SUPREME COURT OF ARIZONA

In the Matter of a Member of the State Bar of Arizona	)	Arizona Supreme Court No. SB-20-0017-AP
MARK LEE WILLIAMS, Attorney No. 22096	)	Office of the Presiding Disciplinary Judge No. PDJ20199058
Respondent.	)	
	)	**FILED 03/03/2021**

DECISION ORDER

Pursuant to Rule 59, Rules of the Supreme Court, Respondent Mark Lee Williams appealed the hearing panel's decision and sanction suspending him for six months and one day. The Court has considered the parties' briefs and the record in this matter.

In disciplinary appeals, we accept the panel's factual findings unless they are not supported by reasonable evidence and are clearly erroneous. *In re Alexander*, 232 Ariz. 1, 5 ¶ 11 (2013). Conclusions of law are reviewed de novo. Rule 59(j). We review the imposed sanction de novo as a question of law. *In re Isler*, 233 Ariz. 534, 541 ¶ 39 (2014).

First, Respondent argues that he was denied due process in the discipline proceedings because the complaint failed to give fair notice of the conduct and charges. Due process in an attorney discipline proceeding requires "fair notice of the charges and a meaningful opportunity to defend against them." *In re Aubuchon*, 233 Ariz. 62, 65 ¶ 7 (2013); *In re Peasley,* 208 Ariz. 27, 34 ¶ 26 (2004). On these facts, Respondent has not demonstrated that he was denied fair notice of the charges.

The allegations in the Complaint are straightforward and, except for the ER 1.4 charge, it is clear which facts relate to which charged ethical rule. Respondent is correct that ER 1.4 has several subparts, and the Complaint did not specify which subpart Respondent was alleged to have violated. This deficiency, however, did not deny Respondent due process or cause him prejudice. In prehearing memoranda, the State Bar consistently described Respondent's alleged misconduct as failing to keep his client "reasonably informed about the status of the matter." This requirement appears in ER 1.4(a)(3). Respondent does not allege that he was unaware of the specific charge and did not file a motion challenging the sufficiency of the Complaint. While the Complaint could have been more specific,

Respondent has not demonstrated that he was denied fair notice of the charges or that he suffered any prejudice.

Second, Respondent argues the panel made clearly erroneous findings regarding the facts of the case, pointing to evidence he presented that conflicted with the panel's determinations. In reviewing the panel's factual findings, the Court does not reweigh conflicting evidence. *In re Isler*, 233 Ariz. at 716 ¶ 17. Except for the findings discussed below, the Court rejects Respondent's challenges to the panel's findings. The record provides clear and convincing evidence that Respondent failed to properly communicate with his client about disclosure requirements and that he failed to timely inform his client about the outcome of the appeal. Further, the evidence establishes that Respondent failed to provide competent representation by raising a frivolous argument on appeal. This conduct negatively impacted his client and the courts. Accordingly, the Court accepts the panel's findings that Respondent's conduct violated ERs 1.1. 1.3, 1.4(a)(3), 3.1, 3.4(c), and 8.4(d).

We agree with Respondent that certain findings or conclusions of the panel were "unsupported by any reasonable evidence." *In re Van Dox*, 214 Ariz. 300, 304 ¶ 15 (2007). We reject the panel's finding that the Court of Appeals "deemed all arguments on appeal waived." Decision and Order Imposing Sanctions, p. 2. The Court of Appeals reviewed on the merits the issue of whether the law of Mexico should apply to the determination of spousal maintenance; the issue was not considered waived. We also reject the panel's conclusion that Respondent engaged in unethical conduct by copying large portions of the trial transcript into his opening brief or by failing to strictly comply with Rule 13(a)(7), Arizona Rules of Civil Appellate Procedure. While Respondent's briefing does not represent best practices, it does not rise to the level of professional misconduct. Finally, we reject the panel's finding that the awards of attorney fees pursuant to A.R.S. § 25-324 were imposed as sanctions. But the trial court and Court of Appeals clearly considered the conduct and unreasonable positions taken on behalf of the client during the proceedings in awarding fees. It is not clear on these facts, however, that the awards were imposed as a sanction. *See Quijada v. Quijada*, 246 Ariz. 217, 222 ¶ 17 (App. 2019) (fee-shifting provisions of A.R.S. § 25-324 are intended to ensure that the poorer party has the proper means to litigate the action, not to punish the litigants).

The panel's mistakes made concerning these findings, however, do not compel us to vacate the panel's finding that Respondent's conduct violated the above-listed ethical rules. The argument concerning the law of Mexico's application to reduce the spousal maintenance award had no supporting authority and did not explain why existing

authority should logically extend to embrace Respondent's argument. The unreasonableness of this position undoubtedly contributed to the lower courts' decisions to award attorney fees against Respondent's client. *See* § 25-324 (authorizing an award of fees if appropriate "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings").

With respect to the appropriate sanction, we agree with the panel that suspension is the presumptive sanction. Respondent repeatedly failed to communicate with his client, resulting in the failure to comply with the disclosure requirements. This conduct negatively impacted the client and the courts. Under ABA Standard 4.42(b), suspension is the presumptive sanction when "a lawyer engages in a pattern of neglect and causes injury or potential injury to a client." Respondent's recent past disciplinary violations also counsel suspension. With one exception, the Court accepts the panel's findings in aggravation and mitigation. We reject the panel's finding that Respondent had a dishonest or selfish motive to "conceal" the Court of Appeals decision. The record supports a finding that Respondent did not timely inform the client of the Court of Appeals decision. There is no evidence, however, that Respondent concealed the information from the client, or that his delay was intended to or did benefit himself.

The panel imposed a suspension of six months and one day. The State Bar, however, recommended a thirty-day suspension and a period of probation including supervision by the Law Office Management Assistance Program (LOMAP). The Court finds that a thirty-day suspension is appropriate on these facts. Further, Respondent would benefit from LOMAP oversight during a period of probation. Accordingly,

IT IS ORDERED granting the appeal.

IT IS FURTHER ORDERED modifying the sanction to reflect a thirty-day suspension, effective thirty days from the date of this order.

IT IS FURTHER ORDERED that, effective the date of this order, Respondent is placed on probation for two years under the following terms and conditions:

1) Within thirty days of this order, Respondent must contact the Compliance Monitor at the State Bar and submit to a LOMAP assessment, as necessary. Respondent shall enter into a LOMAP contract based on the recommendations following any assessment.

Respondent shall be responsible for any costs associated with LOMAP.

2) The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5)(C), and a hearing may be held within thirty days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent must comply with all applicable provisions of Rule 72 and shall promptly inform this Court and the Disciplinary Clerk of his compliance with this Order as provided in Rule 72(e).

IT IS FURTHER ORDERED that Respondent shall be assessed the costs and expenses of the disciplinary proceedings as provided in Rule 60(b)(2)(B).

IT IS FURTHER ORDERED denying the Request to Take Judicial Notice and the Request for Oral Argument.

DATED this 3rd day of March, 2021.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

TO:
Mark Lee Williams
Hunter F Perlmeter
Susan Hunt
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Mary Pieper
Raziel Atienza
Lexis Nexis

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **MARK LEE WILLIAMS,** **Bar No. 022096** Respondent.	**PDJ 2019-9058** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar No.18-2955] **FILED FEBRUARY 27, 2020**

I. SUMMARY

Mark Lee Williams was licensed to practice law in the State of Arizona on November 24, 2003. He represented Mr. Jesus Emilio Garcia ("Client") in his divorce case at both the trial and appellate level.

Rule 49 of the Arizona Rules of Family Law Procedure require each party to complete an Affidavit of Financial Information within a set time frame. Mr. Williams never provided Client with any date to complete that form and replied "No" when Client asked whether it was time sensitive. The pretrial statement with the required Financial Affidavit was never filed. The trial court sanctioned Client for this and other disclosure violations.

The trial court's final decision awarded spousal maintenance to Client's ex-wife. Client was frustrated with the trial court's ruling and sanctions. Mr. Williams

advised Client about appealing the trial court's decision. Mr. Williams did not inform Client that there was little legal or practical chance of success on appeal. Instead he touted his own experience and skill at handling appeals. Mr. Williams filed an opening brief with the Arizona Court of Appeals. He failed to cite any relevant legal or factual authority to support his arguments. He cut and pasted large portions of the trial transcript directly into the statement of facts. The Court of Appeals rejected Mr. Williams's arguments and deemed all arguments on appeal waived. The Court of Appeals ordered Client to pay his ex-wife's attorney fees and costs for the appeal.

Mr. Williams did not inform Client of the Court of Appeals' decision; instead, Client learned of the decision on his own, nearly a month after the decision issued. Client made multiple failed attempts to communicate with Mr. Williams. Mr. Williams was non-responsive. Client initiated a bar charge against Mr. Williams.

This matter proceeded to a contested hearing before the Hearing Panel ("Panel"). Presiding Disciplinary Judge William J. O'Neil ("PDJ") was joined by volunteer attorney member Ralph Wexler and volunteer public member W. Keith Turner. Hunter F. Perlmeter represented the State Bar of Arizona. Mr. Williams appeared *pro se*. Various exhibits were admitted into evidence during the hearing. (Exs. 1, 2, 7–12, 18, 21, 26).

We find by clear and convincing evidence that Mark Lee Williams violated ERs 1.1, 1.3, 1.4, 3.1. 3.4(c), and 8.4(d). Based on the allegations and Mr. Williams's representation of himself at the hearing, the Panel determined a six (6) month and one (1) day suspension is appropriate.

II. FINDINGS OF FACT

1. Mr. Williams is a lawyer licensed to practice law in Arizona having been first admitted to practice on November 24, 2003. (Joint Prehearing Statement ("JPS") at ¶ 1.)

2. Mr. Williams has a prior attorney disciplinary offense. On December 20, 2013, Mr. Williams was admonished and placed on probation by the Attorney Discipline Probable Cause Committee for violating Ethical Rule ("ER") 1.1 (competence), ER 1.3 (diligence), ER 1.5 (retaining an unreasonable fee), ER 1.15(d) (refusing to provide accounting or refund), ER 1.16(d) (failing to protect his client's interest upon termination), and ER 8.4(d) (conduct prejudicial to the administration of justice). (Ex. 11.) That conduct is substantially similar to the violations we find here.

3. Client is an immigrant and the complainant. English is not his first language. (Hr'g Tr. 1/15/2020, beginning at 9:34:00 a.m. and 3:44:26 p.m.)

4. Client hired Mr. Williams in July of 2016 for representation in his divorce. (JPS at ¶ 2.)

5. Mr. Williams never explained the duties and obligation imposed upon his client by the applicable rules. Instead, on September 23, 2016, Mr. Williams emailed Client a blank copy of the Affidavit of Financial Information ("AFL") to complete and a photocopy of Rule 49 of the Rules of Family Law Procedure ("RFLP") ("Rule 49"). (Ex. 12, at 000130-000149.)

6. In the same email, Mr. Williams attached a copy of a letter he sent to the attorney for Client's ex-wife. The letter stated that if the attorney did not provide interrogatories and Rule 49 disclosures, he would request "appropriate sanctions." (Ex. 12, at 000150.) Mr. Williams testified that this letter was how he informed his Client that sanctions could issue against him if he failed to make timely disclosures.

7. On September 28, 2016, Client emailed Mr. Williams and asked if completing the forms was "time sensitive." (Ex. 10, at 000122.) Mr. Williams replied, "No." (Ex. 10, at 000122.)

8. Mr. Williams did not respond to his Client when on September 28, 2016, Client emailed Mr. Williams and asked to meet to "discuss some of [his] answers" to the forms. (Ex. 10, at 000122.)

9. Mr. Williams did not respond to his Client when on October 5, 2016, Client again emailed Mr. Williams and asked when they could meet. (Ex. 10, at 000122.)

10. Mr. Williams did not respond to his Client when on October 19, 2016, Client emailed Mr. Williams informing him that he had attached the partially complete forms and stated ". . .if you need something (sic) more just tell me. . ." (Ex. 10, at 000121.)

11. Mr. Williams did not respond to his Client when on November 9, 2016, Client emailed Mr. Williams asking if there "…was any news about this?, did you need something else from me?..." Instead, Mr. Williams sent Client an email intended for a different client which stated, "I spoke to Michael Vaughan in person yesterday and he is going to contact Jessica Mendez to speak to your ex and meet with your child. He told me he has spoken to you several times." (Ex. 10, at 000121.)

12. Mr. Williams did not respond to his Client when Client informed him that he did not know who the people referenced in the email were. (Ex. 10, at 000121.) In his testimony Mr. Williams admitted this email was "accidentally sent" and had nothing to do with Client's case. (Resp't Mem., at 4.) When Mr. Williams was informed of his error he made no effort to explain this error or respond to Client's questions that gave rise to his misdirected email.

13. Mr. Williams did not respond to his Client when Client on November 14, 2016, emailed Mr. Williams asking, "Hi Mark, any comments?" (Ex. 10, at 000121.)

14. On December 28, 2017, the Judge issued Temporary Orders in Client's case and awarded Client's ex-wife spousal maintenance. (Ex. 3, at 000049-50.)

15. The Judge found no response to the Emergency Petition for Order to Show Cause Re: Temporary Orders had been filed on behalf of Respondent. The Judge found that there was no Financial Affidavit filed on behalf of Client or otherwise timely compliance with the disclosure requirements of Rule 48, RFLP by Respondent. (Id.) The Judge found there had been no response filed on behalf of Client to the Wife's Pre-Trial Statement. The Judge found there had been no pre-trial statement filed on behalf of Respondent. The Judge found an untimely request for findings of fact and conclusions of law had been filed on behalf of Client after the hearing had concluded. (Id.) *See* Rule 82(A) RFLP.

16. In the Final Orders, the court likewise noted that Client "did not file a Financial Affidavit or otherwise timely comply with disclosure requirements of Rule 49." (Ex. 6, at 000084-85.) (emphasis omitted). The court sanctioned Client and required him to pay his ex-wife $2,500. (Ex. 6, at 000084-85.)

17. Mr. Williams in his answer in this proceeding affirmatively denied that such an Affidavit of Financial Information "was to be filed with the Court." (Answer, para. 3 Pg. 2.) This is untrue. Rule 76(C)(1) RFLP mandated that

Mr. Williams as attorney for Respondent file a pretrial statement. We accept the Court's finding that no pretrial statement was filed on behalf of Client.

18. Rule 76(C)(2)(a) required that Mr. Williams "file with the joint or separate pretrial statement" the AFL or a comprehensive statement of income substantially to it. Likewise, Rule 49(A) requires that affidavit to be disclosed and served within 40 days of the filing of a response to the initial petition for dissolution. Mr. Williams not only filed no AFL or comprehensive statement of income substantially to it he also failed to disclose the AFL.

19. Mr. Williams knew he had not served or filed any Financial Affidavit or pretrial statement and acknowledges he did not try to protect his client. Instead he blame-shifted to his client.

20. Client did not understand the reasoning for the judgment and was not happy with the sanction or the trial court's award of spousal maintenance, so Mr. Williams and Client discussed appealing the trial court's decision. (Hr'g Tr., beginning at 9:54:10 a.m.) Mr. Williams failed to inform Client of the lack of legal support for the arguments they sought to make. (Hr'g Tr., beginning at 9:54:10 a.m.) Instead he touted his experience as an appellate lawyer and his success on appeals.

21. On February 8, 2018, Mr. Williams filed an Opening Brief with the Court of Appeals. (Ex. 7.) Over fourteen pages of the Statement of Facts were an

unedited copy of portions of the trial transcript which he generally stated were "important." (Ex. 7, at 000090 and generally 000089-104.)

22. Rule 13 of the Rules of Civil Appellate Procedure required Mr. Williams for "each contention" to include "citations of legal authorities and appropriate references to the portions of the record" on which he relied. He did not do so.

23. The Opening Brief asserted that the trial court abused its discretion by "consider[ing] the length of time the parties were married and living--and intending to reside-in Mexico" when determining spousal maintenance. (Ex. 7, at 000107-108.) Mr. Williams failed to cite relevant legal authority to support this argument. (Ex. 7, at 000107-108.)

24. Instead, to support his arguments, Mr. Williams described hypothetical scenarios involving couples who lived outside of the United States for a majority of their marriages but then divorced after living in the United States for one year. (Ex. 7, at 000108-109.)

25. Mr. Williams also stated that "[i]t is believed that it was the intention of the Arizona legislature in considering an award of spousal maintenance (it was assumed) that the parties lived married all their lived in the United States." (Ex. 7, at 000109.) Mr. Williams included no citations to support this assertion. (Ex. 7, at 000109.)

26. On August 31, 2018, the Court of Appeals issued a decision. (Ex. 8, at 000112.) The decision rejected Mr. Williams's arguments and found that the trial "court's findings of fact and conclusions of law were appropriate." (Ex. 8, at 000116.)

27. The decision also found that Mr. Williams,

> …failed to develop any legal argument to support his position. He also failed to include appropriate citations to the record or relevant legal authority. The same can be said about his [other] arguments . . . . We therefore conclude all these claims are waived or abandoned on appeal and do not address them further. *See* (Ex. 8, at 000116 and Answer admitting paragraph 8 of the Complaint accurately quotes the Court of Appeals Decision.)

28. Because of these foundational procedural failures by Mr. Williams resulting in the waiver or abandonment of such claims, the court ordered Client to pay his ex-wife's attorney fees and taxable costs of $11,870.00. (Ex. 8, at 000116; Ex. 9, at 000118.) Mr. Williams failed to notify Client regarding the outcome of the appeal. (Hr'g Tr., beginning at 9:59:20 a.m.)

29. On September 28, 2018, Client learned on his own that he had lost his appeal and owed attorney fees and costs. (Hr'g Tr., beginning at 9:59:20 a.m.)

30. On the same day, Client texted Mr. Williams that he had "a couple questions" and asked to meet that day. (Ex. 1, at 000003.) Mr. Williams replied that he could not meet that day because he had "too much going on." (Ex. 1, at 000004.)

31. Mr. Williams and Client struggled to find a time to meet due to conflicting schedules; however, on October 1, 2018, Mr. Williams texted that he would "be busy until about 7pm and can meet in person for a short conversation." (Ex. 1, at 000004-17.)

32. On October 1, 2018 at 7:06 p.m., Client texted Mr. Williams that he was heading to Mr. Williams's office. Mr. Williams replied, "No do not come i [sic] am not ready for you." (Ex. 1, at 000019-20.) In the hearing Mr. Williams testified he refused to meet with him because he felt pressured.

33. After Client expressed frustration regarding Mr. Williams's inability to meet with him, Mr. Williams texted that he would "text tomorrow when i [sic] am ready to meet." (Ex. 1, at 000020-26.) The next day, Mr. Williams texted Client that he "worked late today and didnt [sic] have time to meet." (Ex. 1, at 000026.)

34. On October 4, 2018, Client initiated a bar charge against Mr. Williams. (State Bar's Pre-Hr'g Mem. 8.)

35. On October 5, 2018, the State Bar contacted Mr. Williams regarding Client's complaint. (Hr'g Tr., beginning at 1:28:40 p.m.) Mr. Williams told intake counsel that he believed he had mailed a letter to Client regarding the Court of Appeals decision. (Hr'g Tr., beginning at 1:28:40 p.m.) We find he mailed no copy of the opinion until after the State Bar contacted him. That day Mr. Williams for the first time notified his client of the decision by mailing Client a copy of the Court of Appeals decision and informing him that he had moved for an extension of time to file a Petition for Review with the Arizona Supreme Court. (Ex. 26, at 000192-200.)

III. ANALYSIS

A. Jurisdiction

The Judiciary has authority over the practice of law. *In re Creasy*, 198 Ariz. 539, 541 (Ariz. 2000). Specifically, Supreme Court Rule 31(a) states that "[a]ny person or entity engaged in the practice of law . . . is subject to this court's jurisdiction." Rule 31(a), Ariz. R. Sup. Ct. The Supreme Court delegates jurisdiction over disciplinary matters to the Panel. Rules 51-52, Ariz. R. Sup. Ct.

B. State Bar's Allegations and Conclusions of Law

The State Bar must prove each allegation of professional misconduct by clear and convincing evidence. Rule 48(d), Ariz. R. Sup. Ct. Applying the required standard of proof, the Panel reaches the following conclusion on each allegation:

ER 1.1 (competence). ER 1.1 provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

The State Bar alleges that Mr. Williams representation of Client at the appellate level was not competent. Specifically, the State Bar argues that Mr. Williams "failed to reasonably cite to the record and failed to make arguments supported by law." (State Bar Pre-Hr'g Mem. 9.) Mr. Williams' "statement of facts . . . was simply a 14-page cut and paste of a trial transcript." (State Bar Pre-Hr'g Mem. 9.)

"Neither failure to achieve a successful result nor mere negligence in the handling of a case will necessarily constitute an ER 1.1 violation." *In re Curtis*, 184 Ariz. 256, 261 (Ariz. 1995). Mr. Williams counters that Client is looking for someone to blame because he did not get a successful result. (Hr'g Tr., beginning at 3:55:09 p.m.) However, at the hearing, the Panel found Client a reliable witness but did not find Mr. Williams a reliable witness. The evidence shows that Mr. Williams'

briefing precluded even a consideration of the issues and assured an unsuccessful result. The Court of Appeals specifically noted that Mr. Williams

> failed to develop any legal argument to support his position. He also failed to include appropriate citations to the record or relevant legal authority. The same can be said about his [other] arguments . . . . We therefore conclude all these claims are waived or abandoned on appeal and do not address them further.

(Ex. 8, at 000116.) At the hearing, Mr. Williams argued that the State Bar's interpretation of the decision was incorrect. (Hr'g Tr., beginning at 2:25:10 p.m.).

This Panel substantially tried to understand his alternative interpretation of the appellate result of his making which we find to be clear misconduct. At times it seemed Mr. Williams argued that the waiver was intentional or agreed upon by the parties. However, the decision speaks for itself. Mr. Williams' inability to provide evidentiary support for whatever his alternative interpretation is, was starkly like his appellate work for Client. It gave us serious concern for his competence and concerns for the protection of the public.

His appellate brief and the decision that followed are strong evidence to support the State Bar's arguments and Mr. Williams failed to offer anything that we could discern that explained what are unequivocal failings by him. *See In re Aubuchon*, 233 Ariz. 62, 64-65 (2013), *as amended* (Oct. 25, 2013) ("We have done our best to discern and address Aubuchon's arguments, but we consider waived those

arguments not supported by adequate explanation, citations to the record, or authority.")

Mr. Williams' legal argument comprises hypotheticals and unsupported speculation about legislative intent. (Ex. 7, at 000107-10, ¶¶41-44.). Most of the argument lacks any citations to legal authority. (Ex. 7, at 000107-10, ¶¶37-46.) As found by the Court of Appeals, the argument section of his brief contains no references to any portion of the record. Mr. Williams speculated what the trial court "appeared to find," "discussed," and "did not find" and what his client testified about, but with no citations to the record. (Ex. 7, at 000107, ¶¶33-35, 39.)

Legal citation is "absolutely necessary." Peter W. Martin, Introduction to Basic Legal Citation, LEGAL INFORMATION INSTITUTE (2019), https://www.law.cornell.edu/citation/1-200. Advancing a legal argument without any legal authority amounts to more than negligence and demonstrates a lack of competence. This is compounded by the fact that Mr. Williams still does not seem to understand the Court of Appeals ruling, which resulted in waiver.

Mr. Williams' statement of facts section also raises concerns. It is compounded by his lack of legal authority or arguments. Copying large portions of the trial transcript appears to us to be nothing but the shortchanging of his Client rather than the more labor-intensive work of presenting the court with specific, relevant sections of the record that he touted to his client he could do. This implicates

the "thoroughness" required for competent representation. A deliberate choice to include cut and pasted fourteen pages of a transcript in a brief without no citation to any portion of it, constitutes more than a negligent mistake. It demonstrates a lack of competence.

ER 1.3 (diligence). ER 1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

The State Bar alleges that Mr. Williams violated ER 1.3 in multiple ways including failing to respond to his client, failure to comply with the trial court's disclosure deadlines, to adequately brief the appeal, and to notify his client of the Court of Appeals decision. (State Bar Pre-Hr'g Mem. 9.)

Mr. Williams failed to respond to Client's emails regarding the disclosure deadlines. He explicitly ignored him. Mr. Williams was not a credible witness. He did not provide reliable evidence that he had affirmatively attempted to ensure Client met the disclosure requirements beyond the initial email. As Comment 3 to ER 1.3 explains, "[a] client's interests often can be adversely affected by the passage of time." Client was ultimately sanctioned because of the disclosure violations. This demonstrates a lack of diligence, which was compounded by the lack of communication. It is even more troubling that this absence of communication consistently occurred throughout the representation as discussed below.

Mr. Williams' briefing lacked citations and relevant legal authority. Large portions of the statement of facts were copied and pasted. Both factors demonstrate a lack of adequate preparation or thoroughness. *See In re Wolfram*, 174 Ariz 49 (holding that "a lack of diligence by failing to adequately prepare for the criminal trial" violates ER 1.3). The Panel therefore finds that Mr. Williams' inadequate briefing shows a lack of diligence.

Comment 3 to ER 1.3 states: "unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness." Mr. Williams did not notify Client of the adverse result and did not mail the decision until after being contacted by the State Bar. In the hearing, Client stated that his experience with Mr. Williams caused him to lose confidence in his lawyer and Arizona lawyers in general. (Hr'g Tr., beginning at 10:08:00 a.m.) Prompt communication regarding updates in the case likely would have minimized the disappointment Client felt. Mr. Williams failure to notify Client of the result shows a lack of diligence.

ER 1.4 (communication). A lawyer shall "keep the client reasonably informed about the status of the matter," "promptly comply with reasonable requests for information," and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

Mr. Williams violated ER 1.4 by failing to inform his client about the disclosure deadline for the trial court, failing to communicate about a potential need

for an extension of the disclosure deadline, and failing to inform his client about the Court of Appeals decision. (State Bar Pre-Hr'g Mem. 9.) ER 1.4 creates an affirmative duty to keep clients advised of important aspects of the matter they have entrusted to the lawyer to handle. *See In re Cardenas*, 164 Ariz. 149 (1990).

In response to allegations that he failed to provide information regarding disclosure deadlines, Mr. Williams argues that he emailed a copy of Rule 49, which governs the deadline, to his client. (Hr'g Tr., beginning at 3:55:20 p.m.) Mr. Williams also argues that Client was on notice of the risks of failing to comply with disclosure deadlines because he emailed Client a copy of an email he sent to opposing counsel threatening sanctions if opposing counsel did not comply. (Hr'g Tr., beginning at 3:55:20 p.m.)

We find this nonsensical. These attachments do not equate to "explain[ing] the matter to his client so that decisions, vital to his client, could be intelligently made." *In re Cardenas*, 164 Ariz. 149, 151 (Ariz. 1990). Nor is such an argument a defense to his disinclination to communicate with his client. Especially considering that Client's first language is not English, an attachment of a complicated rule in an email does not qualify as adequate explanation. *See* ER 1.4 cmt. 5 ("Adequacy of communication depends in part on the kind of advice or assistance that is involved.")

Mr. William's conduct constitutes a failure under ER 1.4(b) to explain a matter to the extent reasonably necessary to permit the client to make informed

decisions regarding representation. *Comment*, AZ-ER 1.4 ¶ 5. There was no adequate communication with the client as Client's repeated requests for clarification clearly and conclusively establish the violation. ER 1.4(a)(4) requires a lawyer to "promptly comply with reasonable requests for information." The Panel finds that Client made repeated requests to understand the disclosure requirements. (Ex. 10, at 000121-122.) Mr. Williams both failed to provide his client with a deadline and more information about how to complete the forms or completely failed to respond. (Ex. 10, at 000121-122.)

In response to the allegation that he failed to inform his client about the Court of Appeals decision, we disregard Mr. Williams claims that Client indicated that he had found out about the decision and that they had discussed it over the phone. (Hr'g Tr., beginning at 3:48:50 p.m.) Client testified that he learned about the decision on his own nearly a month after the decision issued. (Hr'g Tr., beginning at 9:59:20 a.m.) The Panel found Client's testimony to be credible especially considering that Mr. Williams initially claimed to the State Bar that he had written his client providing him a copy when the opinion issued.

ER 1.4(a)(3) requires a lawyer to keep the client reasonably informed about the status of the matter. This includes "significant developments affecting the timing or the substance of the representation" ER 1.4 cmt. 3. A court's decision, especially one requiring a client to pay thousands of dollars to the opposing side, qualifies as a

significant development affecting the substance of the representation. *See In re Kaplan*, 179 Ariz. 175, 176-77 (Ariz. 1994) (holding that failing to "adequately communicate with the Client during the pendency of his lawsuit . . . [and] to notify the Client the case was dismissed" could support an ER 1.4 violation). A decision from a court should be shared promptly with a client to ensure the possibility of appeal. Mr. Williams violated ER 1.4(b) and (a)(4) by failing to provide Client with adequate information about disclosure requirements and failing to respond to requests for clarification. The Panel also finds that Mr. Williams violated ER 1.4(a)(3) by failing to timely provide Client with information regarding the Court of Appeals decision.

ER 3.1 (unmeritorious claims). ER 3.1 provides that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith and nonfrivolous argument for an extension, modification or reversal of existing law." The 2003 amendment to this Rule added the requirements of both "good faith" and "law and fact." These impose an ethical mandate on the lawyer to independently verify the facts and law before advancing such an argument. As the Court of Appeals ruled, Mr. Williams abused the process and thereby failed to use the legal process to the fullest advantage of his client.

When assessing potential violations of ER 3.1, the Panel applies an objective standard to determine whether an argument is frivolous. *Matter of Levine*, 174 Ariz.

146, 152-53 (Ariz. 1993). Although the lawyer must have knowingly violated ER 3.1, "knowledge can be inferred from the frivolousness of a claim." *In re Alexander*, 232 Ariz. 1, 5 (Ariz. 2013).

The evidence is clear that Mr. Williams made frivolous arguments to the Court of Appeals because he "provided no legal authority" to support his argument that Mexican law should apply or to support his "speculat[ions] about legislative intent." (State Bar Pre-Hr'g Mem. 9.) The Court of Appeals found that Mr. Williams "failed to include appropriate citations to the record or relevant legal authority." (Ex. 8, at 000116.) Mr. Williams claimed belief that the issue was a matter of statewide importance is washed away with his lack of effort to research and failure to offer any relevant support for his claimed belief. (Ex. 7, at 000107-109.) An argument is frivolous if the lawyer "is unable to . . . support the action taken by a good faith argument for an extension, modification or reversal of existing law." ER 3.1 cmt. 2. Similarly, Mr. Williams defended the lack of citations by emphasizing that it was a case of first impression. This argument does not explain the lack of legal research or legal rationale included in the brief. Regardless, his argument only increases his duty to inform Client of the argument's low likelihood of success, which we find he failed to do.

Mr. Williams argues that the Court of Appeals did not find the arguments to be frivolous (Hr'g Tr., beginning at 4:00:45 p.m.) and did not sanction him (Hr'g

Tr., beginning at 4:03:40 p.m.). At the hearing, Mr. Williams argued for an alternative interpretation of the Court of Appeals decision. (Hr'g Tr., beginning at 2:25:10 p.m.). This Panel has made substantial efforts to understand these arguments, but Mr. Williams did not provide the panel with citations or other evidence to clarify his interpretation.

The objective record which includes the Court of Appeals decision is coupled Mr. Williams' inability to clarify the alternative interpretation he advanced. We find clear and convincing evidence of the violation. *See In re Aubuchon,* 233 Ariz. 62, 64-65 (2013), *as amended* (Oct. 25, 2013) ("We have done our best to discern and address Aubuchon's arguments, but we consider waived those arguments not supported by adequate explanation, citations to the record, or authority.")

Throughout the hearing, Mr. Williams emphasized that it was the position his client wanted to advance. Mr. Williams stated, "Client was the one who wanted to . . . make this argument on appeal." (Hr'g Tr., beginning at 3:54:50 p.m.) The Panel recognizes a lawyer's responsibility to "use legal procedure for the fullest benefit of the client's cause." ER 3.1 cmt. 2. However, the Preface to the Rules of Profession Conduct recognizes that "difficult ethical problems arise from the conflict between a lawyer's responsibilities to clients [and] to the legal system."

As ER 3.1 demonstrates, a lawyer is not permitted to advance every argument a client may wish to make. Instead, the lawyer must independently "determine that

they can make good faith and nonfrivolous arguments in support of their clients' positions." ER 3.1 cmt. 2. This was further demonstrated when Mr. Williams acknowledged that "there wasn't much there." (Hr'g Tr., beginning at 4:03:40 p.m.).

Mr. Williams was first admitted to practice in 2003. JPS at ¶ 1. He described his considerable experience representing clients in "many different courts." (Hr'g Tr., beginning at 2:21:40 p.m.). The Panel finds that a lawyer with such experience "undoubtedly knew" that meritorious arguments must contain legal support beyond hypotheticals and speculation. *See In re Aubuchon,* 233 Ariz. at 72 (holding that a prosecutor with five years of experience knew how to support a complaint with an adequate probable cause statement and therefore knew the complaint was not supported by probable cause). It will remain unknown how the Client would have proceeded had Mr. Williams offered him competent representation. Mr. Williams violated ER 3.1.

ER 3.4(c) (knowing rule violation). ER 3.4(c) provides that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."

To find a violation of ER 3.4(c) requires that Mr. Williams must have "knowingly" violated the applicable rules. He violated the rules of the trial court and the appellate court. We recognize that if Mr. Williams should have known about the applicable rules but did not have actual knowledge, there is not a violation of ER

3.4(c). *In re Alexander*, 232 Ariz. 1, 10 (Ariz. 2013). The State Bar alleges that Mr. Williams knowingly did not comply with Rule 49 of the Rules of Family Law Procedure ("Rule 49") and Rule 13 of the Arizona Rules of Civil Appellate Procedure ("ARCAP 13"). The State Bar cites language in both the trial and appellate court decisions for support. (State Bar's Pre-Hr'g Mem. 4-5.) Mr. Williams is an experienced lawyer in both family court proceedings and appellate work by his own statements.

In the Judge's Final Orders, the court noted that Client "did not file a Financial Affidavit or otherwise timely comply with the disclosure requirements of Rule 49." (Ex. 6, at 000084-85.) Mr. Williams argued that he complied with the "***then existing*** applicable and relevant Rules of Family Law Procedure (including but not limited to Rule 47)." (Amended Joint Pre-Hr'g Statement 6.) Mr. Williams emphasized that Rule 47 and Rule 49 changed over time and that Rule 47 did not say Mr. Williams had to file an Affidavit of Financial Information. (Hr'g Tr., beginning at 1:58:10 p.m.)

Rule 47 was not explicitly mentioned in the trial court's order, and Mr. Williams failed to direct the Panel to a specific part of the rule or explain the relevance of Rule 47. The Panel reviewed the version of Rule 49 in effect in 2016 and found that it required an Affidavit of Financial Information to be included "[i]n

a case in which child support is an issue." Rule 49(C)(1), ARFLP (2016). Rule 76(C)(1) RFLP required it be filed.

Mr. Williams emailed his client a copy of an Affidavit of Financial Information to complete with a copy of Rule 49; therefore, his conduct indicates he knew of the rule. (Ex. 12, at 000130-000149.) Because Mr. Williams failed to provide the Panel with specific citations or relevant changes, the Panel made a good effort to find any other relevant rule changes but did not find any. *See In re Aubuchon*, 233 Ariz. at 72 (explaining that the Court tried to discern arguments but deemed arguments waived that are not "supported by adequate explanation, citations to the record, or authority"). The Panel finds that Mr. Williams knowingly violated the then-existing Rule 49 and 76.

When addressing Mr. Williams' argument that the trial court abused its discretion, the Court of Appeals decision stated that Mr. Williams "failed to include appropriate citations to the record or relevant legal authority" and deemed his arguments waived or abandoned. (Ex. 8, at 000116.) Arguments in briefs filed with the Court of Appeals must contain "citations to legal authorities and appropriate references to the portions of the record on which appellant relies." Rule 13(a)(7), Ariz. R. Civ. App. P ("ARCAP"); see Rule 59(h), Ariz. R. Sup.Ct. (requiring the content of briefs to conform to ARCAP 13).

"Failure to comply with a court order is the very heart of the subject misconduct." *Matter of Miranda,* 176 Ariz. 202 (1993). Miranda was hired to do an appeal. He failed to timely file it and his brief, like the brief of Williams, was deficient. He was suspended seven months.

Although Mr. Williams' brief refers to what the trial court "appeared to find," "discussed," and "did not find," the statements lack citations to the record. (Ex. 7, at 000107, ¶¶ 33-35.) The argument also describes testimony of his client with no citation to the record. (Ex. 7, at 000108, ¶ 39.) The majority of Mr. Williams' argument lacks any citations to legal authority. (Ex. 7, at 000107-10, ¶¶37-46.) The argument is supported with hypotheticals without reference to cases and speculation about legislative intent without citations to legislative history. (Ex. 7, at 000107-10, ¶¶ 41-44.) A lawyer is expected to know the rules of civil procedure.[1] Mr. Williams stated he has handled many divorce cases and "represented people in . . . many different courts" and therefore should be familiar with the rules. (Hr'g Tr., beginning at 2:21:42 p.m.) He told his client he was experienced in the handling of appeals.

The Panel finds that Mr. Williams knowingly violated Rule 49 and ARCAP 13 and therefore violated ER 3.4(c).

[1] ER 1.1 requires a lawyer to provide competent representation to the client, which includes the legal knowledge reasonably necessary for the representation. *See Toy v. Katz*, 192 Ariz. 73, 85 (App. 1997). To maintain the requisite knowledge, "a lawyer should keep abreast of changes in the law" to maintain the requisite knowledge. ER 1.1 cmt. 6. Such changes include the rules of civil procedure when engaging in civil litigation.

ER 8.4(d) (prejudicial to administration of justice). ER 8.4(d) provides that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice."

ER 8.4(d) only requires negligent conduct. *In re Alexander*, 232 Ariz. 1, 11 (Ariz. 2013). The State Bar alleges that Mr. Williams' conduct was prejudicial to the administration of justice in several regards. We agree. First, Mr. Williams failed to comply with Rule 49 and Rule 76 FLRP. Mr. Williams did not provide the information or clarifications that would have enabled Client to correctly complete the disclosure requirements of Rule 49. ((Ex. 10, at 000121-122.)

Mr. Williams' acted at least negligently when he failed to respond to Client's repeated requests for information and failed to affirmatively ensure compliance with Rule 49. Disclosure violations reduce the efficiency of the judicial system and lead to unnecessary disputes. His own client was harmed in the form of monetary sanctions due to the disclosure violations.

Second, the State Bar alleges that Mr. Williams advanced frivolous claims in his appeal. As discussed with ER 3.1, Mr. Williams filed inadequate briefing to support claims he knew were unmeritorious. This resulted in wasted court time and resources. Client had to pay his ex-wife's attorney fees and costs resulting from the appeal. Rather than counsel his client against the appeal or support the arguments with relevant authority, Mr. Williams filed an appeal with little chance of success.

Finally, Mr. Williams knowingly failed to inform his client about the adverse Court of Appeals decision. Because lawyers are expected to act with diligence, failure to inform a client of decisions is prejudicial to the administration of justice. Failing to notify a client of a decision reduces the time Client can decide his next steps, such as filing an appeal. The omission is likely to either reduce the client's confidence in the attorney, and potentially worse, may indicate a dishonest intention to hide the result. The Panel finds that Mr. Williams' conduct was prejudicial to the administration of justice.

C. Sanction *Standards*

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") are a "useful tool" to determine the appropriate sanction. *In re Cardenas*, 164 Ariz. 149, 152 (Ariz. 1990).

1. A violation of ER 1.1 implicates *Standard* 4.5, Lack of Competence.

Standard 4.52 provides that "[s]uspension 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." *Standard* 4.53 provides that "[r]eprimand is generally appropriate when a lawyer: (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to the client." Mr. Williams demonstrated a failure to either understand or follow the Court of Appeals' rules for filing; Mr. Williams's deficient briefing

caused the Court of Appeals to find the arguments abandoned or waived. This is entirely the failing of Mr. Williams, not the client.

Client was injured in the form of $11,780.00 in attorney fees and costs. *Standard* 4.53 is therefore relevant; however, Mr. Williams's conduct amounted to more than a failure to understand legal doctrines. Therefore, although *Standard* 4.52 is not directly on point because Mr. Williams claims to be experienced in appellate work, suspension is the appropriate sanction. Ultimately, Mr. Williams was not competent in representing Client on appeal, which resulted in injury to Client in the form of trial court and appellate court sanctions.

2. Violations of ER 1.3 and ER 1.4 implicate *Standard* 4.4, Lack of Diligence.

Standard 4.42(b) provides that "[s]uspension 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 the client." Mr. Williams repeatedly failed to communicate with Client. This prevented Client from meeting the trial court's disclosure requirements and resulted in Client being sanctioned. Mr. Williams also failed to communicate his belief that a successful appeal was unlikely, which would have prevented unnecessary costs. Mr. Williams's Opening Brief with the Court of

Appeals did not contain appropriate legal support, as required by the court rules. This resulted in waiver of the arguments and attorney fees and costs.

3. Violations of ER 3.1 and 3.4(c) implicate *Standard* 6.2, Abuse of the Legal Process. A violation of 8.4(d) implicates *Standard* 6.0, Violations of Duties Owed to Legal System.

Both *Standard* 6.0 and 6.2 implicate *Standard* 6.22, which provides that "[s]uspension is appropriate when a lawyer knows that he is violating a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding." Mr. Williams knew that his arguments to the Court of Appeals lacked any legal support. Mr. Williams is expected to know the Arizona Rules of Civil Appellate Procedure. *See supra* text accompanying note 1. Therefore, his failure to include citations constitutes knowingly violating a court rule. The lack of citations (which further highlighted the unmeritorious arguments) resulted in waiver of the arguments and ultimately caused injury to Client in the form of $11,780.00 in attorney fees and costs.

D. Aggravation, Mitigation, and Sanctions

Standard 3.0 directs the court to consider "the existence of aggravating or mitigating factors" when imposing a sanction for lawyer misconduct. The following aggravating and mitigating factors are implicated in this case:

1. *Standard* 9.22(a) Prior Disciplinary Offenses

Mr. Williams had a previous disciplinary offense in 2013 for violating Ethical Rules 1.1, 1.3, 1.5, 1.15(d), 1.16(d), and 8.4(d). (Ex. 11, 000124.) Despite this, Mr. Williams contends that *Standard* 9.32(a) (mitigation for an absence of prior disciplinary record) should apply because the prior offense involved a criminal case from 2008 or 2009 that included different allegations and issues. (Hr'g Tr., beginning at 4:08:35 p.m.)

In evaluating whether Mr. Williams has prior disciplinary offenses, the court does not require that the offenses result from the same circumstances or even the same misconduct. (These nuances are analyzed under *Standard* 9.22(c).) Instead, the court simply looks at whether there has been a prior disciplinary offense. *See Matter of Augenstein*, 178 Ariz. 133, 136-37 (Ariz. 1994) (finding a prior disciplinary record based on "2 additional instances of misconduct" without analyzing the circumstances or specific type of misconduct). Aggravating factor 9.22(a) therefore applies to any ethical violations.

2. *Standard* 9.22(b) Dishonest or Selfish Motive

Mr. Williams contends that *Standard* 9.32(b) (absence of dishonest or selfish motive) should apply because he was not paid for his services on appeal and is still owed money for his representation in the trial court; however, lack of payment is not a defense to failing to notify a client of an adverse ruling. Mr. Williams was paid

$5,500 in a divorce case in which he failed to file critical, required documents. His request for findings of fact were deficient because it was untimely.

Mr. Williams had a dishonest or selfish motive to conceal the Court of Appeals opinion because the adverse decision heavily criticized Mr. Williams' brief. *See In re Arrick*, 180 Ariz. 136, 143 (Ariz. 1994) (finding dishonest or selfish motives when attorney made misrepresentations to a client that were "designed to cover his negligence"). Aggravating factor 9.22(b) applies.

3. *Standard* 9.22(c) Pattern of Misconduct

Mr. Williams' misconduct in the present case was not the result of a single lapse in judgement, but rather a consistent lack of communication with and competent representation of his client. Mr. Williams has a previous disciplinary offense. In both the previous and present cases, Mr. Williams violated Ethical Rules 1.1, 1.3, and 8.4(d). This demonstrates a larger pattern of misconduct. *See In re Lincoln*, 165 Ariz. 233, 236 (Ariz. 1990) ("[R]espondent's history of disciplinary offenses shows a pattern of similar misconduct.") Aggravating factor 9.22(c) applies.

4. *Standard* 9.22(d) Multiple Offenses

Mr. Williams violated multiple Ethical Rules in the present case. He violated ethical rules in his trial court representation. He also violated ethical rules in his

appellate court representation. Aggravating factor 9.22(d) applies but is given no weight.?

5. *Standard* 9.22(g) Refusal to Acknowledge Wrongful Nature of Conduct

Although Mr. Williams describes himself as "imperfect," Mr. Williams does not acknowledge that any of his conduct was wrongful. Instead, Mr. Williams blame shifts to his Client, claiming he is looking for someone to blame because he did not get a successful result in his case. (Hr'g Tr., beginning at 3:55:09 p.m.) We find the opposite is true. Even when discussing these issues, he fails to see his shortfalls and breaches and instead swore that he will no longer accepts his clients' word and will keep better documentation. (Hr'g Tr., beginning at 3:46:30 p.m.) Neither of these changes if implemented would likely have prevented the misconduct at issue in this case. Both proposed changes blame-shift to the client. Blaming another is inconsistent with acknowledging one's own misconduct. Aggravating factor 9.22(g) applies.

6. *Standard* 9.22(h) Vulnerability of Victim

Client is an immigrant whose first language is not English. (Hr'g Tr. 1/15/2020, beginning at 9:34:00 a.m. and 3:44:26 p.m.) This made Client especially dependent on Mr. Williams' communications and explanations of an often-complicated legal process. *See In re Shannon*, 179 Ariz. 52, 69 (Ariz. 1994) (finding

that a victim's vulnerability turns on the situation rather than predetermined factors such as education or work experience). Aggravating factor 9.22(h) applies.

7. *Standard* 9.22(i) Substantial Experience in the Practice of Law

Mr. Williams has been licensed to practice law since 2003. Mr. Williams stated that he has "represented hundreds of clients." (Resp't Pre-Hr'g Mem. 15.) Aggravating factor 9.22(i) applies.

8. *Standard* 9.32(d) Timely good faith effort to make restitution or to rectify consequences of misconduct

Mr. Williams argued that moving to reconsider with the trial court and receiving an extension of time to file a Petition for Review with the Arizona Supreme Court constitute "timely efforts to protect" Client. (Resp't Pre-Hr'g Mem. 15.) Neither rectified the harm done to Client as a result of the misconduct. We find Mitigating factor 9.32(d) does not apply.

9. *Standard* 9.32(e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings

The Panel finds that Mr. Williams has timely and cooperatively participated in the proceedings. Mitigating factor 9.32(e) applies.

10. *Standard* 9.32(g) Character or reputation

Mr. Williams contends that he "enjoys a good reputation in the community." (Resp't Pre-Hr'g Mem. 16.) However, Mr. Williams offered only his self-serving

opinion of himself. There were no witnesses offered who could attest to the good character or reputation in the community that he claimed for himself. *See Matter of Murray*, 159 Ariz. 280, 283 (Ariz. 1988) (finding mitigation for Mr. Murray when "current and former employers have testified in support of his good character, reputation and professional competence"). Mitigating factor 9.32(g) does not apply.

11. *Standard* 9.32(j) Delay in disciplinary proceedings

Mr. Williams contends that because the State Bar filed no complaint until almost a year after receiving Client's complaint, *Standard* 9.32(j) should apply (Resp't Pre-Hr'g Mem. 16.); however, this is not an unreasonable delay that would have prejudiced Mr. Williams. The State Bar filed a complaint less than two months after the Probable Cause Order was issued. Mitigating factor 9.32(i) does not apply.

12. *Standard* 9.32(k) Imposition of other penalties or sanctions

Mr. Williams contends that *Standard* 9.32(k) should apply because he has spent time and money to "defend[] himself in these proceedings." (Resp't Pre-Hr'g Mem. 16.) Costs associated with defending disciplinary proceedings do not qualify as penalties or sanctions. *See In re Levine*, 174 Ariz. 146, 173 (Ariz. 1993) (finding mitigation when a court *imposes* sanctions and fees) (emphasis added). If defending disciplinary proceedings qualified as a sanction, mitigating factor 9.32(k) would always be applicable. Therefore, mitigating factor 9.32(k) does not apply.

13. *Standard* 9.32(l) Remorse

Mr. Williams maintains that he is remorseful. We find no objective evidence for this claim. Mr. Williams has never accepted responsibility for his actions or tried to remedy the harm done to Client. *See In re Augenstein*, 178 Ariz. 133, 137 (Ariz. 1994) ("[R]emorse must present a showing of more than having said they are sorry…. [T]he best evidence of genuine remorse is affirmative and, if necessary, creative efforts to make the injured client whole.") As discussed under *Standard* 9.22(g), Mr. Williams continues to shift the blame to his client. Blaming others is inconsistent with remorse. Mitigating factor 9.32(l) does not apply.

14. *Standard* 9.32(m) Remoteness of prior offenses

In 2013, Mr. Williams was admonished and placed on probation for a previous disciplinary offense. Mitigating factor 9.32(m) does not apply.

IV. CONCLUSION

"The purpose of professional discipline is to protect the public rather than to punish the attorney." *In re Schwartz*, 141 Ariz. 266, 277 (Ariz. 1984). Another goal of professional discipline is to "instill public confidence in the bar's integrity." *In re Horwitz*, 180 Ariz. 20, 29 (Ariz. 1994). Both goals were considered in this case.

Some of the same concerns that prompted this case also became apparent throughout the hearing and Mr. Williams' representation of himself. A disciplinary hearing is likely to be a stressful experience with significant professional ramifications; however, the Panel was troubled by Mr. Williams' lack of

preparedness. Mr. Williams repeatedly referenced documents not in evidence. The Panel frequently reminded Mr. Williams that he was repeating arguments. Mr. Williams also did not seem to understand the Court of Appeals ruling and continued to defend the decision to appeal. The Panel is troubled by these competence issues and the implications for the public. As his client testified to, Mr. Williams' conduct reduced his client's confidence not only in Mr. Williams but in all Arizona attorneys.

The hearing panel's concerns are multiple and none of them were adequately met by the arguments of Mr. Williams. We find these issues go far beyond competence issues. The hearing panel finds his conduct was such that Mr. Williams should be required to identify the weakness that caused these multiple failings and for the protection of the public clearly and convincingly demonstrate they have been overcome with sufficient safeguards to protect the public.

The Panel orders:

1. Mark Williams, Bar No. 022096, is suspended from the practice of law for six (6) months and one (1) day effective thirty (30) days from this order. As a condition of reinstatement, he must undergo a Member Assistance Program evaluation by Dr. Lett to aid in his identification of terms of probation sufficient to assure the protection of the public.

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

3. Mr. Williams shall pay all costs and expenses incurred by the State Bar of Arizona in this proceeding. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

A final judgement and order shall follow.

DATED this 27th day of February 2020.

William J. O'Neil
William J. O'Neil, Presiding Disciplinary Judge

Ralph Wexler
Ralph Wexler, Attorney Member

W. Keith Turner
W. Keith Turner, Public Member

Copy of the foregoing emailed
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