

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

WILLIAM TATTNALL RUSH,
Bar No. 025228

Respondent.

PDJ-2016-9087

**FINAL JUDGMENT AND
ORDER**

[State Bar File Nos. 15-2534, 15-2540,
15-2863, 15-2928, 16-0333, 16-0340,
16-0505, 16-0538]

FILED JANUARY 26, 2017

This matter came for hearing before the Hearing Panel, which rendered its decision on January 4, 2017. No appeal having been filed and the time to appeal having expired, accordingly:

IT IS ORDERED Respondent, **WILLIAM TATTNALL RUSH, Bar No. 025228**, is disbarred from the State Bar of Arizona and his name is stricken from the roll of lawyers effective January 4, 2017, as set forth in the Hearing Panel's Decision and Order Imposing Sanctions. Mr. Rush 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. Rush shall immediately comply with Rule 72, Ariz. R. Sup. Ct., including notice to clients and others.

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

- 1) \$1,900.00 to Catherine Pittman;
- 2) \$3,900.50 to Bruce Stuart Garry;
- 3) \$500.00 to Karen Grayson;
- 4) \$500.00 to Janelle Swiader;
- 5) \$7,100.00 to Celia Landry; and
- 6) \$2,000.00 to Erica Jean Cherry.

IT IS FURTHER ORDERED Mr. Rush shall pay all costs and expenses incurred by the State Bar totaling \$3,244.81 with interest at the legal rate until paid. 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 26th day of January, 2017.

William J. O'Neil

William J. O'Neil
Presiding Disciplinary Judge

Copies of the foregoing e-mailed
This 26th day of January, 2017, and
Mailed January 27, 2017, to:

James D. Lee
Senior Bar Counsel
State Bar of Arizona
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William Tattnall Rush
Scottsdale Financial center III
7272 E. Indian School Road, Suite 540
Scottsdale, AZ 85251-3921
Email: wtrush@rushfamilylaw.com
Respondent

and alternative address:

William Tattnall Rush
6639 East Preston Street
Mesa, AZ 85215

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**WILLIAM TATTNALL RUSH,
Bar No. 025228**

Respondent.

PDJ-2016-9087

**DECISION AND ORDER IMPOSING
SANCTIONS**

[State Bar Nos. 15-2534, 15-2540, 15-2863, 15-2928, 16-0333, 16-0340, 16-0505 and 16-0538]

FILED JANUARY 4, 2017

PROCEDURAL HISTORY

The State Bar of Arizona filed its complaint on September 9, 2016. On September 14, 2016, the complaint was served on William Tattnall Rush by certified mail/delivery restricted to Mr. Rush, and by regular first class mail, pursuant to Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct. Service was made on Mr. Rush's current address of record with the State Bar: 7272 East Indian School Road, Suite 540, Scottsdale, Arizona 85251-3921; and at an alternate address at which bar counsel believed Mr. Rush may have been residing: 6339 East Preston Street, Mesa, Arizona 85215. On September 15, 2016, the Presiding Disciplinary Judge ("PDJ") was assigned to the matter. On October 5, 2016, the complaint was re-served on Mr. Rush by certified mail/delivery restricted to Mr. Rush, and by regular first class mail, to the alternate address set forth above and in the initial *Notice of Service of Complaint*.

A notice of default was properly issued on November 2, 2016, based upon Mr. Rush's failure to file an answer or otherwise defend. Mr. Rush did not thereafter file an answer or otherwise defend against the allegations in the complaint, so default was properly entered on November 22, 2016. A notice of aggravation/mitigation hearing was sent to the State Bar and Mr. Rush, notifying them that an

aggravation/mitigation hearing was scheduled for December 13, 2016, at 9:00 a.m., at the State Courts Building, 1501 West Washington Street, Room 109, Phoenix, Arizona 85007-3231. On December 13, 2016, the Hearing Panel, comprised of Ralph J. Wexler, attorney member, Brett F. Eisele, public member, and William J. O'Neil, Presiding Disciplinary Judge (PDJ), heard argument. Senior Bar Counsel James Lee appeared for the State Bar; Mr. Rush did not appear personally or by counsel. State Bar Exhibits 1-64 were admitted and Exhibits 8, 15, 16, 35, 54, 58 and 64 were sealed.

The purpose of an aggravation/mitigation hearing is not only to weigh mitigating and aggravating factors, but also to assure there is a nexus between a respondent's conduct deemed admitted and the merits of the State Bar's case. A respondent against whom a default has been entered no may longer litigate the merits of the factual allegations of the complaint. However, the respondent retains the right to appear and participate in the hearing concerning that nexus and the sanctions sought. Included with that right to appear is the right to dispute the allegations relating to aggravation and to offer evidence in mitigation. Mr. Rush was afforded these rights.

The hearing panel independently determine whether, under the facts deemed admitted, ethical violations have been proven by clear and convincing evidence. The hearing panel must also exercise discretion in deciding whether sanctions should issue for a respondent's misconduct. If the hearing panel finds that sanctions are warranted, then it independently determines which sanctions should be imposed. It is not the function of the hearing panel to endorse or "rubber stamp" any request for sanctions.

FINDINGS OF FACT

The facts listed below are those set forth in the State Bar's complaint were deemed admitted by Mr. Rush's default. *De minimis* errors have been corrected.

1. William Tattnell Rush is licensed to practice law in Arizona, having been first admitted to practice in Arizona on July 6, 2007.

2. On February 26, 2016, Mr. Rush was suspended from the practice of law in Arizona, for failure to comply with the requirements of Mandatory Continuing Legal Education.

COUNT ONE (File No. 15-2534/Pittman)

3. On April 20, 2015, Catherine Pittman ("Catherine") filed *pro se* a petition for dissolution of marriage (*Catherine Pittman v. Dennis Pittman*, Maricopa County Superior Court No. FC2015-000816). On that same date, Catherine filed *pro se* a motion for pre-decree temporary orders.

4. Catherine hired Mr. Rush on May 1, 2015, to represent her in her divorce proceeding. Catherine paid Mr. Rush \$1,900.00 of a \$3,000.00 flat fee for the representation. [Exhibit 7.]

5. On May 5, 2015, Mr. Rush filed a notice of appearance on Catherine's behalf.

6. On May 7, 2015, Catherine and Mr. Rush appeared at a "return hearing" that had been scheduled to consider Catherine's *pro se* petition and motion for pre-decree temporary orders; Catherine's husband, Dennis Pittman ("Dennis"), appeared without counsel. The court scheduled a settlement conference for October 6, 2015, and scheduled trial for November 10, 2015. The court ordered the parties to comply with the Arizona Rules of Family Law Procedure regarding disclosure and discovery.

The court also ordered the parties to complete various tasks prior to trial. [Exhibit 7.]

7. On May 14, 2015, attorney Joseph Maisto filed a notice of appearance on Dennis' behalf.

8. On May 21, 2015, attorney Maisto submitted various discovery requests to Mr. Rush. Mr. Rush failed to timely respond to those requests and failed to inform Catherine about them.

9. On May 27, 2015, attorney Maisto filed a response to the petition for dissolution of marriage on Dennis' behalf.

10. Mr. Rush failed to adequately communicate with Catherine, despite multiple attempts she made to contact him by telephone, email and text messages.

11. Catherine took documents to Mr. Rush's office on July 3, 2015, including a parenting class form that needed to be filed with the court. Mr. Rush never filed the parenting class form with the court, and last communicated with Catherine on July 3, 2015. Thereafter, Mr. Rush abandoned his representation of Catherine. [Exhibit 2.]

12. On July 23, 2015, attorney Maisto sent a letter to Mr. Rush requesting responses to his discovery requests by July 31, 2015. Mr. Rush failed to provide responses to the discovery requests.

13. On September 23, 2015, the court continued the settlement conference from October 6 to October 22, 2015, and directed counsel for the parties to complete various tasks prior to that date.

14. By September 24, 2015, Judge Pro Tem Lisa Andrus and the court's alternative dispute resolution department had unsuccessfully attempted to communicate with Mr. Rush.

15. On September 24, 2015, attorney Maisto emailed Mr. Rush and referenced the discovery requests and mentioned he was "on the verge of filing a Motion to Compel."

16. Mr. Rush failed to respond to the discovery requests propounded by attorney Maisto. Therefore, on September 29, 2015, attorney Maisto filed a *Motion to Compel and for Sanctions* because Mr. Rush failed to respond to the discovery requests. [Exhibit 6.]

17. Mr. Rush failed to submit discovery requests to attorney Maisto, which prevented him from adequately representing Catherine.

18. Catherine frequently requested from Mr. Rush a copy of her file and the documents she initially gave him but he failed to provide them to her. He also failed to provide Catherine with an accounting of the fee she had paid.

19. During or about September or October 2015, Catherine hired counsel to replace Mr. Rush as her attorney of record.

20. On October 6, 2015, attorney Emi Koyama filed a notice of substitution of counsel on Catherine's behalf.

21. On October 7, 2015, bar counsel emailed Mr. Rush informing him that Catherine had hired a new attorney and that Catherine or her new attorney needed the file he maintained on Catherine's behalf. Bar counsel instructed Mr. Rush to immediately contact Catherine to arrange to provide her with the file he maintained on her behalf and a refund of any unearned fees.

22. On October 9, 2015, attorney Koyama moved to continue the settlement conference and trial, in part because Mr. Rush had failed to provide her or Catherine with the file he maintained on Catherine's behalf, which would have allowed them to prepare for the settlement conference and trial.

23. On October 23, 2015, the court continued the trial to December 15, 2015.

24. On October 28, 2015, the court continued the settlement conference to November 16, 2015.

25. On or about November 17, 2015, counsel for the parties informed the court they had settled the matter.

26. On November 23, 2015, bar counsel emailed Mr. Rush suggesting that he send Catherine the file he maintained on her behalf, and an accounting of the fees she had paid.

27. As of December 3, 2015, Mr. Rush had not provided Catherine or attorney Koyama with the file he maintained on Catherine's behalf.

28. On January 21, 2016, the court entered a *Consent Decree for Dissolution of Marriage with Children*. Although the court had ordered Catherine to pay attorney's fees and costs related to the motion to compel, Dennis waived that right in the decree by agreeing to pay all of his attorney's fees through the date of the decree.

Failure to Respond to Bar Counsel

29. On December 23, 2015, bar counsel sent a screening letter to Mr. Rush at his address of record with the State Bar, which directed him to submit a written response to the charges of misconduct by January 12, 2016. That letter was returned to the State Bar by the U.S. Postal Service as undeliverable. On February 11, 2016,

another screening letter was sent to Mr. Rush at another address,¹ which directed him to submit a written response to the charges of misconduct by March 2, 2016. Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Mr. Rush failed to submit a written response, as directed by bar counsel.

Violations

By engaging in the misconduct described in Count One, Mr. Rush violated ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.5(a), ER 1.15(d), ER 1.16(d), ER 3.4(c), ER 8.1(b), Rules 54(c), Ariz. R. Sup. Ct., and Rule 54(d)(2), Ariz. R. Sup. Ct.

COUNT TWO (File No. 15-2540/Scott)

30. On February 12, 2015, attorney Nicole Stearns filed a petition for dissolution of marriage on Christopher Scott's ("Christopher") behalf (*Christopher Scott v. Promise Scott*, Maricopa County Superior Court No. FN2015-002291²).

31. On or about February 27, 2015, Christopher's wife, Promise Scott ("Promise"), hired attorney Rebecca Browning to represent her in the divorce proceeding. On February 27, 2015, attorney Browning filed a notice of appearance and a response to the petition for dissolution of marriage on Promise's behalf.

32. On May 5, 2015, the court disqualified attorney Browning from representing Promise due to "an appearance of conflict that is likely an actual conflict."

¹ 6339 East Preston Street, Mesa, Arizona 85215. The Maricopa County Assessor's Office lists that address as a "Residential Rental Parcel." Whitepages.com identifies that address as Respondent's address. The Preston Street address is the address to which screening letters were sent regarding all counts in this complaint, but not returned by the U.S. Postal Service.

² The file number was initially FC2015-002477, but was changed to FN2015-002291 on February 17, 2015.

33. On May 11, 2015, the court reset a previously scheduled Resolution Management Conference to July 16, 2015, and ordered the parties to take certain action prior to that date.

34. On May 19, 2015, Promise hired Mr. Rush to represent her in the divorce proceeding. Promise paid Mr. Rush a flat fee of \$2,000.00 to represent her through conclusion of the case. As new counsel in a pending case, Mr. Rush had a duty to familiarize himself with Promise's case to determine what he needed to do and what he needed to file.

35. On May 20, 2015, Mr. Rush filed a notice of appearance on Promise's behalf.

36. On June 4, 2015, Mr. Rush moved to continue the Resolution Management Conference.

37. On June 18, 2015, attorney Tifanie McMillan filed a *Notice of Change of Counsel within Firm*, replacing attorney Stearns as Christopher's counsel of record.

38. On June 26, 2015, attorney McMillan submitted various discovery requests to Mr. Rush. The responses were due August 5, 2015. Mr. Rush failed to communicate with Promise regarding the discovery requests requested. Mr. Rush was required by the Arizona Rules of Family Law Procedure to timely provide disclosure and respond to discovery requests.

39. Mr. Rush failed to submit discovery requests to attorney McMillan, which prevented him from adequately representing Promise.

40. On July 9, 2015, the court continued the Resolution Management Conference to July 30, 2015.

41. Both Promise and Mr. Rush appeared at the Resolution Management Conference on July 30. On that date, the court affirmed that a settlement conference was scheduled for October 28, 2015, and scheduled a telephonic status conference for November 9, 2015.

42. Mr. Rush last communicated with Promise on July 30, 2015, with an exception of a telephone call on October 14, 2015 (see below). Promise attempted to communicate with Mr. Rush by telephone and email on various occasions after July 30, 2015, but was unsuccessful. Promise's email messages to Mr. Rush were undeliverable, and Mr. Rush failed to respond to her telephone and text messages. Mr. Rush abandoned his representation of Promise on or about July 31, 2015.

43. On August 19, 2015, the court entered a minute entry order regarding the October 28 settlement conference. Counsel were ordered to undertake certain tasks prior to that date, including the submission of a settlement conference memorandum that all discovery has been completed and there were no outstanding discovery disputes.

44. On September 17, 2015, the court issued another minute entry order changing the location of the settlement conference, but reaffirming the date of the settlement conference and counsel's duties.

45. On September 18, 2015, attorney McMillan sent a letter to Mr. Rush reminding him of the outstanding discovery requests and asked for a response by no later than September 30, 2015.

46. On October 1, 2015, Promise sent a text message to Mr. Rush regarding his lack of communication with her. She also asked Mr. Rush to contact her so she could retrieve all the documents he possessed.

47. On October 6, 2015, attorney McMillan moved to compel Promise to answer the discovery requests because Mr. Rush had not provided them. Attorney McMillan also requested sanctions in the form of attorney's fees. Despite that motion, Mr. Rush failed thereafter to provide responses to the discovery requests. [Exhibit 12.]

48. On October 14, 2015, Mr. Rush called Promise and informed her he was suffering from medical problems. Promise informed Mr. Rush she had hired substitute counsel prior to his call and had attempted to get her credit card company to "charge-back" the fees she had paid Mr. Rush with her credit card. Mr. Rush stated he would provide Promise with the file he maintained on her behalf. As of October 22, 2015, however, Mr. Rush had failed to provide Promise with the file he maintained on her behalf.

49. On or about October 22, 2015, Promise hired attorney Emi Koyama to represent her in the divorce proceeding. On October 22, 2015, attorney Koyama filed a *Notice of Substitution of Counsel* and a *Response to Motion to Compel and Motion to Continue Family Settlement Conference* on Promise's behalf. The motion to continue was filed in part because Mr. Rush had failed to provide Promise or attorney Koyama with the file he maintained on Promise's behalf, despite Promise's requests for it. [Exhibit 9.]

50. Promise needed the file that Mr. Rush maintained on her behalf and also needed her affidavit of financial information to be filed.

51. On October 28, 2015, the court denied the motion to compel, but ordered counsel to consult by November 13, 2015, to discuss outstanding discovery.

52. On October 28, 2015, the court continued the settlement conference to November 30, 2015.

53. On November 23, 2015, bar counsel emailed Mr. Rush suggesting that he send Promise the file he maintained on her behalf, and an accounting of the fees she had paid.

54. The parties settled all matters at the settlement conference on November 30, 2015.

55. On February 5, 2016, the court entered a *Consent Decree for Dissolution of Non-Covenant Marriage without Children*, which was filed on February 8, 2016.

Failure to Respond to Bar Counsel

56. On December 23, 2015, bar counsel sent a screening letter to Mr. Rush at his address of record with the State Bar, which directed him to submit a written response to the charges of misconduct by January 12, 2016. [Exhibit 11.] That letter was returned to the State Bar by the U.S. Postal Service as undeliverable. On February 11, 2016, another screening letter was sent to Mr. Rush at another address,³ which directed him to submit a written response to the charges of misconduct by March 2, 2016. [Exhibit 10.] Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Mr. Rush failed to submit a written response, as directed by bar counsel.

Violations

By engaging in the misconduct described in Count Two, Mr. Rush violated ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.5(a), ER 1.15(d), ER 1.16(d), ER 3.4(c),

³ 6339 East Preston Street, Mesa, Arizona 85215.

ER 8.1(b), ER 8.4(d), Rule 54(c), Ariz. R. Sup. Ct., and Rule 54(d)(2), Ariz. R. Sup. Ct.

COUNT THREE (File No. 15-2863/Garry)

57. On August 30, 2014, Bruce Stuart Garry ("Bruce") hired Mr. Rush to represent him in his divorce proceeding. Bruce paid Mr. Rush a flat fee of \$1,000.00. Mr. Rush's fee agreement stated he would: a) draft and file a petition for dissolution of marriage with accompanying documents and advise Bruce regarding his options, applicable statutes and case holdings, strategies and matters to consider; negotiate a settlement agreement/consent decree with opposing counsel; appear and represent Bruce at all hearings for entering a settlement, consent decree or default; draft and file a settlement agreement/consent decree; move for default or temporary orders should they become necessary; and file "any other motions or actions prior to the discovery phase of the dissolution action." The fee agreement also stated, "This agreement does not include representation for any appeals, special actions, mistrial or other actions contemplated at or after the discovery phase of the dissolution proceedings." [Exhibits 14-17.]

58. On September 16, 2014, Mr. Rush filed a petition for dissolution of marriage on Bruce's behalf (*Bruce Garry v. Vickie Garry*, Maricopa County Superior Court No. FN2014-094155). On that same date, Mr. Rush filed a *Notice of Limited Scope Representation*. The notice stated representation comprised drafting and filing documents to initiate proceedings and enter a settlement agreement/consent decree, negotiating settlement terms, filing any appropriate motions regarding the foregoing, and appearing on Bruce's behalf for all those matters.

59. On September 26, 2014, attorney Cheryl Faas filed a *Notice of Appearance* on behalf of Bruce's wife, Vickie Garry ("Vickie").

60. On October 2, 2014, attorney Faas filed a response to petition for dissolution of marriage.

61. On November 4, 2014, Mr. Rush wrote a letter to Bruce that stated in part, "We are also obligated to provide your spouse or his/her attorney with required information during the litigation process."

62. On November 14, 2014, Mr. Rush wrote an email message to Bruce in which he stated in part, "[W]e need to get together our formal disclosure, so we need to discuss that."

63. On December 8, 2014, the court scheduled a Resolution Management Conference for February 9, 2015 (the minute entry order was filed on December 9, 2014). The minute entry order directed counsel to complete various tasks prior to that date, including complying with the initial discovery requirements of the Arizona Rules of Family Law Procedure.

64. On December 12, 2014, attorney Faas propounded various discovery requests upon Mr. Rush. The responses were due January 21, 2015.

65. On January 13, 2015, attorney Faas sent a letter to Mr. Rush reminding him of the upcoming "disclosure deadline" and requesting cooperation regarding possible agreements prior to the Resolution Management Conference.

66. On February 5, 2015, attorney Faas sent another letter to Mr. Rush informing him that his discovery responses were past due. Mr. Rush failed to respond to the discovery requests.

67. On February 6, 2015, Mr. Rush provided attorney Faas with a few documents and a *Notice of Service of Disclosure Documents*. Mr. Rush's disclosure failed to respond to or address all outstanding discovery requests.

68. Both Bruce and Mr. Rush attended the Resolution Management Conference on February 9, 2015. Mr. Rush failed to provide attorney Faas with a Resolution Statement, as ordered by the court, until the Resolution Management Conference. Mr. Rush's Resolution Statement was incomplete, which prevented attorney Faas from understanding Bruce's position on several key issues. At the Resolution Management Conference, the court affirmed the settlement conference scheduled for March 13, 2015, and scheduled a trial for May 18, 2015. The minute entry order directed counsel to undertake various tasks prior to May 18, 2015, including compliance with the discovery and disclosure requirements of the Arizona Rules of Family Law Procedure by no later than April 10, 2015.

69. Following the Resolution Management Conference, attorney Faas reminded Mr. Rush that, even though he assured her he would respond to her discovery requests, his responses were past due. Mr. Rush assured attorney Faas his discovery responses would be forthcoming. Bruce tried to communicate with Mr. Rush by telephone, email and mail following the Resolution Management Conference, but Mr. Rush had limited communication with him. Mr. Rush failed to notify Bruce about hearing dates and failed to keep him informed about the status of his case.

70. On February 10, 2015, the court scheduled a settlement conference for March 13, 2015, and directed counsel to undertake various tasks prior to that date.

71. On February 13, 2015, the court, on its own motion, continued the trial to June 23, 2015.

72. On February 25, 2015, attorney Faas sent another letter to Mr. Rush reminding him of his obligation to respond to the discovery requests. As of March 2, 2015, Mr. Rush had failed to respond to attorney Faas' discovery requests.

73. On March 2, 2015, attorney Faas moved to compel discovery responses, which included a request for attorney's fees. Mr. Rush failed to inform Bruce about that motion or a motion to continue the hearing that attorney Faas had filed. [Exhibit 20.]

74. On March 5, 2015, attorney Faas moved to continue the settlement conference scheduled for March 13, 2015, due to a lack of discovery responses from Mr. Rush.

75. On March 9, 2015, attorney Faas moved to continue the trial because she had plans to be on vacation on the date scheduled for trial.

76. On March 24, 2015, the court granted attorney Faas' motion to continue the trial and continued the trial to August 25, 2015. The court ordered counsel to complete various tasks prior to August 25, 2015, including compliance with the disclosure and discovery requirements of the Arizona Rules of Family Law Procedure by no later than July 24, 2015.

77. On March 25, 2015, the court continued the settlement conference to July 23, 2015, and ordered counsel to complete various tasks prior to that date.

78. On May 6, 2015, attorney Aaron Blase filed a *Notice of Change of Counsel within Firm*, replacing attorney Faas as counsel of record for Vickie.

79. On May 6 or 7, 2015, attorney Blase propounded additional discovery requests upon Mr. Rush. The responses to those requests were due June 22, 2015. Mr. Rush failed to provide responses to those discovery requests.

80. On July 20, 2015, Bruce sent Mr. Rush a proposed settlement agreement. On that same date, attorney Blase spoke with Mr. Rush regarding the outstanding discovery requests. During that conversation, Mr. Rush admitted he still had not submitted responses to all the discovery requests and that the July 23 settlement conference should be continued. [Exhibit 25.]

81. During a telephone conversation with the assigned settlement judge on July 21, 2015, counsel agreed to continue the settlement conference to August 11, 2015, to give Mr. Rush time to respond to the discovery requests.

82. On August 3, 2015, attorney Blase emailed Mr. Rush to remind him that the settlement conference was scheduled for the following week. He also inquired when Mr. Rush would provide responses to the discovery requests. Mr. Rush failed to respond to that email message.

83. On August 6, 2015, attorney Blase sent another email message to Mr. Rush informing him that if he did not provide discovery responses the following day that the settlement conference would have to be continued again.

84. On August 10, 2015, attorney Blase emailed Mr. Rush and the settlement judge requesting that the settlement conference be continued because Mr. Rush had failed to provide responses to the outstanding discovery requests. On that same date, the court vacated the August 11 settlement conference, in part because Mr. Rush had failed to provide responses to the discovery requests.

85. On August 13, 2015, attorney Blase filed an expedited motion to continue the trial then scheduled for August 25, 2015, because Mr. Rush had failed to provide responses to the discovery requests. He also requested that the court enter an order requiring Mr. Rush to respond to all discovery requests and that Bruce

be ordered to pay sanctions. As of August 13, 2015, Mr. Rush had not provided responses to any (or most) of the discovery requests. Mr. Rush had disclosed a few documents with a *Notice of Service of Disclosure Documents* dated February 6, 2015, but they failed to address any (or most) of the outstanding discovery requests. [Exhibit 27.]

86. On August 18, 2015, the court entered an order vacating the trial scheduled for August 25, 2015, placed the case on the inactive calendar until October 31, 2015, and granted the motion to compel. The court ordered Bruce to provide complete responses to the outstanding discovery requests by August 31, 2015. The court authorized the submission of an application and affidavit to support attorney's fees, as requested.

87. On September 2, 2015, attorney Blase applied for Attorney's Fees and Costs. [Exhibit 29.]

88. On September 28, 2015, the court entered a judgment against Bruce and in favor of his wife for \$2,562.50 for attorney's fees and costs "incurred in the pursuit of a claim in the nature of support."

89. On September 29, 2015, Bruce emailed Mr. Rush discharging him as his attorney. [Exhibit 31.]

90. On October 30, 2015, Mr. Rush moved to place the case on the active calendar or in the alternative to continue the case on the inactive calendar for 30 days. He filed that motion even though he had not communicated with Bruce regarding his intent to file the motion. Mr. Rush falsely claimed in the motion he had communicated with Bruce regarding the status and was completing responses to the discovery requests.

91. On November 4, 2015, the court continued the case on the inactive calendar for dismissal on December 3, 2015, unless a decree was entered, a stipulation for dismissal was filed, or a motion to set and certificate of readiness was filed.

92. On December 10, 2015, the court dismissed the case without prejudice for lack of prosecution. Mr. Rush failed to inform Bruce that the court had dismissed his petition for dissolution of marriage. Bruce learned about the dismissal when he checked the court's online docket.

Failure to Respond to Bar Counsel

93. On January 8, 2016, bar counsel sent a screening letter to Mr. Rush at his address of record with the State Bar, which directed him to submit a written response to the charges of misconduct by January 27, 2016. [Exhibit 32.] That letter was returned to the State Bar by the U.S. Postal Service as undeliverable. On February 11, 2016, another screening letter was sent to Mr. Rush at another address,⁴ which directed him to submit a written response to the charges of misconduct by March 2, 2016. [Exhibit 33.] Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Mr. Rush failed to submit a written response, as directed by bar counsel.

Violations

By engaging in the misconduct described in Count Three, Mr. Rush violated ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.5(a), ER 1.16(d), ER 3.4(c), ER 8.1(b), ER 8.4(d), Rule 54(c), Ariz. R. Sup. Ct., and Rule 54(d)(2), Ariz. R. Sup. Ct.

⁴ 6339 East Preston Street, Mesa, Arizona 85215.

COUNT FOUR (File No. 15-2928/Pavelic)

94. On September 3, 2015, Irma Pavelic (“Ms. Pavelic”) hired Mr. Rush to represent her regarding post-divorce decree enforcement issues. She provided him with certain documents, and authorized him to charge his \$1,700.00 fee to her credit card. Approximately seven days later, after Mr. Rush (apparently) performed no work on Ms. Pavelic’s case, she cancelled his authorization to use her credit card (as of that time, Mr. Rush had not yet charged any of his fee to her credit card). [Exhibit 36.]

95. Ms. Pavelic left messages for Mr. Rush to return her documents, but he failed to return them to her. Ms. Pavelic was unable to speak with Mr. Rush by telephone because he was not answering his phone or returning her calls.

Failure to Respond to Bar Counsel

96. On December 23, 2015, bar counsel sent a screening letter to Mr. Rush at his address of record with the State Bar, which directed him to submit a written response to the charges of misconduct by January 12, 2016. [Exhibit 37.] That letter was returned to the State Bar by the U.S. Postal Service as undeliverable. On February 11, 2016, another screening letter was sent to Mr. Rush at another address,⁵ which directed him to submit a written response to the charges of misconduct by March 2, 2016. [Exhibit 38.] Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Mr. Rush failed to submit a written response, as directed by bar counsel.

97. On November 12, 2015, intake bar counsel left a voice-mail message for Mr. Rush. On that same date, bar counsel emailed Mr. Rush, informing him that Ms.

⁵ 6339 East Preston Street, Mesa, Arizona 85215.

Pavelic had been attempting to contact him and wanted her file. Bar counsel asked Mr. Rush to call him at his earliest convenience. Mr. Rush failed to contact bar counsel as directed.

Violations

By engaging in the misconduct described in Count Four, Mr. Rush violated ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.16(d), ER 8.1(b), and Rule 54(d)(2), Ariz. R. Sup. Ct.

COUNT FIVE (File No. 16-0333/Grayson)

98. On September 11, 2015, Karen Grayson ("Karen") hired Mr. Rush to represent her in her divorce proceeding. She paid Mr. Rush a flat fee of \$500.00. Karen provided Mr. Rush with notes regarding the terms she and her husband, Keith Grayson ("Keith") had agreed to include in the decree. Karen's goal was to have a decree entered by December 31, 2015. [Exhibit 40-41.]

99. On September 21, 2015, Mr. Rush filed a petition for dissolution of marriage on Karen's behalf (*Karen Grayson v. Keith Grayson*, Maricopa County Superior Court No. FN2015-091515).

100. On September 30, 2015, Mr. Rush filed a notice of appearance on Karen's behalf.

101. Keith filed no answer to the petition for dissolution of marriage.

102. Mr. Rush drafted a *Property Settlement Agreement* that Karen signed on October 6, 2015.

103. On and/or after November 20, 2015, following the 60-day period before a default could be entered, Karen attempted to contact Mr. Rush to learn what still needed to be done. Karen made several attempts to communicate with Mr. Rush by

telephone, email and text messages. Eventually, Mr. Rush called her after she sent him a message through his Facebook account. He told her he would email a draft divorce decree to her to review, sign and get notarized.

104. On December 8, 2015, Mr. Rush emailed a draft decree to Karen to review. Upon receipt, Karen discovered it contained incorrect information and terminology (e.g., the listed debts and personal property were another person's and the decree referred to her as "Mother" and her husband as "Father," even though they did not have children).

105. On December 9, 2015, Karen emailed Mr. Rush in which she informed him that the decree was incorrect. [Exhibit 42.]

106. Karen called and sent text messages to Mr. Rush but initially received no response. She then sent a message to him through his Facebook account. Mr. Rush called her on December 11, 2015. On that same date, Mr. Rush emailed another draft divorce decree to Karen, but it was still incorrect. Karen immediately notified Mr. Rush by email that the decree was still incorrect, but Mr. Rush failed to respond. She attempted to contact him again, but received no response.

107. On December 23, 2015, Mr. Rush filed an *Application and Affidavit for Default*. On that same date, Mr. Rush filed a separate *Motion and Affidavit for Default Decree without Hearing*.

108. On December 28, 2015, the court denied the *Motion and Affidavit for Default Decree* because no proposed decree had been attached to the motion when it was filed. The court ordered that the motion be resubmitted to Family Court Administration with the proposed decree attached. [Exhibit 44.]

109. Mr. Rush failed to refile the *Motion and Affidavit for Default* with a proposed decree attached.

110. Karen unsuccessfully attempted to contact Mr. Rush frequently during the first week of January 2016.

111. On January 12, 2016, Karen emailed Mr. Rush in which she expressed her frustration at the delay, his failure to attach the proposed decree to the *Motion and Affidavit for Default Decree*, and his lack of communication. She asked him to provide her with a corrected proposed decree she could sign and return. She sent a similar email message to Mr. Rush on January 15, 2016. [Exhibit 43.]

112. Mr. Rush contacted Karen on January 20, 2016, at which time he informed her he had been ill.

113. On January 21, 2016, Mr. Rush sent another draft decree to Karen. She signed it, had it notarized, and emailed it back to him that same day. Mr. Rush abandoned Karen and failed to communicate with her thereafter.

114. Also on January 21, 2016, the court filed a *Notice of Intent to Dismiss Case*, which stated that Karen's case would be dismissed on March 21, 2016, unless a decree was entered, the matter resulted in the entry of default, or the court granted a motion to extend the dismissal date. A copy of that order was sent to Mr. Rush at an incorrect address.

115. Mr. Rush failed to file the proposed decree that Karen had signed, had notarized, and returned to him.

116. On February 16, 2016, Karen filed a *Motion to Withdraw Attorney* because Mr. Rush had been unresponsive. [Exhibit 46.]

117. On March 17, 2016, the court granted Karen's *Motion to Withdraw Attorney*. [Exhibit 48.]

118. On May 5, 2016, the court dismissed the case without prejudice for lack of prosecution.

Failure to Respond to Bar Counsel

119. On February 17, 2016, bar counsel sent a screening letter to Mr. Rush at an address other than his address of record with the State Bar,⁶ which directed him to submit a written response to the charges of misconduct by March 8, 2016. [Exhibit 47.] Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Mr. Rush failed to submit a written response, as directed by bar counsel.

Violations

By engaging in the misconduct described in Count Five, Mr. Rush violated ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.5(a), ER 1.15(d), ER 1.16(d), ER 3.4(c), ER 8.1(b), ER 8.4(d), Rule 54(c), Ariz. R. Sup. Ct., and Rule 54(d)(2), Ariz. R. Sup. Ct.

COUNT SIX (File No. 16-0340/Swiader)

120. During December 2015, Janelle Swiader consulted with Mr. Rush regarding the possibility he could represent her at a hearing (she wanted to be represented because her former husband had informed her he would be represented). Mr. Rush agreed to represent her, and met her at the courthouse. Ms. Swiader paid Mr. Rush a fee of \$250.00. [Exhibit 54.]

⁶ 6339 East Preston Street, Mesa, Arizona 85215.

121. Ms. Swiader and Mr. Rush spoke following the hearing, and about a week later she hired Mr. Rush to continue the representation. Ms. Swiader signed Mr. Rush's fee agreement and authorized him to receive \$500.00 through her debit card; Mr. Rush received that payment on December 18, 2015. Mr. Rush was supposed to move for paternity on Ms. Swiader's behalf by no later than December 31, 2015.

122. Ms. Swiader attempted to communicate with Mr. Rush throughout December to ensure the motion for paternity was filed. Mr. Rush, however, failed to respond. Mr. Rush's voice-mailbox was full and not accepting any new messages, and his office telephone had been disconnected. Mr. Rush failed to respond to Ms. Swiader's text messages and email messages. Mr. Rush abandoned Ms. Swiader.

123. Mr. Rush failed to file a response to a *Petition to Establish Paternity*, and failed to move for paternity by December 31, 2015.

124. On January 20, 2016, Ms. Swiader filed, *pro se*, a response to the *Petition to Establish Paternity*.

125. On February 22, 2015, Ms. Swiader and Shane Evans filed, *pro se*, a *Stipulation to File Consent Paternity Judgment/Order*, in which they agreed to the entry of a judgment of paternity naming Evans as the child's biological father.

126. On March 3, 2016, the court denied the stipulation and dismissed the *Petition to Establish Paternity* because another superior court judge had previously determined the child's father was Ms. Swiader's former husband (the decree in Ms. Swiader's December 2012 divorce listed a man other than Mr. Evans as the child's father).

127. On May 10, 2016, another court denied Mr. Evans' motion to intervene in Ms. Swiader's underlying dissolution case, which he filed in an attempt to obtain an order establishing him as the child's father.

Failure to Respond to Bar Counsel

128. On February 17, 2016, bar counsel sent a screening letter to Mr. Rush at an address other than his address of record with the State Bar,⁷ which directed him to submit a written response to the charges of misconduct by March 8, 2016. [Exhibit 52.] Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Mr. Rush failed to submit a written response, as directed by bar counsel.

Violations

By engaging in the misconduct described in Count Six, Mr. Rush violated ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.5(a), ER 1.16(d), ER 8.1(b), ER 8.4(d), and Rule 54(d)(2), Ariz. R. Sup. Ct.

COUNT SEVEN (File No. 16-0505/Landry)

129. On March 16, 2015, Erin Landry ("Erin"), an adult, filed a petition for order of protection against her mother Celia Landry ("Celia") (*Erin Landry v. Celia Landry*, McDowell Mountain Justice Court No. CC2015-045344). On that same date, the McDowell Mountain Justice Court issued an order of protection in Erin's favor and against Celia.

130. During March 2015, an attorney representing Celia regarding a criminal matter recommended that she hire Mr. Rush to represent her regarding the petition for order of protection.

⁷ 6339 East Preston Street, Mesa, Arizona 85215.

131. On March 31, 2015, during a hearing on the petition for order of protection, Erin moved to dismiss the order of protection. On that same date, the court dismissed the order of protection.

132. On April 2, 2015, Celia entered into a fee agreement with Mr. Rush to pursue grandparent rights so she could have visitation with Erin's daughter (Celia's granddaughter). Mr. Rush also agreed to represent Celia regarding damage that Erin had caused to her home, slander, and other legal problems that Erin was allegedly causing. Celia paid Mr. Rush a fee of \$3,000.00. [Exhibit 58.]

133. Mr. Rush wrote several letters to Erin, asking her to remove her personal belongings from Celia's house. Celia asked Mr. Rush to delay filing a petition for grandparent rights until August or September 2015.

134. On May 14, 2015, a criminal assault charge was filed against Celia in the Phoenix Municipal Court (State v. Celia Landry, No. M-0741-4958845). That charge was based upon the same factual allegations as those that Erin included in her earlier petition for order of protection.

135. On September 15, 2015, Mr. Rush filed a notice of appearance and a petition to establish grandparent rights on Celia's behalf in Erin's dissolution proceeding (Ariel Skalina v. Erin Landry, Maricopa County Superior Court No. FC2012-053408).

136. On September 17, 2015, Erin filed a petition for order of protection against Celia (Erin Landry v. Celia Landry, Maricopa County Superior Court No. FN2015-004825), which addressed the same conduct alleged in the first petition. On that same date, the court signed an order of protection that prohibited Celia from having any contact with Erin or committing any crime against her.

137. On September 17 or 18, 2015, Celia was found guilty of assault in the Phoenix Municipal Court.

138. Erin served the order of protection on Celia on November 20, 2015.

139. Mr. Rush agreed to represent Celia regarding the order of protection. On or about November 25, 2015, Mr. Rush filed a notice of appearance and a Request for Evidentiary Hearing on Order of Protection on Celia's behalf.

140. On December 8, 2015, Mr. Rush moved to quash the order of protection. Celia paid Mr. Rush an additional \$500.00 to file that motion.

141. On December 9, 2015, Celia signed another contract with Mr. Rush and paid an additional \$3,000.00 for representation regarding other issues that may be raised by Erin and possibly to seek custody of her granddaughter.

142. On December 31, 2015, Mr. Rush moved for Temporary Orders for Grandparent Visitation in Erin's dissolution proceeding (No. FC2012-053408).

143. On January 13, 2016, the court scheduled a hearing regarding the order of protection for January 22, 2016. That hearing was subsequently continued to January 29, 2015.

144. On January 29, 2016, Celia and Mr. Rush appeared at the scheduled hearing. Mr. Rush informed the court that Celia no longer wanted to contest the order of protection. The court entered an order affirming the order of protection.

145. Celia requested that Mr. Rush obtain transcripts of the March and September hearings, but as of February 18, 2016, Mr. Rush had not provided her with the transcripts, which she deemed vital to her defense. Mr. Rush told Celia there had been some miscommunication regarding that issue.

146. Celia met with Mr. Rush on only one occasion other than in proceedings in court; all other communication was by telephone or text message.

147. Celia received no communication from Mr. Rush after January 29, 2016. At or about that time, Mr. Rush abandoned Celia.

148. On February 5, 2016, Erin's attorney applied for attorney's fees and a China Doll affidavit. Mr. Rush should have filed a response on Celia's behalf, but failed to do so.

149. On February 11, 2016, Celia filed, pro se, a motion seeking additional time to hire another attorney to respond to Erin's application for attorney's fees. She stated in that motion that Mr. Rush had abandoned her.

150. On or about February 29, 2016, Celia hired another attorney to represent her in Erin's dissolution proceeding.

151. On March 9, 2016, the court denied Celia's motion for additional time to hire new counsel to respond to Erin's application for attorney's fees, and ordered Celia to pay \$500.00 to Erin for attorney's fees and costs associated with defending Celia's objection to the order of protection.

152. Mr. Rush failed to perform all of the work that was necessary to diligently and competently represent Celia (e.g., he failed to file a response to Erin's application for attorney's fees). Celia sought new counsel to assume the representation, expending an additional \$6,500.00.

153. Mr. Rush failed to return or respond to many of Celia's numerous voice-mail messages and text messages. In addition, he failed to return telephone calls and email messages from Erin's attorney and the attorney representing Erin's husband.

154. Celia gave Mr. Rush various documents and compact disks to use on her

behalf in the court proceedings, but he failed to return them to her when he discontinued his representation of her.

Failure to Respond to Bar Counsel

155. On February 23, 2016, bar counsel sent a screening letter to Mr. Rush at an address other than his address of record with the State Bar,⁸ which directed him to submit a written response to the charges of misconduct by March 14, 2016. [Exhibit 56.] Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Mr. Rush failed to submit a written response, as directed by bar counsel.

Violations

By engaging in the misconduct described in Count Seven, Mr. Rush violated ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.5(a), ER 1.15(d), ER 1.16(d), ER 8.1(b), ER 8.4(d), and Rule 54(d)(2), Ariz. R. Sup. Ct.

COUNT EIGHT (File No. 16-0538/Bradley)

156. On January 27, 2015, Erica Jean Cherry (“Ms. Cherry”) filed, pro se, a petition for dissolution of marriage (Erica Cherry v. Matthew Cattey, Maricopa County Superior Court No. FN2015-090352).

157. On February 17, 2015, Matthew Cattey (“Mr. Cattey”), Ms. Cherry’s husband, filed a pro se response to the petition for dissolution of marriage.

158. On February 28, 2015, the court scheduled an Early Resolution Conference for April 21, 2015, and ordered counsel to appear and the parties to undertake various tasks prior to April 21, 2015.

159. Ms. Cherry hired Mr. Rush to represent her. On March 18, 2015, Mr.

⁸ 6339 East Preston Street, Mesa, Arizona 85215.

Rush filed a notice of appearance on Ms. Cherry's behalf.

160. Mr. Rush failed to attend the Early Resolution Conference on April 21, 2015. The conference was vacated due to Mr. Rush suffering from an unexpected illness.

161. On April 28, 2015, the court scheduled a trial for June 24, 2015, and ordered the parties to undertake certain tasks prior to that date.

162. On June 8, 2015, Mr. Rush filed a Motion to Vacate Trial Date and Set Family Settlement Conference.

163. On June 18, 2015, Mr. Cattey moved to continue the trial because Mr. Rush failed to appear at the Early Resolution Conference and he believed the parties could resolve all issues without a trial.

164. On June 23, 2015, the court denied Mr. Rush's motion to vacate the trial date, affirmed the trial date of June 24, 2015, but noted that a referral to alternative dispute resolution would be made if appropriate.

165. Both Ms. Cherry and Mr. Rush attended court on June 24, 2015, the date scheduled for trial. On that date, the court scheduled a settlement conference for July 31, 2015, and placed the case on the inactive calendar for dismissal on August 28, 2015, unless a final decree had been entered or the court, upon motion of either party, reset the case for trial.

166. On July 31, 2015, the court rescheduled the settlement conference for August 5, 2015.

167. On August 5, 2015, the parties attended the settlement conference but could not reach any agreements.

168. On August 6, 2015, Mr. Rush moved to set trial date.

169. On September 10, 2015, the court scheduled the trial for December 14, 2015, and ordered the parties to undertake various tasks prior to that date, including compliance with the disclosure and discovery requirements of the Arizona Rules of Family Law Procedure by no later than November 13, 2015.

170. Mr. Cattey hired counsel to represent him, and on November 2, 2015, attorney Brad Reinhart filed a notice of appearance on Mr. Cattey's behalf.

171. On December 7, 2015, attorney Reinhart moved to continue the December 14, 2015, trial, which the court granted on December 14, 2015. The court attempted to contact Mr. Rush on that date regarding his and Ms. Cherry's availability, but the court's attempt to contact Mr. Rush was unsuccessful and Mr. Rush failed to contact the court. The court rescheduled the trial for June 1, 2016, and ordered the parties to complete various tasks prior to that date, including compliance with the disclosure and discovery rules of the Arizona Rules of Family Law Procedure by no later than May 2, 2016.

172. Mr. Rush failed to communicate with Ms. Cherry for a period of months, and apparently abandoned her. Ms. Cherry hired attorney Shannon Bradley to represent her.

173. On March 30, 2016, attorney Bradley filed a notice of substitution of counsel on Ms. Cherry's behalf, which the court granted on April 8, 2016. Attorney Bradley attempted to contact Mr. Rush by telephone and email so she could retrieve the file he maintained on Ms. Cherry's behalf, but Mr. Rush's telephone was no longer in service and Mr. Rush failed to respond to her email messages.

174. On April 25, 2016, attorney Bradley filed an initial disclosure statement because Mr. Rush had provided no disclosure to Mr. Cattey or attorney Reinhart, as

required by court rules.

175. On May 25, 2016, attorney Bradley notified the court that the parties had resolved all issues and moved the court to vacate the trial scheduled for June 1, 2016.

176. On July 5, 2016, the court entered a consent decree of dissolution of marriage.

Failure to Respond to Bar Counsel

177. On February 29, 2016, bar counsel sent a screening letter to Mr. Rush at an address other than his address of record with the State Bar,⁹ which directed him to submit a written response to the charges of misconduct by March 21, 2016. [Exhibit 60.] Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Mr. Rush failed to submit a written response, as directed by bar counsel.

Violations

By engaging in the misconduct described in Count Eight, Mr. Rush violated ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.5(a), ER 1.16(d), ER 3.4(c), ER 8.1(b), ER 8.4(d), Rule 54(c), Ariz. R. Sup. Ct., and Rule 54(d)(2), Ariz. R. Sup. Ct.

CONCLUSIONS OF LAW

Mr. Rush failed to file an answer or otherwise defend against the allegations in the State Bar's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that

⁹ 6339 East Preston Street, Mesa, Arizona 85215.

Mr. Rush violated: Rule 42, Ariz. R. Sup. Ct., specifically ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.5(a), ER 1.15(d), ER 1.16(d), ER 3.4(c), ER 8.1(b) and ER 8.4(d); Rule 54(c), Ariz. R. Sup. Ct.; and Rule 54(d)(2), Ariz. R. Sup. Ct.

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0*.

Duties violated:

Mr. Rush violated his duty to his clients by violating ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), and ER 1.15(d). Mr. Rush violated his duty to the legal system by violating ER 3.4(c), ER 8.4(d), and Rule 54(c), Ariz. R. Sup. Ct. Mr. Rush violated his duty to the legal profession by violating ER 1.5(a), ER 1.16(d), ER 8.1(b), and Rule 54(d)(2), Ariz. R. Sup. Ct.

Mental State and Injury:

The allegations support a finding that Mr. Rush intentionally or knowingly engaged in conduct that violated the Rules of Professional Conduct (multiple clients and courts informed Ms. Rush that certain tasks needed to be undertaken, but he failed to comply with his clients' or the courts' directives). Although some of Mr. Rush's conduct may have been due to negligence, that mental state is difficult to accept given the sheer number of clients' cases adversely affected and his failure to respond to the State Bar's screening investigation and failure to file an answer.

Mr. Rush violated his duty to clients, implicating *Standard 4.4*. *Standard 4.41* states, "Disbarment is generally appropriate when: (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client." Mr. Rush abandoned his clients, knowingly failed to perform services for clients, and, at a minimum, engaged in a pattern of neglect of client matters, all which caused serious or potentially serious injury to clients. Therefore, *Standard 4.41* applies.

Mr. Rush violated his duty to the legal system, implicating *Standard 6.2*. *Standard 6.22* states, "Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potentially injury to a client or a party, or interference or potential interference with a legal proceeding." Mr. Rush failed to comply with court rules and orders regarding discovery and disclosure, and failed to comply with a court order directing him to refile a motion and affidavit for default, along with a proposed decree on client Karen Grayson's behalf. In addition, Mr. Rush failed to comply with court rules requiring that he cooperate with the State Bar during its investigation into the allegations of misconduct.

Mr. Rush also violated his duty to the profession, which implicates *Standard 7.0*. *Standard 7.1* states, "Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system." *Standard 7.2* states, "Suspension is generally appropriate when a lawyer knowingly engages in

conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to client, the public, or the legal system.” Mr. Rush failed to promptly refund unearned fees and failed to respond to the State Bar’s investigation into charges of misconduct. Mr. Rush’s failure to refund unearned fees benefited himself and caused serious or potentially serious injury to his clients. Therefore, *Standard 7.1* is most applicable.

AGGRAVATING AND MITIGATING FACTORS

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

Standard 9.22(b) – dishonest or selfish move (Mr. Rush abandoned his clients and caused actual and potential harm to his clients; in addition, his failure to refund unearned attorney’s fees or complete the work for which he had been paid benefitted himself);

Standard 9.22(c) – a pattern of misconduct (Mr. Rush abandoned more than one client and caused actual and potential harm to his clients);

Standard 9.22(d) – multiple offenses (Mr. Rush engaged in several types of misconduct, abandoned multiple clients, and caused actual and potential harm to his clients);

Standard 9.22(e) – bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (Mr. Rush failed and refused to cooperate with the State Bar in its investigation and failed to file an answer to the complaint);

Standard 9.22(g) – refusal to acknowledge the wrongful nature of his conduct (Mr. Rush failed and refused to cooperate with the State Bar

in its investigation and failed to file an answer to the complaint; in addition, Mr. Rush has not tried to mitigate the actual harm he did to his clients when he abandoned them);

Standard 9.22(h) – vulnerability of the victims (Mr. Rush’s clients relied upon him to address legal issues they apparently believed they were unequipped to handle);

Standard 9.22(i) – substantial experience in the practice of law (Mr. Rush was admitted to practice law in Arizona on July 6, 2007); and

Standard 9.22(j) – indifference to making restitution (Mr. Rush has not tried to refund unearned attorney’s fees or otherwise mitigate the actual harm he did to his clients when he abandoned them).

The Hearing Panel finds the following mitigating factor applies:

Standard 9.32(a) – absence of a prior disciplinary record.

The Hearing Panel finds the sole mitigating factor does not outweigh the aggravating factors. Therefore, disbarment is appropriate.

PROPORTIONALITY

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

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases factually similar. *See In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). However, the

discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In *In re Gustavo Toledo*, PDJ-2014-9053 (2014), attorney Toledo was disbarred and ordered to pay restitution totaling \$13,043.89. In two cases, attorney Toledo provided few legal services to clients who had paid him a fee. The legal services that attorney Toledo provided to his clients were of no real value to them and caused actual harm to them. Attorney Toledo was not diligent in his representation of his clients. He failed to conduct discovery, failed to prepare a client for trial, and was himself unprepared for trial. In another case, he failed to effectuate service of a complaint, which resulted in its dismissal by the trial court. Attorney Toledo also failed to reasonably communicate with his clients, failed to advise a client that opposing counsel had propounded discovery requests, and failed to inform a client that a judgment had been entered against him for opposing counsel's attorney fees. In addition, attorney Toledo failed to inform another client that her case had been dismissed because he failed to serve the complaint. Upon termination of the representation, attorney Toledo returned only one of the client files, albeit in an untimely manner. He wholly failed to return another client's file, which contained documents necessary for the client to prosecute her claims. Attorney Toledo returned no unearned fees to the clients, despite that the services provided to them were of no real value. Finally, attorney Toledo did not cooperate with the State Bar's investigation. The following aggravating factors were found: dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad-faith obstruction of the

disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of his conduct, substantial experience in the practice of law, and indifference to making restitution. No mitigating factors were found. Attorney Toledo violated Rule 42, Ariz. R. Sup. Ct., specifically ER 1.3, ER 1.4(a)(2) and (3), ER 1.5(b), ER 1.16(d), ER 3.2, ER 8.1(b), and ER 8.4(d), and Rule 54(d)(2), Ariz. R. Sup. Ct.

In *In re Devin Andrich*, PDJ-2014-9029 (2015), attorney Andrich was disbarred and ordered to pay restitution to three former clients totaling \$138,500. Attorney Andrich was retained by clients on a variety of matters. The clients paid fees to attorney Andrich, but he provided little or no legal services to them. In those cases in which attorney Andrich provided legal services, they were of no real value to the clients and sometimes caused them actual harm. Attorney Andrich filed complaints without a good faith basis in law or fact and with the intent to delay, harass, and burden the defendants. He refused to dismiss the complaints when it was clear they were meritless. Attorney Andrich was not diligent in his representation and billed a client for services he did not provide. He also failed to provide a client with a copy of the file upon termination of the representation. During the State Bar's screening investigation, Attorney Andrich gave the State Bar a demand letter he falsely claimed had been sent to opposing counsel in the underlying matter. Attorney Andrich repeatedly misrepresented to another client the status of the underlying case and failed to promptly respond to client requests for information. He defrauded two clients of \$135,000, which he was supposed to hold in trust for them, and then lied to them and the State Bar about the status of those funds. The following aggravating factors were found: selfish or dishonest motive; pattern of misconduct; multiple offenses;

bad faith obstruction of disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge the wrongful nature of his conduct; indifference to restitution; and illegal conduct. The only mitigating factor found was absence of prior disciplinary record. Attorney Andrich violated Rule 42, Ariz. R. Sup. Ct., specifically ER 1.3, ER 1.4(a)(3) and (4), ER 1.5(a), ER 1.15(a), ER 1.16(d), ER 3.1, ER 3.2, ER 4.4(a), ER 8.1(a), ER 8.4(c) and ER 8.4(d); Rule 41(g), Ariz. R. Sup. Ct., Rule 54(d), Ariz. R. Sup. Ct.; and Rule 54(i), Ariz. R. Sup. Ct.

The instant case is similar to the above cases: in each, there were multiple clients and multiple offenses, the abandonment of clients, a failure to diligently represent clients, a failure to adequately communicate with clients, a failure to return a file at the conclusion of representation, and, in *Toledo*, a failure to cooperate with the State Bar.

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

The Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the 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. Rush shall be disbarred from the practice of law effective immediately.
2. Mr. Rush shall pay all costs and expenses incurred by the State Bar and the Office of the Presiding Disciplinary Judge in this proceeding.
3. Mr. Rush shall pay restitution to the following individuals:
 - a. \$1,900.00 to Catherine Pittman [Count One, Exhibit 8];
 - b. \$3,900.50 to Bruce Stuart Garry [Count Three, Exhibits 18, 29, 35, 35];
 - c. \$500.00 to Karen Grayson [Count Five, Exhibits 49, 50];
 - d. \$500.00 to Janelle Swiader [Count Six, Exhibits 53, 54];
 - e. \$7,100.00 to Celia Landry [Count Seven, Exhibits 57, 58]; and
 - f. \$2,000.00 to Erica Jean Cherry [Exhibits 63, 64].

A final judgment and order will follow.

DATED this 4th day of January 2017.

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

Brett F. Eisele
Brett F. Eisele, Volunteer Public Member

Ralph J. Wexler
Ralph J. Wexler, Volunteer Attorney Member

Copy of the foregoing emailed/mailed
this 4th day of January, 2017, to:

William Tattnall Rush
Scottsdale Financial center III
7272 E. Indian School Road, Suite 540
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Email: wtrush@rushfamilylaw.com
Respondent

and alternative address:

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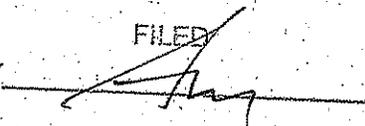
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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

SEP 9 2016

FILED

BY 

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

WILLIAM TATTNALL RUSH,
Bar No. 025228,
Respondent.

PDJ 2016 - 9087

COMPLAINT

[State Bar Nos. 15-2534, 15-2540,
15-2863, 15-2928, 16-0333, 16-0340,
16-0505, and 16-0538]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, except as set forth below, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on July 6, 2007. Respondent was suspended from the practice of law in Arizona on February 26, 2016, for failure to comply with the requirements of Mandatory Continuing Legal Education.

COUNT ONE (File No. 15-2534/Pittman)

Representation of Catherine Pittman

1. On April 20, 2015, Catherine Pittman ("Catherine") filed *pro se* a petition for dissolution of marriage (*Catherine Pittman v. Dennis Pittman*, Maricopa

County Superior Court No. FC2015-000816). On that same date, Catherine filed *pro se* a motion for pre-decree temporary orders.

2. Catherine hired Respondent on May 1, 2015, to represent her in her divorce proceeding. Catherine paid Respondent \$1,900.00 of a \$3,000.00 flat fee for the representation.

3. On May 5, 2015, Respondent filed a notice of appearance on Catherine's behalf.

4. On May 7, 2015, Catherine and Respondent appeared at a "return hearing" that had been scheduled to consider Catherine's *pro se* petition and motion for pre-decree temporary orders; Catherine's husband, Dennis Pittman ("Dennis"), appeared without counsel. The court scheduled a settlement conference for October 6, 2015, and scheduled trial for November 10, 2015. The court ordered the parties to comply with the Arizona Rules of Family Law Procedure regarding disclosure and discovery. The court also ordered the parties to complete various tasks prior to trial.

5. On May 14, 2015, attorney Joseph Maisto filed a notice of appearance on Dennis' behalf.

6. On May 21, 2015, attorney Maisto submitted various discovery requests to Respondent. Respondent failed to timely respond to those requests and failed to inform Catherine about them.

7. On May 27, 2015, attorney Maisto filed a response to the petition for dissolution of marriage on Dennis' behalf.

8. Respondent failed to adequately communicate with Catherine, despite multiple attempts she made to contact him by telephone, email and text messages.

9. Catherine took documents to Respondent's office on July 3, 2015, including a parenting class form that needed to be filed with the court. Respondent never filed the parenting class form with the court, and last communicated with Catherine on July 3, 2015. Thereafter, Respondent abandoned his representation of Catherine.

10. On July 23, 2015, attorney Maisto sent a letter to Respondent requesting responses to his discovery requests by July 31, 2015. Respondent failed to provide responses to the discovery requests.

11. On September 23, 2015, the court continued the settlement conference from October 6 to October 22, 2015, and directed counsel for the parties to complete various tasks prior to that date.

12. On September 24, 2015, attorney Maisto sent an email message to Respondent in which he referenced the discovery requests and mentioned he was "on the verge of filing a Motion to Compel."

13. Respondent failed to respond to the discovery requests propounded by attorney Maisto. Therefore, on September 29, 2015, attorney Maisto filed a *Motion to Compel and for Sanctions* because Respondent failed to respond to the discovery requests.

14. On or before September 24, 2015, Judge Pro Tem Lisa Andrus and the court's alternative dispute resolution department unsuccessfully attempted to communicate with Respondent.

15. Respondent failed to submit discovery requests to attorney Maisto, which prevented him from adequately representing Catherine.

16. Catherine requested a copy of her file from Respondent on several occasions, as well as the documents she initially gave him, but he failed to provide them to her. He also failed to provide Catherine with an accounting of the fee she had paid.

17. During or about September or October 2015, Catherine hired counsel to replace Respondent as her attorney of record.

18. On October 6, 2015, attorney Emi Koyama filed a notice of substitution of counsel on Catherine's behalf.

19. On October 7, 2015, bar counsel sent an email message to Respondent informing him that Catherine had hired a new attorney and that Catherine or her new attorney needed the file he maintained on Catherine's behalf. Bar counsel instructed Respondent to immediately contact Catherine to make arrangements to provide her with the file he maintained on her behalf and a refund of any unearned fees.

20. On October 9, 2015, attorney Koyama filed a motion to continue the settlement conference and trial, in part because Respondent had failed to provide her or Catherine with the file he maintained on Catherine's behalf, which would have allowed them to prepare for the settlement conference and trial.

21. On October 23, 2015, the court continued the trial to December 15, 2015.

22. On October 28, 2015, the court continued the settlement conference to November 16, 2015.

23. On or about November 17, 2015, counsel for the parties informed the court that they had settled the matter.

24. On November 23, 2015, bar counsel sent an email message to Respondent suggesting that he send Catherine the file he maintained on her behalf, as well as an accounting of the fees she had paid.

25. As of December 3, 2015, Respondent had not provided Catherine or attorney Koyama with the file he maintained on Catherine's behalf.

26. On January 21, 2016, the court entered a *Consent Decree for Dissolution of Marriage with Children*. Although the court had ordered Promise to pay attorney's fees and costs related to the motion to compel, Dennis waived that right in the decree by agreeing to pay all of his attorney's fees through the date of the decree.

Failure to Respond to Bar Counsel

27. On December 23, 2015, bar counsel sent a screening letter to Respondent at his address of record with the State Bar, which directed him to submit a written response to the charges of misconduct by January 12, 2016. That letter was returned to the State Bar by the U.S. Postal Service as undeliverable. On February 11, 2016, another screening letter was sent to Respondent at another address,¹ which directed him to submit a written response to the charges of misconduct by March 2, 2016. Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Respondent failed to submit a written response, as directed by bar counsel.

¹ 6339 East Preston Street, Mesa, Arizona 85215. The Maricopa County Assessor's Office lists that address as a "Residential Rental Parcel." Whitepages.com identifies that address as Respondent's address. The Preston Street address is the address to which screening letters were sent regarding all counts in this complaint, but not returned by the U.S. Postal Service.

Violations in Count One

28. By engaging in the conduct set forth in Count One, Respondent violated ER 1.2(a), ER 1.3, ER 1.4(a) and (b), ER 1.5(a), ER 1.15(d), ER 1.16(d), ER 3.4(c), ER 8.1(b), and Rules 54(c) and (d)(2), Ariz. R. Sup. Ct.

COUNT TWO (File No. 15-2540/Scott)

Representation of Promise Scott

29. On February 12, 2015, attorney Nicole Stearns filed a petition for dissolution of marriage on Christopher Scott's ("Christopher") behalf (*Christopher Scott v. Promise Scott*, Maricopa County Superior Court No. FN2015-002291²).

30. On or about February 27, 2015, Christopher's wife, Promise Scott ("Promise"), hired attorney Rebecca Browning to represent her in the divorce proceeding. On February 27, 2015, attorney Browning filed a notice of appearance and a response to the petition for dissolution of marriage on Promise's behalf.

31. On May 5, 2015, the court disqualified attorney Browning from representing Promise due to "an appearance of conflict that is likely an actual conflict."

32. On May 11, 2015, the court reset a previously scheduled Resolution Management Conference to July 16, 2015, and ordered the parties to take certain action prior to that date.

33. On May 19, 2015, Promise hired Respondent to represent her in the divorce proceeding. Promise paid Respondent a flat fee of \$2,000.00 to represent her through conclusion of the case. As new counsel in a pending case, Respondent had a duty to familiarize himself with Promise's case to determine what he needed

² The file number was initially FC2015-002477, but was changed to FN2015-002291 on February 17, 2015.

to do and what he needed to file. At the very least, Respondent should have filed an Affidavit of Financial Information ("AFI") on Promise's behalf.

34. On May 20, 2015, Respondent filed a notice of appearance on Promise's behalf.

35. On June 4, 2015, Respondent filed a motion to continue the Resolution Management Conference.

36. On June 18, 2015, attorney Tifanie McMillan filed a *Notice of Change of Counsel within Firm*, replacing attorney Stearns as Christopher's counsel of record.

37. On June 26, 2015, attorney McMillan submitted various discovery requests to Respondent. The responses were due August 5, 2015. Respondent failed to communicate with Promise regarding the discovery requests or the documents that had been requested. Respondent was required by the Arizona Rules of Family Law Procedure to timely provide disclosure and respond to discovery requests.

38. Respondent failed to submit discovery requests to attorney McMillan, which prevented him from adequately representing Promise.

39. On July 9, 2015, the court continued the Resolution Management Conference to July 30, 2015.

40. Both Promise and Respondent appeared at the Resolution Management Conference on July 30. On that date, the court affirmed that a settlement conference was scheduled for October 28, 2015, and scheduled a telephonic status conference for November 9, 2015.

41. Respondent last communicated with Promise on July 30, 2015, with an exception of a telephone call on October 14, 2015 (see below). Promise attempted

to communicate with Respondent by telephone and email on various occasions after July 30, 2015, but was unsuccessful. Promise's email messages to Respondent were undeliverable, and Respondent failed to respond to her telephone and text messages. Respondent abandoned his representation of Promise on or about July 31, 2015.

42. On August 19, 2015, the court entered a minute entry order regarding the October 28 settlement conference. Counsel were ordered to undertake certain tasks prior to that date, including the submission of a settlement conference memorandum that all discovery has been completed and that there are no outstanding discovery disputes.

43. On September 17, 2015, the court issued another minute entry order changing the location of the settlement conference, but reaffirming the date of the settlement conference and counsel's duties.

44. On September 18, 2015, attorney McMillan sent a letter to Respondent reminding him of the outstanding discovery requests that had been propounded and asked for a response by no later than September 30, 2015.

45. On October 1, 2015, Promise sent a text message to Respondent regarding his lack of communication with her. She also asked Respondent to contact her so she could retrieve all the documents he possessed.

46. On October 6, 2015, attorney McMillan filed a motion to compel Promise to answer the discovery requests because Respondent had not provided them. Attorney McMillan also requested sanctions in the form of attorney's fees. Despite that motion, Respondent failed thereafter to provide responses to the discovery requests.

47. On October 14, 2015, Respondent called Promise and informed her that he was suffering from medical problems. Promise informed Respondent that she had hired substitute counsel prior to his call and had attempted to get her credit card company to "charge-back" the fees she had paid Respondent with her credit card. Respondent stated he would provide Promise with the file he maintained on her behalf. As of October 22, 2015, however, Respondent had failed to provide Promise with the file he maintained on her behalf.

48. On October 28, 2015, the court denied the motion to compel, but ordered counsel to consult on or before November 13, 2015, to discuss outstanding discovery.

49. On or about October 22, 2015, Promise hired attorney Emi Koyama to represent her in the divorce proceeding. On October 22, 2015, attorney Koyama filed a *Notice of Substitution of Counsel* and a *Response to Motion to Compel and Motion to Continue Family Settlement Conference* on Promise's behalf. The motion to continue was filed in part because Respondent had failed to provide Promise or attorney Koyama with the file he maintained on Promise's behalf, despite Promise's requests for it.

50. Promise needed the file that Respondent maintained on her behalf and also needed her affidavit of financial information to be filed.

51. On October 28, 2015, the court continued the settlement conference to November 30, 2015.

52. On November 23, 2015, bar counsel sent an email message to Respondent suggesting that he send Promise the file he maintained on her behalf, as well as an accounting of the fees she had paid.

53. The parties settled all matters at the settlement conference on November 30, 2015.

54. On February 5, 2016, the court entered a *Consent Decree for Dissolution of Non-Covenant Marriage without Children*, which was filed on February 8, 2016.

Failure to Respond to Bar Counsel

55. On December 23, 2015, bar counsel sent a screening letter to Respondent at his address of record with the State Bar, which directed him to submit a written response to the charges of misconduct by January 12, 2016. That letter was returned to the State Bar by the U.S. Postal Service as undeliverable. On February 11, 2016, another screening letter was sent to Respondent at another address,³ which directed him to submit a written response to the charges of misconduct by March 2, 2016. Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Respondent failed to submit a written response, as directed by bar counsel.

Violations in Count Two

56. By engaging in the conduct set forth in Count Two, Respondent violated ER 1.2(a), ER 1.3, ER 1.4(a) and (b), ER 1.5(a), ER 1.15(d), ER 1.16(d), ER 3.4(c), ER 8.1(b) and ER 8.4(d), and Rules 54(c) and (d)(2), Ariz. R. Sup. Ct.

COUNT THREE (File No. 15-2863/Garry)

Representation of Bruce Stuart Garry

57. On August 30, 2014, Bruce Stuart Garry ("Bruce") hired Respondent to represent him in his divorce proceeding. Bruce paid Respondent a flat fee of

³ 6339 East Preston Street, Mesa, Arizona 85215.

\$1,000.00. Respondent's fee agreement stated he would draft and file a petition for dissolution of marriage, along with accompanying documents; advise Bruce regarding his options, legal statutes and holdings, and strategies and considerations in connection with his divorce; negotiate a settlement agreement/consent decree with opposing counsel; appear and represent Bruce at all hearings necessary for entering a settlement, consent decree or default; draft and file a settlement agreement/consent decree; file a motion for default or temporary orders should they become necessary; and file "any other motions or actions prior to the discovery phase of the dissolution action." The fee agreement further stated, "This agreement does not include representation for any appeals, special actions, mistrial or other actions contemplated at or after the discovery phase of the dissolution proceedings."

58. On September 16, 2014, Respondent filed a petition for dissolution of marriage on Bruce's behalf (*Bruce Garry v. Vickie Garry*, Maricopa County Superior Court No. FN2014-094155). On that same date, Respondent filed a *Notice of Limited Scope Representation*. The notice stated the scope of representation consisted of drafting and filing documents to initiate proceedings and enter a settlement agreement/consent decree, negotiating settlement terms, filing any appropriate motions regarding the foregoing, and appearing on Bruce's behalf for all those matters.

59. On September 26, 2014, attorney Cheryl Faas filed a *Notice of Appearance* on behalf of Bruce's wife, Vickie Garry ("Vickie").

60. On October 2, 2014, attorney Faas filed a response to petition for dissolution of marriage.

61. On November 4, 2014, Respondent wrote a letter to Bruce that stated in part, "We are also obligated to provide your spouse or his/her attorney with required information during the litigation process."

62. On November 14, 2014, Respondent wrote an email message to Bruce in which he stated in part, "[W]e need to get together our formal disclosure, so we need to discuss that."

63. On December 8, 2014, the court scheduled a Resolution Management Conference for February 9, 2015 (the minute entry order was filed on December 9, 2014). The minute entry order directed counsel to complete various tasks prior to that date, including complying with the initial discovery requirements of the Arizona Rules of Family Law Procedure.

64. On December 12, 2014, attorney Faas propounded various discovery requests upon Respondent. The responses were due January 21, 2015.

65. On January 13, 2015, attorney Faas sent a letter to Respondent reminding him of the upcoming "disclosure deadline" and requesting cooperation regarding possible agreements prior to the Resolution Management Conference.

66. On February 5, 2015, attorney Faas sent another letter to Respondent informing him that his discovery responses were past due. Respondent failed to respond to the discovery requests.

67. On February 6, 2015, Respondent provided attorney Faas with a few documents and a *Notice of Service of Disclosure Documents*. Respondent's disclosure failed to respond to or address all outstanding discovery requests.

68. Both Bruce and Respondent attended the Resolution Management Conference on February 9, 2015. Respondent failed to provide attorney Faas with a

Resolution Statement, as ordered by the court, until the time of the Resolution Management Conference. Furthermore, Respondent's Resolution Statement was incomplete, which prevented attorney Faas from understanding Bruce's position on several key issues. At the Resolution Management Conference, the court affirmed the settlement conference scheduled for March 13, 2015, and scheduled a trial for May 18, 2015. The minute entry order directed counsel to undertake various tasks prior to May 18, 2015, including compliance with the discovery and disclosure requirements of the Arizona Rules of Family Law Procedure by no later than April 10, 2015.

69. Following the Resolution Management Conference, attorney Faas reminded Respondent that, even though he assured her that he would respond to her discovery requests, his responses were past due. Respondent assured attorney Faas that his discovery responses would be forthcoming. Bruce made efforts to communicate with Respondent by telephone, email and mail following the Resolution Management Conference, but Respondent had very limited communication with him. Among other things, Respondent failed to notify Bruce about hearing dates and failed to keep him informed about the status of his case.

70. On February 10, 2015, the court scheduled a settlement conference for March 13, 2015, and directed counsel to undertake various tasks prior to that date.

71. On February 13, 2015, the court, on its own motion, continued the trial to June 23, 2015.

72. On February 25, 2015, attorney Faas sent another letter to Respondent reminding him of his obligation to respond to the discovery requests. As of March 2, 2015, Respondent had failed to respond to attorney Faas' discovery requests.

73. On March 2, 2015, attorney Faas filed a motion to compel discovery responses, which included a request for attorney's fees. Respondent failed to inform Bruce about that motion or a motion to continue the hearing that attorney Faas had filed.

74. On March 5, 2015, attorney Faas filed a motion to continue the settlement conference scheduled for March 13, 2015, due to a lack of discovery responses from Respondent.

75. On March 9, 2015, attorney Faas filed a motion to continue the trial because she had plans to be on vacation on the date scheduled for trial.

76. On March 24, 2015, the court granted attorney Faas' motion to continue the trial and continued the trial to August 25, 2015. The court ordered counsel to complete various tasks prior to August 25, 2015, including compliance with the disclosure and discovery requirements of the Arizona Rules of Family Law Procedure by no later than July 24, 2015.

77. On March 25, 2015, the court continued the settlement conference to July 23, 2015, and ordered counsel to complete various tasks prior to that date.

78. On May 6, 2015, attorney Aaron Blase filed a *Notice of Change of Counsel within Firm*, replacing attorney Faas as counsel of record for Vickie.

79. On May 6 or 7, 2015, attorney Blase propounded additional discovery requests upon Respondent. The responses to those requests were due June 22, 2015. Respondent failed to provide responses to those discovery requests.

80. On July 20, 2015, Bruce sent Respondent a proposed settlement agreement. On that same date, attorney Blase spoke with Respondent regarding the outstanding discovery requests. During that conversation, Respondent admitted

he still had not submitted responses to all the discovery requests and that the July 23 settlement conference should be continued.

81. During a telephone conversation with the assigned settlement judge on July 21, 2015, counsel agreed to continue the settlement conference to August 11, 2015, to give Respondent time to respond to the discovery requests.

82. On August 3, 2015, attorney Blase sent an email message to Respondent to remind him that the settlement conference was scheduled for the following week. He also inquired when Respondent would provide responses to the discovery requests. Respondent failed to respond to that email message.

83. On August 6, 2015, attorney Blase sent another email message to Respondent informing him that if he did not provide discovery responses the following day that the settlement conference would have to be continued again.

84. On August 10, 2015, attorney Blase sent an email message to Respondent and the settlement judge requesting that the settlement conference be continued because Respondent had failed to provide responses to the outstanding discovery requests. On that same date, the court vacated the August 11 settlement conference, in part because Respondent had failed to provide responses to the discovery requests.

85. On August 13, 2015, attorney Blase filed an expedited motion to continue the trial then scheduled for August 25, 2015, because Respondent had failed to provide responses to the discovery requests. He also requested that the court enter an order requiring Respondent to respond to all discovery requests and that Bruce be ordered to pay sanctions. As of August 13, 2015, Respondent had not provided responses to any (or most) of the discovery requests. Respondent had

disclosed a few documents with a *Notice of Service of Disclosure Documents* dated February 6, 2015, but they failed to address any (or most) of the outstanding discovery requests.

86. On August 18, 2015, the court entered an order vacating the trial scheduled for August 25, 2015, placed the case on the inactive calendar until October 31, 2015, and granted the motion to compel. The court ordered Bruce to provide complete responses to the outstanding discovery requests by August 31, 2015. The court authorized the submission of an application and affidavit in support of attorney's fees, as requested in the motion to compel.

87. On September 2, 2015, attorney Blase filed an *Application for Attorney's Fees and Costs*.

88. On September 28, 2015, the court entered a judgment against Bruce and in favor of his wife in the amount of \$2,562.50 for attorney's fees and costs "incurred in the pursuit of a claim in the nature of support."

89. On September 29, 2015, Bruce sent an email message to Respondent discharging him as his attorney.

90. On October 30, 2015, Respondent filed a motion to place the case on the active calendar or in the alternative to continue the case on the inactive calendar for 30 days. He filed that motion even though he had not communicated with Bruce regarding his intent to file the motion. Respondent falsely claimed in the motion that he had communicated with Bruce regarding the status of the case and was in the process of completing responses to the discovery requests.

91. On November 4, 2015, the court continued the case on the inactive calendar for dismissal on December 3, 2015, unless a decree was entered, a

stipulation for dismissal was filed, or a motion to set and certificate of readiness was filed.

92. On December 10, 2015, the court dismissed the case without prejudice for lack of prosecution. Respondent failed to inform Bruce that the court had dismissed his petition for dissolution of marriage. Bruce learned about the dismissal when he checked the court's online docket.

Failure to Respond to Bar Counsel

93. On January 8, 2016, bar counsel sent a screening letter to Respondent at his address of record with the State Bar, which directed him to submit a written response to the charges of misconduct by January 27, 2016. That letter was returned to the State Bar by the U.S. Postal Service as undeliverable. On February 11, 2016, another screening letter was sent to Respondent at another address,⁴ which directed him to submit a written response to the charges of misconduct by March 2, 2016. Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Respondent failed to submit a written response, as directed by bar counsel.

Violations in Count Three

94. By engaging in the conduct set forth in Count Three, Respondent violated ER 1.2(a), ER 1.3, ER 1.4(a) and (b), ER 1.5(a), ER 1.16(d), ER 3.4(c), ER 8.1(b) and ER 8.4(d), and Rules 54(c) and (d)(2), Ariz. R. Sup. Ct.

⁴ 6339 East Preston Street, Mesa, Arizona 85215.

COUNT FOUR (File No. 15-2928/Pavelic)

Representation of Irma Pavelic

95. On September 3, 2015, Irma Pavelic ("Pavelic") hired Respondent to represent her regarding post-divorce decree enforcement issues. She provided him with certain documents, and authorized him to charge his \$1,700.00 fee to her credit card. Approximately seven days later, after Respondent (apparently) failed to perform any work on Pavelic's case, she cancelled his authorization to use her credit card (as of that time, Respondent had not yet charged any of his fee to her credit card).

96. Pavelic left messages for Respondent to return her documents, but he failed to return them to her. Pavelic was unable to speak with Respondent by telephone because he was not answering his phone or returning her calls.

Failure to Respond to Bar Counsel

97. On December 23, 2015, bar counsel sent a screening letter to Respondent at his address of record with the State Bar, which directed him to submit a written response to the charges of misconduct by January 12, 2016. That letter was returned to the State Bar by the U.S. Postal Service as undeliverable. On February 11, 2016, another screening letter was sent to Respondent at another address,⁵ which directed him to submit a written response to the charges of misconduct by March 2, 2016. Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Respondent failed to submit a written response, as directed by bar counsel.

⁵ 6339 East Preston Street, Mesa, Arizona 85215.

98. On November 12, 2015, intake bar counsel left a voice-mail message for Respondent. On that same date, bar counsel sent an email message to Respondent, informing him that Pavelic had been attempting to contact him and wanted her file. Bar counsel asked Respondent to call him at his earliest convenience. Respondent failed to contact bar counsel, as directed.

Violations in Count Four

99. By engaging in the conduct set forth in Count Four, Respondent violated ER 1.2(a), ER 1.3, ER 1.4(a) and (b), ER 1.16(d), ER 8.1(b) and ER 8.4(c), and Rule 54(d)(2), Ariz. R. Sup. Ct.

COUNT FIVE (File No. 16-0333/Grayson)

Representation of Karen Grayson

100. On September 11, 2015, Karen Grayson ("Karen") hired Respondent to represent her in her divorce proceeding. She paid Respondent a flat fee of \$500.00. Karen provided Respondent with notes regarding the terms that she and her husband, Keith Grayson ("Keith") had agreed to include in the decree. Karen's goal was to have a decree entered by December 31, 2015.

101. On September 21, 2015, Respondent filed a petition for dissolution of marriage on Karen's behalf (*Karen Grayson v. Keith Grayson*, Maricopa County Superior Court No. FN2015-091515).

102. On September 30, 2015, Respondent filed a notice of appearance on Karen's behalf.

103. Keith did not file an answer or respond to the petition for dissolution of marriage.

104. Respondent drafted a *Property Settlement Agreement* that Karen signed on October 6, 2015.

105. On and/or after November 20, 2015, following the 60-day period before a default could be entered, Karen attempted to contact Respondent to learn what still needed to be done. Karen made a number of attempts to communicate with Respondent by telephone, email and text messages. Eventually, Respondent called her after she sent him a message through his Facebook account. He told her that he would email a draft divorce decree to her to review, sign and get notarized.

106. On December 8, 2015, Respondent emailed a draft decree to Karen to review. Upon receipt, Karen discovered it contained incorrect information and terminology (e.g., the listed debts and personal property were another person's and the decree referred to her as "Mother" and her husband as "Father," even though they did not have children).

107. On December 9, 2015, Karen sent an email message to Respondent in which she informed him that the decree was incorrect.

108. Karen called and sent text messages to Respondent but initially received no response. She then sent a message to him through his Facebook account. Respondent called her on December 11, 2015. On that same date, Respondent emailed another draft divorce decree to Karen, but it was still incorrect. Karen immediately notified Respondent by email that the decree was still incorrect, but Respondent failed to respond. She attempted to contact him again, but received no response.

109. On December 23, 2015, Respondent filed an *Application and Affidavit for Default*. On that same date, Respondent filed a separate *Motion and Affidavit for Default Decree without Hearing*.

110. On December 28, 2015, the court denied the *Motion and Affidavit for Default Decree* because no proposed decree had been attached to the motion when it was filed. The court ordered that the motion be resubmitted to Family Court Administration with the proposed decree attached.

111. Respondent failed to refile the *Motion and Affidavit for Default* with a proposed decree attached.

112. Karen unsuccessfully attempted to contact Respondent on several occasions during the first week of January 2016.

113. On January 12, 2016, Karen sent an email message to Respondent in which she expressed her frustration at the delay, his failure to attach the proposed decree to the *Motion and Affidavit for Default Decree*, and his lack of communication. She asked him to provide her with a corrected proposed decree that she could sign and return. She sent a similar email message to Respondent on January 15, 2016.

114. Respondent contacted Karen on January 20, 2016, at which time he informed her that he had been ill.

115. On January 21, 2016, Respondent sent another draft decree to Karen. She signed it, had it notarized, and emailed it back to him that same day. Respondent abandoned Karen and failed to communicate with her thereafter.

116. Also on January 21, 2016, the court filed a *Notice of Intent to Dismiss Case*, which stated that Karen's case would be dismissed on March 21, 2016, unless

a decree was entered, the matter resulted in the entry of default, or the court granted a motion to extend the dismissal date. A copy of that order was sent to Respondent at an incorrect address.

117. Respondent failed to file the proposed decree that Karen had signed, had notarized, and returned to him.

118. On February 16, 2016, Karen filed a *Motion to Withdraw Attorney* because Respondent had been unresponsive.

119. On March 17, 2016, the court granted Karen's *Motion to Withdraw Attorney*.

120. On May 5, 2016, the court dismissed the case without prejudice for lack of prosecution.

Failure to Respond to Bar Counsel

121. On February 17, 2016, bar counsel sent a screening letter to Respondent at an address other than his address of record with the State Bar,⁶ which directed him to submit a written response to the charges of misconduct by March 8, 2016. Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Respondent failed to submit a written response, as directed by bar counsel.

Violations in Count Five

122. By engaging in the conduct set forth in Count Five, Respondent violated ER 1.2(a), ER 1.3, ER 1.4(a) and (b), ER 1.5(a), ER 1.16(d), ER 3.4(c), ER 8.1(b) and ER 8.4(d), and Rules 54(c) and (d)(2), Ariz. R. Sup. Ct.

⁶ 6339 East Preston Street, Mesa, Arizona 85215.

COUNT SIX (File No. 16-0340/Swiader)

Representation of Janelle Swiader

123. On December 23, 2015, Shane Evans ("Evans"), Janelle Swiader's former husband, filed a *Petition to Establish Paternity, Legal Decision-Making, Parenting Time and Support* that named Janelle Swiader ("Swiader") as the mother of a child for which he claimed he was the father (*Shane Evans v. Janelle Swiader*, Maricopa County Superior Court No. FC2015-007725). On that same date, Swiader signed and filed an acceptance of service.

124. During December 2015, Swiader consulted with Respondent regarding the possibility that he could represent her at a hearing (she wanted to be represented because Evans had informed her that he was going to be represented at the hearing). Respondent agreed to represent her and met her at the courthouse. Swiader paid Respondent a fee of \$250.00.

125. Swiader and Respondent spoke following the hearing, and about a week later she decided to hire Respondent to continue the representation. Swiader signed Respondent's fee agreement and authorized him to receive \$500.00 through use of her debit card; Respondent received that payment on December 19, 2015. Respondent was supposed to file a motion for paternity on Swiader's behalf by no later than December 31, 2015.

126. Swiader attempted to communicate with Respondent throughout December to ensure the motion for paternity was filed. Respondent, however, failed to respond. Respondent's voice-mailbox was full and not accepting any new messages, and his office telephone had been disconnected. Respondent failed to

respond to Swiader's text messages and email messages. Respondent abandoned Swiader.

127. Respondent failed to file a response to the *Petition to Establish Paternity*, and failed to file a motion for paternity by December 31, 2015.

128. On January 20, 2016, Swiader filed, *pro se*, a response to the *Petition to Establish Paternity*.

129. On February 22, 2015, Swiader and Evans filed, *pro se*, a *Stipulation to File Consent Paternity Judgment/Order*, in which they agreed to the entry of a judgment of paternity naming Evans as the child's biological father.

130. On March 3, 2016, the court denied the stipulation and dismissed the *Petition to Establish Paternity* because another superior court judge had previously determined the child's father was Swiader's former husband (the decree in Swiader's December 2012 divorce listed a man other than Evans as the child's father).

131. On May 10, 2016, another court denied Evans' motion to intervene in Swiader's underlying dissolution case, which he filed in an attempt to obtain an order establishing him as the child's father.

Failure to Respond to Bar Counsel

132. On February 17, 2016, bar counsel sent a screening letter to Respondent at an address other than his address of record with the State Bar,⁷ which directed him to submit a written response to the charges of misconduct by March 8, 2016. Neither that letter nor other letters sent to him at the same address

⁷ 6339 East Preston Street, Mesa, Arizona 85215.

were returned to the State Bar by the U.S. Postal Service. Respondent failed to submit a written response, as directed by bar counsel.

Violations in Count Six

133. By engaging in the conduct set forth in Count Six, Respondent violated ER 1.2(a), ER 1.3, ER 1.4(a) and (b), ER 1.5(a), ER 1.16(d), ER 8.1(b) and ER 8.4(d), and Rules 54(d)(2), Ariz. R. Sup. Ct.

COUNT SEVEN (File No. 16-0505/Landry)

Representation of Celia Landry

134. On March 16, 2015, Erin Landry ("Erin"), an adult, filed a petition for order of protection against her mother Celia Landry ("Celia") (*Erin Landry v. Celia Landry*, McDowell Mountain Justice Court No. CC2015-045344). On that same date, the McDowell Mountain Justice Court issued an order of protection in Erin's favor and against Celia.

135. During March 2015, an attorney representing Celia regarding a criminal matter recommended that she hire Respondent to represent her regarding the petition for order of protection.

136. On March 31, 2015, during a hearing on the petition for order of protection, Erin moved to dismiss the order of protection. On that same date, the court dismissed the order of protection.

137. On April 2, 2015, Celia entered into a fee agreement with Respondent to pursue grandparent rights so she could have visitation with Erin's daughter (Celia's granddaughter). Respondent also agreed to represent Celia regarding damage that Erin had caused to her home, slander, and other legal problems that Erin was allegedly causing. Celia paid Respondent a fee of \$3,000.00.

138. Respondent wrote several letters to Erin, asking her to remove her personal belongings from Celia's house. Celia asked Respondent to delay filing a petition for grandparent rights until August or September 2015.

139. On May 14, 2015, a criminal assault charge was filed against Celia in the Phoenix Municipal Court (*State v. Celia Landry*, No. M-0741-4958845). That charge was based upon the same factual allegations as those that Erin included in her earlier petition for order of protection.

140. On September 17 or 18, 2015, Celia was found guilty of assault in the Phoenix Municipal Court.

141. On September 15, 2015, Respondent filed a notice of appearance and a petition to establish grandparent rights on Celia's behalf in Erin's dissolution proceeding (*Ariel Skalina v. Erin Landry*, Maricopa County Superior Court No. FC2012-053408).

142. On September 17, 2015, Erin filed a petition for order of protection against Celia (*Erin Landry v. Celia Landry*, Maricopa County Superior Court No. FN2015-004825), which addressed the same conduct that had been alleged in the first petition. On that same date, the court signed an order of protection that prohibited Celia from having any contact with Erin or committing any crime against her.

143. Erin served the order of protection on Celia on November 20, 2015.

144. Respondent agreed to represent Celia regarding the order of protection. On or about November 25, 2015, Respondent filed a notice of appearance and a *Request for Evidentiary Hearing on Order of Protection* on Celia's behalf.

145. On December 8, 2015, Respondent filed a motion to quash the order of protection. Celia paid Respondent an additional \$500.00 to file that motion.

146. On December 9, 2015, Celia signed another contract with Respondent and paid an additional \$3,000.00 for representation regarding other issues that may be raised by Erin and possibly to seek custody of her granddaughter.

147. On December 31, 2015, Respondent filed a Motion for Temporary Orders for Grandparent Visitation in Erin's dissolution proceeding (No. FC2012-053408).

148. On January 13, 2016, the court scheduled a hearing regarding the order of protection for January 22, 2016. That hearing was subsequently continued to January 29, 2016.

149. On January 29, 2016, Celia and Respondent appeared at the scheduled hearing. Respondent informed the court that Celia no longer wanted to contest the order of protection. The court entered an order affirming the order of protection.

150. Celia requested that Respondent obtain transcripts of the March and September hearings, but as of February 18, 2016, Respondent had not provided her with the transcripts, which she deemed vital to her defense. Respondent told Celia there had been some miscommunication regarding that issue.

151. Celia met with Respondent on only one occasion other than in the context of proceedings in court; all other communication was by telephone or text message.

152. Respondent and Celia appeared at the hearing on the order of protection on January 29, 2016. After consulting with Celia, Respondent informed

the court that she no longer wished to contest the order of protection. The court then affirmed the order of protection.

153. Celia did not receive any communication from Respondent after January 29, 2016. At or about that time, Respondent abandoned Celia.

154. On February 5, 2016, Erin's attorney filed an application for attorney's fees and a *China Doll* affidavit. Respondent should have filed a response on Celia's behalf, but failed to do so.

155. On February 11, 2016, Celia filed, *pro se*, a motion seeking additional time to hire another attorney to respond to Erin's application for attorney's fees. She stated in that motion that Respondent had abandoned her.

156. On or about February 29, 2016, Celia hired another attorney to represent her in Erin's dissolution proceeding.

157. On March 9, 2016, the court denied Celia's motion for additional time to hire new counsel to respond to Erin's application for attorney's fees, and ordered Celia to pay \$500.00 to Erin for attorney's fees and costs associated with defending Celia's objection to the order of protection.

158. Respondent failed to perform all of the work that was necessary to diligently and competently represent Celia (e.g., he failed to file a response to Erin's application for attorney's fees). As a result, Celia sought new counsel to assume the representation, expending an additional \$6,500.00.

159. Respondent failed to return or respond to many of Celia's numerous voice-mail messages and text messages. In addition, he failed to return telephone calls and email messages from Erin's attorney and the attorney representing Erin's husband.

160. Celia gave Respondent various documents and compact disks to use on her behalf in the various court proceedings, but he failed to return them to her when he discontinued his representation of her.

Failure to Respond to Bar Counsel

161. On February 23, 2016, bar counsel sent a screening letter to Respondent at an address other than his address of record with the State Bar,⁸ which directed him to submit a written response to the charges of misconduct by March 14, 2016. Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Respondent failed to submit a written response, as directed by bar counsel.

Violations in Count Seven

162. By engaging in the conduct set forth in Count Seven, Respondent violated ER 1.2(a), ER 1.3, ER 1.4(a) and (b), ER 1.5(a), ER 1.15(d), ER 1.16(d), ER 8.1(b) and ER 8.4(d), and Rules 54(d)(2), Ariz. R. Sup. Ct.

COUNT EIGHT (File No. 16-0538/Bradley)

Representation of Erica Jean Cherry

163. On January 27, 2015, Erica Jean Cherry ("Cherry") filed, *pro se*, a petition for dissolution of marriage (*Erica Cherry v. Matthew Cattey*, Maricopa County Superior Court No. FN2015-090352).

164. On February 17, 2015, Matthew Cattey ("Cattey"), Cherry's husband, filed, *pro se*, a response to the petition for dissolution of marriage.

⁸ 6339 East Preston Street, Mesa, Arizona 85215.

165. On February 28, 2015, the court scheduled an Early Resolution Conference for April 21, 2015, and ordered counsel to appear and the parties to undertake various tasks prior to April 21, 2015.

166. Cherry hired Respondent to represent her. On March 18, 2015, Respondent filed a notice of appearance on Cherry's behalf.

167. Respondent failed to attend the Early Resolution Conference on April 21, 2015. The conference was vacated due to Respondent suffering from an unexpected illness.

168. On April 28, 2015, the court scheduled a trial for June 24, 2015, and ordered the parties to undertake certain tasks prior to that date.

169. On June 8, 2015, Respondent filed a *Motion to Vacate Trial Date and Set Family Settlement Conference*.

170. On June 18, 2015, Catey filed a motion to continue the trial because Respondent failed to appear at the Early Resolution Conference and he believed the parties could resolve all issues without a trial.

171. On June 23, 2015, the court denied Respondent's motion to vacate the trial date, affirmed the trial date of June 24, 2015, but noted that a referral to alternative dispute resolution would be made at that time, if appropriate.

172. Both Cherry and Respondent attended court on June 24, 2015, the date scheduled for trial. On that date, the court scheduled a settlement conference for July 31, 2015, and placed the case on the inactive calendar for dismissal on August 28, 2015, unless a final decree had been entered or the court, upon motion of either party, reset the case for trial.

173. On July 31, 2015, the court rescheduled the settlement conference for August 5, 2015.

174. On August 5, 2015, the parties attended the settlement conference but were unable to reach any agreements.

175. On August 6, 2015, Respondent filed a motion to set trial date.

176. On September 10, 2015, the court scheduled the trial for December 14, 2015, and ordered the parties to undertake various tasks prior to that date, including compliance with the disclosure and discovery requirements of the Arizona Rules of Family Law Procedure by no later than November 13, 2015.

177. Cattey hired counsel to represent him, and on November 2, 2015, attorney Brad Reinhart filed a notice of appearance on Cattey's behalf.

178. On December 7, 2015, attorney Reinhart filed a motion to continue the December 14, 2015, trial, which the court granted on December 14, 2015. The court attempted to contact Respondent on that date regarding his and Chery's availability, but the court's attempt to contact Respondent was unsuccessful and Respondent failed to contact the court. The court rescheduled the trial for June 1, 2016, and ordered the parties to complete various tasks prior to that date, including compliance with the disclosure and discovery rules of the Arizona Rules of Family Law Procedure by no later than May 2, 2016.

179. Respondent failed to communicate with Cherry for a period of months, and apparently abandoned her. At some point in time, Cherry hired attorney Shannon Bradley to represent her.

180. On March 30, 2016, attorney Bradley filed a notice of substitution of counsel on Cherry's behalf, which the court granted on April 8, 2016. Attorney

Bradley attempted to contact Respondent by telephone and email so she could retrieve the file he maintained on Cherry's behalf, but Respondent's telephone was no longer in service and Respondent failed to respond to her email messages.

181. On April 25, 2016, attorney Bradley filed an initial disclosure statement because Respondent had failed to provide any disclosure to Cattey or attorney Reinhart, as required by court rules.

182. On May 25, 2016, attorney Bradley notified the court that the parties had resolved all issues in the case and moved the court to vacate the trial scheduled for June 1, 2016.

183. On July 5, 2016, the court entered a consent decree of dissolution of marriage.

Failure to Respond to Bar Counsel

184. On February 29, 2016, bar counsel sent a screening letter to Respondent at an address other than his address of record with the State Bar,⁹ which directed him to submit a written response to the charges of misconduct by March 21, 2016. Neither that letter nor other letters sent to him at the same address were returned to the State Bar by the U.S. Postal Service. Respondent failed to submit a written response, as directed by bar counsel.

Violations in Count Eight

185. By engaging in the conduct set forth in Count Eight, Respondent violated ER 1.2(a), ER 1.3, ER 1.4(a) and (b), ER 1.5(a), ER 1.16(d), ER 3.4(c), ER 8.1(b) and ER 8.4(d), and Rules 54(c) and (d)(2), Ariz. R. Sup. Ct.

⁹ 6339 East Preston Street, Mesa, Arizona 85215.

DATED this 9th day of September, 2016.

STATE BAR OF ARIZONA

James D. Lee
James D. Lee
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 9th day of September, 2016.

by: Jules Stone
JDL/ts