

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

SCOTT LIEBERMAN,
Bar No. 024306

Respondent.

PDJ-2017-9049

**FINAL JUDGMENT AND
ORDER**

[State Bar Nos. 16-1372, 16-2465
& 16-3649]

FILED AUGUST 18, 2017

This matter was heard by a Hearing Panel which rendered its decision under Rule 58, Ariz. R. Sup. Ct. No appeal has been filed and the time to appeal has expired.

Accordingly,

IT IS ORDERED Respondent, **SCOTT LIEBERMAN**, is suspended from the practice of law for three (3) years effective August 25, 2017, for conduct in violation of his duties and obligations as a lawyer as disclosed in the Hearing Panel's Decision and Order Imposing Sanctions filed on July 26, 2017.

IT IS FURTHER ORDERED Mr. Lieberman 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 Mr. Lieberman shall pay the costs and expenses of the State Bar of Arizona in the amount of \$2,000.00, within thirty (30) days from the date of this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this August 18, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed this August 18, 2017, and mailed August 21, 2017, to:

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Scott Lieberman
Law Offices of Scott Lieberman, PLLC
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Respondent

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**SCOTT LIEBERMAN,
Bar No. 024306**

Respondent.

PDJ 2017-9049

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar Nos. 16-1372, 16-2465, 16-3649]

FILED JULY 26, 2017

Pursuant to Rule 58(d), Ariz. R. Sup. Ct.,¹ this matter came before the Hearing Panel (“Panel”) for consideration of the Rule 58(a) complaint against Scott Lieberman, Bar No. 024306. On June 27, 2017, the Hearing Panel (“Panel”), composed of Judge Maurice Portley (Retired), volunteer attorney member, Archer Shelton, volunteer public member, and Presiding Disciplinary Judge William J. O’Neil (“PDJ”), heard the aggravation/mitigation hearing.

Although the allegations are deemed admitted by the entry of effective default, the Panel has also independently determined that the State Bar has proven by clear and convincing evidence that Mr. Lieberman violated ethical rules, as alleged. At the conclusion, the State Bar requested a three (3) year suspension.

¹ Unless stated otherwise, all Rule references are to the Ariz. R. Sup. Ct.

I. PROCEDURAL HISTORY

The State Bar of Arizona (“SBA”) filed its complaint on April 10, 2017. On April 11, 2017, the complaint was served on Respondent, Scott Lieberman by certified, delivery restricted mail, and by regular first class mail, pursuant to Rules 47(c) and 58(a) (2). The PDJ was assigned to the matter. A notice of default was properly issued on May 9, 2017. Effective default was properly entered on May 31, 2017, at which time notice of a June 27, 2017, aggravation and mitigation hearing was sent to the parties, notifying them of the 1:30 p.m. aggravation/mitigation hearing at the State Courts Building, 1501 West Washington Street, Phoenix, Arizona. On June 27, 2017, the assigned Hearing Panel heard the proceeding.

A respondent against whom an effective 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. Mr. Lieberman did not appear.

II. FINDINGS OF FACT

COUNT ONE (File no. 16-1372/Evans)

1. In the spring of 2007, April Evans retained Mr. Lieberman in a divorce action (Tucson Superior Court case no. D2007-0747). [Exhibit 5.]
2. During the representation, Mr. Lieberman engaged in a sexual relationship with Ms. Evans that lasted for 2-3 years. [Exhibits 2 & 5.]

3. Mr. Lieberman and Ms. Evans did not have a consensual sexual relationship before the creation of their client-lawyer relationship. [Exhibit 5, Bates 11.]

4. In engaging in this conduct, Mr. Lieberman violated ERs 1.7, 1.8, 8.4(d), and Rule 41(g).

COUNT TWO (File no. 16-2465/Caramella)

5. In 2012, Jessica Caramella hired Mr. Lieberman to represent her in a family law matter in Pima County Superior Court case no. SP2012-0173. [Complaint, p. 2.]

6. On May 22, 2016, the court entered a parenting time order, and Ms. Caramella wanted Mr. Lieberman to challenge the order. [Id.]

7. On May 23, 2016, Mr. Lieberman emailed Ms. Caramella stating that he would move for reconsideration of the order “this week.” [Id.]

8. On June 17, 2016, Ms. Caramella requested a copy of the motion for reconsideration that she presumed had been filed. [Exhibit 11, Bates 20.]

9. Mr. Lieberman responded the same day, “Yes I got this! Have to run back out again but will send you a copy of course!!!!!!” [Id.]

10. A few hours later Mr. Lieberman emailed her indicating that he would send a copy once the runner “drops it back off.” [Exhibit 11, Bates 21.]

11. Mr. Lieberman, however, had never filed a motion for reconsideration, and, therefore, there was no motion to deliver to Ms. Caramella as he had promised. [Complaint, p. 3.]

12. On September 7, 2016, the State Bar sent Mr. Lieberman an initial screening letter requiring a response by September 27, 2016. Mr. Lieberman failed to respond to the letter. [Exhibit 12.]

13. In engaging in the conduct detailed in Count Two, Mr. Lieberman violated ERs 1.2, 1.3, 1.4, 8.4(c), and 8.4(d), and Rule 54(d).

COUNT THREE (File no. 16-3649/State Bar)

14. The State Bar investigated Mr. Lieberman for alleged inappropriate communication of a sexual nature with clients in file numbers 12-1099 and 12-12384. On November 28, 2012, Mr. Lieberman, through counsel, emailed his response to the State Bar's investigations. [Exhibit 15.]

15. In the State Bar's request, Mr. Lieberman was asked:

- a. How many clients he had engaged in "similar informal/flirtatious banter with in addition to those identified" in file nos. 12-1099 and 12-2384."
- b. Whether he had ever had "a sexual relationship with a client."

16. Mr. Lieberman, by counsel, stated "I spoke with Scott [Lieberman] about the [allegations] and he indicated that he has not engaged in any other similar

flirtatious banter with any other of his clients. In addition, he has never had a sexual relationship with a client.” [Id.]

17. Mr. Lieberman’s denial of having had a sexual relationship with a client was false. [Complaint, p. 4.]

18. A screening letter was sent to Mr. Lieberman on November 2, 2016, requiring a response by November 21, 2016. Mr. Lieberman failed to respond to the screening letter. [Exhibit 16.]

19. In engaging in the conduct detailed in Count Three, Mr. Lieberman violated ER 8.4(c) and Rule 54(d).

III. CONCLUSIONS OF LAW

Based upon the facts deemed admitted under Rule 58(d), the Hearing Panel finds by clear and convincing evidence that Mr. Lieberman violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 1.4, 1.7, 1.8, 8.4(c), 8.4(d), Rule 41(g), and Rule 54(d).

IV. 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 consider: (1) the duty violated; (2) the lawyer’s mental

state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0.*

Duties violated:

Mr. Lieberman violated his duty to his clients by violating ERs 1.2, 1.3, 1.4, 1.7, 1.8, and 8.4(c). Mr. Lieberman violated his duty owed as a professional by violating ERs 8.4(d), and Rule 41(g) and Rule 54.

Mental State and Injury:

Standard 5.11(b) provides:

Disbarment is generally appropriate when a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Mr. Lieberman lied to the State Bar during an investigation into a prior allegation of inappropriate sexual communications with female clients. He falsely stated he had never engaged in a sexual relationship with a client.

Standard 4.62 provides:

Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

Mr. Lieberman intentionally deceived his client in Count Two by stating he had filed a motion for reconsideration, when he had not. He additionally deceived her on two occasions by stating he was delivering the motion to her.

AGGRAVATING AND MITIGATING FACTORS

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

Aggravating factors include:

- *Standard 9.22(b)*: dishonest or selfish motive (lied to the State Bar and his client)
- *Standard 9.22(c)*: pattern of misconduct (a pattern of dishonesty)
- *Standard 9.22(d)*: multiple offenses (Respondent violated all alleged ERs)
- *Standard 9.22(e)*: bad faith obstruction of the disciplinary proceeding (Mr. Lieberman failed to answer the complaint and respond to two bar charges).
- *Standard 9.22(h)*: vulnerability of victim (Respondent engaged in a sexual relationship with a current client dependent upon his representation in a divorce action.)

The Hearing Panel finds the following mitigating factor applies:

- *Standard 9.32(a)*: absence of a prior disciplinary record

Upon consideration of the aggravating factors and the sole mitigating factor, a suspension of three (3) years is ordered.

V. 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 determined the appropriate sanction using the facts deemed admitted, and applying the ABA *Standards*, the aggravating factors, the sole mitigating factor, and the goals of the attorney discipline system.

The Hearing Panel orders:

1. Mr. Lieberman shall be suspended from the practice of law for three (3) years effective thirty (30) days from this order.
2. Mr. Lieberman shall pay all costs and expenses incurred by the State Bar.

A final judgment and order will follow.

DATED this 26th day of July 2017.

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

Archer Shelton
Archer Shelton, Volunteer Public Member

Maurice Portley
Hon. Maurice Portley (Ret.), Attorney Member

Copy of the foregoing emailed/mailed
this 26th day of July, 2017, to:

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Respondent

by: MSmith

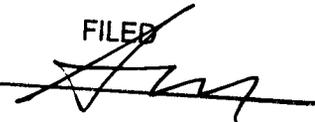
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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

APR 10 2017

BY

FILED



BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**SCOTT LIEBERMAN,
Bar No. 024306,**

Respondent.

PDJ 2017-9049

COMPLAINT

[State Bar No. 16-1372, 16-2465, 16-3649]

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 May 18, 2006.

COUNT ONE (File no. 16-1372/Evans)

2. In the spring of 2007, April Evans retained Respondent in a divorce action (Tucson Superior Court case no. D2007-0747).

3. During the representation, Respondent engaged in a sexual relationship with Evans for 2-3 years.

4. No consensual sexual relationship existed between Respondent and Evans when the client-lawyer relationship commenced.

5. In engaging in the conduct detailed in Count One, Respondent violated ERs 1.7, 1.8, 8.4(d), and Rule 41(g).

COUNT TWO (File no. 16-2465/Caramella)

6. In 2012, Jessica Caramella hired Respondent for assistance in a family law matter (Pima County Superior Court case no. SP2012-0173).

7. On May 22, 2016, Caramella received an order from the court regarding parenting time that she wanted Respondent to challenge.

8. On May 23, 2016, Respondent emailed Caramella telling her that he would file a motion for reconsideration of the order "this week."

9. On June 17, 2016, Caramella requested a copy of the motion for reconsideration that she presumed had been filed.

10. Respondent responded the same day, "Yes I got this! Have to run back out again but will send you a copy of course!!!!!"

11. A few hours later Respondent emailed Caramella indicating that he would send a copy once the runner "drops it back off."

12. Respondent, however, had never filed a motion for reconsideration and never provided Caramella with a copy of such a motion.

13. On September 7, 2016, the State Bar sent Respondent an initial screening letter requiring a response by September 27, 2016. Respondent failed to furnish a response.

14. In engaging in the conduct detailed in Count Two, Respondent violated ERs 1.2, 1.3, 1.4, 8.4(c), and 8.4(d), and Rule 54(d).

COUNT THREE (File no. 16-3649/State Bar)

15. On November 28, 2012, Respondent, through counsel, sent an email to the State Bar in response to an investigation request in State Bar file nos. 12-1099 and 12-2384. In those matters, Respondent was investigated for inappropriate communications of a sexual nature with clients.

16. In the State Bar's request, Respondent was asked:

- a. How many clients he had engaged in “similar informal/flirtatious banter with in addition to those identified” in file nos.12-1099 and 12-2384.”
- b. Whether he had ever had “a sexual relationship with a client.”

17. Respondent’s counsel responded on Respondent’s behalf as follow: “I spoke with Scott [Respondent] about the below and he indicated that he has not engaged in any other similar flirtatious banter with any other of his clients. In addition, he has never had a sexual relationship with a client.”

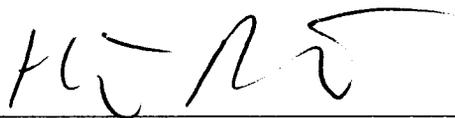
18. Respondent’s denial of having had a sexual relationship with a client was false.

19. A screening letter was sent to Respondent on November 2, 2016, requiring a response by November 21, 2016. Respondent failed to respond to the screening letter.

20. In engaging in the conduct detailed in Count Three, Respondent violated ER 8.4(c) and Rule 54(d).

DATED this 10th day of April, 2017.

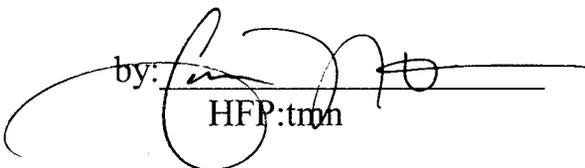
STATE BAR OF ARIZONA



Hunter F. Perlmeter
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 10th day of April, 2017.

by:



HFP:tmh