

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

BARRY W. ROREX,
Bar No. 025910

Respondent.

No. PDJ-2016-9015

**FINAL JUDGMENT AND
ORDER**

[State Bar Nos. 15-2293, 15-2637,
15-2755]

FILED JUNE 21, 2017

The decision of the hearing panel was filed with the disciplinary clerk on May 26, 2017. The time for appeal has passed and no appeal has been filed.

Now Therefore,

IT IS ORDERED Respondent, **BARRY W. ROREX, Bar No. 025910**, is suspended from the practice of law for six (6) months and one (1) day effective retroactive to February 24, 2017, the date the stay in this matter was lifted.

IT IS FURTHER ORDERED Mr. Rorex 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 if reinstated, Mr. Rorex shall be under terms and conditions of probation as determined by the hearing panel.

IT IS FURTHER ORDERED Mr. Rorex shall pay restitution to the following individuals in the following amounts:

(Count One) Matthew Foley \$200.00;

(Count Two) Kyle Esham \$750.00; and

(Count Three) Robert Martino \$600.00.

IT IS FURTHER ORDERED Mr. Rorex shall pay the State Bar's costs and expenses in this matter totaling \$2,000.00. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

DATED this 21st day of June, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 21st day of June, 2017 to:

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Respondent

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by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**BARRY W ROREX,
Bar No. 025910**

Respondent.

PDJ 2016-9015

**DECISION AND ORDER
IMPOSING SANCTIONS**

State Bar Nos. [15-2293, 15-2637, 15-2755]

FILED MAY 26, 2017

On April 19, 2017, the Hearing Panel, comprised of James M. Marovich, Attorney Member, Edward J. Luterbach, Public Member, and Presiding Disciplinary Judge (PDJ) William J. O’Neil, held an aggravation/mitigation hearing. Hunter Perlmeter appeared on behalf of the State Bar of Arizona. Mr. Rorex failed to appear. At the conclusion of the hearing, the State Bar requested a six (6) month and one (1) day suspension and restitution. In his mitigation statement, Mr. Rorex asserts he did not purposely try to obstruct justice in his clients’ cases and discusses his medical conditions. Mr. Rorex requests a three (3) month suspension and restitution to clients Martino and Foley.

I. SANCTION IMPOSED

**SIX (6) MONTH AND ONE (1) DAY SUSPENSION,
RESTITUTION, AND COSTS**

II. PROCEDURAL HISTORY

The State Bar of Arizona filed its complaint on February 11, 2016. On February 12, 2016, the complaint was served on Mr. Rorex by certified, delivery restricted mail, and 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 March 9, 2016, given Mr. Rorex’s failure to file an answer or otherwise defend. Default was effective on March 29, 2017.

On April 4, 2016, Mr. Rorex filed a petition for transfer to disability status. On April 7, 2016, this formal discipline matter was stayed pending determination of Mr. Rorex’s competency. On April 26, 2016, Mr. Rorex was appointed counsel to assist him in the disability matter. On October 12, 2016, appointed counsel’s motion to withdraw was granted because Mr. Rorex failed to communicate with appointed counsel. A status conference was held on February 24, 2017. On that date, the stay in this matter was lifted. On April 5, 2017, at Mr. Rorex’s request, Mr. Rorex’s Petition for disability was dismissed.

Finding that ample time had been given to address the effective default, the PDJ directed the disciplinary clerk to set an aggravation/mitigation hearing. On that

date, the disciplinary clerk sent notice of the aggravation/mitigation hearing to the parties notifying them that the hearing had been scheduled for April 20, 2017, at 1:30 p.m., at the State Courts Building, 1501 West Washington Street, Phoenix, Arizona 85007-3231.

On April 19, 2017 at 3:19 p.m., Mr. Rorex emailed the disciplinary clerk an Emergency Motion for a Continuance of Aggravation/Mitigation Hearing and Emergency Motion for Permission to Participate Telephonically in Aggravation/Mitigation hearing due to dental issues. The disciplinary clerk emailed Mr. Rorex on April 20, 2017 at 9:28 a.m. and notified him that the PDJ would allow him to proceed telephonically and gave him the designated phone number to in call for the hearing. Mr. Rorex failed to appear.

Mr. Rorex's emergency motions were received by mail on April 21, 2017 and filed that day. By Order of the PDJ filed April 21, 2017, Mr. Rorex could file with the disciplinary clerk a statement to support any mitigation by May 11, 2017. His statement to support mitigation was received on May 12, 2017 and has been considered by the Panel.

A respondent against whom a default has been entered no may longer litigate the merits of the factual allegations, but retains the right to appear and participate in

the hearing to the extent allowed by the rules of procedure. 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. Mr. Rorex failed to appear.

III. FINDINGS OF FACT

The facts listed below are those set forth in the complaint and were deemed admitted by Mr. Rorex's default. Those allegations were undergirded by the admission of thirty (30) Exhibits. 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 Mr. Rorex violated the ethical rules.

1. Mr. Rorex was a lawyer licensed to practice law in Arizona having been first admitted to practice in Arizona on February 25, 2008.

COUNT ONE (File no. 15-2293/Matthew Foley)

1. Complainant Matthew Foley hired Mr. Rorex in early 2014 to pursue a landlord/tenant claim. Foley paid \$200 in filing fees at the start of the representation and the matter was to be handled on a contingency fee basis.

2. After the initial meeting, Foley repeatedly requested status updates, but received no response from Mr. Rorex.

3. Mr. Rorex eventually filed a lawsuit on Foley's behalf, however, he failed to serve the defendant.

4. Because Foley did not receive status updates regarding his lawsuit, he terminated the representation via email on November 17, 2014, believing his case had been abandoned. He also requested a copy of his file, but received no response from Mr. Rorex. [Exhibit 1.]

5. Mr. Rorex failed to respond to the State Bar's inquiry concerning his conduct. [Exhibits 3-10.]

6. In engaging in the above conduct, Mr. Rorex violated ERs 1.2, 1.3, 1.4, 1.15, 1.16, and Rule 54(d).

COUNT TWO (File no. 15-2637/ Kyle Esham)

7. Complainant Kyle Esham hired Mr. Rorex for assistance with a landlord/tenant dispute. Esham paid Mr. Rorex a \$750 flat fee at the start of the case. [Exhibits 11-12.]

8. Mr. Rorex sued and served the defendant. He then stopped communicating with Esham, failing to respond to emails sent to him on February 27, March 11, March 17, and March 27, 2015.

9. Mr. Rorex finally responded to an April 20, 2015 email, indicating nothing needed to be done until the defendant filed an answer.

10. Mr. Rorex failed to respond to emails sent by Esham on May 16, May 22, June 8, and June 9, 2015, in which Esham requested a status update.

11. In June of 2015, Esham's case was dismissed by the court due to inactivity. Mr. Rorex failed to answer phone calls from Esham for most of the month of June.

12. On June 24, 2015, Esham reached Mr. Rorex's assistant who scheduled a meeting with Mr. Rorex and Esham for June 30, 2015. At the meeting, Mr. Rorex appeared and notified Esham he had moved to re-open the case and was waiting for the military to confirm that the defendant was not in active military service before he pursued a default for defendant's failure to answer the lawsuit.

13. Esham instructed Mr. Rorex to pursue a default judgment on July 14, 2015, but received no response. Mr. Rorex also failed to respond to an email from Esham on July 31, 2015.

14. Esham reached Mr. Rorex on August 25, 2015, and was told by him that he would move forward with the default. Mr. Rorex failed to do so.

15. Mr. Esham tried to follow up with Mr. Rorex on September 15 and 25, as well as on October 9 and 14, 2015, but Mr. Rorex did not respond. Esham filed a written bar charge on October 14, 2015.

16. Mr. Rorex failed to respond to the State Bar's inquiry concerning his conduct. [Exhibits 15, 17, & 19.]

17. In engaging in the above conduct, Mr. Rorex violated ERs 1.2, 1.3, 1.4, 1.15, 1.16, and Rule 54(d).

COUNT THREE (File no. 15-2755/Robert Martino)

18. In early 2014, Complainant Robert Martino met with Mr. Rorex about representing him on a contingency basis in three cases. Martino provided Mr. Rorex with a check on August 16, 2013, for \$600 to cover filing fees in the three matters. Mr. Rorex cashed the check. [Exhibit 21.]

19. On February 28, 2014, Martino met with Mr. Rorex concerning the matters.

20. On June 2, 2014, Martino emailed Mr. Rorex requesting a status update. Mr. Rorex apologized for the delay via email on July 20, 2014, and indicated that he

would provide an update the following week. Mr. Rorex, however, never again contacted Martino despite numerous calls and letters. [Exhibit 21, Bates 040.]

21. Mr. Rorex failed to respond to the State Bar's inquiry concerning his conduct and failed to refund Martino's filing fees or return his files despite written requests that he do so. [Exhibits 22-23, 25, &28.]

22. In engaging in the above conduct, Mr. Rorex violated ERs 1.2, 1.3, 1.4, 1.15, 1.16 and Rule 54(d).

CONCLUSIONS OF LAW

Mr. Rorex failed to file an answer or otherwise defend against the allegations in the State Bar's complaint. Default was properly entered and effective. The allegations are therefore deemed admitted under Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Mr. Rorex violated: Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2 (scope of representation), 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping property), 1.16 (terminating representation), and Rule 54(d) (obligations in disciplinary investigation).

RESTITUTION

While Mr. Rorex appears to have performed some work in the matters detailed in counts 1-3 above, he ultimately abandoned his clients in all three counts, rendering that work of no value to the clients. Restitution, shall be made by Mr. Rorex in the following amounts:

Foley (Count One): \$200.00; Esham (Count Two): \$750.00; and Martino (Count Three): \$600.00.

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. Rorex violated his duty to his clients by violating ERs 1.2, 1.3, 1.4, 1.15, and 1.16.

Mental State and Injury:

Mr. Rorex knowingly violated his duty to clients, 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.

Mr. Rorex knowingly failed to perform services for clients and engaged in a pattern of neglect of client matters, all which caused serious or potentially serious injury to clients. Therefore, *Standard 4.42* applies.

AGGRAVATING AND MITIGATING FACTORS

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

- *Standard 9.22(a)*: Prior Disciplinary offenses- Mr. Rorex received an admonition and probation in file no. 15-0675 for violations of ERs 1.3, 1.4, 1.5, and Rule 54(d). [Exhibit 30.]
- *Standard 9.22(c)*: Pattern of misconduct- Mr. Rorex's conduct was virtually the same in all three counts.
- *Standard 9.22(d)* Multiple offenses: Mr. Rorex's conduct violated all of the ERs alleged in the complaint.

- *Standard 9.22(e)*: Bad faith obstruction of the disciplinary process. Mr. Rorex failed to respond to the bar charges underlying the three counts of the complaint.

The Hearing Panel finds the following factor is present in mitigation:

- *Standard 9.32(c)* personal or emotional problems. Pursuant to Rule 63(b)(2) and (3), Ariz. R. Sup. Ct., a prima facie finding of incapacity was established in Mr. Rorex’s disability matter, File No. PDJ-2016-9029. Mr. Rorex was temporarily transferred to disability inactive status on April 7, 2016. However, sufficient medical evidence including a nexus between the disability and the misconduct has not been submitted or established for the Panel to apply *Standard 9.32(h)*. Mr. Rorex’s medical conditions were considered under *Standard 9.32(c)*.

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 State Bar of Arizona. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Hearing Panel has determined the sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. The Hearing Panel orders:

1. Mr. Rorex shall be suspended for six (6) months and one (1) day retroactive to February 24, 2017, the date the stay in this matter was lifted.

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

3. If reinstated, Mr. Rorex shall be under terms and conditions of probation as determined by the hearing panel.

4. Mr. Rorex shall pay restitution to the following individuals in the following amounts:

- Matthew Foley (Count One): \$200.00
- Kyle Esham (Count Two): \$750.00 [Exhibit 11.]
- Robert Martino (Count Three): \$600.00

A final judgment and order will follow.

DATED this 26th day of May 2017.

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

Edward J. Luterbach
Edward J. Luterbach, Volunteer Public Member

James M. Marovich
James M. Marovich, Volunteer Attorney Member

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

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

FEB 11 2016

BY  FILED

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**BARRY W. ROREX,
Bar No. 025910,**

Respondent.

PDJ 2016-9015

COMPLAINT

[State Bar No. 15-2293, 15-2637, 15-2755]

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 February 25, 2008.

COUNT ONE (File no. 15-2293/Foley)

2. Complainant Matthew Foley hired Respondent in early 2014 to pursue a landlord/tenant claim. Foley paid \$200 in filing fees at the start of the representation and the matter was to be handled on a contingency fee basis.

3. After the initial meeting, Foley repeatedly requested status updates, but received no response from Respondent.

4. Respondent eventually filed a lawsuit on Foley's behalf, however, he failed to serve the defendant.

5. Because Foley did not receive status updates regarding his lawsuit, he terminated the representation via email on November 17, 2014, believing his case had been abandoned. He also requested a copy of his file, but received no response from Respondent.

6. Respondent has failed to respond to the State Bar's inquiry concerning his conduct.

7. In engaging in the above conduct, Respondent violated ERs 1.2, 1.3, 1.4, 1.15, 1.16, and Rule 54(d).

COUNT TWO (File no. 15-2637/Esham)

8. Complainant Kyle Esham hired Respondent for assistance with a landlord/tenant dispute. Esham paid Respondent a \$750 flat fee at the start of the case.

9. Respondent filed a lawsuit and served the defendant. Thereafter, he stopped communicating with Esham, failing to respond to emails sent to him on February 27, March 11, March 17, and March 27, 2015.

10. Respondent did respond to an April 20, 2015 email and in doing so indicated that nothing needed to be done in the case until the defendant filed an answer.

11. Respondent failed to respond to emails sent by Esham on May 16, May 22, June 8, and June 9, 2015, in which Esham requested a status update.

12. In June of 2015, Esham's case was dismissed by the court due to inactivity. Respondent failed to answer phone calls from Esham for most of the month.

13. On June 24, 2015, Esham reached Respondent's assistant who scheduled a meeting with Respondent and Esham for June 30, 2015. At the meeting, Respondent appeared and notified Esham that he had moved to re-open the case and that he was waiting for the military to confirm that the defendant was not in active military service before he pursued a default for defendant's failure to answer the lawsuit.

14. After confirmation was received that the defendant was not in the military, Esham instructed Respondent to pursue a default judgment on July 14, 2015, but received no response. Respondent also failed to respond to an email from Esham on July 31, 2015.

15. Esham reached Respondent on August 25, 2015, and Respondent indicated that he would move forward with the default. He, however, failed to do so.

16. After Esham followed up on September 15 and 25, as well as on October 9 and 14, 2015, without success, he filed a written bar charge on October 14, 2015.

17. Respondent failed to respond to the State Bar's inquiry concerning his conduct

18. In engaging in the above conduct, Respondent violated ERs 1.2, 1.3, 1.4, 1.15, 1.16, and Rule 54(d).

COUNT THREE (File no. 15-2755/Martino)

19. Complainant Robert Martino met with Respondent about representing him on a contingency basis in three cases in early 2014. Martino provided Respondent with a check on August 16, 2013, for \$600 to cover filing fees in the matters. Respondent cashed the check.

20. On February 28, 2014, Martino met with Respondent concerning the matters.

21. On June 2, 2014, Martino emailed Respondent requesting a status update. Respondent apologized for the delay via email on July 20, 2014, and indicated that he would provide an update the following week. Respondent, however, never again contacted Martino despite numerous calls and letters.

22. Respondent failed to respond to the State Bar's inquiry concerning his conduct and failed to refund Martino's filing fees or return his files despite written requests that he do so.

23. In engaging in the above conduct, Respondent violated ERs 1.2, 1.3, 1.4, 1.15, 1.16 and Rule 54(d).

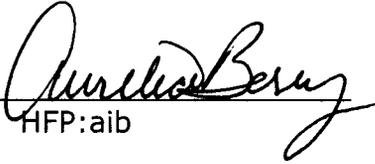
DATED this 11th day of February, 2016.

STATE BAR OF ARIZONA



Hunter F. Perlmeter
Staff Bar Counsel - Litigation

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 11th day of February, 2016.

by: 
HFP:aib