed the engagement letter accepting the client's representation "for the firm," and accepted a \$10,000 prepayment of legal fees. In addition, Respondent was the only lawyer who worked on the client's case for the firm, sending emails and other correspondence on the firm's letterhead to multiple persons in attempts to negotiate a property dispute for the client without informing recipients of his suspended status, and he developed and discussed strategies to advance the matter toward settlement. He also drew upon the prepaid legal fees for his services at the firm's discounted rate of \$350 per hour. Respondent testified at the hearing that his law firm, of which he is founder and managing attorney, has no employees in the traditional sense, and he continued to manage the firm during his suspension, which resulted in assigning the client's legal matter to himself.

The Supreme Court and the Hearing Panel consistently use the American Bar Association's *Standards for Imposing Lawyer Sanctions* to determine appropriate sanctions for attorney discipline. In determining an appropriate sanction, the Court and Hearing Panel consider the duty violated, the lawyer's mental state, the presence or absence of actual or potential injury, and the existence of aggravating and mitigating circumstances. ABA Standard 3.0. The *Standards* instruct that the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct among multiple ethical violations. Multiple or repeated instances of misconduct should be considered as aggravating factors.

Because we find Respondent's misconduct was knowing, disbarment is the presumptive discipline under ABA Standards 8.1(a), and suspension is the presumptive discipline under ABA Standards 4.12 and 7.2. The Hearing Panel correctly found aggravating factors of prior discipline (ABA Standard 9.22(a)), and substantial experience in the practice of law (ABA Standard 9.22(i)). The Court further finds that the record supports the aggravating factor of multiple offenses (ABA Standard 9.22(c)). The Hearing Panel also found four mitigating factors. Considering the aggravating and mitigating circumstances, the Court finds that a reduction in the presumptive discipline under Standard 8.1(a) is warranted, and suspension is the appropriate discipline. In addition, the Court finds that an appropriate term of probation is one-and-one-half years. Therefore, upon consideration,

**IT IS ORDERED** that the State Bar's appeal as to Issues II, III, and IV is GRANTED.

**IT IS FURTHER ORDERED** affirming the decision of the Hearing Panel that Respondent SCOTT K. HENDERSON violated ERs 1.15 and 5.5 and Rule 43, Rules of the Supreme Court and modifying the sanction to reflect a six-month suspension, effective 30 days from the date of this Decision Order.

**IT IS FURTHER ORDERED** that Respondent SCOTT K. HENDERSON shall be placed on probation for one-and-one-half years beginning on the date of his reinstatement.

**IT IS FURTHER ORDERED** that the State Bar's appeal as to Issue I is DENIED.

**IT IS FURTHER ORDERED** that Respondent SCOTT K. HENDERSON's cross-appeal is DENIED.

**IT IS FURTHER ORDERED** that Respondent's request for oral argument and request for attorneys' fees and costs are DENIED.

**IT IS FURTHER ORDERED** that Respondent shall comply with all the provisions of Rule 72, Rules of the Supreme Court, including, but not limited to, Rule 72(a), which requires that Respondent notify all of his clients, within ten days from the date of this Decision Order, of his inability to represent them and that he should promptly inform this Court of his compliance as provided by Rule 72(e).

**IT IS FURTHER ORDERED** that Respondent shall comply with all rule provisions regarding reinstatement proceedings.

**IT IS FURTHER ORDERED** accepting the Hearing Panel's conclusion that Respondent shall be assessed the costs and expenses of the disciplinary proceedings as provided in Rule 60(b). The Hearing Panel shall enter its final judgment and order.

DATED this 11<sup>th</sup> day of May, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
SCOTT BALES  
Chief Justice

TO:

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