BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DANA REED HOGLE,** **Bar No. 022898** Respondent.	**PDJ 2021-9028** **FINAL JUDGMENT AND ORDER** [State Bar Nos. 20-0364, 20-1957] **FILED NOVEMBER 30, 2021**

The hearing panel issued its decision on November 4, 2021, imposing a two-year 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 November 10, 2021 pursuant to Rule 60(d). No objection has been filed.

IT IS THEREFORE ORDERED that Respondent **DANA REED HOGLE, Bar No. 022898**, is suspended from the practice of law in Arizona for two years, effective 30 days from the date of this order**,** 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 $4,613.95. There are no costs or expenses incurred

by the Office of the Presiding Disciplinary Judge in these proceedings.

DATED this 30th day of November 2021.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

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

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by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DANA REED HOGLE,** **Bar No. 022898** Respondent.	**PDJ 2021-9028** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar Nos. 20-0364, 20-1957] **FILED NOVEMBER 4, 2021**

An evidentiary hearing was held on September 8 and 9, 2021 before a hearing panel comprised of Presiding Disciplinary Judge Margaret H. Downie, attorney member Richard L. Brooks, and public member Thomas C. Schleifer. The State Bar of Arizona was represented by Hunter F. Perlmeter. Respondent Dana Reed Hogle ("Respondent") was present and was represented by Nancy A. Greenlee. Numerous exhibits were admitted into evidence, and the following individuals testified:

- Dana Reed Hogle
- Stephen C.Biggs
- Jay Fuller
- Nathan Hogle
- Cynthia Martinez
- Darin Palmer
- Zachary Bloomer
- Christopher Stapley
- Michael Ward
- Thomas Hogle
- Clyde Bawden

After the matter was submitted for decision, the hearing panel requested briefing on an additional issue. Having considered the record before it, the hearing panel issues

the following findings of fact, conclusions of law, and sanction in the form of a two-year suspension.

FINDINGS OF FACT

1. Respondent was admitted to the State Bar of Arizona on June 14, 2004.

2. Respondent is the owner and founder of The Hogle Law Firm ("the Firm").

Count One (Complainant Jay Fuller)

3. Jay Fuller was injured in a traffic accident on June 22, 2015 while in the course of his employment with The Swift Company, LLC ("Swift"). The at-fault driver was a motorcyclist named Michael Norman Riggs, who died from injuries he sustained in the accident.

4. American Liberty was Swift's workers' compensation carrier. Because Mr. Fuller was injured in the course of his employment, he received workers' compensation benefits, which gave rise to a lien in favor of American Liberty against any proceeds Mr. Fuller might recover from a third party for his accident-related injuries.

5. In June of 2015, Respondent's brother – Nathan Hogle – met Mr. Fuller through a friend. Nathan Hogle suggested that Mr. Fuller visit the Firm for a client intake interview. At the time, Nathan Hogle was "of counsel" to the Firm, having been admitted to the State Bar of Arizona in January of 2013. Respondent was Nathan Hogle's supervisor.

6. Mr. Fuller signed a contingency fee agreement with the Firm on June 30, 2015.

7. On April 21, 2017, counsel for American Liberty -- Stephen C. Biggs – communicated with Cynthia Martinez at the Firm, advising her that the carrier had provided $47,795.87 in workers' compensation benefits to Mr. Fuller as of that date. At the disciplinary hearing, Ms. Martinez was described as a paralegal at the Firm. However, at the time of her communications with Mr. Biggs, her email signature block read:

> Cynthia Martinez
> Director of Injury Law
> The Hogle Law Firm

Ms. Martinez is not an attorney. At the disciplinary hearing, she testified that litigation (as opposed to pre-litigation) was not her area of expertise.

8. Mr. Biggs later followed up with an email to Ms. Martinez on May 31, 2017, stating, in pertinent part:

> Please provide me (or have the attorney handling this case provide me) with an update on the status of negotiations with Foremost Insurance Company (the auto insurer for Mr. Riggs). Mr. Fuller's personal injury claim against Mr. Riggs is, at this point, statutorily assigned to the workers' compensation carrier. *See* A.R.S. § 23-1023(B). The workers' compensation carrier is willing to discuss a reassignment of the claim back to Mr. Fuller, but we need assurances that a settlement will be reached or an action timely filed before the two-year statute of limitations runs on the personal injury claim. Otherwise, to protect its subrogation rights, the compensation carrier may be forced to institute an action against the estate of Mr. Riggs before the statute of limitations runs.

No one in Respondent's office responded to Mr. Biggs' May 31, 2017 email.

9. On June 12, 2017, Mr. Biggs both emailed and mailed a letter to Nathan Hogle, copying Ms. Martinez and stating:

I need an immediate update on the status of Mr. Fuller's personal injury claim against Michael Normal Riggs (now deceased), the motorist who caused the accident that resulted in Mr. Fuller's injuries. Cynthia at your office previously informed me that you are in negotiations with Foremost Insurance Group, the automobile insurer for Mr. Riggs, regarding Mr. Fuller's personal injury claim. Cynthia also informed me that it is your office's intent to file a personal injury action in state court against Mr. Riggs or his estate if a settlement cannot be reached before the statute of limitations runs on Mr. Fuller's personal injury claim. However, in late April I received a letter and phone call from Kara Alston, the claims representative for Foremost handling Mr. Fuller's claim, and she informed me that no significant settlement negotiations had occurred because Mr. Fuller continued to treat for his injuries. She also told me that once Foremost receives and reviews all medical documentation supporting Mr. Fuller's bodily injury claim, Foremost will be able to proceed toward settlement of his claim. Since that date, I have requested a status update from your office, but have not received one.

Please be advised that your client is statutorily required to provide the workers' compensation carrier written notice of his intent to bring an action against a third party, and must provide the workers' compensation carrier timely and periodic notice of all pleadings and rulings concerning the status of any pending action. A.R.S. § 23-1023(C). You should also be aware that because Mr. Fuller did not institute an action against Mr. Riggs or his estate within one year after his personal injury cause of action accrued, his personal injury claim was statutorily assigned to the workers' compensation carrier in June 2016, and it is the carrier who currently has standing to bring and prosecute an action against Mr. Riggs or his estate or to compromise the claim with Mr. Riggs or his estate. A.R.S. § 23-1023(B). But the carrier may reassign the claim back to Mr. Fuller, and if it does, Mr. Fuller will once again have the same rights to pursue his personal injury claim that he had before it was statutorily assigned to the workers' compensation carrier. A.R.S. § 23-1023(B)(4).

As I previously informed Cynthia, American Liberty Insurance Co. (the workers' compensation carrier in this case) is willing to reassign Mr. Fuller's personal injury claim back to Mr. Fuller if it receives adequate assurances a settlement will be reached or a personal injury action will be filed before the statute of limitations runs. But those

> assurances, the adequacy of which will be judged in the sole discretion of the carrier, need to come **no later than Wednesday, June 14, 2017** . . .
>
> Please contact me immediately so that we can discuss this matter.

No one in Respondent's office responded to Mr. Biggs' June 12, 2017 communications.

10. On June 16, 2017, without ever having spoken to his client, Respondent signed and filed a civil complaint in Maricopa County Superior Court on Mr. Fuller's behalf, naming the following defendants: The Estate of Michael Norman Riggs, Peggy Louise Riggs, RV Delivery Service, LLC, and several fictitious defendants. The complaint identified Respondent, Nathan Hogle, and Thomas Hogle as counsel for the plaintiff but included only the following email address: Dana@thehoglefirm.com.

11. Respondent also caused a summons to be issued on June 16, 2017 that included his name, as well as the names of Nathan Hogle and Thomas Hogle, but stated:

> The name and address of the attorney for the Plaintiff
>
> THE HOGLE FIRM
> Dana R. Hogle
> 1013 S. Stapley Drive
> Mesa, Arizona 85204

12. Respondent assumed that Nathan Hogle "and paralegals" drafted the Fuller complaint he signed. Nathan Hogle, however, testified he did not draft the complaint. Respondent knew nothing about the Fuller case when he signed the complaint.

13. According to Respondent, Nathan Hogle was the lawyer responsible for the Fuller case. Nathan Hogle, though, testified he did *not* consider himself the responsible

attorney and stated that Respondent, as owner of the Firm, was ultimately responsible. Nathan Hogle performed no work on the Fuller case and testified that he had no communication with the Fullers in 2017 or 2018.

14. Respondent did not advise Mr. Fuller that he had filed a complaint on his behalf or provide him with a copy of the complaint. Nothing in the record reflects that anyone else at the Firm gave Mr. Fuller this information.

15. Despite the mandate of A.R.S. § 23-1023(C), Respondent did not notify American Liberty or its counsel of the complaint he filed.[1] Mr. Biggs testified he was "shocked" and "extremely concerned" when he learned of the filing and stated the complaint would clearly be dismissed because, as a matter of law, Mr. Fuller did not own the claim.

16. When Respondent signed and filed the complaint, Mr. Fuller did not own the personal injury claim and had no legal authority to file suit. Mr. Biggs had repeatedly advised the Firm of this fact. Respondent and the Firm took no action to have the personal injury claim reassigned to Mr. Fuller by the workers' compensation carrier, despite repeated admonitions by Mr. Biggs.

17. On July 3, 2017, Mr. Biggs wrote to the insurance carrier for decedent Riggs, copying Nathan Hogle and Ms. Martinez on that communication. Mr. Biggs demanded

[1] A.R.S. § 23-1023(C) requires injured workers to give the carrier "written notice of the intention to bring an action against a third party" and "provide to the insurance carrier . . . timely and periodic notice of all pleadings and rulings concerning the status of the pending action." Mr. Biggs repeatedly advised the Firm of these statutory requirements.

that any settlement negotiations with the Firm cease because Mr. Fuller did not own the personal injury claim.

18. Mr. Biggs also wrote separately to Nathan Hogle on July 3, 2017, reiterating that Mr. Fuller had no legal authority to file suit, advising that the complaint named incorrect defendants,[2] demanding that the Firm "cease and desist from any further efforts to reach a settlement," and asking that the lawsuit be dismissed. Mr. Biggs further stated:

> At this point, American Liberty Insurance Co. intends to exercise its right to directly pursue or settle the statutorily assigned claims of Mr. Fuller against third parties for the industrial injuries suffered by Mr. Fuller . . . To that end, I am in the process of initiating a probate proceeding seeking the appointment of a personal representative for the estate of Michael Riggs. Once a personal representative has been appointed, there will be a proper party defendant on whom a lawsuit can be served.
>
> * * * * *
>
> Because reassignment of Mr. Fuller's claim is still possible so long as the reassignment occurs prior to suit being filed and the statute of limitations running on the claim, I am willing to discuss the *possibility* of reassignment with you, if your client is still interested in attempting to obtain a reassignment. But my willingness to *discuss* that possibility should not be interpreted as a representation or promise of any kind that the compensation carrier actually will reassign the claim, in whole or in part, to Mr. Fuller.

[2] Mr. Biggs explained that, by statute, the proper defendant was the personal representative of Mr. Riggs' estate and that no claim could be brought until after a personal representative had been appointed. He also pointed out that the complaint named "Peggy Louise Riggs" as a defendant, but the decedent's wife's name was "Penny." Finally, Mr. Biggs observed that the complaint named RV Delivery Services LLC as a defendant but included "no allegations indicating how that LLC could possibly be liable. . ."

19. On July 3, 2017, Cynthia Martinez forwarded Mr. Biggs' letter of that date to Respondent and wrote: "Hey Dana. Need to set a time tomorrow to talk about this file." Respondent replied, "Call whenever." Nothing in the record suggests Respondent ever followed up with Ms. Martinez or took any action after receiving Mr. Biggs' letter.

20. Notwithstanding Ms. Martinez' July 3, 2017 communication, Respondent stated in his response to the Fuller bar charge that, "No problems with the Fuller case were brought to [my] attention by Nathan or any other employee of the Firm." Respondent admitted at the disciplinary hearing, though, that Mr. Biggs was attempting to alert him to problems with the case.

21. Having received no response to his earlier communications, Mr. Biggs again wrote to Nathan Hogle on July 26, 2017, copying Ms. Martinez, and stating:

> I am following up on the attached letter that was sent to you three weeks ago regarding the lawsuit you filed on behalf of Jay Fuller against the estate of Michael Riggs and others . . . My letter demanded that you and your client voluntarily dismiss that lawsuit without prejudice. As explained in the letter, your client has no right to the claims asserted in that lawsuit because they were statutorily assigned to American Liberty Insurance Company more than a year ago and never reassigned back to your client.
>
> To date, you have not responded to my letter, and the online docket for CV2017-093639 does not reflect your voluntary dismissal of the case. Please provide me with an immediate response regarding what your client intends to do about that lawsuit. If you and your client are not going to voluntarily dismiss the lawsuit without prejudice, my client may be forced to intervene in the action to accomplish that end. If it does so, we may end up in a situation where my client seeks sanctions against you and your client. I would rather not go that route.
>
> Please promptly respond to this email and provide the information requested, or give me a call to discuss this matter.

22. Having once again received no response from anyone at the Firm, Mr. Biggs sent an email to Respondent, Nathan Hogle, Thomas Hogle, and Cynthia Martinez on August 3, 2017, stating:

> This is my third written request to your firm demanding your client, Jay Fuller, voluntarily dismiss without prejudice the lawsuit he filed against the Estate of Michael Riggs and others . . . For the reasons outlined in the attached letter, sent to Nathan Hogle a month ago, you and your client had no good faith basis for filing that lawsuit. And even if you and your client were negligently or recklessly unaware of the statutory reassignment to my client, American Liberty Insurance Company, of Mr. Fuller's claims at the time you filed the suit, you have now been on notice of that reassignment, Mr. Fuller's lack of standing to assert the claims being pursued in the action, and the other defects in your complaint I identified in my July 3 letter for a full month. So for the last 31 days, you have had no reasonable basis for maintaining the suit by Mr. Fuller against the estate of Michael Riggs and his widow.
>
> It is my understanding the defendants in that case have moved to dismiss it without prejudice. I once again demand you and your client voluntarily dismiss the case without prejudice. American Liberty has filed a probate case seeking the appointment of a personal representative for the estate of Michael Riggs and will pursue that appointment so American Liberty can properly present the claim (which it now owns) against his estate for recovery of the workers' compensation benefits American Liberty has paid and may pay in the future for Mr. Fuller's industrial injury.
>
> Although my client has sole control of the claims against third parties, including Mr. Riggs and his widow, for Mr. Fuller's injuries . . . I am willing to discuss with you the possibility of a negotiated reassignment of those claims. . . . But nothing will happen unless (1) your client voluntarily dismisses without prejudice his current lawsuit against the estate of Michael Riggs and his widow, and (2) you begin communicating with me.

Neither Respondent nor anyone else at the Firm responded to Mr. Biggs.

23. Mr. Biggs testified that, although he sent numerous emails and made a number of telephone calls to the Firm, he never heard from an attorney.

24. On August 7, 2017, defendants filed a motion to dismiss the Fuller complaint. Respondent was endorsed on that motion. Defendants argued that Mr. Fuller lacked standing to file suit because the personal injury claim belonged to the workers' compensation carrier.

25. Neither Respondent nor anyone else at the Firm advised Mr. Fuller of the motion to dismiss, and no one filed a response to the motion.

26. On September 6, 2017, the court granted defendants' motion to dismiss. Respondent did not advise Mr. Fuller of this ruling. And contrary to the mandate of A.R.S. § 23-1023(C), he did not advise American Liberty of the dismissal order.

27. American Liberty filed an action in superior court to have decedent Riggs' wife appointed as special administrator of the estate. After that occurred, American Liberty filed a civil complaint, and the special administrator served an offer of judgment for $100,000, which American Liberty accepted. All of the funds went to American Liberty. Mr. Fuller received nothing.

28. On May 14, 2019 – more than a year and a half after his complaint was dismissed – the Firm sent Mr. Fuller a letter under Nathan Hogle's signature that read:

> This is to inform you that, pursuant to the terms of our original engagement with you, we have decided to terminate our representation. Accordingly, I encourage you to retain new counsel. We will have no further attorney-client relationship.
>
> As of the conversation you had with me over a year ago, this letter is to acknowledge that our firm will no longer be representing you with regards to any potential claims. Please be advised that a suit was filed June 16, 2017 to protect the Statute of Limitations, but was dismissed on September 6, 2017.

> We regret the circumstances that have necessitated this action, but we wish you every success in your future endeavors.

Nathan Hogle testified he did not draft this letter and has no recollection of signing it, though he confirmed that the signature looks like his.[3]

29. The May 14, 2019 letter was sent to Mr. Fuller by certified mail but was returned to the Firm as unclaimed. The letter was also sent "via regular mail," though Mr. Fuller testified he never received it. Mr. Fuller stated he was unaware of the Firm's termination of representation until he picked up his file in November of 2019. Mr. Fuller never advised anyone at the Firm that its services were no longer needed, and he does not recall any conversation with Nathan Hogle about terminating the representation.[4]

30. Although Mr. Fuller had a lawyer representing him in connection with his claim for workers' compensation benefits, the personal injury litigation Respondent agreed to undertake was an entirely separate matter.

31. Respondent did not communicate with Jay Fuller at any point during his representation of him. Neither Respondent nor anyone else at the Firm informed Mr. Fuller of any statute of limitations issues relating to his personal injury claim, the

[3] In a separate disciplinary proceeding against Nathan Hogle (PDJ 2021-9043), the parties entered into a consent agreement that stated Nathan "did not prepare or send the letter and has no recollection of having seen it. The signature was not a wet signature, but rather was electronically generated by staff." The parties also agreed in that proceeding that, "Fuller never received any communication from the Hogle Firm regarding termination until November 22, 2019 when he went to pick up a copy of his file."

[4] Nathan Hogle testified he has no recollection of the conversation with Mr. Fuller referenced in the May 14, 2019 letter. Moreover, as noted *supra*, Nathan testified he had no communication with Mr. Fuller in 2017 or 2018.

extensive correspondence from American Liberty's counsel, the need to obtain a reassignment of his personal injury claim, the motion to dismiss, or the court order dismissing his complaint.

32. Respondent testified as follows at the disciplinary hearing: "I never heard [Jay Fuller's] name until I was literally being sued and then a bar complaint followed thereafter." That testimony was not credible, particularly because shortly after making that unequivocal statement, Respondent confirmed that he received Ms. Martinez' email seeking guidance on the Fuller case and also confirmed that he received communications from Mr. Biggs. Moreover, Respondent had signed and filed the civil complaint on behalf of Mr. Fuller.

33. Cynthia Martinez forwarded the emails she received from Mr. Biggs to both Respondent and Nathan Hogle.

34. Mr. Fuller suffered harm due to the gross mishandling of his case. Mr. Biggs testified that for a long time, American Liberty was willing to reassign the personal injury claim to Mr. Fuller. Had that occurred, he explained, Mr. Fuller could have sought to recover against substantial uninsured and underinsured motorist policies ($500,000 policy limits for each). Mr. Biggs testified that liability for the accident was clear, and decedent Riggs' insurer did not want to litigate.

35. Mr. Fuller filed a lawsuit for legal malpractice, naming Respondent, Nathan Hogle, and the Firm as defendants. That matter was settled for a confidential amount. Respondent testified that after that claim, the Firm lost its legal malpractice insurance and currently has none.

36. Mr. Fuller testified at the disciplinary hearing that, as a result of his experience with Respondent and the Firm, he does not trust the legal profession or lawyers "at all."

Count Two (Complainant Darin Palmer)

37. Darin Palmer was the plaintiff in a civil action filed in Maricopa County Superior Court alleging false imprisonment and assault by a security guard. The lawsuit was filed on September 20, 2018 by Mr. Palmer's brother-in-law, Zachary Bloomer.

38. Mr. Bloomer – who lived in Utah -- sought out Arizona counsel to take over Mr. Palmer's representation. An acquaintance of his named Chris Stapley offered to assist. Mr. Stapley told Mr. Bloomer he was not licensed to practice law in Arizona but was licensed in Missouri and was hoping to be admitted in Arizona while working for the Firm.

39. In his email correspondence, Mr. Stapley used a signature/address block identifying himself as "Christopher V. Stapley, Esq. Attorney at Law – Personal Injury*" Below that language, 13 lines of small print appear, including a "confidentiality notice" and the following: "**Licensed to Practice Exclusively in the State of Missouri*."

40. For several months in 2018, Mr. Stapley was the head of the litigation division of the Firm, despite the fact he was not licensed to practice law in Arizona.

41. Respondent was Mr. Stapley's supervisor.

42. On January 29, 2019, defendants filed an answer to the civil complaint. Mr. Bloomer sent Mr. Stapley the complaint, answer, and other information on March 5, 2019. Mr. Stapley responded, stating: "Dana and I will have a look at everything and we should

get back to you within the next day or two." Mr. Stapley copied Respondent on this communication.

43. Mr. Stapley followed up with Mr. Bloomer on March 8, 2019, stating: "I had a few conversations with our managing attorney Dana. We would love to be able to help. Let's talk on Monday if that works to see what might be the best way to proceed." Respondent was again copied on Mr. Stapley's email.

44. Mr. Stapley met with Mr. Palmer and his wife on March 18, 2019. They signed a contingency fee agreement that same day. The only attorney identified in the fee agreement is "Dana R. Hogle, Esq." Mr. Stapley told the Palmers: "Dana Hogle is your attorney."

45. Mr. Stapley testified that a litigation paralegal left the Firm soon after the Palmers became clients, and he told Respondent he did not know a lot about litigation and needed help.

46. Mr. Palmer has never met Respondent or communicated with him. Mr. Palmer did not speak with an Arizona-licensed attorney at any time during the Firm's representation of him. At the disciplinary hearing, Respondent confirmed that Mr. Stapley was the Palmers' only point of contact at the Firm before their case was dismissed.

47. On March 28, 2019, Mr. Stapley prepared and filed an unsigned notice of substitution of counsel, identifying Respondent as Mr. Palmer's attorney of record in place of Mr. Bloomer. However, the caption of the notice listed domestic relations parties unrelated to the Palmer matter and failed to include client consent. *See* Rule 5.3(a)(2)(B), Ariz. R. Civ. P.

48. Opposing counsel emailed both Respondent and Mr. Stapley on March 25, 2019, calling their attention to the deficiencies in the notice of substitution of counsel, and stating:

> We received this unsigned document, naming the wrong parties but referencing the Palmer Case cause number (I received a call from your office on March 25, 2019 about substitution in the Palmer matter). Can you please send a corrected Substitution of Counsel, with client consent, with the correct case caption once it is filed?

Neither Respondent nor Mr. Stapley responded to defense counsel or took any corrective action.

49. On April 5, 2019, Mr. Bloomer emailed Mr. Stapley, stating: "I have not seen the updated docs come through. Is this something I need to do and then send over to you? Because of initial disclosure deadlines, etc, I'd like the court to see some action to transfer the case." Mr. Stapley responded:

> I efiled it on March 28th, and have not received the conformed copy from the court yet.
>
> As soon as I do I will definitely forward it to you. Also, I did speak with opposing counsel to let them know of the change, and they said they would not oppose it, but would still like to get the ball rolling on discovery as soon as we are approved. I let them know I certainly am not opposed to that.

Mr. Stapley did not disclose that the unsigned document he had filed on March 28, 2019 included incorrect information, despite the fact defense counsel had advised Respondent and him of the deficiencies more than a week earlier.

50. On April 24, 2019, the court placed the Palmer case on the dismissal calendar, stating that the case would be dismissed without further notice on June 24, 2019

unless one of the following occurred before that date: (1) the parties filed a Joint Report and Proposed Scheduling Order; (2) a comprehensive pretrial conference was set; (3) a final judgment, notice of decision, arbitration award, or dismissal was entered; or (4) a motion to continue on the dismissal calendar was granted. At the time this order issued, the Firm had not filed a signed, rule-compliant notice of substitution of counsel with the correct information, and the court did not endorse Respondent on the April 24, 2019 order.

51. On April 24, 2019, Respondent signed and filed a substitution of counsel in the Palmer case that included the correct information.

52. Defense counsel emailed Mr. Stapley on May 10, 2019, asking him to "confirm what attorney will be handling this matter." Mr. Stapley responded the same day, copying Respondent and stating: "Mr. Dana Hogle will be the attorney on this matter."

53. In his May 10, 2019 email to defense counsel, Mr. Stapley discussed the need to file a Joint Report and Proposed Scheduling Order, stating:

> [B]ased on the Rule 16(b) Early Meeting the parties are then jointly responsible to submit their Joint Report and Proposed Joint Scheduling Order within 10 (business) days of the Early Meeting. So, in order to be compliant with the court rules, could you please forward me some dates that would work with your schedule so I can coordinate this meeting with Mr. Hogle. *I'm sure you saw that the Court placed both parties on notice (prior to our entering on this matter) that the case would be dismissed for failure to follow these rules.* (Emphasis added)

The only order the superior court had issued regarding dismissal for failure to comply with Rule 16 was the April 24, 2019 order.

54. Mr. Stapley's May 10, 2019 email demonstrates that Respondent (who was copied on the email) and the Firm were on notice no later than May 10, 2019 that the court had placed the Palmer case on the dismissal calendar. Respondent, though, later took the position in the superior court, in these disciplinary proceedings, and in an August 14, 2020 letter to the Palmers that the Firm had no notice of such action.[5]

55. Even if Respondent and the Firm *had* been unaware of the April 24, 2019 court order, that order merely recited the requirements of Rule 38.1(d), Ariz. R. Civ. P.

56. Respondent filed a motion to extend time for the Rule 16(b) early meeting on May 31, 2019. He stated that he intended to file a motion to amend the complaint and asked that the Rule 16(b) conference be held after the amended complaint was filed. The court granted the motion.

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[5] After the Palmers wrote to Respondent alleging malpractice in the handling of their case, Respondent responded on August 14, 2020, blaming Mr. Bloomer for the dismissal:

> In your letter, you point to areas where our office could have done things better than we did. However, you know that the reason that this case was dismissed is because your prior counsel's office failed to notify us that the case had been placed on the dismissal calendar. His office did not prosecute the case in the first place which caused the notice of placement on the dismissal calendar to be issued and then his office did not forward the notice to us so that we could calendar the date and ensure that the necessary steps were taken to prevent dismissal. If any malpractice occurred related to this matter, it was committed by your former counsel. We would urge you to direct your grievance there.

57. On August 7, 2019, Mr. Stapley emailed Mr. Palmer, stating: "[W]e are still waiting for the judge to rule on our First Amended Complaint." That statement was not correct, as no motion to amend the complaint had been filed.

58. On August 22, 2019, Mr. Palmer asked Mr. Stapley for an update. Mr. Stapley responded: "We are still waiting for the judge to rule on our Motion for a First Amended Complaint." That statement was not accurate, as no motion to amend had been filed.

59. Mr. Stapley mistakenly believed he had successfully e-filed the motion to amend. However, the court sent notifications to Respondent's email address advising that the filing had not succeeded.

60. Defense counsel emailed Respondent on September 24, 2019 as follows:

> Dana – We have been operating under the understanding that you intend to file a motion seeking to amend the Complaint. Because it has been nearly four months since you notified the Court you would be filing the motion, and none has been filed, I would appreciate an update from your end.

Respondent received this message and forwarded it to Mr. Stapley, who responded to defense counsel and copied Respondent, stating:

> I apologize for my clerical error.
> I thought this was efiled over two months ago and I was waiting for the judge to formally accept the filing and approve the First Amended Complaint. I must have accidentally forgotten to click submit. I have just now-re-filed it, and have attached it for your review.

61. On September 25, 2019, Respondent signed and filed a motion to amend the complaint. For unknown reasons, he again filed the motion to amend on October 9, 2019.

62. The court granted the motion to amend on November 12, 2019. However, no amended complaint was ever filed. *See* Rule 15(a)(5), Ariz. R. Civ. P. ("If a motion for leave to amend is granted, the moving party must file and serve the amended pleading within 10 days after the entry of the order granting the motion, unless the court orders otherwise.").

63. Neither Respondent nor anyone at the Firm disclosed the error in filing the motion to amend to Mr. Palmer or corrected earlier misstatements blaming the judge for the delay. On the contrary, on November 14, 2019, Mr. Stapley emailed Mr. Palmer, stating: "I am not sure why the judge took so long with that . . ."

64. Mr. Palmer's wife emailed Mr. Stapley on January 1, 2020 as follows:

> Darin and I just wanted to follow up in regards to this case and see what the next steps are in pursuing it. Please reach out to us with any updates you have and any information on what we can do to help further this process along.

When she received no response, Mrs. Palmer sent Mr. Stapley the same message again on January 8, 2020.

65. On January 8, 2020, the superior court dismissed the Fuller case, stating:

> This case was previously placed on the dismissal calendar for dismissal pursuant to Rule 38.1(d) of the Arizona Rules of Civil Procedure. When the court placed this matter on the dismissal calendar, the court specified what action would need to occur to avoid dismissal. None of the actions listed have occurred by the specific date.
>
> Pursuant to Rule 38.1(d)2 of the Arizona Rules of Civil Procedure
>
> IT IS ORDERED, dismissing all unadjudicated claims in the above entitled case without prejudice.

66. Respondent did not tell the Palmers that their case had been dismissed.

67. Mr. Stapley emailed Mrs. Palmer on January 24, 2020, stating:

> We were getting ready to serve the HOW [sic] when the court assigned a new judge and the new judge dismissed the case. This was an error on the judge's side, because the court rules mandate that we have 90 days from the issuance of a new Complaint (which we have in this instance, since we just got the amended complaint approved by the previous judge in December) to have the Complaint served. We are in the process of getting the case re-activated, and then we can get it served.
>
> This is not something we are concerned about, but does require some motion work on our end. Once this is cleared up and served, then the HOA will have 30 days to file an Answer from the service of the Complaint, and then we will re-start discovery. Once discovery is up and running we will let you know, so we can coordinate getting information to and from you from the other attorneys.

The assertion that "[t]his was an error on the judge's side" was false. The Palmers' case was dismissed because of non-compliance with Rule 38.1(d). Moreover, the amended complaint was never filed, and Mr. Stapley offered incorrect legal advice about the time within which an amended complaint must be served. *See* Rule 15(a)(5), Ariz. R. Civ. P. Respondent testified that during this timeframe, he was unaware of what was happening in the Palmer case, notwithstanding his status as counsel of record.

68. Mr. Stapley engaged in the unauthorized practice of law, and Respondent, as his supervisor and counsel of record, facilitated that unauthorized practice of law.

69. In a response to the Palmer bar charge, Respondent stated: "With the exception of believing he filed the amended petition [sic], when he didn't actually hit the 'file' button, Mr. Stapley's processing of the case and communication with the clients

about the items necessary for their case comported in all respects with Mr. Hogle's case-handling firm policies."

70. On February 25, 2020, Mrs. Palmer emailed Mr. Stapley, stating: "Just trying to be the squeaky wheel here. Any updates?" She did not receive a response.

71. Mrs. Palmer again emailed Mr. Stapley on March 3, 2020, stating:

> We haven't heard any updates on this for a while now, and would like to know where we stand in regards to this case. Are you still with the firm? Is there an update you can provide us? Is there anything we need to do? Last we communicated was over a month ago and we were waiting to reactivate the case and serve the HOA. Has it been reactivated? If so, has the HOA been served?

That same day, Mr. Stapley responded:

> We are in the process of on-boarding Mike Ward as an additional attorney onto the team. I have cc'd him as a quick reference. He is working on this issue, we actually discussed this case this morning, however due to the logistical difficulties in onboarding a new attorney we anticipate have [sic] this motion resolved by the end of the week to early next week. We will let you know for sure once the motion has been submitted.

72. On March 4, 2020 – approximately two months after the case had been dismissed – the Firm filed a motion to reinstate and to extend time to serve the amended complaint. The motion urged the court to reinstate the action due to mistake or excusable neglect, arguing "the notice placing the case on the dismissal calendar was never received." As discussed *supra*, however, the Firm knew that the court had stated it would dismiss the Palmer case if specified actions were not taken, and independent of that knowledge, Respondent should have complied with the requirements of Rule 38.1(d).

73. Also on March 4, 2020, Respondent signed and filed a notice associating attorney Michael Ward of The Law Offices of Michael J. Ward, PLC, on the Palmer case. At that point, both Respondent and Mr. Ward were counsel of record for the Palmers. Respondent did not advise the Palmers of Mr. Ward's association on their case.

74. Defendants opposed the motion to reinstate, arguing that plaintiffs "repeatedly failed to prosecute the pending action" and waited almost two months after dismissal to seek reinstatement. Defendants asserted that, "[o]ther than serving Defendants, requesting extensions, and seeking leave to file an Amended Complaint that was never filed, Plaintiffs did absolutely nothing to prosecute this action." (Original emphasis) Defendants further argued:

> [T[he record establishes that Plaintiffs' current counsel became counsel of record in April 2019 – more than seven (7) months before the dismissal. Even if Plaintiffs' current counsel did not get a copy of the Notice, the Arizona Rules of Civil Procedure informed Plaintiffs' current counsel that they had to take some action or the case would get dismissed. *See* Ariz. R. Civ. P. 38.1. Under no stretch of the imagination can Plaintiffs' current counsel reasonably argue that their neglect in this matter is excusable because it is not the act of a reasonably prudent attorney under the same circumstances. A reasonably prudent attorney would be knowledgeable about the Arizona Rules of Civil Procedure and at a minimum, monitored the Court docket and electronic record.

75. Respondent and Mr. Ward thereafter filed a supplement to the motion to reinstate, attaching a declaration by Respondent. Respondent acknowledged therein that he was "one of the attorneys of record" for the Palmers and stated he had reviewed the file promptly after it was received from Mr. Bloomer. He avowed that the Firm did not

receive a copy of the April 24, 2019 order until March 3, 2020 – after the case had been dismissed. He further stated:

> I recognized in November of 2019 that this case and others were not being pursued as diligently or aggressively as I would have preferred and that I did not have capacity to give them the attention they needed. I also recognized at that time that one of my staff members who I heavily rely upon was going through some major personal challenges that interfered with work. I believe that this was the reason why the amended complaint was not immediately filed and served on the Defendants after the motion was granted.

Contrary to Respondent's avowal, the record establishes that the Firm knew the Palmer case had been placed on the dismissal calendar no later than May 10, 2019.

76. At the disciplinary hearing, Respondent described the Palmer case as "crappy" and blamed Mr. Bloomer for "dropp[ing] the ball drastically." However, in the March 30, 2020 declaration he filed with the court, Respondent avowed that the Palmers had a "meritorious claim." Moreover, the record establishes that Respondent and the Firm were representing the Palmers for more than nine months before the case was dismissed and should have complied with Rule 38.1, independent of the April 24, 2019 order.

77. On April 1, 2020, Mrs. Palmer emailed Mr. Stapley and Mr. Ward, stating:

> I wanted to follow up once more on the status of our case and getting the motion resolved. We have received little in way of communication, and each time we reach out there is little to no progress. I understand that some things may be out of your hands, but it is concerning that we have been with your firm for close to a year now, and no real progress has been made. Please give an update on this case, as well as any further information you need from us to make this happen. We appreciate close communication, so if you could include us in any communication, that would be greatly appreciated.

Mr. Stapley responded to Mrs. Palmer, stating, in pertinent part:

> When a case goes into litigation there are often large timeframes where nothing can move forward without the judge or an opposing counsel to do something. For example, the last day that the other attorney could file a response was on March 18, 2020, which was the actual day that they filed their Response. So I apologize if that was not communicated well with you. What I will plan on at this point is I will send you a bi-weekly email to provide you any information with what is going on in the case even if we are still in a holding pattern (unless of course something happens before).

78. The superior court heard argument on the motion to reinstate on June 3, 2020. The minute entry from that hearing states that "Mr. Ward shall file a Supplemental Affidavit from their client that goes to the merits of the case." Mr. Ward did so, but both he and Respondent also submitted affidavits describing their handling of the case. Defendants objected to those affidavits, arguing that, "[c]onsistent with Plaintiffs' continued lackadaisical approach, rather than the directed supplemental Affidavits, Plaintiffs provided additional Affidavits beyond the scope of the Court's Order."

79. On June 23, 2020, the superior court denied the motion to reinstate. It declined to consider the supplemental declarations of Respondent and Mr. Ward, noting it had not requested them, and they were "repetitive to previous filings." The court further stated:

> This case has clearly not been vigorously prosecuted. Since serving the Complaint in January of 2019, Plaintiffs have sought extensions and granted leave to file an Amended Complaint which was never filed. No other action has been taken.
>
> * * * * *
>
> The Court finds that the evidence for excusable neglect and the merits of the case are clearly lacking. The Court is mindful of the

> case law supporting adjudicating cases on the merits and the Court is consistently lenient in setting aside judgments in similar circumstances. However, the Court finds this is a bridge too far.

80. Pursuant to a consent agreement in PDJ 2019-9075, Respondent was suspended for 90 days, effective April 6, 2020, for ethical misconduct in three unrelated client matters.

81. By letter dated April 7, 2020, bar counsel advised Respondent of several rule-based requirements stemming from his suspension and specifically advised that Rule 72(a) required him to "notify, by registered or certified mail, return receipt requested, all clients being represented in pending matters . . . any opposing counsel in pending matters . . . and each court and division in which [you have] any pending matter (whether active or inactive), of the discipline order or judgment." Respondent received and reviewed this letter.

82. As of April 6, 2020, Respondent was counsel of record for the Palmers. He did not, however, inform the Palmers, opposing counsel in the Palmer case, or the superior court of his suspension from the practice of law. At the disciplinary hearing, Respondent testified: "I never had a conversation with the Palmers one time. It would have been an interesting thing to call them . . . and say, 'hi, I'm your attorney of record. First time you've ever heard from me.'"

83. Mr. Stapley testified that he was responsible for identifying all active cases where Respondent was counsel of record so that notification of his suspension could be provided. He identified the Palmer case as one where notice was required.

84. On April 23, 2020, Respondent signed a Rule 72(e) affidavit, attesting that: "I have fully complied with the provisions of the Order of Suspension and with Rule 72, Ariz.R.Sup.Ct." That statement was not true; Respondent had not notified the Palmers, opposing counsel in their case, or the court of his suspension.

85. Before being reinstated to the practice of law after serving the 90-day suspension, Respondent filed a Rule 64(e)(2)(A) affidavit stating: "I have fully complied with the requirements of the order of Suspension dated April 6, 2020." That statement was not true; Respondent had not notified the Palmers, opposing counsel in their case, or the court of his suspension.

CONCLUSIONS OF LAW

Count One (Fuller)

1. The State Bar proved by clear and convincing evidence that Respondent violated ER 3.1 -- Meritorious Claims and Contentions. As relevant here, ER 3.1 states that a lawyer "shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law." ER 3.1 requires that lawyers "inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith and nonfrivolous arguments in support of their clients' positions." ER 3.1, cmt 2.

2. When Respondent filed the civil complaint, Mr. Fuller did not own the personal injury claim. Absent reassignment of the claim by American Liberty, Mr. Fuller

had no legal authority to file suit. *See* A.R.S. § 23-1023. Respondent and the Firm had been repeatedly advised of this fact. Furthermore, by signing and filing the complaint, Respondent certified that, to the best of his "knowledge, information, and belief formed after reasonable inquiry," the claims and legal contentions included therein were warranted by existing law. Rule 11(b)(2), Ariz. R. Civ. P. *See, e.g., In re Levine*, 174 Ariz. 146, 153 ("The objective standard of Rule 11 is analogous to the standard of ER 3.1."). Respondent could not have accurately certified that Mr. Fuller's claims were warranted by existing law. Moreover, Respondent testified that when he signed and filed the Fuller complaint, he knew nothing about the case.

3. By signing and filing the civil complaint, Respondent became counsel of record for Mr. Fuller. *See* Rule 5.3(a)(1)(A), Ariz. R. Civ. P. Once a lawyer has appeared as counsel of record, "the attorney will be deemed responsible as the party's attorney of record in all matters involving the action until the action ends or the attorney withdraws as the party's attorney or is substituted as the party's attorney by another attorney." Rule 5.3(a)(1)(B), Ariz. R. Civ. P. "Each attorney of record is responsible for keeping advised of the status of, and the deadlines in, pending actions in which that attorney has appeared." Rule 5.3(b), Ariz. R. Civ. P.

4. The State Bar proved by clear and convincing evidence that Respondent failed to provide competent representation to Mr. Fuller, in violation of ER 1.1. "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." ER 1.1. Respondent did not comply with statutory requirements applicable to Mr. Fuller's personal injury claim, he

named incorrect defendants in the complaint, he failed to respond to repeated communications from Mr. Biggs, and he failed to respond to the motion to dismiss.

5. Respondent characterizes his conduct in the Fuller matter as malpractice rather than ethical misconduct. However, "[a] lawyer crosses the line between negligence and unethical incompetence by failing to possess or acquire the legal knowledge and skill necessary for the representation or by neglecting to investigate the facts and law as required to represent the client's interests." *In re Alexander*, 232 Ariz. 1, 8 (2013) (citations omitted). Respondent failed to acquire the information and knowledge needed to advise Mr. Fuller accurately and represent him competently, and he ignored repeated admonitions by and communications from Mr. Biggs. *See, e.g., In re Ireland*, 146 Ariz. 340, 346 (1985) ("Researching a question of jurisdiction and the applicable statute of limitations in a personal injury action . . . is so rudimentary to the practice of law as to warrant no further comment. We disagree with respondent . . . that such behavior is not actionable under the disciplinary rules.").

6. The State Bar proved by clear and convincing evidence that Respondent failed to provide diligent and prompt representation to Mr. Fuller, in violation of ER 1.3. Respondent did not respond to multiple communications from and requests for information by Mr. Biggs, failed to comply with statutory requirements relating to American Liberty, and failed to respond to the motion to dismiss.

7. The State Bar proved by clear and convincing evidence that Respondent violated ER 1.4 by failing to keep Mr. Fuller reasonably informed about the status of his case and by failing to explain matters "to the extent reasonably necessary to permit the

client to make informed decisions regarding the representation." "The intentionality of an attorney's conduct is irrelevant in determining a violation of ER 1.4. The question is simply whether or not the attorney provided the client with sufficient information to enable the client to make an informed decision regarding the representation." *In re Shannon*, 179 Ariz. 52, 63 (1994). Although Respondent was counsel of record for Mr. Fuller, he never once communicated with him or provided him with important information and documentation.

8. The State Bar proved by clear and convincing evidence that Respondent violated ER 5.1 and ER 5.3 as to Cynthia Martinez and Nathan Hogle. The Firm held Ms. Martinez out as "Director of Injury Law" and vested substantial responsibility in her for managing pre-litigation and litigation matters, though she is not a lawyer and holds a high school degree. Respondent failed to supervise Ms. Martinez' actions in the Fuller matter or follow up with her regarding Mr. Biggs' communications, despite her request that he do so. Respondent also failed to adequately supervise Nathan Hogle, whom he viewed as the lawyer responsible for the Fuller case, notwithstanding Nathan Hogle's contrary belief.

9. The State Bar proved by clear and convincing evidence that Respondent violated ER 8.4(d) (conduct prejudicial to the administration of justice). ER 8.4(d) "does not require a mental state other than negligence." *In re Alexander*, 232 Ariz. 1, 11 (2013); *see also In re Clark*, 207 Ariz. 414, 418 (2004) (finding an ER 8.4(d) violation where an attorney's negligent act of "transferring assets to his professional corporation and notifying another creditor of the transfer may have deprived [his client] of partial

recovery on his judgment"). "A lawyer's conduct violates ER 8.4(d) if it causes injury or potential injury." *In re Martinez*, 248 Ariz. 458, 467 (2020). Respondent's abdication of duties owed Mr. Fuller caused both actual and potential injury.

Count Two (Palmer)

10. The State Bar proved by clear and convincing evidence that Respondent failed to provide competent representation to Mr. Palmer, in violation of ER 1.1. Respondent failed to comply with Rule 38.1(d), failed to file or serve an amended complaint, and failed to file a timely, accurate, rule-compliant substitution of counsel.

11. The State Bar proved by clear and convincing evidence that Respondent violated ER 1.3. As the superior court found when it denied the motion to reinstate, the Palmer case was not diligently prosecuted, and evidence of excusable neglect was "clearly lacking."

12. The State Bar proved by clear and convincing evidence that Respondent violated ER 1.4. Respondent never once communicated with his client, and he failed to ensure that the Palmers received adequate and timely communication from others at the Firm. For these same reasons, the State Bar proved by clear and convincing evidence that Respondent violated ER 3.2.

13. The State Bar proved by clear and convincing evidence that Respondent violated ER 5.1, ER 5.3, and ER 5.5. He failed to supervise Mr. Stapley, who was not licensed to practice law in Arizona, and he permitted Mr. Stapley to give the Palmers

legal advice.[6] Mr. Stapley told Respondent that he needed assistance with litigation matters soon after the Palmers became clients. Before their case was dismissed, the Palmers never communicated with an attorney who was licensed to practice law in Arizona. Given the manner in which Mr. Stapley held himself out in written communications and his provision of legal advice, clients such as Mr. Palmer reasonably believed he was their attorney. Respondent conceded that Mr. Stapley was the Palmers' only point of contact at the Firm throughout the litigation until the court dismissed their complaint.

14. The State Bar proved by clear and convincing evidence that Respondent violated ER 8.4(d). Respondent's abdication of duties owed to Mr. Palmer caused both actual and potential injury.

15. Respondent was counsel of record for the Palmers on April 6, 2020 -- the date his suspension from the practice of law took effect in PDJ 2019-9075. As such, Respondent was required to notify Mr. Palmer, opposing counsel, and the superior court of his suspension from the practice of law. His failure to do so violated Rule 72(a).

SANCTION

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 an appropriate sanction, the hearing panel considers the duty violated, the lawyer's mental state, the actual or potential injury

[6] Mr. Stapley testified that he regularly advised Firm clients about statutes of limitations and other legal deadlines applicable to their matters.

caused by the misconduct, and the existence of aggravating and mitigating factors. *See In re Scholl*, 200 Ariz. 222, 224 (2001).

Respondent violated numerous ethical duties owed to clients, the courts, and the profession. A lawyer is negligent when he or she fails "to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *In re White-Steiner*, 219 Ariz. 323, 325 (2009). In contrast, "knowledge" requires "the conscious awareness of the nature or attendant circumstances of the conduct." *Id.* Between knowing and negligent conduct, the *ABA Standards* identify another possible mental state: that the lawyer should know his conduct is improper. *Id.* at 325-26.

All of the violations at issue relate to fundamental, easy-to-understand ethical precepts. Viewing Respondent's conduct in the light most favorable to him, he willfully ignored his professional obligations to the Fullers and the Palmers and, as owner of the Firm, created and perpetuated an environment that bred the types of ethical misconduct at issue here. His misconduct caused actual harm to clients. It also needlessly consumed judicial resources and tarnished the reputation of the legal profession.

The following ABA Standards are relevant to the misconduct found by the hearing panel:

4.4 LACK OF DILIGENCE

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.

4.42 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.

Respondent engaged in a pattern of gross neglect bordering on abandonment in both the Fuller and Palmer matters. He caused actual injury to his clients. Standard 4.41(c) (disbarment) is therefore most applicable to the violations of ER 1.3.

4.5 LACK OF COMPETENCE

4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

4.53 Reprimand is generally appropriate when a lawyer:

(a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or

(b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

In the Fuller case, Respondent was repeatedly advised of what needed to occur given the involvement of the workers' compensation carrier. He was also told early on

by a staff member that his attention was needed on the Fuller case. Respondent ignored all of this and, at the disciplinary hearing, suggested (incorrectly) that the Firm was somehow absolved of responsibility because Mr. Fuller had a lawyer assisting him with his claim for workers' compensation benefits. Respondent's conduct in the Fuller case implicates Standard 4.52 (suspension). His lack of competence in the Palmer matter more closely aligns with Standard 4.53(a) (reprimand).

4.6 LACK OF CANDOR

> 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 potential serious injury to a client.
>
> 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.
>
> 4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

Standard 4.63 (reprimand) most closely aligns with Respondent's misconduct in the Fuller and Palmer matters. Although misrepresentations were made to the Palmers, they came from Mr. Stapley, and there is no clear and convincing evidence Respondent directed or ratified these misrepresentations.

6.1 FALSE STATEMENTS, FRAUD, AND MISREPRESENTATION

> 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
>
> 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material

information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

In the Palmer matter, Respondent avowed to the court that the Firm had no notice the case had been placed on the dismissal calendar. The record establishes otherwise. The more challenging question is whether Respondent intentionally lied, thereby implicating disbarment under Standard 6.11, or whether his avowals, while inaccurate, were the product of gross negligence, thereby implicating Standard 6.13.

Respondent clearly should have known the Palmer case would be dismissed if actions mandated by the Arizona Rules of Civil Procedure were not taken. Ultimately, though, the hearing panel cannot find by clear and convincing evidence that he *intentionally* deceived the court (and, later, the State Bar) regarding this issue.

6.2 ABUSE OF THE LEGAL PROCESS

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a

client or other party, or causes interference or potential interference with a legal proceeding.

Respondent failed to comply with court orders in the Palmer case, causing actual injury to his client. Standard 6.23 (reprimand) applies to this misconduct.

8.0 PRIOR DISCIPLINE ORDERS

8.1 Disbarment is generally appropriate when a lawyer:

(a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or

(b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

We consider Respondent's prior discipline in more depth *infra*, when discussing prior discipline as an aggravating factor. For the reasons cited in that context, the hearing panel does not rely on Standard 8.0 in any material respect in fashioning an appropriate sanction.

As the foregoing analysis reflects, Respondent engaged in ethical misconduct that implicates ABA Standards variously calling for disbarment, suspension, and reprimand. On balance, the hearing panel concludes suspension is the presumptive sanction. We next consider relevant aggravating and mitigating factors – both of which must be supported by reasonable evidence. *In re Abrams*, 227 Ariz. 248, 252 (2011).

The State Bar established the following aggravating factors:

9.22(a) – prior disciplinary offenses.

In PDJ 2019-9075, Respondent and the State Bar initially submitted a consent agreement for a 30-day suspension and 18 months of probation due to Respondent's admitted violations of ERs 1.3, 1.4, 1.5, 1.8, 1.16, 5.1, 5.3, 8.4(c), and Rule 41(g) in three separate client cases. PDJ William J. O'Neil declined to accept the agreement and suggested a modification "to reflect a sanction of a six month and one day suspension, and upon reinstatement, two years of probation." Respondent retained counsel, and the parties thereafter submitted an amended consent agreement "with additional mitigation" to support a suspension of 90 days plus 12 months of probation for violations of ERs 1.3, 1.4, 1.5, 1.8(h), 5.1, 5.3, 8.1(b), 8.4(c) and 8.4(d).

Judge O'Neil accepted the amended consent agreement, summarizing Respondent's misconduct in the three client matters at issue as follows:

> In Count One, Mr. Hogle represented a client in a personal injury case arising from a bus accident. His firm represented nine of the injured passengers. In the litigation the Hogle firm provided no disclosure statement. Opposing counsel moved to compel. Mr. Hogle also failed to respond to the motion. The Court issued a minute entry to produce the final disclosure statement within 30 days. Mr. Hogle failed to produce the statements and sanctions issued. A motion for sanctions was filed. No response was filed, and Mr. Hogle failed to respond to client requests for information about the status of their cases. Opposing counsel then moved to dismiss for lack of prosecution. Mr. Hogle failed to respond to the motion, did not inform the clients of the motion, and the case was dismissed with prejudice. A Motion to set aside the dismissal was unsuccessful.
>
> In Count Two, Mr. Hogle's firm was hired to handle a personal injury claim in December 2015. On March 31, 2017, the risk manager handling the claim contacted Mr. Hogle's paralegal. That paralegal drafted a letter stating records and billings were being obtained and would be forwarded upon

> receipt. On August 30, 2017, nearly a year and a half later, the risk manager had heard nothing and wrote Mr. Hogle's firm. When she received no response, she went to Mr. Hogle's firm and inquired about the case. She was given an unsigned termination letter after thirty minutes. Mr. Hogle's file shows no communication to the client of his termination of services. There is no proof of mailing nor was there a word version available of the letter.
>
> In Count Three, Mr. Hogle was hired to represent a minor step-child by the step-father regarding a felony and received a $5,000 initial fee. He failed to provide a fee agreement. He appeared at advisory hearing on June 9, 2017 but could not participate because he filed no notice of appearance until June 15, 2017. Instead, a public defender represented the minor for the hearing and give the offer of a plea agreement from the State. He did not communicate with the State regarding the plea offer for the next four months. On October 26, 2017 Mr. Hogle requested and was given the same plea offer offered in June. Mr. Hogle presented the offer to the family and encouraged them to accept the agreement, which the minor did. When the step-father and his wife complained to Mr. Hogle he wrote two checks for $1,625 stating it was a donation for "social activities" and to aid the minor and his family "in this challenging time."
>
> He also wrote, that acceptance of the constituted payment in full for the legal services and a waiver for any future financial claims. He did not advise the family to seek independent counsel to review the waiver. The family filed a bar charge. Mr. Hogle told the State Bar that he had "went above and beyond by ensuring that everyone was involved and aware . . ." The step-father upon receipt of the response, submitted a recording of Mr. Hogle admitting he didn't communicate and wished "I had upped my game" Mr. Hogle was dishonest in his communications.

Prior discipline is an aggravating factor that weighs heavily against a respondent attorney. *In re Brady*, 186 Ariz. 370, 375 (1996). More severe sanctions are appropriate when a lawyer engages in further acts of the same or similar misconduct for which he has already been disciplined. *In re Brown*, 184 Ariz. 480, 484 (1996).

Respondent correctly notes that much of his misconduct in the Fuller case occurred during the same timeframe as the misconduct at issue in PDJ 2019-9075. His misconduct

in the Palmer matter, though, occurred later in time, and some of it took place after Respondent had worked with the Law Office Management Assistance Program (LOMAP) in diversion for almost two years. With the exception of the Rule 72 violation, though, none of the misconduct at issue in these proceedings occurred *after* Respondent's earlier suspension. As a result, the hearing panel accords his prior disciplinary history less weight than would otherwise be the case.

9.22(c) – a pattern of misconduct. The "pattern of misconduct" aggravator "applies to lawyers who repeatedly engage in ethical misconduct in different contexts." *In re Alexander*, 232 Ariz. 1, 15 (2013). It applies here.

9.22(d) – multiple offenses. The hearing panel has found multiple ethical violations arising from the Fuller and Palmer matters.

9.22(i) – substantial experience in the practice of law. Mr. Hogle was admitted to the State Bar of Arizona in 2004.

Respondent established one mitigating factor by reasonable evidence: **9.32(c) – personal or emotional problems.** Although the hearing panel applies this factor in mitigation, it notes that the evidence regarding it was not particularly weighty. Respondent briefly discussed a divorce during the relevant time frame and submitted an exhibit listing dates between September of 2017 and March of 2019 when he participated in counseling sessions. The exhibit did not include meaningful information about the nature of the therapy or the progress Respondent presumably made in that setting.

In the hearing panel's estimation, Respondent did not demonstrate genuine remorse. His acknowledgement of wrongdoing was tepid at best. Respondent

consistently shifted blame to others and refused to acknowledge the ethical responsibilities he bore due to his status as counsel of record for the Fullers and Palmers and as owner of the Firm. His demeanor when testifying was often defensive and, at times, hostile – particularly during cross-examination. Respondent's suggestion he should receive no discipline for his misconduct in the Fuller and Palmer matters because he served a suspension for misconduct occurring in other cases during the same general timeframe bordered on the absurd.

Respondent blames many of the problems at issue in these proceedings on the rapid growth of the Firm. Our supreme court has held, though, that an "unwieldy workload" does not excuse ethical misconduct, stating:

> A lawyer must not accept representation if the lawyer's workload prohibits handling a matter in compliance with our professional rules. If Respondent was too busy to provide competent, diligent representation, he should have either hired adequate help or refused the case – and the fee.

In re Wolfram, 171 Ariz. 49, 56 (1993) (citations omitted).

Additionally, the ethical rules "require not only supervision, but also that the supervising attorney establish 'internal policies and procedures' providing reasonable assurances that lawyers and nonlawyers in the firm conform to the Rules of Professional Conduct." *In re Phillips*, 226 Ariz. 112, 116 (2010) (citations omitted). Lawyers must also "take reasonable steps to ensure that firm practices, not merely policies, actually comply with ethical rules binding all lawyers practicing law in this state." *Id.* at 120. Respondent failed to comply with these obligations.

To the extent Respondent has made positive changes in the Firm's practices and procedures since the Fuller and Palmer cases, such action is laudable. It does not, however, negate the misconduct at issue here, though it somewhat blunts the State Bar's disbarment recommendation.

"Lawyer discipline serves two main purposes: (1) to protect the public and the courts and (2) to deter the attorney and others from engaging in the same or similar misconduct." *In re Zawada*, 208 Ariz. 232, 236 (2004). Attorney discipline aims "to instill public confidence in the Bar's integrity." *In re Phillips*, 226 Ariz. 112, 117 (2010). The objective is not to punish the offender. *Id.* "[I]n determining the appropriate sanction to be imposed, we should focus on such considerations as the maintenance of the integrity of the profession in the eyes of the public, the protection of the public from unethical or incompetent lawyers, and the deterrence of other lawyers from engaging in unprofessional conduct." *In re Murray*, 159 Ariz. 280, 282 (1988). Applying these principles, as well as the aforementioned ABA Standards, the hearing panel concludes a long-term suspension is necessary to maintain the integrity of the profession, to protect the public, and to deter Respondent and other attorneys from engaging in similar misconduct.

CONCLUSION

Based on the foregoing, the hearing panel orders:

1. Dana Reed Hogle is suspended from the practice of law for two years, effective 30 days from the date of this order;

2. Respondent shall pay the State Bar's costs in an amount to be set by separate order.

A final judgment and order will follow.

DATED this 4th day of November 2021.

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

/s/ signature on file
Richard L. Brooks, Attorney Member

/s/ signature on file
Thomas C. Schleifer, PhD., Public Member

COPY of the foregoing e-mailed
this 4th day of November 2021, to:

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