

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

JOHN BURTON,
Bar No. 012445

Respondent.

PDJ 2021-9052

FINAL JUDGMENT AND ORDER

[State Bar No. 21-0299]

FILED SEPTEMBER 30, 2021

The hearing panel issued its decision on September 14, 2021 imposing a 90-day suspension and the payment of costs. No appeal has been filed pursuant to Rule 59, Ariz. R. Sup. Ct. The State Bar filed its Statement of Costs and Expenses on September 14, 2021 pursuant to Rule 60(d). No objection has been filed.

IT IS THEREFORE ORDERED that Respondent **JOHN BURTON, Bar No. 012445**, is suspended from the practice of law in Arizona for 90-days effective September 14, 2021, to run concurrently with the suspension in PDJ 2019-9101, for his conduct in violation of the Arizona Rules of Professional Conduct as set forth in the hearing panel's decision.

IT IS FURTHER ORDERED that Respondent shall comply with the requirements of Rule 72, Ariz. R. Sup. Ct., including notifying clients, counsel and courts of his suspension.

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

DATED this 30th day of September 2021.

Margaret H. Downie

Margaret H. Downie
Presiding Disciplinary Judge

COPY of the foregoing e-mailed
on this 30th day of September 2021, to:

John Burton
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Email: john@burtonlawpllc.com
sonnyrico7@gmail.com
Respondent

Craig D. Henley
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by: SHunt

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MEMBER OF THE STATE BAR OF
ARIZONA,

JOHN BURTON,
Bar No. 012445

Respondent.

PDJ 2021-9052

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar No. 21-0299]

FILED SEPTEMBER 14, 2021

The State Bar filed a complaint against Respondent John Burton on June 29, 2021. On June 30, 2021, 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. A notice of default was issued on July 29, 2021 due to Respondent's failure to file an answer or otherwise defend. Respondent did not thereafter appear in these proceedings. As a result, the default became effective on August 12, 2021, at which time a notice of aggravation/mitigation hearing was sent to all parties.¹

On September 13, 2021, a hearing panel comprised of Presiding Disciplinary Judge Margaret H. Downie, attorney member James M. Marovich, and public member Marsha Morgan Sitterley heard argument and considered the record before it. Senior Bar Counsel

¹ It appears that Respondent has not complied with Rule 32(c)(4)(iii), which requires all "members" to provide the State Bar with a current street address, email address, telephone number, and any other post office address the member may use. A suspended attorney is considered a "member" of the State Bar. See Rule 32(c)(1).

Craig D. Henley appeared on behalf of the State Bar. Mr. Burton did not appear. Exhibits 1-15 were admitted into evidence. By virtue of the default, the facts set forth in the State Bar's complaint have been deemed admitted.

FINDINGS OF FACT

1. Respondent was admitted to the State Bar of Arizona on June 6, 1989. He is currently suspended and was suspended when the conduct at issue occurred.

2. The State Bar of Arizona received three insufficient funds notices on Respondent's client trust account.

3. First, Wells Fargo Bank reported that on January 26, 2021, a Fry's Marketplace debit in the amount of \$54.89 attempted to pay against the account. The bank honored the debit and charged a \$35.00 overdraft fee. The bank reported an account balance of negative <\$128.24> on that day.

4. On January 27, 2021, a Fry's Marketplace debit in the amount of \$32.32 attempted to pay against the account. The bank honored the debit and charged a \$35.00 overdraft fee. The bank reported an account balance of negative <\$195.56> on that day.

5. On February 8, 2021, the State Bar of Arizona e-mailed Respondent a copy of the overdraft notices and requested an explanation of the overdrafts and copies of the related mandatory records, but the email was returned as undeliverable. After being

contacted by telephone the same day, Respondent provided an alternative email address -- sonny7rico@gmail.com.

6. Wells Fargo Bank subsequently reported that on January 25, 2021, a Fry's Marketplace debit in the amount of \$38.91 attempted to pay against the account. The bank honored the debit and charged a \$35.00 overdraft fee. The bank reported an account balance of negative <\$38.35> on that day.

7. On February 9, 2021, the State Bar of Arizona e-mailed Respondent a copy of the additional overdraft notice and requested an explanation of the overdrafts and copies of the related mandatory trust account records.

8. On February 15, 2021, Respondent replied:

I retired from the practice of law two years ago. I have received no payment from any past clients during this time nor have I stayed current with MCLE obligations. The use of my IOLTA account was inadvertent and will be rectified in due course. Fee Thank you. (sic)

9. Respondent failed to provide the requested records or an explanation for the lack of production.

10. On March 25, 2021, the Trust Account Examiner sent Respondent a request for additional information including, but not limited to, the production of the previously requested mandatory trust account records by April 5, 2021.

11. Respondent failed to produce the requested documents by April 5, 2021.

12. On April 6, 2021, the Trust Account Examiner left Respondent a voicemail informing him of his failure to comply and requesting a return call.

13. On April 7, 2021, Respondent contacted the Trust Account Examiner and indicated that he did not receive the e-mail in question but confirmed that the e-mail address used was accurate.

14. Respondent stated that he is retired.

15. Respondent further admitted that he knows he should not have, but that he used the IOLTA for personal activity and subsequently overdrew it, which resulted in the insufficient fund notices.

16. Finally, Respondent stated that the account has been closed and that he worked out a repayment plan with the bank.

17. When the Trust Account Examiner brought to Respondent's attention that his membership standing was actually suspended and not retired, Respondent indicated that he was aware of the correct status but did not elaborate further.

18. The Trust Account Examiner asked Respondent if he received confirmation of the closing of the account and he indicated that he did not.

19. Respondent stated that the Trust Account Examiner should be able to independently call and confirm given Respondent's perceived relationship between the State Bar and the banks.

20. When the Trust Account Examiner explained that the banks would only release information to him as the owner of the account, Respondent demanded that the Trust Account Examiner explain what authority he had to request production of the trust account records, stating that he did not want to start “a witch hunt.”

21. The Trust Account Examiner advised Respondent that the State Bar’s authority regarding a lawyer’s use of an IOLTA account was established by the Rules of the Arizona Supreme Court and explained that the only way to verify that the activity was personal in nature was by reviewing the records requested.

22. The Trust Account Examiner further advised Respondent that the State Bar’s request for additional trust account information would be resent to his confirmed e-mail address.

23. Respondent acknowledged and stated that he would try his best to provide the requested documents.

24. On April 9, 2021, Respondent replied:

As expressly indicated to you in our recent phone call, my IOTAL (sic) account has been closed and I am awaiting written confirmation from the bank which I will forward to you. The IOLTA account has been removed by the bank and I no longer have access to it because it does not exist.

As also indicated to you, the overdraft of said IOLTA account arose from the inadvertent deposit of NON-CLIENT FUNDS!

Lastly, as you and the State Bar of AZ has been informed, I have retired from the practice of law. I have not represented a client in nearly two years. Your broad request for my additional personal financial and banking information is denied. I will forward you confirmation of the IOLTA account when I receive same. Thank you.

25. To date, Respondent has not provided the State Bar with any of the requested trust account documents or proof of the trust account closure.

26. By engaging in the above-referenced conduct, Respondent violated the following ethical rules:

- a. ER 8.1(b) by knowingly failing to respond to a lawful demand for information from the disciplinary authority;
- b. Rule 43(b), Ariz. R. Sup. Ct., by failing to comply with the required Standards of Performance as set forth in the trust account rules; and
- c. Rule 54(d), Ariz. R. Sup. Ct., by failing to furnish information or respond promptly to requests made by the disciplinary authority.

CONCLUSIONS OF LAW

Clear and convincing evidence establishes that Respondent violated the following rules: Rule 42, Ariz. R. Sup. Ct., ER 8.1(b), Rule 43(b), Ariz. R. Sup. Ct., and Rule 54(d), Ariz. R. Sup. Ct.

SANCTION

Sanctions imposed against lawyers “shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* (“Standards”).” Rule 58(k), Ariz. R. Sup. Ct. In fashioning a sanction, the hearing panel considers the following

factors: (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.*

Respondent knowingly violated his duty owed as a professional by violating Rule ER 8.1(b), Rule 43(b), Ariz. R. Sup. Ct., and Rule 54(d). Standard 7.2 states 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.

The hearing panel next considers the existence of aggravating or mitigating factors - both of which must be supported by reasonable evidence. *In re Abrams*, 227 Ariz. 248, 252 (2011). The following aggravating factors have been established by reasonable evidence:

1. 9.22(a) prior disciplinary offenses:
 - PDJ 2019-9101 [SB19-1298 and 19-1518] (2020): Respondent was suspended for six months and one day for violating ERs 1.3, 1.15(a) and (c), 1.16, and Rule 43, Ariz. R. Sup. Ct.;
 - PDJ 2018-9102 [SB17-2275] (2019): Respondent was reprimanded and placed on probation for violating ERs 1.5(a) and 1.15(c) and Rule 43, Ariz. R. Sup. Ct.
2. 9.22(c) pattern of misconduct;
3. 9.22(d) multiple offenses; and

4. 9.22(i) substantial experience in the practice of law.

The record does not establish the existence of any mitigating factors, although bar counsel advised the hearing panel that, during the proceedings in PDJ 2019-9101, the State Bar learned that Mr. Burton was experiencing financial difficulties and was, at times, living in a homeless shelter. The State Bar believes the IOLTA account at issue was closed in the April/May 2021 timeframe, though it has not subpoenaed the bank's records.

CONCLUSION

The purpose of lawyer discipline is to protect the public and the administration of justice, as well as to deter both the respondent attorney and members of the bar at large from engaging in the same or similar misconduct. *In re Zawada*, 208 Ariz. 232, 236 (2004). Attorney discipline also aims "to instill public confidence in the Bar's integrity." *In re Phillips*, 226 Ariz. 112, 117 (2010).

The State Bar requests a suspension of at least 30 days but notes that under the ABA Standards, a lengthier suspension or even disbarment would be supportable. As a practical matter, due to his prior discipline, Respondent will be required to go through full reinstatement proceedings, including proof of rehabilitation, should he seek to return the practice of law. Under these circumstances, the hearing panel concludes that a 90-day suspension is appropriate.

For the foregoing reasons, the hearing panel orders as follows:

a) Respondent John Burton shall be suspended for ninety days, effective immediately, to run concurrently with the suspension in PDJ 2019-9101 [SB19-1298 and 19-1518];

b) Respondent shall pay all costs and expenses incurred by the State Bar. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in this proceeding.

A final judgment and order will follow.

DATED this 14th day of September 2021.

/s/signature on file
Margaret H. Downie, Presiding Disciplinary Judge

/s/ signature on file
James M. Marovich, Attorney Member

/s/ signature on file
Marsha Morgan Sitterley, Public Member

Copy of the foregoing emailed
this 14th day of September, 2021, to:

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by: SHunt