

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**EDWARD D. FITZHUGH,
Bar No. 007138**

Respondent.

No. PDJ-2016-9042

**FINAL JUDGMENT AND ORDER
OF DISBARMENT**

[State Bar Nos. 13-1280, 13-2331,
15-1142, & 15-2476]

FILED SEPTEMBER 12, 2016

This matter was heard by the Hearing Panel, which rendered its Decision and Order on August 12, 2016. An appeal has been filed and any assessment of costs shall be determined in accordance with Rule 60(b), Ariz.R.Sup.Ct. The Hearing Panel declined to issue a stay of its Decision and Order.

Now Therefore,

IT IS ORDERED Respondent, **EDWARD D. FITZHUGH, Bar No. 007138**, is disbarred from the State Bar of Arizona and his name is stricken from the roll of lawyers effective September 12, 2016, as set forth in the Decision and Order Imposing Sanctions of the Hearing Panel. Mr. Fitzhugh 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. Fitzhugh 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.

DATED this 12th day of September, 2016.

William J. O'Neil

Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 12th day of September, 2016, to:

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**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar Nos. 13-1280, 13-2331,
15-1142, & 15-2476]

FILED AUGUST 12, 2016

The State Bar of Arizona ("SBA") filed its complaint on April 29, 2016. On May 2, 2016, the complaint was served on Respondent, Edward Fitzhugh, by certified, delivery restricted mail, and by regular first class mail, under Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. On May 31, 2016, default was entered and a notice of default was sent to Mr. Fitzhugh by the disciplinary clerk, under Rule 58(d), Ariz. R. Sup. Ct.

After that default was entered Mr. Fitzhugh moved for extension of time to file a responsive pleading on June 6, 2016. On June 7, 2016, the PDJ extended the effective entry date of the default, effectively granting Mr. Fitzhugh until June 23, 2016 to file his answer. The June 7, 2016 order of the PDJ cautioned Mr. Fitzhugh,

Mr. Fitzhugh is cautioned that if effective entry of default under Supreme Court Rule 58 is entered, the allegations in the complaint "shall be deemed admitted" and the effective entry of default "shall not be set aside except in cases where such relief would be warranted under Rule 60(c), Ariz.R.Civ.P." Under Supreme Court Rule 58 upon effective entry of default the presiding disciplinary judge shall schedule an aggravation/mitigation hearing before the hearing panel not less than fifteen (15) days from the service of notice on the parties. Mr. Fitzhugh is strongly encouraged to govern himself accordingly.

In addition, the order reminded the parties,

The parties are reminded the Disciplinary Clerk Office is not an "e-file" Court. No electronic pleadings shall be filed with the Disciplinary Clerk by any party. The parties are reminded all pleadings must be paper documents with an original "wet" signature to be accepted for filing by the Disciplinary Clerk.

Despite the cautionary language within the order of the PDJ, Mr. Fitzhugh did not timely file an answer with the court and default was effective on June 23, 2016. Under Rule 58(d), Ariz. R. Sup. Ct., the allegations in a formal complaint are deemed admitted if the respondent lawyer fails to file an answer and a default is entered. See also, *In Re Lincoln*, 165 Ariz. 233, 798 P.2d 371 (1990).

On June 27, 2016, Mr. Fitzhugh moved to file his answer, "out of time" acknowledging that he knew it had not been timely filed with the disciplinary clerk and moved to set aside the effective entry of default. No answer was attached. Regarding his answer he stated initially that, "the original was mailed and copies emailed *to the interested parties* on June 22, 2016." [Motion, page 1, line 15.] He then stated "Respondent's Answer was mailed and emailed that day, June 22, 2016 *to the court.*" [Motion, page 1, lines 19-20.] Mr. Fitzhugh did not say it had been timely *filed* with the court because Mr. Fitzhugh certified that he knew he had not filed the answer timely in stating, "The one day delay in filing the Answer was not intentional." [Motion, Page 2, line 22.] Mr. Fitzhugh acknowledged in the motion he disregarded filing his answer in favor of seeking subpoenas previously denied by the Bankruptcy Judge.

In the July 6, 2016 order denying relief, the PDJ referred to the cautionary language in the June 7, 2016 order, including quoting the language of Supreme Court Rule 58, reminding Mr. Fitzhugh that an effective default "shall not be set aside except in cases where such relief would be warranted under Rule 60(c), Ariz.R.Civ.P."

The order emphasized, "If Mr. Fitzhugh desires to set aside the effective default he should file a rule compliant motion." The order again reminded Mr. Fitzhugh any pleading was required to be physically filed with the disciplinary clerk.

On July 5, 2016, under Civil Rule 60(a), Mr. Fitzhugh moved for New Trial. No answer was attached. He again acknowledged he did not timely file his answer but alleged he had a new secretary mail it. Notwithstanding, in the motion he again certified he did not believe he filed it timely but rather certified the answer was received by the disciplinary clerk "one day out of time." [Motion for New Trial, page 1, line 23.] Mr. Fitzhugh did not state he intended to file an answer but rather stated he had wanted to do discovery to "incorporate that evidence into the Rule 12 responsive pleading he intended to file." The motion was denied stating the answer had never been filed with the clerk. Mr. Fitzhugh was again referred to Civil Rule 60(c) as the avenue for potential relief.

The purpose of the aggravation/mitigation hearing is not only to weigh the mitigating and aggravating factors, but also to assure there is a nexus between the judicially admitted allegations and the merits. 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 concerning that nexus and the sanctions sought. Included with that right to appear is the right to cross-examine witnesses but not to dispute the factual allegations. Ms. Fitzhugh was afforded these rights.

On July 14, 2016, an Aggravation and Mitigation Hearing ("Hearing") was held by the Panel, composed of the PDJ, public member Nance Daley, and attorney member Teri Rowe. Mr. Fitzhugh appeared disheveled, sweating profusely and nearly

one hour late for the Hearing. Mr. Fitzhugh shifted the blame for his repeated failure to file his answer to his secretary. Later that afternoon, well after the Hearing, Mr. Fitzhugh attempted to file his exhibits for the Hearing that had just concluded that morning. The following day, July 15, 2016, Mr. Fitzhugh attempted to file his answer. The PDJ subsequently issued an Order Striking Answer and Exhibits. The Panel finds disbarment is the appropriate sanction.

FINDINGS OF FACT

The Complaint details a factual basis for the disbarment of Mr. Fitzhugh, comprising four counts of misconduct. Count One was brought to the attention of the State Bar by Judge Randall M. Howe of the Arizona Court of Appeals. Mr. Fitzhugh, on behalf of his client, Mr. Patel, sued to recover damages regarding workplace negligence. Mr. Fitzhugh stipulated to dismissing the last defendant with prejudice. The order of dismissal with prejudice was entered on February 17, 2012, Mr. Fitzhugh, supposedly on behalf of his client, filed an appeal of that order on October 1, 2012, advancing a position that was adverse to his client. The client was unaware that Mr. Fitzhugh filed an appeal. The appeal was dismissed because Mr. Patel was not the aggrieved party, as the client had settled his claim for \$2.6 million dollars. [See Exhibits 1-3.]

In a separate litigation, the insurance company that issued the coverage for the worker's compensation claim of Mr. Patel sued him for indemnity. A mediation was held and in a December 2, 2011, email, Mr. Fitzhugh confirmed he and his client agreed to settle the statutory liens for a payment of \$400,000 to the insurer and other terms. Because of that settlement, Fitzhugh could negotiate the separate settlement agreement with the defendant in the suit he had brought for the \$2.6

million dollars. Mr. Fitzhugh did not pay the \$400,000. Suit was brought against Mr. Patel for breach of contract and a declaratory judgment against the client and Mr. Fitzhugh individually. A motion to remove Mr. Fitzhugh as counsel for Mr. Patel was filed on January 8, 2013.

On February 14, 2013, judgment by consent was entered by the PDJ suspending Mr. Fitzhugh from the practice of law for six months. The judgment was non-appealable under Rule 57, Ariz.R.Sup.Ct. Under Supreme Court Rule 72, Mr. Fitzhugh had to give notice of his suspension to his client, opposing counsel and the court. Under the judgment, Mr. Fitzhugh was ordered to immediately comply with Rule 72, Ariz. R. Sup. Ct. [Exhibits 43, 44.] That Rule mandates precludes an attorney suspended beyond 60 days from associating an attorney to represent the client. Because of the length of the suspension, Mr. Fitzhugh was required to withdraw.

Mr. Fitzhugh did not withdraw and opposed the motion to remove him as counsel of record for Mr. Patel. Mr. Fitzhugh filed for bankruptcy. On February 13, 2013, Mr. Fitzhugh told the bankruptcy court that granting his motion to dismiss his bankruptcy would enable him to represent Mr. Patel, despite knowing he had consented to a suspension, that a motion to remove him as counsel for Mr. Patel was pending before the Superior Court, and that Rule 72 mandated he withdraw as counsel of record. On June 7, 2013, despite his suspension, Mr. Fitzhugh appeared at the Superior Court to argue the motion to remove him as counsel. By minute entry dated June 7, 2013, the court granted the motion and removed Mr. Fitzhugh as counsel. [Exhibit 4 and 5.] Mr. Fitzhugh then failed to respond to the State Bar inquiries regarding the charge. [Exhibit 6.]

The issue before us is not whether Mr. Fitzhugh could represent himself individually in the declaratory judgment. He could, despite his suspension. However, he could not continue his representation of Mr. Patel. His statement to the bankruptcy court is clear and convincing evidence of his intention to ignore his suspension and continue to oppose the motion, despite the mandate of Rule 72.

In Count Two, Mr. Fitzhugh had been representing a client, Mr. Venezia, in a personal injury matter for over three years. By agreement for discipline by consent, Mr. Fitzhugh consented to a six month suspension and judgment was entered by the PDJ on February 24, 2013. Pursuant to Rule 72, Mr. Fitzhugh failed to withdraw from representing the client and was precluded from associating with an attorney as his suspension was more than 60 days. His client repeatedly requested his legal file from Mr. Fitzhugh for at least two months after the suspension began. Mr. Fitzhugh did not timely give him the file and when he finally did, crucial evidence was missing from the file. Mr. Fitzhugh demanded costs of over \$186,000. Mr. Fitzhugh would later demand a percentage of the settlement proceeds as attorney fees arguing he remained counsel of record for Mr. Venezia despite the suspension.

When the client demanded proof of payment of costs of over \$186,000 purportedly paid by Mr. Fitzhugh, Mr. Fitzhugh failed or refused to provide the information and has never given proof of payment of any of those costs. [Exhibit 10.] Mr. Fitzhugh did not respond to the State Bar demand for the same information. [Exhibits 11, 13-17.] Mr. Fitzhugh in his Motion for Reconsideration acknowledged he "stated the file, which he (Mr. Venezia) did not have access to, contained documentary proof of the costs and payments." Mr. Fitzhugh argued the burden was upon the client to prove he hadn't incurred the costs. In his Motion for

Reconsideration he stated, "Respondent demanded that Bar counsel have Mr. Venezia and his new attorneys cite any single cost to the file they challenged." [Motion for Reconsideration, page 4, lines 3-7.]

Because of the errors, omissions, and failure to discuss the case with his client by Mr. Fitzhugh, the client was forced to accept a lower settlement. Of greater concern to the Panel is while still suspended, Mr. Fitzhugh emailed the business partner of Mr. Venezia and disclosed confidential information regarding the personal injury matter of Mr. Venezia to collect the unsubstantiated costs and expenses.

Mr. Fitzhugh also filed a complaint on behalf of the business of the client, VF Electric, against the defendant in the Count One litigation stated above. His theory was "financial loss of a key man to its business for almost six months." Mr. Fitzhugh blamed the failure of complaint on the client never having given him the evidence to support the complaint. The Defendant moved to dismiss for lack of jurisdiction and failure to state a claim upon which relief could be granted. Mr. Fitzhugh sought to amend the complaint three times. The District Court issued orders to Mr. Fitzhugh regarding his attempt to amend the complaint. Mr. Fitzhugh "repeatedly failed to comply with the court's orders" and the action was dismissed. Mr. Fitzhugh appealed the dismissal to the 9th Circuit Court of Appeals which affirmed the District Court's dismissal directly citing the failure of Mr. Fitzhugh to abide by the direct orders of the Court. [Exhibits 7-9.] We accept the findings of the District Court and the Court of Appeals that Mr. Fitzhugh repeatedly failed to follow the orders of the Court. We independently determine whether such failings to follow the orders of the court constitute violations of the Ethical Rules. We find it was the refusal of Mr. Fitzhugh to abide by direct orders of the court that brought the dismissal.

Mr. Fitzhugh filed for personal bankruptcy. We find Mr. Fitzhugh intentionally failed to disclose his claim to 40% of the settlement of \$900,000, plus costs, from the client as an asset, while still asserting a right to collect that \$200,000 from the client. Before the Panel, Mr. Fitzhugh argued that asset was owned by his LLC, which was created prior to his bankruptcy. We find Mr. Fitzhugh knowingly made false representations to the trustee in his bankruptcy matter, and this Panel claiming the \$200,000 was an asset to an LLC that did not exist until October 21, 2013, six months after Mr. Fitzhugh filed for his personal bankruptcy. [Exhibit 12.] Mr. Fitzhugh stated to the trustee, "As for my bankruptcy, it was a personal bankruptcy. My firm is a P.C., which I am paid for. Mr. Fitzhugh misrepresented to the trustee he was attempting to collect the fee on behalf of his "LLC." The Fee agreement of Mr. Fitzhugh mentions no P.C. or LLC. [Complaint paragraphs 68-70.]

Mr. Fitzhugh also filed numerous frivolous motions, including one motion to reopen discovery in his personal bankruptcy matter despite discovery having been closed for approximately one year. The bankruptcy judge denied Mr. Fitzhugh's request to issue subpoenas for discovery, but Mr. Fitzhugh issued numerous subpoenas anyway. This was followed by Mr. Fitzhugh attempting to issue the denied Federal Court subpoenas through the disciplinary clerk.

In Count Three, Mr. Fitzhugh was terminated by his client, who suffered a serious personal injury. On October 15, 2008, the Legal Assistant to Mr. Fitzhugh informed the Gilcrease law office the office of Mr. Fitzhugh would "forward the file to your office" and would file a notice of withdrawal. [Exhibit 19.] Mr. Fitzhugh emailed that he would follow through and assure that was done. [Exhibit 20.] On January 22, 2009, the associate counsel handling the case were reminded Mr. Fitzhugh was

no longer involved. [Exhibit 21.] Mr. Fitzhugh failed to officially withdraw from representation without telling the client. The client on September 24, 2012 by email emphasized to Mr. Fitzhugh, "For subject case, Mr. Glynn Gilcrease is my attorney."

In response, Mr. Fitzhugh wrote Mr. Gilcrease telling him he had done over 95% of the work on the case and interjected himself into the case without the approval of the client. Mr. Fitzhugh stated he took it upon himself to call the lead defense attorney and take other actions. Over one year later, Mr. Fitzhugh asserted to the client's new attorney he was entitled to a 95% interest in the case. Mr. Fitzhugh failed to disclose that claimed 95% interest in the client's case during his personal bankruptcy proceedings, and made numerous false statements to the State Bar about the trustee in his bankruptcy proceedings. In addition, Mr. Fitzhugh failed to disclose to Mr. Ryan, an attorney aiding the client in Count Three, that Mr. Fitzhugh was in bankruptcy when he was negotiating a settlement for that fee with Mr. Ryan.

In Count Four, Mr. Fitzhugh, who was never licensed to practice law in Colorado, was hired by Fernando and Moana Leonard ("Leonards") of Colorado to represent them. Mr. Fitzhugh asked William Babich Esq. to act as local counsel. Mr. Babich agreed provided Mr. Fitzhugh sought admission *pro hac vice*, taking and defending all depositions, handling all discovery and advancing all costs. The Leonards agreed to and signed the fee sharing letter. Mr. Fitzhugh entered into a "Co-Counsel and Fee Sharing Agreement." At that time, Mr. Fitzhugh was already in bankruptcy.

The formal complaint was filed in April 2013. Mr. Fitzhugh never obtained *pro hac vice* admission and failed to participate in the case or to front costs. Mr. Fitzhugh was suspended from the practice of law in Arizona, the only state where he is

admitted, from March 29, 2013 through December 16, 2013. Mr. Babich withdrew as counsel of record in November, 2013 because Mr. Fitzhugh failed to abide by his agreement with him. Mr. Fitzhugh told the Leonards that he continued to represent them in their personal injury matter and had done everything necessary to pursue their case. Mr. Fitzhugh practiced law despite his suspension and his non-licensure in Colorado.

The Leonards sued Mr. Fitzhugh for malpractice. The findings of the District Court in Colorado undergird the deemed admitted allegations regarding this count. [Exhibit 35.] The findings of the court confirm Mr. Fitzhugh failed to seek admission *pro hac vice*, take and defend all depositions handle all discovery or advance all costs as required in his signed agreement. [Exhibit 35, pages 3-4.] His co-counsel withdrew because of the failure of Mr. Fitzhugh to abide by the agreement. Judgment by was entered against Mr. Fitzhugh for his malpractice by default. [Exhibit 37.] The suit was not stayed by the bankruptcy. [Exhibit 38.] Mr. Fitzhugh failed to respond to the State Bar's allegations regarding this matter. [Exhibits 35-38.]

CONCLUSIONS OF LAW

Mr. Fitzhugh, through his default, was deemed to have admitted to all counts of the Complaint. The Panel does not operate in a vacuum. The State Bar properly demanded documents and records from Mr. Fitzhugh. He knew of his duty to respond and did not. He knew he had an obligation to physically file an answer and did not. A defaulted respondent cannot better a position with personal testimony or personal assurances that non-disclosed documents or records are existent.

There is a reason respondents are required to cooperate by timely responding to a State Bar inquiry. There is a reason why a respondent is required as early as

while under investigation, to furnish information including copies of requested records, files and accounts. There is a reason after being served with a complaint a Respondent is required to timely file an answer which then sets the time for the mandatory service of an initial disclosure statement under Rule 58(e). Each of these requirements level the playing field of informed decision and promote justice rather than its delay. No lawyer should expect or require of an opponent that they conduct a frantic scramble to review last hour disclosures, factual arguments or unstated, undisclosed positions. Mr. Fitzhugh knew of his obligation to respond and chose not to.

Pursuant to Supreme Court Rule 54(d), we find Mr. Fitzhugh refused to cooperate with the State Bar over the course of these disciplinary matters. In Count One, the State Bar by letter dated February 27, 2014, asked Mr. Fitzhugh to address four specific areas of inquiry. He refused to. [Exhibit 6.] In Count Two, the State Bar by letter dated September 27, 2013, asked Mr. Fitzhugh to address the allegations of Mr. Venezia. He was informed his failure to address the allegations and supply information could be a violation of Rule 54. [Exhibit 13.] He refused to. When later again asked for responses to two letters sent to him three months earlier, Mr. Fitzhugh was told the State Bar would add allegations of a violation of ER 8.1(b) and Rule 54(d). [Exhibit 16 and 17.] He did not supply the requested emails, did not answer the inquiries but instead made nonresponsive assertions. [Complaint, paragraphs 80-81, page 12.] In Count Four, the State Bar by letter dated October 7, 2015, asked Mr. Fitzhugh to address the allegations of the allegations of the Leonards. He refused to.

It was known to Mr. Fitzhugh that this matter was proceeding to complaint nearly a year before the formal complaint was filed. There was no surprise. Two probable cause orders were issued on April 21, 2015. A third probable cause order issued seven months later on November 19, 2015. The Attorney Discipline Probable Cause Committee ordered a fourth finding of probable cause five months after that on April 26, 2016. Rule 54(d) required upon request of the State Bar that Mr. Fitzhugh “a full and complete response to inquiries and questions” and that he “furnish copies of requested records, files and accounts.” He refused to.

When served with the formal complaint, Mr. Fitzhugh again failed to act. From a practical standpoint, a failure of a defaulted respondent to cooperate is compounded when a respondent indirectly attempts to litigate factual issues under the guise of discovery or various reconsideration motions factual issues that are precluded through the default process. The Panel is not blind to the fact that part of the statements of Mr. Fitzhugh might have been undermined by the documents and records Mr. Fitzhugh refused to supply to the State Bar despite multiple requests and the filing of the complaint. Refusing to supply the sturdy foundation of records and documents inevitably increases the risk of a hearing panel viewing the statements of a respondent as being built upon the shifting sand of rhetoric and hyperbole and attempting to “sandbag” the opponent.

Any defaulted respondent would do well to review *Ariz. Dep't of Revenue v. Superior Court ex rel. Ariz. Tax Court*, 165 Ariz. 47, 49, 796 P.2d 479, 481 (App. 1990). There the defaulted party “refused to review settlement offers”. They apparently also did not disclose exhibits or witnesses nor give any indication “that they intended to offer evidence at all...” The opinion warns the law does not preclude

the court “from considering such factors in determining the participation at default hearing of the party in default.”

Due process requires a hearing panel to independently determine whether, under the facts deemed admitted, ethical violations have been proven by clear and convincing evidence. A hearing panel must also exercise discretion in deciding whether sanctions should issue for the conduct and, if sanctions are warranted, which sanctions should issue. It is not the function of a hearing panel to endorse or “rubber stamp” any request for sanctions.

Based upon the facts deemed admitted, this Panel finds by clear and convincing evidence Mr. Fitzhugh violated: ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.16, 1.9, 3.1, 3.2, 5.5, 8.4(d), and Rules 54(c), 54(d), and 72(a), Ariz. R. Sup. Ct.

ABA STANDARDS ANALYSIS

In determining a sanction, the court utilizes the American Bar Association’s *Standards for Imposing Lawyer Sanctions* (“Standards”) under Rule 57(a)(2)(E), Ariz. R. Sup. Ct. The *Standards* are a “useful tool in determining the proper sanction.” *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). When an attorney faces discipline for multiple charges of misconduct, the most serious charge serves as the baseline for the punishment. *In re Moak*, 205 Ariz. 351, 353, 71 P.3d 343, 345 (2003) (citing *In re Cassalia*, 173 Ariz. 372, 375, 843 P.2d 654, 657 (1992) (adopting Commission report); *Standards* at 6). The court then considers: (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*.

Punishment is not part of the purpose of lawyer discipline proceedings. Instead the purpose of lawyer discipline,

is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge their professional duties to clients, the public, the legal system and the legal profession. *Standard 1.1*

See, In re Abrams, 257 P.3d 167, 169–70 (Ariz. 2011). There the Court stated, “The purpose of professional discipline is twofold: (1) to protect the public, the legal profession, and the justice system, and (2) to deter others from engaging in misconduct.” (citation omitted); *In re Brady*, 923 P.2d 836, 841 (Ariz. 1996).

In this matter we note on multiple occasions, most seriously in Count Four, Mr. Fitzhugh practiced law while suspended. The sanction of disbarment is presumed when a lawyer violates a court order not to practice law while under suspension.

People v. Mason, 212 P.3d 141 (Colo. O.P.D.J. 2009). Disbarment is not reprisal. Instead, “[d]isciplinary proceedings are intended, `to protect the public; to foster public confidence in the Bar; to preserve the integrity of the profession; and to deter other lawyers from similar misconduct”” *In re Enna*, 971 A.2d 110, 113 (Del. 2009)

I. Duties Violated, Mental State, Injury

The most serious ethical violations are the violations of ERs 3.3(a), 4.1(a), 8.1(a), and 8.4(c). Therefore, *Standards* 5.1, 6.1, and 7.0 apply.

Standard 5.1 reads:

Disbarment is generally appropriate when:

- (a) . . .
- (b) A lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice.

First, Mr. Fitzhugh engaged in intentional misconduct when he made misrepresentations to the State Bar in several counts. Second, Mr. Fitzhugh was untruthful about his entitlement to fees and costs in his bankruptcy in Count Two, alleging the money belonged to an LLC that did not exist when he filed for personal bankruptcy. This was done to mislead the court for personal gain. Third, Mr. Fitzhugh was not truthful about the percentage of the time he spent involved on the case in Count Three to the opposing counsel.

Mr. Fitzhugh's misrepresentations seriously adversely reflect on Mr. Fitzhugh's fitness to practice.

Standard 6.11 reads:

Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes serious or potentially serious adverse effect on the legal proceeding.

First, Mr. Fitzhugh knowingly violated court orders in Count Two by continually amending the complaint in a manner the court had disallowed, which resulted in the court dismissing the client's case. Second, Mr. Fitzhugh knowingly was untruthful about the trustee during his personal bankruptcy proceedings. Third, Mr. Fitzhugh knowingly was untruthful to the court by omitting assets from two cases—Counts Two and Three. We find Mr. Fitzhugh knew his personal assets needed to be listed. Mr. Fitzhugh prepared a petition for fee arbitration outlining his claimed right to those assets, but failed to list those assets during bankruptcy. He failed to formally withdraw and opposed a motion to remove him as counsel of record while he was suspended.

Mr. Fitzhugh's false statements and omissions caused serious or potentially serious harm to the clients, to the bankruptcy trustee, and to the legal system by causing an adverse effect on multiple legal proceedings.

Standard 7.0 reads:

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession 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.

Mr. Fitzhugh was untruthful by omission when he knowingly failed to tell Mr. Ryan he was in bankruptcy when he was negotiating with him to settle in Count Three. Second, Mr. Fitzhugh knowingly failed to withdraw from representation of the client in Count Two, resulting in a lower settlement for the client's personal injury case. Third, Mr. Fitzhugh intentionally entered an agreement as co-counsel while suspended in Arizona, not licensed in Colorado or elsewhere and did nothing to protect his clients, causing them actual injury.

Mr. Fitzhugh's misconduct was intended to obtain personal benefits and caused serious or potentially serious injuries to the clients, the public, and the legal system.

Under *Standards* 5.1, 6.11, and 7.0, the Panel determined disbarment is the presumptive sanction for Mr. Fitzhugh.

II. Aggravating and Mitigating Factors:

A. The Panel finds the following aggravating factors are present:

- *Standard 9.22(a)* prior disciplinary offense

Mr. Fitzhugh was suspended for six months, effective March 29, 2013, State Bar file nos. 11-1877 and 11-2635, for violating ER's 1.5(a), 1.6(a), 1.8(b), 1.16(d), 3.3(a), 4.1, 8.4(a), and 8.4(d). Mr. Fitzhugh was reinstated on December 6, 2013.

Mr. Fitzhugh was also suspended for thirty days, effective October 26, 2011, State Bar file nos. 09-0468 and 08-0477, for violating ER's 1.5(e), 1.6, 1.7, 1.15(a), 1.15(b), 5.3(c), 8.4(d), and Rules 43(a), 43(d), 44(a), and 44(b), Ariz. R. Sup. Ct.

- *Standard 9.22(b)* dishonest or selfish motive

The Supreme Court has held that a dishonest or selfish motive "speaks in terms of 'motive,' not conduct." *Matter of Shannon*, 179 Ariz. 52, 69, 876 P.2d 548, 565 (1994). Here, Mr. Fitzhugh interjected himself back into the case in Count Three when he realized there would be a large settlement. Mr. Fitzhugh also harassed the client in Count Two for \$200,000 in unsubstantiated costs and expenses. Mr. Fitzhugh contested this aggravating factor at the Hearing, but did so only by attacking the integrity of the witness. Mr. Fitzhugh was unable to provide any logical explanation for his actions. Mr. Fitzhugh demonstrated a dishonest or selfish motive that extends beyond merely his actions.

- *Standard 9.22(c)* a pattern of misconduct

Mr. Fitzhugh has been previously sanctioned for similar misconduct.

- *Standard 9.22(d)* multiple offenses

The State Bar's complaint contains four distinct counts of misconduct. While we find Court Four the most serious and the other counts as aggravators; each count calls for disbarment. At the Aggravation/Mitigation Hearing, Mr. Fitzhugh tried to re-litigate previous judgments. Not only is an aggravation/mitigation hearing the improper forum to dispute those judgements, but those judgements became facts deemed admitted when Mr. Fitzhugh failed to provide an answer to the complaint.

- *Standard 9.22(e)* bad faith obstruction of disciplinary proceedings

The Supreme Court has held that "Failure to cooperate with disciplinary authorities is a significant aggravating factor." *Matter of Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1172 (1988) (citing *Standard* 9.22(e); C.W. WOLFRAM, MODERN LEGAL ETHICS 123 (1983); DR 1-102(A)(5)). For example *In re Pappas*, the respondent failed to produce documents, which the State Bar sought in order to "untangle the voluminous transactions" made by the respondent, throughout the State Bar's investigation and disciplinary proceedings even though the respondent had access to those documents. *Id.* The court found the existence of aggravating factor 9.22(e), reasoning that the respondent's actions exceeded simple bad judgment. *Id.*

In *Pappas*, the repeated failure to produce documents to which he had access for the State Bar warranted a finding of aggravating factor 9.22(e), because the respondent's actions exceeded simple bad judgement. Mr. Fitzhugh's repeated failure to comply with the State Bar's requests for information are coupled with failures to comply with court orders and substantial experience in the law in the two prior suspensions. A finding of aggravating factor 9.22(e) is also warranted here as Mr. Fitzhugh's actions more than exceeded simple bad judgment.

Disbarment is appropriate when a lawyer has a prior disciplinary history of multiple suspensions, commits new violations and repeatedly fails to respond to State Bar requests for information. *In re Lincoln*, 823 P.2d 1275, 1278 (Ariz. 1992). See also *People v. Cozier*, 74 P.3d 531 (Colo. O.P.D.J. 2003). There, two instances of knowing violations of court order and rules warranted a suspension under *Standard* 6.22, but the Court ordered disbarment because of the prior misconduct. Likewise, *In re Munroe*, 89 A.D.3d 1 (N.Y. App. Div. 2011) the Court ordered disbarment, rather

than suspension, for the lawyer's egregious pattern of misconduct, including refusal to obey court orders, evidenced pattern of disdain for the courts.

- *Standard 9.22(f)* submission of false statements

Mr. Fitzhugh has repeatedly made false statements to the State Bar. Mr. Fitzhugh also made false statements to the bankruptcy trustee in Count Two regarding an LLC that did not exist when Mr. Fitzhugh filed for bankruptcy.

- *Standard 9.22(g)* refusal to acknowledge wrongful nature of conduct

Mr. Fitzhugh refuses to acknowledge that he did anything wrong and fails to appreciate the significance of his misconduct, making him a danger to the public and to the profession. Mr. Fitzhugh's only acknowledgment of the wrongfulness of his conduct was during his closing arguments at Hearing, where Mr. Fitzhugh said he admits what he did was wrong. The Panel does not accept these statements as an "acknowledgement of the wrongful nature of conduct" for application of *Standard 9.22(g)* because throughout the rest of the Hearing, Mr. Fitzhugh blamed nearly everyone else involved for his own misconduct, including attacking the integrity of both witnesses, one of whom he sued; accusing the complainant of perjury; blaming the State Bar; and blaming his former client for not attending the Hearing to testify, even though Mr. Fitzhugh never asked this witness to testify and never filed a subpoena to compel this witness.

- *Standard 9.22(i)* substantial experience in the practice of law

Mr. Fitzhugh has been admitted to practice law in Arizona for 35 years.

B. The Panel finds that no mitigating factors are present.

The Panel does not find that *Standard 9.32(c)*, personal or emotional problems, is a mitigating factor. Uncorroborated and self-serving testimony about undisclosed

personal or emotional problems is not mitigation. For example *In re Augenstein*, the respondent testified to suffering from depression, among other emotional problems, but offered no medical evidence to corroborate the claims. *In re Augenstein*, 178 Ariz. 133, 137-38, 871 P.2d 254, 258-59 (1994). The court held that personal and emotional problems was not a mitigating factor, because the respondent's uncorroborated testimony was merely self-serving and not a reason to mitigate sanctions. *Id.* at 138, 871 P.2d 254, 259.

Mr. Fitzhugh referred to several personal issues in his closing statements not disclosed before the Hearing. Mr. Fitzhugh also offered no corroborating evidence for these claims. Like the respondent's testimony in *Augenstein*, which did not support a finding of *Standard 9.32(c)* because the testimony was uncorroborated and self-serving, Mr. Fitzhugh's testimony is also uncorroborated and self-serving. While the Panel is sympathetic to Mr. Fitzhugh's personal and emotional state, Mr. Fitzhugh's testimony about undisclosed personal and emotional problems, and Mr. Fitzhugh's concerning appearance at the Hearing, does not favor mitigation; lesser sanctions will not protect the public or the profession.

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. 62, 74, 41 P.3d 600, 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). For the reasons stated above the Panel determined no conditions of supervision will protect the public while the appeal is pending.

The Panel has made the above findings of fact and conclusions of law. The Panel has determined the sanction using the facts deemed admitted, application of the *Standards*, including the aggravating factors, the absence of mitigating factors, and the goals of the attorney discipline system. Accordingly,

IT IS ORDERED Mr. Fitzhugh is disbarred from the practice of law effective thirty (30) days from the date of this order. The Panel believes no terms of probation will protect the public.

IT IS FURTHER ORDERED Mr. Fitzhugh shall pay all costs and expenses incurred by the SBA. There are no costs of the Office of the Presiding Disciplinary Judge in this proceeding.

A final judgment and order shall follow.

DATED this 12th day of August, 2016.

William J. O'Neil

Presiding Disciplinary Judge

Teri M. Rowe

Teri M. Rowe Volunteer Attorney Member

Nance A. Daley

Nance A. Daley, Volunteer Public Member

COPY of the foregoing e-mailed
this 12th day of August, 2016, and
mailed August 15, 2016, to:

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

APR 29 2016

FILED
BY Am

**BEFORE THE
PRESIDING DISCIPLINARY JUDGE**

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

**EDWARD D. FITZHUGH,
Bar No. 007138,**

Respondent.

PDJ 2016-9042

COMPLAINT

[State Bar File Nos. 13-1280, 13-2331, 15-1142, 15-2476]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was an Arizona attorney who was admitted to practice on December 22, 1981.
2. From March 29, 2013, until December 6, 2013, Respondent was a suspended Arizona attorney.

COUNT ONE (File No. 13-1280/Howe)

3. Respondent represented Dharmesh Patel (Patel), who was injured in a work related accident and received worker's compensation benefits.
4. Respondent, on behalf of Patel, brought an action against GTE and Tiempo, Inc. to recover damages claimed to have been caused by their negligence in the work related accident.

5. In 2009, an issue arose as to whether there was a valid reassignment of the worker's compensation claim to Patel. The court determined that there was a valid reassignment.

6. On February 15, 2012, Respondent, on behalf of Patel, stipulated to dismissing the last remaining defendant, GTE, with prejudice.

7. On February 17, 2012, the order of dismissal with prejudice was entered

8. On October 1, 2012, Respondent filed an appeal, supposedly on behalf of Patel, that appears to advance a position that is adverse to Patel.

9. In the appeal, Respondent asked the Court of Appeals (appellate court) to review the trial court's order entered on March 10, 2009.

10. In the March 10, 2009 order, the lower court found that prior counsel, Gilcrease and Bansal, had effectuated a verbal reassignment of the worker's compensation claim.

11. The appellate court dismissed the appeal because the appellant, Patel, was not the aggrieved party, since he had settled his claim against GTE for \$2.6 million dollars.

12. The appellate court referred the matter to the State Bar.

13. Patel did not know that Respondent filed an appeal after the settlement was reached.

14. Between the settlement with GTE and Respondent's filing of the appeal, *Princeton Insurance Company, et al., v. Dharmesh Patel et al.*, CV2012-009648, was commenced.

Princeton Insurance Company, et al., v. Dharmesh Patel et al., CV2012-009648

15. Princeton Insurance Company (Princeton) was the company that issued the insurance policy that provided coverage for the worker's compensation claim made by Patel.

16. Sedgwick Claims management Services (Sedgwick), was Princeton's agent charged with administering the Patel claim.

17. In November 2011, a mediation was held to try and resolve Patel's claims, including Princeton's lien rights. Larry Fleischman (Fleischman) was the mediator.

18. On November 3, 2011, Fleischman wrote an email to Sedgwick, with a copy to Respondent, discussing a proposal to settle Princeton's lien claims.

19. Sedgwick confirmed in writing that Princeton would agree to waive its lien rights on the proposed terms.

20. In a December 2, 2011, email, Respondent confirmed that he and Patel agreed to settle Princeton and Sedgwick's statutory lien claims for a \$400,000 payment to Princeton/Sedgwick and a credit against indemnity payments.

21. In reliance on the settlement with Princeton, Respondent was able to negotiate a separate agreement with GTE and collected approximately \$2.6 million dollars.

22. Respondent then refused to pay Princeton the \$400,000.

23. On June 25, 2012, Sedgwick, on behalf of Princeton, filed a breach of contract-specific performance claim and a declaratory judgment claim.

24. Sedgwick named both Patel and Respondent, individually, as defendants.

25. On January 8, 2013, in Princeton Insurance Company, et al., v. Patel Sedgwick filed a motion to remove Respondent as Patel's counsel since he would be a necessary witnesses in the action.

26. On February 14, 2013, a judgment and order for a six-month suspension was entered against Respondent.

27. March 29, 2013, was the effective date of the suspension.

28. The judgment and order specifically required Respondent to immediately comply with Rule 72, Ariz.R.Sup.Ct.

29. Rule 72(a) states in part: "Within ten (10) days after the date of an order or judgment ... imposing discipline ... a respondent suspended ... shall notify the following persons ... of the order or judgment, and the fact that the lawyer is disqualified to act as a lawyer after the effective date of same."

30. Respondent was required to notify current clients, co-counsel, opposing counsel, and each court and division where a matter is pending. The notice has to be sent regular or certified mail, return receipt requested.

31. Respondent was removed as counsel in Princeton Insurance Company, et al., v. Patel by minute entry dated June 7, 2013. Until that time, Respondent was still the attorney of record for Patel. Respondent did not file a notice regarding his imminent suspension, did not file a request to withdraw from the representation, and was only removed as counsel after Sedgwick filed a motion to disqualify Respondent from representing Patel.

32. Respondent's conduct in this count violated Rule 42, ERs 1.2, 1.4, 3.1, 5.5(a), and 8.4(d), and Rule 72(a).

COUNT TWO (File No. 13-2331/Venezia)

33. On February 14, 2013, a judgment and order was entered suspending Respondent for six months effective March 29, 2013.

34. Under Rule 72, Ariz. R. Sup. Ct., Respondent had ten days from the date the judgment and order was entered, or until February 24, 2013, to notify his clients, among others, that starting on March 29, 2013, he would be disqualified from acting as a lawyer.

35. At the time of his suspension, Respondent had been representing Richard Venezia [Venezia] in a personal injury matter for over three years. *Venezia et al., vs. GTE et al.*, CV2009-006922. Venezia was injured while working on electrical equipment owned by a third party.

36. Respondent failed to take the proper steps to secure appropriate substitute counsel for Venezia during his suspension.

37. Venezia tried post-suspension to secure counsel with sufficient trial and content area expertise who could take his case forward but was unable to do so, leaving his interests unprotected.

38. Venezia requested his file for at least two months after Respondent was suspended before it was finally provided to him. Even then, some crucial evidence was not in the file.

39. Respondent was asking to be reimbursed approximately \$200,000 in costs that he alleged he had advanced to Venezia. Venezia asked Respondent for

proof of payment of the costs. Venezia has never received proof of payment – only itemized cost sheets.

40. On November 15, 2013, Respondent was asked to provide the State Bar with “[a]ll receipts for costs paid in the Venezia matter...” Respondent failed to provide the information.

41. Venezia was forced to accept a lower settlement amount due to Respondent’s errors and omissions or failure to discuss with Venezia material aspects of the case. This failure to discuss the case with Venezia prevented him from being able to assess the risk of trial versus settling his case at earlier mediations.

42. In a November 25, 2013, email to Venezia’s business partner Alex Fil, Respondent inappropriately disclosed confidential information. Respondent told Mr. Fil that Venezia settled his personal injury matter and owed Respondent almost \$200,000 in costs alone.

43. Respondent revealed additional confidential information in an attempt to have Mr. Fil intervene with Venezia and get him to pay Respondent the \$200,000 in costs.

VF Electric et al. vs. GTE Corporation, et al.

44. In addition to the personal injury case, Venezia was a partner in VF Electric and on May 12, 2009, Respondent filed a complaint on behalf of VF Electric and against defendant GTE Corporation (GTE), on the theory of “financial loss of a key man to its business for almost six months.”

45. The complaint alleged breach of warranty, breach of warranties of implied fitness and for a particular purpose, and breach of fiduciary duty.

46. Defendant GTE moved to dismiss the complaint for lack of jurisdiction and failure to state a claim.

47. Respondent filed a first amended complaint and added four more defendants and alleged product liability, breach of warranty, breach of warranty of merchantability and implied fitness, consumer fraud, and negligence.

48. GTE moved to dismiss for lack of subject matter jurisdiction, failure to state a claim, and failure to plead fraud with particularity.

49. Respondent moved for leave to file a second amended complaint.

50. On May 4, 2010, the court granted the second motion to amend, but stated in the order that it would not permit any further amendments by Respondent.

51. The second amended complaint alleged claims of strict liability, breach of warranty, consumer fraud, negligence, and RICO violations.

52. GTE moved to dismiss the second amended complaint.

53. On March 4, 2011, the court granted GTE's motion to dismiss the RICO claim but denied GTE's motion to the extent it required the court to exercise jurisdiction over plaintiff's state law claim "over which the court was not convinced it had subject matter jurisdiction."

54. The court denied Respondent's motion for leave to file a third amended complaint because the proposed third amended complaint included "numerous other

changes that go well beyond the limited scope of amendment permitted by the court" in its July 21, 2010 order.

55. The court did, however, allow Respondent to amend the complaint to make "the requested changes to defendants, [to plead] sufficient facts to establish the complete diversity of parties and that the amount in controversy exceed[ed] \$75,000, and allege[d] facts to support plaintiffs' contention that defendants' acts of concealment and fraud tolled the applicable statutes of limitations."

56. The court specifically stated that the case would be closed if Respondent failed to file a third amended complaint "consistent with the court's order."

57. On May 16, 2011, the court dismissed the third amended complaint under Rule 41(b) Fed.R.Civ.Proc (action dismissed for failure to comply with a court order).

58. The court noted that Respondent "repeatedly failed to comply with the court's orders."

59. Respondent appealed the dismissal to the 9th Circuit Court of Appeals. On January 22, 2013, the 9th Circuit affirmed the District Court's dismissal of the action.

60. The 9th Circuit opinion upholding dismissal of the VF Electric case clearly states that the dismissal by the District Court was a punitive measure taken by the District Court after Respondent failed to abide by direct Orders of the District Court.

61. Respondent failed to advise Venezia, in a timely fashion, about the dismissal of the VF Electric lawsuit.

Respondent's Bankruptcy Case

62. On May 30, 2013, Respondent filed for bankruptcy protection.

63. Respondent failed to disclose to the Bankruptcy Court in the Chapter 7 petition that he was owed attorney's fees and costs from Venezia's personal injury case.

64. The personal injury case settled in September 2013, during the pendency of the bankruptcy case, therefore, Respondent's entitlement to recover the fees and costs belonged to the bankruptcy estate.

65. When Respondent realized that he would not be able to collect his fees, he attempted to dismiss his Chapter 7 bankruptcy case.

66. In his February 13, 2014, motion to dismiss Respondent states:

Debtor was experiencing financial difficulties and the threat of foreclosure. These were the primary motivating factors in filing the Petition for Bankruptcy on May 30, 2013. The circumstances have changed; in July a case Debtor ... had been working on for almost three and one-half years finally settled [and] the client refuses to pay Debtor for his work.

In another matter Debtor is a nominal defendant; *Princeton et al. v. Patel, Fitzhugh*. Dismissal of this Petition would allow Debtor to move for his dismissal from that case. Once dismissed as a party, the Debtor can then represent Mr. Patel in the proceedings.¹

67. On February 18, 2014, the attorney for the bankruptcy trustee, Terry Dake, filed a motion to approve compromise that he had worked out with Venezia and successor attorney.

¹ See State Bar file no. 13-1280

68. Mr. Dake noted in the February 18, 2014 motion that when Respondent was asked about his attempt to collect fees while the bankruptcy was pending, Respondent stated, "As for my bankruptcy, it was a personal bankruptcy. My firm is a P.C., which I am paid from."

69. Respondent misrepresented to Mr. Dake that he was attempting to collect the fee on behalf of his "LLC."

70. Respondent's fee agreement does not mention a P.C., no P.C. is listed in Respondent's schedules or statement of financial affairs, and no P.C. was found in the records of the Arizona Corporation Commission.

71. Respondent did not file the articles of organization for the LLC until October 21, 2013, nearly six months after the bankruptcy case was filed.

Failure to Cooperate With the State Bar

72. On September 17, 2013, Respondent was sent a charging letter along with Venezia's allegations.

73. Respondent asked for an extension of time to respond and was given until October 21, 2013, to provide his response.

74. On October 9, 2013, Respondent emailed bar counsel that he required "at least an additional three weeks to respond to Mr. Venezia's complaint" because Venezia had come to his house and threatened him. Respondent says that Venezia then obtained a protective order [PO] against Respondent. After the hearing on the PO, Respondent says the judge dismissed the petition telling Venezia "I don't believe you. I know what you are up to." This is not a true statement.

75. Respondent also told the judge that the exhibits Venezia submitted were not complete. On February 27, 2014, Respondent was also asked to provide the State Bar with "copies of all of the exhibits in their entirety, containing [Respondent's] messages to [Venezia] and [Venezia's] responses to [Respondent]...." Respondent failed to do so.

76. During a hearing on August 6, 2013, Respondent made the following misstatements to the judge: "[N]ow true, I was suspended, but that is under appeal and it didn't have anything to do with honesty or anything like that, no, I am a very good attorney." This is a knowing misrepresentation to the court. Respondent entered into a consent agreement with the State Bar for a six-month suspension that was effective on March 29, 2013. There was no appeal of the suspension because he consented to it. Respondent specifically agreed that he made false statements to the court and to third parties. Respondent was also asked why his statements to the court are not further violations of ER 3.3(a). Respondent failed to respond.

77. Respondent was asked to explain why he failed to tell the bankruptcy court about his claim of attorney's fees. Respondent was given until March 13, 2014, to provide answers to the State Bar's questions. Respondent did not respond.

78. On June 11, 2014, Respondent was asked to respond to the State Bar's February 27, 2014 letter, and was specifically told that there were four areas of concern that needed to be addressed.

79. On June 16, 2014, Respondent sent the State Bar another copy of a response he had already given to the State Bar.

80. On June 18, the State Bar sent the following email to Respondent:

Your undated letter that was attached to your May 9, 2014 email and to your June 17, 2014 email does not answer the questions in my February 27, 2014 letter. I have attached another copy of the letter. Please read it before you respond. You were asked to provide me with emails and to explain why your statements to the judge and the State Bar do not violate ERs 3.3 and 4.1. If you do not send me the information I have requested, this will be considered a violation of ER 8.1(b) and Rule 54(d). You have until June 20, 2014 to provide me with your response.

81. On June 20, Respondent or his assistant, sent an email to the State Bar that said in part:

But let's also forget that the court determined he was lying and dismissed his Petition. You still want me to produce documents proving he was lying. I told you he was lying, the court ruled he was lying and dismissed his Petition. The burden is on him to produce any supporting proof, which if any, I will respond to.

[...]

You now allege that I misrepresented to the court that my prior sanctions were not based on truthfulness. If you recall, I was blamed for the representations of my attorney. I would be more than happy to relitigate the Madrigal case with you. You make reference to emails without specificity. If they pertain to my dealings with Venezia, please be specific as to the ones [yoy] seek.

82. Respondent's conduct in this count violated Rule 42, ERs 1.4, 1.5(a), 1.6, 1.9(c), 1.16(d), 3.3(a), 4.1, 8.4(c), 8.1(a) and (b), Rule 54(c) and (d).

COUNT THREE (File No. 15-1142/Ryan)

83. Between 2005 and 2008, Glynn Gilcrease (Gilcrease) and Respondent assisted each other with several cases. Sometime after May 24, 2007, Gilcrease asked Respondent to assist Gilcrease with litigation on behalf of his clients, Bryan &

Theresa Whipp (the Whipps). Respondent started helping Gilcrease sometime in September 2007.

84. In August 2008, Gilcrease drafted the Whipp complaint and sent it to Respondent for his review and filing. Both Gilcrease and Respondent were listed as attorneys for the plaintiff on the complaint.

85. Respondent provided certain services, but the relationship between Gilcrease and Respondent deteriorated and in October 2008, Respondent indicated that he would withdraw from the litigation; however, Respondent failed to file a notice of withdrawal until March 2013.

86. On May 30, 2013, Respondent filed a voluntary Chapter 7 bankruptcy petition. After the bankruptcy case was filed, Respondent continued to pursue negotiations with Gilcrease to collect fees for the work he had done on the Whipp case. Respondent claims to have performed 95% of the work on the case, but he did not list it as an asset in his bankruptcy petition.

87. Thomas M. Ryan (Mr. Ryan) represented Gilcrease against Respondent in the fee dispute. Gilcrease disputed the claims made by the Respondent. In order to resolve the dispute with Gilcrease over the fees and costs claimed by Respondent, the Trustee agreed to compromise the claim for \$10,000, subject to Court approval.

88. On July 7, 2014, Mr. Dake, the Trustee's attorney, filed a motion to approve compromise. In the motion, Mr. Dake noted that the entitlement to recover the Whipp fees and costs was the property of the estate. Mr. Dake also noted that this was the second time that Respondent had failed to disclose his

claims to fees earned and costs expended in the bankruptcy petition. Respondent knowingly failed to disclose the Whipp claim to the Bankruptcy Court, because on April 25, 2013, slightly more than one month before he filed the bankruptcy case on May 30, 2013, Respondent prepared and filed a 68 page fee arbitration request with the State Bar.

89. On September 2, 2014, the court granted Mr. Dake's motion to approve the compromise and specifically overruled Respondent's objection to the motion to approve compromise.

90. On April 10, 2015, Respondent filed a motion for clarification in the bankruptcy case. Respondent made several misrepresentations in the motion:

- a. "There has not been a final judicial approval of this proposed [compromise]. Yet the trustee's attorney Dake only recently disclosed that he has already finalized the proposed settlement sale of the asset with the opposing party." The Court approved the compromise on September 2, 2014.
- b. "Attorney Dake confesse[d] to having committed malpractice, that he intentionally misled the court and debtor." Mr. Dake never "confessed" to committing malpractice or that he misled the court or the debtor.

91. In his July 8, 2015, response to the State Bar, Respondent made several misrepresentations:

92. "Dake, without the requisite court approval, sold the asset to [Complainant], then for several months attempted to cover up his misconduct."

93. "We now know that Dake sold the asset to [Complainant] on behalf of Gilcrease, without the requisite court approval. That for several months Dake actively concealed his improper action from [Respondent] and the court, not confessing until a few days before a hearing on the matter."

94. "Then he concealed his action from [Respondent] and the court for several months. Dake has taken actions to deter, intimidate and distract [Respondent] from pursuing inquiry into his improper and what may be illegal conduct. Illegal because, for several months [Respondent] and [his] attorney ... attempted to negotiate [Respondent's] purchase of the asset from [Respondent's] bankruptcy estate. Attorney Dake fraudulently caused [Respondent] to expend attorney's fees in [Respondent's] attempts to purchase an asset Dake knew he had already disposed of."

95. Respondent's conduct in this count violated Rule 42, ERs 1.5(a), 3.3(a), 8.1(a), 8.4(c) and (d), Ariz. R. Sup. Ct.

COUNT FOUR (File No. 15-2476/State Bar)

96. On July 11, 2011, Fernando and Moana Leonard (Plaintiffs) were living in a rented house in Hesperus, Colorado when a propane explosion occurred and they were injured. Plaintiffs hired Respondent to represent them, even though he is not licensed to practice in Colorado.

97. Respondent asked William Babich (Babich), who is licensed in Colorado, to act as local counsel. Babich agreed to act as local counsel contingent on Respondent seeking admission *pro hac vice*, taking and defending all

depositions, handling all discovery, and advancing all costs. Both Plaintiffs agreed to and signed the fee sharing letter.

98. On April 4, 2013, a complaint was filed in Denver County District Court. Babich attempted to get Respondent to enter his appearance *pro hac vice*, participate in the case, and to front costs as agreed, but Respondent failed to abide by his obligations under the co-counsel agreement.

99. From March 29, 2013, through December 16, 2013, Respondent was suspended from the practice of law in Arizona, the only state where he is admitted.

100. On November 19, 2013, Babich sought leave to withdraw. Plaintiffs never objected to Babich's withdrawal. Respondent told Plaintiffs that he continued to represent them in the personal injury matter and had done everything necessary to pursue their case.

101. On November 22, 2013, three days after filing the motion to withdraw, Babich filed a motion to extend expert disclosure deadline to give Plaintiffs and Respondent additional time to abide by the deadline.

102. On December 17, 2013, Judge Frick granted Babich's motion to withdraw and the motion to extend expert deadlines from December 16, 2013 to January 6, 2014.

103. On February 27, 2014, the Court issued a notice for a pretrial conference to occur on March 10, 2014.

104. The court set the pretrial conference due to concerns over Plaintiffs' failure to participate in the litigation. Plaintiffs appeared at the pretrial conference believing that Respondent had done everything necessary to pursue their case. The

court held at the pretrial conference that no further continuances of the trial date would be granted and all witnesses and exhibits not disclosed within one week would be excluded at trial. More than a week passed without such disclosure, precluding Plaintiffs from introducing any exhibits or witnesses at trial.

105. On March 20, 2014, Defendants took the depositions of both Plaintiffs. Up until their depositions, Respondent was in telephone contact with Plaintiffs and said he continued to represent them.

106. After the depositions, it became clear that Plaintiffs could not establish liability against the defendants. Respondent ignored expert reports asserting zero liability for the two defendants, Amerigas and Plaintiffs' landlord.

107. Plaintiffs filed a malpractice lawsuit against Respondent and Babich, but Babich was later dismissed from the suit. Respondent failed to respond and on November 4, 2014, a default was entered. On May 15, 2015, a damages hearing was held and the court awarded the Plaintiffs \$686,723.19.

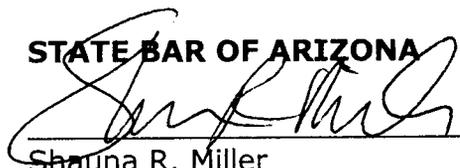
108. On October 7, 2015, Respondent was sent a screening letter asking him to respond to the allegations no later than October 27, 2015. Respondent failed to respond.

109. Respondent's conduct in this count violated Rule 42, ERs 1.1, 1.2, 1.3, 1.4, 3.2, 8.4(c) and (d), and Rule 54(c), Ariz. R. Sup. Ct.

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DATED this 29th day of April, 2016

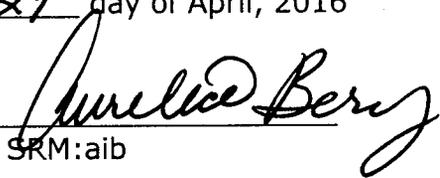
STATE BAR OF ARIZONA



Shauna R. Miller
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 29th day of April, 2016

by:



SRM:aib

FILED

APR 21 2015

STATE BAR OF ARIZONA

BY

**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,**

**EDWARD D. FITZHUGH
Bar No. 007138**

Respondent.

No. 13-1280

PROBABLE CAUSE ORDER

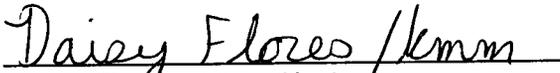
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 10, 2015, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and statements contained in Respondent's letter.

By a vote of 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 13-1280.

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 21st day of April, 2015.


Daisy Flores, Vice Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee member Judge Lawrence F. Winthrop did not participate in this matter.

Original filed this 22nd day
of April, 2015, with:

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

Copy mailed this 22nd day
of April, 2015, to:

Edward D. Fitzhugh
Post Office Box 24238
Tempe, Arizona 85285-4238
Respondent

Copy emailed this 22nd day
of April, 2015, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

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

by: Jackie Dorender

FILED

APR 21 2015

STATE BAR OF ARIZONA

BY *Bald*

**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,**

**EDWARD D. FITZHUGH
Bar No. 007138**

Respondent.

No. 13-2331

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 10, 2015, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and statements contained in Respondent's letter..

By a vote of 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 13-2331.

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 21st day of April, 2015.

Daisy Flores/Kmm

Daisy Flores, Vice Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee member Judge Lawrence F. Winthrop did not participate in this matter.

Original filed this 22nd day
of April, 2015, with:

Lawyer Regulation Records Manager
State Bar of Arizona
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Phoenix, Arizona 85016-6266

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Edward D. Fitzhugh
Post Office Box 24238
Tempe, Arizona 85285-4238
Respondent

Copy emailed this 22nd day
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Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

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

by: Jackie Dender

FILED

NOV 19 2015

STATE BAR OF ARIZONA

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,**

**EDWARD D. FITZHUGH
Bar No. 007138**

Respondent.

No. 15-1142

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on November 13, 2015, 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. 15-1142.

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 19 day of November, 2015.

Lawrence F. Winthrop

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

Original filed this 19 day
of November, 2015, with:

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

Copy mailed this 20 day
of November, 2015, to:

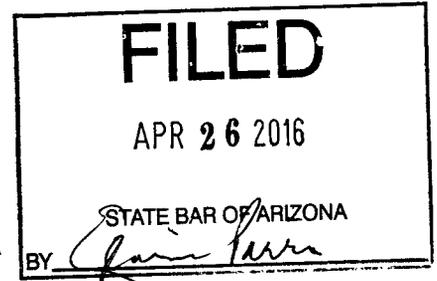
Edward D. Fitzhugh
Post Office Box 24238
Tempe, Arizona 85285-4238
Respondent

Copy emailed this 20 day
of November, 2015, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

by: 



**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,**

**EDWARD D. FITZHUGH
Bar No. 007138**

Respondent.

No. 15-2476

PROBABLE CAUSE ORDER

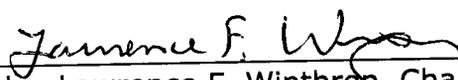
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 8, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-2476.

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 26 day of April, 2016.



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

Original filed this 26th day
of April, 2016, with:

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

Copy mailed this 27th day
of April, 2016, to:

Edward D. Fitzhugh
P.O. Box 24238
Tempe, Arizona 85284-4238
Respondent

Copy emailed this 27th day
of April, 2016, to:

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1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
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by: Aurelia Berg