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

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

**RYAN M. WACKERLY,
Bar No. 022077**

Respondent.

PDJ-2012-9108

**REPORT AND ORDER IMPOSING
SANCTIONS**

State Bar No. 12-1432

FINDINGS OF FACT

1. Andrew Espinoza hired Respondent in February of 2012 to handle an employment law matter. Espinoza paid Respondent \$3,500.00 during the first two months of the representation, the amount set forth in Respondent's fee agreement for pretrial work.
2. Although Respondent indicated to Espinoza that he would do so, he failed to place a telephone call to either Espinoza's employer or Espinoza's doctor.
3. Respondent performed no work relating to Espinoza's case and failed to refund the fees paid to him or return his case file, upon request.
4. Espinoza hired another attorney and filed a complaint with the Bar after Respondent failed to return numerous phone calls.
5. Respondent failed to respond to the Bar's screening letter of July 18, 2012. Subsequently, Bar counsel sent an investigator to Respondent's place of work to hand-deliver the screening letter to Respondent. After

receiving the letter, Respondent failed to call Bar counsel or provide a written response to the Complaint.

6. Respondent did, however, place a phone call to Espinoza following receipt of the Bar complaint to voice his frustration concerning the complaint.

CONCLUSIONS OF LAW

7. Respondent violated ER 1.3, which requires a lawyer to act with reasonable diligence in representing his client. Respondent failed to perform any work related to Espinoza's case.
8. Respondent violated ER 1.4, which requires a lawyer to reasonably communicate with his client during the course of representation. Respondent failed to return phone calls and failed to provide Espinoza with any update concerning his case.
9. Respondent violated ER 1.5, which requires a lawyer's fee to be reasonable. Respondent collected \$3,500.00 from Espinoza, but failed to perform any work.
10. Respondent violated ER 1.16, which requires that, upon termination of representation, a lawyer surrender documents and property to which the client is entitled. Respondent failed to return client documents.
11. Respondent violated ER 8.1, which prohibits a lawyer from knowingly failing to respond to a lawful demand for information from a disciplinary authority. Respondent did not furnish a response to the Bar.
12. Respondent violated ER 8.4(d), which prohibits a lawyer from engaging in conduct prejudicial to the administration of justice. Respondent failed to file suit on Espinoza's behalf after agreeing to do so.

13. Respondent violated ER Rule 54, which requires a lawyer to promptly furnish information to the State Bar. Respondent provided no response to the Bar's investigation.

ABA STANDARDS ANALYSIS

In determining an appropriate sanction, the hearing panel is required to utilize the American Bar Association's *Standards for Imposing Lawyer Sanctions* (hereinafter *Standards*). Rule 58(k), Ariz. R. Sup. Ct. In determining an appropriate sanction, consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *Standard* 3.0.

The following discussion of the *Standards* illustrates that Respondent violated duties owed to clients.

4.41 Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

Aggravating and Mitigating Factors:

9.22(a): Prior disciplinary offenses:

File 11-2964: Reprimand, March 20, 2012 and Suspension of six months and one day, October 26, 2012

9.22(e): bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency

9.22(j): Indifference to making restitution

PROPORTIONALITY

In the Matter of a Member of the State Bar of Arizona, Joseph Didio, SB-09-0018-D, is applicable and proportional as Mr. Didio was disbarred for failing to adequately communicate, failing to diligently represent his clients, failing to perform work, and essentially abandoning his practice. Mr. Didio violated ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.7, 1.16, 3.4(c), 5.1, 8.1(b), 8.4(c), 8.4(d) and Rules 53(d) and (f).

In the matter of a Member of the State Bar of Arizona, Jeff Jackson, SB-09-0079-D, is applicable and proportional. Mr. Jackson was disbarred for failing to adequately communicate and diligently represent clients, collecting retainers and fees from his clients without performing work and essentially abandoning his practice. Mr. Jackson violated ERs 1.3, 1.4(a)(4), 1.5(a), 1.5(b), 1.15(d), 1.16, 3.2, 3.4(a), 3.4(d), 8.1(b), 8.4(d) and Rule 53(c), 53(d) and 53(f).

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. Therefore,

IT IS ORDERED:

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 Complainant Andrew Espinoza restitution in the amount of \$3,500.00. within thirty days of the execution of the Final Judgment and Order in this matter.

DATED this 13th day of February, 2013.



Honorable William J. O'Neil
Presiding Disciplinary Judge



Douglas Pilcher Volunteer Public Member



Glen Thomas, Volunteer Attorney Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona

this 13th day of February, 2013.

Copies of the foregoing mailed/emailed
this 13th day of February, 2013, to:

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Respondent

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Copy of the foregoing hand-delivered
This 13th day of February, 2013, to:

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by: H. Smith