

JUN 28 2012

FILED

BY

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

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

**Jonathan Elgart,
Bar No. 024375**

Respondent.

PDJ-2012-9037

**RULE 58(k) HEARING PANEL
REPORT**

[State Bar No. 11-0941, 11-1940,
11-1946, 11-2123, 11-2191]

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on May 2, 2012. On May 3, 2012, the complaint was served on Respondent by certified, delivery restricted mail as well as by regular first class mail pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. A notice of default was properly issued on May 30, 2012, given Respondent's failure to file an answer or otherwise defend. On May 30, 2012, a telephonic initial case management hearing took place and Respondent failed to appear after receiving proper notice. Respondent did not file an answer or otherwise defend against the complainant's allegations and default was properly entered on June 11, 2012. On June 11, 2012, a notice of aggravation and mitigation hearing was sent to all parties notifying them the aggravation mitigating hearing was scheduled for June 15, 2012 at 10:00 a.m. at 1501 West Washington, Court of Appeals, CR 2, Phoenix, Arizona 85007-3231. On June 11, 2012, the SBA

filed a Motion to Continue Aggravation/Mitigation Hearing date, which motion was granted. A notice was sent to all parties notifying them that the hearing was continued to June 28, 2012 at 10:00 a.m. On June 12, 2012, the Court, on its own motion, re-set the hearing for June 28, 2012 at 1:30 p.m and sent notices to all parties notifying them of same. On June 28, 2012, the Hearing Panel, duly empanelled, heard argument.

FINDINGS OF FACT

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

1. At all relevant times, Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on January 31, 2007.

2. Respondent was administratively suspended on February 24, 2012, for non-compliance with Rule 45, Ariz. R. Sup. Ct. for the 2010-11 MCLE educational year.

COUNT ONE (File no. 11-0941/Dean)

3. On January 14, 2010, Complainant retained Respondent to submit automobile reaffirmation agreements and to negotiate with Complainant's mortgage lender in connection with Complainant's previously filed bankruptcy case. Complainant paid Respondent \$600.

4. By letter dated July 15, 2011, Respondent advised the State Bar (SBA) during its investigation that he contacted the mortgage lender on several occasions but that he "did not complete the representation" because he failed to calendar the

matter once there were no active deadlines. Respondent also admitted that "partial completion in this case was of little value."

5. After retaining Respondent, Complainant continued to receive letters from the mortgage company. Complainant contacted the mortgage company and was told they had no information regarding Respondent.

6. Complainant called Respondent three times, but Respondent failed to return her telephone calls.

7. Complainant went to Respondent's office unannounced and spoke to Respondent. Respondent apologized for letting a deadline pass regarding the car loan and promised that he would continue working on her case.

8. Complainant did not hear from Respondent after this meeting, so she called Respondent but was unable to reach him. Complainant eventually learned that Respondent had moved his offices.

9. In June 2010, Complainant and Respondent spoke at which time Respondent again apologized for the lack of communication. Respondent promised to continue to work on Complainant's case.

10. Complainant continued to receive letters from her various lenders. She continued to call Respondent, but did not receive any return calls.

11. In June or July 2011, Respondent contacted Complainant, again apologized for the lack of contact, and offered Complainant a refund.

12. By letter dated July 15, 2011, and during the SBA investigation, Respondent renewed his offer to provide Complainant with a full refund.

13. Respondent failed to deliver the refund to Complainant.

14. On December 15, 2011, SBA Investigator Mike Fusselman, at bar counsel's request, called Respondent at his telephone number of record and left a message asking for a return telephone call regarding this bar charge. Respondent failed to return the telephone call.

15. Respondent violated E.R. 1.3. Respondent failed to diligently complete the tasks he was hired to perform.

16. Respondent violated E.R. 1.4(a)(4). Complainant called Respondent numerous times regarding her case, but Respondent failed to return most of Complainant's telephone calls.

17. Respondent violated E.R. 1.16(d). Respondent promised to refund to Complainant the \$600 that she paid to him at the inception of the representation, but Respondent has failed to refund those monies to her.

18. Respondent violated E.R. 8.1(b). Respondent failed to return telephone calls made by SBA investigator Mike Fusselman to Respondent's telephone number of record seeking information relating to this bar charge.

19. Respondent violated Rule 54(d)(1). Respondent refused to cooperate with SBA investigator Mike Fusselman's efforts to interview him in this matter.

20. Respondent violated Rule 54(d)(2). Bar counsel asked SBA investigator Mike Fusselman to interview Respondent. Respondent failed to return Mr. Fusselman's telephone calls seeking an interview.

COUNT TWO (File no. 11-1279/St. Ange)

21. In September or October 2010, Complainant retained Respondent for a bankruptcy matter while the latter worked at the firm Kielsky, Rike & Elgart. Complainant paid a total of \$1,100.

22. After retaining him, Complainant did not hear from Respondent. Over a period of four months, Complainant tried unsuccessfully to communicate with Respondent by both telephone and email.

23. Respondent failed to file the bankruptcy petition that Complainant hired and paid him to file.

24. After December 31, 2010, Respondent no longer worked at Kielsky, Rike & Elgart.

25. In early 2011, Complainant terminated the representation and requested a refund.

26. By letter dated July 16, 2011, Respondent advised the SBA that he was unable to refund Complainant's monies because his former firm had withheld client funds and financial information from him.

27. Complainant made numerous calls and office visits to Respondent in an effort to obtain a refund.

28. In April 2011, Complainant submitted a bar charge against Respondent stating that she still had not received a refund.

29. Thereafter, Chris Rike, Respondent's former law partner, refunded Complainant's money. According to Complainant, Mr. Rike indicated the firm would pursue its remedies against Respondent relating to the refund.

30. On December 15, 2011, SBA Investigator Mike Fusselman, at bar counsel's request, called Respondent at his telephone number of record and left a message asking for a return telephone call regarding this bar charge. Respondent failed to return the telephone call.

31. Respondent violated E.R. 1.3. Respondent failed to act with reasonable diligence in representing Complainant by failing to file the bankruptcy petition.

32. Respondent violated E.R. 1.4(a)(4). Respondent failed to return most of Complainant's telephone calls and emails seeking information regarding her case.

33. Respondent violated E.R. 1.16(d). Respondent failed to timely provide Complaint with a refund upon the termination of his representation.

34. Respondent violated E.R. 8.1(b). Respondent failed to return SBA Investigator Mike Fusselman's telephone call seeking information relating to this bar charge.

35. Respondent violated Rule 54(d)(1). Respondent refused to cooperate with SBA Investigator Mike Fusselman's efforts to interview him in this matter.

36. Respondent violated Rule 54(d)(2). Bar counsel asked SBA Investigator Mike Fusselman to interview Respondent. Respondent failed to return Mr. Fusselman's telephone calls seeking an interview.

COUNT THREE (File no. 11-1648/Lambert)

37. On March 25, 2011, Complainant retained Respondent for a Chapter 7 bankruptcy matter. Complainant signed a fee agreement that provided, in part, that Respondent would not file the bankruptcy petition until Complainant paid him \$1,999 in earned-upon-receipt fees and costs.

38. Also on that date, Complainant paid Respondent \$250.

39. On March 27 and March 28, 2011, Complainant and Respondent communicated by email about modifying Complainant's mortgage.

40. On March 28, 2011, Complainant gave Respondent permission to negotiate with her lender.

41. Also during March and April 2011, Complainant called Respondent's office and left voicemail messages asking to speak with him about her matter. Respondent failed to return those telephone calls.

42. On April 25, 2011, Complainant emailed Respondent stating that she had given her lender a release so that Respondent could negotiate the mortgage modification on Complainant's behalf and asked about the status of negotiations. Complainant also stated: "If this is something you would rather not handle just let me know and we can discuss terminating the contract." Respondent failed to reply to Complainant's email.

43. On May 2, 2011, Complainant emailed Respondent terminating the representation and asking for a refund.

44. During the SBA's investigation, Respondent stated that he was willing to give Complainant a refund and provide Complainant with a copy of her file if provided with an address to do so.

45. In response to the offer, Complainant provided Respondent with her address.

46. Respondent failed to provide Complainant with either a refund or a copy of the file.

47. On December 15, 2011, SBA Investigator Mike Fusselman, at bar counsel's request, called Respondent at his telephone number of record and left a message asking for a return telephone call regarding this bar charge. Respondent failed to return the telephone call.

48. Respondent violated E.R. 1.4(a)(4). Respondent failed to respond to most of Complainant's telephone calls or emails seeking information about her case.

49. Respondent violated ER 1.16(d). Upon termination of the representation, Respondent offered to refund to Complainant the \$1,250 that she paid him at the inception of the case and provide to her a copy of her file, but he failed to do either.

50. Respondent violated ER 8.1(b). Respondent failed to return SBA investigator Mike Fusselman's telephone call seeking information relating to this bar charge.

51. Respondent violated Rule 54(d)(1). Respondent refused to cooperate with SBA investigator Mr. Fusselman's efforts to interview him in this matter.

52. Respondent violated Rule 54(d)(2). Bar counsel asked SBA Investigator Mike Fusselman to interview Respondent, but Respondent failed to return Mr. Fusselman's telephone calls seeking an interview.

COUNT FOUR (File no. 11-3019/Harvey)

53. On February 22, 2011, Complainant retained Respondent for a bankruptcy matter. Complainant signed a fee agreement that provided, in part, for a total fee of \$3,500 and stated that Respondent would not file the bankruptcy petition until Complainant had paid \$2,024 in earned-upon-receipt fees and costs.

54. On that date, Complainant paid Respondent \$250.

55. On March 25, 2011, Complainant paid Respondent an additional \$1,780, bringing the total amount paid to \$2,030. Complainant also provided Respondent with documents necessary to file the bankruptcy petition.

56. On April 15, 2011, Complainant called Respondent and left a voicemail message asking about the status of her case.

57. On May 6, 2011, Respondent called Complainant and apologized for the delay in filing the bankruptcy petition. Respondent promised Complainant that he would have the petition prepared by May 13, 2011.

58. On May 20, 2011, having neither heard nor received anything from Respondent, Complainant called Respondent and left a voicemail message asking about the status of her case.

59. Complainant continued to call and leave voicemail messages for Respondent on the following dates: May 23, May 25, May 27, May 31, June 3, and June 6, 2011. Respondent failed to return any of Complainant's telephone calls.

60. In June 2011, Complainant terminated Respondent's representation and asked for a refund of the monies that she had paid to him.

61. On June 13, 2011, William Wingard, an attorney friend of Complainant's, wrote a demand letter to Respondent asking for the refund.

62. In late July 2011, Respondent provided Complainant's file to her new bankruptcy attorney, Bruce Bauman.

63. On August 25, 2011, Complainant emailed Respondent to again ask for a refund.

64. Respondent neither filed the bankruptcy petition that Complainant hired and paid him to file nor refunded Complainant's monies to her.

65. On September 13, 2011, Complainant submitted her bar charge to the SBA.

66. The SBA began its investigation and mailed screening letters on October 3rd and November 1, 2011, to Respondent's address of record requesting a written response to the bar charge. Respondent failed to respond to either letter.

67. On December 15, 2011, State Bar Investigator Mike Fusselman, at bar counsel's request, called Respondent at his telephone number of record and left a message asking for a return telephone call regarding this bar charge. Respondent failed to return the telephone call.

68. Respondent violated E.R. 1.3. Respondent was not diligent in his representation of Complainant. Respondent failed to file Complainant's bankruptcy petition.

69. Respondent violated E.R. 1.4(a)(4). Respondent failed to promptly respond to Complainant's reasonable requests for information concerning her matter.

70. Respondent violated E.R. 1.16(d). Upon termination of the representation, Respondent failed to timely give Complainant her file or refund the \$2030 that Complainant had paid to him.

71. Respondent violated E.R. 8.1(b). Respondent failed to respond to bar counsel's letters or return SBA investigator Mike Fusselman's telephone call seeking information relating to the bar charge.

72. Respondent violated Rule 54(d)(1). Respondent failed to respond to bar counsel's letters or SBA Investigator Mike Fusselman's attempts to interview him in this matter.

73. Respondent violated Rule 54(d)(2). Respondent failed to respond to bar counsel's letters or return SBA Investigator Mike Fusselman's telephone calls seeking an interview.

COUNT FIVE (File no. 11-3269/Osheel)

74. On February 15, 2010, Complainant retained Respondent for both a personal and a business bankruptcy while Respondent worked at the firm of Kielsky, Rike & Elgart. Respondent told Complainant that he would handle the matters for total fees and costs of \$3,598. Complainant told Respondent that he would not be able to file for bankruptcy until the next year because he needed to get his corporate books in order. Complainant paid Respondent \$1,750 at that time.

75. Between April 2010 and the end of December 2010, Complainant occasionally called Respondent asking general bankruptcy questions. Respondent answered those questions.

76. After December 31, 2010, Respondent no longer worked at Kielsky, Rike & Elgart, and Respondent opened his own law office. Respondent informed Complainant about the change and the representation continued.

77. In January 2011, Complainant paid Respondent the remaining \$1,848 in fees and costs to Respondent due under the fee agreement.

78. After an email conversation ending on April 18, 2011, Complainant did not have any further contact with Respondent.

79. Between May and September 2011, Complainant called Respondent approximately 40 to 50 times and left messages asking for a return telephone call each time. Respondent failed to return any of Complainant's telephone calls.

80. Complainant also made approximately six unannounced visits to Respondent's office, but the receptionist told him each time that Respondent was not in the office.

81. In mid-2011, Complainant's wife went to Respondent's office and used her maiden name to see Respondent as a "new" client. The receptionist informed her that Respondent's wife had recently had a baby and Respondent was not accepting new clients.

82. On September 18, 2011, Complainant emailed Respondent stating that he had retained other counsel and requesting a refund of the \$1,848 that Complainant had paid to Respondent. Complainant also followed-up with a telephone call and left a message requesting the same refund. Respondent failed to respond to the telephone message or refund any monies to Complainant.

83. Respondent failed to file a bankruptcy petition in either of Complainant's personal or business matters, and failed to give Complainant any refund.

84. After Complainant submitted a bar charge, the State Bar began its investigation and mailed screening letters to Respondent's address of record on October 31, 2011 and December 1, 2011. Respondent failed to respond to either letter.

85. On January 10, 2012, State Bar Investigator Kevin McBay, at bar counsel's request, called Respondent in an attempt to interview him. Respondent failed to return the telephone call.

86. On January 11, 2012, Mr. McBay emailed Respondent in an attempt to set up an interview relating to the bar charge. Respondent failed to respond to the email.

87. Respondent violated E.R. 1.3. Respondent failed to act diligently in the representation. Respondent did not file the bankruptcy petitions for Complainant.

88. Respondent violated E.R. 1.4(a)(4). Respondent failed to promptly respond to Complainant's reasonable requests for information concerning his matter.

89. Respondent violated E.R. 1.16(d). Respondent failed to refund Complainant's unearned fees and costs after Complainant terminated the representation.

90. Respondent violated E.R. 8.1(b). Respondent failed to respond to bar counsel's letters or return State Bar Investigator Kevin McBay's telephone call or email seeking information relating to the bar charge.

91. Respondent violated Rule 54(d)(1). Respondent failed to cooperate with the State Bar's investigation. Respondent failed to respond to bar counsel's letters and to SBA Investigator Kevin McBay's efforts to interview him in this matter.

92. Respondent violated Rule 54(d)(2). Respondent failed to respond to bar counsel's screening letters or return SBA Investigator Kevin McBay's telephone call or email seeking an interview in this matter.

CONCLUSIONS OF LAW

Respondent 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. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Respondent violated the following: Rule 42, Ariz. R. Sup. Ct., specifically E.R.s 1.3, 1.4(a)(4), 1.16(d), 8.1(b), Rule 54(d)(1) and (2).

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 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.

Duties violated:

Respondent violated his duty to his clients by violating E.R.s 1.3, 1.4(a)(4), and 1.16(d). Respondent also violated his duty owed as a professional by violating ER 8.1(b), as well as Rule 54(d)(1) and (2).

Mental State and Injury:

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

Respondent 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, Respondent failed to substantively respond to the SBA’s investigation. Further, Respondent’s actions were taken with the intent to obtain a personal benefit. *Standard 7.1*, therefore, is applicable.

AGGRAVATING AND MITIGATING FACTORS

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

- *Standard 9.22(b)* - dishonest or selfish motive: Respondent took monies from clients as retainers, performed little or no work and retained the monies for his own benefit. Respondent also failed to substantively respond to the SBA’s investigation to cover up his misdeeds.
- *Standard 9.22(c)* - pattern of misconduct. Respondent has several open disciplinary cases involving similar misconduct.
- *Standard 9.22 (d)* - multiple offenses: Respondent knowingly took monies from clients as retainers, performed little or no work and retained the monies for his own benefit. Respondent also failed to substantively respond to the SBA’s investigation to cover up his misdeeds.
- *Standard 9.22 (e)* - bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency: Respondent did not substantively respond in the SBA’s investigation nor did he speak to SBA investigators. “Failure to cooperate with disciplinary authorities is a significant aggravating factor.” *Matter of Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1172 (1988).

- *Standard 9.22(j)* - indifference to making restitution: While Respondent offered to make restitution; he has wholly failed to do so.

The Hearing Panel finds the following mitigating factor applies:

- *Standard 9.32(a)* absence of a prior disciplinary record: Respondent has no prior discipline.

The Hearing Panel finds the sole mitigating factor does not outweigh the aggravating factors. Disbarment 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 Witt*, SB-06-0131-D (2006) Witt was disbarred. Witt was convicted of a Class D felony for violating Title 18 U.S.C § 1347, Health Care Fraud. Witt engaged in fraudulent conduct over a four-year period involving the theft of public

monies by fraudulently billing Medicare for services not provided. The two aggravating factors were: *Standards* 9.22(b) dishonest or selfish motive and a 9.22(c) pattern of misconduct. The 5 mitigating factors were: *Standards* 9.32(a) absence of a prior disciplinary record, 9.32(e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings, 9.32(g) character or reputation, 9.32(k) imposition of other penalties or sanctions, and 9.32(l) remorse. Witt was sanctioned for violation of Rule 42, Ariz. R. Sup. Ct., specifically ERs 8.4(b) 8.4(c), and Rule 53(h), Ariz. R. Sup. Ct.

In *In re Johnson*, SB-10-0037-D, Johnson was disbarred and ordered to pay restitution for failing to adequately communicate with and diligently represent clients. Respondent also knowingly violated a court order and practiced law while suspended as well as failed to provide the State Bar with a current address, and failed to return client property including certain funds belonging to the client. Respondent further failed to respond or cooperate with the State Bar's investigation. The five aggravating factors were: *Standards* 9.22(a) prior disciplinary offenses, 9.22(b) dishonest or selfish motive, 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceedings by failing to comply with the rules or orders of the disciplinary agency and 9.22(i) substantial experience in the practice of law. No mitigating factors were presented.

In *In re Di Pietro*, SB-05-0028-D (2005), Di Pietro was suspended for 2-years and placed on probation upon reinstatement. Di Pietro converted \$700 of client funds for his own use, prepared a false document to hide the theft, and then lied to his business partner when confronted with the theft. The two aggravating factors

were: *Standards* 9.22(b) dishonest or selfish motive and 9.22(i) substantial experience in the practice of law. The 2 mitigating factors were: *Standards* 9.32(a) absence of a prior disciplinary record, 9.32(e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings. Di Petro was sanctioned for violation of Rule 42, Ariz. R. Sup. Ct., specifically ERs 4.1(a), 8.4(b), and 8.4(c).

In *In re Camacho*, SB-96-0079-D (1997), Camacho was disbarred. Camacho allowed summary judgment of over \$15,000 to be entered against clients without taking any steps to have it set aside or inform the clients and intentionally misled clients by stating they could still present their case. The clients agreed to a maximum settlement amount of \$2,500. Camacho, however, subsequently made and agreed to a \$5,000 offer on his clients' behalf without their knowledge or consent. Camacho also converted \$3,047.75 of settlement funds owed to Medicare for his own purpose. Lastly, Camacho failed to respond in the SBA's investigation. The six aggravating factors were: *Standards* 9.22(a) prior disciplinary offenses, 9.22(b) dishonest or selfish motive, 9.22(c) a pattern of misconduct 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, 9.22(i) substantial experience in the practice of law, and 9.22(j) indifference to making restitution. Mitigating factors were discussed, but the Commission's report does not specifically identify ones that were found except for *Standard* 9.32(l) remorse.

This case is similar to the above in that they all involve the conversion of funds or theft or abandonment of the practice of law.

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 upon the above, the Hearing Panel orders as follows:

1. Respondent shall be disbarred from the practice of law.
2. Respondent shall pay all costs and expenses incurred by the SBA and the Office of the Presiding Disciplinary Judge in this proceeding.
3. Respondent shall pay the following in restitution:
 - A. Six Hundred Dollars (\$600.00) to Joanne Dean;
 - B. Two Hundred-Fifty Dollars (\$250.00) to Colleen Lambert;
 - C. Two Thousand-Thirty Dollars (\$2,030.00) to Shirley Harvey; and
 - D. One Thousand Eight Hundred Forty-Eight Dollars (\$1,848.00) to Jeremy Osheel.

4. The Hearing Panel will enter the appropriate Final Judgment and Order.

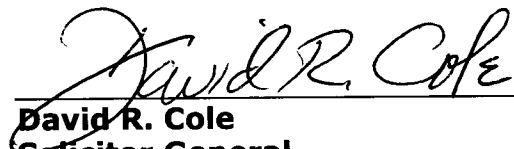
DATED this 28th day of June, 2012.



**Honorable William J. O'Neil
Presiding Disciplinary Judge
Of the Supreme Court of Arizona
Chair of the Hearing Panel**



**Mark Salem
Volunteer Public Member**



**David R. Cole
Solicitor General
Arizona Attorney General's Office
Volunteer Attorney Member**

Original filed with the Disciplinary Clerk
Of the Office of the Presiding Disciplinary Judge
Of the Supreme Court of Arizona
This 28th day of June, 2012.

Copies of the foregoing mailed/emailed
This 28th day of June, 2012, to:

Jonathan Elgart
Elgart Law Office
625 W Southern Ave Ste E-138
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Email: jonathan@elgartlaw.com
Respondent

Copy of the foregoing hand-delivered
This 28th day of June, 2012, to:

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By:

