

SUPREME COURT OF ARIZONA

In the Matter of a Member of the) Arizona Supreme Court
State Bar of Arizona) No. SB-16-0050-AP
)
W. MICHAEL WALZ,) Office of the Presiding
Attorney No. 11345) Disciplinary Judge
) No. PDJ20169039
Respondent.)
) **FILED 4/20/2017**
_____)

DECISION ORDER

Pursuant to Rule 59, Rules of the Arizona Supreme Court, Respondent W. Michael Walz appealed the hearing panel's imposition of a reprimand and two-year term of probation. Respondent argues that the panel erred in *sua sponte* amending the complaint to add new charges after the hearing had concluded. The Court has considered the parties' briefs and the record in this matter. We review the panel's decision to amend the complaint for an abuse of discretion. The Court concludes that the panel erred in amending the complaint and finding new, uncharged ethical violations.

In pre-hearing proceedings, after an evidentiary hearing, the presiding disciplinary judge (PDJ) imposed sanctions on Respondent for his failure to prepare and serve an initial disclosure statement and to participate in preparing a joint pre-hearing statement. See Rule 58(e), (i). The State Bar did not move to amend the complaint to add charges relating to that conduct. Following the subsequent hearing on the merits, the panel found that the State Bar failed to carry its burden of proving the allegations in its complaint. The

panel, however, found that Respondent's prior non-compliance with pre-hearing procedures violated Rule 54(c) and (d). Citing Rule 47(b)(1), the panel amended the complaint to include these new charges and imposed discipline for those violations. Decision and Order Imposing Sanctions, pp. 2, 11-12. Rule 47(b)(1), however, does not authorize a panel to amend a complaint *sua sponte*. The panel therefore erred in doing so.

Rule 47 covers general procedural matters in discipline cases. Subsection (b)(1) deals with amendment of pleadings:

(b) Amendment of Pleadings.

1. *To Conform To Evidence*. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, but failure so to amend does not affect the result of the hearing on these issues. If evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, the hearing panel may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the hearing panel that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The hearing panel may grant a continuance to enable the objecting party to meet such evidence.

The panel found that the evidentiary hearing concerning Respondent's non-compliance with pre-hearing procedural requirements involved "issues not raised by the pleadings" that nonetheless should be treated "as if they had been raised in the pleadings." Decision and Order Imposing Sanctions, p. 2. But Respondent neither expressly

nor impliedly consented to that. And the second sentence of Rule 47(b)(1) provides that such an amendment to the pleadings may be made "upon motion of any party." (Emphasis added.) Thus, the rule anticipates that it is up to the parties to propose changes to the pleadings. The rule does not permit the panel or PDJ to initiate the amendment of the pleadings.

Similarly, Rule 47(b)(2) relates specifically to pre-hearing amendments and permits bar counsel to amend the complaint. It too does not permit the panel or PDJ to initiate an amendment of the complaint. Reserving the right to seek amendment of the pleadings to the parties is appropriate because the hearing panel acts as the objective, independent trier of fact and should not be assuming the role of prosecutor and deciding what charges to bring. Rule 47(b) does not authorize the panel to amend the pleadings *sua sponte*.

In addition, amending a complaint to add new charges after a hearing has concluded raises due process concerns. A lawyer has the right to procedural due process in attorney disciplinary proceedings. *In re Ruffalo*, 390 U.S. 544, 551 (1968). Due process in such proceedings "[i]ncludes fair notice of the charges made and an opportunity for the accused to provide an explanation and present a defense." *In re Peasley*, 208 Ariz. 27, 34 ¶ 26 (2004) (alterations omitted) (citing *In re Walker*, 200 Ariz. 155, 158 ¶ 13 (2001)). A respondent may not be charged with one ethical violation and then, without opportunity for a hearing or presentation of evidence, be

disciplined for another. *In re Owens*, 182 Ariz. 121, 124 (1995); *In re Meyers*, 164 Ariz. 558, 561-62 (1990). In Respondent's proceeding, he had no notice that the panel planned to amend the complaint to add new discipline charges and had no opportunity to respond. Sanctioning an attorney under these circumstances violates due process.

The panel and bar counsel attempt to distinguish this case from *In re Owens* and *In re Meyers* by arguing that the procedural rules are different now and Respondent admitted his non-compliance at the earlier evidentiary hearing. As noted above, however, the current rules do not authorize the panel to amend the pleadings *sua sponte*. Further, the panel's analysis does not address the due process problem. The first time Respondent learned about the amendment was when the panel issued its Decision and Order Imposing Sanctions. Respondent was not on notice that the complaint would be amended to add charges and had no opportunity to respond to the amended charges. Respondent may have accepted the pre-hearing sanctions for his non-compliance with procedural requirements; but the additional, amended charges (regarding the same procedural omissions for which the PDJ had previously imposed sanctions) raised the prospect of new sanctions, and Respondent was improperly deprived of his right to challenge any additional sanctions. Therefore,

IT IS ORDERED granting Respondent's appeal.

IT IS FURTHER ORDERED reversing the decision of the panel

finding additional violations of Rule 54(c) and (d) and vacating the order imposing a reprimand and probation.

Chief Justice Bales did not participate in the determination of this matter.

DATED this 20th day of April, 2017.

_____/s/_____
JOHN PELANDER
Vice Chief Justice

TO:

James J Belanger

Vidula Uday Patki

W Michael Walz

Craig D Henley

Amanda McQueen, Disciplinary Clerk, Office of the Presiding
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**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

W. MICHAEL WALZ,
Bar No. 011345

Respondent.

No. PDJ-2016-9039

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar No. 15-2980]

FILED SEPTEMBER 2, 2016

Probable cause was found on March 25, 2016. A formal complaint was filed on April 25, 2016. On May 24, 2016, Mr. Walz filed his Answer. A telephonic Initial Case Management Conference (ICMC) was held on June 1, 2016. Both parties appeared and Mr. Walz was advised by the Presiding Disciplinary Judge (PDJ) of his right to retain an attorney.

On July 8, 2016, pursuant to Rule 58(f)(3),¹ the State Bar moved to strike the answer of Mr. Walz and enter a sanction of judgment by default for the failure of Mr. Walz to serve his initial disclosure statement and his failure to participate in the preparation of the joint prehearing statement. Emails and a letter sent to Mr. Walz were attached to the motion demonstrating the efforts by the State Bar to resolve the discovery issue and that Mr. Walz did not jointly participate in the preparing of the joint prehearing statement despite the express orders entered from the ICMC. A mandatory hearing on the motion was required pursuant to Rule 58(f)(3). On July 19, 2016 that sanctions hearing was held. Craig D. Henley, Senior Bar Counsel and W. Michael Walz were present.

¹ Unless otherwise stated, all rule references are to the Arizona Rules of the Supreme Court.

Mr. Walz stated his non-compliance was intentional as he felt the State Bar was engaged in a hatchet case against him. Mr. Walz stated he's ready to retire and while he cares what happens, he has elected to stay in his cabin in New Mexico rather than comply with the rules of disclosure or the orders of the court because, from his view, it would serve no purpose for him to file motions or adhere to those rules and orders. By Order of the PDJ filed July 19, 2016, procedural sanctions were issued pursuant to Rule 58(f)(3)(A) and (B).

As non-compliance was raised by the State Bar's Rule 58 motion and subsequent evidentiary hearing, the issue of whether that conduct is grounds for discipline under Rule 54(c) and (d) is before the Hearing Panel ("Panel"). Pursuant to Rule 58(f)(3)(C), whether such intentionally evasive and incomplete disclosure may be construed a violation under Rule 54(d) is reserved to the Panel, not the PDJ himself. These pleadings were referred to the PDJ by Bar Counsel. However, even if they had not been referred to by Bar Counsel, the pleadings evidencing non-compliance were before the Panel for its consideration. In this decision, the Panel does not ignore *In re Owens*, 182 Ariz. 121, 124, 893 P.2d 1284, 1287 (1995) and *In re Myers*, 164 Ariz. 558, 561- 562, 795 P.2d 201, 204-205 (1990) which address uncharged conduct being the basis of a sanction without proper notice or an opportunity to defend against the charges. The Panel distinguishes the present circumstance from those in *Owens* and *Myers* as the Rules differ significantly from when those decisions were issued. Rule 47(b)(1) requires an amendment to conform to the evidence only regarding "issues not raised by the pleadings." A Rule 58(f)(3) mandatory sanctions hearing was noticed and held. The misconduct of Mr. Walz was intentional. It is the finding of the Panel, such misconduct is grounds for discipline under Supreme Court Rule 54(c) and (d).

For his failure to prepare and serve an initial disclosure statement, Mr. Walz was procedurally prohibited from offering any testimony or exhibits into evidence pursuant to 58(f)(3)(B)(i). For his intentional refusal to follow pretrial orders, including his intentional refusal to participate in the preparing of the joint prehearing statement, Mr. Walz could not: oppose the allegations in the complaint; the evidence of the State Bar; support any defenses he may have claimed nor the denials and defenses in his answer, pursuant to Rule 58(f)(3)(B)(i).

Those procedural sanctions are not the same as an effective entry of default. The allegations in the complaint were not deemed admitted. Despite the issuance of procedural sanctions, the Panel made an independent determination of whether the State Bar had proven by clear and convincing evidence that Respondent violated the ethical rules.

On July 25, 2016, a Rule 58(j) hearing occurred before the Panel, composed of the PDJ, public member Richard L. Westby, and attorney member Mark S. Sifferman. Exhibits 2, 3, 7, 18, 19, 21, 31 and 32 were admitted. Bar Counsel made an offer of proof to support the allegations within the complaint. Exhibits 31 and 32 were two data CD's comprised of what appeared to be hours of surreptitious recordings taken by Complainant of multiple conversations between her and Mr. Walz. There was no meaningful context to the statements in the recordings. The Panel is not under any obligation to search such a voluminous record to ascertain how, why, or if those recordings contain evidence to support their allegations. *Hubbs v. Costello*, 22 Ariz. App. 498, 501, 528 P.2d 1257, 1260 (1974).

Bar Counsel was ordered to file a Memorandum of Record Designation, stating by time recording markers of the respective exhibit recordings which parts of the recorded conversations the State Bar argues evidences misconduct, citing the Ethical

Rule applicable to each such citation and relating it to the allegations of the complaint. That Memorandum of Record Designation ["Memorandum"] was filed on August 11, 2016. That Memorandum has Attachments A through G of recording transcript designations. Recordings, A-C, E, and G were stated to be recordings of conversations occurring in 2013. Attachments A and B were recordings occurring on September 30, 2013, Attachment C occurred on October 1, 2013, Attachment D was undated, Attachment E occurred on May 9, 2013, Attachment F occurred on June 14 of an unstated year, and Attachment G occurred on November 21, 2013.

FINDINGS OF FACT

Mr. Walz is a lawyer licensed to practice law in the State of Arizona on May 9, 1987. In or around April 2009, Complainant was employed by Mr. Walz. The complaint comprised one count which stated multiple, but separate allegations. The complaint listed:

-Paragraph 3, "During the course of Complainant's employment with Respondent, Respondent repeatedly made unwanted sexual advances towards Complainant."

-Paragraph 5, "During the course of Complainant's employment with Respondent, Respondent advised a client, Dean Meyers, to flee the jurisdiction to a country without an extradition treaty in order to avoid justice."

-Paragraph 8, Respondent's Arizona Medical Marijuana Program ID card expired on September 21, 2012."

-Paragraphs 11 and 12, Respondent requested that Complainant obtain marijuana for him from private sources other than marijuana dispensaries registered by the Arizona Department of Health Services, and on occasion Complainant succeeded in obtaining it from those sources.

The complaint alleges, without specificity, that by these actions Mr. Walz:

1) engaged in unprofessional conduct in violation of Rule 41(g);

2) failed to consult with his client about relevant limitations on Respondent's ability to counsel client regarding absconding from the jurisdiction in violation of Rule 42, ER 1.4(a)(5);

3) engaged in criminal behavior which reflects adversely upon the lawyer's honesty, trustworthiness or fitness as a lawyer in violation of Rule 42, ER 8.4(b); and

4) engaged in misconduct that was prejudicial to the administration of justice in violation of Rule 42, ER 8.4(d).

The complaint does not identify which Ethical Rule was allegedly violated by which factual allegation. However, in the Memorandum of Record Designation, the State Bar links the allegations with the appurtenant rule. The behavior of Mr. Walz in the recordings was often repugnant to the Panel. However, that is not the standard by which a Panel determines the merits of a complaint. Rule 48(d) sets forth the standard of proof regarding allegations in a complaint. The burden of proof is upon the State Bar to prove the allegations by clear and convincing evidence. Rule 48(e).

Rule 41(G) Alleged Violation

The first allegation against Mr. Walz alleges he engaged in unprofessional conduct by making unwanted sexual advances towards Complainant in violation of Rule 41(g). That Rule states the duties and obligations of all members of the State Bar shall be to "avoid engaging in unprofessional conduct and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the justice of the cause with which the member is charged."

To support this "unwanted sexual advances" allegation, the Panel was referred to specific recordings by the Memorandum. By example, the Panel was referred to Attachment E of the Memorandum. There Mr. Walz asked Complainant, "Where should I sit? I'll sit on this side." She responded, "Don't sit over there." To which he

replied, "Okay. I'll have to sit somewhere. I'll sit by all these dirty Kleenex." Complainant said "Sorry (laughter)." [Attachment E, Page 2:10-15.]

Another cited recording claimed to support this allegation was Mr. Walz stating, "I'm going from Medford to by Carter Lake." Complainant stated, "Uh-huh. It's a nice—"Mr. Walz stated, "Oh that's right. You can see what I'm doing." Complainant responded, "I know exactly what you're doing." Mr. Walz stated, "Because I haven't been looking at any porn. You'd be really offended. (Laughter) I meant anyway." [*Id.*, Page 10:18-11:1.]

In another cited recording referenced, Complainant in context is angry with Mr. Walz and claims he just talked to her about going on disability. Prior to the referenced section, Mr. Walz states, "Janet, I'm just wanting to talk about work." She responds, "Now you want to talk about work?" He states, "I always want to talk about work." When she asked what work he claims she cannot do, he tells her, "You can't—you can't send a request for a police report." [Attachment F, Page 2:1-24.] After this prior dialogue, the State Bar cites that Complainant suddenly alleged Mr. Walz had "porn on in the office" which he immediately denies. [*Id.*, Page 4:4-15.]

We found the balance of the cited recordings offered insufficient proof of this allegation. We reviewed the cited transcripts, listened to the recordings and find the State Bar failed to meet its burden of proof regarding this allegation.

Alleged Violation of ER 1.4(a)(5) and ER 8.4(d)

ER 1.4(a)(5) requires that a lawyer "consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law." ER

8.4(d) states it is professional misconduct for a lawyer to “engage in conduct that is prejudicial to the administration of justice.”

The State Bar stated, “During the course of Complainant’s employment with Respondent, Respondent advised a client, Dean Meyers, to flee the jurisdiction to a country without an extradition treaty in order to avoid justice.” In addition, Mr. Walz allegedly “made similar statements to Meyers’ mother and other clients.” [State Bar Individual Pre-Hearing Statement, Page 2, Paragraph 2 and 3.]

To support this allegation, the State Bar referred the Panel to Memorandum Attachment G, Page 2:17-3:8. The Panel determined the entirety of Attachment G brought the conversation into better context. In the transcript of that recording, an unidentified individual calls Mr. Walz and discusses an unnamed defendant, (“defendant”). The caller is not the defendant. Who the parties to the call are taking about or who is calling is never stated. Mr. Walz tells the caller, “Well, I’ve got some good news. The prosecutor decided not to do the trial after all.” The statements of the caller are often muffled and indiscernible. As a result, it is not clear what statements Mr. Walz is responding to.

The State Bar emphasizes that Mr. Walz informed the caller there was a warrant for the arrest of the defendant and then stated, “but if they don’t find him, then nothing happens to him.” The response of the caller is indiscernible, but Mr. Walz tells him “it’s a real problem.” He then tells the caller, “Maybe you can talk to him about going to the Philippines or something....” We first note, contrary to the State Bar allegation, the United States has had an extradition treaty with the Philippines for more than a decade. Second, shortly after that statement, Mr. Walz tells the caller, “Well I don’t know what to tell you about that. The only way to

prevent that from ever happening is to have him turn himself in, and I don't think he wants to do that." [Attachment G, Page 3:13-16.]

We conclude Mr. Walz is answering questions as completely as he can. The evidence is far from clear and convincing that Mr. Walz is encouraging "a client, Dean Meyers, to flee the jurisdiction to a country without an extradition treaty in order to avoid justice." It is not clear whether the defendant referred to has even established a lawyer/client relationship. Mr. Walz states in response to the assertion of the caller that the defendant is employed and working,

Well, that's—good. Yeah. He said he was going to send me \$1500. That's how much I agreed to take because I have been working on his case, and I think one of the reasons that they didn't do the trial was because I was working on the case, and I think they were—they thought they might not win." [*Id.*, Page 4:1-8.]

Mr. Walz tells the caller in response to a muffled statement by the caller, "Well, yeah, you can hope for the best, but not, that's—that's—that's just not realistic. No, I think you know, if they—if they find him in the next three years or so, they would probably bring him back." When the caller states, "Well, it's worth a try because (muffled)," Mr. Walz recalls for the caller the story of a client he previously had who was on bench warrant status for five years and flew to Arizona "and they arrested him the minute he arrived at the airport." [*Id.*, Page 4:14-5:5.]

We found the balance of the cited recordings offered insufficient proof of this allegation. We reviewed the cited transcripts, listened to the recordings and find the State Bar failed to meet its burden of proof establishing a violation of ER 1.4(a)(5) and ER 8.4(d).

Alleged Violation of ER 8.4(b)

Among the contested facts deemed material by the State Bar was listed, "Respondent's Arizona Medical Marijuana Program ID card expired on September 21,

2012.” The State Bar alleged Respondent requested Complainant obtain marijuana for Respondent from private sources other than marijuana dispensaries registered by the Arizona Department of Health Services and that Complainant did so. Other contested facts deemed material by the State Bar included Respondent was upset because “he could have made other arrangements” when Complainant failed to purchase an ounce of marijuana from Complainant’s acquaintance “David” and Respondent paid money for a marijuana grow-house, partially quoting Respondent saying “maybe I wanted to get some weed out of the investment” and “...considering the money I paid, I wanted to get some marijuana back.” [State Bar Individual Pre-Hearing Statement, Page 2, Paragraph 4-7 and 8(b)-(c).]

ER 8.4(b) states it is professional misconduct for an attorney to “commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.” The *A.B.A. Model Rules of Professional Conduct*, Comment, says in part,

Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer’s behalf.

ER 8.4 reaches to include behavior beyond the practice of law by an attorney. *People v. Parsley*, 109 P.3d 1060 (Colo. O.P.D.J. 2005). Paragraph (b) of that Rule provides an attorney may be disciplined for certain criminal conduct. We consider the evidence from that perspective.

The State Bar Complaint alleges Respondent’s Arizona Medical Marijuana Program ID card expired on September 21, 2012. [Complaint, Page 2, Paragraph 8.] In addition that Respondent paid money for a “marijuana growhouse” but was never authorized to cultivate marijuana. As a result, it is the State Bar’s position that any

attempt to purchase or use marijuana violated law. The State Bar argues, even if Mr. Walz was licensed, his purchasing or having Complainant purchase from private sources other than marijuana dispensaries registered by the Arizona Department of Health Services would be unlawful. As with most of the counts, the support for these allegations comes from the surreptitious recordings of Complainant of conversations that are alleged to have occurred in 2013.

The State Bar declined to offer Exhibit 33 into evidence although it was in its book of proposed exhibits filed with the disciplinary clerk. As the Exhibit is dispositive of multiple allegations, the PDJ orders the exhibit into evidence. Exhibit 33 is a verified statement from the Arizona Department of Health Services, Licensing. It is not listed in the State Bar Individual Pre-Hearing Statement.

The Exhibit verifies Respondent has had five medical marijuana cards issued to him. With the first, he could apparently cultivate marijuana. The card expired on September 21, 2012, and its status is now void. The second card is the only card referenced by the State Bar. It was issued on June 20, 2012, and expired on September 21, 2012. The next card was issued to Mr. Walz had an effective date of September 22, 2012, and expired on September 22, 2013. His fourth card was effective on November 13, 2013, and expired on November 14, 2014. We conclude at all times relative to the recordings, Mr. Walz had a valid Medical Marijuana card. The fact his first card expired on September 21, 2012, is not relevant. Because this raised significant concerns for the Panel, Exhibits 4, 5 and 6 were also reviewed. Exhibit 4 is the State of Arizona authorization for Complainant to cultivate and harvest marijuana. Exhibit 5 is the Arizona Department of Health Services Qualified Patient Request by Mr. Walz to add a caregiver for him. Exhibit 6 is the Arizona Department

of Health Services Medical Marijuana Caregiver Attestation apparently filed by Complainant to assist Mr. Walz with his medical marijuana use.

We reviewed the cited transcripts, listened to the recordings and find the references often grossly out of context. By example, to support the State Bar allegation that Respondent was upset because “he could have made other arrangements” when Complainant failed to purchase an ounce of marijuana from Complainant’s acquaintance “David,” the State Bar referenced Attachment B.

But in that recording, Complainant denies she was asked by Respondent to obtain marijuana for him. [Attachment B, Page 5:2-3.] When Complainant tells Respondent he had said *he* would call David, Respondent states she keeps making things up. [*Id.*, Page 5:4-8.] This is emphasized by each of them later in the recording when they both individually deny any effort to call or agreement to call David. [*Id.*, Page 6:19-24.] How such denials establish a crime is entirely unclear to us. We found the balance of the cited recordings offered insufficient proof of this allegation. We reviewed the cited transcripts, listened to the recordings and find the State Bar failed to meet its burden of proof by clear and convincing evidence a violation of ER 8.4(b).

Violation of Order of the Court and any obligation under the Rules in a disciplinary proceeding

While we find the State Bar failed to meet its burden of proof regarding the alleged misconduct in the complaint, we find in this proceeding, Mr. Walz intentionally violated orders of the PDJ and violated his disclosure obligation pursuant to the Supreme Court Rules in this disciplinary proceeding. Supreme Court Rule 54(c) and (d) state grounds for discipline of a member of the State Bar include knowing violations of court orders and failing to furnish information or respond promptly to

any inquiry or request from bar counsel or the presiding disciplinary judge made pursuant to the rules for information relevant to a pending complaint.

Mr. Walz did not serve his initial disclosure statement and failed to participate in the preparation of the joint prehearing statement and on July 19, 2016, the PDJ held a sanctions hearing. Both parties were present. As previously discussed, Mr. Walz stated his non-compliance was intentional as he felt the State Bar was engaged in a hatchet case against him. Mr. Walz advised he is ready to retire and stated that while he cares what happens in this discipline matter, he has elected to stay in his cabin in New Mexico rather than comply with the rules of disclosure or the orders of the court, because from his view it would serve no purpose for him to file motions or adhere to those rules and orders. We find such conduct is grounds for discipline under Supreme Court Rule 54(c) and (d).

CONCLUSIONS OF LAW

Based upon these facts, the Panel finds by clear and convincing evidence that Mr. Walz violated Supreme Court Rule 54(c) and (d).

ABA STANDARDS ANALYSIS

In determining a sanction, the court utilizes the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") under Rule 57(a)(2)(E), Ariz. R. Sup. Ct. The *Standards* are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). The court considers: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0*.

I. Duties Violated, Mental State, Injury

Mr. Walz violated his obligation pursuant to the Supreme Court Rules to cooperate, furnish information, follow the initial case management conference order of the presiding disciplinary judge, and comply with the duty to file a disclosure statement as part of discovery. His actions were intentional and showed extreme disregard for the profession. His animus towards the State Bar included animus for the Attorney Discipline Probable Cause Committee, the Office of the Presiding Disciplinary Judge, the Supreme Court, and the profession.

The rules he violated were the Rules of the Supreme Court of Arizona, not of the State Bar of Arizona. The orders he violated were those of the PDJ, not of the State Bar of Arizona. The probable cause order he distained was from the Attorney Discipline Probable Cause Committee, not the State Bar.

Every attorney and every judge has an obligation to demonstrate respect for the legal system, not merely by words but by their actions. Every lawyer has a duty to show respect for those who serve the legal system. That obligation of regard is to the position held in the legal system not the person and is not limited to judges but also to other lawyers and public officials. While every lawyer has a concomitant duty, when necessary, to challenge the correctness, integrity or rightness of official action, it is also every lawyer's responsibility to uphold the legal process because every licensed lawyer is an officer of the legal system. Mr. Walz failed in his obligations as a lawyer.

Standard 7.0, Violations of Other Duties Owed As A Professional is applicable to violations of Rule 54. While the *Standards* are a useful tool in determining an appropriate sanction, they are considered guidelines and offer a frame of reference in determining the appropriate sanction. At times however, the lawyer's misconduct

does not fit squarely within those references. Although Mr. Walz's misconduct was intentional, the Panel determined that reprimand and probation is the appropriate sanction in this matter. The sanction fulfills the purposes of lawyer discipline, which is to protect the public and deter similar misconduct by other lawyers. *Matter of Kersting*, 151 Ariz. 171, 726 P.2d 587 (1986).

II. Aggravating and Mitigating Factors:

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

- *Standard 9.22(e)* bad faith obstruction of disciplinary proceedings.
- *Standard 9.22(g)* refusal to acknowledge wrongful nature of conduct.
- *Standard 9.22(i)* substantial experience in the practice of law. Mr. Walz practice law in Arizona since 1987.

B. The Panel finds mitigating factor 9.32(a) (absence of prior disciplinary offenses) is present. Mr. Walz offered no evidence in mitigation.

The Panel finds the presence of these aggravating factors and sole mitigating factor do not move the Panel to increase or decrease the sanction of reprimand and probation.

CONCLUSION

The Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Panel has made the above findings of fact and conclusions of law. The Panel has determined the appropriate sanction using the facts in this matter, consideration of the *Standards*, including the aggravating and mitigating factors, and the goals of the attorney discipline system. Accordingly,

IT IS ORDERED Mr. Walz is reprimanded effective the date of this order.

IT IS FURTHER ORDERED placing Mr. Walz on probation for two (2) years with the State Bar's Member Assistance Program (MAP) effective the date of this order.

IT IS FURTHER ORDERED Mr. Walz shall contact the State Bar's Compliance Monitor at (602) 340-7258 within ten (10) days from the date of this order to schedule an assessment. Specifically, Mr. Walz shall undergo at his expense, an independent medical examination by Dr. Phillip Lett, who shall report his findings to the State Bar. Thereafter, the Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate, and the terms, including reporting requirements, shall be incorporated herein. Mr. Walz shall be responsible for any costs associate with participation and compliance.

NON-COMPLIANCE

If Mr. Walz fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, under Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend a sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED no costs and expenses are awarded to the State Bar as they failed to meet their burden of proof. Pursuant to Rule 60(b)(1), costs and expenses are assessed based on proven or admitted counts. There are no costs of the Office of the Presiding Disciplinary Judge in this proceeding.

A final judgment and order will follow.

DATED this 1st day of September, 2016.

William J. O'Neil

Presiding Disciplinary Judge

CONCURRING:

Mark S. Sifferman

Mark S. Sifferman, Volunteer Attorney Member

Richard L. Westby

Richard L. Westby, Volunteer Public Member

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