

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

GREG CLARK,
Bar No. 009431

Respondent.

PDJ 2021-9048

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 20-1493, 20-1622]

FILED SEPTEMBER 14, 2021

The hearing panel issued its decision on August 25, 2021 imposing an immediate disbarment, restitution, and the payment of costs. No appeal has been filed pursuant to Rule 59, Ariz. R. Sup. Ct. The State Bar filed its Revised Statement of Costs and Expenses on August 25, 2021 pursuant to Rule 60(d). No objection has been filed.

IT IS THEREFORE ORDERED that Respondent **GREG CLARK, Bar No. 009431**, is disbarred from the State Bar of Arizona and his name is stricken from the roll of lawyers effective August 25, 2021 as set forth in the Panel's Decision and Order Imposing Sanctions. Mr. Clark is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court.

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 disbarment.

IT IS FURTHER ORDERED that Respondent shall pay restitution to Mohamed Abukar Aden in the sum of \$7,420 and restitution to Anastasia Sauerman in the sum of \$2,000.

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 14th day of September 2021.

Margaret H. Downie

Margaret H. Downie
Presiding Disciplinary Judge

COPY of the foregoing e-mailed on this 14th day of September 2021, to:

Greg Clark
45 W. Jefferson Street, Suite 510
Phoenix, AZ 85003-2316
Email: gclarkatty@aol.com
Respondent

Craig D. Henley
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**GREG CLARK,
Bar No. 009431**

Respondent.

PDJ 2021-9048

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar Nos. 20-1493 and 20-1622]

FILED AUGUST 25, 2021

The State Bar of Arizona filed its complaint on June 17, 2021. On June 18, 2021, the complaint was served on Respondent Greg Clark 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 issued on July 16, 2021 due to Respondent's failure to file an answer or otherwise defend. Respondent did not thereafter appear in these proceedings. As a result, default was properly entered on July 30, 2021, at which time a notice of the aggravation/mitigation hearing was sent to all parties.

On August 25, 2021, a hearing panel comprised of Presiding Disciplinary Judge Margaret H. Downie, attorney member George A. Riemer, and public member Marsha Morgan Sitterley heard argument and considered the record before it. Senior Bar Counsel Craig D. Henley appeared on behalf of the State Bar. Mr. Clark did not appear. Exhibits 1-46 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 May 12, 1984. He is currently disbarred.

COUNT ONE (File No. 20-1493/Aden)

2. On October 23, 2019, Mohamed Abukar Aden was indicted in the United States District Court case of *United States v. Aden*, CR-19-01233-PHXMTL (MHB). On November 1, 2019, Mr. Aden hired Respondent to represent him in that matter.

3. Respondent's written fee agreement (signed by Respondent and Mr. Aden on November 1, 2019) called for a \$15,000 "minimum non-refundable retainer/fee." Mr. Aden made an initial cash payment of \$7,500 on November 1, 2019 and made subsequent cash payments over the course of the next four months, resulting in a total payment to Respondent of \$10,920.

4. On November 6, 2019, Respondent filed a notice of appearance and attended a two-minute arraignment. The matter was set for a jury trial to begin on December 10, 2019.

5. On November 19, 2019, Respondent filed an unopposed motion to continue the December 10, 2019 jury trial, and the trial was reset for January 7, 2020.

6. On December 16, 2019, Respondent filed another unopposed motion to continue the trial, which was reset for March 3, 2020.

7. On December 17, 2019, the State Bar initiated the discipline case of *In re: Greg Clark*, PDJ 2019-9096 (SB19-1409). On January 24, 2020, Respondent filed an answer in that matter.

8. On February 6, 2020, Respondent filed another unopposed motion to continue the trial in Mr. Aden's case, and the jury trial was reset for June 2, 2020.

9. While Mr. Aden provided certain general text messages from Respondent regarding possible resolutions of the case, Mr. Aden indicates that most of his requests for information during the representation went unanswered by Respondent.

10. On May 6, 2020, Respondent mailed Mr. Aden a letter demanding payment of \$4080 or he would withdraw.

11. On May 12, 2020, Respondent filed a motion to continue the June 2, 2020 trial, which was reset for October 6, 2020.

12. On May 12, 2020, the hearing panel issued a Decision and Order in PDJ 2019-9096 (SB19-1409), suspending Respondent from the practice of law for six months and one day, effective thirty days after the date of the order.

13. Respondent failed to inform Mr. Aden of his suspension from the practice of law.

14. On July 15, 2020, the court set a telephonic hearing for July 23, 2020 to discuss Mr. Aden's representation due to Respondent's suspension. The docket entry from the July 23, 2020, hearing notes: "Defense counsel does not appear."

15. Despite Mr. Aden's requests for his client file, Respondent failed to provide Mr. Aden or his successor counsel with a copy of the file.

16. On July 14, 2020, the State Bar e-mailed an initial screening letter to Respondent, requesting a written response along with:

1. A copy of the entire client file, including all correspondence (mailings, emails, text messages, etc.), phone logs, representation agreements, motions, attorney notes, and any other relevant information organized in a navigable manner.

You may provide a hard or electronic copy of the file. If you choose to provide a hard copy, please provide one-sided copies only.

2. All communications with Mohamed Aden (mailings, emails, text messages, etc.); proof of phone, in-person, or video conversations with Mohamed Aden; and any jail visit receipts, if applicable and/or videoconference receipts, if applicable.

Please provide written communications, whether electronic or hardcopy, in their original format.

3. A complete billing statement/accounting of work performed.

17. Although Respondent provided the State Bar with two brief written responses, including the fee agreement, receipts for amounts paid, a brief description of some of the legal services performed, some of the motions to continue and related court rulings, and two e-mail chains between himself and the assigned prosecutor, the responses did not include any emails, notes, or other documentation evidencing any contact or communication between Respondent or his office and Mr. Aden.

18. By engaging in the above-described conduct, Respondent violated the following ethical rules:

- a. ER 1.4 by failing to reasonably communicate with the client;
- b. ER 1.5(a) by charging and collecting an unreasonable fee;
- c. ER 1.16(d) by failing to take steps reasonably practicable to protect the client's interests at the termination of the representation;
- d. ER 3.4(c) by failing to appear at a court hearing as ordered; and
- e. Rule 72, by failing to comply with the notice requirements regarding suspension.

COUNT TWO (File No. 20-1622/Sauerman)

19. On February 13, 2020, Anastasia Sauerman hired Respondent to represent her in a criminal matter.

20. In 2018, Ms. Sauerman pleaded guilty to a forgery offense pursuant to a plea agreement that required her to testify in another matter.

21. The written fee agreement called for a \$5,000 “minimum non-refundable retainer/fee” for representing “Client regarding a case in Maricopa County Superior Court, Arizona, involving drug felonies.”

22. Ms. Sauerman gave Respondent an initial payment of \$1,000 and paid the balance due over the course of the next two months.

23. Ms. Sauerman indicates that most of her requests for information during the representation went unanswered by Respondent.

24. In his response to the State Bar, Respondent claims to have provided the following legal services:

Sauerman, Anastasia

Feb. 2020

2-10: t/c new client...02
2-12: t/c new client appt...03
2-13: conf with client/fee agreement...1.0
2-13: t/c with client...06
2-13: call to prosecutor,msg...01
2-15: call to client msg..01
2-15: call to client..01
2-18: spoke with client....06
2-20: call to client...01
3-2: call to client...01
3-9; t/c client discuss case....06
3-10: conf client/\$/discuss case....1.0
3-17: discuss plea....06
3-18: discuss case.....04
3-24: call to client...01

3-27: t/c with prosecutor, plea, meeting client.....05
3-27: call to client....01
3-27: call to client01
3-27: spoke to client about meeting with State.....06
4-3: client text...01
4-5: conf with client/case/\$.....1.5
4-10: missed appt.....1.0
4-13: call client....01
4-28: call client.....01
5-4: call client...01
5-11: call client...01

5-21: missed appt.....1.0

6-8: fired/discussed refund.....1.0

7-17: text...01

7-17: discussed refund.....03

25. Ms. Sauerma n's phone records demonstrate that the time entries for phone calls purportedly occurring on 2-15, 2-18, 2-20, 3-17, 3-18, 3-24, 4-13, 4-28, 5-4, 5-11, and 5-21 are not true. Similarly, Ms. Sauerma n's phone records demonstrate that the 3-9 phone call only lasted four minutes.

26. Respondent failed to file a notice of appearance in Ms. Sauerma n's case or otherwise appear as attorney of record.

27. On May 12, 2020, the hearing panel issued a Decision and Order in the discipline case of *In re: Greg Clark*, PDJ 2019-9096 (SB19-1409), suspending Respondent from the practice of law for six months and one day, effective thirty days from the date of the order.

28. Respondent failed to inform Ms. Sauerma n of his suspension from the practice of law.

29. On or about June 8, 2020, Ms. Sauerma n received a text from her former lawyer asking for Respondent to file a notice of appearance so he could be removed from the case. Although Ms. Sauerma n forwarded the text to Respondent, Respondent failed to respond. On July 17, 2020, Ms. Sauerma n re-sent Respondent the same text. Later that

day, Ms. Sauerman texted Respondent, stating that she discovered he had failed to file a notice of appearance in the case.

30. Although Ms. Sauerman also fired Respondent and demanded a refund, Respondent did not respond.

31. On July 24, 2020, Ms. Sauerman sent another text stating she had “not heard a word” from Respondent. Respondent responded by asking for Ms. Sauerman’s address and agreeing to a refund.

32. In his response to the State Bar, Respondent claims that the parties agreed to a \$2000 refund.

33. To date, Ms. Sauerman has not received a refund or response from Respondent.

34. By engaging in the above-described conduct, Respondent violated the following ethical rules:

- a. ER 1.3 by failing to act diligently during the representation;
- b. ER 1.4 by failing to reasonably communicate with the client;
- c. ER 1.5(a) by charging and collecting an unreasonable fee;
- d. ER 1.16(d) by failing to take steps reasonably practicable to protect the client’s interests at termination of the representation;

- e. ER 8.1(a) by knowingly making a false statement of material fact in connection with a discipline matter;
- f. ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;
- g. Rule 54(d) by failing to furnish accurate information in response to a disciplinary inquiry; and
- h. Rule 72 failing to comply with the notice requirements regarding suspension.

CONCLUSIONS OF LAW

Clear and convincing evidence establishes that Respondent violated Rule 42, Ariz.

R. Sup. Ct., specifically:

Count 1: ER 1.4, ER 1.5(a), ER 1.16(d), ER 3.4(c) and Rule 72;

Count 2: ER 1.3, ERs 1.4, ER 1.5(a), ER 1.16(d), ER 8.1(a), ER 8.4(c), Rule 54(d), and Rule 72.

Respondent retained unreasonable fees in both client matters.

ABA STANDARDS ANALYSIS

Sanctions imposed against lawyers “shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* (“ABA 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*.

Duties violated:

Respondent violated duties owed to his clients (ERs 1.3, 1.4, 1.5(a), 1.16(d), 8.4(c) and Rule 72), duties owed to the legal system (ER 3.4(c)), and duties owed as a professional (ER 8.1(a) and Rule 54(d)).

Mental State and Injury:

The record reflects that Respondent knowingly abandoned the representation of his clients in both matters. He retained unreasonable fees in both matters, which enriched himself and deprived his clients of funds to which they were entitled.

The following ABA Standards apply:

Standard 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
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client;

Standard 4.61: Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client,

Standard 6.22: Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury to a client or a party, or interference or potential interference with a legal proceeding,

Standard 7.1: 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 potential serious injury to a client, the public or the legal system.

Disbarment is the presumptive sanction. Next, the hearing panel considers relevant aggravating and mitigating factors.

AGGRAVATING AND MITIGATING FACTORS

Based on the record before it, the hearing panel finds the existence of the following aggravating factors:

1. 9.22(a) -- prior disciplinary offenses;
 - PDJ 2021-9032 (SB 20-1011): Disbarment for violations of ERs 1.3, 1.5(a) and (b), 1.8(a)(1)-(3) and 8.4(d).
 - PDJ 2019-9096 (SB19-1409): Suspension of 6 months and 1-day for violating ERs 1.2, 1.3, 1.4, 1.16(d), 3.2, 8.1, 8.4(c), 8.4(d), and Rule 54(d)(2).

- SB15-0690, 15-1685, & 15-2526: Suspension of 60 days plus probation for two years for violating ERs 1.3, 1.4(a)(3) and (4), 1.5(a), 1.16(d), and Rule 54(d)(2).
 - SB06-1353, 06-1300, 06-0298, & 05-0665: Informal reprimand for violating ER 1.8(a).
 - SB02-1830 & 02-1934: Informal reprimand and probation for one year for violating ERs 1.3, 1.4, 1.5, and ER 1.16(d).
 - SB02-0356: Informal reprimand for violating ER 1.4.
 - SB98-2060: Censure for violating ER 8.1(b) and Rules 43 and 51(h)(1).
 - SB95-2033: Censure for violating ERs 1.1, 1.3 and 8.4.
2. 9.22(b) dishonest or selfish motive;
 3. 9.22(e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
 4. 9.22(i) substantial experience in the practice of law;
 5. 9.22(j) indifference to making restitution.

The record does not establish the existence of any mitigating factors.

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). Prior discipline is an aggravating factor that weighs

heavily against a respondent attorney. *In re Brady*, 186 Ariz. 370, 375 (1996). Mr. Clark has an extensive disciplinary history – some of which involves conduct similar to that at issue here. He is currently serving a long-term suspension and was recently ordered disbarred in PDJ 2021-9032.

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

- a) Respondent Greg Clark shall be disbarred, effective immediately.
- b) Mr. Clark 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.
- c) Restitution in the sum of \$7,420 to Mohamed Abukar Aden.
- d) Restitution in the sum of \$2,000 to Anastasia Sauerman.

A final judgment and order will follow.

DATED this 25th day of August 2021.

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

/s/ signature on file
George A. Riemer, Attorney Member

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

Copy of the foregoing emailed
this 25th day of August, 2021, to:

Greg Clark
45 W. Jefferson Street, Suite 510
Phoenix, Arizona 85003-2316
Email: gclarkatty@aol.com; nocardio@aol.com
Respondent

Craig D. Henley
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

by: SHunt