

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A
DISABILITY INACTIVE MEMBER
OF THE STATE BAR OF ARIZONA,**

**PAUL R. BAYS,
Bar No. 013479**

Respondent.

PDJ 2020-9114

**FINAL JUDGMENT AND
ORDER**

State Bar File Nos. 20-0147, 20-0210,
20-0366

FILED MARCH 19, 2021

The hearing panel rendered its Decision and Order on February 16, 2021, imposing a one-year concurrent suspension, restitution, and the payment of costs. No notice of appeal having been filed, the time for appeal having expired, and no objection to the State Bar's Statement of Costs and Expenses having been filed,

IT IS ORDERED Respondent, **PAUL R. BAYS, Bar No. 013479**, is suspended from the practice of law in Arizona for one (1) year to run concurrently with his suspension in PDJ 2020-9078, effective February 16, 2021.

IT IS FURTHER ORDERED Mr. Bays shall comply with the requirements of Rule 72, Ariz. R. Sup. Ct. which include but are not limited to notification of clients and others and filing all notices and affidavits required.

IT IS FURTHER ORDERED Mr. Bays shall pay restitution as follows: \$3,900.00 to Nathan Andrews; \$1,125.83 to Joe Thomas; and \$3,500.00 to Jeremy Ramsey.

IT IS FURTHER ORDERED Mr. Bays shall pay the costs and expenses of the State Bar of Arizona of \$2,000.00. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

DATED this 19th day of March, 2021.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed this 19th day of March, 2021, to:

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A DISABILITY
INACTIVE MEMBER OF THE
STATE BAR OF ARIZONA,**

**PAUL R. BAYS,
Bar No. 013479**

Respondent.

PDJ 2020-9114

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar Nos. 20-0147, 20-0210, 20-0366]

FILED FEBRUARY 16, 2021

SUMMARY

As alleged in a multiple count Complaint the hearing panel found that Mr. Bays failed to adequately communicate and diligently represent three separate clients. In Count 1 he was paid \$3,900 to represent a father in a family law matter. The opposing mother was the daughter of a former client of Mr. Bays. Mr. Bays suggested, without explanation, that the daughter's father surrender his parental rights.

Count 2, Mr. Bays was paid \$2,500 to represent a client seeking severance of the parental rights he shared with the biological mother. That client and his wife thereafter adopted the child during their marriage. Bays obtained confidential information about the husband client and his wife through that representation. Mr. Bays then represented the husband client's wife in a dissolution action against the

former husband client without obtaining waivers of any potential conflicts from them.

In Count 3, Mr. Bays was paid \$3,500 to represent a father in a child custody matter. The court accepted the parties parenting plan. Thereafter, the opposing party filed a motion to dismiss and made other requests. Mr. Bays did not file a response for his client. The case was dismissed as a result. Mr. Bays moved for reconsideration and to withdraw, then charged his client for the motion to withdraw and the motion for reconsideration.

Mr. Bays violated ERs 1.2 (scope of representation), 1.3 (diligence), 1.4 (communication), 1.5(a) (fees), 1.9(a) (duties to former clients), 3.2 (expediting litigation) and 8.4(d) (conduct prejudicial to the administration of justice).

PROCEDURAL HISTORY

The Complaint was filed on December 1, 2020 and served on Mr. Bays. The Presiding Disciplinary Judge (“PDJ”) was assigned. Mr. Bays filed no answer, effective default was entered, and the matter set for aggravation/mitigation hearing.

On February 4, 2021 and aggravation/mitigation was held. The Hearing Panel was comprised of voluntary attorney member Richard L. Brooks, volunteer public member W. Keith Turner, and the PDJ William J. O’Neil. The State Bar was represented by Senior Bar Counsel Craig D. Henley. Mr. Bays appeared and was self-represented. Exhibits 1-36 were admitted without objection.

FINDINGS OF FACT

The alleged facts are deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. They are as follows.

DEEMED ADMITTED FACTS

1. Bays was licensed to practice law in Arizona on June 14, 1991.
2. On August 27, 2020, Bays was transferred to disability inactive status in *In re: Paul R. Bays*, PDJ 2020-9069 (SB20-1806), effective immediately.

COUNT ONE (File No. 20-0147/Andrews)¹

3. In or around November 2018, Nathan Andrews paid Bays \$3900.00 to represent him in the Cochise County family law case of *Nathan Andrews v. Casie Riggs*, #DO201800895.
4. Casie Riggs is the daughter of Justin Riggs, a former family law client of Bays.
5. During a February 25, 2019 meeting between Bays and Andrews, Bays suggested that Andrews surrender his parental rights but was unable to explain to Andrews why he suggested the surrender.
6. Between February and May 2019, Bays failed to timely respond to Andrews's requests for information regarding the case.

¹ Exhibits 19-24.

7. In or around April or May 2019, the parties decided to participate in a conference with their respective attorneys.

8. While Andrews requested that Bays set the conference, Bays failed to schedule the conference.

9. On May 14, 2019, opposing counsel filed a request for mediation.

10. On August 29, 2019, the Court issued an order placing the case in conciliation court. The parties later participated in a private mediation.

11. On October 3, 2019, Bays filed a Notice of Change of Judge and the case was reassigned on October 10, 2019.

12. On or about October 8, 2019, the parties agreed to an equitable parenting plan and a notice of successful mediation was filed on October 9, 2019.

13. The originally assigned judge issued an order approving the parenting plan on November 8, 2019. Bays failed to inform Andrews of the Court's acceptance of the parenting plan.

14. Between November and December 2019, Bays failed to timely respond to Andrews's requests for information regarding the case.

15. On January 6, 2020, Bays filed a Motion to Set and Certificate of Readiness.

16. After Andrews independently discovered that the plan was accepted, Bays provided Andrews a copy on January 10, 2020. Andrews informed Bays that Andrews had recently obtained a copy from the Court on his own.

17. On January 13, 2020, Andrews met with Bays at the law firm to discuss Bays' relationship with Justin Riggs and whether it influenced Bays' advice that Andrews surrender his parenting rights.

18. Andrews also asked Bays about Bays' failure to communicate with him, specifically Bays' failing to notify Andrews about the court's acceptance of the parenting plan.

19. Bays immediately denied any wrongdoing and demanded that Andrews leave his office.

20. Bays filed Notice of Withdrawal on January 14, 2020.

21. By engaging in the above-referenced conduct, Bays violated:

- a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 by failing to abide by the client's decisions and request;
- b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 by failing to act diligently during the representation; and
- c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 by failing to reasonably communicate with the client during the representation.

COUNT TWO (File No. 20-0210/Thomas)²

² Exhibits 25-27.

22. In 2013, Bays represented Joe Thomas in a severance of parental rights action with the biological mother of his child which led to an uncontested adoption by Thomas and his wife, Mary Thomas. Bays obtained confidential information about both Thomas and his wife during the representation.

23. On October 4, 2019, Thomas paid Bays \$2500.00 to represent him in a purportedly uncontested divorce action from a person identified as Mary Elefteriadis.

24. In or around November 4, 2019, Bays prepared a Petition for Dissolution of Marriage and related documents without realizing that Mary Elefteriadis was his former client, Mary Thomas.

25. Shortly thereafter, Bays hired an assistant, Paul Ylvisaker, who took over the representation.

26. In his response to the State Bar, Bays indicates that he did not perform any substantive legal services prior to reassigning the case to Ylvisaker.

27. On or about November 13, 2019, Ylvisaker had a brief discussion with Thomas/Elefteriadis and was informed that she wanted the matter to be resolved through the court.

28. Shortly thereafter, Arizona attorney Anne Borowiec contacted Ylvisaker and informed him that there appeared to be a conflict of interest based upon Bays' prior representation of Thomas/Elefteriadis.

29. On or about December 13, 2019, Ylvisaker terminated his employment with Bays and Thomas chose to continue Ylvisaker's representation of him.

30. Bays failed to obtain a writing waiving any potential conflict(s) from either Thomas or Thomas/Eleftheriadis during the representation.

31. By engaging in the above-referenced conduct, Bays violated:

- a. Rule 42, Ariz. R. Sup. Ct., ER 1.4 by failing to reasonably communicate with the client during the representation;
- b. Rule 42, Ariz. R. Sup. Ct., ER 1.5(a) by charging and collecting an unreasonable fee for the representation; and
- c. Rule 42, Ariz. R. Sup. Ct., ER 1.9(a) by formerly representing a client in a matter and thereafter representing another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

COUNT THREE (File No. 20-0366/Ramsey)³

32. In or around November 2018, Jeremy Ramsey paid Bays \$3500.00 to represent him in the Cochise County family law case of *Jeremy Duane Ramsey v. Jacqueline Rene Ramsey*, #DO201600238. The case primarily involved jurisdictional issues related to child custody and childcare.

33. On December 6, 2018, Bays filed a notice that the parties agreed to participate in private mediation.

³ Exhibits 28-36.

34. On March 13, 2019, the court approved the parties' parenting plan.
35. On March 27, 2019, the opposing party filed several pleadings through counsel including, but not limited to, a Notice of Appearance, a Request for Conference regarding the jurisdictional issues and a Motion to Dismiss.
36. Opposing counsel e-mailed Bays all three pleadings in one attachment that day stating, in pertinent part, "attached please find pleadings filed in this matter today".
37. Bays failed to file a response to the Motion to Dismiss.
38. On April 26, 2019, the Court granted the Motion to Dismiss.
39. On May 30, 2019, Bays filed a Notice of Withdrawal.
40. Bays' billing records show that Bays contacted his client and opposing counsel on June 4, 2019.
41. On June 5, 2019, Bays prepared and filed a Notice of Appearance and Motion for Reconsideration.
42. On October 14, 2019, the Court ordered opposing counsel to file a response to the Motion for Reconsideration which was done on October 31, 2019.
43. On December 16, 2019, the Court denied the motion and affirmed the previous dismissal.
44. Bays' billing records show that Bays charged a total of \$4034.00 for the representation including, but not limited to, \$1350.00 for the Motion to

Withdraw, the June 4th telephone calls to Ramsey and opposing counsel as well as the June 5th research and drafting of the Motion to Reconsideration.

45. By engaging in the above-referenced conduct, Bays violated:
- a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 by failing to abide by the client's decisions and request;
 - b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 by failing to act diligently during the representation;
 - c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 by failing to reasonably communicate with the client during the representation;
 - d. Rule 42, Ariz. R. Sup. Ct., ER 1.5(a) by charging and collecting an unreasonable fee for the representation;
 - e. Rule 42, Ariz. R. Sup. Ct., ER 3.2 by failing to expedite the litigation; and
 - f. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) by engaging in conduct prejudicial to the administration of justice.

CONCLUSIONS OF LAW

The Exhibits support the allegations of unethical conduct. The Panel finds by clear and convincing evidence that Mr. Bays violated: Rule 42, Ariz. R. Sup. Ct., specifically:

Count 1:

- a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 by failing to abide by the client's decisions and request;
- b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 by failing to act diligently during the representation; and
- c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 by failing to reasonably communicate with the client during the representation.

Count 2:

- a. Rule 42, Ariz. R. Sup. Ct., ER 1.4 by failing to reasonably communicate with the client during the representation;
- b. Rule 42, Ariz. R. Sup. Ct., ER 1.5(a) by charging and collecting an unreasonable fee for the representation; and
- c. Rule 42, Ariz. R. Sup. Ct., ER 1.9(a) by formerly representing a client in a matter and thereafter representing another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

Count 3:

- a. Rule 42, Ariz. R. Sup. Ct., ER 1.2 by failing to abide by the client's decisions and request;
- b. Rule 42, Ariz. R. Sup. Ct., ER 1.3 by failing to act diligently during the representation;
- c. Rule 42, Ariz. R. Sup. Ct., ER 1.4 by failing to reasonably communicate with the client during the representation;
- d. Rule 42, Ariz. R. Sup. Ct., ER 1.5(a) by charging and collecting an unreasonable fee for the representation;
- e. Rule 42, Ariz. R. Sup. Ct., ER 3.2 by failing to expedite the litigation; and
- f. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) by engaging in conduct prejudicial to the administration of justice.

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 Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.5(a), 1.9(a) and 8.4(d).

Respondent violated his duty to the legal system by violating Rule 42, Ariz. R. Sup. Ct., ERs 3.2 and 8.4(d).

Mental State and Injury: Mr. Bays knowingly violated his duties to the profession, his client and the legal system causing actual injury.

The following *Standards* apply.

Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3 and 1.4:

Standard 4.42

Suspension is generally appropriate when a lawyer: a) knowingly fails to perform services for a client or b) engages in a pattern of neglect and causes injury or potential injury to a client.

Rule 42, Ariz. R. Sup. Ct., ER 1.5:

Standard 4.62

Suspension is generally appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to a client.

Rule 42, Ariz. R. Sup. Ct., ER 1.9(a):

Standard 4.32

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict and causes injury or potential injury to a client.

Rule 42, Ariz. R. Sup. Ct., ER 3.2 and 8.4(d):

Standard 6.22

Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Therefore, the Hearing Panel finds that the above-listed *Standards* are applicable.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors:

1. 9.22(a) prior discipline history;
 - SB99-0053: Respondent received an informal reprimand for violating Rule 42, Ariz. R. Sup. Ct., ER 8.2 by writing a letter to another attorney in which he indicated that a judge's decision was contrived and highly unethical.

While *not* considered as discipline, the Hearing Panel also considered Respondent's prior diversion history regarding the issue of knowledge or intent with respect to all three Counts:

- SB 15-2522: Respondent was diverted for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.5 and ER 1.5(d)(3) by failing to pursue enforcement of a divorce decree and property claims as requested by the client; and

- SB 13-1878: Respondent was diverted for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.5(d)(3), 1.15(d), 1.18(c) and 8.4(d) by representing a husband in a divorce matter without disclosing that he had previously consulted with the husband’s wife about representation in the same matter.
 - PDJ-2020-9078. Respondent was suspended for one year.
2. 9.22(b) dishonest or selfish motive;
 3. 9.22(c) a pattern of misconduct;
 4. 9.22(g) refusal to acknowledge wrongful nature of conduct;
 5. 9.22(h) vulnerability of victim;
 6. 9.22(i) substantial experience in the practice of law; and
 7. 9.22(j) indifference to making restitution.

The Hearing Panel finds the following mitigating factors:

8. 9.32(c) personal or emotional problems; and
9. . 9.32(h) physical disability

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.’” *In re Alcorn*, 202 Ariz. 62, 74 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182 (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 (1994).

Now Therefore,

IT IS ORDERED:

- Respondent, **PAUL R. BAYS, Bar No. 013479** shall be suspended for one (1) year to run concurrently with a one (1) year suspension in *In re: Paul R. Bays*, PDJ 2020-9078 (SB19-2767 and 20-0139), effective immediately;
- Mr. Bays shall pay restitution in the following amounts to the following persons:
 - 1) \$3,900 to Nathan Andrews (Count One);
 - 2) \$1,125.83 to Joe Thomas (Count 2); and
 - 3) \$3,500.00 to Jeremy Ramsey (Count 3).
- Mr. Bays shall pay all costs and expenses incurred by the SBA. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in this proceeding.

A final judgment and order shall follow.

DATED this 16th day of February 2021.

Signature on File
William J. O'Neil, Presiding Disciplinary Judge

Signature on File
Richard L. Brooks, Volunteer Attorney Member

Signature on File
W. Keith Turner, Volunteer Attorney Member

Copy of the foregoing emailed
this 16th day of February 2021 to:

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by: SHunt