

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**JENNIFER MELISSA BROWN,
Bar No. 023602**

Respondent.

PDJ-2017-9066

**FINAL JUDGMENT AND
ORDER OF SUSPENSION**

[State Bar Nos. 16-2347 & 16-3566]

FILED NOVEMBER 29, 2017

The decision of the hearing panel was filed with the disciplinary clerk on November 7, 2017. The time for appeal has passed and no appeal has been filed.

Now Therefore,

IT IS ORDERED Respondent, **JENNIFER MELISSA BROWN, Bar No. 023602**, is suspended from the practice of law for two (2) years effective November 7, 2017.

IT IS FURTHER ORDERED Ms. Brown shall immediately 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 Ms. Brown shall pay \$1,400.00 plus interest at the legal rate to Barry Shalen.

IT IS FURTHER ORDERED Ms. Brown shall pay the State Bar's costs and

expenses in the amount of \$2,000.00. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

DATED this 29th day of November, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 29th day of November, 2017 to:

Jennifer Melissa Brown
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Respondent

Bradley F. Perry
Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
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Email: LRO@staff.azbar.org

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

JENNIFER MELISSA BROWN,
Bar No. 023602

Respondent.

PDJ 2017-9066

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar Nos. 16-2347, 16-3566]

FILED NOVEMBER 7, 2017

On August 14, 2017, the Hearing Panel, comprised of Judge Maurice Portley (retired), attorney member, Betty Jane Davies, public member, and the Presiding Disciplinary Judge, (“PDJ”), William J. O’Neil, held an aggravation/mitigation hearing. Bradley F. Perry appeared on behalf of the State Bar of Arizona. Ms. Brown did not appear. Exhibits 1-14 were admitted. At the conclusion of the hearing, the State Bar requested a two (2) year suspension and restitution.

I. PROCEDURAL HISTORY

The State Bar of Arizona (“SBA”) filed its Complaint on May 18, 2017. On May 22, 2017, the Complaint was served on Ms. Brown by certified, delivery restricted mail, as well as by regular first class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge (“PDJ”) was assigned to the matter. A notice of default was properly issued on June 20, 2017, given Ms.

Brown's failure to file an Answer or otherwise defend. Ms. Brown did not file an Answer or otherwise defend against the Complainant's allegations and default was properly entered on July 11, 2017, at which time a notice of aggravation and mitigation hearing was sent to all parties notifying them the aggravation mitigating hearing was scheduled for August 14, 2017, at the State Courts Building, 1501 West Washington Street, Phoenix, Arizona 85007-3231. On August 14, 2017, the Hearing Panel, duly impaneled, heard argument and considered evidence.

II. FINDINGS OF FACT

The facts stated below are those set forth in the State Bar's complaint and were deemed admitted by Ms. Brown's default. The allegations in the complaint are substantially supported by the 14 admitted exhibits.

A respondent against whom a default has been entered no longer has the right to litigate the merits of the factual allegations, but retains the right to appear and participate in the hearing that will determine the sanctions. Included with that right to appear is the right to testify and the right to cross-examine witnesses, in each instance only to establish facts related to aggravation and mitigation. Ms. Brown did not appear.

1. At all times relevant, Ms. Brown was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 3, 2005.

2. On March 22, 2017, Ms. Brown was suspended from the practice of law for two years after entry of default in PDJ 2016-9129.

COUNT ONE (File No. 16-2347/Shannon)

3. Heather Shannon hired Ms. Brown in June 2015, to represent her in a family court matter.

4. Beginning in July 2016, Ms. Shannon was unable to contact Ms. Brown. Ms. Shannon texted Ms. Brown and left voicemails on Ms. Brown's office phone and cell phone. Ms. Brown did not return the messages or texts.

5. During this period, Ms. Brown also failed to communicate with the opposing party who attempted to contact Ms. Brown to resolve issues in the case. Ms. Brown did not return any of the opposing party's communications.

6. On August 4, 2016, Ms. Shannon filed a "Motion For Emergency Removal of Petitioner's Counsel" so she could file *pro per* pleadings. [Exhibit 3.]

7. On August 8, 2016, Ms. Brown filed a Motion to Withdraw, stating "Counsel has been experiencing serious health issues which have rendered her unable to continue as counsel in this matter." The Court granted withdrawal on August 11, 2016.

8. The State Bar sent Ms. Brown a screening letter via mail and email on September 30, 2016, requesting a response by October 20, 2016. On October 27, 2016, the State Bar granted a 10-day courtesy extension via mail and email resetting

the response deadline to November 7, 2016. Ms. Brown failed to provide a response.
[Exhibits 3& 4.]

9. Ms. Brown's conduct in this count violates Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.16, 3.2, 8.1(b), and Rule 54(d), Ariz. R. Sup. Ct.

COUNT TWO (File No. 16-3566/Shalen)

10. Barry Shalen hired Ms. Brown in late 2014 or early 2015 to draft a post-nuptial agreement in preparation for Mr. Shalen's divorce. Mr. Shalen paid Ms. Brown \$1,400.00 for her services. [Exhibits 1 & 14.]

11. Mr. and Mrs. Shalen met with Ms. Brown two times. First, to discuss the issues to be memorialized in the agreement. Second, to review and finalize the terms of the agreement. [Exhibit 14.]

12. Following the second meeting, Ms. Brown was to draft the agreement and provide it to Mr. and Mrs. Shalen for execution. [Exhibit 14.]

13. Ms. Brown failed to draft the agreement and never contacted Mr. and Mrs. Shalen again. Ms. Brown vacated her rented office space, did not leave any forwarding contact information, and stopped answering emails and phone calls. [Exhibit 14.]

14. Mr. Shalen attempted to locate Ms. Brown but was unable to do so. [Exhibit 14.]

15. Mr. Shalen filed a Bar complaint against Ms. Brown in October 2016. The State Bar mailed and emailed Ms. Brown an initial screening letter on October 28, 2016, requesting a response by November 17, 2016. Ms. Brown failed to respond. On November 23, 2016, the State Bar mailed and emailed Ms. Brown a letter providing a 10-day courtesy extension. Ms. Brown failed to respond. [Exhibits 3, 4, 5, & 6.]

16. Ms. Brown's conduct in this count violates Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5, 8.1(b), 8.4(d), and Rule 54(d), Ariz. R. Sup. Ct.

III. CONCLUSIONS OF LAW

Ms. Brown failed to file an Answer or otherwise defend against the allegations in the SBA's Complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Although the allegations are deemed admitted by default, there has also been an independent determination by the Hearing Panel that the State Bar has proven by clear and convincing evidence that respondent violated the ethical rules.

Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Ms. Brown violated the following: Rule 42 Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5, 1.16, 3.2, 8.1(b), 8.4(d), and Rule 54(d) Ariz. R. Sup. Ct.

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, the following factors should be 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:

Ms. Brown violated her duty to her clients by violating ERs 1.3, 1.4, and 1.5. Ms. Brown violated her duty to the legal system by violating ER 3.2. Ms. Brown also violated her duty owed as a professional by violating ERs 8.1(b) and 8.4(d), as well as Rule 54(d).

Mental State and Injury:

Ms. Brown violated her duty to clients, thereby implicating *Standard 4.4*. *Standard 4.42* states:

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.

In this matter, Ms. Brown knowingly failed to perform services for clients and engaged in a pattern of neglect of client matters, all of which caused injury to clients. Therefore, *Standard 4.42* is applicable.

Ms. Brown also violated her duty owed as a professional, which implicates *Standard 7.0*. *Standard 7.1* states, “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 potentially serious injury to a client, the public, or the legal system.” *Standard 7.2* states, “Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.”

Ms. Brown failed to substantively respond to the SBA’s investigation. There is no evidence that Ms. Brown’s actions were undertaken with the intent to obtain personal benefit, therefore *Standard 7.2*, is applicable.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors are present in this matter:

- *Standard 9.22(c)* – Pattern of Misconduct.
- *Standard 9.22(e)* – Bad faith obstruction of the disciplinary process.
- *Standard 9.22(h)* – Vulnerability of the victim.

- *Standard 9.22(j)* – Indifference to making restitution.

The Hearing Panel finds the following mitigating factor applies:

- *Standard 9.32(b)* – Absence of dishonest or selfish motive.

The Hearing Panel finds the mitigating factors do not outweigh the aggravating factors, therefore, suspension is appropriate.

PROPORTIONALITY

In the past, the Supreme Court has consulted similar cases in an attempt to assess the proportionality of the sanction recommended. *See In re Struthers*, 179 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept or proportionality review is “an imperfect process.” *In re Owens*, 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases “are ever alike.” *Id.*

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *See In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In *In re Chang*, PDJ 2013-9083 (2013), is instructive, and the respondent was suspended for two years and ordered to pay restitution for violations of Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2(a), ER 1.3, ER 1.4(a)(2), (3) & (4), ER 1.5(a), ER 1.15(d), ER 1.16(d), ER 3.2, ER 3.4(c), ER 8.1(b), and ER 8.4(d), and Rules 32(c)(3), 54(c), and 54(d)(1) and (2), Ariz. R. Sup. Ct.

In *Chang*, Mr. Chang, in one case, failed to provide his client with copies of court orders, failed to respond to his client's numerous requests for information, and failed to keep his client reasonably informed about the status of his case. Mr. Chang failed to adequately represent his client in a post-conviction-relief proceeding and failed to help his client prepare a pro se petition, as ordered by the court. Mr. Chang failed, at the conclusion of representation, to promptly deliver a copy of his entire file to his client.

Regarding a second client, Mr. Chang failed to timely file an opening brief, failed to adequately communicate with his client, failed to respond to his client's attempts to communicate with him, and failed to keep him reasonably informed about the status of his case. Mr. Chang charged or collected an unreasonable amount for expenses, stopped representing his client without notice, and failed to promptly deliver his file to his client or his subsequent counsel.

Mr. Chang failed to respond to some requests for information and documents during the State Bar's investigation and failed to report a current address to the State

Bar within 30 days of the effective date of his address change. In addition, Mr. Chang failed to file an Answer to the State Bar's Complaint, which resulted in the entry of default.

The Court found the following aggravating factors: dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, vulnerability of the victims, substantial experience in the practice of law, and the following mitigating factors: absence of a prior disciplinary record, personal, or emotional problems, and remorse.

This case is similar to *Chang*, in that in all of the cases involved abandoned clients, actual injury to the client, and failure to cooperate with the State Bar.

IV. 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).

The Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the appropriate sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. Based upon the above, the Hearing Panel orders as follows:

1. Ms. Brown shall be suspended from the practice of law for two (2) years effective immediately.
2. Ms. Brown shall pay all costs and expenses incurred by the SBA. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings
3. Ms. Brown shall pay \$1,400.00 in restitution to Barry Shalen.

A final judgment and order will follow.

DATED this 7th day of November, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Betty Jane Davies

Betty Jane Davies, Volunteer Public Member

Maurice Portley

**Judge Maurice Portley (ret.), Volunteer
Attorney Member**

Copy of the foregoing mailed/mailed
this 7th day of November, 2017, to:

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Respondent

Bradley F. Perry
Bar Counsel
State Bar of Arizona
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Email: LRO@staff.azbar.org

by: AMcQueen

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAY 18 2017

FILED

BY



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BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**JENNIFER MELISSA BROWN,
Bar No. 023602,**

Respondent.

PDJ 2017-9066

COMPLAINT

[State Bar No. 16-2347; 16-3566]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 3, 2005.
2. On March 22, 2017, Respondent was suspended from the practice of law for two years after entry of default in PDJ 2016-9129.

COUNT ONE (File No. 16-2347/Shannon)

3. Heather Shannon hired Respondent in June 2015, to represent her in a family court matter.

4. Beginning in July 2016, Ms. Shannon was unable to contact Respondent. Ms. Shannon texted Respondent and left voicemails on Respondent's office phone and cell phone. Respondent did not return the messages or texts.

5. During this period, Respondent also failed to communicate with the opposing party who attempted to contact Respondent to resolve issues in the case. Respondent did not return any of the opposing party's communications.

6. On August 4, 2016, Ms. Shannon filed a "Motion For Emergency Removal of Petitioner's Counsel" so she could file *pro per* pleadings.

7. On August 8, 2016, Respondent filed a Motion to Withdraw, stating "Counsel has been experiencing serious health issues which have rendered her unable to continue as counsel in this matter." The Court granted withdrawal on August 11, 2016.

8. The State Bar sent Respondent a screening letter via mail and email on September 30, 2016, requesting a response by October 20, 2016. On October 27,

2016, the State Bar granted a 10-day courtesy extension via mail and email resetting the response deadline to November 7, 2016. Respondent failed to provide a response.

9. Respondent's conduct in this count violates Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.16, 3.2, 8.1(b), and Rule 54(d), Ariz. R. Sup. Ct.

COUNT TWO (File No. 16-3566/Shalen)

10. Barry Shalen hired Respondent in January or February 2015 to draft a post-nuptial agreement in preparation for Mr. Shalen's divorce. Mr. Shalen paid Respondent \$1,400.00 for her services.

11. Mr. and Mrs. Shalen met with Respondent two times. First, to discuss the issues to be memorialized in the agreement. Second, to review and finalize the terms of the agreement.

12. Following the second meeting, Respondent was to draft the agreement and provide it to Mr. and Mrs. Shalen for execution.

13. Respondent failed to draft the agreement and never contacted Mr. and Mrs. Shalen again. Respondent vacated her rented office space, did not leave any forwarding contact information, and stopped answering emails and phone calls.

14. Mr. Shalen attempted to locate Respondent but was unable to do so.

15. Mr. Shalen filed a Bar complaint against Respondent in October 2016. The State Bar mailed and emailed Respondent an initial screening letter on October 28, 2016, requesting a response by November 17, 2016. Respondent failed to respond. On November 23, 2016, the State Bar mailed and emailed Respondent a letter providing a 10-day courtesy extension. Respondent failed to respond.

16. Respondent's conduct in this count violates Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5, 8.1(b), 8.4(d), and Rule 54(d), Ariz. R. Sup. Ct.

DATED this 18th day of May, 2017.

STATE BAR OF ARIZONA



Bradley F. Perry
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 18th day of May, 2017.

by: 

FILED

JAN 31 2017

BY *[Signature]*

**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

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

**JENNIFER MELISSA BROWN,
Bar No. 023602,**

Respondent.

No. 16-2347

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on January 13, 2017, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2347.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 31 day of January, 2017.

[Signature]

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee member Ben Harrison did not participate in this matter.

Original filed this 31st day
of January, 2017, with:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 1st day
of February, 2017, to:

Jennifer Melissa Brown
Brown Legal Group, PC
4625 South Lakeshore Drive
Tempe, Arizona 85282-7127
Respondent

Copy emailed this 1st day
of February, 2017, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
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State Bar of Arizona
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by: 

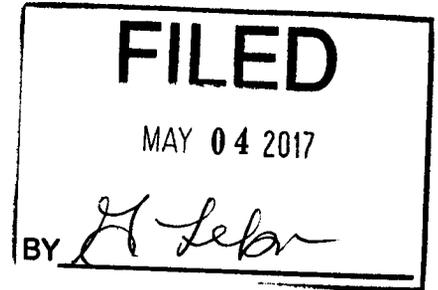
BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA

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

JENNIFER MELISSA BROWN
Bar No. 023602

Respondent.

No. 16-3566



PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 7, 2017, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-3566.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 3rd day of May, 2017.

A handwritten signature in cursive script that reads "Lawrence F. Winthrop".

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

Original filed this 4th day
of May, 2017 with:

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of May, 2017, to:

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Respondent

and alternative address:

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Copy emailed this 5th day
of May, 2017, to:

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by:

