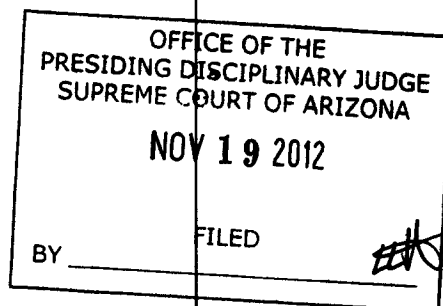




**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

**C. THOMAS MASON,
Bar No. 019534,**

Respondent.

PDJ-2012-9077

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar File Nos. 11-2317 and
12-0134]

On October 24, 2012, the Hearing Panel ("Panel"), composed of Bruce M. Brannan, a public member from Maricopa County, James M. Marovich, an attorney member from Maricopa County, and the Honorable William J. O'Neil, Presiding Disciplinary Judge ("PDJ"), held a one day Aggravation/Mitigation Hearing pursuant to Supreme Court Rule 58(k), Ariz.R.Sup.Ct. Hunter Perlmeter appeared on behalf of the State Bar of Arizona ("State Bar"), and Michael Drake appeared for Mr. Mason.

Default was entered September 25, 2012 as Mr. Mason failed to answer the State Bar complaint. The formal entry of default by the Disciplinary Clerk resulted in the allegations of the complaint being "deemed admitted" pursuant to Rule 58(d). A respondent against whom a default has been entered 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.

Respondent seeks probation with restrictions on practice, and the State Bar seeks suspension for a minimum of one year¹.

The Panel considered the admitted exhibits, the State Bar Prehearing Statement, Respondent's Memorandum in Mitigation, and the testimony of Mr. Mason. There has been an independent determination by the Hearing Panel that the State Bar has, by clear and convincing evidence, proven that the actions of Mr. Mason are in violation of the ethical rules.

The Panel now issues the following Report and Order Imposing Sanctions, ordering that Mr. Mason is suspended for a period of one year with reinstatement conditions as Ordered below.

I. PROCEDURAL HISTORY

The State Bar of Arizona filed its complaint in this matter on August 10, 2012. An Initial Case Management Conference was held September 11, 2012, at which Respondent failed to appear. Respondent also subsequently failed to file an answer, and Default was properly entered by the Disciplinary Clerk on September 25, 2012. The Aggravation/Mitigation Hearing was initially set for October 15, 2012, but was continued upon request of Mr. Mason until October 24th. Mr. Drake filed a notice of appearance as counsel of record for Respondent on October 18, 2012. He also filed a Motion to Set Aside Default on that same date, which was denied. The State Bar filed its prehearing memorandum October 11, 2012. Respondent filed a Memorandum in Mitigation on October 24, 2012.

¹ The State Bar initially sought disbarment in its prehearing memorandum filed October 11, 2012.

II. FINDINGS OF FACT

1. At all times relevant, Mr. Mason was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on September 26, 2000.

COUNT ONE (File no. 11-2317/Schultz)

2. Mr. Ronald Schultz entered into a contingency fee agreement with Mr. Mason on January 4, 2010, to file a lawsuit against a real estate company with which he had made an investment. Mr. Schultz paid a deposit of \$1,000.00, for costs at the outset of the representation.
3. After Mr. Mason was non-responsive to Mr. Schultz's communications for several months, Mr. Schultz on June 27, 2011, via fax, requested the return of all of his papers and the \$1,000.00, deposit for costs.
4. For several more months Mr. Schultz received no response.
5. The Bar sent letters to Mr. Mason on November 1, 2011, and December 1, 2011, requesting information concerning the matter. Mr. Mason did not respond.
6. A Bar investigator subsequently contacted Mr. Mason by phone on January 12, 2012. Mr. Mason informed the investigator that he did not respond to the Bar's letters because he assumed that Mr. Schultz was providing accurate answers to all of the questions that the Bar was asking of him. Mr. Mason further indicated that he had not used any of Schultz's \$1,000 deposit for costs and that, although Schultz wanted him to file suit against one of the members of an investment company, he believed filing such a suit would be frivolous and, therefore, did not do so.

7. Mr. Mason acknowledged that he initially "dropped the ball" by failing to communicate with Mr. Schultz and that the longer the lack of communication went on, the harder it became for him to bring himself to reestablish communication due to his own embarrassment.
8. On January 19, 2012, the Bar requested a copy of Mr. Schultz's file by February 6, 2012. When no response was received, an additional request was made on February 7, 2012, requesting documents by February 21, 2012.
9. On February 21 2012, Mr. Mason sent, via Federal Express, a CD of documents. The majority of the documents did not directly relate to Mr. Shultz's case.
10. On March 30, 2012, Bar Counsel sent Mr. Mason a letter confirming the Bar's understanding that Mr. Schultz had previously sent an email to Mr. Mason unequivocally terminating his representation and demanding the return of \$1,000.00, in costs. The letter requested that Mr. Mason notify the Bar within ten days whether he intended to return the funds.
11. Mr. Mason did not respond to Bar Counsel's letter and failed to timely return multiple voice messages. He did, however, email one of the Bar's investigators on May 14, 2012, to state "I will do my best" to contact Bar Counsel the next day. However, he failed to do so.
12. Mr. Mason violated ER 1.3, which requires a lawyer to act with reasonable diligence and promptness in representing his client. Respondent failed to file the lawsuit that Mr. Schultz intended him to file and failed to timely communicate his reasons for not filing suit.
13. Mr. Mason violated ER 1.4, which requires a lawyer to reasonably communicate with his client. Mr. Mason repeatedly failed to respond to phone calls and

emails for months at a time. Additionally he ignored communications in which his client terminated his representation and requested the return of his money.

14. Mr. Mason violated ER 1.15(d), which requires a lawyer to promptly deliver to a client funds that the client is entitled to receive. Mr. Mason has failed to promptly return Mr. Shultz's \$1,000.00, cost deposit.
15. Mr. Mason violated ER 1.16(d), which requires a lawyer, upon termination of a representation, to surrender documents and property to which the client is entitled. Mr. Mason failed to return his client's file.
16. ER 8.1(b) prohibits a lawyer from knowingly failing to respond to a lawful demand for information from an admissions or disciplinary authority. Mr. Mason, on multiple occasions, failed to timely respond to the Bar.
17. Rule 54(d) requires the lawyer to promptly respond to the Bar's requests for information. Mr. Mason repeatedly failed to timely respond to the Bar's requests for information.

COUNT TWO (File no. 12-0134/RUSING)

18. Mary Sue Gasho Anderson and her brother, John Gasho, ("the Gashos") were represented by Mr. Mason and attorney Osmund Burton² in a probate matter (PB-20070733) in a Pima County Superior Court case related to the estates of their deceased parents.
19. In June of 2007, attorney Osmund Burton filed a Complaint in the probate court on the Gashos' behalf. Around the same time, Mr. Burton associated with Mr.

² Mr. Burton has accepted a consent agreement for a three year suspension and was ordered to fee arbitration for his conduct related to his representation of the Gashos. See State Bar prehearing statement.

Mason as co-counsel. The Gashos approved the association with Mr. Mason and were of the understanding that Mr. Mason would serve as "lead trial counsel."

20. Mr. Mason made court appearances in the matter and performed research and writing.
21. On November 5, 2009, the court ordered that pretrial statements were to be filed no later than December 4, 2009. Mr. Mason and Mr. Burton failed to file a pretrial statement.
22. In May of 2011, a Motion to Dismiss for Lack of Prosecution was filed by opposing counsel. Neither Mr. Burton nor Mr. Mason timely communicated to the Gashos that the motion had been filed and did nothing to address the motions until two days prior to a hearing on the motion. At that time Mr. Burton acknowledged to the court that he and Mr. Mason were responsible for the delay.
23. In a July 29, 2011, minute entry the court stated, "It is clear that plaintiffs have taken no action in almost 2 years since the November, 2009 Order was entered"
24. The court dismissed the case with prejudice for lack of prosecution on October 5, 2011.
25. According to the Gashos, as of January of 2012, they had paid Mr. Burton and Mr. Mason nearly \$100,000.00 for their representation. When the Gashos requested their file, they learned that there was no working file or an accounting of the fees paid by them.
26. Bar counsel sent a screening letter to Mr. Mason on January 24, 2012, requesting a response within twenty days. On February 13, 2012, Mr. Mason

requested an extension until March 12, 2012. Prior to the deadline, on March 7, 2012, an additional extension until April 2, 2012, was granted due to the death of Mr. Mason's father. However, no response was subsequently received from Mr. Mason.

27. Mr. Mason violated ER 1.1, which requires a lawyer to provide competent representation to a client, including the legal skill, thoroughness and preparation reasonably necessary for the representation.
28. Mr. Mason violated ER 1.3, which requires a lawyer to provide diligent representation. Mr. Mason failed to meet court deadlines ultimately causing his client's case to be dismissed for lack of prosecution.
29. Mr. Mason violated ER 1.4, which requires a lawyer to reasonably communicate with a client about the case. Mr. Mason did not timely or accurately communicate with his clients concerning the status of their case.
30. Mr. Mason violated ER 3.2, which requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client. Mr. Mason's failure to expedite the Gashos' case resulted in the case's dismissal with prejudice.
31. Mr. Mason violated ER 8.1(b), which prohibits a lawyer from knowingly failing to respond to a lawful demand for information from an admissions or disciplinary authority.
32. Mr. Mason violated ER 8.4(d), which prohibits a lawyer from engaging in conduct prejudicial to the administration of justice. Mr. Mason's failure to prosecute resulted in the dismissal of his client's case.

Testimony of Thomas Mason

Mr. Mason established his academic credentials, with two Bachelor's degrees and three Master's degrees, followed by a J.D. in 1998. Prior to attending law school, Mr. Mason was a financial planner and estate planner. He served as an expert witness on complicated securities issues, and stated that he went to law school to enhance his abilities as an expert witness. He joined the Bar in 2000, two years after his graduation from law school.

Prior to 2007, Mr. Mason stated that he was not the sole lawyer on any case, but was generally invited to be co-counsel to bring his specialized expertise to cases. He was co-counsel in approximately a dozen matters. Mr. Mason states that he primarily did research and writing, as well as motion practice. On the rare occasions when a client came directly to him, he engaged co-counsel.

Regarding the Gasho matter, Mr. Mason stated that Mr. Burton was engaged by the client and subsequently engaged Mr. Mason as co-counsel. The allegations deemed admitted by default indicate that the Gasho's understanding was that Mr. Mason would serve as lead trial counsel, however Mr. Mason stated that his understanding of his role was to assist Mr. Burton where directed. This was primarily to include rewriting the complaint and handling the briefing and arguing on the preliminary motion practice. Mr. Mason believes that his work, as directed by Mr. Burton, was completed in 2009. He argued motions in court, however he testified he does not know whether he filed an association as co-counsel of record. He also testified that he believed he was working for Mr. Burton and not the client. However, the exhibits are unequivocal. Mr. Mason filed pleadings listing himself as

"co-counsel" and as an attorney of record. See State Bar Exhibit 17, bates stamps 208 and 221.

In 2011, Mr. Mason was contacted by the State Bar regarding his handling of Mr. Schultz's matter. After an extended period of time in which he failed to contact his client, Mr. Mason did provide a written apology to Mr. Schultz and completed research on the underlying matter. Mr. Mason testified that he tried to discourage Mr. Schultz from pursuing the case given his limited financial resources and the probable limitations on recovery.

At the time the State Bar was trying to contact Mr. Mason regarding Counts One and Two, he testified that he was in the midst of managing the health crises of his father (leading to death), mother (falls, fractures, dementia) and wife (degenerative neurological condition). Mr. Mason stated as an only child he was solely responsible for his parents, and is also solely responsible for his wife. He stated he engaged care support to the limit of his financial resources, and he directly provides the remainder of the care-giving for his wife. He testified that his wife's disease is a neurological condition³ and progressively worsening. He stated that the emotional and psychological impact on him has been debilitating. He asserted he was sleep deprived, physically exhausted, and had little time to work. He stated he had withdrawn from all contacts, was emotionally paralyzed and could not do important things such as respond to the State Bar or open probate on his father's estate.

³ Mr. Mason stated that his wife was diagnosed by the Mayo Clinic with multiple system atrophy.

Mr. Mason stated that he now realizes that he has been heavily affected by the stress of his family's health issues and the demands of caregiving, and has been suffering from depression. He advised that he is now under a doctor's care and taking an anti-depressant.

The Panel notes that Mr. Mason did not provide supporting documentation related to this self-serving testimony.⁴

III. CONCLUSIONS OF LAW

Mr. Mason failed to file an answer or otherwise defend against the allegations in the 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 Panel finds by clear and convincing evidence that Mr. Mason violated the following: Rule 42, ERs 1.1, 1.3, 1.4, 1.15(d), 1.16(d), 3.2, 8.1(b), and 8.4(d); and Rule 54(d), Ariz. R. Sup. Ct.

IV. Sanction and ABA Standards

The only issue for the Hearing Panel to decide is the sanction to be imposed. Pursuant to Rule 58(k), a panel shall consult the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") 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. *Standard 3.0; In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004).

⁴ Attached to Respondent's Memorandum in Mitigation is (1) a letter from attorney Barry Kirschner to the State Bar dated October 1, 2012, which letter simply recounts what Mr. Mason told Mr. Kirschner about his personal circumstances, and (2) a letter from Mr. Mason to Mr. Kirschner dated August 21, 2012 describing his personal circumstances.

Duty Violated

Mr. Mason's conduct violated his duties to his clients, the profession, and the legal system. The most important ethical duties are those obligations which a lawyer owes to his clients. *Standards*, II. Theoretical Framework. Mr. Mason's client violations centered on his duty of competence, diligence and communication. This was exacerbated by his failure to respond to the State Bar.

Mental State

A lawyer's mental state is reviewed to determine if the ethical lapses were committed intentionally, knowingly, or negligently. Here, Respondent's mental state was "knowing," as he was clearly aware that he had not responded to his clients, the Schultz's, for an extended period of time. Mr. Mason was also aware that the State Bar was trying to contact him telephonically and sending him correspondence.⁵

Extent of Injury

Evidence shows that Mr. Mason caused actual harm to his clients and the legal profession. His misconduct caused the Gasho case to be dismissed with prejudice, and he failed for months to return Mr. Shultz's deposit of \$1,000 and his file.

Aggravating/Mitigating Circumstances

The Panel finds aggravating factors 9.22(c) a pattern of misconduct; (d) multiple offenses; and (j) indifference to making restitution are present. Mr. Mason

⁵ Much of the correspondence from the State Bar remained unopened, as described in the October 1, 2012 letter from Barry Kirschner to the Bar. This letter included an index of unopened State Bar correspondence provided by Mr. Mason to Mr. Kirschner at that time.

did not respond timely to the State Bar in Counts One and Two, a continuation of behavior for which he was informally reprimanded in 2008.

The Panel finds the following factors are present in mitigation: 9.32(b), absence of dishonest or selfish motive, and 9.32(c) personal or emotional problems. Mr. Mason testified at length regarding the personal difficulties he stated he has faced over the last several years due to injury, death and neurological disorders affecting his parents and wife. He also states he suffers from depression and has begun to treat it with medication. However, Mr. Mason did not supply proof other than his testimony, therefore the hearing panel gave limited weight to this factor.

It is noted that the *Standards* provide that "absent aggravating or mitigating circumstances," the sanctions provided are "generally appropriate." *Standards*, II. Theoretical Framework. They are designed as guidelines to give the courts a framework, but flexible such that the court may impose the appropriate sanction based on the specific circumstances of each case. *Standards*, 1.3.

Standard 4.41 (Lack of Diligence) is applicable to Mr. Mason's violations of the duties to his clients, which are ERs 1.1, 1.3 and 1.4. This *Standard* provides that 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
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

In contrast, *Standard* 4.42 provides that 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.

The difference between the disbarment and suspension standard under 4.4 primarily rests on the degree of injury that occurred; serious or potentially serious injury is required to apply the disbarment standard. The Panel finds that suspension is the appropriate *Standard* in this instance, as Mr. Mason's conduct constituted a pattern of neglect in the Gasho matter, causing injury to that client. Mr. Mason's other failings were knowing, however they did not result in serious injury. *Standard* 7.2 (duties as a professional) applies to Mr. Mason's violations of his duties as a professional and the legal system. 7.2 provides that 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.

V. Discussion

In this instance, the underlying client matters involve knowing failures and a pattern of neglect in diligently representing clients and communicating regarding the status of their cases. Mr. Mason also exacerbated the situation by failing over an extended period of time to respond to the State Bar. The Panel is extremely sympathetic to the life stresses that Mr. Mason testified he encountered in the last few years and may well be dealing with on a daily basis. The Panel understands

that disabling depression is a not uncommon byproduct of that stress. We have considered his testimony that he has now sought medical assistance for this depression.

Mr. Mason's request for probation with the condition that he not accept clients or work on legal matters for a year is acknowledgement that he is not currently able to practice law. The Panel agrees that he is not currently able to practice, but finds that probation is an inadequate measure to protect the public. Probation is useful in situations in which the lawyer will continue to practice, but would benefit from some type of oversight for the conduct that requires correction. At issue here, however, is Mr. Mason's fundamental lack of understanding that as an attorney, the duties he owes are first and foremost to his clients. In the Gasho matter, Mr. Mason stated over and over again that he worked for Mr. Burton, and that his involvement stopped when he had accomplished what Mr. Burton asked. He acknowledges that he wrote pleadings, appeared in court, submitted oral arguments, and engaged in direct correspondence with other counsel. Yet he testified that he was not co-counsel in the case, and that the client's expectations about his role were simply different from his.

As an attorney Mr. Mason is subject to the rules of legal ethics, and responsible to the State Bar. None of these duties may be subjugated to a belief that as co-counsel he is not primarily responsible for a case or that the client will provide the investigative information the State Bar was seeking. Mr. Mason has failed to grasp the basic legal and ethical concepts that he must understand to practice as a lawyer.

It appears that Mr. Mason has not made the intellectual transition from expert witness to lawyer, and the responsibilities that the latter role requires. Suspension is not only appropriate given the injury caused by Mr. Mason, but will ensure that prior to reinstatement Mr. Mason establish that he clearly understands the cause of his ethical lapses and is rehabilitated. The Panel determined that Mr. Mason would benefit in this regard from re-addressing the fundamentals of duties owed by lawyers, and requires that he pass the Multi-State Professional Responsibility Examination as a condition of reinstatement.

VI. Conclusion

In accordance with the above findings of fact and conclusions of law, the Hearing Panel has determined the appropriate sanction based on the facts deemed admitted, the *Standards*, the aggravating and mitigating factors, and the goals of the attorney discipline system.

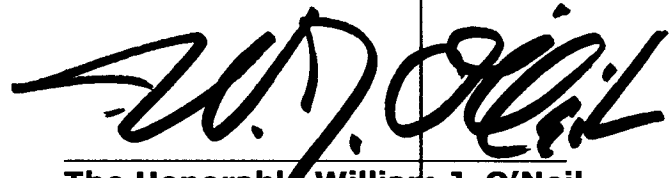
The Panel now orders as follows:

IT IS ORDERED:

1. Mr. Mason is suspended from the practice of law for a period of one (1) year effective immediately.
2. As a condition of reinstatement Mr. Mason shall successfully pass the Multi-State Professional Responsibility examination.
3. Upon reinstatement, Mr. Mason shall be placed on probation for two years with terms and conditions to be determined at the time of reinstatement.
4. Respondent shall participate in fee arbitration with Osmond Burton and Mary Sue Gasho Anderson and John Gasho as ordered in PDJ-2012-9068 [File No. 12-0135].

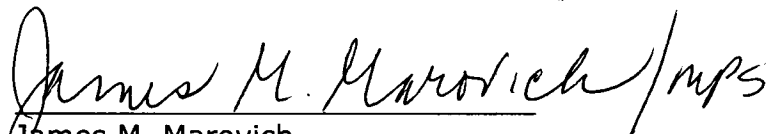
5. Respondent shall pay all costs and expenses incurred by the State Bar and the Office of the Presiding Disciplinary Judge in these proceedings.
6. Respondent shall pay restitution of One Thousand Dollars (\$1,000.00) to Mr. Ronald Schultz within five (5) days of the date of the final Judgment and Order.
7. A final order and judgment and order will follow.

DATED this 19 day of November, 2012.



The Honorable William J. O'Neil
Presiding Disciplinary Judge

CONCURRING:



James M. Marovich
Volunteer Attorney Member



Bruce M. Brannan
Volunteer Public Member

Original filed with the Disciplinary Clerk
this 19 day of October, 2012.

Copies of the foregoing mailed/emailed
this 19 day of October, 2012, to:

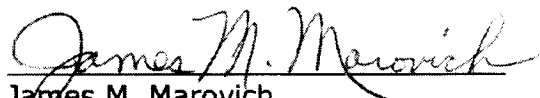
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6. Respondent shall pay restitution of One Thousand Dollars (\$1,000.00) to Mr. Ronald Schultz within five (5) days of the date of the final Judgment and Order.
7. A final order and judgment and order will follow.

DATED this _____ day of November, 2012.

The Honorable William J. O'Neil
Presiding Disciplinary Judge

CONCURRING:


James M. Marovich
Volunteer Attorney Member

Bruce M. Brannan
Volunteer Public Member

Original filed with the Disciplinary Clerk
this _____ day of November, 2012.

Copies of the foregoing mailed/emailed
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Copy of the foregoing hand-delivered/emailed
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by: 