

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

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

**Kevin Marc Bumstead,
Bar No. 024337**

Respondent.

PDJ-2012-9082

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar No. 12-0953, 12-1154]

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on August 21, 2012. On August 22, 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. On August 29, 2012, the Presiding Disciplinary Judge ("PDJ") was assigned to the matter. A notice of default was properly issued on September 18, 2012 as Respondent failed to file an answer or otherwise defend. On September 19, 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 October 2, 2012. On October 2, 2012, a notice of aggravation and mitigation hearing was sent to all parties notifying them the aggravation mitigating hearing was scheduled for October 18, 2012 at 9:00 a.m. at 1501 West Washington, Court of Appeals, CR 2, Phoenix, Arizona 85007-3231. On October 18, 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 times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on September 4, 2006.

2. By judgment and order dated January 27, 2012, the presiding disciplinary judge accepted an agreement for discipline by consent by which Respondent was suspended for four (4) years effective February 26, 2012 for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.2(a), 1.3, 1.4, 1.15(a), 1.15(d), 8.4(b), 8.4(c), 8.4(d), and Rule 43(a) in PDJ 2011-9077, State Bar file 11-1513.

COUNT ONE (File no. 12-0953/Lin)

3. Complainant is a licensed attorney in Las Vegas, Nevada and associated with Respondent regarding a personal injury case involving three (3) clients.

4. During the summer of 2011, Respondent claimed that he was negotiating a settlement with Allstate Insurance Company and attempting to obtain reductions in the medical bills but discovered a number of lien issues.

5. Despite numerous attempts to contact Respondent regarding the status of the case, Complainant and the clients lost all contact with Respondent in October 2011.

6. Complainant verified that Allstate Insurance Company provided Respondent with settlement checks totaling Eighteen Thousand Two Hundred Twenty Dollars (\$18,220.00).

7. Complainant also verified that the settlement checks were cashed by Respondent without Complainant or the client's knowledge or consent.

8. On April 19, 2012, the State Bar mailed Respondent an initial screening letter to Respondent's last known address requesting that Respondent answer in no less than twenty (20) days.

9. On May 15, 2012, the State Bar mailed a letter identifying Respondent's failure to respond and requesting that Respondent answer in no less than ten (10) days.

10. To date, Respondent has not responded to any of the State Bar's letters.

11. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.2 by failing abide by a client's decision concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued or taking such action on behalf of the client as is impliedly authorized to carry out the representation.

12. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.3 by failing to act with reasonable diligence and promptness.

13. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.4(a)(1), (2), (3) and (4) by failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules, failing to reasonably consult with the client about the means by which the client's objectives are to be accomplished, failing to keep the client reasonably informed about the status of the matter and failing to promptly comply with reasonable requests for information.

14. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.4(b) by failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

15. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.15(a) and (d) by failing to hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property and failing to promptly notify the client or third party upon receiving funds or other property in which a client or third party has an interest.

16. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 8.1(b) by failing to respond to a lawful demand for information from a disciplinary authority.

17. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 8.4(b) by engaging in criminal act by endorsing check without client authority, an act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer.

18. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

19. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) by engaging in conduct that is prejudicial to the administration of justice.

20. Respondent violated Rule 43(a), Ariz. R. Sup. Ct., by failing to keep funds belonging in whole or in part to a client or third person in connection with the representation separate and apart from the lawyer's personal and business accounts.

21. Respondent violated Rule 54(d), Ariz. R. Sup. Ct., by failing to cooperate with officials and staff of the State Bar.

COUNT TWO (File no. 12-1154/TeBeest & Banner Health)

22. In or around November 2011, Respondent represented Complainant's eighty three year old father (hereinafter referred to as "Client") in a personal injury case.

23. On November 25, 2011, Respondent initiated the Maricopa County Superior Court lawsuit of *Tebeest v. Banner Health and Citadel Retirement Community*, CV2011-070808.

24. In or around March 9, 2012, Respondent provided Client with documents settling the case with Banner Baywood Medical Center which were duly executed and returned to Respondent.

25. On March 9, 2012, Respondent e-mailed Client that he was in the process of personally obtaining the settlement check and would mail Client his percentage of the settlement shortly.

26. On March 27, 2012, Respondent indicated that things were hectic and that he "will sit down today and get all the numbers put together as far as payments, fees, liens etc. (and will) call later today to confirm check is in mail."

27. On April 6, 2012, Respondent e-mailed Client indicating that his home was robbed and that he has not been in the office but will get a full accounting prepared that day.

28. Upon further investigation, Complainant discovered that Banner settled the case for Sixty Two Thousand Five Hundred Dollars (\$62,500.00).

29. Despite several attempts to contact Respondent, Complainant was not been able to determine the status of the Banner settlement funds, the status of the outstanding liens or the status of the case against Citadel Retirement Community and had to retain alternate counsel, O'Quinn Law, P.C.

30. On May 8, 2012, Ms. O'Quinn provided the Complainant and the State Bar with confirmation that the claims against Citadel and the individual doctors had not been settled, but that the Banner claims had been settled for Sixty Two Thousand Five Hundred Dollars (\$62,500.00) and none of the lien holders [including a Seventeen Thousand Dollars (\$17,000.00) Medicare lien] have apparently been paid.

31. Ms. O'Quinn obtained a copy of the settlement check and Client verified that the signatures were not he and his wife's.

32. On June 12, 2012, Banner Health, through counsel, sent bar counsel a letter verifying the results of their investigation into allegations that Respondent converted the Banner settlement funds as well as Ms. O'Quinn's verification that the matter has been reported to the Mesa Police Department.

33. On May 3, 2012, the State Bar mailed Respondent an initial screening letter to Respondent's last known address requesting that Respondent answer in no less than twenty (20) days.

34. On June 1, 2012, the State Bar mailed a letter identifying Respondent's failure to respond and requesting that Respondent answer in no less than ten (10) days.

35. To date, Respondent has not responded to any of the State Bar's letters.

36. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.2 by failing abide by a client's decision concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be

pursued or taking such action on behalf of the client as is impliedly authorized to carry out the representation.

37. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.3 by failing to act with reasonable diligence and promptness.

38. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.4(a)(1), (2), (3) and (4) by failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules, failing to reasonably consult with the client about the means by which the client's objectives are to be accomplished, failing to keep the client reasonably informed about the status of the matter and failing to promptly comply with reasonable requests for information.

39. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.4(b) by failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

40. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.15(a) and (d) by failing to hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property and failing to promptly notify the client or third party upon receiving funds or other property in which a client or third party has an interest.

41. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 5.5 by engaging in the unauthorized practice of law.

42. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 8.1(b) by failing to respond to a lawful demand for information from a disciplinary authority.

43. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 8.4(b) by engaging in criminal act by endorsing check without client authority, an act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer.

44. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

45. Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) by engaging in conduct that is prejudicial to the administration of justice.

46. Respondent violated Rule 43(a), Ariz. R. Sup. Ct., by failing to keep funds belonging in whole or in part to a client or third person in connection with the representation separate and apart from the lawyer's personal and business accounts.

47. Respondent violated Rule 54(d), Ariz. R. Sup. Ct., by failing to cooperate with officials and staff of the State Bar.

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:

Count 1: Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 1.4(a)(1), (2), (3) and (4), 1.4(b), 1.15(a) and (d), 8.1, 8.4(b), 8.4(c), 8.4(d), Rule 43, Rule 54(d);

Count 2: Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 1.4(a)(1), (2), (3) and (4), 1.4(b), 1.15(a) and (d), 5.5, 8.1, 8.4(b), 8.4(c), 8.4(d), Rule 43, Rule 54(d).

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 client by violating ERs 1.2, 1.3, 1.4(a)(1), 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.4(b), 1.15(a), 1.15(d) and Rule 43. Respondent violated his duty to the public and the administration of justice by violating ERs 5.5, 8.4(b), 8.4(c), and 8.4(d). Respondent also violated his duty owed as a professional by violating ER 5.5, 8.1 and Rules 54(d).

Mental State and Injury:

Respondent violated his duty to the public, thereby implicating *Standard* 5.1. *Standard* 5.11 states:

Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation,

fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Standard 5.12 states, "Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard 5.11* and that seriously adversely reflects on the lawyer's fitness to practice."

In this matter, Respondent committed theft and fraudulent schemes, in violation of A.R.S. § 13-1802, et.seq. and § 13-2310, et.seq., by utilizing certain settlement funds for his own purpose without authorization. Therefore, *Standard 5.11(a)* 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."

In the instant case, Respondent failed to substantively respond to the SBA's investigation. Respondent's actions were taken with the intent to obtain a personal benefit. *Standard 7.1*, therefore, is appropriate.

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 misappropriated money and failed to 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 including, but not limited to, PDJ 2011-9077, State Bar file 11-1513.
- *Standard 9.22 (d)* - multiple offenses: Respondent knowingly converted money, abandoned several active lawsuits and failed 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 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(g)* - refusal to acknowledge wrongful nature of conduct: Respondent has never acknowledged what he did was wrong.
- *Standard 9.22(i)* - substantial experience in the practice of law: Respondent was admitted to practice in September 4, 2006.

- *Standard 9.22(j)* - indifference to making restitution: Respondent has not made or offered to make restitution.
- *Standard 9.22(k)* - illegal conduct: Respondent committed theft and fraudulent schemes, in violation of A.R.S. § 13-1802, et.seq. and § 13-2310, et.seq.

The Hearing Panel finds no mitigating factors are present in this matter:

Based upon the foregoing, the Hearing Panel finds that immediate 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 Camacho*, SB-96-0079-D (1997), Cammacho was disbarred. Cammacho 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 that he 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 did 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 disbarment resulting from the Respondent's conversion or theft of client funds.

CONCLUSION

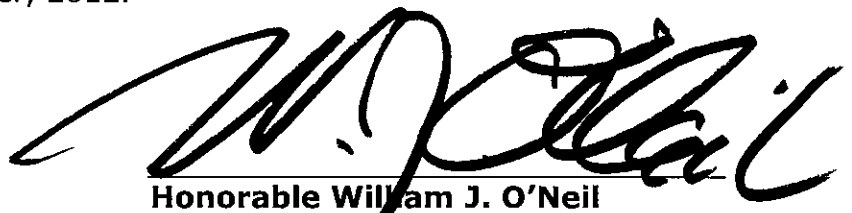
The Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002)(quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 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 and the goals of the attorney discipline system.

Based upon the above, the Hearing Panel orders as follows:

1. Respondent shall be immediately 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 within thirty days of the execution of the Final Judgment and Order in this matter.
3. Respondent shall pay Michael Lin of the Lin Law Group and/or Yue Hua Li; Xin Xin Liang and Tracy Liang restitution in the amount of Eighteen Thousand Two Hundred Twenty Dollars (\$18, 220.00) within thirty days of the execution of the Final Judgment and Order in this matter.
4. Respondent shall pay Merwin K. TeBeest and/or Nadine E. TeBeest or their personal representative restitution in the amount of Sixty Two Thousand Five Hundred Dollars (\$62,500.00) within thirty days of the execution of the Final Judgment and Order in this matter.
5. A Final Judgment and Order will follow.

DATED this 18 day of October, 2012.

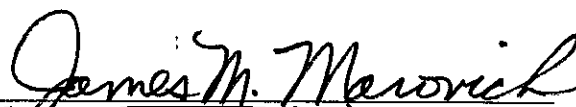


Honorable William J. O'Neil
Presiding Disciplinary Judge

CONCURRING



Douglas S. Pilcher
Volunteer Public Member



James M. Marovich
Volunteer Attorney Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 18 day of October, 2012.

Copies of the foregoing mailed/emailed
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