

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

COLE D. SORENSON,
Bar No. 013097

Respondent.

PDJ 2020-9096

**FINAL JUDGMENT AND
ORDER OF DISBARMENT**

[State Bar Nos. 20-1169, 20-1685,
20-1867]

FILED JANAURY 26, 2021

This matter came for hearing before the hearing panel which rendered its decision on January 7, 2021 and ordered the disbarment of Cole D. Sorenson. No notice of appeal or request for stay was filed under Rule 59, Ariz. R. Sup. Ct., and the time now having expired, and no objection to the State Bar's Statement of Costs and Expenses having been filed,

IT IS ORDERED Respondent **COLE D. SORENSON, Bar No. 013097** is disbarred from the State Bar of Arizona and his name is stricken from the roll of lawyers, effective January 7, 2021 as set forth in the Panel's Decision and Order Imposing Sanctions. Mr. Sorenson 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 Mr. Sorenson shall comply with the requirements relating to notification of clients and others and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED Mr. Sorenson shall pay restitution to Kipling Tracy in the amount of \$115,000.00.

IT IS FURTHER ORDERED Mr. Sorenson shall pay the costs and expenses of the State Bar of Arizona in the amount of \$2,000.00 pursuant to Rule 60(b), Ariz. R. Sup. Ct. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

DATED this 26th day of January 2021.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 26th day of January 2021 to:

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

Cole D. Sorenson
1419 N. 3rd Street
Phoenix, AZ 85004-1699
Email: cole@cds-law.com
Respondent

by: MSmith

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**COLE D. SORENSON,
Bar No. 013097**

Respondent.

PDJ 2020-9096

**DECISION AND ORDER
IMPOSING SANCTIONS**

State Bar Nos. 20-1169, 20-1685 and
20-1867

FILED JANUARY 7, 2021

SUMMARY

In multiple counts, Mr. Sorenson failed to adequately communicate and diligently represent clients. He retained client settlement funds and converted funds for his own benefit. Mr. Sorenson further failed to respond to the State Bar's investigation and failed to notify clients of his suspension. Mr. Sorenson violated Rule 42, Ariz. R. Sup. Ct., ERs 1,2, 1.3, 1.4, 1.16, 1.5(a), 3.2, 8.1(b), 8.4(d), and Rules 54(d) and 72.

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on October 15, 2020. On October 20, 2020, the complaint was served on Mr. Sorenson by certified, delivery restricted mail, and by regular first-class mail, under Rules 47(c) and 58(a)

(2), Ariz. R. Sup. Ct. The State Bar also personally served the Complaint upon an individual at Mr. Sorenson's last known business address of record.

The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. Effective entry of default was entered against Mr. Sorenson given his failure to file an answer or otherwise defend even after notice of the default was sent to him. The Chief Justice by Administrative Order authorized and directed the use of technologies to eliminate or limit in-person contact in the conduct of court proceedings. Because of COVID-19 concerns, the hearing proceeded telephonically.

The morning of the hearing, the acting Disciplinary Clerk emailed Mr. Sorenson approximately 45 minutes before the hearing commenced, asking him if there was a contact number he preferred be used. There was no response. Mr. Sorenson was called at his phone number of record to begin the hearing. An individual answered and stated she was forwarding the call to him. It went immediately to voice mail. The Disciplinary clerk left a voice message. The hearing proceeded. No return call or responsive email was received.

An audio recorded telephonic aggravation/mitigation hearing of approximately 30 minutes was heard on January 7, 2021. The Hearing Panel comprised voluntary attorney member, James M. Marovich, volunteer public member, Howard Weiske, and Presiding Disciplinary Judge William J. O'Neil. Each received upon appointment the complaint, the proposed exhibits, and a proposed

form of decision filed by the State Bar. That proposed form of decision was reviewed and modified by the Presiding Disciplinary Judge and sent to the hearing panel members for comments or edits on January 4, 2021.

The State Bar was represented by Senior Bar Counsel Craig D. Henley. Mr. Sorenson did not appear. Exhibits 1-19 were admitted. At the hearing, Mr. Henley explained the unsuccessful efforts made to locate Mr. Sorenson. At the conclusion of the hearing the panel members agreed with the recommendation of the State Bar and the proposed decision as amended by the PDJ was adopted.

FINDINGS OF FACT

The facts listed below are quoted from the SBA's complaint and deemed admitted by Mr. Sorenson's default or supported by the exhibits. Where inconsequential allegations contradict the objective exhibits, we rely on those exhibits.¹

GENERAL ALLEGATIONS

1. At all times relevant, Mr. Sorenson was a lawyer licensed to practice law in the State of Arizona since June 26, 1990.

2. On February 24, 2020, the State Bar initiated the discipline case of *In re: Cole D. Sorenson*, PDJ 2020-9014 [SB19-2933].

¹ The hearing panel independently determined whether the facts as alleged and deemed admitted were violations of the rules alleged in Complaint allegations 28, 43, and 53.

3. On April 15, 2020, the disciplinary clerk entered a default against Mr. Sorenson in *In re: Cole D. Sorenson*, PDJ 2020-9014 [SB19-2933] and scheduled an aggravation/mitigation hearing for April 28, 2020.

4. On April 28, 2020, a duly empaneled hearing panel held an aggravation/mitigation hearing in *In re: Cole D. Sorenson*, PDJ 2020-9014 [SB19-2933]. Mr. Sorenson appeared telephonically on his own behalf.

5. By order dated May 20, 2020, Mr. Sorenson was suspended from the practice of law for three years, effective May 28, 2020 *In re: Cole D. Sorenson*, PDJ 2020-9014 [SB19-2933].

COUNT ONE (File No. 20-1169/Forschler)

6. The State Bar incorporates the prior paragraphs by reference.

7. In 2016, Ann Forschler hired Mr. Sorenson to represent her husband Howard regarding a personal injury claim.

8. On August 30, 2018, Mr. Sorenson initiated the Mohave County Superior Court case of *Forschler v. Rookies, LLC*, CV2018-01068.

9. On November 22, 2019, the Defendants made an offer of judgment for \$16,000.00.

10. While Mr. Sorenson did inform the Forschlers about the offer of judgment, it was only to inform them that he had already rejected it.

11. In or around October 2019, the defendants propounded certain discovery requests including, but not limited to, interrogatories, requests for admission, requests for production and later three notices of deposition.

12. Mr. Sorenson sent the discovery requests to the Forschlers who returned them to Mr. Sorenson the next morning.

13. On or about November 25, 2019, Mr. Sorenson called the Forschlers informing them that he would be in town to prepare for the deposition the following day. Mr. Sorenson called later that night and informed them that the deposition was cancelled by the defendants.

14. That phone call was the last time the Forschlers heard from Mr. Sorenson. [Ex. 8.]

15. On January 23, 2020, the Mr. Sorenson appeared at a scheduled status conference. The court set another status conference for May 22, 2020.

16. On March 23, 2020, the defendants filed a motion to dismiss for failure to prosecute or, alternatively, to compel the Forscher's deposition and preclude undisclosed evidence. [Ex. 3.] Defendant cited Mr. Sorenson's failure to respond to certain discovery requests, his unilateral last-minute cancellations of a noticed deposition on three separate occasions and his untimely responses to the request for admission.

17. Specifically, the defendants stated that Mr. Sorenson called them on November 25th to request that the parties reschedule the November 26, 2020 deposition so that his clients could consider the offer of judgment.

18. Defendants further stated in the motion that, when Mr. Sorenson failed to cooperate with getting the deposition rescheduled, they noticed the rescheduled deposition without Mr. Sorenson's input for January 17, 2020. The motion explains that, on January 15, 2020, the defendants received a call from the court reporter stating that Mr. Sorenson cancelled the deposition again.

19. Finally, defendants stated that Mr. Sorenson failed to respond to any subsequent attempts to reschedule the deposition causing the defendants to send a third notice setting the deposition on March 12, 2020.

20. On March 11, 2020, Mr. Sorenson e-mailed the defendants cancelling the deposition.

21. Mr. Sorenson failed to respond to the March 23rd motion to dismiss and the court waited approximately 35 days before ruling.

22. On April 30, 2020, the court dismissed the personal injury case for failure to prosecute stating, in pertinent part, "Plaintiff's conduct reflects an ongoing failure to comply with the Arizona Rules of Civil Procedure....Despite repeated requests, Plaintiff has either cancelled depositions the day before they were scheduled or outright ignored Defendant's efforts to secure his testimony. Plaintiff

similarly failed to adhere to Rules 33 and 34 when he did not submit responses to Defendant's Uniform Interrogatories and Defendant's Requests for Production...Plaintiff did not comply with Defendant's Requests for Admission until fifty-six (56) days past the deadline to respond." [Ex. 7.]

23. Mr. Sorenson failed to inform the Forschlers of the motion to dismiss or adverse ruling.

24. After the Court informed the Forschlers that the lawsuit was dismissed, the Forschlers called Mr. Sorenson twice a week before e-mailing him a letter twice a month requesting contact. Mr. Sorenson failed to respond to all of the Forscher's requests or inform them of his anticipated suspension from the practice of law.

25. Mr. Sorenson failed to inform the Forschlers of his suspension or return the client file.

26. On May 27, 2020, the State Bar e-mailed Mr. Sorenson an initial screening letter to his e-mail of record with the State Bar requesting a written response within twenty (20) days. The letter reminded Mr. Sorenson of his duty to cooperate and informed him that failure to cooperate is, in itself, grounds for discipline pursuant to Rule 42, Ariz. R. Sup. Ct., ER 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct.

27. The e-mail was not returned as undeliverable and, to date, Mr. Sorenson has failed to contact the State Bar.

28. By engaging in the above-described conduct, all of which is incorporated by reference, Mr. Sorenson violated the following ethical rules:

- a. Rule 42, Ariz. R. Sup. Ct.:
 - ER 1.2 by failing to act within the client’s authority regarding the representation;
 - ER 1.3 by failing to act diligently during the representation;
 - ER 1.4 by failing to reasonably communicate with the client;
 - ER 1.16(d) by failing to take steps reasonably practicable to protect a client’s interests;
 - ER 3.2 by failing to expedite litigation;
 - ER 8.1(b) by failing to respond to a lawful demand for information from the discipline authority;
 - ER 8.4(d) by engaging in conduct prejudicial to the administration of justice;
- b. Rule 54(d), Ariz. R. Sup. Ct. by failing to furnish information or promptly respond to any inquiry or request from bar counsel; and
- c. Rule 72, Ariz. R. Sup. Ct. by failing to notify his client of his suspension from the practice of law.

COUNT TWO (File No. 20-1685/Drain)

29. The State Bar incorporates the prior paragraphs by reference.

30. In September 2017, Kayla Drain retained Mr. Sorenson for personal injury claims arising out of a car accident with a drunk driver. [Ex. 11.]

31. During the initial phase of the representation, Ms. Drain states that Mr. Sorenson frequently informed her that he would not discuss settlement until he obtained all of her medical records and had a final total of the medical bills.

32. When asked later, Mr. Sorenson would be unable to provide specific information regarding the status of the case but would frequently assure Ms. Drain that he was not considering any settlement offers.

33. On May 11, 2020, Ms. Drain received a letter from her health insurance company.

34. She immediately called Mr. Sorenson regarding the letter and was told that “[h]e has my money in his trust fund” and that he “dropped the ball entirely”. Mr. Sorenson also stated “[t]his is completely his fault and to send him all the information and he will get this taken care of and handled as it should have been done already.”

35. Mr. Sorenson referenced a \$15k payment from the insurance company but did not know how much he purportedly placed in his trust account.

36. Ms. Drain hired successor counsel and determined for the first time that her claims were settled with both her insurance company and the opposing party’s insurance company for a total of \$30K.

37. After three months of unsuccessful attempts to contact Mr. Sorenson, Ms. Drain visited the State Bar website and discovered for the first time that Mr. Sorenson was suspended from the practice of law.

38. Mr. Sorenson failed to communicate with Ms. Drain or return file.

39. A review of the Maricopa County Superior Court online records reflects that no lawsuit was filed on Ms. Drain's behalf.

40. On August 28, 2020, the State Bar e-mailed Mr. Sorenson an initial screening letter to his e-mail of record with the State Bar requesting a written response within twenty (20) days. The letter reminded Mr. Sorenson of his duty to cooperate and informed him that failure to cooperate is, in itself, grounds for discipline pursuant to Rule 42, Ariz. R. Sup. Ct., ER 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct.

41. The State Bar has not received electronic notification that the e-mail was undeliverable.

42. To date, Mr. Sorenson has failed to respond to the State Bar.

43. By engaging in the above-described conduct, all of which is incorporated by reference, Mr. Sorenson violated the following ethical rules:

a. Rule 42, Ariz. R. Sup. Ct.:

- ER 1.2 by failing to act within the client's authority regarding the representation;
- ER 1.3 by failing to act diligently during the representation;
- ER 1.4 by failing to reasonably communicate with the client;
- ER 1.16(d) by failing to take steps reasonably practicable to protect a client's interests;

- ER 8.1(b) by failing to respond to a lawful demand for information from the discipline authority;
 - ER 8.4(d) by engaging in conduct prejudicial to the administration of justice;
- b. Rule 54(d), Ariz. R. Sup. Ct. by failing to furnish information or promptly respond to any inquiry or request from bar counsel; and
- c. Rule 72, Ariz. R. Sup. Ct. by failing to notify his client of his suspension from the practice of law.

COUNT THREE (File No. 20-1867/Tracy)

44. The State Bar incorporates the prior paragraphs by reference.

45. In February 2019, Veronica Tracy and her husband retained Mr. Sorenson for a workman's compensation claim. [Ex. 13.]

46. After unsuccessfully attempting to contact Mr. Sorenson for months, Ms. Tracy was contacted by the workman's compensation representative who indicated that they were unable to contact Mr. Sorenson.

47. The representative informed Ms. Tracy that Mr. Sorenson settled the underlying claims on September 19, 2019 with the covering insurance companies for a total of \$115,000.00. To date, Ms. Tracy did not receive any portion of the settlement funds. [Exs. 15, 16, and 17.]

48. Mr. Sorenson made the Progressive settlement without Ms. Tracy's knowledge or consent and has not contacted her since 2019.

49. Mr. Sorenson did not advise Ms. Tracy of his suspension from the practice of law. Ms. Tracy discovered this information on her own.

50. On August 27, 2020 at 2:55 pm, the State Bar e-mailed Mr. Sorenson an initial screening letter to his e-mail of record with the State Bar requesting a written response within twenty (20) days. The letter reminded Mr. Sorenson of his duty to cooperate and informed him that failure to cooperate is, in itself, grounds for discipline pursuant to Rule 42, Ariz. R. Sup. Ct., ER 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct.

51. The State Bar received electronic confirmation that the e-mail was opened that same day at 5:33 pm.

52. To date, Mr. Sorenson has failed to respond to the State Bar.

53. By engaging in the above-described conduct, all of which is incorporated by reference, Mr. Sorenson violated the following ethical rules:

a. Rule 42, Ariz. R. Sup. Ct.:

- ER 1.2 by failing to act within the client's authority regarding the representation;
- ER 1.3 by failing to act diligently during the representation;
- ER 1.4 by failing to reasonably communicate with the client;
- ER 1.5(a) by collecting and retaining an unreasonable fee;
- ER 1.16(d) by failing to take steps reasonably practicable to protect a client's interests;
- ER 3.2 by failing to expedite litigation;
- ER 8.1(b) by failing to respond to a lawful demand for information from the discipline authority;
- ER 8.4(d) by engaging in conduct prejudicial to the administration of justice;

- b. Rule 54(d), Ariz. R. Sup. Ct. by failing to furnish information or promptly respond to any inquiry or request from bar counsel; and
- c. Rule 72, Ariz. R. Sup. Ct. by failing to notify his client of his suspension from the practice of law.

CONCLUSIONS OF LAW

The allegations are deemed admitted by default and the exhibits support the findings of unethical conduct. The Hearing Panel finds by clear and convincing evidence that under Rule 42, Ariz. R. Sup. Ct., Mr. Sorenson violated:

COUNT ONE:

- a. Rule 42, Ariz. R. Sup. Ct.:
 - ER 1.2 by failing to act within the client's authority regarding the representation;
 - ER 1.3 by failing to act diligently during the representation;
 - ER 1.4 by failing to reasonably communicate with the client;
 - ER 1.16(d) by failing to take steps reasonably practicable to protect a client's interests;
 - ER 3.2 by failing to expedite litigation;
 - ER 8.1(b) by failing to respond to a lawful demand for information from the discipline authority;
 - ER 8.4(d) by engaging in conduct prejudicial to the administration of justice;
- b. Rule 54(d), Ariz. R. Sup. Ct. by failing to furnish information or promptly respond to any inquiry or request from bar counsel; and
- c. Rule 72, Ariz. R. Sup. Ct. by failing to notify his client of his suspension from the practice of law.

COUNT TWO:

a. Rule 42, Ariz. R. Sup. Ct.:

- ER 1.2 by failing to act within the client's authority regarding the representation;
- ER 1.3 by failing to act diligently during the representation;
- ER 1.4 by failing to reasonably communicate with the client;
- ER 1.16(d) by failing to take steps reasonably practicable to protect a client's interests;
- ER 8.1(b) by failing to respond to a lawful demand for information from the discipline authority;
- ER 8.4(d) by engaging in conduct prejudicial to the administration of justice;

b. Rule 54(d), Ariz. R. Sup. Ct. by failing to furnish information or promptly respond to any inquiry or request from bar counsel; and

c. Rule 72, Ariz. R. Sup. Ct. by failing to notify his client of his suspension from the practice of law.

COUNT THREE:

a. Rule 42, Ariz. R. Sup. Ct.:

- ER 1.2 by failing to act within the client's authority regarding the representation;
- ER 1.3 by failing to act diligently during the representation;
- ER 1.4 by failing to reasonably communicate with the client;
- ER 1.5(a) by collecting and retaining an unreasonable fee;
- ER 1.16(d) by failing to take steps reasonably practicable to protect a client's interests;
- ER 3.2 by failing to expedite litigation;

- ER 8.1(b) by failing to respond to a lawful demand for information from the discipline authority;
 - ER 8.4(d) by engaging in conduct prejudicial to the administration of justice;
- b. Rule 54(d), Ariz. R. Sup. Ct. by failing to furnish information or promptly respond to any inquiry or request from bar counsel; and
- c. Rule 72, Ariz. R. Sup. Ct. by failing to notify his client of his suspension from the practice of law.

ABA STANDARDS ANALYSIS

The American Bar Association’s *Standards for Imposing Lawyer Sanctions* (“*Standards*”) are a “useful tool in determining the proper sanction.” *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, these factors were considered: (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:

Mr. Sorenson violated his duty to his clients, the legal system, the public and his duty owed as a professional by knowingly violating the above-referenced ethical rules.

Mental State and Injury:

Mr. Sorenson knowingly violated his duty to clients, deceived them, and caused serious injury to his clients implicating the following *ABA Standards*:

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

Standard 4.41

Disbarment is generally appropriate when:

(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.

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

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.

Rule 42, Ariz. R. Sup. Ct., ER 1.16, Rule 54, Ariz. R. Sup. Ct. and Rule 72, Ariz. R. Sup. Ct.:

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.

Rule 42, Ariz. R. Sup. Ct., ER 3.2:

Standard 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.

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

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.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds these aggravating factors:

1. 9.22(a) prior disciplinary offenses;
2. 9.22(b) dishonest or selfish motive;
3. 9.22(c) a pattern of misconduct;
4. 9.22(d) multiple offenses;
5. 9.22(h) vulnerability of victim;
6. 9.22(i) substantial experience in the practice of law; and
7. 9.22(j) indifference to making restitution.

8. We decline to find aggravating factor 9.22(e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;

Mr. Sorenson submitted no mitigating factors.

The Hearing Panel finds that Disbarment is appropriate.

CONCLUSION

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.’” *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

Now Therefore,

IT IS ORDERED:

- a) **COLE D. SORENSON, Bar No. 013097** is disbarred, effective immediately.
- b) Mr. Sorenson shall pay the following restitution:
 - i. \$115,000.00 to Veronica Tracy in Count Three.

c) Mr. Sorenson shall pay all costs and expenses incurred by the SBA.

A final judgment and order will follow.

DATED this 7th day of January 2021.

Signature on File

William J. O'Neil, Presiding Disciplinary Judge

Signature on File

James M. Marovich, Volunteer Attorney Member

Signature on File

Howard Weiske, Volunteer Attorney Member

Copy of the foregoing emailed
this 7th day of January, 2021, to:

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

Cole D. Sorenson
1419 N. 3rd Street
Phoenix, AZ 85004-1699
Email: cole@cds-law.com
Respondent

by: MSmith